Chapter 7: Ontario

LAST UPDATE: NOVEMBER 2017

Ontario – Main Language Laws

French Language Services Act, R.S.O. 1990, c. F. 32

ANNOTATIONS – GENERAL

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[2] This appeal raises important issues in relation to the language rights of Ontario's francophone minority. Montfort, located in Ottawa, is the only hospital in Ontario in which the working language is French and where services in French are available on a full-time basis. Montfort serves as the community hospital for the substantial francophone community of eastern Ontario and also plays a unique role in the education and training of French-speaking health care professionals. The Divisional Court held that, as the Commission's directions would cripple Montfort as an important francophone institution, they should be quashed on the ground that the Commission failed to respect the unwritten constitutional principle of respect for and protection of minorities. Ontario appeals, arguing that linguistic rights are exhaustively defined by the written text of the Constitution. As Montfort is not protected by the words of the Constitution, Ontario says that the Commission was free to alter its status. Montfort and the intervenors urge us to uphold the decision of the Divisional Court. They also rely on the quasi-constitutional protections of the *French Language Services Act*, R.S.O. 1990, c. F.32 ("F.L.S.A."), and say that the Divisional Court erred in rejecting their claim that Montfort is protected by s. 15 of the *Charter*.

[…]

[125] For the reasons that follow, we have concluded that the Constitution's structural principle of respect for and protection of minorities is a bedrock principle that has a direct bearing on the interpretation to be accorded the F.L.S.A. and on the legality of the Commission's directions affecting Montfort. This bedrock principle also informs our discussion below of the reviewability of the Commission's directions.

[126] We proceed first to consider the F.L.S.A. and its application to the facts of the present case in light of the interpretive principles applicable to language rights and in light of the constitutional principle of respect for and protection of minorities. We then turn to the application of the unwritten principles to the exercise and review of discretionary decisions of statutory bodies with a statutory mandate to act in the public interest. As the conclusion we have reached on these two issues is sufficient to dispose of this appeal, it is not necessary for us to answer the more general question - whether the fundamental constitutional principle of respect for and protection of minorities gives rise to a specific constitutional right capable of impugning the validity of an act of the legislature or sufficient to require the province to act in some specific manner.

Issue 5: Do the Commission's directions violate the *French Language Services Act*?

[127] The Divisional Court held at p. 70 that Montfort's designation as a public service agency under the F.L.S.A. meant that:

> [T]he francophone community of Ontario had acquired a legislatively recognized entitlement to receive health services in a truly francophone environment at Hôpital Montfort, and an expectation that those services would be provided in at least the quality and extent offered by Montfort, including the existence of a training centre that guaranteed the instruction of medical professionals in French.

[128] The interpretation of the F.L.S.A. is central to this appeal.

[129] The F.L.S.A. is an example of the provincial legislature of Ontario using s. 16(3) to build on the language rights contained in the *Constitution Act, 1867* and the *Charter* to advance the equality of status or use of the French language. The aspirational element contained in s. 16(3) - advancing the French language toward substantive equality with the English language in Ontario- is of significance in interpreting the F.L.S.A.

[130] In addition, the principle of respect for and protection of minority language rights is a useful tool not only in interpreting the F.L.S.A. but in assessing the validity of the Commission's directions in light of that legislation. Government action, as well as government legislation, is to be considered in light of constitutional principles, including the unwritten constitutional principles.

[131] As the title of the F.L.S.A. indicates, the Act is about the right to receive services in the French language. The interpretive principles derived from the language-rights jurisprudence have a significant bearing on the approach to be adopted to the F.L.S.A. We shall now elaborate on these principles.

[132] At one time, the Supreme Court of Canada adopted a restrictive approach to the interpretation of language rights. In *Société des Acadiens*, *supra*, at p. 578, Beetz J., writing for the majority, held that language rights, which were the result of "political compromise," should be approached with judicial restraint in contrast to human rights, which are "seminal in nature because they are rooted in principle." It is now clear, however, that this narrow and restrictive approach has been abandoned and that language rights are to be treated as fundamental human rights and accorded a generous interpretation by the courts.

[133] In *Ford c. Québec (Procureur général)* [[1988] 2 S.C.R. 712 (S.C.C.)], *supra*, at 748, the Supreme Court rejected the contention that the specific language rights protected by the Constitution are exhaustive, leaving no room for the protection of the right to use one's language of choice as an aspect of freedom of expression. The Court quoted from its earlier decision in *Reference re Language Rights Under s. 23 of Manitoba Act, 1870 & s. 133 of Constitution Act, 1867*, [1985] 1 S.C.R. 721 (S.C.C.), at 744:

> The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society.

In *Ford*, the Court added at pp. 748-749:

> Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression.

[134] Similarly, in *Mahe*, *supra*, the Court adopted a generous purposive approach to the interpretation of minority language education rights guaranteed by s. 23 of the *Charter*. Writing for the Court, Dickson C.J.C., at p. 362, again referred to the cultural importance of language:

> [A]ny broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them.

[135] The Chief Justice made reference at p. 363 to the importance of schools as institutions that function as "community centres where the promotion and preservation of minority language culture can occur." With reference to the strictures imposed by the narrow approach taken in *Société des Acadiens*, Dickson C.J.C. observed at p. 365:

> Both its genesis and its form are evidence of the unusual nature of s. 23. Section 23 confers upon a group a right which places positive obligations on government to alter or develop major institutional structures. Careful interpretation of such a section is wise: however, this does not mean that courts should not "breathe life" into the expressed purpose of the section, or avoid implementing the possibly novel remedies needed to achieve that purpose.

[136] More recently, in *R. v. Beaulac*, [1999] 1 S.C.R. 768 (S.C.C.), at 791-792, the Supreme Court flatly rejected the narrow approach of *Société des Acadiens* and held that a purposive and generous interpretation of language rights was called for:

> Language rights must *in all cases* be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada. To the extent that *Société des Acadiens du Nouveau-Brunswick*, *supra*, at pp. 579-80, stands for a restrictive interpretation of language rights, it is to be rejected. The fear that a liberal interpretation of language rights will make provinces less willing to become involved in the geographical extension of those rights is inconsistent with the requirement that language rights be interpreted as a fundamental tool for the preservation and protection of official language communities where they do apply. [Emphasis in original, references omitted.]

[137] We note that in *Beaulac*, the Court was interpreting language rights conferred by the provisions of the *Criminal Code*, and that the interpretive approach enunciated applies both to language rights conferred by ordinary legislation as well as to constitutional guarantees.

[138] In *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3 (S.C.C.), at 24, the Supreme Court reaffirmed the proposition advanced in *Mahe* that" language rights cannot be separated from a concern for the culture associated with the language." The Court also reaffirmed the proposition from *Beaulac* that language rights must be given a purposive interpretation, taking into account the historical and social context, past injustices, and the importance of the rights and institutions to the minority language community affected.

[139] As we have explained, the provisions of the F.L.S.A. must be interpreted in light of these principles.

[140] In addition to the aspirational element of s. 16(3), the principle of respect for and protection of the francophone minority in Ontario, and the broad and purposive interpretation to be given to language rights, general principles of statutory interpretation also apply. Statutory interpretation cannot be founded on the wording of legislation alone. As articulated by McLachlin C.J.C. in *R. v. Sharpe*, [2001] 1 S.C.R. 45 (S.C.C.), at 74-75, the proper approach is found in Driedger's *Construction of Statutes*, 2nd ed. (1983), at 87, as follows:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

The Context of the Act and Its Purpose

[141] It was within the overall context of steady progression and advancement of services in French that the F.L.S.A. was introduced and passed in 1986. In introducing the legislation on May 1, 1986, the Honourable Bernard Grandmaître, the Minister for Francophone Affairs, stated (*Debates of the Legislative Assembly of Ontario*, pp. 203-204):

> Our province has a special responsibility in this regard [to ensure that francophones receive services in their own language] because Ontario is home to the largest group of French-speaking Canadians outside Quebec. It is for that reason the government of Ontario intends to guarantee through legislation the rights of francophones to receive government services in French.
>
> The various measures contained in this bill are inspired by the basic principles of justice and equality which we value so highly in this province. These are two fundamental principles on which our country has been built by the two founding peoples. The government of Ontario believes that it is now appropriate that this reality and this duality should be reflected in the operations *of all ministries*. (Emphasis added.)

[142] This and other speeches made by members of the Legislature noted that the governments of Ontario had, over the years, changed their policy toward the French language. The Bill was the result of years of successive steps toward the goal of providing services to francophones in their own language. The Bill received the unanimous support of all three political parties represented in the Legislative Assembly, and amendments were proposed with a view to ensuring its protections would be met. For example, s. 8(1)(d) of the F.L.S.A., which provides that services could be exempted from being offered in French where, in the opinion of the Lieutenant Governor in Council, "it is reasonable and necessary to do so" had added to it the words "*and where the exemption does not derogate from the general purpose and intent of this Act*": see *Debates of the Legislative Assembly of Ontario*, November 6, 1986, at pp. 3202-3203.

[143] The legislative history and the comments of the members of the legislature when the F.L.S.A. was enacted permit this court to draw a number of inferences and conclusions about the underlying purposes and objectives of the F.L.S.A. and the intention of the legislature enacting it. One of the underlying purposes and objectives of the Act was the protection of the minority francophone population in Ontario; another was the advancement of the French language and promotion of its equality with English. These purposes coincide with the underlying unwritten principles of the Constitution of Canada. As already stated, underlying constitutional principles may in certain circumstances give rise to substantive legal obligations because of their powerful normative force: *Provincial Judges Reference*, *supra*, at pp. 67-70, per Lamer C.J.C., and *Secession Reference*, *supra*, at pp. 249 and 290-291.

[…]

VI. Conclusion

[188] Our conclusions may be summarized as follows:

> (1) We affirm the Divisional Court's findings of fact that the Commission's directions to Montfort would:

(a) result in a reduction in availability of health care services in French;

(b) jeopardize the training of French language health care professionals; and

(c) impair Montfort's broader role as an important linguistic, cultural, and educational institution, vital to the minority francophone population of Ontario.

[…]

(5) The fundamental constitutional principle of respect for and protection of minorities, together with the principles that apply to the interpretation of language rights, require that the F.L.S.A. be given a liberal and generous interpretation.

Canadians for Language Fairness v. Ottawa (City), 2006 CanLII 33668 (ON SC)

[74] The Applicant submits that the *F.L.S.A.* [*French Language Services Act*] was intended: "To provide for quality accessible services to the Francophone minority."

[75] I would point out that the legislation does not describe only a "francophone" as beneficiary of the legislation, but the target rather is "a person" as set out in section 14(2).

[…]

Purpose of the *French Language Services Act*

[92] I conclude that the purpose of the *F.L.S.A.* is to promote the use of French and English and to advance the equalization of status or use of English and French while offering services in French and thus protecting the rights of the minority francophone population in Ontario.

[…]

2. Constitutional Question

[127] I agree with the Respondent's submission that the purpose underlying the *F.L.S.A.*, and more particularly *By-Law 2001-170* and the Bilingualism Policy, is properly characterized as an attempt to supplement constitutionally protected rights, a goal that is particularly important given the City's historical, political, and symbolic significance. The City states that Canada is a country with two official languages and an international reputation for its acceptance of diversity. As the capital of Canada, Ottawa is, by extension, a powerful symbol for all Canadians, as well as for the rest of the world, of the bilingual status of our state.

Canada (Commissioner of Official Languages) v. Canada (Department of Justice), 2001 FCT 239 (CanLII)

[70] Thus, since the agreement delegating powers relating to prosecutions under the *CA* [*Contraventions Act*] to the provincial government was signed, the laws that are applied with respect to language rights in Ontario are the *Courts of Justice Act*, which relates to the "judicial" aspects of prosecutions and which provides for, *inter alia*, a bilingual trial (ss. 125, 126), and the *French Language Services Act*, R.S.O. 1990, c. F.32, which relates to the "administrative" aspects of prosecutions

[…]

[147] Following the enactment of section 65.1 of the *CA*, the *French Language Services Act* of Ontario appears to determine that province's language rights.

[148] However, it would be wrong to say that the successive and cumulative application of the *CA*, the *French Language Services Act* of Ontario and the agreements between the respondents and the Attorney General of Ontario and the municipalities of Mississauga and Ottawa could make Part IV of the *OLA* [*Official Languages Act*], or section 20 of the *Charter*, inoperative.

[149] Part IV of the *OLA* and section 20 of the *Charter* still apply, and if any conflict arises with the *French Language Services Act* of Ontario, the *OLA* and section 20 of the *Charter* must prevail.

Workplace Safety and Insurance Board (Re), 2008 CanLII 41561 (ON IPC)

Unlike the [Ontario *Human Rights*] *Code*, the *FLSA* [*French Language Services Act*] does not contain a clause that gives it primacy over other legislation. However, given that the Court of Appeal has clearly stated that "language rights are to be treated as fundamental human rights," it logically follows that if an administrative tribunal's enabling legislation does not grant it the authority to decline applying the *FLSA*, it must consider the *FLSA* in the appeals before it. The [*Freedom of Information and Protection of Privacy*] *Act* does not preclude this office from applying the *FLSA*. I find, therefore, that this office has an obligation to consider the *FLSA* in interpreting the provisions of the *Act*.

[…]

Given that the Court of Appeal in Lalonde stated that language rights must be treated as "fundamental human rights," and generously interpreted by the court, I find this office must take a broad, liberal and purposive approach when interpreting the French language rights set out in the *FLSA*. The words of the *FLSA* must be given their plain meaning, but it is equally important that the rights enunciated in this legislation be given their full recognition and effect.

Preamble

Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

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Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

The Words and the Scheme of the Act

[145] The preamble states that the Act [*French Language Services Act*] is a statutory recognition of the cultural heritage of the French speaking population and a reflection of the Legislative

Assembly's commitment to preserve that cultural heritage for future generations. While a preamble is not a source of positive law in contrast to the provisions that follow it, a preamble can contribute to the interpretation of a law: *Provincial Judges Reference*, at p. 69.

[146] Here, the preamble states "it is desirable to *guarantee* the use of the French language in institutions of the … government of Ontario as provided for in this Act" [emphasis added]. One of those institutions is Montfort, a government agency under the Act.

Canadians for Language Fairness v. Ottawa (City), 2006 CanLII 33668 (ON SC)

A. *French Language Services Act*

[17] In 1986 the Provincial Legislature enacted the *F.L.S.A*.

[18] The statute's underlying rationale is clear in its Preamble:

> *Preamble*
>
> Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act;.

[19] Pursuant to this intention the *F.L.S.A*. provides for the right to provision of services in French, for translation of statutes and regulations into French and also legislates for a Minister and an Office for Francophone Affairs.

Chaperon v. Sault Ste. Marie (City), 1994 CanLII 7284 (ON SC)

Statutory Language Provisions in Ontario

[26] While language in Ontario has not been dealt with in the *Constitution Act, 1982*, the Legislature of Ontario has enacted the *French Language Services Act*, R.S.O. 1990, c. F.32, which gives certain guarantees in respect of the use of language. The preamble to that Act reads as follows:

> Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act;

North Bay Regional Health Centre v. Ontario Nurses' Association, 2015 CanLII 38054 (ON LA)

As for the suggestion that the assistance of the ward clerk in translating between the RN and clients, I agree with the hospital. Quite aside from the danger of a mistranslation, the process would defeat one of the purposes of the FLRA (*sic*) in that it does not properly recognize French as, in the words of the preamble to the statute, as "an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada…and in Ontario". In my

view, reliance upon translation, except in abnormal or emergency circumstances, does not accord with the status of French as an official language.

N.B. – See also *North Bay Regional Health Centre v. Ontario Nurses' Association*, 2016 CanLII 22751 (ON LA).

Lafrance v. Director of Regulatory Compliance, 2002 ONAFRAAT 17 (CanLII)

With regard to the application of the *FLSA* [*French Language Services Act*] to the proceedings of the Tribunal, the preamble of the *FLSA* states that the French language has a special status as an official language in Canada, and is recognized as an official language in Ontario in the courts and in education. The *FLSA* sets out to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario.

Definitions

1. Definitions

1. In this Act,

"Board of Internal Economy" means the Board of Internal Economy established by section 87 of the *Legislative Assembly Act*; ("*Commission de régie interne*")

"Commissioner" means the French Language Services Commissioner appointed under section 12.1; ("*commissaire*")

"government agency" means,

> **(a) a ministry of the Government of Ontario, except that a psychiatric facility, residential facility or college of applied arts and technology that is administered by a ministry is not included unless it is designated as a public service agency by the regulations,**
>
> **(b) a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council,**
>
> **(c) a non-profit corporation or similar entity that provides a service to the public, is subsidized in whole or in part by public money and is designated as a public service agency by the regulations,**
>
> **(d) a long-term care home as defined in the *Long-Term Care Homes Act, 2007* that is designated as a public service agency by the regulations, other than a municipal home or joint home established under Part VIII of the *Long-Term Care Homes Act, 2007*, or a home for special care as defined in the Homes for Special Care Act that is designated as a public service agency by the regulations,**
>
> **(e) a service provider as defined in the *Child and Family Services Act* or a board as defined in the *District Social Services Administration Boards Act* that is designated as a public service agency by the regulations,**

and does not include a municipality, or a local board as defined in the Municipal Affairs Act, other than a local board that is designated under clause (e); ("*organisme gouvernemental*")

"Minister" means the Minister responsible for Francophone Affairs; ("*ministre*")

"service" means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose. ("*service*")

R.S.O. 1990, c. F.32, s. 1; 1997, c. 25, Sched. E, s. 3; 2007, c. 7, Sched. 16, s. 1; 2007, c. 8, s. 204; 2013, c. 16, s. 1.

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[147] Section 1 defines a government agency in part as a publicly subsidized non-profit corporation that provides service to the public and that is designated by regulation. That is Montfort. The word "service" is also defined in s. 1 as any service or procedure provided by a government agency and "includes all communications for the purpose."

Dehenne v. Dehenne, 1999 CanLII 15118 (ON SC)

The *French Language Services Act*

[9] The Office of the Public Guardian and Trustee is part of the Ontario Ministry of the Attorney General, to which the *French Language Services Act* applies. Like the Attorney General, the Public Guardian and Trustee has a duty to take the necessary steps to effectively implement language rights and cannot allege a lack of human or financial resources in an effort to justify an obstacle to carrying out his language responsibilities.

Nottingham v. Emond, 1997 CanLII 17034 (ON SC)

2: BACKGROUND FACTS

[5] The parties cohabited from April 1987 to February 1992, when they separated. Jacques Jr., their only child, was born on 3 January 1989. Following the separation, there was a period of informal shared custody whereby the child would reside with each parent for alternating one-week periods. Eventually, disputes arose about the father's access visits. While the mother worked, the child was, during his pre-school years, in the care of a baby-sitter. The father got into the habit of seeing the child for an hour or two each day at the baby-sitter's house while the mother was at work. The mother became increasingly concerned about this unrestricted access in her absence.

[…]

[10] The mother continued to press for a further assessment. The father agreed and a consent order was made by Judge King on 7 November 1994 for an assessment to be conducted by the Family Court Clinic of the Clarke Institute of Psychiatry (the "Clarke"). At the father's insistence, the assessment was to have a bilingual component.

[…]

4: THE FRENCH LANGUAGE FACTOR

[23] If there was a problem, it was with the Clarke assessment, an assessment that has still not taken place. The appellant argues that the reason for the absence of an assessment, an assessment that Judge King had ordered, was that the Clarke refused to furnish a bilingual component. It was argued by the intervener, and supported by the appellant, that the Clarke is a government agency as defined by clause 1(b) of the *French Language Services Act* and that the Clarke therefore has a duty under subsection 5(1) of that *Act* to provide services in French. This was confirmed by the Director of Communications of the Clarke, whose affidavit was filed by the intervener. Indeed, nothing to the contrary was argued by the respondent.

City of Toronto v. Braganza, 2011 ONCJ 657 (CanLII)

Neither the parking signs nor the charging documents were in French

[39] Under s.1 of the *FLSA* [*French Language Services Act*], "service" means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

[40] Under Regulation 615 of the *Highway Traffic Act*, a lengthy regulation with 52 sections, there is repeated reference to the *FLSA* and the designated areas to which that Act refers in section 1. Some parking signs are included in the regulation and if such a sign is erected in an area designated under the *FLSA*, it must be in French and English as for example s. 25 which specifies that a sign prohibiting parking 9AM - 4PM Monday to Friday, must read LUN-VEN as well as MON-FRI.

North Bay Regional Health Centre v. Ontario Nurses' Association, 2015 CanLII 38054 (ON LA)

The background and evidence

[2] The employer is seeking designation under the *French Language Services Act*, which statute gives French-speaking residents of Ontario the right to receive government services (including health care services) in French within selected areas of the province. It was required to seek that designation by the Local Heath Integration Network to which it belongs.

[3] In furtherance of its application for designation, the employer was required to, and did, adopt a plan whereby it could meet the requirement that all hospital services and communications that are provided to Anglophone patients, their families and the general public are also to be provided seamlessly, and in a similar or comparable manner, to Francophones.

[4] The plan includes a number of criteria for identifying services and/or positions which are expected to be bilingual (designated positions):

[…]

Further, the requirement for bilingualism in North Bay is manifestly reasonable. Even if it were not mandated by the French Language Services Act, bilingualism is clearly a perfectly logical and sensible objective for any organization which is situated in an area of the province where there is a substantial percentage of French speakers. Indeed, in four of the authorities cited by the parties, arbitrators found that hospitals in different areas of Ontario were entitled to require proficiency in French for positions in which an employee might be expected to deal with members of the public.

The union, however, said that the matter should not end there. It relied upon portions of the employer's FLS plan to suggest that the hospital failed to explore alternative means of delivering French language services in the clinic. In particular, it submitted that the hospital did not follow its own process in that it dismissed, without consideration, the possibility that the clinic could continue to serve French speaking clients as it had in the past with unilingual English RN's. That is especially true, the union said, when there is no evidence of a complaint to the effect that anyone had not been provided service in the official language of their choice. In that regard, it emphasized the unique circumstances of the Anticoagulation Clinic in that almost all of the communication with clients was by telephone calls initiated from the clinic. It is therefore possible, the union said, for a unilingual English RN to serve English speaking patients while the other employees in the clinic dealt with those who preferred to speak French.

The hospital's FLS plan, the union said, specifically envisioned situations involving single employee classifications where there was no need to require bilingualism from an employee because an effective alternate means of providing French services was reasonably available. The only way that such an exception could work, the union submitted, was if the person in the single employee classification received help from an employee(s) in another classification, exactly as Ms. Brunette had assisted three other unilingual RN's provide service to Francophone clients. Despite this provision of the FLS plan, the union said, the evidence was that the hospital, in awarding the job to a more junior nurse, had disregarded the possibility that it could provide an effective alternative to a bilingual RN.

Although the union's submission was primarily directed at the assistance which Ms. Brunette could provide, it also suggested that the hospital's survey of first time clients, wherein less than five percent of respondents indicated that they wished to have service in French should be considered, and that the translation abilities of the bilingual ward clerk could assist the grievor. I do not agree with either of these latter propositions. The telephone survey conducted by the hospital was unscientific in the extreme, and I do not know how reliable it is especially in contrast to the demographic data. I am not disposed therefore to attach much weight to that survey.

As for the suggestion that the assistance of the ward clerk in translating between the RN and clients, I agree with the hospital. Quite aside from the danger of a mistranslation, the process would defeat one of the purposes of the FLRA (*sic*) in that it does not properly recognize French as, in the words of the preamble to the statute, as "an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada…and in Ontario". In my view, reliance upon translation, except in abnormal or emergency circumstances, does not accord with the status of French as an official language.

However, I am of the view, and I find, that the hospital did not properly consider the possibility that the clinic might be able to provide an effective alternative to a bilingual RN as its plan required it to do.

N.B. – See also *North Bay Regional Health Centre v. Ontario Nurses' Association*, 2016 CanLII 22751 (ON LA).

Workplace Safety and Insurance Board (Re), 2008 CanLII 41561 (ON IPC)

The *FLSA* [*French Language Services Act*] provides individuals with the right to receive provincial government "services" in French in 25 designated areas of the province. In particular, section 2 of the *FLSA* requires the Ontario government "to ensure that services are provided in French." Moreover, under section 5 of the *FLSA*, "a person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature …"

The term “service” is defined in section 1 as “any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.” Section 7 of the *FLSA* states that the right to receive services in French may be limited “as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this *Act* have been taken or made.”

For the reasons that follow, I find that if an institution under the [*Freedom of Information and Protection of Privacy*] *Act* is covered by the *FLSA*, it is required to provide francophone requesters with their personal information in French, in response to access requests, subject to the limitations set out in section 7 of the *FLSA*.

[…]

In my view, this finding does not apply to requests for one’s own personal information. I agree that the *FLSA* requires an institution to respond, in French, to requests made in French under the *Act*, because responding to access requests under the *Act* is clearly a “service” provided to the public, as that term is defined in section 1 of the *FLSA*. However, I do not agree with former Inquiry Officer’s Fineberg’s finding that an institution has absolutely no obligation to translate any responsive records into French.

Although the *Act* does not generally require an institution to create a record in response to an access request, the Act must also be interpreted in a manner that is consistent with the *FLSA*. In my view, a broad, liberal and purposive approach to the definition of “service” in section 1, would include the disclosure of personal information to a francophone individual, in response to an access request.

As noted above, the term “service” is defined in the *FLSA* as “any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.” In my view, responding to access requests is a “service” provided to the public by government agencies, and providing requesters with their own personal information would fall within “all communications” for that purpose. I find support for the latter part of this interpretation in the wording of section 48(4) in the French version of the Act, which requires the head of an institution to ensure that, “les renseignements personnels soient *communiqués*, le cas échéant, au particulier sous une forme intelligible…” [Emphasis added.]

Braithwaite v. Ontario (Attorney General), 2005 HRTO 31 (CanLII)

[20] I would note that although the term “services” is not defined in the [*Human Rights*] *Code*, it has been defined in other legislation. In the *French Language Services Act*, R.S.O. 1990, c. F.32, s. 1 reads as follows:

> “service” means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

[21] It seems to me that this definition is apt and would encompass both the decision to hold a coroner’s inquest and the inquest itself.

Lafrance v. Director of Regulatory Compliance, 2002 ONAFRAAT 17 (CanLII)

The *Act* defines “government agency” in a way that makes it clear that the [*Agriculture, Food and Rural Affairs Appeal*] Tribunal is a government agency which is included in the application of the *FLSA*, and it also defines “service” in a way that clearly includes what the Tribunal does: that is, it includes the communications with, the hearing of evidence by, and the issuance of decisions by the Tribunal.

Network North v. O.P.S.E.U., Local 666, 1995 CarswellOnt 5677, [1995] O.L.A.A. No. 85 [hyperlink not available]

[20] Given the substantial francophone population in the catchment area, we are satisfied that it was prudent and necessary for Network North to develop policies and a French language implementation plan to achieve designated status under the *French Language Services Act*. Accordingly, it was necessary to determine the extent of existing bilingual capabilities and to review each position as to the need for bilingual designation. In that regard, we are satisfied that French language co-ordinator Reyna Bouchard properly made the decision to designate certain secretary/receptionist and dicta-typist positions as either bilingual or proposed bilingual and that she followed the appropriate criteria in the process.

[21] In reviewing each position, Ms Bouchard properly took into account the fact that secretary/receptionists and dicta-typists are front-line personnel involved in the first contact with clients in the language of the client's choice. We are persuaded that Network North had a legitimate business reason for designating positions as requiring bilingual capabilities and that the required bilingual qualification was reasonably related to the work to be performed. Surely, the employer has the right to assess the needs of its clientele and to decide if a bilingual qualification is a reasonable qualification for a particular job. This the employer has done not for the purposes of thwarting seniority rights of unilingual employees but rather to address the reality of the French fact in the catchment area and for legitimate business reasons of obtaining designated status under the *French Language Services Act*.

Rights and Obligations

2. Provision of services in French

2. The Government of Ontario shall ensure that services are provided in French in accordance with this Act.

R.S.O. 1990, c. F.32, s. 2.

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[148] Section 2 requires the Government of Ontario to ensure that services are provided in French in accordance with the Act. The F.L.S.A. [*French Language Services Act*] does not impose a requirement of institutional bilingualism across the province. Instead, it provides a measured policy that varies with the circumstances. Thus, our decision is a contextual one. This is not a ruling about every hypothetical situation that might arise concerning minority French language rights in the province.

Chaperon v. Sault Ste. Marie (City), 1994 CanLII 7284 (ON SC)

[27] Section 2 provides that the Government of Ontario shall ensure that services are provided in French as permitted by the Act. Section 3(1) gives everyone the right to use English or French in the debates and other proceedings of the Legislative Assembly and s. 3(2) provides that the public bills introduced after January 1, 1991 shall be introduced and enacted in both English and French.

City of Toronto v. Braganza, 2011 ONCJ 657 (CanLII)

[69] There is no issue that the appellant who made thoughtful written and oral argument, and obviously does not personally require that parking signs or his parking tickets be in French, has standing to challenge the legislative scheme.

[70] But what is missing from the appellant's challenge is any evidentiary basis for concluding that parking signs in French in Toronto or parking tickets in French in Toronto are services that the Province is required to provide in French in order to comply with the purpose and the provisions of the *FLSA* [*French Language Services Act*].

[71] In *Lalonde*, paragraph 148, the Court of Appeal explained its own decision to uphold the Divisional Court's quashing of the decision of the Health Services Restructuring Commission to substantially reduce health services provided by Montfort Hospital, a hospital that provided care in the French language in the Ottawa area.

[72] There the court stated in relation to the *FLSA*:

> Section 2 requires the Government of Ontario to ensure that services are provided in French in accordance with the Act. The *FLSA* does not impose a requirement of institutional bilingualism across the province. Instead, it provides a measured policy that varies with the circumstances. *Thus our decision is a contextual one*. This is not a ruling about every hypothetical situation that might arise concerning minority French language rights in the province. [*emphasis added*]

[73] When relying on *Lalonde* to argue the quasi-constitutional status of the *FLSA* as the appellant does, it is important to recall what was at stake and what evidence was before the Court. The case involved not only the provision of health care services to the predominantly French speaking community in their first language but also the issue of whether there would be a French language teaching hospital that could assure the continuous training of health care professionals who would be able to provide French language health care in the future.

[74] This whole attack on the City of Toronto's unilingual parking signs and parking tickets is based on a general right to be provided services in both English and French in Ontario that Parliament explicitly did not create in the Charter, and which the legislature has so far seen fit to allow municipalities to not require, while the Legislature pursues the desirability of guaranteeing the use of the French language contemplated in the preamble to the *FLSA*.

[75] There is no evidentiary basis for concluding that parking "involves a situation with profound implications for Ontario's francophone community that engages the principle of respect for and protection of communities", *Lalonde*, *supra* so as to engage any unwritten constitutional right.

[76] The appellant did not have the benefit of either counsel or the aid or intervention of organizations representing Ontario's francophone community. If it were to be shown that the legislature's authorizing municipalities to not provide parking signs or parking tickets in French really struck at the heart of the acknowledged importance of the right to live in French in Ontario, then that might be a different case. However, the appellant has not persuaded me that either the parking signs or the parking tickets are in any way not authorized by statute or unconstitutional. This ground of appeal fails.

Commission de la sécurité professionnelle et d'assurance contre les accidents du travail, 2011 HRTO 1216 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[20] Ontario is not an officially bilingual province, but the Ontarian legislator recognizes French speakers' right to services in French. See the *French Language Services Act*, .R.S.O. 1990, c. F.32. This statute defines the language obligations of government agencies and institutions, such as the [Workplace Safety and Insurance] Board. It also creates the Office of the French Language Services Commissioner, which may receive complaints relating to failures to comply with the Act. The services provided to the applicant by the Board may not comply with the Act, but this possibility is not proof of a violation of the [*Human Rights Code*].

Workplace Safety and Insurance Board (Re), 2008 CanLII 41561 (ON IPC)

Given that section 2 of the *FLSA* requires the Ontario government "to ensure that services are provided in French," I find that if an institution under the [*Freedom of Information and Protection of Privacy*] *Act* is covered by the *FLSA*, it is required to translate a francophone requester's personal information into French when responding to an access request. In my view, this finding is not only consistent with the requirements of the *FLSA*, it also enhances one of the major purposes of the Act, which is to provide individuals with access to their personal information. It cannot be said that francophone requesters have been provided with meaningful access to their personal information if an institution makes no effort to provide the information in French.

Ontario (Housing) (Re), 1993 CanLII 4886 (ON IPC)

The *French Language Services Act* requires that government agencies, defined in that legislation to include the Ministry, ensure that "services are provided in French". "Service" is defined as:

> ... any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

It is my view that, pursuant to the *French Language Services Act*, the Ministry is obliged to respond, in French, to requests made in French under the *Act*. This is what the Ministry did in this case. However, it is not obliged to provide a translation of any responsive records. This would result in an institution having to create a record in circumstances in which it is not required to do so. Accordingly, I am of the opinion that there is no statutory obligation on the Ministry to respond to this part of the requests in any way different from the way it did.

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3. (1) Use of English or French in Legislative Assembly

3. (1) Everyone has the right to use English or French in the debates and other proceedings of the Legislative Assembly.

R.S.O. 1990, c. F.32, s. 3 (1).

3. (2) Bills and Acts of the Assembly

3. (2) The public Bills of the Legislative Assembly introduced after the 1st day of January, 1991 shall be introduced and enacted in both English and French.

R.S.O. 1990, c. F.32, s. 3 (2).

ANNOTATIONS

Chaperon v. Sault Ste. Marie (City), 1994 CanLII 7284 (ON SC)

[27] Section 2 provides that the Government of Ontario shall ensure that services are provided in French as permitted by the Act. Section 3(1) gives everyone the right to use English or French in the debates and other proceedings of the Legislative Assembly and s. 3(2) provides that the public bills introduced after January 1, 1991 shall be introduced and enacted in both English and French.

Black Action Defence Committee v. Huxter, Coroner, 1992 CanLII 7695 (ON SC)

[80] Subject to the *French Language Services Act*, R.S.O. 1990, c. F.32, all public bills must be introduced and enacted bilingually. Consequently, the English and French versions of Ontario's statutory law are equally authoritative. This has been the case for federal statutes for some time. (See *R. v. Dubois*, [1935] S.C.R. 378 at pp. 382, 401-403.) Where one version of a statutory provision is ambiguous and the other linguistic version is clear, the ambiguous provision may be resolved in accordance with the certainty of its linguistic counterpart. However, this comparative interpretive exercise must always have regard to the legislative purpose and the context of a statute. Indeed, even in the case of divergent meanings, a statute's purpose and its context are of central importance. As expressed by Michael Beaupré in his text *Interpreting Bilingual Legislation* (Carswell: Toronto, 1986) at p. 28:

> Thus we conclude that the search for "context" is still at the root of even a bilingual approach to the interpretation of legislation. Just as it is normal to resolve ambiguity by resort to all aspects of context, which are ordered according to traditional canons, so context is an essential vehicle in the resolution of apparent divergency between English and French texts of the law. Just as we expect provisions to be read together, and not in a vacuum before meaning can be ascertained objectively, so is it natural to expect reference to be made to both language versions and reconciliation to be sought where necessary. This is the major premise of *Dubois* and its line of cases.

[81] Thus, in a case of clear conflict between linguistic versions, the version to be selected should be the one most consonant with the context and purpose of the statute. In such a circumstances, the principle of equal authority gives way in order to effectuate a uniform administration of our laws. The question arises, is the case at hand one of clear conflict or merely one of ambiguity?

4. (1) Translation of Statutes

4. (1) Before the 31st day of December, 1991, the Attorney General shall cause to be translated into French a consolidation of the public general statutes of Ontario that were re-enacted in the Revised Statutes of Ontario, 1980, or enacted in English only after the coming into force of the Revised Statutes of Ontario, 1980, and that are in force on the 31st day of December, 1990. R.S.O. 1990, c. F.32, s. 4 (1).

4. (2) Enactment

4. (2) The Attorney General shall present the translations referred to in subsection (1) to the Legislative Assembly for enactment.

R.S.O. 1990, c. F.32, s. 4 (2).

4. (3) Translation of regulations

4. (3) The Attorney General shall cause to be translated into French such regulations as the Attorney General considers appropriate and shall recommend the translations to the Executive Council or other regulation-making authority for adoption.

R.S.O. 1990, c. F.32, s. 4 (3).

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5. (1) Right to services in French

5. (1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

R.S.O. 1990, c. F.32, s. 5 (1).

CROSS-REFERENCE: For bilingual signage requirements in areas designated by the *French Language Services Act*, see the following regulations adopted under the *Ontario Highway Traffic Act*:

Accessible Parking for Persons With Disabilities, R.R.O. 1990, Reg. 581

Border Approach Lanes, O. Reg. 94/06

Designation of Bus By-pass Shoulders on King's Highway, O. Reg. 618/05

High Occupancy Vehicle Lanes, O. Reg. 620/05

Pedestrian Crossover Signs, O. Reg. 402/15

Pilot Project – Hot Lanes, O. Reg. 227/16

Pilot Project – Three-Wheeled Vehicles, O. Reg. 28/16 [site web des lois-en-ligne de l'Ontario]

Restricted Use of Left Lanes by Commercial Motor Vehicles, R.R.O. 1990, Reg. 608

Signs, R.R.O. 1990, Reg. 615

See also sections 18 and 31 of the Housing Services Act, 2011, S.O. 2011, c. 6, Sch. 1 for services that relate to housing that must be provided in English and French in areas designated under the *French Language Services Act*.

ANNOTATIONS

R. v. Petruzzo, 2011 ONCA 386 (CanLII)

[6] On the second ground, Mr. Petruzzo contends that the *French Language Services Act* obliges the City of Toronto to have bilingual traffic signs. He points to two sections of that *Act*, ss. 5 and 14, in support of his contention. Neither section assists him.

[7] Section 5 stipulates that a person has the right to receive available services in French from any head or central office of a government agency. However, the definition of government agency in s. 1 expressly excludes municipalities.

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[149] Section 5(1) of the *Act* [*French Language Services Act*] gives a person the right "to communicate in French with, and to receive available services in French from, any head or central office of a government agency" and "the same right in respect of any other office of such agency . . . that is located in or serves an area designated in the Schedule." The right in s. 5 does not apply to all government agencies. It only applies to those institutions that are defined as a government agency in s. 1. Montfort receives public money and is designated under the *Act*. Montfort satisfies the definition of a government agency. Ottawa-Carleton is also a designated area in the Schedule. Thus, a person has the right to communicate in French with, and to receive available services from, Montfort and any "office" of Montfort. In order to understand the meaning of "available services" as used in s. 5, it will be helpful to provide an overview of the other provisions of the *Act*.

[…]

[159] Ontario submits that designation as a government agency under the *Act* merely confers the right to receive the services provided by the designated agency at any given point in time. In support of its position, Ontario relies on the wording of s. 5: "A person has the right in accordance with this Act to communicate in French with, and to receive *available services* in French from, any . . . government agency" [emphasis added]. Ontario submits that the Act only gives a person the right to receive whatever services Montfort offers. If Montfort offers ten services in French one year and two services in French the following year, that is all a person has the right to receive. Ontario's position is, further, that the *F.L.S.A.* requires that only services are to be provided in French, and "services" does not include the training of health care professionals in French.

[160] We cannot accept this submission. In our opinion the words "available services" in s. 5 of the *Act* refer to available health care services at the time the agency is designated under the *Act*. The legislature has quite clearly manifested its intention in the preamble of the *F.L.S.A.* to "guarantee" the provision of services in French. Ontario's submission, if accepted, would result in seriously undermining the guarantee. Our interpretation is reinforced by the French version of the statute, which speaks only of "services" and not "available services." Our interpretation is also consistent with the objectives of the *F.L.S.A*, the aspirational element of s. 16(3) of the *Charter*, and the unwritten constitutional principle of respect for and protection of minorities.

[161] Ontario's submission also fails to pay adequate attention to the overall scheme of the legislation. Montfort's designation does not apply only in respect of specified services. It applies in respect of all the health care services offered by Montfort at the time of designation. If Ontario's submission is correct, there would never be any need to pass an amending regulation under s. 8 or give notice under s. 10 to exempt or remove a service from the designation. In our opinion, before removing an existing service, such as cardiology, from Montfort's designation, it would

have been necessary to pass a regulation because cardiology services were no longer going to be available in French not only at Montfort but elsewhere in the Ottawa-Carleton region. Of course, the requirement of s. 7 that circumstances make it "reasonable and necessary" to limit the provision of French language health care services would first have to be met.

Dehenne v. Dehenne, 1999 CanLII 15118 (ON SC)

The *French Language Services Act*

[7] In 1986 the Ontario Legislative Assembly adopted the *French Language Services Act*, R.S.O. 1990, c. F.32. Section 5(1) of that Act describes the right to service in French as follows:

> 5(1) Chacun a droit à l'emploi du français, conformément à la présente loi, pour communiquer avec le siège ou l'administration centrale d'un organisme gouvernemental ou d'une institution de la Législature et pour en recevoir les services. Chacun jouit du même droit à l'égard de tout autre bureau de l'organisme ou de l'institution qui se trouve dans une région désignée à l'annexe ou qui sert une telle région.
>
> 5(1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

[8] Section 7 sets out the scope of these rights as follows:

> 7. Si toutes les mesures raisonnables ont été prises et que tous les projets raisonnables ont été élaborés afin de faire respecter la présente loi, les obligations qu'elle impose aux organismes gouvernementaux et aux institutions de la Législature sont assujetties aux limitations raisonnables et nécessaires qu'exigent les circonstances.
>
> 7. The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made.

[9] The Office of the Public Guardian and Trustee is part of the Ontario Ministry of the Attorney General, to which the *French Language Services Act* applies. Like the Attorney General, the Public Guardian and Trustee has a duty to take the necessary steps to effectively implement language rights and cannot allege a lack of human or financial resources in an effort to justify an obstacle to carrying out his language responsibilities.

The Breach of the Letter and Spirit of the *French Language Services Act*

[10] The Public Guardian and Trustee has special responsibilities to persons declared incapable of managing their affairs and persons declared incapable of caring for themselves. The Public Guardian and Trustee cannot himself be incapable in one of the two official languages of the Ontario courts.

[11] In this case, in response to an application made in French, the Office of the Public Guardian and Trustee replied to counsel for the applicant in English only, which is a breach of the letter and spirit of the *French Language Services Act*. The Office of the Public Guardian and Trustee has a duty to reply in French to communications he receives in French. The intervention of this court should not be necessary to reinforce this right.

[12] The Public Guardian and Trustee also asked the court to include an English text in an order although the application for that order was made in French, which is manifestly to disregard the status of French as an official language of the Ontario courts.

[13] It should be noted that following the order of September 13, 1999 the Office of the Public Guardian and Trustee in a letter dated September 28, 1999, recognized its mistake in not replying in French to the application made in French. The Office of the Public Guardian and Trustee thus tendered its apologies to the court. The court is encouraged by the commitment given by the Office of the Public Guardian and Trustee, which will henceforth observe the duties imposed by the letter and spirit of the *French Language Services Act*.

The Right to the Use of French is not the Right to an Interpreter

[14] The documentary evidence used at the hearing of the application indicated that one of the two persons who assessed the respondent's capacity was a unilingual anglophone and, on that occasion, he obtained the services of an interpreter. The Office of the Public Guardian and Trustee publishes the qualifications of persons who are qualified to assess the mental capacity of an individual to take certain decisions about his property or the care of his person under the *Substitute Decisions Act, 1992*, S.O. 1992, c. 30. According to O. Reg. 293/96, in order to be authorized to assess capacity, a person must be a member of the College of Psychologists of Ontario, the College of Certified Social Workers of Ontario, the College of Occupational Therapists of Ontario and the Ontario College of Nurses. The persons assessing capacity must also have taken a training course given or approved by the Attorney General and passed the examinations forming part of that course.

[15] It appears from the list of the assessors obtained from the Office of the Public Guardian and Trustee that the list of assessors in the Toronto area does not include enough people capable of giving an assessment in French. The list identifies assessors able to use (directly or through an interpreter) German, Bengali, Cantonese, Chinese, Spanish, Welsh, Hebrew, Hungarian, Hindi, Italian, Mandarin, Polish, Portuguese, Punjabi, Serbo-Croatian, Telugo, Toishan, Yiddish and French. The list does not take into account the fact that French is one of the two official languages of the Ontario courts. Only a person identified as an assessor able to use French is capable of doing his work in French. The right to the use of French is not a right to an interpreter: French-speaking families who pay a professional to assess a person's capacity are entitled to an assessment conducted in French (without the assistance of an interpreter) and the preparation of a report in French. The Office of the Public Guardian and Trustee should certify a sufficient number of assessors to ensure an assessment in French and the preparation of the assessment report in French.

Nottingham v. Emond, 1997 CanLII 17034 (ON SC)

4: THE FRENCH LANGUAGE FACTOR

[18] At the opening of the hearing of the appeal, I gave leave under rule 13 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, for the intervention of L'Association des Juristes D'Expression Française de l'Ontario ("AJEFO"). AJEFO is a non-profit association whose objects include representing the interests of francophone litigants throughout Ontario and the promotion of their legal rights, in order to assure equal and ready access to the justice system in the French language, and also to ensure that the provisions of the law with respect to language rights are respected.

[19] Mr. Emond is a bilingual francophone. Ms. Nottingham is a unilingual anglophone. Their son Jacques Jr. has been brought up in a bilingual household to the extent that his mother converses

with him in English and his father in French. It would appear that communication between mother and father is in English.

[20] The French language factor is significant in four ways:

1. The hearing before Judge Brownstone was a bilingual hearing. At that hearing, Mr. Emond was represented by Gary Shortliffe, a bilingual anglophone counsel.

2. Mr. Emond insisted on a bilingual component to the Clarke assessment.

3. One of the grounds of appeal was that Judge Brownstone based his order at least in part on Mr. Emond's insistence on a bilingual assessment and his refusal to take part in any assessment that failed to have a bilingual component.

4. The appeal also was conducted as a bilingual hearing.

[21] Under these circumstances and notwithstanding that Mr. Emond was ably represented on the appeal by Paul Rouleau, a bilingual francophone lawyer, I felt that it was entirely appropriate that AJEFO be allowed to intervene. Mr. Anthony Keith, a bilingual anglophone lawyer, appeared as counsel for AJEFO. I am most indebted to him for his able and helpful contribution.

[22] We must start with the proposition that, regardless of his level of English comprehension and expression, Mr. Emond was clearly entitled to a bilingual hearing; subsection 126(1) of the *Courts of Justice Act*, R.S.O. 1990 c. C-43. This right was recognized and given effect to both at the hearing in Provincial Division and on the appeal in General Division.

[23] If there was a problem, it was with the Clarke assessment, an assessment that has still not taken place. The appellant argues that the reason for the absence of an assessment, an assessment that Judge King had ordered, was that the Clarke refused to furnish a bilingual component. It was argued by the intervener, and supported by the appellant, that the Clarke is a government agency as defined by clause 1(b) of the *French Language Services Act* and that the Clarke therefore has a duty under subsection 5(1) of that Act to provide services in French. This was confirmed by the Director of Communications of the Clarke, whose affidavit was filed by the intervener. Indeed, nothing to the contrary was argued by the respondent

[…]

[25] With respect, I do not interpret the letter in that way. With the consent of the parties, Judge King had ordered a bilingual assessment. It would appear from the wording of the second paragraph of the letter that there may have been some sort of misunderstanding between the court clerk and the clinic as to the nature of the assessment. In any event, all counsel now agree that the Clarke is ready to conduct a bilingual assessment prior to trial.

[…]

[50] Finally, it should be pointed out that the appellant was not, as he claimed, denied a French language assessment. Such a tool will be available before trial and his rights will therefore be preserved. This is not a case of just one party's being assessed with the court's relying on that assessment to the detriment of the other, because there was simply no assessment at all.

Chaperon v. Sault Ste. Marie (City), 1994 CanLII 7284 (ON SC)

[28] Section 5(1) gives a person the right, in accordance with the *French Language Services Act*, RSO 1990, c F.32, to communicate in French with, and to receive available services in French

from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule to the Act.

City of Toronto v. Braganza, 2011 ONCJ 657 (CanLII)

Neither the parking signs nor the charging documents were in French

[37] The appellant contends that as neither the street signs specifying that pay parking is enforced and instructing drivers to place purchased ticket on dash, nor the parking infraction notices (the tickets) are in French, they do not comply with the *French Language Services Act* (FLSA) and *The Provincial Offences Act*, and are void.

[38] On a basic statutory interpretation level, the appellant is not correct.

[39] Under s.1 of the *FLSA*, "service" means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

[40] Under Regulation 615 of the *Highway Traffic Act*, a lengthy regulation with 52 sections, there is repeated reference to the *FLSA* and the designated areas to which that Act refers in section 1. Some parking signs are included in the regulation and if such a sign is erected in an area designated under the *FLSA*, it must be in French and English as for example s. 25 which specifies that a sign prohibiting parking 9AM - 4PM Monday to Friday, must read LUN-VEN as well as MON-FRI.

[41] The specific municipal signs on the street where the appellant parked are not set out in the regulation, but the appellant argues that the municipality as a creature of the legislature is also bound by the *FLSA* and that its services and communications must be provided in French pursuant to s. 5 of the *FLSA* which reads:

> A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

[42] As he states in his factum:

> The City of Toronto is applying provincial statutes within its delegated authority. Accused persons are entitled to expect the same language rights guarantees as if it were the Attorney General of Ontario administering the *Provincial Offences Act*.

[43] But the *FLSA*, which is after all an Act of the Legislature, specifically addresses the issue of the provision of French language services in municipalities in s. 14 which provides;

> 14(1) The council of a municipality that is in an area designated in the Schedule may pass a by-law providing that the administration of the municipality shall be conducted in both English and French and that all or specified municipal services to the public shall be made available in both languages.
>
> (2) When a by-law referred to in subsection (1) is in effect, a person has the right to communicate in English or French with any office of the municipality, and to receive available services to which the by-law applies, in either language.

[44] The City of Toronto is an area designated in the Schedule. However, s.52 of *Regulation 615* of the *Highway Traffic Act* provides as follows:

> A municipality situated in an area designated by the *French Language Services Act* is not required to comply with the sign requirements for such areas unless it has passed a by-law under section 14 of that Act.

[45] At least with respect to the appellant's argument that the signs should be in French in Toronto, the statutory scheme leads to the result that they need not be. This is exactly what Justice Laskin concluded in written reasons dismissing a motion for leave to appeal a decision of this Court in *R. v. Petruzzo* (2011), 11 M.V.R. (6th) 201 (Ont. C.A. [In Chambers]) where he held:

> The City of Toronto is designated in the Schedule to the Act as a bilingual area, and under s.14 may pass a by-law providing that the administration of a municipality shall be conducted in both official languages and that all or specified services shall be available in English and French. However, the City of Toronto has not passed such a by-law. Because it has not done so, s.52 of *Regulation 615* applies and forecloses the need for bilingual traffic signs.

[46] This is conclusive of the issue as far as the parking signs go.

[47] Although there is no case like *Petruzzo* dealing with the appellant's argument that the certificates of parking infraction (the tickets) must be in French, the statutory provisions are parallel to those dealt with in Petruzzo. *Regulation 949* of the *Provincial Offences Act Regulations*, which governs forms for parking infractions under the *POA*, provides that:

> 8. Forms referred to in this regulation may be in English or French or both English and French.

[48] The appellant submits that this section of the *Regulation 949* is *ultra vires* the legislature and void and of no force or effect because it conflicts with s. 8(c) of the *FLSA*. That section reads:

> The Lieutenant Governor in Council may make regulations, (c) exempting services from the application of sections 2 and 5 where, in the opinion of the Lieutenant Governor in Council, it is reasonable and necessary to do so and where the exemption does not derogate from the general purpose and intent of this Act.

[49] There can be no conflict between a regulation in the *POA* that permits forms to be in English or French and a section in the *FLSA* that permits exemptions.

[50] The appellant is submitting that as the *FLSA* applies to municipalities as acting on behalf of the Province when prosecuting parking violations under the *POA*, the only exemptions to the requirement in the *FLSA* that services be in French is that found in s.8(c). Therefore, presumably, according to the appellant, if there has been no exemption passed, the forms must be in French and s. 8 of *Regulation 949* of the *POA* is not valid.

[51] The appellant submits that the municipality is acting on behalf of the Province for the purposes of Part II and I accept this proposition for the purpose of argument, section 175 of the *POA* specifically provides for agreements between the Municipalities and the Province for enforcement of among other things, Part II of the Act, and such a memorandum of understanding has been signed.

[52] That the legislature contemplated that the municipalities would enforce parking infractions is implicit in s. 15(3) of the *Act*, entitled municipal by-laws, and which reads:

> If the alleged infraction is under a by-law of a municipality, it is not necessary to include a reference to the number of the by-law on the certificate of notice.

[53] But, if the municipalities are acting on behalf of the Province, then they are subject to provincial legislation. This is obvious as the *POA* gives them the responsibility for parking; this is the very basis of the appellant's argument. But the *POA* is provincial legislation that applies to the municipalities as much as the *FLSA*, and s.8 of *Regulation 949* is a valid regulation made under the regulation making powers of the *POA*. It actually promotes the French language by permitting a municipality to use French only forms.

[54] And, although it is only a regulation, it neither violates nor conflicts with the guarantee in s. 5 of the *FLSA* that the Province provides services in French. A fundamental principle of statutory interpretation is that the statutory scheme is to be read as a whole. The regulation under the *POA* which allows English only forms, must be read as if the Governor in Council knew of the existence of s. 5 of the *FLSA*. It is presumed the legislature did not intend to make or empower the making of contradictory enactments: Sullivan on the Construction of Statutes 5th Edition, Lexis Nexis 2008, page 325. Although not as explicit as *Regulation 615* that Justice Laskin dealt with in *Petruzzo*, s. 8 of *Regulation 949*, is still clear authority to the municipalities to issue English only forms for parking Infractions.

[55] The appellant, in the statutory interpretation part of his attack on his English parking tickets urges the same predominance for the *FLSA* that he submits the *POA* regulation should not have. All of the legislation must be read as a whole and absent a constitutional right to all services in French in Ontario, or a quasi-constitutional status for the *FLSA*, section 8 of *Regulation 949* of the *POA* is valid.

Canada (Commissioner of Official Languages) v. Canada (Department of Justice), 2001 FCT 239 (CanLII)

[160] With respect to extra-judicial services relating to the administration of prosecutions for contraventions under the *CA* [*Contraventions Act*], the Court notes that the *French Language Services Act* of Ontario covers only the named regions where the Act is to apply, and that not all municipalities are subject to the Act.

[161] Counsel for the applicant correctly pointed out that language rights as they relate to signs, the right to make a complaint to the Commissioner of Official Languages and the right to an active offer of services in French are now not available as the *Contraventions Act* applies in Ontario, since they are not included in the *French Language Services Act* or the *Courts of Justice Act*.

[162] It was also clearly noted that when an individual wishes to obtain information in French regarding an offence committed in Ontario in relation to a federal statute, the individual will not necessarily contact the offices of the Department of Justice in Ottawa or Toronto, where services are provided in both official languages, but rather will contact the place where the ticket was received, and that it is not at all certain that the individual will be able to receive adequate information services in French.

[163] Thus, although the *French Language Services Act* of Ontario has expanded access to French language services in Ontario, it cannot be regarded as ensuring the language rights guaranteed by Part IV of the *OLA* and section 20 of the *Charter*.

Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada v. Filtrum Inc, 2014 CanLII 44380 (ON LRB)

REASONS FOR DISMISSING THE MOTION TO DISMISS THE APPLICATION

[16] The responding party seeks a declaration that its rights under section 5(1) of the *FLSA* have been infringed by the applicant and the Board by the applicant having knowingly delivered an application for certification in English only to the responding party in Quebec when it knew or ought to have known that the responding party conducted its affairs and communicated in French. The responding party submits that there are Board forms available in the French language that could have been used by the applicant when it delivered and filed this application but that the applicant deliberately chose to use the Board's English only forms rather than the French forms knowing that doing so would impair the ability of the responding party to file its response to the application in a timely fashion.

[…]

[24] It is, according to the responding party, the failure to ensure that the initial communications from the Board and the prescribed forms used by the applicant in filing its application for certification contain adequate notice in the French language that violates section 5(1) of the *FLSA*.

[25] The responding party, quite properly, does not assert that the applicant contravened the *FLSA*. Rather, the violation of section 5(1) of the *FLSA* occurred in this case according to the responding party because the prescribed forms for construction industry certification applications that were used by the applicant do not provide francophone employers with adequate information in the French language about what can occur if they do not act promptly.

[26] Section 5(1) of the *FLSA* provides:

> A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule. [emphasis added]

It is also important to note the definition of "service" in section 1 of the *FLSA* which states:

> "service" means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

[27] The Board, in dealing with the responding party's motion to dismiss this application assumes, without deciding, that the responding party's receipt of the Board's prescribed forms from the applicant in only the English language and the initial communications it received from the Board in only the English language contravened section 5(1) of the *FLSA*. The Board also assumes without deciding that the notice in French on both the Form C-33 Notice to Employees and the Form C-32 Notice to Employers about the availability of services from the Board in both French and English was inadequate and failed to meet the obligation established by section 5(1).

[28] In making those assumptions, the Board has not considered section 7 of the *FLSA* which, depending on the circumstances, may well justify the current processes adopted by the Board and the prescribed forms used by the Board (and the applicant) when dealing with francophone parties. Section 7 of the *FLSA* provides:

> The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made.

As noted earlier the Board did not consider section 7 of the *FLSA* as it did not have any evidence of nor did it consider what, if any, "reasonable measures and plans for compliance with this Act have been taken or made."

[29] The responding party says that because its rights under section 5(1) were infringed, this proceeding is a nullity. It contends that it was entitled to have all the communications it received in relation to this application before the Board in French and despite that violation being remedied by the Board, this proceeding is nevertheless a nullity and must be dismissed.

[…]

[31] The responding party contends that the rights enshrined by section 5(1) of the *FLSA* are significant and important rights that must be protected and advanced. It claims that the violation that occurred cannot be rectified. In the circumstances, the only remedial response to such a fundamental violation of the responding party's rights to receive services, which include communication, from an agency of the government of Ontario such as the Board, in the French language is the nullification of the proceedings that had been commenced on the forms prescribed by the Board that violated the *FLSA*.

[32] I disagree.

[33] The issue, given that I have assumed an infringement of the responding party's rights under section 5(1) of the *FLSA*, is whether that infringement nullifies this application and thereby results in its dismissal.

[…]

[37] Moreover, the responding party has conceded, as it must, that it had been put in the position it would have been in if there had not been a contravention of section 5(1) of the *FLSA*. The Board extended the time for the filing of a response and providing information over the objection of the applicant. The responding party accepted that any prejudice it had suffered as a result of the violation of its language rights under the *FLSA* was fully remedied when the Board in its June 11th decision granted its request to extend the time for filing its response and providing the information required by section 128.1(3) of the Act.

[…]

[40] In the result, the responding party's motion to dismiss this application because it is a nullity by reason of the infringement of the responding party's rights under section 5(1) of the *FLSA* is dismissed.

N.B. – See also *Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada v. Filtrum Inc*, 2014 CanLII 32398 (ON LRB) and *Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry v. Filtrum Inc*, 2014 CanLII 38591 (ON LRB) for judicial history.

Ontario Public Service Employees Union (Robinson) v. Ontario (Tourism Marketing Partnership Corporation), 2014 CanLII 80979 (ON GSB)

[8] The level of proficiency established bore a reasonable relationship to the work to be done by the person in the position. The position was located in a designated area under the *FLSA*. Therefore, it fell within an area in which persons have a right to receive services in French and English. Further, the need for such services may reasonably be inferred from its location at the Ontario - Quebec border. A request was made to "designate" the position, specifically referring to the right to French language services guaranteed by the *FLSA* and the lack of currently designated position in the area to provide those services. The request states: "This position would provide services to both English and French language speaking clients and responds to enquiries in person, by telephone and in writing." There is no dispute that the request to designate the position was approved. There is also no dispute that the Guide was applied to determine the level of proficiency required. The Guide contemplates levels of proficiency ranging from "advanced - minus" to "superior": "intermediate - plus", the level of proficiency achieved by the Grievor on her written test, is below the lowest level contemplated by the Guide.

Bernard v. Lakehead University, 2013 HRTO 380 (CanLII)

[21] The Tribunal's processes are available to parties in English and in French. As stated in *Lincourt v. Le Centre de santé communautaire Hamilton/Niagara*, 2011 HRTO 528 (CanLII), in bilingual applications, the Tribunal's practice in the hearing process is to provide "translation of the proceedings and the oral evidence of the witnesses from French to English and English to French as required, and the hearing will be conducted by a bilingual adjudicator". This is in accordance with Rule 3.8 of the Tribunal's Rules of Procedure.

[22] The university argues that the Tribunal's mandate to provide resolution of disputes in a manner which is expeditious is not compatible with providing a bilingual hearing in this matter in which it proposes to call 21 witnesses. Whether it will be necessary or desirable for the university to call 21 witnesses is a question the adjudicator may address separately at the appropriate time in accordance with the provisions of Rule 1.7, but even if the university ultimately does call all of the witnesses it currently proposes, the Tribunal is responsible to provide dispute resolution which is fair and just, as well as expeditious. In circumstances where the applicants, whose first language is French, have communicated with the Tribunal in French and have indicated that they would feel disadvantaged at legal proceedings in English, and where the Tribunal has obligations pursuant to the FLSA and has the capacity to alleviate the challenge of proceedings in French or English, a bilingual hearing is consistent with the Tribunal's responsibility to provide dispute resolution which is fair, just and expeditious. This is not altered by the fact that the hearing will likely be rendered more lengthy by the use of an interpreter.

[23] The university also submits that as the events relevant to the Application occurred in English, the Tribunal should consider them in English. It is not the case that the Tribunal conducts hearings only in the language in which the events occurred occur, and in fact, may make interpretation services available to individuals whose native tongue is neither French nor English, even though the events they complain of may have occurred in French or English.

[24] The university also argues that the right to services in French pursuant to the *FLSA* is not an absolute right, according to section 7 of that Act. It appears to rest its argument on the fact that the applicants are accustomed to speaking English and on the length of time and the cost associated with the hearing of these Applications, and consequently asks the Tribunal to limit the applicants' rights to services in the French language because it is reasonable and necessary to do so. It does not appear to challenge the appropriateness of bilingual hearings in general, but merely in these circumstances, where it has signalled its intention to call 21 witnesses and stated its hearing estimate of more than 35 days. The Tribunal has a practice of providing bilingual hearings, as described above, and as provided for in its Rules of Procedure. I do not find that the

fact that the applicants are accustomed to speaking English at work or the potential length of these proceedings are circumstances which make it reasonable and necessary to derogate from the rights otherwise accorded to the applicants under s. 5 of the *FLSA*.

[25] Finally, I note that the university seeks clarification with respect to the extent of the use of the interpreter at the hearing. Typically, this question is addressed at the outset of a hearing and is subject to change through the course of the hearing. The use of an interpreter may range from word for word interpretation of "everything" to interpretation on an "as needed basis". It may vary from speaker to speaker and may evolve through the course of the proceedings. Accordingly, it is not useful to pursue a commitment from any party on this question at this point.

Lincourt v. Le Centre de santé communautaire Hamilton/Niagara, 2011 HRTO 528 (CanLII)

[7] The Tribunal's practice in bilingual applications is to communicate during the pre-hearing process in the language of French or English as indicated by the parties. In this case, as the applicant prefers communication in English and the respondents prefer communication in French, all written communication from the Tribunal to the parties is provided in both English and French. A bilingual case processing officer is available to answer oral inquires from the parties in their language of choice. However, the Tribunal's practice is to accept written communications from the parties in the language in which it is received. The Tribunal does not translate the applicant's material into French or the respondents' material into English. During the hearing process, the Tribunal will provide translation of the proceedings and the oral evidence of the witnesses from French to English and English to French as required, and the hearing will be conducted by a bilingual adjudicator.

[8] The Tribunal does communicate with the applicant in English, but it does not translate the respondents' communications into English. Therefore, to the extent that communications occur in French, they are by other parties who are exercising their rights to communicate in French in accordance with Ontario law, pursuant to the *French Language Services Act* R.S.O. 1990, c. F, 32 as amended.

[9] By offering interpretation services during the mediation and hearing process, the Tribunal attempts to alleviate challenges where the parties speak different languages and comply with its obligation to provide its services in French and English.

[10] The request for all communication in this matter to be in English and the request for the proceedings to be in English is denied.

Markwick v. Conférence des évêques catholiques du Canada, 2010 HRTO 113 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[6] The respondents concede that the Canadian Conference of Catholic Bishops is a bilingual organisation. However, they assert that the majority of their staff uses French as a first language. They assert their right under section 5 of the *French Language Services Act*, R.S.O. 1990, c. F. 32, as amended, to communicate with the Tribunal in French. They note that the applicant has the option to retain a bilingual representative. Section 5 provides

> [5] (1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

[7] The applicant does not have a representative. He asserts that the *Code* has primacy over the *French Language Services Act* and that the *Code* requires that he have access to the Tribunal process in a non-discriminatory manner. He asserts that his inability to comprehend the respondents' written materials impedes his ability to access the Tribunal's procedures.

[8] In my view, the interrelationship between the *French Language Services Act* and the *Code* is not relevant. The respondents are entitled to exercise their rights under that *Act* and correspond with the Tribunal in French, just as the vast majority of parties correspond with the Tribunal in English.

[9] The issue raised by the applicant is really about his ability to access the Tribunal's services. The Tribunal does communicate with the applicant in English, but it does not translate the respondents' communications into English. Therefore, to the extent that communications occur in French, they are by other parties who are exercising their rights to communicate in French in accordance with Ontario law.

[10] It may be that the applicant will need to obtain the assistance of a bilingual representative or retain translation services to understand the respondents' documents. There is little difference between this situation and the situation of a person whose mother tongue is neither English or French, who has difficulty in understanding legal documents. They too must retain the assistance of language or legal interpreters. Moreover, in this case, the right to communicate in French is guaranteed by the *Act*.

[11] I accept that a person who is not fluent in the language of the Tribunal processes, whether it is English or French, faces additional challenges in representing themselves before the Tribunal. The Tribunal cannot eliminate all these challenges. By offering translation services during the mediation and hearing process, the Tribunal attempts to alleviate some of these challenges and comply with its obligation to provide its services in French and English.

[12] The Request for an order requiring the respondents to communicate in English is denied.

Giroux v. Ontario, 2005 CanLII 22131 (ON SCDC)

Analysis

(a) Closure of the LRO [Land Registry Office] in Welland and relocation of all services to St. Catharines

[22] Welland is a designated area for the purposes of the *FLSA*. Thus, s. 5(1) grants the residents of Welland the right to communicate in French with, and to receive services in French from, any office of the Ministry of Consumer and Business Services located in the Welland area and any other offices of the Ministry that serve the Welland area.

[23] The applicants claim that the closure of the former site of the LRO in Welland and the relocation of all services to St. Catharines constitute a closure of programs similar to the closure of programs at Hôpital Montfort that was at issue in the Lalonde case. In *Lalonde*, the Court of Appeal ruled that the closure of programs in that case violated the *FLSA* because of the failure to comply with the statutory process in place for so doing.

[24] In our opinion, the situation in the case before us is very different from that dealt with by the Court of Appeal in *Lalonde*.

[25] First, Hôpital Montfort is an agency designated by the Lieutenant Governor in Council under s. 8 of the *FLSA* as a public service agency for the purposes of the *FLSA*. The government was

trying to compel the reduction of the services offered by this designated agency without following the process stipulated by law. The Welland office, however, was not designated within the meaning of the Act. It was merely a site from which the government delivered certain government services, including the Niagara South LRO. All of these services were and are required to be available in French. The Ministry's obligation under s. 5(1) of the Act is to deliver the services, but nothing in s. 5(1) requires these services to be available at a specific office. If an office is located in a designated region, it must, unless an exception is made in accordance with the provisions of s. 5 of the *FLSA*, provide French language services. If no office is located in the designated region, the office that provides service to the region must offer French language services. By stipulating that the service may be provided by an office outside the designated area, the Act is clearly requiring the delivery of services, but granting the province discretion concerning the location of the offices.

[26] Second, there is no loss of services. The site has merely been relocated. All of the French language services have been maintained.

[27] The principal difference, however, is that in *Lalonde*, the Court of Appeal emphasized the fact that Hôpital Montfort played a special, unique and significant role in the community. Apart from the services that were provided in French there to the community, Hôpital Montfort was an institution founded by the francophone minority and a symbol of that community. It was and still is the only Ontario hospital to provide a francophone environment for French-language training for doctors. The decision by the Restructuring Commission, which was overturned by the court, would have made significant cuts to the French language services provided by the hospital, thereby curtailing the role it could play in the community. The cuts would effectively have ended the hospital's role in the training of doctors in French.

[28] In the case before us, the evidence does not prove that the office in Welland played an active role in the community. The LRO had more of a technical role and, over the years, very few people came to the LRO requesting French language services. The small number of people wishing to receive French language services will have access to them at the new LRO location in St. Catharines.

[29] The background facts are thus very different from the situation with which the Court of Appeal was dealing in *Lalonde*. In the case before us, apart from the loss of the bilingual signage advertising the Niagara South LRO, the community has actually lost very little in the wake of the relocation.

[30] The applicants claim that, under s. 5(1) of the *FLSA*, once a government office has been set up in a designated area, it cannot be closed or relocated outside the area unless the government meets the requirements and limits set out in ss. 7, 8 or 10 of the *FLSA*. In our opinion, the wording of s. 5(1) of the *FLSA* is clear and does not impose such a constraint on the government. The aspiration expressed by s. 16(3) of the *Canadian Charter of Rights and Freedoms*, the constitutional principle of respect for and protection of minorities (*Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217, [1998] S.C.J. No. 61, para. 54) and the broad, purposive interpretation that language rights must receive are aids in the interpretation of texts but they do not work in such a way as to change a clear text.

[31] The Ministry's obligation under s. 5(1) of the *FLSA* is to provide service. It must provide services in the French language to the designated area of Welland. Depending on the circumstances, the office may be located within or outside the area. Contrary to the applicants' claims, nothing in s. 5(1) implies that the service point is fixed in time. Nothing requires the government to follow the process described in ss. 7, 8 or 10 of the *FLSA* prior to the relocation of a service point. Interpreting s. 5(1) in light of the principles set out above does nothing to change this finding.

[32] With the exception of the constitutional principle of respect for and protection of minorities which, in certain situations, has normative legal force (Lalonde, supra, para. 174), the principles of interpretation referred to do not grant the minority protection against any government action that could have a negative impact on the minority. They merely serve to interpret the rights and protections granted to the minority by legislation or by the constitution.

[33] The analysis must therefore focus on the right granted by the *FLSA*, i.e., the right to receive services. The applicants suggest that if the province is free to change service points without following the process set out in ss. 7, 8 or 10 of the *FLSA*, it could relocate all the service points in the province where French language services are available to Toronto overnight. All of the francophone communities would then lose their local access to government services. This would mean in many cases that francophones would no longer have reasonable access to services.

[34] This hypothetical situation is not before us. In the present case, with the exception of the arrangement for the remote registration of documents which is the subject of an agreement with the Association des juristes d'expression française de l'Ontario, the same services have been provided to francophones and anglophones since the relocation and are available at the same service point. Usage of the service is such that the change of service location does not have a disproportionate impact on the francophone community. In fact, the evidence suggests that with the exception of a few users who may have to travel a greater distance to [page769] receive service, the only loss to the community is that of the bilingual signage advertising the office which is now closed.

[35] In our view, in this case, there has been no government decision or action which "would have serious consequences for the Franco-Ontarian minority" to the point of engaging the constitutional principle of respect for and protection of minorities (*Lalonde*, *supra*, p. 563 O.R.).

[36] In conclusion, the applicants have not shown that the Minister's decision to relocate the LRO from Welland to St. Catharines is unreasonable, that it contravenes the *FLSA* or that it violates the constitutional principle of respect for and protection of minorities. It is therefore unnecessary to deal with ss. 7, 8 and 10 of the *FLSA*.

[…]

Conclusion

[44] We therefore find that the applicants have not demonstrated that the Minister's decision to relocate the LRO from Welland to St. Catharines constitutes a breach of the obligation to provide services in accordance with the provisions of the *FLSA* or that it violates the constitutional principle of respect for and protection of minorities. The application concerning the relocation of the LRO is therefore dismissed.

Decision No. 2098/03, 2007 ONWSIAT 3243 (CanLII)

(iii) The reasoning

(a) Service in the French language

[24] I fist note that the worker in this case argued mainly that she was not understood and that she was not fairly treated by the Board due to her language difficulties. She claims to have difficulty understanding English and that all correspondence and services offered by the Board for the first two years were mostly in English. She also complained that she could not receive specialized medical services in French in the Niagara Falls area and that this is the reason why

she returned to Quebec in 1999, and later took up residence in that province after her retirement at a the end of the 2000-2001 school years.

[25] I understand the worker's frustration due to the lack of French services available to look after her case at the Board, especially during the first months following her injury. The file does show that the Board failed to offer these services immediately after the injury. The first item she received n French was a translation of a letter from the Claims Adjudicator, dated April 28, 1998, two weeks after the English version had been sent. The Board's memo file also shows that, on February 4, 1998, the unilingual health care adjudicator had asked a person in French services to speak to the worker and address a number of questions for her. I do not find that this is an adequate service, when a third person, not necessarily an interpreter must ask questions on behalf of an adjudicator. The *French-Language Act* states that French-speaking persons are expected to be understood and communicate in their language and that the provisions of French services must not unreasonably delay these services. Both these provisions of the *French-Language Act* were, in my estimation, severely breached in this case. It seems that the worker's case was turned over to a French-speaking adjudicator on February 8, 1998. However, she continued to have contact with a unilingual nurse specialist. Responses from the Board were unilingual with only sporadic translations.

2083615 Ontario Inc. (Touché Resto-Lounge) (Re), 2007 CanLII 58255 (ON AGC) [judgment available in French only]

[OUR TRANSLATION]

[51] In this case, after changing representatives, the licence holder requested that the hearing be held in French. The Commission agreed to this request.

[52] The hearing began on May 8, 2007. An interpreter was present throughout the hearing. The entire proceeding was interpreted from French to English and from English to French unless the representative of either party refused interpretation. There were a number of witnesses, and most of them testified in English. Unless interpretation was refused, all testimonies were translated into French.

[53] There is no evidence that the panel members were unable to understand the language of the proceeding, be it English or French. Moreover, Vice-Chair Hunt is proficient in French and has held other AGCO [Alcohol and Gaming Commission of Ontario] hearings in French. In the panel's opinion, the requirements of the guidelines for hearings in French contained in the guide for managers and the obligations imposed by the *French Language Services Act* were complied with.

[…]

[57] In *Société des Acadiens du Nouveau-Brunswick Inc. v. Association of Parents for Fairness in Education, Grand Falls District 50 Branch*, the Supreme Court very clearly stated that, in the absence of a system of testing and without evidence to the contrary, it is for the judge, or, in this case, the Board members making up the panel, to determine whether they have a sufficient level of understanding to hear a bilingual case. This principle is set out in the *French Language Services Act* and found in the guide for managers.

[58] The panel is able to fully understand the proceeding and to hold the hearing in accordance with the Board's obligations under the *French Language Services Act*.

Decision No. 1938/06E, 2006 ONWSIAT 2569 (CanLII)

[7] Mr. Marier submits, however, that while he and the worker received the English version of the August 5, 2005 decision, they specifically requested a French version of the decision in

correspondence dated August 12, 2005. Mr. Marier has provided a copy of his correspondence to the ARO to this effect. Mr. Marier advised that the French decision was not received until March 23, 2006, following which he immediately filed the worker's appeal with the Tribunal.

[8] Section 5(1) of the *French Language Services Act* R.S.O. 1990 c. F.32 states that a "person has the right in accordance with the Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature". The *Guidelines for Tribunals* published by the Office of the Francophone Affairs state that decisions relative to hearings held in both English and French should be published simultaneously in both languages.

[9] The ARO rendered her decision based on the written record without an oral hearing, which may explain the confusion regarding the worker's language preference and whether the hearing was an English or a French one. It is clear, however, according to Mr. Marier's correspondence of August 12, 2005 to the ARO, that the worker wished to receive a copy of the ARO decision in French. It was therefore incumbent upon the Board to provide the worker with a French decision. It appears that the Board did not do this until March 2006.

[10] While I considered whether the ARO decision was actually issued on August 5, 2005 with the English decision or on March 23, 2006 with the French decision, it is ultimately not necessary for me to decide this issue. I am satisfied that the exceptional circumstances of this case surrounding the Board's failure to provide French language services in a timely manner to the worker merit an extension of time to appeal the ARO decision.

N.B. – See also *Decision No. 161i/92*, 1992 CanLII 5586 (ON WSIAT) regarding the application of s. 5 of the *French Language Services Act* to the Workplace Safety and Insurance Appeals Tribunal.

Decision No. 643/05, 2005 ONWSIAT 876 (CanLII)

[24] I also note that the worker requested French language services in her Form 6. The Claims Investigator interviewed her in French. It is unclear whether the worker conversed in French or in English in her telephone conversations with the Claims Adjudicator. It is clear, however, that the Claims Adjudicator's written decision of March 1, 1999 was sent to the worker in English only. While the worker is not alleging that she does not speak or understand English, the provision of French language services is not dependant on her ability to speak and understand English but rather, on her stated preference for French language services. My decision in this appeal does not turn on this issue since the worker's submissions do not rely on the absence of appropriate French language services and the worker's request for French language services has been rather inconsistent. For example, she wrote her March 17, 2000 letter in English and requested that the Tribunal appeal proceed in English. It is nevertheless important to note that at least until March 1, 1999, the worker's request for French language services was still in effect.

Lafrance v. Director of Regulatory Compliance, 2002 ONAFRAAT 17 (CanLII)

Subsection 5(1) of the *FLSA* states:

> *Right to services in French*
>
> 5. (1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule. R.S.O. 1990, c. F.32, s. 5 (1).

The Tribunal interprets this to mean that either from its offices in Guelph, or when it is conducting hearings in any of the areas designated in the Schedule to the Act, the Tribunal must communicate in French with any person who wishes to communicate with the Tribunal in French.

[…]

The appellants submit that in order to meet the obligations under the *FLSA* the Tribunal must sit with a panel consisting of members who are all capable of understanding the French language. While there is no doubt that this would facilitate the appellants' ability to use the French language to address the Tribunal, to be understood, and to be addressed by the Tribunal in the French language, it is not the only possible way for the requirements of the *FLSA* to be met. The provision of simultaneous translation also meets the requirements of the *FLSA*. Not only does this mean that a non-French speaking member of the Tribunal can understand what the appellant is saying to the Tribunal, it also means that the appellant can hear the translation from English to French of the words of other parties and counsel who choose to address the Tribunal in English, as is their right to do. The Tribunal notes that simultaneous translation is the method that the Legislature of Ontario and the Parliament of Canada use to facilitate the use of both French and English in their proceedings, deliberations, and indeed to enact statutes.

The Tribunal is of the view that the appellants' right to a hearing in the language of their choice was provided in compliance with the *FLSA*. The Tribunal is satisfied that the members of the Tribunal that heard the appeal and the parties to the hearing were well served by a knowledgeable interpreter who provided simultaneous translation from English to French and from French to English.

The fact that knowledgeable bilingual counsel represented the appellants does not relieve the Tribunal of its obligations under the *FLSA* but it suggests to the Tribunal that the interests and concerns of the appellants were communicated to the Tribunal in a meaningful way.

The Tribunal is satisfied that the appellants received a fair hearing within reasonable and necessary limits on its obligations under the *FLSA* to serve the appellants in French. The Tribunal is satisfied that it has taken "all reasonable measures and plans for compliance with this *Act*".

N.B. – See also *Ferme Benoit Lachaine v. DFO*, 2011 ONAFRAAT 29.

Decision No. 18850101, 2001 ONWSIAT 2811 (CanLII)

[22] The right to receive French services is a right protected under the *French Language Services Act*. The Tribunal's jurisdiction however is limited to determining whether the requirements of section 42 were met in this case, with respect to the 1998 NEL assessment and award. Section 42 of the *Workers' Compensation Act* provides clear criteria for the assessing and rating of NEL awards. With respect to the assessing physician's report, there is discretion to order a second assessment if the original assessment was not complete or correct. The NEL award must be rated in accordance with the prescribed rating schedule, the American Medical Association Guide to the Evaluation of Permanent Impairment (3rd edition revised).

[…]

[26] If the Board failed in this case to provide French language services that it ought to have provided under the *French Language Services Act*, this is a matter that the worker may take up with the French Language Services Commission, the appropriate authority with jurisdiction over

such matters. As I have tried to explain above, I have no jurisdiction to enforce that legislation. My jurisdiction is limited to determining the correctness of the decision under appeal.

N.B. – See also *Decision No. 196/02*, 2002 ONWSIAT 2345 regarding lack of jurisdiction to enforce the *French Language Services Act*.

International Brotherhood of Painters and Allied Trades, Local 200 v. Vitrerie Orleans Glass Inc., 2000 CanLII 10052 (ON LRB)

[2] The hearing originally convened on February 2, 2000, before another panel of the Board. An interim decision with respect to events of that day was released on February 14, 2000. The Board noted that the evening before the hearing, counsel for the responding party had requested that the hearing be conducted in French, and that the venue be changed to Ottawa, and if those requests could not be immediately accommodated, then the matter should be adjourned. The Board noted that the request for a bilingual adjudicator was not made in a timely way, although the Board's Notices had invited any party to advise the Board if it wished services in French. Ultimately, the Board decided to adjourn the matter so that "all parties could be properly heard", to a date when a bilingual panel of the Board would be available.

[…]

[4] The hearing reconvened on March 7, 2000 before a bilingual panel of the Board, and an interpreter was present. When the Board indicated that it intended to conduct a bilingual hearing, in which each participant could speak in the language of its choice, with the panel responding accordingly, counsel for the applicant submitted that it was more appropriate to conduct the hearing in English, with interoperation being provided if necessary. Counsel for the applicant submitted that all the participants spoke English to some degree. She suggested that the responding party's principal clearly spoke some English, because he conducted his business in Ontario. If parts of the hearing were conducted in French, counsel submitted, she would be at a disadvantage because she did not speak French, and would have to rely on translation, where important nuances in the testimony would be lost.

[5] I declined counsel for the applicant's suggestion, and a bilingual hearing proceeded. The underlying principles of the *French Language Services Act* recognize the equality of both French and English in Ontario, and the rights of citizens to "receive available services in French" [section 5], subject to "such limits as circumstances make reasonably necessary" [section 7]. Agencies, such as the Board have a fair level of discretion about how to carry out those goals. But it seems to me that where a hearing can be conducted in a manner that allows parties to participate in their language of choice, without giving precedence to one language over the other, it is the preferable way to proceed.

Ottawa Hospital v. Canadian Union of Public Employees-Local 4000, 1999 CanLII 20418 (ON LA)

[12] Counsel for the Hospital stresses that the Hospital has been designated bilingual under the terms of the *French Language Services Act*, R.S.O. 1990, c F.32, and is under an obligation to provide patient services and care in the French language to the population it serves. She argues that it is not only reasonable, but necessary, for the Hospital to ensure that where there is only one nurses' aide on duty, and that duty involves direct patient contact with persons whose language is French, it is appropriate to require proficiency in both official languages as a qualification for the position. That, she submits, is amply the case with respect to the position of nurses' aide in the Hospital's Hemodialysis Unit. In support of that submission Counsel refers the Board to a number of prior arbitration awards, cited and discussed below.

[13] Upon a review of the facts and the authorities, this Board is complied to agree with the Hospital. In our view the applicable principles were well articulated in the decision of the majority of a Board of Arbitration chaired by Arbitration Kevin M. Burkett in *Cornwall General Hospital v. O.N.A.* (1986), 22 L.A.C. (3d) 141 (Ont. L.R.B.). That award concerned the grievance of a registered nurse who was denied a position in the Hospital's outpatient Psychiatry Department because of her inability to speak French. The majority ruled that proficiency in French was a reasonable requirement in the circumstances, given that the Hospital serviced a city with a French speaking population in excess of 34 percent. At p. 148 the following comments appear:

> In the context of a language requirement, and indeed in the context of certain other requirements as well, we have some difficulty with the analysis in *St. Peter's Centre and O.N.A.*, *supra*, and *Re St. Catharines General Hospital and Service Employees Union, Local 204* (January 30, 1984), unreported [now reported 13 L.A.C. (3d) 378] (*Teplitsky*), which is attached to the St. Peter's award. These awards suggest that in the absence of an express clause giving management the right to establish qualifications, such as a certain level of education or a certain diploma, that qualification means simply the ability to perform the work required by the classification. There are, no doubt, many jobs where an employee, absent the formal qualifications, has the know-how and ability to perform the work and, therefore, must be considered as qualified. However, this analysis does not hold up when applied in the case of a language requirement. Where an employer stipulates that the successful applicant for a particular position must have proficiency in a certain language the issue is not whether the candidate can somehow "manage" without the language proficiency but, rather, whether the language requirement meets the test of legitimate business purpose. Surely an employer, in the exercise of its discretion to manage, has the right to assess the market-place and its customers' needs and to decide if a bilingual capacity is required. If it is proven that such is the case and the employer has not acted in an arbitrary or discriminatory fashion, then, in our view, the language capacity becomes a requirement of the job.

[14] Not surprisingly, the hospitals of eastern and northern Ontario have been a fertile ground for jurisprudence in the area of bilingualism as a required qualification in job postings. The awards are virtually uniform in recognizing the legitimacy of positions with significant patient contact necessitating an ability to understand and speak French: *Ottawa General Hospital v. O.N.A.* (1979), 23 L.A.C. (2d) 420 (Ont. Arb. Bd.) (Brent); *Ottawa Civic Hospital v. C.U.P.E., Local 576* (June 10, 1986), Fraser Arb. (Ont. Arb. Bd.); *Children's Hospital of Eastern Ontario v. O.N.A.* (April 29, 1988), Saltman Arb. (Ont. Arb. Bd.); *Children's Hospital of Eastern Ontario v. O.N.A.* (July 10, 1992), Keller Arb. (Ont. Arb. Bd.); *Lady Dunn General Hospital v. S.E.U., Local 268* (January 22, 1996), Springate Arb. (Ont. Arb. Bd.); and *Network North v. O.P.S.E.U., Local 666* (1995), 50 L.A.C. (4th) 155 (Ont. Arb.) (Verity).

[15] In our view a reading of the above cases confirms the fundamental position which seems to be espoused by both parties before us. They are agreed that the degree to which an employer can properly attach linguistic ability to a position depends on the nature of the duties and responsibilities involved. As Arbitrator Springate expressed it at p. 19 of the Lady Dunn General Hospital award: "Logically a test of an employee's ability to speak French should have some relationship to the communications responsibilities associated with the relevant job." It appears to this Board manifest that the operative principle suggests a sliding scale of ability. The degree of proficiency in French which could be required of a custodian or operating engineer in a hospital might be substantially less than that which could reasonably be expected of a psychiatric nurse, social worker or receptionist. The operative principle, reflected in the comments of Arbitrator Burkett in the Cornwall General Hospital award, is grounded in the fundamental notion that any qualification, including linguistic ability, must bear a reasonable relationship to the legitimate business purposes and functions of the employer's institution. That approach has been used with respect to assessing the appropriateness of bilingualism requirements in industries beyond health care, including the communications industry (*Canadian Telecommunications Union v. Canadian*

National Railway Telecommunications Department (1972), 24 L.A.C. 16 (Ont. Arb. Bd.) (Egan); *Commercial Telegraphers' Union v. Canadian National Railway* (1967), 18 L.A.C. 283 (Ont. Arb.) (Hanrahan); as well as in other service industries, including retail food operations, *C.F.A.W., Local 175 v. Great Atlantic & Pacific Co. of Canada* (November 25, 1974), O'Connor Arb. (Ont. Arb. Bd.).

[16] When the general principles are applied to the facts of the instant case, we are satisfied with the Hospital's requirement of a knowledge of both official languages is reasonable as it relates to the position of the single nurses' aide assigned to handle a shift in the Hospital's Hemodialysis Unit. It is common ground that the Unit services patients whose language is French. While the job does not involve the administration of medical or nursing care, it plainly does require the nurses' aide to communicate clearly with patients undergoing dialysis treatment. That communication generally involves matters of relatively simple personal comfort, but can occasionally extend to receiving and transmitting concerns about symptoms of distress, including loss of blood pressure or other physical conditions which must be communicated without delay to the responsible on-duty nurse or other medical staff.

[17] In an area so sensitive, we are satisfied that it is not sufficient for an individual to be able to communicate only in a rudimentary way, with a combination of broken French and sign language. On the material before us it appears beyond dispute that a degree of ongoing vigilance and caution is required in the individual who fulfills the role of nurses' aide in the Dialysis Unit. That role would plainly suffer, if not be entirely undermined, to the extent that the individual holding the duties and responsibilities of the position might be unable to understand, without delay or uncertainty, an expression of concern or physical distress expressed by a patient in either of the official languages. Additionally, apart from situations of urgency, the Hospital has a legitimate business concern to ensure that the nurses' aide is capable of fully understanding and communicating with patients with respect to their general comfort and needs during the lengthy and regular periods they attend at the Hemodialysis Unit for treatment. On the whole we are satisfied that the standard established by the Hospital is reasonable, and that proficiency in French is a bona fide occupational requirement with respect to the nurses' aide position which is the subject of this grievance. There can, therefore, be no issue of direct or indirect discrimination in violation of Article 3.01 of the collective agreement or of any parallel human rights legislation.

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5. (2) Duplication of services

5. (2) When the same service is provided by more than one office in a designated area, the Lieutenant Governor in Council may designate one or more of those offices to provide the service in French if the Lieutenant Governor in Council is of the opinion that the public in the designated area will thereby have reasonable access to the service in French.

R.S.O. 1990, c. F.32, s. 5 (2).

5. (3) Idem

5. (3) If one or more offices are designated under subsection (2), subsection (1) does not apply in respect of the service provided by the other offices in the designated area.

R.S.O. 1990, c. F.32, s. 5 (3).

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6. Existing practice protected

6. This Act shall not be construed to limit the use of the English or French language outside of the application of this Act.

R.S.O. 1990, c. F.32, s. 6.

ANNOTATIONS

Galganov v. Russell (Township), 2012 ONCA 409 (CanLII)

(d) Whether specific authority is required to enact a by-law respecting language because of the *French Language Services Act*

[46] Brisson argues that the Township's authority to enact the By-law pursuant to the broad powers of s. 11(2)(5) of the (*Municipal Act, 2001,* SO 2001, c 25*)* is undermined by the *French Language Services Act*, R.S.O. 1990, c. F. 32 (the "*FLSA*").

[47] Brisson submits that the *FLSA* ousts the jurisdiction of a municipality to enact by-laws under the general powers provisions of the *Municipal Act, 2001*. Section 14(1) of the *FLSA* provides that a municipality that is in a designated area, such as the Township here, "may pass a by-law providing that the administration of the municipality shall be conducted in both English and French and that all or specified municipal services to the public shall be made available in both languages." Brisson argues that, if the *Municipal Act, 2001* conferred broad authority on municipalities to enact by-laws pertaining to language use within the municipality, s. 14(1) of the *FLSA* would be entirely unnecessary. In effect, Brisson submits that s. 14(1) of the *FLSA* limits the power to enact language by-laws to strictly municipal services contained in that section. I disagree.

[48] Brisson's submission ignores s. 6 of the *FLSA* which provides that: "This Act shall not be construed to limit the use of the English or French language outside of the application of this Act." Thus, the express powers of a municipality regarding official languages as provided for in the *FLSA* do not derogate from any general power included in the general grant of power provision in the *Municipal Act, 2001*. Furthermore, the *FLSA* deals with services provided by municipalities in the French language; it does not deal with promotion of the social well-being of municipalities.

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[150] Section 6 gives some protection to existing practices with respect to the use of English or French outside the application of the Act. It provides that the Act cannot be used to limit the use of either language where the Act does not apply.

Lafrance v. Director of Regulatory Compliance, 2002 ONAFRAAT 17 (CanLII)

Section 6 of the *FLSA* states:

> Existing practice protected
>
> 6. This Act shall not be construed to limit the use of the English or French language outside of the application of this Act. R.S.O. 1990, c. F.32, s. 6.

The Tribunal interprets this to mean that the fact that services are being provided in one of French or English shall not mean that services in the other language are diminished. For

example, if a person requires services of the Tribunal in French, that cannot result in a person using English to communicate with the Tribunal in a proceeding having less service.

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7. Limitation of obligations of government agencies, etc.

7. The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made.

R.S.O. 1990, c. F.32, s. 7.

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[151] Section 7 makes the obligations of government agencies to provide services in French subject to "such limits as circumstances make reasonable and necessary" but requires first that "all reasonable measures and plans for compliance with this Act have been taken or made."

[…]

[164] Section 7 of the *F.L.S.A.* states that the right to receive services in French may only be limited "as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made." The definition of "necessary" implies "une chose absolument indispensable, ce dont on ne peut rigoureusement pas se passer. En somme, une nécessité inéluctable": Pigeon, *Rédaction et interprétation des lois*, 3e éd. (1986), at 36. The word "necessary" in this context would appear to mean that existing services can only be limited when this is the only course of action that can be taken.

[165] Before limiting Montfort's services as a community hospital, Ontario must also have taken "all reasonable measures" to comply with the Act. It is possible to state with greater precision what falls short of "all reasonable measures." "All reasonable measures" does not simply mean giving a direction to the transferee hospital to attain *F.L.S.A.* designation and then transferring the French services before that designation has been attained. Nor does "all reasonable measures" mean creating a seemingly insurmountable problem for the training of health care professionals in French and leaving the affected community to solve the problem itself. The Commission's directions do not comply with s. 7 of the Act.

[166] Although it is impossible to specify precisely what is encompassed by the words "reasonable and necessary" and "all reasonable measures," at a minimum they require some justification or explanation for the directions limiting the rights of francophones to benefit from Montfort as a community hospital.

[167] While the Lieutenant Governor in Council may make regulations exempting services from the application of ss. 2 and 5 where, in the opinion of the Lieutenant Governor in Council, it is reasonable and necessary to do so, there has been no attempt to pass a regulation exempting any of the health care services from being provided in French. We also note the requirement that any regulation exempting a service from the application of the Act not derogate from the general purpose and intent of the Act. These words appear to invite some objective scrutiny and indicate that the discretionary opinion of the Lieutenant Governor in Council is not absolute.

[168] While the Commission, and now the Minister, may exercise a discretion to change and to limit the services offered in French by Montfort, it cannot simply invoke administrative convenience and vague funding concerns as the reasons for doing so: see by analogy *R. v. Beaulac*, [1999] 1 S.C.R. 768 (S.C.C.), at 805-806, *Centre hospitalier Mont-Sinaï c. Québec (Ministre de la Santé & des Services sociaux)*, 2001 SCC 41 (S.C.C.), at para. 116. The Commission's mandate has to be reconciled with the statutory requirements of the *F.L.S.A*. The Commission may not issue a directive removing available services in French from Montfort, particularly when the services are not available in French on a full-time basis elsewhere in the Ottawa-Carleton region, without complying with the "reasonable and necessary" requirement of the *F.L.S.A.*

[169] Accordingly, we conclude that the Commission's directions fail to respect the requirements of the *F.L.S.A.*

[…]

VI. Conclusion

[188] Our conclusions may be summarized as follows:

> (a) result in a reduction in availability of health care services in French;
>
> (b) jeopardize the training of French language health care professionals; and
>
> (c) impair Montfort's broader role as an important linguistic, cultural, and educational institution, vital to the minority francophone population of Ontario.

[…]

(6) By enacting the *F.L.S.A*., Ontario bound itself to provide the services offered at Montfort at the time of designation under the Act unless it was" reasonable and necessary" to limit them. Ontario has not offered the justification that it is reasonable and necessary to limit the services offered in French by Montfort to the community. The Commission's directions failed to respect the requirements of the *F.L.S.A.*

Dehenne v. Dehenne, 1999 CanLII 15118 (ON SC)

The *French Language Services Act*

[7] In 1986 the Ontario Legislative Assembly adopted the *French Language Services Act*, R.S.O. 1990, c. F.32. Section 5(1) of that Act describes the right to service in French as follows:

> 5(1) Chacun a droit à l'emploi du français, conformément à la présente loi, pour communiquer avec le siège ou l'administration centrale d'un organisme gouvernemental ou d'une institution de la Législature et pour en recevoir les services. Chacun jouit du même droit à l'égard de tout autre bureau de l'organisme ou de l'institution qui se trouve dans une région désignée à l'annexe ou qui sert une telle région.
>
> 5(1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

[8] Section 7 sets out the scope of these rights as follows:

7. Si toutes les mesures raisonnables ont été prises et que tous les projets raisonnables ont été élaborés afin de faire respecter la présente loi, les obligations qu'elle impose aux organismes gouvernementaux et aux institutions de la Législature sont assujetties aux limitations raisonnables et nécessaires qu'exigent les circonstances.

7. The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made.

Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada v. Filtrum Inc, 2014 CanLII 44380 (ON LRB)

[14] The Board accepted that if the responding party could demonstrate a prima facie violation of the *FLSA* the Board would assume that a violation had occurred without regard to the saving provision of section 7 of the *FLSA* and would determine whether that contravention must result in the dismissal of this application because it is null and void.

[…]

[27] The Board, in dealing with the responding party's motion to dismiss this application assumes, without deciding, that the responding party's receipt of the Board's prescribed forms from the applicant in only the English language and the initial communications it received from the Board in only the English language contravened section 5(1) of the *FLSA*. The Board also assumes without deciding that the notice in French on both the Form C-33 Notice to Employees and the Form C-32 Notice to Employers about the availability of services from the Board in both French and English was inadequate and failed to meet the obligation established by section 5(1).

[28] In making those assumptions, the Board has not considered section 7 of the *FLSA* which, depending on the circumstances, may well justify the current processes adopted by the Board and the prescribed forms used by the Board (and the applicant) when dealing with francophone parties. Section 7 of the *FLSA* provides:

> The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made.

As noted earlier the Board did not consider section 7 of the *FLSA* as it did not have any evidence of nor did it consider what, if any, "reasonable measures and plans for compliance with this *Act* have been taken or made."

Bernard v. Lakehead University, 2013 HRTO 380 (CanLII)

[24] The university also argues that the right to services in French pursuant to the *FLSA* is not an absolute right, according to section 7 of that Act. It appears to rest its argument on the fact that the applicants are accustomed to speaking English and on the length of time and the cost associated with the hearing of these Applications, and consequently asks the Tribunal to limit the applicants' rights to services in the French language because it is reasonable and necessary to do so. It does not appear to challenge the appropriateness of bilingual hearings in general, but merely in these circumstances, where it has signalled its intention to call 21 witnesses and stated its hearing estimate of more than 35 days. The Tribunal has a practice of providing bilingual hearings, as described above, and as provided for in its Rules of Procedure. I do not find that the fact that the applicants are accustomed to speaking English at work or the potential length of these proceedings are circumstances which make it reasonable and necessary to derogate from the rights otherwise accorded to the applicants under s. 5 of the *FLSA*.

Workplace Safety and Insurance Board (Re), 2008 CanLII 41561 (ON IPC)

The term "service" is defined in section 1 as "any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose." Section 7 of the *FLSA* states that the right to receive services in French may be limited "as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this *Act* have been taken or made."

For the reasons that follow, I find that if an institution under the [*Freedom of Information and Protection of Privacy*] *Act* is covered by the *FLSA*, it is required to provide francophone requesters with their personal information in French, in response to access requests, subject to the limitations set out in section 7 of the *FLSA*.

[…]

However, an institution's obligation to translate a francophone requester's personal information into French, in response to an access request, is not absolute. As noted above, section 7 of the *FLSA* states that the right to receive services in French may be limited "as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made." In the *Lalonde* case, cited above, the Court of Appeal made the following comments about the meaning of the limitations set out in section 7:

> … The definition of "necessary" implies "une chose absolument indispensable, ce dont on ne peut rigoureusement pas se passer. En somme, une nécessité ineluctable": L.-P. Pigeon, *Rédaction et interprétation des lois*, 3e éd. (Québec: Gouvernement du Québec, Ministère des Communications, 1986) at p. 36. The word "necessary" in this context would appear to mean that existing services can only be limited when this is the only course of action that can be taken.
>
> Before limiting Montfort's services as a community hospital, Ontario must also have taken "all reasonable measures" to comply with the Act. It is possible to state with greater precision what falls short of "all reasonable measures". "All reasonable measures" does not simply mean giving a direction to the transferee hospital to attain *F.L.S.A.* designation and then transferring the French services before that designation has been attained. Nor does "all reasonable measures" mean creating a seemingly insurmountable problem for the training of healthcare professionals in French and leaving the affected community to solve the problem itself. The Commission's directions do not comply with s. 7 of the *Act*.

The Court then goes on to state that although the limitations set out in section 7 are difficult to define, there is a minimum standard that must be met by government bodies that decide to limit services provided to francophones:

> Although it is impossible to specify precisely what is encompassed by the words "reasonable and necessary" and "all reasonable measures", at a minimum they require some justification or explanation for the directions limiting the rights of francophones to benefit from Montfort as a community hospital.

In short, I find that if an institution covered by the *FLSA* decides not to translate a francophone requester's personal information into French, either in whole or in part, in response to an access request under the *Act*, it must demonstrate that this limitation on providing services in French is in accordance with section 7 of the *FLSA*. In particular, it must show that it has taken all "reasonable measures and plans" for compliance with the *FLSA* and that the particular circumstances of the access request make its decision "reasonable and necessary." Moreover, in

accordance with the Court of Appeal's findings in *Lalonde*, an institution must, at a minimum, provide some justification or explanation for its decision.

[…]

As noted above, I have found that if an institution covered by the *FLSA* decides not to translate a francophone requester's personal information into French, either in whole or in part, in response to an access request under the *Act*, it must demonstrate that this limitation on providing services in French is in accordance with section 7 of the *FLSA*. In particular, it must show that it has taken all "reasonable measures and plans" for compliance with the *FLSA* and that the particular circumstances of the access request make its decision "reasonable and necessary." Moreover, in accordance with the Court of Appeal's findings in *Lalonde*, an institution must, at a minimum, provide some justification or explanation for its decision.

[…]

There appear to be documents in the appellant's file, covering the time period specified in his request, which the WSIB [*Workplace Safety and Insurance Board*] has not translated into French. However, based on the totality of the evidence before me, I find that the WSIB has demonstrated, in accordance with section 7 of the *FLSA*, that it has taken all "reasonable measures and plans" for compliance with the *FLSA*, and that the particular circumstances of the appellant's access request make the WSIB's decision not to translate his entire file into French "reasonable and necessary." In addition, I find that the WSIB has, in accordance with the Court of Appeal's findings in *Lalonde*, met the minimum requirement of providing some justification or explanation for its decision.

Lafrance v. Director of Regulatory Compliance, 2002 ONAFRAAT 17 (CanLII)

Section 7 of the *FLSA* contemplates that there may be some reasonable limitation on the obligations of government agencies to provide services in French. Section 7 of the *FLSA* states:

> *Limitation of obligations of government agencies, etc.*
>
> 7. The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made. R.S.O. 1990, c. F.32, s. 7.

[…]

The appellants submit that in order to meet the obligations under the *FLSA* the Tribunal must sit with a panel consisting of members who are all capable of understanding the French language. While there is no doubt that this would facilitate the appellants' ability to use the French language to address the Tribunal, to be understood, and to be addressed by the Tribunal in the French language, it is not the only possible way for the requirements of the *FLSA* to be met. The provision of simultaneous translation also meets the requirements of the *FLSA*. Not only does this mean that a non-French speaking member of the Tribunal can understand what the appellant is saying to the Tribunal, it also means that the appellant can hear the translation from English to French of the words of other parties and counsel who choose to address the Tribunal in English, as is their right to do. The Tribunal notes that simultaneous translation is the method that the Legislature of Ontario and the Parliament of Canada use to facilitate the use of both French and English in their proceedings, deliberations, and indeed to enact statutes.

[…]

The Tribunal is satisfied that the appellants received a fair hearing within reasonable and necessary limits on its obligations under the *FLSA* to serve the appellants in French. The Tribunal is satisfied that it has taken “all reasonable measures and plans for compliance with this *Act*”.

International Brotherhood of Painters and Allied Trades, Local 200 v. Vitrerie Orleans Glass Inc., 2000 CanLII 10052 (ON LRB)

[2] The hearing originally convened on February 2, 2000, before another panel of the [Ontario Labour Relations] Board. An interim decision with respect to events of that day was released on February 14, 2000. The Board noted that the evening before the hearing, counsel for the responding party had requested that the hearing be conducted in French, and that the venue be changed to Ottawa, and if those requests could not be immediately accommodated, then the matter should be adjourned. The Board noted that the request for a bilingual adjudicator was not made in a timely way, although the Board's Notices had invited any party to advise the Board if it wished services in French. Ultimately, the Board decided to adjourn the matter so that "all parties could be properly heard", to a date when a bilingual panel of the Board would be available.

[…]

[4] The hearing reconvened on March 7, 2000 before a bilingual panel of the Board, and an interpreter was present. When the Board indicated that it intended to conduct a bilingual hearing, in which each participant could speak in the language of its choice, with the panel responding accordingly, counsel for the applicant submitted that it was more appropriate to conduct the hearing in English, with interoperation being provided if necessary. Counsel for the applicant submitted that all the participants spoke English to some degree. She suggested that the responding party's principal clearly spoke some English, because he conducted his business in Ontario. If parts of the hearing were conducted in French, counsel submitted, she would be at a disadvantage because she did not speak French, and would have to rely on translation, where important nuances in the testimony would be lost.

[5] I declined counsel for the applicant's suggestion, and a bilingual hearing proceeded. The underlying principles of the *French Language Services Act* recognize the equality of both French and English in Ontario, and the rights of citizens to "receive available services in French" [section 5], subject to "such limits as circumstances make reasonably necessary" [section 7]. Agencies, such as the Board have a fair level of discretion about how to carry out those goals. But it seems to me that where a hearing can be conducted in a manner that allows parties to participate in their language of choice, without giving precedence to one language over the other, it is the preferable way to proceed.

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8. Regulations

8. The Lieutenant Governor in Council may make regulations,

(a) designating public service agencies for the purpose of the definition of “government agency”;

(b) amending the Schedule by adding areas to it;

(c) exempting services from the application of sections 2 and 5 where, in the opinion of the Lieutenant Governor in Council, it is reasonable and necessary to do so and

where the exemption does not derogate from the general purpose and intent of this Act.

R.S.O. 1990, c. F.32, s. 8.

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[152] Section 8 gives the Lieutenant Governor in Council the power to make regulations (a) designating public service agencies; (b) amending the Schedule by adding designated areas to it; and (c) exempting services from the application of ss. 2 and 5 where, in its opinion, "it is reasonable and necessary to do so *and where the exemption does not derogate from the general purpose and intent of this Act*" [emphasis added].

City of Toronto v. Braganza, 2011 ONCJ 657 (CanLII)

[48] The appellant submits that this section [8] of the *Regulation 949* [of the *Provincial Offences Act Regulations*] is *ultra vires* the legislature and void and of no force or effect because it conflicts with s. 8(c) of the *FLSA*. That section reads:

> The Lieutenant Governor in Council may make regulations, (c) exempting services from the application of sections 2 and 5 where, in the opinion of the Lieutenant Governor in Council, it is reasonable and necessary to do so and where the exemption does not derogate from the general purpose and intent of this Act.

[49] There can be no conflict between a regulation in the *POA* that permits forms to be in English or French and a section in the *FLSA* that permits exemptions.

[50] The appellant is submitting that as the *FLSA* applies to municipalities as acting on behalf of the Province when prosecuting parking violations under the *POA*, the only exemptions to the requirement in the *FLSA* that services be in French is that found in s.8(c). Therefore, presumably, according to the appellant, if there has been no exemption passed, the forms must be in French and s. 8 of *Regulation 949* of the *POA* is not valid.

[51] The appellant submits that the municipality is acting on behalf of the Province for the purposes of Part II and I accept this proposition for the purpose of argument, section 175 of the *POA* specifically provides for agreements between the Municipalities and the Province for enforcement of among other things, Part II of the Act, and such a memorandum of understanding has been signed.

[52] That the legislature contemplated that the municipalities would enforce parking infractions is implicit in s. 15(3) of the *Act*, entitled municipal by-laws, and which reads:

> If the alleged infraction is under a by-law of a municipality, it is not necessary to include a reference to the number of the by-law on the certificate of notice.

[53] But, if the municipalities are acting on behalf of the Province, then they are subject to provincial legislation. This is obvious as the *POA* gives them the responsibility for parking; this is the very basis of the appellant's argument. But the *POA* is provincial legislation that applies to the municipalities as much as the *FLSA*, and s.8 of *Regulation 949* is a valid regulation made under the regulation making powers of the *POA*. It actually promotes the French language by permitting a municipality to use French only forms.

[54] And, although it is only a regulation, it neither violates nor conflicts with the guarantee in s. 5 of the *FLSA* that the Province provides services in French. A fundamental principle of statutory interpretation is that the statutory scheme is to be read as a whole. The regulation under the *POA* which allows English only forms, must be read as if the Governor in Council knew of the existence of s. 5 of the *FLSA*. It is presumed the legislature did not intend to make or empower the making of contradictory enactments: Sullivan on the Construction of Statutes 5th Edition, Lexis Nexis 2008, page 325. Although not as explicit as *Regulation 615* that Justice Laskin dealt with in *Petruzzo*, s. 8 of *Regulation 949*, is still clear authority to the municipalities to issue English only forms for parking Infractions.

[55] The appellant, in the statutory interpretation part of his attack on his English parking tickets urges the same predominance for the *FLSA* that he submits the *POA* regulation should not have. All of the legislation must be read as a whole and absent a constitutional right to all services in French in Ontario, or a quasi-constitutional status for the *FLSA*, section 8 of *Regulation 949* of the *POA* is valid.

---

9. (1) Public service agencies; limited designation

9. (1) A regulation designating a public service agency may limit the designation to apply only in respect of specified services provided by the agency, or may specify services that are excluded from the designation.

R.S.O. 1990, c. F.32, s. 9 (1).

9. (2) Consent of university

9. (2) A regulation made under this Act that applies to a university is not effective without the university's consent.

R.S.O. 1990, c. F.32, s. 9 (2).

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[153] Section 9 provides that the right to receive services in French from a designated agency may be limited in that designation may apply only to certain specified services, as opposed to all services, provided by the agency, or the agency may exclude certain of its services from designation. Montfort has not specified certain of its services for inclusion or exclusion. Thus, the designation applies to all of the services offered by Montfort.

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10. (1) Notice and comment re exempting regulation, etc.

10. (1) This section applies to a regulation,

(a) exempting a service under clause 8 (c);

(b) revoking the designation of a public service agency;

(c) amending a regulation designating a public service agency so as to exclude or remove a service from the designation.

R.S.O. 1990, c. F.32, s. 10 (1).

10. (2) Idem

10. (2) A regulation to which this section applies shall not be made until at least forty-five days after a notice has been published in The Ontario Gazette and a newspaper of general circulation in Ontario setting forth the substance of the proposed regulation and inviting comments to be submitted to the Minister.

R.S.O. 1990, c. F.32, s. 10 (2); 2013, c. 16, s. 3.

10. (3) Idem

10. (3) After the expiration of the forty-five day period, the regulation with such changes as are considered advisable may be made without further notice.

R.S.O. 1990, c. F.32, s. 10 (3).

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[154] Section 10 provides that where a regulation exempts a service, revokes the designation of a public service agency, or amends a regulation designating a public service agency so as to exclude or *remove a service* from the designation, at least 45 days' notice must first have been published in the *Ontario Gazette* and a newspaper of general circulation in Ontario inviting comments to be submitted to the Minister for Francophone Affairs. After the expiry of this period, the regulation may be made without further notice.

[155] The implication of s. 10 is that when there is a change in the services offered by a government agency, a regulation will be passed. Before the regulation passes, 45 days' notice of the change must first be published in both the *Ontario Gazette* and a general circulation newspaper, inviting comment.

Minister and Employees

11. (1) Responsible Minister

11. (1) The Minister is responsible for the administration of this Act.

R.S.O. 1990, c. F.32, s. 11 (1); 2013, c. 16, s. 4 (2).

11. (2) Functions

11. (2) The functions of the Minister are to develop and co-ordinate the policies and programs of the government relating to Francophone Affairs and the provision of French language services and for the purpose, the Minister may,

(a) prepare and recommend government plans, policies and priorities for the provision of French language services;

(b) co-ordinate, monitor and oversee the implementation of programs of the government for the provision of French language services by government agencies and of programs relating to the use of the French language;

(c) make recommendations in connection with the financing of government programs for the provision of French language services;

(d) Repealed: 2007, c. 7, Sched. 16, s. 2 (1).

(e) require the formulation and submission of government plans for the implementation of this Act and fix time limits for their formulation and submission,

and shall perform such duties as are assigned to the Minister by order in council or by any other Act.

R.S.O. 1990, c. F.32, s. 11 (2); 1993, c. 27, Sched.; 2007, c. 7, Sched. 16, s. 2 (1).

11. (3) Annual report

11. (3) The Minister, after the close of each fiscal year, shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Office of Francophone Affairs and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

R.S.O. 1990, c. F.32, s. 11 (3).

11. (4) Regulations

11. (4) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations generally for the better administration of this Act and, without limiting the generality of the foregoing,

(a) governing the publication of government documents in French;

(b) governing the provision of services in French under a contract with a person who has agreed to provide services on behalf of a government agency, including the circumstances in which the agency may enter into such a contract.

2007, c. 7, Sched. 16, s. 2 (2); 2013, c. 16, s. 4 (2).

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[156] Section 11 provides that the Minister for Francophone Affairs is responsible for the administration of the Act, and his function is to develop and coordinate the policies and programs of the government.

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12. (1) Office for Francophone Affairs

12. (1) Such employees as are considered necessary shall be appointed under Part III of the *Public Service of Ontario Act, 2006* for the administration of the functions of the Minister, and shall be known as the Office of Francophone Affairs.

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12. (2) Function of Office of Francophone Affairs

12. (2) The Office of Francophone Affairs may,

> **(a) review the availability and quality of French language services and make recommendations for their improvement;**
>
> **(b) recommend the designation of public service agencies and the addition of designated areas to the Schedule;**
>
> **(c) require non-profit corporations and similar entities, facilities, homes and colleges referred to in the definition of "government agency" to furnish to the Office information that may be relevant in the formulation of recommendations respecting their designation as public service agencies;**
>
> **(d) recommend changes in the plans of government agencies for the provision of French language services;**
>
> **(e) make recommendations in respect of an exemption or proposed exemption of services under clause 8 (c),**

and shall perform any other function assigned to it by the Minister, the Executive Council or the Legislative Assembly.

R.S.O. 1990, c. F.32, s. 12 (2); 1993, c. 27, Sched; 2013, c. 16, s. 5 (2).

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[157] Section 12(2) provides that the Office of Francophone Affairs may, *inter alia*, "recommend changes in the plans of government agencies for the provision of French language services" and "make recommendations in respect of an exemption or proposed exemption of services under clause 8(1)(c)."

French Language Services Commissioner

12.1 (1) French Language Services Commissioner

12.1 (1) There shall be an officer of the Assembly who is known in English as the French Language Services Commissioner and in French as commissaire aux services en français.

2013, c. 16, s. 6.

12.1 (2) Definition

12.1 (2) In this section,

"recognized party" has the same meaning as in subsection 62 (5) of the *Legislative Assembly Act*.

2013, c. 16, s. 6.

12.1 (3) Appointment

12.1 (3) The Lieutenant Governor in Council shall appoint the Commissioner on the address of the Assembly, but only if the person to be appointed has been selected by a panel that is composed of one member of the Assembly from each recognized party and that is chaired by the Speaker of the Assembly who is a non-voting member.

2013, c. 16, s. 6.

12.1 (4) Transition

12.1 (4) The Commissioner in office immediately before the *French Language Services Amendment Act* (French Language Services Commissioner), 2013 comes into force shall continue to hold office until confirmed in office under subsection (3) or until a successor is appointed.

2013, c. 16, s. 6.

12.1 (5) Term of office

12.1 (5) The Commissioner shall hold office for a term of five years and may be reappointed for one further term of five years.

2013, c. 16, s. 6.

12.1 (6) Same

12.1 (6) The Commissioner continues to hold office after the expiry of the term until reappointed or until a successor is appointed.

2013, c. 16, s. 6.

12.1 (7) Removal

12.1 (7) The Lieutenant Governor in Council may remove the Commissioner for cause on the address of the Assembly.

2013, c. 16, s. 6.

12.1 (8) Delegation

12.1 (8) The Commissioner may delegate in writing, to any person employed in the Office of the French Language Services Commissioner, the authority to perform any of the Commissioner's functions or to carry out any of the Commissioner's powers, subject to the terms provided for in the delegation.

2013, c. 16, s. 6.

12.1 (9) Temporary Commissioner

12.1 (9) If, while the Assembly is not sitting, the Commissioner is unable for any reason to fulfil the duties of office or the office becomes vacant, the Lieutenant Governor in Council shall appoint a temporary Commissioner, whose appointment comes to an end when the Commissioner is again able to fulfil the duties of the office or when a new Commissioner is appointed under subsection (3), as the case may be.

2013, c. 16, s. 6.

12.1 (10) Selection by panel

12.1 (10) The Lieutenant Governor in Council may appoint a temporary Commissioner under subsection (9) only if the person to be appointed has been selected by a panel that is composed of one member of the Assembly from each recognized party and that is chaired by the Speaker of the Assembly who is a non-voting member.

2013, c. 16, s. 6.

12.1 (11) Powers and duties

12.1 (11) A temporary Commissioner shall have the power and duties of the Commissioner.

2013, c. 16, s. 6.

12.1.1 (1) Nature of employment

12.1.1 (1) The Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment.

2013, c. 16, s. 6.

12.1.1 (2) Not a public servant

12.1.1 (2) The Commissioner is not a public servant within the meaning of the *Public Service of Ontario Act, 2006*.

2013, c. 16, s. 6.

12.1.2. (1) Salary and benefits

12.1.2 (1) The Commissioner and a temporary Commissioner appointed under subsection 12.1 (9) shall be paid a salary that the Board of Internal Economy determines and that is comparable to the salary paid to other officers of the Assembly.

2013, c. 16, s. 6.

12.1.2 (2) Same

12.1.2 (2) The salary of the Commissioner shall not be reduced except on the address of the Assembly.

2013, c. 16, s. 6.

12.1.2 (3) Expenses

12.1.2 (3) The Commissioner is entitled to be paid reasonable travelling and living expenses while absent from his or her ordinary place of residence in the exercise of any functions under this Act.

2013, c. 16, s. 6.

12.1.2 (4) Pension

12.1.2 (4) The Commissioner is a member of the Public Service Pension Plan.

2013, c. 16, s. 6.

12.1.3 (1) Office of the Commissioner

12.1.3 (1) The office known in English as the Office of the French Language Services Commissioner and in French as Commissariat aux services en français is continued.

2013, c. 16, s. 6.

12.1.3 (2) Budget

12.1.3 (2) The money required for the administration of the Office of the French Language Services Commissioner shall be paid out of the money appropriated for that purpose by the Legislature.

2013, c. 16, s. 6.

12.1.3 (3) Directives

12.1.3 (3) The Board of Internal Economy may from time to time issue directives to the Commissioner with respect to the expenditure of funds and the Commissioner shall comply with those directives.

2013, c. 16, s. 6.

12.1.3 (4) Estimates

12.1.3 (4) The Commissioner shall present annually to the Board of Internal Economy estimates of the sums of money that will be required for the purposes of carrying out the Commissioner's functions under this Act.

2013, c. 16, s. 6.

12.1.3 (5) Review by Board

12.1.3 (5) The Board of Internal Economy shall review and may alter the estimates as it considers proper.

2013, c. 16, s. 6.

12.1.3 (6) Audit

12.1.3 (6) The accounts and financial transactions of the Office of the French Language Services Commissioner shall be audited annually by the Auditor General.

2013, c. 16, s. 6.

12.1.4 (1) Employees

12.1.4 (1) Subject to the approval of the Board of Internal Economy, the Commissioner may employ the employees whom the Commissioner considers necessary for the efficient and proper operation of the Office of the French Language Services Commissioner and may determine their salary or wages and terms and conditions of employment.

2013, c. 16, s. 6.

12.1.4 (2) Transition

12.1.4 (2) The employees of the Office of the French Language Services Commissioner in office immediately before the day the *French Language Services Amendment Act (French Language Services Commissioner), 2013* comes into force shall continue as employees of that Office.

2013, c. 16, s. 6.

12.1.4 (3) Salaries or wages

12.1.4 (3) Salaries or wages determined under subsection (1) shall be comparable to the salaries or wages determined under Part III of the *Public Service of Ontario Act, 2006* for public servants employed under that Part to work in a ministry, other than in a minister's office, who are in similar positions.

2013, c. 16, s. 6.

12.1.4 (4) Benefits

12.1.4 (4) The benefits determined under Part III of the *Public Service of Ontario Act*, 2006 with respect to the following matters for public servants employed under that Part to work in a ministry, other than in a minister's office, who are not within a bargaining unit apply to the employees of the Office of the French Language Services Commissioner:

1. Cumulative vacation and sick leave credits for regular attendance and payments in respect of those credits.

2. Plans for group life insurance, medical-surgical insurance or long-term income protection.

3. The granting of leaves of absence.

2013, c. 16, s. 6.

12.1.4 (5) Same

12.1.4 (5) For the purposes of subsection (4), if a benefit applicable to an employee of the Office of the French Language Services Commissioner is contingent on the exercise of a discretionary power or the performance of a discretionary function, the Commissioner or any person authorized in writing by the Commissioner may exercise the power or perform the function.

2013, c. 16, s. 6.

12.1.5 Premises and supplies

12.1.5 The Commissioner may lease the premises and acquire the equipment and supplies as are necessary for the efficient and proper operation of the Office of the French Language Services Commissioner.

2013, c. 16, s. 6.

12.1.6 (1) Immunity

12.1.6 (1) No proceeding shall be commenced against the Commissioner or any employee of the Office of the French Language Services Commissioner for any act done or omitted in good faith in the execution or intended execution of his or her duties under this Act.

2013, c. 16, s. 6.

12.1.6 (2) Testimony

12.1.6 (2) Neither the Commissioner nor an employee of the Office of the French Language Services Commissioner is a compellable witness in a civil proceeding outside the Assembly in connection with anything done under this Act or any other Act.

2013, c. 16, s. 6.

12.2 Functions of Commissioner

12.2 It is the function of the Commissioner to encourage compliance with this Act by,

> **(a) conducting investigations into the extent and quality of compliance with this Act, pursuant to complaints relating to French language services made by any person or on the Commissioner's own initiative;**
>
> **(b) preparing reports on investigations, including recommendations for improving the provision of French language services;**
>
> **(c) monitoring the progress made by government agencies in providing French language services;**
>
> **(d) advising the Minister on matters related to the administration of this Act; and**
>
> **(e) performing such other functions as may be assigned to the Commissioner by the Lieutenant Governor in Council.**

2007, c. 7, Sched. 16, s. 3.

ANNOTATIONS

Landriault v. Champlain (Canton), 2016 HRTO 846 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[8] The Application submits that the respondent infringed subsection 14(2) of the *French Language Services Act* (the "FLSA") and municipal bylaw No. 98-02. The [Human Rights Tribunal of Ontario] lacks the jurisdiction to establish infringements of other statutes. Any allegations of these statutes being infringed by the respondent must be disposed of using the enforcement mechanisms of the applicable statute. The Tribunal only has jurisdiction to determine whether the [*Human Rights*] *Code* has been infringed.

[…]

[13] The applicant argued that since the respondent had agreed to provide services in French under the FLSA, the Tribunal had jurisdiction to determine whether the respondent had respected its commitment. I do not agree with the argument according to which an agreement or an obligation to comply with the FLSA gives the Tribunal the authority to dispose of complaints concerning the quality of French language services in Ontario. The FLSA delegates this responsibility to the Office of the French Language Services Commissioner.

12.3 (1) Commissioner's discretion to investigate complaints

12.3 (1) The Commissioner may, in his or her discretion, decide not to take any action based on a complaint relating to French language services, including refusing to investigate or ceasing to investigate any complaint, if, in his or her opinion,

(a) the subject-matter of the complaint is trivial;

(b) the complaint is frivolous or vexatious or is not made in good faith;

(c) the subject-matter of the complaint has already been investigated and dealt with;

(d) the subject-matter of the complaint does not involve a contravention of or failure to comply with this Act or, for any other reason, does not come within the authority of the Commissioner under this Act.

2007, c. 7, Sched. 16, s. 3.

12.3 (2) Notice to complainant

12.3 (2) If the Commissioner decides not to act on a complaint, or to take no further actions with regard to a complaint, he or she shall give the complainant notice in writing of the decision, and of the reasons for it.

2007, c. 7, Sched. 16, s. 3.

12.4 (1) Investigations

12.4 (1) Subject to this Act, the Commissioner may determine the procedure to be followed in conducting an investigation.

2007, c. 7, Sched. 16, s. 3.

12.4 (2) Notice to be given to deputy head

12.4 (2) Before beginning an investigation, the Commissioner shall inform the deputy head or other administrative head of the government agency concerned of his or her intention to conduct an investigation.

2007, c. 7, Sched. 16, s. 3.

12.4 (3) Application of Public Inquiries Act, 2009

12.4 (3) Section 33 of the *Public Inquiries Act, 2009* applies to an investigation by the Commissioner.

2009, c. 33, Sched. 6, s. 60.

12.4 (3.1) Confidentiality

12.4 (3.1) Information disclosed to the Commissioner under this Act is confidential and shall not be disclosed to any person, except,

> **(a) by the person to whom the information relates or with the consent of that person;**
>
> **(b) in a criminal proceeding, as required by law; or**
>
> **(c) otherwise in accordance with this Act.**

2013, c. 16, s. 7 (1).

12.4 (4) Report on results of investigation

12.4 (4) The Commissioner shall report the results of an investigation,

> **(a) where the investigation arises from a complaint, to the complainant, the deputy head or other administrative head of the government agency concerned and the Speaker of the Assembly;**
>
> **(b) where the investigation is at the Commissioner's own initiative, to the deputy head or other administrative head of the government agency concerned and the Speaker of the Assembly.**

2007, c. 7, Sched. 16, s. 3; 2013, c. 16, s. 7 (2).

12.5 (1) Annual report

12.5 (1) On or before July 31 in each year, the Commissioner shall prepare and submit to the Speaker of the Assembly an annual report on his or her activities, which may include recommendations for improving the provision of French language services.

2013, c. 16, s. 8.

12.5 (2) Copy of report

12.5 (2) Upon submitting an annual report, the Commissioner shall provide a copy of it to the Minister.

2013, c. 16, s. 8.

12.5 (3) Tabling of report

12.5 (3) Upon receiving an annual report, the Speaker of the Assembly shall lay it before the Assembly at the earliest reasonable opportunity.

2013, c. 16, s. 8.

12.6 (1) Other reports

12.6 (1) The Commissioner may at any time prepare and submit, to the Speaker of the Assembly, any other report that the Commissioner considers appropriate on any matter related to this Act.

2013, c. 16, s. 8.

12.6 (2) Copy of report before submission

12.6 (2) Before submitting a report under subsection (1), the Commissioner shall deliver a copy of it to any member of the Executive Council who presides over and has charge of any ministry or to the head of any public entity to which the report is relevant.

2013, c. 16, s. 8.

12.6 (3) Interpretation, head of a public entity

12.6 (3) A reference in subsection (2) to the head of a public entity is a reference to its chief executive officer or to a person who holds a similar position with respect to the public entity.

2013, c. 16, s. 8.

12.6 (4) Copy of report

12.6 (4) Upon submitting a report under subsection (1), the Commissioner shall provide a copy of it to the Minister and may provide a copy of it to any person whom the Commissioner considers appropriate.

2013, c. 16, s. 8.

12.6 (5) Tabling of report

12.6 (5) Upon receiving a report under subsection (1), the Speaker of the Assembly shall lay it before the Assembly at the earliest reasonable opportunity.

2013, c. 16, s. 8.

12.7 Publication of report

12.7 The Commissioner may publish, in any manner he or she considers appropriate, a report of the Commissioner mentioned in this Act, 30 days after having submitted the report, unless the Speaker consents to the report's earlier publication.

2013, c. 16, s. 8.

French Language Services Co-ordinators

13. (1) French language services co-ordinators

13. (1) A French language services co-ordinator shall be appointed for each ministry of the government.

R.S.O. 1990, c. F.32, s. 13 (1).

13. (2) Committee

13. (2) There shall be a committee consisting of the French language services co-ordinators, presided over by the senior official of the Office of Francophone Affairs.

R.S.O. 1990, c. F.32, s. 13 (2).

13. (3) Communication

13. (3) Each French language services co-ordinator may communicate directly with his or her deputy minister.

R.S.O. 1990, c. F.32, s. 13 (3).

13. (4) Deputy minister

13. (4) Each deputy minister is accountable to the Executive Council for the implementation of this Act and the quality of the French language services in the ministry.

R.S.O. 1990, c. F.32, s. 13 (4).

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[158] Section 13 requires that a French language services coordinator be appointed for each ministry and that all the coordinators be part of a committee presided over by the Office of Francophone Affairs.

Municipalities

14. (1) Municipal by-laws re official languages

14. (1) The council of a municipality that is in an area designated in the Schedule may pass a by-law providing that the administration of the municipality shall be conducted in both English and French and that all or specified municipal services to the public shall be made available in both languages.

R.S.O. 1990, c. F.32, s. 14 (1).

ANNOTATIONS

Galganov v. Russell (Township), 2012 ONCA 409 (CanLII)

(d) Whether specific authority is required to enact a by-law respecting language because of the *French Language Services Act*

[46] Brisson argues that the Township's authority to enact the By-law pursuant to the broad powers of s. 11(2)(5) of the (*Municipal Act, 2001,* SO 2001, c 25*)* is undermined by the *French Language Services Act*, R.S.O. 1990, c. F. 32 (the "*FLSA*").

[47] Brisson submits that the *FLSA* ousts the jurisdiction of a municipality to enact by-laws under the general powers provisions of the *Municipal Act, 2001*. Section 14(1) of the *FLSA* provides that a municipality that is in a designated area, such as the Township here, "may pass a by-law providing that the administration of the municipality shall be conducted in both English and French and that all or specified municipal services to the public shall be made available in both languages." Brisson argues that, if the *Municipal Act, 2001* conferred broad authority on municipalities to enact by-laws pertaining to language use within the municipality, s. 14(1) of the *FLSA* would be entirely unnecessary. In effect, Brisson submits that s. 14(1) of the *FLSA* limits the power to enact language by-laws to strictly municipal services contained in that section. I disagree.

[48] Brisson's submission ignores s. 6 of the *FLSA* which provides that: "This Act shall not be construed to limit the use of the English or French language outside of the application of this Act." Thus, the express powers of a municipality regarding official languages as provided for in the *FLSA* do not derogate from any general power included in the general grant of power provision in the *Municipal Act, 2001*. Furthermore, the *FLSA* deals with services provided by municipalities in the French language; it does not deal with promotion of the social well-being of municipalities.

(e) Conclusion on *ultra vires* argument

[49] The By-law is *intra vires* the Township's authority. This conclusion takes into account the wording of the *Act* [*Municipal Act, 2001*], the jurisprudence respecting the broad and purposive interpretation of municipal powers, and the expert evidence that the By-law is a means of preserving and enhancing the social well-being of the Township under s. 11(2)(5). Read in conjunction with s. 8(3)(b) of the *Act* [*Municipal Act, 2001*], which, as I have indicated, provides that a by-law under s. 11 may "require persons to do things respecting the matter", I am of the opinion that the Township had the authority to enact the By-law.

[…]

(i) Whether the By-law serves an objective that is sufficiently important

[67] The evidence before the court, concerning the social well-being of the municipality, discussed under the authority to enact the By-law in (2)(b)(ii) above, establishes the importance of the purpose the By-law addresses – the preservation and enhancement of the equality of the status of the French language in the Township, a municipality which has chosen to designate itself as bilingual under the French Language Services Act and to offer its services to residents in both languages. The objective of the By-law, the promotion of the equality of status of both French and English, the official languages of Canada, is a pressing and substantial one.

Canada (Commissioner of Official Languages) v. Canada (Department of Justice), 2001 FCT 239 (CanLII)

[71] When Ontario enacted the *Streamlining of Administration of Provincial Offences Act, 1988*, it provided for certain powers deriving from the *CA* [*Contraventions Act*] to be transferred to the municipalities. That Act does not provide for bilingual trials or trials in French, and not all Ontario municipalities are subject to the *Courts of Justice Act*. In addition, only the municipalities named in Sched. 1 to the *French Language Services Act* may be subject to that Act, and then only if the municipalities have passed a bylaw to that effect in accordance with subs. 14(1) of the *French Language Services Act*.

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14. (2) Right to services in English and French

14. (2) When a by-law referred to in subsection (1) is in effect, a person has the right to communicate in English or French with any office of the municipality, and to receive available services to which the by-law applies, in either language.

R.S.O. 1990, c. F.32, s. 14 (2).

ANNOTATIONS

Canadians for Language Fairness v. Ottawa (City), 2006 CanLII 33668 (ON SC)

[74] The Applicant submits that the *F.L.S.A.* was intended: "To provide for quality accessible services to the Francophone minority."

[75] I would point out that the legislation does not describe only a "francophone" as beneficiary of the legislation, but the target rather is "a person" as set out in section 14(2).

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14. (3) Regional councils

14. (3) Where an area designated in the Schedule is in a regional municipality and the council of a municipality in the area passes a by-law under subsection (1), the council of the regional municipality may also pass a by-law under subsection (1) in respect of its administration and services.

2002, c. 17, Sched. F, Table.

ANNOTATIONS

R. v. Petruzzo, 2011 ONCA 386 (CanLII)

[6] On the second ground, Mr. Petruzzo contends that the *French Language Services Act* obliges the City of Toronto to have bilingual traffic signs. He points to two sections of that *Act*, ss. 5 and 14, in support of his contention. Neither section assists him.

[7] Section 5 stipulates that a person has the right to receive available services in French from any head or central office of a government agency. However, the definition of government agency in s. 1 expressly excludes municipalities.

[8] The City of Toronto is designated in the Schedule to the Act as a bilingual area, and under s. 14 may pass a by-law providing that the administration of a municipality shall be conducted in both official languages and that all or specified municipal services shall be available in English and French. However, the City of Toronto has not passed such a by-law. Because it has not done so, s. 52 of *Regulation 615* under the *Highway Traffic Act* applies and forecloses the need for bilingual traffic signs. Section 52 states:

> A municipality situated in an area designated by the *French Language Services Act* is not required to comply with the sign requirements for such areas unless it has passed a by-law under section 14 of that Act.

[9] Nonetheless, Mr. Petruzzo finds support for his argument in the decision of Justice of the Peace Napier in *R. v. Myers*, 2004 CarswellOnt 5638 (C.J.). In that case, the Justice of the Peace held that unilingual traffic signs in the City of Toronto were not valid. In his view, because the City is a designated bilingual area under the *French Language Services Act*, traffic signs under the *Highway Traffic Act* must be in both English and French.

[10] Respectfully, I consider the decision in *Myers* to be wrong. It does not satisfactorily explain why the City of Toronto is obliged to have bilingual signs when it has not passed a by-law under s. 14 of the Act. Most important, *Myers* does not refer to s. 52 of *Regulation 615*, which expressly states that absent a by-law under s. 14, bilingual signs are not required.

Canadians for Language Fairness v. Ottawa (City), 2006 CanLII 33668 (ON SC)

Issues

[57] The Applicant frames the issues as follows.

1. Are By-Law 2001-170 and the Bilingualism Policy illegal and ultra vires of the City of Ottawa because they are in excess of the authority granted by section 14 of the *F.L.S.A.*?

[…]

[63] The Applicant then relies on *Chaperon v. Sault Ste. Marie (City)* (1994), 1994 CanLII 7284 (ON SC), 19 O.R. (3d) 281 (Gen. Div.) [*Chaperon*], which stands for the proposition that the City could not rely on a resolution when the power given by the *F.L.S.A.* was to pass a By-Law.

[64] In early 1990, the Council of the Corporation of the City of Sault Ste. Marie had passed a resolution purportedly in accordance with the provisions of section 103 [now section 247] of the *Municipal Act*, 1990. The resolution recognized that English had been the working language of the City and declared that it was the official language of communication with its citizens in all levels of government. The applicants moved for a declaration that the resolution was void as being *ultra vires*.

[65] The Court held that the original resolution and the confirming resolution were ultra vires, void and of no effect. The City of Sault Ste. Marie could not rely on section 14 of the *F.L.S.A.*, as it requires that the municipality pass a by-law and the City had only passed a resolution.

[66] In contrast, in the case at bar, the City of Ottawa did in fact pass a By-Law with respect to bilingualism and expressly relied on section 14 of the *F.L.S.A.* for the authority to do so; as well, it passed a separate by-law to incorporate the Policy. The *Chaperon* case is distinguished on these facts.

[…]

Other Submissions

[106] I find no merit in the Applicant's submission that since the Policy was passed first in time it is invalid (there being no power at the time to do other than pass a by-law). The method of proceeding was to adopt the report (recommending the Policy), to pass By-Law 170 incorporating that Policy, and then to pass By-Law 173 to adopt and confirm that Policy. The precise order is irrelevant since the City was within section 14 of the *F.L.S.A.* at all times and its intention was clear throughout. By-Law 173 (pages 24 and 25 herein) is described as confirming the proceedings of the Council and adopting the Reports by By-Law.

[…]

[108] The fact that the impugned By-Law is brief and lacks specificity, another of the Applicant's grounds for declaring the By-Law and Policy invalid, has no relevance. The submission that it does not repeat the terms of section 14 is also without merit. The By-Law is squarely within the ambit of section 14 of the *F.L.S.A.*

Chaperon v. Sault Ste. Marie (City), 1994 CanLII 7284 (ON SC)

[30] Section 14 of the Act provides that a Council of the municipality in an area designated in the Schedule may pass a by-law providing that the administration of the municipality shall be conducted in both English and French, and that all, or only specified, municipal services to the public shall be made available in both languages. Section 14, which deals with municipalities, reads as follows:

> 14. (1) The council of a municipality that is in an area designated in the Schedule may pass a by-law providing that the administration of the municipality shall be conducted in both English and French and that all or specified municipal services to the public shall be made available in both languages.
>
> (2) When a by-law referred to in subsection (1) is in effect, a person has the right to communicate in English or French with any office of the municipality, and to receive available services to which the by-law applies, in either language.
>
> (3) Where an area designated in the Schedule is in a metropolitan or regional municipality and the council of a municipality in the area passes a by-law under subsection (1), the council of the metropolitan or regional municipality may also pass a by-law under subsection (1) in respect of its administration and services. 1986, c. 45, s. 16.

[31] All of the District of Algoma was named in the Schedule, and thus any municipality in the District may enact a by-law under section 14. This subsection was enacted by S.O. 1986, c. 45, s. 16 [*French Language Services Act, 1986*], and thus was in place at the time of the 1990 resolution in issue.

[…]

[33] Section 103 of the *Municipal Act* and section 14 of the *French Language Services Act* confer certain powers in respect of language on municipal councils. In the case of the *Municipal Act*, all Ontario municipalities may exercise the powers granted by the section, while in the case of the latter statute only those municipalities which are in areas set out in the Schedule to the *FLSA* may do so. Since Sault Ste. Marie is in the District of Algoma, the City could, if it chose to do so, exercise powers under either statute.

[34] What are the City's powers on language? Is the City limited to the authority granted in these two statutes, or are there other sources of authority giving it the power to deal with language issues?

[…]

[69] The field of language legislation belongs to the federal and provincial governments. Municipalities do not have the power to legislate except in narrow areas of responsibility under the *Municipal Act* and the *French Language Services Act*, conferred upon them by the legislature.

[…]

[71] Was the City merely expressing an opinion of the status quo? In one sense, it was, and in another sense, it went beyond that status quo. To see the January 1990 resolution in its proper context, one must turn again to the February 1990 resolution whose words are directed to the French Canadian residents of the City in terms of their contributions to the culture, history and development of the City. The resolution encourages the French Canadians of the City to continue in the celebration of their important history, ancestry and culture as part of the City's multicultural fabric. This resolution, however, somehow does not grasp that there is something more to the constitutional fabric of Canada besides multiculturalism, and that involves certain language guarantees. English and French are official languages of Canada. At the federal government level, by provisions of our constitutional law and in Ontario, bilingualism is provided by statute. In the one case, there are constitutional guarantees for language and education, and in the case of the province, legislative guarantees in the *French Language Services Act*. No legislative provisions in the *Municipal Act* grant powers to municipalities to declare official language status.

City of Toronto v. Braganza, 2011 ONCJ 657 (CanLII)

[43] But the *FLSA*, which is after all an Act of the Legislature, specifically addresses the issue of the provision of French language services in municipalities in s. 14 which provides;

> 14(1) The council of a municipality that is in an area designated in the Schedule may pass a by-law providing that the administration of the municipality shall be conducted in both English and French and that all or specified municipal services to the public shall be made available in both languages.
>
> (2) When a by-law referred to in subsection (1) is in effect, a person has the right to communicate in English or French with any office of the municipality, and to receive available services to which the by-law applies, in either language.

[44] The City of Toronto is an area designated in the Schedule. However, s.52 of Regulation 615 of the *Highway Traffic Act* provides as follows:

> A municipality situated in an area designated by the *French Language Services Act* is not required to comply with the sign requirements for such areas unless it has passed a by-law under section 14 of that Act.

[45] At least with respect to the appellant's argument that the signs should be in French in Toronto, the statutory scheme leads to the result that they need not be. This is exactly what Justice Laskin concluded in written reasons dismissing a motion for leave to appeal a decision of this Court in *R. v. Petruzzo* (2011), 11 M.V.R. (6th) 201 (Ont. C.A. [In Chambers]) where he held:

> The City of Toronto is designated in the Schedule to the Act as a bilingual area, and under s.14 may pass a by-law providing that the administration of a municipality shall be conducted

in both official languages and that all or specified services shall be available in English and French. However, the City of Toronto has not passed such a by-law. Because it has not done so, s.52 of Regulation 615 applies and forecloses the need for bilingual traffic signs.

[46] This is conclusive of the issue as far as the parking signs go.

Schedule

Municipality or District	Area
City of Greater Sudbury	All
City of Hamilton	All of the City of Hamilton as it exists on December 31, 2000
City of Ottawa	All
City of Toronto	All
Regional Municipality of Niagara	Cities of: Port Colborne and Welland
Regional Municipality of Peel	City of Brampton
Regional Municipality of Peel	City of Mississauga
County of Dundas	Township of Winchester
County of Essex	City of Windsor
	Towns of: Belle River and Tecumseh
	Townships of: Anderdon, Colchester North, Maidstone, Sandwich South, Sandwich West, Tilbury North, Tilbury West and Rochester
County of Frontenac	City of Kingston

County of Glengarry	**All**
County of Kent	**Town of Tilbury**
	Townships of: Dover and Tilbury East
County of Middlesex	**City of London**
County of Prescott	**All**
County of Renfrew	**City of Pembroke**
	Townships of: Stafford and Westmeath
County of Russell	**All**
County of Simcoe	**Town of Penetanguishene**
	Townships of: Tiny and Essa
County of Stormont	**All**
District of Algoma	**All**
District of Cochrane	**All**
District of Kenora	**Township of Ignace**
District of Nippissing	**All**
District of Parry Sound	**Municipality of Callander**
District of Sudbury	**All**

District of Thunder Bay	**Towns of: Geraldton, Longlac and Marathon**
	Townships of: Manitouwadge, Beardmore, Nakina and Terrace Bay
District of Timiskaming	**All**

R.S.O. 1990, c. F.32, Sched.; O. Reg. 407/94, s. 1; 1997, c. 26, Sched.; 1999, c. 14, Sched. F, s. 4; 2000, c. 5, s. 12; O. Reg. 407/94, s. 2 (as remade by O. Reg. 405/04, s. 1); O. Reg. 407/94, s. 3 (as made by O. Reg. 184/06, s. 1).

CROSS-REFERENCE: For bilingual signage requirements in areas designated by the *French Language Services Act*, see the following regulations adopted under the Ontario *Highway Traffic Act*:

Accessible Parking for Persons With Disabilities, R.R.O. 1990, Reg. 581

Border Approach Lanes, O. Reg. 94/06

Designation of Bus By-pass Shoulders on King's Highway, O. Reg. 618/05

High Occupancy Vehicle Lanes, O. Reg. 620/05

Pedestrian Crossover Signs, O. Reg. 402/15

Pilot Project – Hot Lanes, O. Reg. 227/16

Pilot Project – Three-Wheeled Vehicles, O. Reg. 28/16 [site web des lois-en-ligne de l'Ontario]

Restricted Use of Left Lanes by Commercial Motor Vehicles, R.R.O. 1990, Reg. 608

Signs, R.R.O. 1990, Reg. 615

See also sections 18 and 31 of the Housing Services Act, 2011, S.O. 2011, c. 6, Sch. 1 for services that relate to housing that must be provided in English and French in areas designated under the *French Language Services Act*.

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Giroux v. Ontario, 2005 CanLII 22131 (ON SCDC)

[22] Welland is a designated area for the purposes of the *FLSA* [*French Language Services Act*]. Thus, s. 5(1) grants the residents of Welland the right to communicate in French with, and to receive services in French from, any office of the Ministry of Consumer and Business Services located in the Welland area and any other offices of the Ministry that serve the Welland area.

Ontario (Ministry of Health and Long-Term Care) and OPSEU (Chabot), Re, 2014 CarswellOnt 10832, 119 C.L.A.S. 312 [hyperlink not available]

[6] Sudbury is designated as a French speaking area under the *French Language Services Act*. Approximately seventy-five percent (75%) of the positions at the Central Ambulance Communications Centre (CACC) are designated as bilingual. I accept that it was the Employer's management right to determine if it needed bilingual Ambulance Communications Officers 1 in order to deliver service to the public. There is nothing to indicate that the Employer, in this instance, acted improperly or in bad faith when it assessed the need. In my judgment, the French language requirement was both reasonable and closely related to the job to be performed. I further accept that the Employer had a legitimate business purpose when it posted the positions as bilingual. I note, for the record, that the position material to this proceeding is the "1 fixed-term, full-time ACO1 position, for up to 12 months". It follows that, as the grievors did not possess the mandatory qualification, they are not entitled to the position or to the remedies claimed in the grievances.

Note: On July 1, 2018, the following area is added to the Schedule to the Act: (See O. Reg. 407/94, s. 4 (as made by O. Reg. 159/15, s. 1))

Regional Municipality of York	**City of Markham**

Designation of Public Service Agencies – French Language Services Act, O. Reg. 398/93

1. The following are designated as public service agencies for the purpose of the definition of "government agency" in section 1 of the Act:

1. Access (Aids Committee of Sudbury) in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

2. L'Accueil Francophone de Thunder Bay in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

3. ACFO Rive-Nord Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services by Garderie Petit Trésor in Elliot Lake.

3.0.1 Action Positive: VIH – Sida in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

3.1 Addiction Services of Eastern Ontario/Services de toxicomanie de l'Est de l'Ontario in respect of the following programs carried out on behalf of the Ministry of Health and Long-Term Care, namely, Administration Services and Community Treatment Program.

4. Algoma District Social Services in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

4.1 Algonquin Child and Family Services, operating under the names Hands TheFamilyHelpNetwork.ca and Mains — LeReseaudaideauxfamilles.ca, in respect of the

programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services in North Bay, East Nipissing, West Nipissing and Timmins.

5. Algonquin Nursing Home Limited in Mattawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

6. Alzheimer Society of Cornwall and District/Société Alzheimer de Cornwall et Région but only in respect of community information sessions, self-help groups, individual support services and family support groups programs carried out on behalf of the Ministry of Health and Long-Term Care.

7. Andrew Fleck Child Care Services in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

8. L'Arche-Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

8.1 Assisted Living Southwestern Ontario but only in respect of the Central Y Supportive Housing program carried out on behalf of the Ministry of Health and Long-Term Care.

9. Association canadienne-française de l'Ontario — Conseil régional des Mille-Îles (ACFO — Mille-Îles) but only in respect of the employment programs carried out by Services d'employabilité ACFOMI Employment Services on behalf of the Ministry of Training, Colleges and Universities.

10. Revoked: O. Reg. 346/13, s. 1 (2).

11. Revoked: O. Reg. 402/12, s. 1 (1).

12. Association pour l'intégration communautaire de Nipissing Ouest/West Nipissing Association for Community Living in Sturgeon Falls in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

13. Association pour l'intégration communautaire d'Iroquois Falls/Iroquois Falls Association for Community Living in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

14. L'Association pour l'intégration sociale d'Ottawa-Carleton in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

15. "Au Ballon Rouge" (Garderie des Petits) in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

16. Revoked: O. Reg. 285/11, s. 1 (2).

17. La Boîte à soleil co-opérative Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

18. Les Bouts d'Choux in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

19. Cambrian College in Sudbury in respect of the programs carried out on behalf of the Ministry of Community and Social Services by l'Arc-en-ciel and le Carrousel.

20. Canadian Mental Health Association/L'Association canadienne pour la santé mentale - Champlain East/Champlain Est in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

21. Canadian Mental Health Association, Sudbury Branch in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

22. Canadian Mental Health Association Timmins Branch in respect of the Family Resource Centre and the Community Outreach Program carried out on behalf of the Ministry of Community and Social Services and in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

23. Canadian Mothercraft of Ottawa-Carleton but only in respect of the programs carried out by the Ontario Early Years Centre/Centre de la petite enfance de l'Ontario on behalf of the Ministry of Children and Youth Services.

23.1 Carlington Community Health Centre/Centre de santé communautaire Carlington in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care and in respect of the Family Violence Program carried out on behalf of the Ministry of Community and Social Services.

24. Carrefour des Femmes du Sud-Ouest de l'Ontario in respect of the programs carried out on behalf of the Ministry of the Attorney General.

25. The Catholic Family Service of Ottawa-Carleton/Service familial catholique d'Ottawa-Carleton in respect of the Community Integration Program and the Family Violence Program, excluding New Directions, carried out on behalf of the Ministry of Community and Social Services.

25.1 Catholic Family Services of Durham/Services à la famille catholiques de Durham in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

26. Central Care Corporation: Centre de soins de longue durée Montfort/Montfort Long-Term Care Centre but only in respect of programs at the Centre carried out on behalf of the Ministry of Health and Long-Term Care.

27. Revoked: O. Reg. 285/11, s. 1 (4).

28. Centre d'accueil Roger-Séguin in Clarence Creek in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

29. Centre d'activités françaises de Penetanguishene in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

29.1 Centre de counselling de Sudbury/Sudbury Counselling Centre in respect of the programs carried out on behalf of the Ministry of the Attorney General and the Ministry of Community and Social Services.

30. Centre de counselling familial de Timmins/Timmins Family Counselling Centre Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of the Solicitor General and Correctional Services.

31. Centre de jour des Petits Poucets in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

32. Le Centre de jour polyvalent des aînés francophones d'Ottawa-Carleton in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

33. Centre de jour Séraphin-Marion d'Orléans in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

34. Centre de la Jeunesse de Toronto/La maison Montessori in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

35. The corporation named in its letters patent as the "Centre de reeducation Cor Jesu de Timmins Incorporee", operating under the name Centre Jubilee Centre, but only in respect of initial assessment and treatment planning services, case management services, entry services and individual services of the Residential Treatment Program, carried out on behalf of the Ministry of Health and Long-Term Care.

35.0.1 Centre de ressources familiales de Sturgeon Falls Sturgeon Falls Family Resource Centre in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

35.1 Centre de santé communautaire de Kapuskasing et région in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

36. Centre de santé communautaire de l'Estrie Ontario in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

36.1 Centre de santé communautaire de Nipissing Ouest/West Nipissing Community Health Centre in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

36.2 Centre de santé communautaire du Grand Sudbury in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

37. Centre de santé communautaire du Niagara in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

37.1 Le centre de santé communautaire du Témiskaming in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

38. Centre de santé communautaire Hamilton-Wentworth-Niagara Inc. in Welland and Hamilton in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

38.1 Centre de santé communautaire de Sudbury-Est/Sudbury East Community Health Centre in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

39. Centre de santé et services communautaires, Hamilton Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

40. Centre de services à l'emploi de Prescott-Russell Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

41. Revoked: O. Reg. 177/13, s. 1 (2).

42. Centre des Femmes Francophones du Nord-Ouest de l'Ontario in respect of the programs carried out on behalf of the Ministry of the Attorney General.

43. Centre des petits d'Ottawa Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

44. Centre des services communautaires de Vanier — Vanier Community Service Centre in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

45. Centre des services de développement pour Stormont, Dundas et Glengarry in Cornwall in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

46. Centre Éducatif Soleil des Petits in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

47. Centre francophone d'aide et de lutte contre les agressions à caractère sexuel d'Ottawa in respect of the programs carried out on behalf of the Ministry of the Attorney General.

48. Centre francophone de Sault-Ste-Marie in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

49. Centre francophone de Toronto in respect of the programs carried out on behalf of the Ministry of the Attorney General, the Ministry of Community and Social Services, the Ministry of Children and Youth Services, the Ministry of Health and Long-Term Care, the Ministry of Training, Colleges and Universities and the Ministry of Citizenship and Immigration.

50. Centre Lajoie des Aînés(es) francophones de Pembroke in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

51. Centre médical Ste-Anne Inc. in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

52. Centre Novas - CALACS francophone de Prescott-Russell in respect of the programs carried out on behalf of the Ministry of the Attorney General.

53. Centre parascolaire des Pionniers in Orléans in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

54. Centre parascolaire "La Clémentine" d'Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

55. Le Centre parascolaire l'Hirondelle d'Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

56. Centre Passage Parallèle des ressources familiales du Nipissing Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

57. Centre Passerelle pour femmes du Nord de l'Ontario in respect of the programs carried out on behalf of the Ministry of the Attorney General and the Ministry of Community and Social Services.

58. Centre Pivot du Triangle magique de Rayside-Balfour in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

59. Centre pour enfants Timiskaming Child Care in respect of the Private Home Day Care Program carried out on behalf of the Ministry of Community and Social Services.

60. Centre préscolaire Coccinelle d'Orléans in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

61. Centre psychosocial in Ottawa in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

61.1 Centretown Community Health Centre, Inc., also known as Centre de santé communautaire du Centre-ville, in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

62. Le Centre Victoria pour femmes (Sudbury) in respect of the programs carried out on behalf of the Ministry of the Attorney General and the Ministry of Community and Social Services.

63. Les Centres d'Accueil Héritage in Toronto but only in respect of Centre des Pionniers and the Supportive Housing Programs for the elderly and for AIDS patients of Place Saint-Laurent carried out on behalf of the Ministry of Health and Long-Term Care.

63.1 Champlain Community Care Access Centre/Centre d'accès aux soins communautaires de Champlain in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

64. Château Gardens (Lancaster) Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care by Château Gardens Lancaster Nursing Home.

65. Child and Family Centre, Centre de l'enfant et de la famille, Ngodweaangizwin Aaskaagewin but only in respect of the residential placement advisory committee, counselling services and the day treatment program carried out on behalf of the Ministry of Children and Youth Services.

66. Child and Community Resources/Ressources pour l'enfance et la communauté in respect of the programs carried out on behalf of the Ministry of Community and Social Services and in respect of the following programs carried out on behalf of the Ministry of Children and Youth Services:

i. Autism Clinical Services.

ii. Best Start Hubs.

iii. Integrated Services for Northern Children.

iv. Out-of-Home-Respite program.

v. Regional Autism Intervention Program.

vi. Residential Programs.

vii. School Support Program - Autism Spectrum Disorder.

67. Revoked: O. Reg. 285/11, s. 1 (6).

68. The Children's Aid Society of Ottawa-Carleton/La société de l'aide à l'enfance d'Ottawa-Carleton in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

69. The Children's Aid Society of the District of Sudbury and Manitoulin in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

70. The Children's Aid Society of the United Counties of Stormont, Dundas and Glengarry/La société de l'aide à l'enfance des comtés unis de Stormont, Dundas et Glengarry in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

71. Children's Hospital of Eastern Ontario/L'Hôpital pour enfants de l'Est de l'Ontario but only in respect of the Audiology, Occupational Therapy, Child Life, Speech Therapy, Clinical Pharmacy, Psychology, Clinical Nutrition, Social Work and Planning of Discharges programs carried out on behalf of the Ministry of Health and Long-Term Care.

72. Revoked: O. Reg. 5/16, s. 1 (2).

73. City View Centre for Child & Family Services but only in respect of the programs carried out by the Early Years Centre Nepean-Carleton/Centre de la petite enfance Nepean-Carleton on behalf of the Ministry of Children and Youth Services.

74. La Clef du Bonheur de Verner in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

75. Clinique juridique bilingue Windsor-Essex/Windsor-Essex Bilingual Legal Clinic in respect of the programs carried out on behalf of the Ministry of the Attorney General.

76. Clinique juridique communautaire Grand-Nord Community Legal Clinic in respect of the programs carried out on behalf of the Ministry of the Attorney General.

77. Clinique juridique populaire de Prescott et Russell Inc. in respect of the programs carried out on behalf of the Ministry of the Attorney General.

78. Clinique juridique Stormont, Dundas and Glengarry Legal Clinic in respect of the programs carried out on behalf of the Ministry of the Attorney General.

79. Club Accueil/âge d'or d'Azilda in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

80. Club d'âge d'or de la Vallée Inc./Golden Age Club of the Valley in Hanmer in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

81. Club d'âge d'or River Valley/Golden Age Club in River Valley in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

81.1 Cochrane Temiskaming Children's Treatment Centre in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

82. Colibri - Centre des femmes francophones du comté de Simcoe in respect of the programs carried out on behalf of the Ministry of the Attorney General and the Ministry of Community and Social Services.

82.1 Collège d'arts appliqués et de technologie La Cité collégiale in respect of the programs carried out on behalf of the Ministry of Training, Colleges and Universities.

83. Collège Boréal d'arts appliqués et de technologie (Collège Boréal) in respect of the programs carried out on behalf of the Ministry of Training, Colleges and Universities.

83.1 Le Collège de Hearst in respect of the programs carried out on behalf of the Ministry of Training, Colleges and Universities.

84. Community Counselling Centre of Nipissing in respect of the programs carried out on behalf of the Ministry of the Attorney General and the Ministry of Community and Social Services and in respect of the Addiction Services of Nipissing program carried out on behalf of the Ministry of Health and Long-Term Care.

85. Community Lifecare Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care by Community Nursing Home in Alexandria.

85.1 Community Living Kirkland Lake in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

86. Community Living-Stormont County but only in respect of the Adolphus Street Residence, the Community Contact and the Resource Teacher programs carried out on behalf of the Ministry of Community and Social Services.

87. Community Living Timmins Intégration Communautaire in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

88. Community Service Order Program of Ottawa-Carleton/Programme d'ordonnance de service communautaire d'Ottawa-Carleton in respect of the programs carried out on behalf of the Ministry of the Solicitor General and Correctional Services.

88.1 Community Support Centre of Essex County in respect of the North Shore meals on wheels and North Shore friendly visiting programs, switchboard, reception and administration carried out on behalf of the Ministry of Health and Long-Term Care.

89. Les Compagnons des Francs-Loisirs in respect of the programs carried out on behalf of the Ministry of Community and Social Services by Garderie Soleil in North Bay.

90. Conseil de planification des services communautaires de Prescott-Russell Inc. in respect of the programs carried out on behalf of the Community and Social Services.

91. Coopérative Brin d'herbe Inc. in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

92. Coopérative Carrousel pour parents et enfants francophones Inc. in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

92.1 Cornwall Community Hospital - Hôpital Communautaire de Cornwall in respect of the following programs carried out by the Hospital on behalf of the Ministry of Health and Long-Term Care:

i. Administration/Corporate Services.

ii. Admission Prevention Services.

iii. Adult Counselling and Treatment.

iv. Ambulatory Care Clinics.

v. Assertive Community Treatment Team (ACT Team).

vi. Business Office.

vii. Computer Assisted Tomography.

viii. Critical Care Unit.

ix. Diabetic Clinic.

x. Diagnostic Services Administrative Support.

xi. Dietary.

xii. Discharge Planning.

xiii. Emergency.

xiv. Health Information Services.

xv. Human Resources.

xvi. Inpatient Mental Health Unit.

xvii. Inpatient Social Work.

xviii. Inpatient Surgery.

xix. Mammography.

xx. Mental Health Crisis Team.

xxi. Nuclear Medicine.

xxii. Obstetrics.

xxiii. Occupational Therapy.

xxiv. Operating Room.

xxv. Outpatient Mental Health.

xxvi. Paediatrics.

xxvii. Patient Registration.

xxviii. Pharmacy.

xxix. Physiotherapy.

276. Pre-admission.

276i. Speech Language Pathology.

276ii. Spiritual Care.

276iii. Switchboard.

276iv. Ultrasound.

276v. X-Ray.

93. Cornwall Home Assistance Services to Seniors Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

94. Corporation de garde d'enfants du Nipissing Ouest/West Nipissing Child Care Corporation in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

95. The Council on Aging/Le Conseil sur le vieillissement — Ottawa-Carleton in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

96. District of Cochrane Social Services Administration Board in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

97. Early Years Centre North Inc. in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

98. East Ferris Golden Age Club in Corbeil in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

98.1 Eastern Ottawa Resource Centre/Centre des ressources de l'Est d'Ottawa in respect of the Family Violence Program and the Home Support Program carried out on behalf of the Ministry of Community and Social Services.

99. Elliot Lake and North Shore Community Legal Clinic in respect of the programs carried out on behalf of the Ministry of the Attorney General.

100. Employment and Education Resource Centre of Cornwall and District Inc. in respect of the programs carried out on behalf of the Ministry of Training, Colleges and Universities and the Ministry of Community and Social Services.

101. L'Équipe d'hygiène mentale pour francophones de Stormont, Dundas et Glengarry Inc. in Cornwall in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

102. Extendicare Northeastern Ontario Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care by Extendicare/Tri-Town Nursing Home in Haileybury, Extendicare/Cochrane and Extendicare/Kapuskasing.

103. Extendicare Northwestern Ontario Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care by Extendicare/Hearst and Extendicare/Timmins.

104. Family Services Centre of Sault Ste. Marie and District in respect of the Adult Protective Services program and the Community Counselling program carried out on behalf of the Ministry of Community and Social Services.

105. Foyer Richelieu Welland in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

106. La Fraternité — The Fraternity in Sudbury in respect of the programs carried out on behalf of the Ministry of the Solicitor General and Correctional Services.

107. Garderie Arc-en-ciel des Mousses Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

108. Garderie Brin de Soleil d'Ottawa Est Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

109. La Garderie des Petits Poussins de Port Colborne Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

110. La Garderie Française de Hamilton Co-opérative Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

111. Garderie Francophone de St-Catharines Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

112. Garderie La Farandole de Toronto in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

113. Garderie La Joie de North York Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

114. Garderie Le Cerf-volant de Gaston Vincent in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

115. La Garderie Le Petit Navire de Hamilton Co-opérative Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

116. Garderie Rayon de Soleil de North York Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

117. Garderie "Sur un nuage" d'Ottawa-Carleton in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

118. La Garderie Touche-à-tout de Sudbury in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

118.0.1 Georgian Bay General Hospital, also known as Hôpital général de la baie Georgienne, but only in respect of the ambulatory care program and the finance, human resources and telecommunications services carried out on behalf of the Ministry of Health and Long-Term Care.

118.1 Geriatric Psychiatry Community Services of Ottawa/Services communautaires de géronto-psychiatrie d'Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

119. Glengarry Association for Community Living in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

120. The Glengarry Inter-Agency Group Inc. in Alexandria in respect of the following programs:

> **i. Adult Protective Services Program carried out on behalf of the Ministry of Community and Social Services.**
>
> **ii. Adult Day Service carried out on behalf of the Ministry of Health and Long-Term Care.**
>
> **iii. Ontario Early Years Centre carried out on behalf of the Ministry of Children and Youth Services.**

121. Glengarry Memorial Hospital in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

122. Revoked: O. Reg. 346/13, s. 1 (4).

123. Golden Age "Club" d'âge d'or de Field in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

124. Golden Age "Club" d'âge d'or de Sturgeon Falls in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

125. Groupe Action pour l'Enfant, la Famille et la Communauté de Prescott-Russell in Hawkesbury in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

126. Habitat Interlude in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

126.0.1 Hamilton Community Legal Clinic/Clinique juridique communautaire de Hamilton in respect of the programs carried out on behalf of the Ministry of the Attorney General.

126.1 Health Nexus, also known as Nexus Santé, in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

127. Hearst, Kapuskasing, Smooth Rock Falls Counselling Services/Services de counselling de Hearst, Kapuskasing, Smooth Rock Falls in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

128. Revoked: O. Reg. 285/11, s. 1 (11).

129. Hôpital général de Hawkesbury and District General Hospital Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

130. Hôpital général d'Ottawa/Ottawa General Hospital in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

131. Hôpital Montfort in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

132. Hôpital Notre-Dame Hospital in Hearst in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

133. Hôpital privé Beechwood Private Hospital in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

134. Hôpital régional de Sudbury Regional Hospital, operating under the name Health Sciences North/Horizon Santé-Nord, in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care, the Ministry of Children and Youth Services and the Ministry of Community and Social Services.

134.1 Horizons Renaissance Inc. in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

135. ICAN Independence Centre and Network in Sudbury in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

136. Revoked: O. Reg. 256/17, s. 1 (9).

136.0.1 Intégration communautaire Hearst Community Living in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

136.1 Iris Addiction Recovery for Women in Sudbury in respect of the individual counseling in the treatment and aftercare programs and the intake services carried out on behalf of the Ministry of Health and Long-Term Care.

137. Revoked: O. Reg. 256/17, s. 1 (9).

138. The King's Daughters Dinner Wagon in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

139. Revoked: O. Reg. 402/12, s. 1 (5).

140. The Lady Minto Hospital at Cochrane in respect of ambulance services carried out on behalf of the Ministry of Health and Long-Term Care.

140.1 Revoked: O. Reg. 346/13, s. 1 (4).

141. Laurentian Hospital in Sudbury in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

142. Maison Arc-en-ciel Centre de réhabilitation du nord de l'Ontario Inc. in Opasatika in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

143. Maison d'amitié in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

144. Maison Décision House in Ottawa in respect of the programs carried out on behalf of the Ministry of the Solicitor General and Correctional Services.

144.1 Maison d'hébergement pour femmes francophones in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

144.2 Maison de soins palliatifs de Sudbury Hospice in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

145. Maison Fraternité — Fraternity House in Vanier in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care and the Ministry of Children and Youth Services.

146. Maison Interlude House Inc. in Hawkesbury in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

147. Maison Renaissance de la Réhabilitation in Hearst in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

148. Maryfarm Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

149. Minto Counselling Centre in Cochrane in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

150. La Montée d'Elle Centre de ressource pour violence familiale S.D. et G. Inc. in Alexandria in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

150.1 Montfort Renaissance Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

151. Revoked: O. Reg. 76/17, s. 1 (2).

152. Nipissing District Social Services Board in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

153. Nipissing District Youth Employment Service Inc. in respect of the community service order program carried out on behalf of the Ministry of the Solicitor General and Correctional Services.

153.1 Nipissing Mental Health Housing and Support Services in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

154. North Algoma Health Organization in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care by Medical Centre in Dubreuilville.

155. North Bay and District Association for Community Living in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

155.0.1 North Bay Regional Health Centre in respect of the following programs carried out on behalf of the Ministry of Health and Long-Term Care:

i. Acute Inpatient Psychiatry Unit (AIPU) Recreation Therapy.

ii. Administration.

iii. Ambulance Nipissing.

iv. Ambulance North Bay.

v. Assertive Community Treatment (ACT) Team 1.

vi. Assertive Community Treatment (ACT) Team 2.

vii. Birthing Unit Services.

viii. Cardiac Program Management.

ix. Central Ambulance Communications Centre.

x. Community Treatment Crisis Support Beds.

xi. Complex Continuing Care Recreation Therapy.

xii. Crisis Intervention.

xiii. Dental Clinic.

xiv. Diabetes Adult.

xv. Diagnostic Imaging – Administration.

xvi. Diagnostic Imaging – Administration Picture Archiving and Communication System.

xvii. Diagnostic Imaging – Computed Tomography.

xviii. Diagnostic Imaging – Echo Ultrasound.

xix. Diagnostic Imaging – Magnetic Resonance Imaging.

xx. Diagnostic Imaging – Mammography.

xxi. Diagnostic Imaging – Nuclear Medicine – Gamma.

xxii. Diagnostic Imaging – Radiology.

xxiii. Diagnostic Imaging – Ultrasound.

xxiv. Early Intervention.

xxv. Human Resources.

xxvi. Kirkwood Program – Management Administration.

xxvii. Mental Health Clinical Management.

xxviii. Patient Food Services.

xxix. Peer Support.

xxx. Physiotherapy.

xxxi. Regional Dementia Care Program (Oak Lodge).

xxxii. Regional Outsource Services Resource Consultation.

xxxiii. Regional Specialized Mental Health (RSMH) Social Services.

xxxiv. Regional Specialized Mental Health (RSMH) Supportive Rehabilitation.

xxxv. Sudbury Psychology.

xxxvi. Sudbury Social Services.

xxxvii. Surgical Ambulatory: Ambulatory Care.

xxxviii. Surgical Ambulatory: Chemotherapy Clinic.

xxxix. Surgical Ambulatory: Telemedicine Ambulatory Care Unit.

ANNOTATIONS

North Bay Regional Health Centre v. Ontario Nurses' Association, 2016 CanLII 22751 (ON LA)

The background and evidence

[2] The employer is seeking designation under the *French Language Services Act*, which statute gives French-speaking residents of Ontario the right to receive government services (including

health care services) in French within selected areas of the province. It was required to seek that designation by the Local Heath Integration Network to which it belongs.

[3] In furtherance of its application for designation, the employer was required to, and did, adopt a plan whereby it could meet the requirement that all hospital services and communications that are provided to Anglophone patients, their families and the general public are also to be provided seamlessly, and in a similar or comparable manner, to Francophones.

[4] The plan includes a number of criteria for identifying services and/or positions which are expected to be bilingual (designated positions):

[…]

Further, the requirement for bilingualism in North Bay is manifestly reasonable. Even if it were not mandated by the French Language Services Act, bilingualism is clearly a perfectly logical and sensible objective for any organization which is situated in an area of the province where there is a substantial percentage of French speakers. Indeed, in four of the authorities cited by the parties, arbitrators found that hospitals in different areas of Ontario were entitled to require proficiency in French for positions in which an employee might be expected to deal with members of the public.

The union, however, said that the matter should not end there. It relied upon portions of the employer's FLS plan to suggest that the hospital failed to explore alternative means of delivering French language services in the clinic. In particular, it submitted that the hospital did not follow its own process in that it dismissed, without consideration, the possibility that the clinic could continue to serve French speaking clients as it had in the past with unilingual English RN's. That is especially true, the union said, when there is no evidence of a complaint to the effect that anyone had not been provided service in the official language of their choice. In that regard, it emphasized the unique circumstances of the Anticoagulation Clinic in that almost all of the communication with clients was by telephone calls initiated from the clinic. It is therefore possible, the union said, for a unilingual English RN to serve English speaking patients while the other employees in the clinic dealt with those who preferred to speak French.

The hospital's FLS plan, the union said, specifically envisioned situations involving single employee classifications where there was no need to require bilingualism from an employee because an effective alternate means of providing French services was reasonably available. The only way that such an exception could work, the union submitted, was if the person in the single employee classification received help from an employee(s) in another classification, exactly as Ms. Brunette had assisted three other unilingual RN's provide service to Francophone clients. Despite this provision of the FLS plan, the union said, the evidence was that the hospital, in awarding the job to a more junior nurse, had disregarded the possibility that it could provide an effective alternative to a bilingual RN.

Although the union's submission was primarily directed at the assistance which Ms. Brunette could provide, it also suggested that the hospital's survey of first time clients, wherein less than five percent of respondents indicated that they wished to have service in French should be considered, and that the translation abilities of the bilingual ward clerk could assist the grievor. I do not agree with either of these latter propositions. The telephone survey conducted by the hospital was unscientific in the extreme, and I do not know how reliable it is especially in contrast to the demographic data. I am not disposed therefore to attach much weight to that survey.

As for the suggestion that the assistance of the ward clerk in translating between the RN and clients, I agree with the hospital. Quite aside from the danger of a mistranslation, the process would defeat one of the purposes of the FLRA (*sic*) in that it does not properly recognize French

as, in the words of the preamble to the statute, as “an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada…and in Ontario”. In my view, reliance upon translation, except in abnormal or emergency circumstances, does not accord with the status of French as an official language.

However, I am of the view, and I find, that the hospital did not properly consider the possibility that the clinic might be able to provide an effective alternative to a bilingual RN as its plan required it to do.

155.0.2 North East Association for Community Living/Association pour intégration communautaire du Nord-Est in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

155.1 North East Community Care Access Centre/Centre d’accès aux soins communautaires du Nord-Est in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

156. North Eastern Ontario Family and Children’s Services/Services à la famille et à l’enfance du Nord-Est de l’Ontario in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

157. Oasis Centre des femmes Inc. in respect of the programs carried out on behalf of the Ministry of the Attorney General and the Ministry of Community and Social Services.

158. Revoked: O. Reg. 285/11, s. 1 (14).

159. Options Bytown Non-Profit Housing Corporation of Ottawa-Carleton but only in respect of the Supportive Housing Program carried out on behalf of the Ministry of Community and Social Services.

159.1 Orléans-Cumberland Community Resource Centre/Centre de ressources communautaires Orléans-Cumberland in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

160. Ottawa-Carleton Association for Persons with Developmental Disabilities but only in respect of the Centre de transition communautaire and the supported employment, supported independent living and Maryland programs carried out on behalf of the Ministry of Community and Social Services.

161. Ottawa-Carleton Regional Residential Treatment Centre in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

162. Ottawa Children’s Treatment Centre in respect of the programs carried out on behalf of the Ministry of Children and Youth Services and the Ministry of Community and Social Services.

163. Ottawa Civic Hospital Corporation in respect of the in-vitro fertilization and dentistry clinics carried out on behalf of the Ministry of Health and Long-Term Care.

164. The Ottawa Hospital/L’Hôpital d’Ottawa but only in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care at the General Campus.

165. Ottawa Salus Corporation but only in respect of community support, residential rehabilitation (Fisher and Crichton sites), community development (Athlone, Gladstone and MacLaren sites) and administrative services programs carried out on behalf of the Ministry of Health and Long-Term Care.

166. Pavilion Women's Centre, operating under the name Pavilion Women's Centre/Centre des femmes, in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

167. Penetanguishene General Hospital Inc. but only in respect of admitting, discharge, switchboard, reception, ambulatory care programs, people systems and business office services carried out on behalf of the Ministry of Health and Long-Term Care.

168. Personal Choice Independent Living/Choix personnel Vie autonome in Ottawa, but only in respect of supportive housing services, attendant care services and case co-ordination programs at the Bronson Avenue site, carried out on behalf of the Ministry of Health and Long-Term Care.

169. Le Petit Chaperon Rouge: Garderie Francophone in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

170. La Petite Étoile de Niagara Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

171. Physically Handicapped Adults' Rehabilitation Association-Nipissing-Parry Sound in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

172. Pinecrest-Queensway Health and Community Services/Services de santé et services communautaires Pinecrest-Queensway but only in respect of the programs carried out by the Ontario Early Years Centre Ottawa West-Nepean/Centre de la petite enfance d'Ottawa-Ouest-Nepean on behalf of the Ministry of Children and Youth Services.

173. Pleasant Rest Nursing Home Limited in L'Orignal in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

174. Revoked: O. Reg. 177/13, s. 1 (4).

175. La Présence, Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

176. Programme parascolaire La Vérendrye in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

177. Recon Association in Timmins in respect of the programs carried out on behalf of the Ministry of the Solicitor General and Correctional Services.

178. The Religious Hospitallers of St. Joseph of Cornwall, Ontario but only in respect of the following programs carried out on behalf of the Ministry of Health and Long-Term Care:

> **i. The business office, administration, cardio-respiratory, chronic care, critical care unit, diabetic, dietary, human resources, lifeline, medical, operating room, physical**

therapy, surgical, social work, switchboard and volunteer programs carried out by Hotel Dieu Hospital.

ii. The administration, switchboard, dietary and social work programs carried out by St. Joseph's Villa.

iii. The complex continuing care therapy, long-term care therapy, environmental services and spiritual care programs carried out by St. Joseph's Continuing Care Centre.

178.1 Réseau des femmes du Sud de l'Ontario - Sarnia/Lambton in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

178.2 Réseau des services de santé en français de l'Est de l'Ontario in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

179. La ribambelle, centre préscolaire francophone de London in respect of the programs carried out on behalf of the Ministry of Children and Youth Services.

180. Royal Ottawa Health Care Group/Services de Santé Royal Ottawa but only in respect of the rehabilitation Centre, geriatric psychiatric services and psychiatric rehabilitation program carried out on behalf of the Ministry of Health and Long-Term Care and the St-Bonaventure Day Treatment Program for Youth carried out on behalf of the Ministry of Community and Social Services.

180.1 St. Gabriel's Villa of Sudbury/Villa St-Gabriel de Sudbury in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

181. Sandy Hill Community Health Centre, Inc./Centre de santé communautaire Côte-de-Sable, Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care and the Ministry of Children and Youth Services.

182. Sensenbrenner Hospital in Kapuskasing in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

183. Service Coordination for Persons with Special Needs/Coordination des services pour personnes ayant des besoins spéciaux in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

184. Service d'entraide communautaire in Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

185. Revoked: O. Reg. 139/12, s. 1 (7).

186. Services à la Jeunesse de Hearst Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

186.1 Revoked: O. Reg. 402/12, s. 1 (7).

187. Les Services à l'enfance Grandir ensemble in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

187.1 Services aux victimes Prescott Russell Victim Services in respect of the programs carried out on behalf of the Ministry of the Attorney General.

188. Services communautaires de Prescott-Russell in Hawkesbury in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

189. Revoked: O. Reg. 256/17, s. 1 (14).

190. Les Services correctionnels communautaires de Prescott-Russell et Glengarry in respect of the programs carried out on behalf of the Ministry of the Solicitor General and Correctional Services.

191. Services de garde de Rayside-Balfour in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

192. Services de santé de Chapleau Health Services in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

193. Services de toxicomanie Cochrane Nord Inc. — North Cochrane Addiction Services Inc. in Kapuskasing, Cochrane, Hearst and Smooth Rock Falls in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

194. Revoked: O. Reg. 402/12, s. 1 (9).

195. Services psychiatriques francophones de l'est de l'Ontario in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

196. The Sisters of St. Joseph of Sault Ste. Marie but only in respect of accounting, administration, day surgery, diabetic clinic, food services, housekeeping, human resources, maintenance, pastoral, patient information, radiology, social services and seniors home support programs carried out on behalf of the Ministry of Health and Long-Term Care by St. Joseph's Health Centre in Blind River.

197. Smooth Rock Falls Hospital Corporation in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

198. Revoked: O. Reg. 177/13, s. 1 (4).

199. Société Alzheimer Society Sudbury-Manitoulin in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

200. Les Soeurs de la charité d'Ottawa/Sisters of Charity at Ottawa in respect of the following businesses:

> **i. Centre de santé Élisabeth-Bruyère/Elisabeth-Bruyère Health Centre in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care and the Lifeline Program carried out on behalf of the Ministry of Health and Long-Term Care.**
>
> **ii. Hôpital général de Mattawa/Mattawa General Hospital in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.**

iii. La Résidence Saint-Louis in Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

iv. Saint-Vincent Hospital/Hôpital Saint-Vincent at Ottawa in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

201. Soins palliatifs Horizon-Timmins Inc./Horizon-Timmins Palliative Care Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

202. South Cochrane Addictions Services Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

203. The Sudbury and District Association for Community Living/Association pour l'intégration communautaire de Sudbury et district in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

204. Sudbury Community Service Centre in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

205. Sudbury Young Women's Christian Association in respect of the Service Co-ordination and administration programs carried out on behalf of the Ministry of Community and Social Services.

206. Sudbury Youth Services Inc., Services à la Jeunesse de Sudbury Inc. in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

207. Sudbury Y.W.C.A. Brookwood Apartments in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

208. Sudbury Y.W.C.A. Genevra House in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

209. Timmins and District Hospital/L'Hôpital de Timmins et du district in respect of administrative services at the Timmins and District Hospital Corporation, primary, secondary and acute care at the St. Mary's General Hospital, and chronic care at the Porcupine General Hospital carried out on behalf of the Ministry of Health and Long-Term Care.

210. Union Culturelle des Franco-Ontariennes in Sudbury in respect of the programs carried out on behalf of the Ministry of Community and Social Services.

210.1 University of Ottawa Heart Institute - Institut de cardiologie de l'Université d'Ottawa in respect of the following programs carried out by the Institute on behalf of the Ministry of Health and Long-Term Care:

i. Admitting.

ii. Ambulatory Care.

iii. Arrhythmia Monitoring Centre.

iv. Auxiliary Services.

v. Cardiac Anaesthesia.

vi. Cardiac Associates/Surgery.

vii. Cardiac Cath Lab.

viii. Cardiac Imaging.

ix. Cardiac Operating Room.

x. Cardiac Surgery & Cardiac Valve Surgery Clinic.

xi. Cardiac Surgical Unit & Recovery Room.

xii. Communication Centre.

xiii. Coronary Care Unit.

xiv. French Language Services.

xv. Heart Failure Clinic.

xvi. HI Telehealth APN.

xvii. Human Resources Services.

xviii. Library.

xix. Nursing Unit H3.

xx. Nursing Unit H4.

xxi. Nutrition.

xxii. Pacemaker & Defibrillator Clinic.

xxiii. Pastoral Services.

xxiv. Pharmacy Outpatient.

xxv. Pre-Admission Unit.

xxvi. Prevention and Rehab Centre.

xxvii. Telehealth APN.

xxviii. Wait List Management Office (Triage).

210.2 Valoris pour enfants et adultes de Prescott-Russell/Valoris for children and adults of Prescott-Russell in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

211. Victorian Order of Nurses, Sudbury Branch but only in respect of the Home Support, Foot Care, Supportive Housing, Placement Coordination Service and Nursing Programs carried out on behalf of the Ministry of Health and Long-Term Care.

212. Volunteer Organization in Community Correctional Services (V.O.I.C.S.S.) in Sudbury in respect of the programs carried out on behalf of the Ministry of the Solicitor General and Correctional Services.

213. Western Ottawa Community Resource Centre but only in respect of the Program Against Woman Abuse/Programme contre la violence faite aux femmes, excluding the shelter services provided by Chrysalis House, and in respect of the programs carried out by the Carleton-Ontario Early Years Centre/Centre de la petite enfance de l'Ontario-Carleton on behalf of the Ministry of Children and Youth Services and the Ministry of Community and Social Services.

214. The West Nipissing General Hospital/Hôpital général de l'ouest Nipissing in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care.

215. Youth Services Bureau of Ottawa, Bureau des services à la jeunesse d'Ottawa in respect of the programs carried out on behalf of the Ministry of Community and Social Services and the Ministry of Children and Youth Services.

216. 519179 Ontario Inc. in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care by St. Joseph Nursing Home in Rockland.

217. 656955 Ontario Limited in respect of the programs carried out on behalf of the Ministry of Health and Long-Term Care by Pinecrest Nursing Home in Plantagenet.

O. Reg. 398/93, s. 1; O. Reg. 406/94, s. 1; O. Reg. 62/96, s. 1; O. Reg. 486/96, s. 1; O. Reg. 100/98, s. 1; O. Reg. 109/99, s. 1; O. Reg. 166/02, s. 1; O. Reg. 77/04, s. 1; O. Reg. 299/07, s. 1; O. Reg. 148/08, s. 1; O. Reg. 211/09, s. 1; O. Reg. 144/10, s. 1; O. Reg. 1/11, s. 1; O. Reg. 285/11, s. 1; O. Reg. 139/12, s. 1; O. Reg. 402/12, s. 1; O. Reg. 177/13, s. 1; O. Reg. 346/13, s. 1; O. Reg. 304/14, s. 1; O. Reg. 158/15, s. 1;. O. Reg. 5/16, s. 1 (1-5); O. Reg. 76/17, s. 1; O. Reg. 110/17, s. 1; O. Reg. 256/17, s. 1.

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

[60] Montfort is the only hospital in Ontario that can guarantee continuous access to a broad range of primary and secondary health care services in French. Other health care institutions in the Ottawa-Carleton region cannot do so. While the Ottawa General is designated under the *F.L.S.A*. [*French Language Services Act*], the Ottawa Civic, with which it is merged, is only partially designated. The Commission ordered the amalgamated hospital to attain designation under the *F.L.S.A.* The Heart Institute, now part of the merged Ottawa Hospital and to which the Commission ordered Montfort's cardiology programs transferred, does not have any designation under the *F.L.S.A.* It too was ordered to attain designation. Even at the Ottawa General, a designated centre under the *F.L.S.A.*, health care services are not available in French on a full-time basis in all areas. The Commission's August 1997 report acknowledged that the quality of services in French offered by designated health care providers other than Montfort varied dramatically despite the fact of designation under the *F.L.S.A.*

[…]

[162] The Commission appears to have attempted to frame its directions so as to make available equivalent health care services in French at other institutions. Language and culture are not, however, separate watertight compartments. The reality of the matter is, as found by the Divisional Court, that the Commission's directions would reduce the availability and accessibility of health care services in French, both directly in the Ottawa-Carleton region and eastern Ontario, and indirectly by imperiling the training of health care professionals, which would in turn increase the assimilation of Franco-Ontarians. Montfort's designation under the *F.L.S.A.* includes not only the right to health care services in French at the time of designation but also the right to whatever structure is necessary to ensure that those health care services are delivered in French. This would include the training of health care professionals in French. To give the legislation any other interpretation is to prefer a narrow, literal, compartmentalized interpretation to one that recognizes and reflects the intent of the legislation.

[163] It can hardly be said that the serious adverse effects of the Commission's directions are consistent with the purpose and objectives of the *F.L.S.A.* Nor do the directions accord with the government's criteria for designating an agency under the *F.L.S.A.* The four criteria are: (1) permanency and quality of services in French; (2) access to services in French; (3) francophone representation in the governance and management of the institution; and (4) accountability (H.S.R.C. August 1997 Report at p. 82). Designation entails preparing and submitting a plan specifying the manner in which the institution seeking designation meets these criteria. By designating Montfort under the Act, Ontario has signified it is government policy that the services of Montfort, a general community hospital, are intended to be permanently offered and readily accessible in French. The Commission's directions represent a shift in this policy. Even the Commission itself recognized that the transfer of services from Montfort meant that "some" existing services would not be available in French in Ottawa-Carleton, and that it would no longer be possible to train health care professionals completely in French in a bilingual setting. The Commission, and now Ontario, has given no explanation for this shift in policy. Nor has there been compliance with s. 7 of the *F.L.S.A.*

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2. (1) Laurentian University of Sudbury is designated as a public service agency for the purpose of the definition of “government agency” in section 1 of the Act in respect of the following services:

1. The provision of programs leading to the following degrees:

i. Bachelor of Commerce (B.Comm.).

ii. Bachelor of Education (B.Ed.).

iii. Bachelor of Physical and Health Education (B.P.H.E.).

iv. Bachelor of Science (B.Sc.).

v. Bachelor of Science in Nursing (B.Sc.N.).

vi. Bachelor of Social Work (B.S.W.).

vii. Bachelor of Arts (B.A.).

viii. Bachelor of Health Sciences (B.H.Sc.).

ix. Doctor of Philosophy (Ph.D.) in Human Studies.

x. Master of Human Kinetics (M.H.K.).

xi. Master of Social Work (M.S.W.).

xii. Master of Arts (M.A.).

xiii. Master of Health Sciences (M.H.Sc.).

2. Academic support services provided to students and prospective students by the schools or departments of the University that offer the degrees listed in paragraph 1.

3. Non-academic services provided to students by the University.

O. Reg. 128/14, s. 1.

2. (2) The designation made by subsection (1) is limited to services provided by the University at its Sudbury campus.

O. Reg. 128/14, s. 1.

2. (3) The designation made by paragraph 1 of subsection (1) does not apply to courses provided only in English if it is possible to complete the requirements for each of the listed degrees by taking only courses provided in French.

O. Reg. 128/14, s. 1.

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3. (1) The University of Ottawa is designated as a public service agency for the purpose of the definition of "government agency" in section 1 of the Act in respect of the following services:

1. The provision of undergraduate programs by the following faculties:

i. Faculty of Law.

ii. Faculty of Social Sciences.

iii. Faculty of Education.

iv. Faculty of Arts, with the exception of the programs of the Department of English.

v. Faculty of Health Sciences.

vi. Telfer School of Management.

vii. Faculty of Medicine.

2. The provision of the following undergraduate programs by the Faculty of Science:

i. Major programs.

ii. The Bachelor of Science with Honours in Biomedical Science program.

3. The provision of the following undergraduate program by the Faculty of Science and the Faculty of Engineering:

i. The Joint Honours Bachelor of Science in Computer Science and Mathematics program.

4. The provision of the following undergraduate programs by the Faculty of Engineering:

i. The Honours Bachelor of Science with Specialization in Computer Science program.

ii. The Major in Computer Science program.

iii. The Bachelor of Applied Science in Computer Engineering program.

iv. The Bachelor of Applied Science in Software Engineering program.

5. The services provided to students by the academic secretariat of each of the faculties referred to in paragraphs 1 to 4.

6. All other services provided to students by the University, except for the services provided to students by any of its faculties and except for sporting excellence programs and competitive sports clubs.

O. Reg. 276/15, s. 1.

3. (2) For academic years starting on or after May 1, 2019, the designation made by paragraph 1, 2, 3 or 4 of subsection (1) in respect of a program applies as follows:

1. The designation continues in respect of a program for an academic year if, for at least one of the immediately three preceding academic years, the number of full-time students enrolled to take the first year of the program in French is at least five.

2. If the program is a new program, the designation continues in respect of the program for the second and third academic years of the program despite paragraph 1.

3. If the designation does not continue under paragraph 1 in respect of a program for an academic year, the designation also does not continue in respect of that program for any subsequent academic year regardless of any subsequent increase in the number of full-time students enrolled to take the first year of the program in French.

O. Reg. 276/15, s. 1.

3. (3) In subsection (2) and this subsection,

"academic year" means a period beginning on May 1 in a year and ending on April 30 of the next year; ("*année universitaire*")

"full-time student" means, in respect of a program for an academic year, a student whose study load in the academic year is equal to the normal full-time study load for his or her program in the academic year. ("*étudiant à temps plein*")

O. Reg. 276/15, s. 1.

3. (4) For greater certainty, the designation made by paragraph 1, 2, 3 or 4 of subsection (1) in respect of a program provided only in French or in both English and French does not continue if the University ceases to provide the program in any language

O. Reg. 276/15, s. 1.

3. (5) The designation made by paragraph 1, 2, 3 or 4 of subsection (1) does not apply to the following programs:

1. Minor programs.

2. Certificate programs.

3. Programs specifically designed to address the needs of Aboriginal students.

4. Programs in which all students enrolled in the program are required to take a certain number of courses in English and French, regardless of whether they are enrolled to take the program in English or French and regardless of their mother tongue.

5. Language programs.

6. Language teaching programs.

7. Translation programs.

O. Reg. 276/15, s. 1.

3. (6) The designation made by paragraph 1, 2, 3 or 4 of subsection (1) in respect of a program does not apply to the following components of the program:

1. Options within the program.

2. Any of the following courses that are part of the program:

i. Language courses.

ii. Courses provided in a language other than French or English.

iii. Online, video conference, audio conference and other distance education courses.

iv. Courses provided by another institution.

3. Any of the following that are part of the program:

i. Placements, including internships, co-operative placements, clinical placements and other field placements.

ii. Clinical teaching activities.

iii. Foreign exchanges.

O. Reg. 276/15, s. 1.

3. (7) The designation made by subsection (1) is limited to services provided by the University at its Ottawa campuses.

O. Reg. 276/15, s. 1.

3. (8) The designation made by paragraph 1, 2, 3 or 4 of subsection (1) in respect of a program does not apply to courses and other components of the program that are provided only in English if it is possible to complete the requirements of the program, other than the courses and other components excluded under subsection (6), by completing only courses and other components of the program that are provided in French.

O. Reg. 276/15, s. 1.

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4. (1) York University is designated as a public service agency for the purpose of the definition of "government agency" in section 1 of the Act in respect of the following services:

1. The provision of programs by Glendon College, a faculty of the University.

2. Academic support services provided to students by Glendon College.

3. Non-academic services provided to students by Glendon College, except for parking and security services and except for services provided by student clubs and organizations established by Glendon College.

O. Reg. 6/16, s. 1.

4. (2) For greater certainty, the designation made by paragraph 1 of subsection (1) in respect of a program provided only in French or in both English and French does not continue if Glendon College ceases to provide the program in any language.

O. Reg. 6/16, s. 1.

4. (3) The designation made by paragraph 1 of subsection (1) does not apply to the following programs:

1. Programs leading to an international Bachelor of Arts (iBA) or international Bachelor of Science (iBSc) degree.

2. Programs provided in partnership with a faculty of the University or in partnership with an institution other than the University.

3. Language programs, other than French studies programs.

4. Language teaching programs.

5. Translation programs.

6. Conference interpreting programs.

O. Reg. 6/16, s. 1.

4. (4) The designation made by paragraph 1 of subsection (1) in respect of a program does not apply to the following components of the program:

1. Options within the program.

2. Any of the following courses that are part of the program:

i. Language courses, other than French courses.

ii. Courses provided in a language other than French or English.

iii. Online, video conference, audio conference and other distance education courses.

iv. Courses provided by another faculty of the University or by an institution other than the University.

3. Any of the following that are part of the program:

i. Placements, including internships, co-operative placements, clinical placements and other field placements.

ii. Clinical teaching activities.

iii. Study abroad and student exchange programs.

O. Reg. 6/16, s. 1.

4. (5) The designation made by subsection (1) is limited to services provided in person by Glendon College at the Glendon campus of the University.

O. Reg. 6/16, s. 1.

4. (6) The designation made by paragraph 1 of subsection (1) in respect of a program does not apply to courses and other components of the program that are provided only in English if it is possible to complete the requirements of the program, other than the courses and other components excluded under subsection (4), by completing only courses and other components of the program that are provided in French.

O. Reg. 6/16, s. 1.

Designation of Additional Areas – French Languages Services Act, O. Reg. 407/94

1. The following area is added to the Schedule to the Act:

County of Middlesex

City of London

O. Reg. 407/94, s. 1.

2. The following areas are added to the Schedule to the Act:

Regional Municipality of Peel

City of Brampton

District of Parry Sound

Municipality of Callander

O. Reg. 405/04, s. 1.

3. The following area is added to the Schedule to the Act:

County of Frontenac

City of Kingston

O. Reg. 184/06, s. 1.

Note: On July 1, 2018, the Regulation is amended by adding the following section: (See: O. Reg, 159/15, s. 1)

4. The following area is added to the Schedule to the Act:

Regional Municipality of York

City of Markham

O. Reg. 159/15, s. 1.

Exemptions – French Language Services Act, O. Reg. 671/92

1. The following are exempt from the application of sections 2 and 5 of the Act:

1. Publications prepared by or for government agencies or institutions of the Legislature, or appendices to those publications, that are of a scientific, technical, reference, research or scholarly nature and that,

i. although not restricted in circulation to the confines of the Government of Ontario, are not normally available for general circulation to members of the public, or

ii. are normally consulted by members of the public with the assistance of public servants.

O. Reg. 671/92, s. 1.

Provision of French Language Services on behalf of Government Agencies – French Language Services Act, O. Reg. 284/11

1. Definition

1. In this Regulation,

"third party" means a person or entity that has agreed with a government agency to provide a service on behalf of the agency.

O. Reg. 284/11, s. 1.

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2. Provision of services in French

2. (1) By the day specified in subsection (3), every government agency shall ensure that all services that a third party provides to the public on its behalf under an agreement between the agency and the third party are provided in accordance with the Act.

O. Reg. 284/11, s. 2 (1).

2. (2) By the day specified in subsection (3), every government agency shall ensure that a third party providing a service in French to the public on its behalf shall take appropriate measures, including providing signs, notices and other information on services and initiating communication with the public, to make it known to members of the public that the service is available in French at the choice of any member of the public.

O. Reg. 284/11, s. 2 (2).

2. (3) Subject to section 7 of the Act, the day mentioned in subsection (1) or (2) is,

(a) the three-year anniversary of the day this Regulation comes into force, if the agreement that the government agency has entered into with the third party comes into force before the day this Regulation comes into force; or

(b) the day the agreement that the government agency has entered into with the third party comes into force, if it comes into force on or after the day this Regulation comes into force.

O. Reg. 284/11, s. 2 (3).

3. Report

3. (1) By 30 days after the day specified in subsection 2 (3), every government agency that retains a third party to provide a service to the public on behalf of the agency shall file a report in accordance with subsection (2) setting out,

> **(a) the name of the agency and the name and contact information of a contact person in the agency for the purposes of the report;**
>
> **(b) a statement whether the Act requires the agency to provide the service to the public in French;**
>
> **(c) if the Act requires the agency to provide the service to the public in French, a description of the service provided and a statement whether the agency has complied with section 2.**

O. Reg. 284/11, s. 3 (1).

3. (2) A government agency shall file the report with,

> **(a) the Minister responsible for Francophone Affairs, if the agency is a ministry or if the agency is not a ministry and does not have a minister responsible for it; or**
>
> **(b) the minister responsible for the agency, if the agency is not a ministry and has a minister responsible for it.**

O. Reg. 284/11, s. 3 (2).

3. (3) A minister who receives a report of a government agency for which the minister is responsible shall promptly forward the report to the Minister responsible for Francophone Affairs.

O. Reg. 284/11, s. 3 (3).

Ontario – Other Language Laws

Assessment Act, R.S.O. 1990, c. A.31

1. (1) Definitions

1. (1) In this Act,

[…]

"French-language rights holder" means a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario; ("*titulaire des droits liés au français*")

Assessment roll

14. (1) Contents

14. (1) The assessment corporation shall prepare an assessment roll for each municipality, for each locality and for non-municipal territory and the assessment roll shall contain the following information as well as the information required under subsections (1.1) and (1.2):

[...]

14. (1.1) Additional contents, land in a municipality or locality

14. (1.1) The assessment roll shall also contain the following information respecting land in a municipality or locality:

> **1. The name of every tenant who is a supporter of a school board.**
>
> **2. The type of school board the owner or tenant, as the case may be, supports under the *Education Act*.**
>
> **3. Whether the owner or tenant, as the case may be, is a French-language rights holder.**

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16. Annual school support list

16. (1) Every year, the assessment corporation shall prepare a list showing, for each municipality or locality, name of every person who is entitled to support a school board and the type of school board that the person supports. The corporation shall deliver the list to the secretary of each school board in the municipality or locality on or before September 30 in the year.

1997, c. 43, Sched. G, s. 18 (12).

[...]

16. (4) School support

16. (4) Unless an application is received and approved by the assessment corporation under section 16 to the contrary, the assessment corporation shall indicate in the assessment roll that a person is an English-language public board supporter if that person is entitled to be such a supporter under the *Education Act*.

1997, c. 31, s. 143 (10); 1997, c. 43, Sched. G, s. 18 (14).

Auditor General Act, R.S.O. 1990, c. A.35

21. (1) Oath of office and secrecy and oath of allegiance

21. (1) Every employee of the Office of the Auditor General, before performing any duty as an employee of the Auditor General, shall take and subscribe before the Auditor General or a person designated in writing by the Auditor General,

(a) the following oath of office and secrecy, in English or in French:

[…]

(b) the following oath of allegiance, in English or in French:

Business Corporations Act, R.S.O. 1990, c. B.16

Part II – Incorporation

10. (1) Restrictions on corporate name

10. (1) The word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the corresponding abbreviations "Ltd.", "Ltée", "Inc." or "Corp." shall be part, in addition to any use in a figurative or descriptive sense, of the name of every corporation, but a corporation may be legally designated by either the full or the abbreviated form.

R.S.O. 1990, c. B.16, s. 10 (1).

10. (2) Languages

10. (2) Subject to this Act and the regulations, a corporation may have a name that is,

(a) English only;

(b) French only;

(c) one name that is a combination of English and French; or

(d) one name in English and one name in French that are equivalent but are used separately.

2010, c. 16, Sched. 8, s. 1 (1).

ANNOTATIONS

Bank of Montreal v. Valdi Société en Commandite/Valdi & Co., Limited Partnership (Trustee of), 1996 CanLII 8018 (ON SC)

The argument continues that, in the case of debtor limited partnerships, one can draw an analogy to the registration requirements under the P.P.S.A. [*Personal Property Security Act*] in respect of corporate names. In other words, since the regulations under the P.P.S.A. require creditors of corporations to set out the English and French forms of their names on separate debtor lines in a financing statement, creditors of limited partnerships with English and French forms of their names should be required to complete the financing statement in the same manner.

In my view, this argument is wrong. The legislation specifically addresses the issue of the situation where a corporation has a French and English form of name. In this circumstance, the forms must be separated and set out in the financing statement on two different appropriate lines for the name of a business debtor. The legislators, therefore, specifically turned their minds to this issue. There is no similar provision for limited partnerships and, in the absence of authority to the contrary, it is not open to this court to extend this approach to similar situations involving limited partnerships.

Further, the concept of a "form of name" derives from corporation statutes. Section 10(2) of the Ontario *Business Corporations Act*, R.S.O. 1990, c. B.16, states:

> 10(2) Subject to the provisions of this Act and the regulations, a corporation may set out its name in its articles in an English form, a French form, an English form and a French form or a combined English and French form and it may be legally designated by any such name.

There is no similar provision in the L.P.A. [*Limited Partnerships Act*]. This further indicates that, having regard to the fact that the form of name concept appears to exist solely in corporations law, the concept should not be extended to the realm of limited partnerships without any legislative amendments to this effect.

---

10. (2.1) Same

10. (2.1) A corporation that has a name described in clause (2) (d) may be legally designated by its English name or its French name.

2010, c. 16, Sched. 8, s. 1 (2).

10. (3) Other restrictions

10. (3) For the purposes of subsections (1) and (2), only letters from the Roman alphabet or Arabic numerals or a combination thereof, together with such punctuation marks and other marks as are permitted by regulation, may form part of the name of a corporation.

R.S.O. 1990, c. B.16, s. 10 (3).

10. (4) Other languages

10. (4) Subject to the provisions of this Act and the regulations, a corporation may have in its articles a special provision permitting it to set out its name in any language and the corporation may be legally designated by that name.

R.S.O. 1990, c. B.16, s. 10 (4).

Powers of Minister

271.1 (1) Minister’s regulations

271.1 (1) The Minister may make regulations,

[…]

(b) prescribing the punctuation marks and other marks that may form part of a corporate name under subsection 10 (3);

(c) respecting the content of a special language provision under subsection 10 (4);

General – Business Corporations Act, R.R.O 1990, Reg. 62

18. (1) The following documents shall accompany any articles containing a proposed name for a corporation or a change of corporate name:

[…]

18. (2) If a proposed name is in an English form and a French form, separate computer-printed search reports shall be provided for the English form and the French form of the name, unless the English and French forms of the name are identical and the legal element required under subsection 10 (1) of the Act that is used in the French form of the name is the French version of the legal element used in the English form of the name.

O. Reg. 59/07, s. 2 (2).

22.1 If articles set out an English form and a French form for a name of a corporation, the "/" mark shall separate the two forms of the name.

O. Reg. 627/93, s. 7.

Celebration of Portuguese Heritage Act, 2001, S.O. 2001, c. 22

Preamble

[…]

The Portuguese Canadian community is a vibrant community in Ontario and continues to make many significant contributions to our society and to enrich it with its history, language, culture and work ethic.

Chartered Professional Accountants of Ontario Act, 2017, S.O. 2017, c. 8, Sch. 3

35. (6) Proceedings in French

35. (6) If a member who speaks French is the subject of a proceeding before the discipline committee, he or she may require that the proceeding or any part of it be heard in French.

37. (6) Proceedings in French

37. (6) If a member who speaks French is the subject of an appeal before the appeal committee, he or she may require that the appeal or any part of it be heard in French.

Child and Family Services Act, R.S.O. 1990, c. C. 11

Duties of service providers

2. (1) French language services

2. (1) Service providers shall, where appropriate, make services to children and their families available in the French language.

ANNOTATIONS

R.P.1 v. Her Majesty the Queen, 2015 ONSC 2249 (CanLII)

[1] The present case turns on a narrow question. Can the mother of the children sue a Children's Aid Society alleging negligence or worse in the conduct of an investigation under the statutory mandate of the CAS pursuant to the *Child and Family Services Act*, R.S.O. 1990, c. C-11?

[…]

[15] The plaintiff's counsel acknowledged that the *Irish* case appeared to have turned the tide and she no longer sought to argue the distinction suggested in the *Durakovic v. Guzman* case that a duty of care was generally owed to parents by CAS [Children's Aid Society]'s at the investigation stage. Instead, she sought to distinguish the cases on the basis of an allegation of breach of statutory duty to provide services in the French language pursuant to s. 2(1) of the *CFSA*. In my view, nothing in s 2(1) of the *Act* derogates from the overriding policy considerations underlying the *Syl Apps* decision. In a city as diverse as Toronto, the CAS's deal with language barriers affecting children on a daily basis. If, as is alleged, the CCAS [Catholic Children's Aid Society] investigation in this case was negligent due to failure to utilize French language translators, it does not alter the nature of the allegation which is fundamentally one of conducting a negligent investigation. If the CAS owes no duty of care to parents in relation to investigations, it matters little what the specific allegation of negligence in an individual case might be. Negligence may derive from a hundred sources — failure to secure adequate translation or interpretation resources is but one possible instance of negligence. It does not alter the principle of the matter in my view.

[16] I am of the view that the *Syl Apps* case is a binding precedent in this case and that, accordingly, I must hold that there was no duty of care owed by the defendant CCAS to the plaintiff mother in relation to the manner of its investigation of the alleged abuse or the manner of its treatment of the child thereafter. Of course I make no such finding as regards the duties owed to the children themselves and the mother continues to act as litigation guardian of the children in their claim against the defendant

Society and Crown Wardship

61. (1) Placement of wards

61. (1) This section applies where a child is made a society ward under paragraph 2 of subsection 57 (1) or a Crown ward under paragraph 3 of subsection 57 (1) or under subsection 65.2 (1).

2006, c. 5, s. 19 (1).

61. (2) Placement

61. (2) The society having care of a child shall choose a residential placement for the child that,

> **[…]**
>
> **(c) where possible, respects the child's linguistic and cultural heritage;**

ANNOTATIONS

Children's Aid Society of London and Middlesex v. C.M., 2011 ONSC 4399 (CanLII)

[77] I am cognizant that Crown wardship with no access to a biological parent is the most intrusive of orders available to the Court because it severs the link between child and birth parent and creates an opportunity for adoption of the child. It is for this reason that s 61(2)(c) and (d) of the *Child and Family Services Act, RSO 1990, c C.11* requires the Society to choose a residential placement for the child that, where possible, respects the child's linguistic and cultural heritage, and where the child is an Indian or a native person, is with a member of the child's extended family, a member of the child's band or native community, or another Indian or native family if possible.

A.[...] (First Nation) v. Children's Aid Society of Toronto, 2004 CanLII 34409 (ON SC)

[52] The applicant failed to meet the deadline set out in the section 140(3) notice. The Band knew the Society was anxious, in the children's interests, to move forward with their adoption placements immediately. They knew the children had been in care for 18 months. They knew the placements were imminent. The applicant's plan does not permit the Society to fulfill its statutory mandate of placing the children for adoption, and doing so in a timely fashion. In all, I can find no failure on the part of the Society to take all possible steps to find an appropriate Indian or native placement for these children. Indeed, someone who is both her relative, and a member of the same community will adopt J. There can be no breach as far as she is concerned. As far as C and J-A are concerned, the Society had to balance their obligation to place in the first nations community, their other obligations to place the children for adoption within a reasonable period of time, and to consider all the other best interests factors set out in the legislation.

[53] For example, the Society was also obliged under s. 61(2) (c) to respect the children's linguistic and cultural heritage in coming to a placement decision. The children's mother is Chinese. This is a factor they had to consider. One of the adoptive parents is also Chinese. All the children's rights are important. All have been protected. The adoptive parents have undertaken and committed to nurturing the children's native heritage. C's adoptive parents have said that he is aware he is half native and half Chinese. He has first nations artifacts in his room. They have discussed going to cultural events in the native community.

Catholic Children's Aid Society of Toronto v. W.(V.), 2000 CanLII 22316 (ON CJ)

[13] Because M.A. A-S. is an Indian child, who also happens to be of Spanish descent, the decision-making process with respect to her future must be approached in a somewhat different fashion — that is to say, there are special factors to be taken into consideration.

[…]

[23] In all of the circumstances, this is not a case where the traditional native response to a family problem — that is to say, placement of the child with relatives or another family in the community — should displace the European concepts of bonding and continuity of care. Quite apart from the fact that no one has come forward with such a plan, the four-year status quo and the strength of the bond with the P.s are just too overwhelming to embrace the traditional response. Can anyone imagine how this child — at four years of age and in a southern urban setting for the whole of that time — could cope with a transfer to another home in a northern non-urban setting and in which she had little or no understanding of what was being said to her? Sad as it is, the fact remains that M.A. A-S.'s first language is and likely always will be English. This is not to say that she should not be exposed to and learn whatever Cree she is capable of absorbing, for she must.

[…]

[28] I will now deal with the order I must make. In all the circumstances, M.A. A-S. cannot be moved from the P. home and the only option that will bring stability into her life is an order for Crown wardship. In large measure, the child herself has voted for the result. On the basis of the evidence provided, I find that less restrictive options would be inadequate to protect the child: subsection 57(3). The circumstances justifying a Crown wardship order are unlikely to change within a reasonably foreseeable time frame which, in this case, given that the child has been in care for almost four years, would be tantamount to immediately: subsection 57(6). The direction in clause 61(2)(c) with respect to language and culture cannot, in the circumstances, be honoured in its entirety. I am satisfied that reasonable efforts have been and will be made to do as much as humanly possible to address the issue. No one has come forward with a plan to meet the direction in clause 61(2)(d) with respect to placement. And finally, an order for Crown wardship is the only hope to secure this child's future and is in her best interests.

Child Care and Early Years Act, 2014, S.O. 2014, c. 11, Sch. 1

Part VI – Service System planning for child care and early years programs and services

Provincial Interest

49. (1) Provincial interest

49. (1) It is a matter of provincial interest that there be a system of child care and early years programs and services that,

> **[…]**
>
> **(f) respects equity, inclusiveness and diversity in communities and the particular qualities of,**

(i) Aboriginal, First Nations, Métis and Inuit communities;

[…]

(iii) Francophone communities, and

Minister's Role

Minister's policy statements - provincial interest, programming and pedagogy, etc.

55. (1) General

55. (1) The Minister may issue policy statements relating to the operation of child care and early years programs and services and any other matter dealt with under this Part.

[...]

55. (4) Same

55. (4) In developing policy statements under subsection (1), the Minister shall consider the interests and particular qualities of Aboriginal, First Nations, Métis and Inuit communities and Francophone communities.

Children's Law Reform Act, R.S.O. 1990, c. C.12

Schedule – Convention on the Civil Aspects of International Child Abduction

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

City of Ottawa Act, 1999, S.O. 1999, c. 14, Sch. E

Local Boards

11.1 (1) Policy respecting use of English and French languages

11.1 (1) The city shall adopt a policy respecting the use of the English and French languages in all or specified parts of the administration of the city and in the provision of all or specified municipal services by the city.

2005, c. 3, s. 1.

11.1 (1.1) Same, for board of health

11.1 (1.1) A policy adopted under subsection (1) applies with respect to the administration of the board of health and the provision of services by the board.

2010, c. 1, Sched. 2, s. 1.

11.1 (2) Scope and content of policy

11.1 (2) The scope and content of the policy adopted under subsection (1) shall be as determined by the city.

2005, c. 3, s. 1.

11.1 (3) Existing policy

11.1 (3) If, before the day this section comes into force, the city has adopted a policy respecting the use of the English and French languages as described in subsection (1) that is lawful, that policy shall be deemed to be a policy adopted under subsection (1).

2005, c. 3, s. 1.

11.1 (4) Limitation

11.1 (4) The requirement to adopt a policy under this section is independent of and unaffected by the power to pass a by-law under section 14 of the *French Language Services Act* and nothing in this section affects the interpretation of section 14 of that Act.

2005, c. 3, s. 1.

City of Toronto Act, 2006, S.O. 2006, c. 11, Sch. A

Part VI – Practices and Procedures

First Meeting

186. (1) Declaration of office

186. (1) A person, other than a person appointed under section 193, shall not take a seat on city council until the person takes the declaration of office in the English or French version of the form established by the Minister of Municipal Affairs and Housing for that purpose.

2006, c. 11, Sched. A, s. 186 (1).

186. (2) Separate declarations

186. (2) Subsection (1) applies even if the person has already taken a declaration of office for another office on city council.

2006, c. 11, Sched. A, s. 186 (2).

By-laws

195. (1) Language of by-laws

195. (1) The by-laws and resolutions of the City shall be passed in English or in both English and French.

2006, c. 11, Sched. A, s. 195 (1).

195. (2) Official plan

195. (2) An official plan adopted by the City shall be in English or in both English and French.

2006, c. 11, Sched. A, s. 195 (2).

195. (3) Proceedings

195. (3) City council and every committee of council may conduct its proceedings in English or French or in both English and French.

2006, c. 11, Sched. A, s. 195 (3).

195. (4) Minutes

195. (4) Despite subsection (3), the minutes of the proceedings shall be kept in English or in both English and French.

2006, c. 11, Sched. A, s. 195 (4).

195. (5) Proviso

195. (5) Nothing in this section,

> **(a) affects an obligation imposed by or under any Act to make, keep, use, file, register or submit any record in the language or languages specified by or under the Act; or**
>
> **(b) affects any requirement at law to give reasonable notice.**

2006, c. 11, Sched. A, s. 195 (5).

195. (6) Translations

195. (6) If the City submits a record to a provincial ministry in French, the City shall, at the request of the minister of that ministry, supply an English translation of it.

2006, c. 11, Sched. A, s. 195 (6).

Property Tax Bill - Form and Content – City of Toronto Act, 2006, O. Reg. 122/07

General

1. Application of regulation

1. (1) This Regulation sets out the form and content required for tax bills under section 308 of the Act.

O. Reg. 122/07, s. 1 (1).

1. (2) A tax notice set out in Schedule 1, 2 or 3 may be provided in English only, in French only or bilingually.

O. Reg. 211/15, s. 1.

Co-operative Corporations Act, R.S.O. 1990, c. C.35

Name

7. (1) Use of “co-operative” or “coopérative”, etc.

7. (1) The corporate name of a co-operative shall include the word “co-operative” in English or “coopérative” in French as part thereof.

R.S.O. 1990, c. C.35, s. 7 (1).

7. (2) Idem

7. (2) Where a co-operative or any director, officer, employee or member uses the name of the co-operative, the word “co-operative” or «coopérative» may be abbreviated to “co-op” in English or “coop” in French.

R.S.O. 1990, c. C.35, s. 7 (2).

---

8. Use of name

8. Despite section 7, a co-operative may use its name in such form and in such language as the articles provide and as the Minister approves.

R.S.O. 1990, c. C.35, s. 8.

Allotment, Issue and Transfer

46. (1) Contents of certificates

46. (1) Every share or loan certificate shall state upon its face,

> **(a) the name of the co-operative and a statement in English or in French that it is a co-operative incorporated under the law of the Province of Ontario;**
>
> **[…]**

46. (2) Restrictions to be noted

46. (2) Every share certificate shall have noted conspicuously thereon a statement in English or in French that the transfer of shares is restricted.

R.S.O. 1990, c. C.35, s. 46 (2).

[…]

46. (4) Definition

46. (4) In this section,

"noted conspicuously" means written in such a way that the person against whom words so noted or appearing are to operate ought reasonably to notice them.

R.S.O. 1990, c. C.35, s. 46 (4).

Commercial Tenancies Act, R.S.O. 1990, c. L. 7

Part III

Application to judge against overholding tenant

[…]

75. Application, how entitled

75. Application under this Part shall be styled in English or French, as may be appropriate:

Community Care Access Corporations Act, 2001, S.O. 2001, c. 33

Corporate Matters

6.1 (1) Right to use French

6.1 (1) A person has the right to communicate in French with, and to receive available services in French from, a community care access corporation.

2011, c. 9, Sched. 6, s. 1.

6.1 (2) Board to ensure

6.1 (2) The board of directors of a community care access corporation shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

2011, c. 9, Sched. 6, s. 1.

6.1 (3) Limitation

6.1 (3) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

2011, c. 9, Sched. 6, s. 1.

6.1 (4) Definition

6.1 (4) In this section,

"service" means any service or procedure that is provided to the public by a community care access corporation and includes all communications for the purpose.

2011, c. 9, Sched. 6, s. 1.

Condominium Act, 1998, S.O. 1998, c. 19

Powers and Duties of Condominium Authority

1.25 (1) Right to use French

1.25 (1) A person has the right to communicate in French with, and to receive available services in French from, the condominium authority.

2015, c. 28, Sched. 1, s. 2.

1.25 (2) Definition

1.25 (2) In subsection (1),

"service" means any service or procedure that is provided to the public by the condominium authority in carrying out its powers and duties under this Act or the regulations and includes,

(a) responding to inquiries from members of the public, and

(b) any other communications for the purpose of providing the service or procedure.

2015, c. 28, Sched. 1, s. 2.

1.25 (3) Board's duty

1.25 (3) The board of directors of the condominium authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

2015, c. 28, Sched. 1, s. 2.

1.25 (4) Limitation

1.25 (4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

2015, c. 28, Sched. 1, s. 2.

N.B. – This provision is not in force at the date of publication.

Description and Registration – Condominium Act, O. Reg. 49/01

Part I – Description

Plans of Survey

11. (1) Forms on sheets

11. (1) Each sheet of the plans of survey, except for the sheets of the exclusive use portions survey, shall show,

[…]

(d) immediately below the certificate mentioned in clause (c), the notation "Declaration registered as Number ..... " if the registered declaration is in English or "Déclaration enregistrée sous le numéro ..... " if the registered declaration is in French;

O. Reg. 49/01, s. 11 (1); O. Reg. 443/11, s. 1 (1, 2).

Part II – Registration and Recording

Declaration and Description

27. Land registrar's duties before recording

27. (1) If a declaration and description are received for registration, the land registrar shall,

[…]

27. (2) if the declaration and description are in English, the following items in the following order:

(a) if the declaration and description are in English, the following items in the following order:

1. The name of the land titles or registry division in which the land described in the description is situated, excluding the number of the division.

2. The applicable words in English specified in subsection (4) for the type of corporation involved.

3. The words "Condominium Plan No.".

4. The number assigned as part of the name of the corporation under paragraph 4 of clause (3) (a); or

(b) if the declaration and description are in French and are capable of being registered in that language, the following items in the following order:

1. The words "Plan d'association condominiale".

2. The applicable words in French specified in subsection (4) for the type of corporation involved.

3. The number assigned as part of the name of the corporation under paragraph 3 of clause (3) (b).

4. The word "de" and the name of the land titles or registry division in which the land described in the description is situated, excluding the number of the division.

O. Reg. 49/01, s. 27 (2).

27. (3) The name that the land registrar assigns to the corporation shall consist of,

(a) if the declaration and description are in English, the following items in the following order:

1. The name of the land titles or registry division in which the land described in the description is situated, excluding the number of the division.

2. The applicable words in English specified in subsection (4) for the type of corporation involved.

3. The words "Condominium Corporation No.".

4. The next available consecutive number; or

(b) if the declaration and description are in French and are capable of being registered in that language, the following items in the following order:

1. The words "Association condominiale".

2. The applicable words in French specified in subsection (4) for the type of corporation involved.

3. The next available consecutive number.

4. The word "de" and the name of the land titles or registry division in which the land described in the description is situated, excluding the number of the division.

O. Reg. 49/01, s. 27 (3).

27. (4) The words mentioned in subsections (2) and (3) for the type of corporation involved are,

(a) the word "Standard" or "ordinaire" in the case of a standard condominium corporation;

(b) the words "Common Elements" or "de parties communes" in the case of a common elements condominium corporation;

(c) the words "Vacant Land" or "de terrain nu" in the case of a vacant land condominium corporation; and

(d) the word "Leasehold" or "de propriété à bail" in the case of a leasehold condominium corporation.

O. Reg. 49/01, s. 27 (4).

Description of land

45. Description of land

45. (1) The description of a unit in an instrument received for registration shall consist of,

[…]

45. (2) An instrument that purports to affect the title of a common interest attached to a parcel of tied land in the case of a common elements condominium corporation shall

describe the parcel in accordance with the requirements of *Ontario Regulation 43/96 (Surveys, Plans and Descriptions of Land)* made under the *Registry Act*, together with,

> **(a) the words "together with an appurtenant common interest in" if the instrument is in English and is acceptable for registration, or the words "ainsi que l'intérêt commun qui se rattache à la parcelle et qui est relié à l' " if the instrument is in French and is acceptable for registration;**
>
> **(b) the name assigned to the corporation under subsection 27 (3); and**
>
> **(c) a reference to the name of the municipality in which the property is located at the time of execution of the instrument.**

O. Reg. 49/01, s. 45 (2).

45. (3) An instrument that purports to affect the title of all units and common elements included in the property may describe the property as follows in the following order:

> **1. The words "all the units and common elements in" if the instrument is in English and is acceptable for registration, or the words "toutes les parties privatives et parties communes du" if the instrument is in French and is acceptable for registration.**

45. (4) An instrument that purports to affect the title of the common elements included in the property, but no units, may describe the land affected as follows in the following order:

> **1. The words "all the common elements in" if the instrument is in English and is acceptable for registration, or the words "toutes les parties communes du" if the instrument is in French and is acceptable for registration.**

Termination

47. Notice of termination

47. (1) A notice of termination mentioned in section 122 of the Act shall be in the form that the Director of Titles specifies.

O. Reg. 49/01, s. 47 (1); O. Reg. 443/11, s. 10 (1).

[…]

47. (5) In recording a notice of termination in the form described in subsection (1) or (2), the land registrar shall describe the executing parties as,

> **[…]**
>
> **(b) in the case of a freehold condominium corporation, all the owners as tenants in common, described as,**
>
> > **(i) "all the former owners as tenants in common" if the notice is in English, or**

(ii) “tous les anciens propriétaires comme tenants communs” if the notice is in French; and

(c) in the case of a leasehold condominium corporation, all the former owners of the leasehold interests in the units, described as,

(i) “all the former owners” if the notice is in English, or

(ii) “tous les anciens propriétaires” if the notice is in French. O. Reg. 49/01, s. 47 (5);

O. Reg. 443/11, s. 10 (3).

Condominium Management Services Act, 2015, S.O. 2015, c. 28, Sch. 2

Part II – Administration

Powers and Duties of Administrative Authority

26. (1) Right to use French

26. (1) A person has the right to communicate in French with, and to receive available services in French from, the administrative authority.

26. (2) Definition

26. (2) In subsection (1),

“service” means any service or procedure that is provided to the public by the administrative authority in carrying out its powers and duties under this Act or the regulations and includes,

(a) responding to inquiries from members of the public, and

(b) any other communications for the purpose of providing the service or procedure.

26. (3) Board’s duty

26. (3) The board of directors of the administrative authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

26. (4) Limitation

26. (4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

N.B. – This Act is not in force at the date of publication.

Corporations Act, R.S.O. 1990, c. C. 38

Part II – Companies

20. (1) Use of word “Limited”

20. (1) The name of a company shall have the word “Limited” or “Limitée” as the last word thereof, but a company may use the abbreviation “Ltd.” or “Ltée” and may be referred to in the same manner.

---

21. (1) Use of name

21. (1) Where a company or a director, officer or employee thereof uses the name of the company, the word “Limited” or “Limitée”, or the abbreviation “Ltd.” or “Ltée”, shall appear as the last word thereof.

21. (3) Idem

[…]

21. (3) A private company shall have the words “private company” or the words “compagnie fermée” on its seal, if it has a seal.

R.S.O. 1990, c. C.38, s. 21 (3); 1993, c. 27, Sched.; 1998, c. 18, Sched. E, s. 60.

---

22. Use of name

22. Despite subsection 20 (1) and section 21, a company may use its name in such form and in such language as the letters patent or supplementary letters patent provide.

R.S.O. 1990, c. C.38, s. 22.

---

46. (1) Contents of share certificates

46. (1) Every share certificate,

> **(a) shall bear upon its face the name of the company, a statement in English or in French that the company is incorporated in the Province of Ontario and a statement of its authorized capital;**

Part VII – Corporations, General

306. (1) List of shareholders

306. (1) No shareholder or member or creditor or the agent or legal representative of any of them shall make or cause to be made a list of all or any of the shareholders or members of the corporation, unless the person has filed with the corporation or its agent an affidavit of such shareholder, member or creditor in the following form in English or French, and, where the shareholder, member or creditor is a corporation, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of such corporation:

---

307. (1) Where list of shareholders to be furnished

307. (1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection (2), may require a corporation, other than a private company, or its transfer agent to furnish within ten days from the filing of such affidavit a list setting out the names alphabetically arranged of all persons who are shareholders or members of the corporation, the number of shares owned by each such person and the address of each such person as shown on the books of the corporation made up to a date not more than ten days prior to the date of filing the affidavit.

307. (2) Affidavit

307. (2) The affidavit referred to in subsection (1) shall be made by the applicant and shall be in the following form in English or French:

Corporations Tax Act, R.S.O. 1990, c. C. 40

Part VI – Administration and Enforcement

98. (1) Confidentiality

98. (1) Every person employed, or formerly employed, directly or indirectly in the administration or enforcement of this Act or in the development and evaluation of tax policy for the Government of Ontario shall preserve secrecy with respect to all matters related to this Act that come to his or her knowledge in the course of such employment and shall not communicate any information or material related to any such matter to any other person not legally entitled thereto except,

[...]

98. (4) Exception

98. (4) Despite subsection (1), upon the request of the Minister of Consumer and Business Services, the Minister of Finance may give the following information that has been given to him or her by a corporation to an authorized person employed in the Ministry of Consumer

and Business Services or an authorized agent of that Ministry for the purposes of the administration of the *Corporations Information Act*:

[…]

8. The corporation's preferred official language.

Courts of Justice Act, R.S.O. 1990, c. C. 43

Part II – Court of Ontario

Small Claims Court

33. (1) Deputy Judges Council

33. (1) A council known as the Deputy Judges Council in English and as Conseil des juges suppléants in French is established.

1994, c. 12, s. 13.

33. (2) Composition

33. (2) The Deputy Judges Council is composed of,

[…]

(e) three persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

1994, c. 12, s. 13; 1996, c. 25, s. 9 (14, 17).

33. (3) Criteria

33. (3) In the appointment of members under clause (2) (e), the importance of reflecting, in the composition of the Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

1994, c. 12, s. 13.

N.B. – This provision closely resembles subsection 8(4) of the *Justices of the Peace Act* in its mention of Ontario's linguistic duality.

33. (7) Duty of Chief Justice

33. (7) The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French, when they have been approved by the Deputy Judges Council.

2006, c. 21, Sched. A, s. 4.

Provincial Judges

43. (1) Judicial Appointments Advisory Committee

43. (1) A committee known as the Judicial Appointments Advisory Committee in English and as Comité consultatif sur les nominations à la magistrature in French is established.

1994, c. 12, s. 16.

43. (2) Composition

43. (2) The Committee is composed of,

> **[…]**
>
> **(b) three lawyers, one appointed by The Law Society of Upper Canada, one by the Canadian Bar Association-Ontario and one by the County and District Law Presidents' Association;**
>
> **(c) seven persons who are neither judges nor lawyers, appointed by the Attorney General;**
>
> **[…]**

43. (3) Criteria

43. (3) In the appointment of members under clauses (2) (b) and (c), the importance of reflecting, in the composition of the Committee as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

N.B. – This provision closely resembles subsection 2.1(5) of the *Justices of the Peace Act* in its mention of Ontario's linguistic duality.

Ontario Judicial Council

49. (1) Judicial Council

49. (1) The Ontario Judicial Council is continued under the name Ontario Judicial Council in English and Conseil de la magistrature de l'Ontario in French.

1994, c. 12, s. 16.

49. (2) Composition

49. (2) The Judicial Council is composed of,

> **[…]**

(d) two judges of the Ontario Court of Justice, appointed by the Chief Justice;

[…]

(f) a lawyer who is not a bencher of The Law Society of Upper Canada, appointed by the Law Society;

(g) four persons who are neither judges nor lawyers, appointed by the Lieutenant Governor in Council on the Attorney General's recommendation.

1994, c. 12, s. 16; 1996, c. 25, s. 9 (15, 18, 20).

49. (4) Criteria

49. (4) In the appointment of members under clauses (2) (d), (f) and (g), the importance of reflecting, in the composition of the Judicial Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

N.B. – This provision closely resembles subsection 8(4) of the *Justices of the Peace Act* in its mention of Ontario's linguistic duality.

Other duties of Judicial Council

51. (1) Provision of information to public

51. (1) The Judicial Council shall provide, in courthouses and elsewhere, information about itself and about the justice system, including information about how members of the public may obtain assistance in making complaints.

51. (2) Same

51. (2) In providing information, the Judicial Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

[…]

51. (6) Annual report

51. (6) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant.

51.2 (1) Use of official languages of courts

51.2 (1) The information provided under subsections 51 (1), (3) and (4) and the matters made public under subsection 51.1 (1) shall be made available in English and French.

51.2 (2) Same

51.2 (2) Complaints against provincial judges may be made in English or French.

51.2 (3) Same

51.2 (3) A hearing under section 51.6 shall be conducted in English, but a complainant or witness who speaks French or a judge who is the subject of a complaint and who speaks French is entitled, on request,

> **(a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;**
>
> **(b) to be provided with the assistance of an interpreter at the hearing; and**
>
> **(c) to be provided with simultaneous interpretation into French of the English portions of the hearing.**

51.2 (4) Same

51.2 (4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7 (2) applies.

51.2 (5) Bilingual hearing or mediation

51.2 (5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

51.2 (6) Part of hearing or mediation

51.2 (6) A directive under subsection (5) may apply to a part of the hearing or mediation, and in that case subsections (7) and (8) apply with necessary modifications.

51.2 (7) Same

51.2 (7) In a bilingual hearing or mediation,

> **(a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;**
>
> **(b) documents may be filed in either language;**
>
> **(c) in the case of a mediation, discussions may take place in either language;**

(d) the reasons for a decision or the mediator's report, as the case may be, may be written in either language.

51.2 (8) Same

51.2 (8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons or report written in the other language.

1994, c. 12, s. 16.

N.B. – This provision closely resembles section 10.1 of the *Justices of the Peace Act*.

51.9 (1) Standards of conduct

51.9 (1) The Chief Justice of the Ontario Court of Justice may establish standards of conduct for provincial judges, including a plan for bringing the standards into effect, and may implement the standards and plan when they have been reviewed and approved by the Judicial Council.

1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

51.9 (2) Duty of Chief Justice

51.9 (2) The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French, when they have been approved by the Judicial Council.

1994, c. 12, s. 16; 1996, c. 25, s. 9 (20); 2006, c. 21, Sched. A, s. 6.

N.B. – This provision closely resembles section 13 of the *Justices of the Peace Act*.

51.10 (1) Continuing education

51.10 (1) The Chief Justice of the Ontario Court of Justice shall establish a plan for the continuing education of provincial judges, and shall implement the plan when it has been reviewed and approved by the Judicial Council.

1994, c. 12, s. 16; 1996, c. 25, s. 9 (18, 20).

51.10 (2) Duty of Chief Justice

51.10 (2) The Chief Justice shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Judicial Council.

1994, c. 12, s. 16; 1996, c. 25, s. 9 (20).

N.B. – This provision closely resembles section 14 of the *Justices of the Peace Act*.

Part V – Administration of the Courts

Memoranda of understanding between Attorney General and Chief Justices

77. (1) Court of Appeal

77. (1) The Attorney General and the Chief Justice of Ontario may enter into a memorandum of understanding governing any matter relating to the administration of the Court of Appeal.

2006, c. 21, Sched. A, s. 14.

[…]

77. (5) Publication

77. (5) The Attorney General shall ensure that each memorandum of understanding entered into under this section is made available to the public, in English and French.

2006, c. 21, Sched. A, s. 14.

79.3 (1) Annual report on administration of courts

79.3 (1) Within six months after the end of every fiscal year, the Attorney General shall cause a report to be prepared on the administration of the courts during that fiscal year, in consultation with the Chief Justice of Ontario, the Chief Justice of the Superior Court of Justice and the Chief Justice of the Ontario Court of Justice.

2006, c. 21, Sched. A, s. 14.

79.3 (2) Same

79.3 (2) The annual report shall provide information about progress in meeting the goals set out in section 71 and shall be made available to the public in English and French.

2006, c. 21, Sched. A, s. 14.

Part VI – Judges and Officers

80. Oath of office

80. Every judge or officer of a court in Ontario, including a deputy judge of the Small Claims Court, shall, before entering on the duties of office, take and sign the following oath or affirmation in either the English or French language:

---

86. (1) How certain judges to be addressed

86. (1) Every judge of the Court of Ontario may be addressed as "Your Honour" or as "(*Mr. or Madam*) Justice (*naming the judge*)" in English or as "Votre Honneur" ou "(M. ou M^{me}) le/la Juge (*nom du juge*)" in French.

R.S.O. 1990, c. C.43, s. 86 (1); 1996, c. 25, s. 9 (10); 1998, c. 20, Sched. A, s. 19 (1).

Case management masters

86.1 (1) Appointment

86.1 (1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such case management masters as are considered necessary.

1996, c. 25, s. 1 (18).

[…]

86.1 (9) Standards of conduct

86.1 (9) The Chief Justice may establish standards of conduct for case management masters.

1996, c. 25, s. 1 (18).

86.1 (10) Duty of Chief Justice

86.1 (10) The Chief Justice shall ensure that any standards of conduct are made available to the public, in English and French.

2006, c. 21, Sched. A, s. 15.

Part VII – Court Proceedings

Application of Part

95. (1) Civil proceedings

95. (1) This Part applies to civil proceedings in courts of Ontario.

95. (2) Criminal proceedings

95. (2) Sections 109 (constitutional questions) and 123 (giving decisions), section 125 and subsection 126 (5) (language of proceedings) and sections 132 (judge sitting on appeal), 136 (prohibition against photography at court hearing) and 146 (where procedures not provided) also apply to proceedings under the *Criminal Code* (Canada), except in so far as they are inconsistent with that Act.

R.S.O. 1990, c. C.43, s. 95 (1, 2).

ANNOTATIONS

R. v. Simard, [1995] O.J. No. 3989, 27 O.R. (3d) 116 (QL) (ON CA) [hyperlink not available]

[8] By virtue of s. 95(2) of the *Courts of Justice Act*, ss. 125(1) and 126(5) of this *Act* are also applicable to criminal proceedings except in so far as they are inconsistent with the *Criminal Code*. These provisions read as follows:

> 95(2) Sections 109 (constitutional questions) and 123 (giving decisions), section 125 and subsection 126(5) (language of proceedings) and sections 132 (judge sitting on appeal), 136 (prohibition against photography at court hearing) and 146 (where procedures not provided) also apply to proceedings under the Criminal Code (Canada), except in so far as they are inconsistent with that Act.
>
> . . . . .
>
> 125(1) The official languages of the courts of Ontario are English and French.
>
> . . . . .
>
> 126(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

---

95. (3) Provincial offences proceedings

95. (3) Sections 109 (constitutional questions), 125, 126 (language of proceedings), 132 (judge sitting on appeal), 136 (prohibition against photography at court hearings), 144 (arrest and committal warrants enforceable by police) and 146 (where procedures not provided) also apply to proceedings under the *Provincial Offences Act* and, for the purpose, a reference in one of those sections to a judge includes a justice of the peace presiding in the Ontario Court of Justice.

R.S.O. 1990, c. C.43, s. 95 (3); 1996, c. 25, s. 9 (18).

Language

125. (1) Official languages of the courts

125. (1) The official languages of the courts of Ontario are English and French.

ANNOTATIONS

Lalonde v. Ontario (Commission de restructuration des services de santé), 2001 CanLII 21164 (ON CA)

The context of the Act and its purpose

[141] It was within the overall context of steady progression and advancement of services in French that the F.L.S.A. [*French Language Services Act*] was introduced and passed in 1986. [2] […]

Note 2: S.O. 1986, c. 45. Prior to this, the 1960s showed an increased sensitivity to French language rights both as a question of fairness to Ontario's own residents and as a larger backdrop to national unity. The Ontario government passed a motion giving members of the Legislature the right to address the House in English or in French. The *Schools Administration Act*, R.S.O. 1960, c. 361, and the *Secondary Schools and Boards of Education Act*, R.S.O. 1960, c. 362, were passed to facilitate the establishment and support of French elementary and secondary schools. On May 3, 1971, Premier Davis made a formal statement in the legislative assembly in which he pledged to continue the general philosophy of former Premier Roberts concerning bilingualism. He indicated that Ontario's policy would be to provide, wherever practicable, public services in the English and French languages. He recognized the special emphasis given by the federal government to bilingualism in the National Capital region and pledged to support efforts made to date by the municipalities in the region to increase provision of bilingual services: Debates of the Legislative Assembly of Ontario, May 3, 1971 at pp. 1104-09. In the field of justice, a pilot project was begun in June 1976 to permit the use of French in trials before the Criminal Division of the Provincial Court in Sudbury. The project was extended to Ottawa the following year. Bilingual services were then extended to the Family Court Division in Sudbury and Ottawa. At the request of the Attorney General for Ontario, the Criminal Code, R.S.C. 1970, c. C-34 was amended in 1979 to provide for trials before a judge or jury who spoke the official language of the accused or both English and French (S.C. 1978-79, c. 10). In April 1984, the *Courts of Justice Act*, 1984, S.O. 1984, c. 11 was amended to provide in s. 135 (now s. 125, R.S.O. 1990, c. C.43) that the official languages of the courts in Ontario are English and French (S.O. 1984, c. 11). At that time, the then Attorney General for Ontario, the Honourable Roy McMurtry, stated that the government had made it clear that services in the French language in relation to health care had to be a priority: Debates, April 10, 1984 at pp. 616-17.

N.B. – The above excerpt is a footnote within *Lalonde v. Ontario (Commission de restructuration des services de santé)*, 2001 CanLII 21164 (ON CA)

R. v. Simard, [1995] O.J. No. 3989, 27 O.R. (3d) 116 (ON CA) [hyperlink not available]

[8] By virtue of s. 95(2) of the *Courts of Justice Act*, ss. 125(1) and 126(5) of this *Act* are also applicable to criminal proceedings except in so far as they are inconsistent with the *Criminal Code*. These provisions read as follows:

95(2) Sections 109 (constitutional questions) and 123 (giving decisions), section 125 and subsection 126(5) (language of proceedings) and sections 132 (judge sitting on appeal), 136 (prohibition against photography at court hearing) and 146 (where procedures not provided) also apply to proceedings under the Criminal Code (Canada), except in so far as they are inconsistent with that Act.

. . . . .

125(1) The official languages of the courts of Ontario are English and French.

. . . . .

126(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

Herscovitch v. Chatelain, 2016 ONSC 2378 (CanLII)

[5] Pursuant to s. 125 and s. 126 of the *Courts of Justice Act*, the official languages of the courts of Ontario are English and French and a party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. Whether the Respondent speaks, writes or works professionally in English as suggested by Ms. Carson is not the issue. I accept that French is her first language and the court is required to facilitate a bilingual proceeding.

LeBlanc v. York Catholic District School Board, 2002 CanLII 37923 (ON SC)

[42] There remains one thing to add. It has to do with Mr. LeBlanc's complaint regarding the use of French language in this case. He not only wants the court (and the tribunals) to communicate with him in French but the parties and their lawyers to do so as well. In addition, he wants the parties to file their pleadings and other documents in French. Finally, what irritates Mr. LeBlanc most is that the parties send their documents to him with his address written in English rather than in French as indicated in his statement of claim, namely: Casier Postale 27602, Succursale Yorkdale, Toronto, Ontario, M6A 3B8. From his perspective, all of this translates into a failure to communicate with him.

[43] That is not the case in law. It is important that the court and the administration demonstrate an ability to communicate with Mr. LeBlanc in French and that they do so. However, there is no such obligation on the part of the English parties or their lawyers. Section 125 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 provides that the official languages of the court in Ontario are French and English. Section 126(1) and (2) states:

[…]

[44] Thus Mr. LeBlanc has the right to a bilingual judge. He has the right to file his pleadings and his other documents in French, and he can plead in French. But he cannot insist that the other parties and their lawyers file their pleadings and their other documents in French or communicate with him in French, if they do not wish to do so. They have the right to use English.

[45] Finally, while it is preferable that the parties address their communications to Mr. LeBlanc at his address, written in French as he desires, it is not obligatory. The use of an English address does not provide a reason for Mr. LeBlanc not to accept their documents [page698] and then pretend that he has not received them. I am satisfied that the defendants have served their documents in a manner which is appropriate under the *Rules of Civil Procedure*.

Dehenne v. Dehenne, 1999 CanLII 15118 (ON SC)

[6] In 1984 the Ontario Legislative Assembly gave French official status. Section 125(1) of the Courts of Justice Act, R.S.O. 1990, c. C.43 provides that:

> 125(1) Les langues officielles des tribunaux de l'Ontario sont le français et l'anglais.
>
> 125(1) The official languages of the courts of Ontario are English and French.

Bajikijaie v. Mbuyi, 2009 CanLII 29486 (ON SCDC)

The Issue on Appeal

[1] This matter, involving modest amounts of money in an award for costs, raises important questions about the nature of bilingual proceedings and the interpretation of ss. 125 and 126(1) and (2) of the *Courts of Justice Act*.

[2] The Appellant, Benjamin Felix Bajikijaie, filed his Statement of Claim in French, triggering s. 126 of the *Courts of Justice Act*, as well as s. 3 of the *Regulation for Bilingual Proceedings* made under the *Courts of Justice Act*, O. Reg. 53.01. Master Hawkins is not bilingual. He was assigned to this file as the Case Management Master. He ordered that the action be discontinued on consent. He received written submissions and fixed costs in favour of the defendants. The Appellant seeks to appeal from the Master's order for costs, as the Appellant argues that the matter should have been dealt with by a bilingual Master.

[3] Hoy J., on April 10, 2008, granted leave to appeal the award of costs with respect to whether the Appellant's language rights had been infringed pursuant to section 62.02(4)(b). She relied upon the Court of Appeal decision in *Ndem v. Patel*, 2008 ONCA 148 (CanLII) in reaching her conclusion:

> [27] In *Ndem v. Patel*, the Court of Appeal set aside a summary judgment order, because the appellant's right to a bilingual hearing was violated, and referred the matter back to the court below, without consideration of the merits of the underlying claim. Rouleau J.A. wrote, "English and French are the official languages of the courts in Ontario, and the court has a responsibility to ensure compliance with language rights under s.126 of the Courts of Justice Act. A proper interpretation of this provision is one that is consistent with the preservation and development of official language communities in Canada and with the respect and preservation of their cultures: See *Beaulac*, paras. 25, 34 and 45. Violation of these rights, which are quasi-constitutional in nature, constitutes material prejudice to the linguistic minority."

Applicable Legislation

[4] Sections 125 and 126(1) and (2) of the *Courts of Justice Act* provide:

> *Official languages of the courts*
>
> 125.(1) The official languages of the courts of Ontario are English and French.
>
> *Bilingual proceedings*
>
> 126.(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.
>
> *Idem*

> The following rules apply to a proceeding that is conducted as a bilingual proceeding:
>
> . . .
>
> The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.

[…]

Case Law

[6] The case law is clear that the court system must accommodate the equal right to be heard in English and in French. The judgment in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 R.C.S. 768 at paragraph 39 confirms this overriding principle:

> Je tiens à souligner qu'un simple inconvénient administratif n'est pas un facteur pertinent. La disponibilité de sténographes judiciaires, la charge de travail des procureurs ou des juges bilingues et les coûts financiers supplémentaires de modification d'horaire ne doivent pas être pris en considération parce que l'existence de droits linguistiques exige que le gouvernement satisfasse aux dispositions de la Loi en maintenant une infrastructure institutionnelle adéquate et en fournissant des services dans les deux langues officielles de façon égale. Comme je l'ai dit plus tôt, dans un cadre de bilinguisme institutionnel, une demande de services dans la langue de la minorité de langue officielle ne doit pas être traitée comme s'il y avait une langue officielle principale et une obligation d'accommodement en ce qui concerne l'emploi de l'autre langue officielle. Le principe directeur est celui de l'égalité des deux langues officielles.

[…]

Conclusion

[22] I conclude that s. 3.(1) of *Regulation* 53.01 is mandatory in its terms: "if the first document that is filed by or issued at the request of a party to a proceeding is written in French, the party shall be deemed to have exercised the right under subsection 126(1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French."

[23] The deeming provisions that require all future hearings in the proceeding to be presided over by a bilingual person clearly have been breached. A hearing includes an ex-parte motion.

[24] The case should have been assigned to a bilingual Master as originally requested and contemplated by the parties. If a bilingual Master was not available, then it should have been assigned to a bilingual judge. The request for a bilingual master is clear in the Case History Report and initially this requirement was complied with.

[25] The administrative system unfortunately failed to adequately flag this case as a bilingual matter and it was assigned to Master Hawkins. The conclusion in this decision is in no way critical of the Master - it is the administrative system that has failed. I note that it is also incumbent upon counsel and the parties in bilingual matters to ensure that the matter proceeds before the appropriate bilingual court officer, as inevitably there are errors that occur in the administrative system.

[26] Me. Côté's suggestion that his clients wished to proceed with the motion in English, and therefore a bilingual master was not necessary, does not respond to the problem. Me. Côté's clients of course had the right to plead and file documents in English. That right does not affect the requirement that a bilingual person be assigned to hear all matters in the file, even if Me. Côté chose to file his clients' documents in English.

[27] As the Court of Appeal made it clear in *Belende v. Greenspoon*, *supra*, the right to have a bilingual court officer is a substantive, not merely procedural right:

> [15] Where, as in the present case, the appellant has met the procedural requirements to trigger a right to a bilingual hearing this right is more than purely procedural, it is substantive and the appropriate remedy is to set aside the order: see *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768.

[28] It would be unusual in fixing costs not to review the pleadings in order to understand the nature of the proceedings and the context in which the costs award is sought. It is not clear whether the Master in this case reviewed the pleadings. It is clear that had he reviewed the Appellant's Statement of Claim he would not have understood it. Although the documents filed with the Master for the motion for costs were in English, they included the letter written in French founding the claim for defamation. Clearly he would not have understood this letter.

[29] For these reasons, I am of the view that the order of Master Hawkins should be set aside and that the issue of costs should be determined by a bilingual Master, with the Appellant having the opportunity to make submissions.

---

125. (2) Proceedings in English unless otherwise provided

125. (2) Except as otherwise provided with respect to the use of the French language,

> **(a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and**
>
> **(b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator.**

R.S.O. 1990, c. C.43, s. 125.

ANNOTATIONS

Shanthakumar v. Ming Pao Newspapers, 2017 ONSC 5553 (CanLII)

[1] In 2010, the RCMP arrested Sulochana Shanthakumar ("Ms. Shanthakumar") and her husband and charged them with fraudulently attempting to secure a small Government-backed business loan from the Royal Bank of Canada. The RCMP posted a press release about the arrests on their web site.

[2] Ming Pao Newspapers (Canada) Limited ("Ming Pao") re-published information about the arrests from the RCMP press release in an article on the newspaper's web site ("the article"). The article was in the Chinese language but could be translated to English using the Google

Translator program. Ming Pao left the article on its web site after the Crown withdrew the charges in court by reason of insufficient evidence.

[3] Ms. Shanthakumar sued Ming Pao for defamation based on the content of the article, which she says damaged her reputation in the community. Her Statement of Claim (the "Claim") alleges that the article re-published defamatory statements about her. The Claim does not specify the words that it alleges were defamatory or say whether they were published in the Chinese language version of the article, or in the Google translated version.

[4] Ming Pao moves to strike the Claim on the grounds that it does not disclose a reasonable cause of action, may prejudice or delay the fair trial of the action, and is scandalous, frivolous or vexatious, and/or an abuse of the process of the Court.

[…]

[39] The defendants assert that the Claim, including Ms. Shanthakumar's Reply to their Demand for Particulars, fails to comply with section 125(2)(b) of the *Courts of Justice Act*. Section 125(2)(b) states that, "documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator." The defendants argue that Ms. Shanthakumar has failed to comply with this requirement because she has filed the Chinese version of the article but has failed to file an accurate English translation certified by an affidavit of the translator.

[40] The Reply attaches the Chinese version of the article, and the Google Translation. It does not attach an accurate translation accompanied by an affidavit of a translator certifying the accuracy of the translation. The Claim and Reply therefore do not comply with s. 125(2)(b) of the *Courts of Justice Act*.

[41] The fact that Ms. Shanthakumar asserts that the Google translation of the article is itself defamatory does not relieve her of the obligation of complying with s. 125(2)(b) of the *Courts of Justice Act*. However, in the present case, where Ms. Shanthakumar asserts in her pleading that the Google Translation sets out the exact words published, I am able to look to that translation for the purpose of determining whether it discloses a reasonable cause of action.

[42] The defendants note that the Article does not say what Ms. Shanthakumar says it does. The police press release and the article that was based on it says "If convicted, penalties range up to 14 years in prison under the *Criminal Code*." They further note that the Google Translation states, "Police estimate that if the two men sentenced convicted, they face up to 14 years in prison." That is, even the Google Translation says "if convicted".

[43] I agree that the Google Translate version of the article, which Ms. Shanthakumar acknowledges sets out the exact words of the Chinese article, demonstrates that her Claim has no reasonable prospect of success. On this basis, it is unnecessary to order her to produce a certified translation of the Chinese version of the article.

Igder v. Heydarzad, 2016 ONSC 3478 (CanLII)

ISSUES

[…]

[25] The appellant submits that the trial judge committed palpable and overriding errors demonstrating a lack of impartiality in the general areas:

(i) By refusing to hear evidence from the appellate witnesses who had material knowledge of the matters central to the action;

(ii) By permitting documentary evidence to be adduced at trial not in the English language and not properly translated in contravention of the s. 125(2)(b) of the *Courts of Justice Act* and relying upon those documents in the reasons for judgment;

(iii) By continuously interrupting the appellant's representative during his examination, cross-examination and submissions and thereby descending into the arena.

[…]

(ii) Admission of Evidence in Contravention of s.125(2)(b) of the Courts of Justice Act

[37] Section 125(2)(b) of the *Courts of Justice Act* requires that:

(b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator. R.S.O. 1990, c. C.43, s. 125.

[38] The appellant submits that the trial judge erred in law by allowing the texts sent in the Farsi language to be entered with evidence as Exhibits 7 and 8 and further by relying on these texts in his reasons for judgment in light of the appellant's objection to the accuracy of the translation provided by the respondent.

[39] I agree with the appellant that the texts should not have been admitted into evidence in contravention of s. 125(2)(b) of the *Courts of Justice Act*. The real issue is whether the trial judge committed a palpable or overriding error for the reasons advanced by the appellant or whether the error was relatively harmless.

[…]

[49] While Exhibits 7 and 8 should not have been admitted into evidence I am satisfied in the circumstances of this case that the trial judge did not commit palpable and overriding error warranting a new trial in doing so. The trial judge was in much better position to assess the relative credibility of the parties than the appellate court and is owed deference in the absence of palpable and overriding error.

Behzadi v. Goodarzy, 2016 ONSC 4140 (CanLII)

[89] While it had on the first page, of the two pages in English, a stamp alleging that the document was a true translation, it failed to comply with s. 125(2)(b) of the *Courts of Justice Act* as there was no affidavit of a translator certifying the translation of the two Arabic pages into English.

Sera v. Ambroise, 2013 ONSC 7067 (CanLII)

The Law and Analysis

[44] The law with respect to French language rights in court hearings in Ontario is found in sections 125 and 126 of the *Courts of Justice Act* and accompanying regulation 53/01.

[45] Without setting out all of the sections in detail (as the parties are well aware of them), in short the relevant parts of the legislation may be summarized as follows:

(a) The official languages of the courts in Ontario is French and English;

(b) While English is the default language of all proceedings, a party may request that a proceeding be conducted as a bilingual proceeding;

(c) Such a request may be in writing or orally;

(d) A bilingual proceeding will be conducted by a bilingual judge;

(e) Evidence shall be recorded and transcribed in the language in which it is given;

(f) Pleadings and documents may be filed in French as of right in all schedule 2 areas. In all other areas they may be filed in French on the consent of the parties;

(g) In the Ontario Court of Justice, Small Claims Court or the Family Court of the Superior Court of Justice an originating process may be written in French and documents may be filed in French. Any originating process or document filed in English or French may be translated into the other language at a party's request.

[46] While the father's counsel has no issue with the mother having a bilingual hearing, she objects to documents being filed in French. She argues that since Newmarket is not a designated schedule 2 area, French documents may not be filed without her consent. In contrast, the mother's counsel submits that sections 126(4) and (5) of the *CJA* are essentially exceptions to the schedule 2 requirement. It would not make sense that one could file an originating process in French and then not be able to file further documents in French.

[47] The mother's counsel relies on *Belende v. Greenspoon*, an endorsement of the Court of Appeal, dated May 6, 2004. In that case the appellant filed his notice of appeal in French. As such all future proceedings were deemed to be bilingual. The registrar struck the appeal. The registrar was not bilingual, and as such, the order was set aside. In that case, however, the mortgage had already been redeemed so the appeal was effectively moot.

[48] In *Belende v. Patel*, a Court of Appeal decision dated February 29, 2008, the appellant sought to set aside an order for summary judgment made against him on the grounds that the judge hearing the matter denied the appellant his right to a bilingual proceeding. The court held that such a right is not qualified by judicial discretion and that the right is more than purely procedural. It is a substantive right and the appropriate remedy where there has been a breach is to set aside the order.

[49] In *Tremblay v. Piquet*, the wife sought a bilingual proceeding and the right to file documents in French. As the matter proceeded in Simcoe, Ontario, which is a non-schedule 2 area, she was precluded from filing her documents in French without the husband's consent which was not given. The court transferred the matter to the Unified Family Court in Hamilton to allow the wife to file her documents in French.

[50] Finally, the mother relies on the case of *Wittenberg v. Fred Geisweiller/Locomotive Investments Inc.* 1999 CanLII 14805 (ON SC), 1999 CanLII 14805(SCJ) for the proposition that a waiver to the right of a bilingual proceeding must be clear and informed. The fact that a litigant goes forward with a proceeding in English at the judge's insistence is not sufficient.

[51] The father's counsel points out that other than the Tremblay case, the cases cited by the mother's counsel are appeals or cases involving final orders. She could not find any law on the appropriate remedy for interim orders. I do not doubt that little or no law exists in that area.

[52] Turning first in my analysis to the issue of filing French documents, I respectfully disagree with the father's counsel. While it is clear that Newmarket is not a designated schedule 2 area, that does not mean that section 126(4) of the *CJA* can be ignored. The Family Court of the Superior Court of Justice is clearly recognized as a court which will accept documents in French. While this may seem inconsistent with section 126(2) (in particular subsections (6) and (7)) of the *CJA*, I do not see it this way. I see it as the natural expansion of the right to a bilingual proceeding. This follows the reasoning in the *Tremblay* case above. In short, how is one's right to a truly bilingual proceeding to be properly effected if one is not allowed to file documents in French? The rights of the opposing party are protected by the ability to have any French documents translated into English on consent.

[53] As such, I find that the mother may file any future documents in this proceeding in French. If requested by the father, a translation into English may be requested.

[54] Turning now to the issue of the whether the previous orders should be set aside I find that they should not be for the following reasons:

(a) The mother, while being aware as far back as December 19, 2011 of the process to request a bilingual hearing, did not pursue it. I accept that at least at that point she was fully aware of her right to a bilingual hearing as the court adverted on several occasions to the process of requesting one.

(b) While the mother claims that she was fearful or did not understand what she had to do to request a bilingual hearing, her letters and emails to Ms. Irwin demonstrate that she was perfectly capable of making herself understood about her position in relation to access and her criticism of the father. It is, therefore, difficult to accept that she did not understand the court's recommendations in this regard at both the December 19, 2011 hearing and the January 2012 motion. It is true that the fact that she has a certain proficiency in English is not relevant to her right to a bilingual hearing. At the same time it must be relevant in terms of her understanding what steps were open to her in terms of requesting that hearing.

(c) While I do not ascribe much weight to this fact, it is true that the mother hired two Anglophone lawyers and was apparently able to properly instruct them. She did not make any complaints (that I am aware of) regarding the services of Mr. Sadvari or Ms. Di Battista. A quick view on the internet would no doubt have afforded her a choice of francophone counsel in Toronto and the Greater Toronto Area.

(d) The status quo in this matter cannot be erased. The trial has not been adjourned and the mother will have an opportunity to have this court consider all of the evidence afresh. As well, it cannot be ignored that even if the mother had had a bilingual hearing at the January 2012 motion, there would likely have been some order made changing the arrangements in the separation agreement as she had not seen the children in over a year. That situation did not arise because of any language difficulties.

(e) The case law cited by the mother does not relate directly to the issue that is before this court, i.e. the setting aside of interim orders. Further, in those cases there was either a refusal to conduct a bilingual hearing (*Balende v. Patel*) or a substantive step taken in English in a hearing that was already deemed bilingual (*Balende v. Greenspoon*). Neither of those fact situations are on all fours with this case.

(f) With respect to the *Wittenberg* case, there was no insistence by any judge in this case thus far that a proceeding go forward in English contrary to the wishes of the mother. Indeed the mother was encouraged to take steps to make a request for a bilingual hearing, but did not do so. This is not a case like *Wittenberg* where the court pushed ahead in the face of the mother

saying she did not understand or was uncomfortable. I do not accept that she was fearful or that it was "risky" as she puts it. It was simply a poor decision on her part whose consequences, unfortunately, cannot now be undone.

(g) There are no transcripts of the various hearings which are impugned by the mother. As such, the court has only the contradictory affidavit evidence of the parties and the judges' endorsements with respect to what happened at those hearings. Accordingly, the court must proceed cautiously in terms of making any findings of fact about what was or was not said to the mother in terms of any waiver of her rights.

(h) The mother is now in a position where her rights have been fully recognized. The current motion as well as the upcoming trial will be presided over by a bilingual judge with the assistance of an interpreter and bilingual court reporter. Every possible step has been taken to ensure the mother will be able to express herself in her native language both personally in the course of her own evidence and through her lawyer, who is extremely competent in both languages.

[55] Given all of the above, I decline to vacate any of the previous orders and do not find that there has been any breach of the mother's right to a bilingual hearing. If such a breach has occurred, it has since been remedied by steps which have been in place since the October 2012 trial management conference.

[56] As to any argument concerning the effect and potential prejudice resulting from the interim orders made in January 2012, the response is as follows: first, a trial is pending to address all outstanding issues; and second, given the change in circumstances that had been in place for some period of time by January 2012, it is this court's view that some change to the custody and access arrangement would have been ordered in any event no matter the language in which that hearing took place.

Orders

[57] Given all of the above I make the following orders:

[…]

c. The mother's request to have all previous interim orders set aside on the grounds that her right to a bilingual hearing (both oral and written) have been infringed is dismissed.

d. The mother has the right to file any future documents in this proceeding in French. Upon the request of the father those documents may be translated into English.

[…]

N.B. – Leave to appeal this decision was refused: *Sera v. Ambroise*, 2014 ONSC 2981 (CanLII):

[21] There is no doubt that French language rights are of fundamental importance in this province. Not only do they offer some measure of security to the francophone community, a community which has formed an integral part of the historical and cultural fabric of this province since Confederation, but they also serve the wider purpose of promoting access to justice for the greatest number of Ontario citizens.

[22] In my opinion, however, the facts of this case leave it outside the rarefied spectrum of language rights cases which might qualify as sufficiently important to warrant leave being

granted. The Respondent's language rights were never denied to her. They were not suspended, trammeled or even questioned. At the earliest opportunity, they were afforded to her. They have been respected and now enshrined in the proceedings.

[23] The denial of the form of relief sought by the Respondent was based upon the motions judge's findings on matters wholly unrelated to substantive language rights: the Respondent's election not to avail herself of procedural steps, the Respondent's conduct during the litigation, the absence of substantial prejudice, the nature of the orders and the imminence of trial, the unalterable facts upon which the targeted orders were granted in the first place and the paucity of evidence on what took place at the hearings.

[24] The comments made by the motion judge in her supplementary endorsement touching on the importance of the issue of language rights were not misplaced. Indeed, her entire decision on the substantive relief sought is permeated by an overriding concern for the sanctity of French language rights. I share that concern. That does not, however, alter the basis upon which the motions judge made her decision. The question of whether the matters for the proposed appeal are important on a leave application should not be determined based merely upon the suggestion by the moving party that they involve language rights. To address the question appropriately, one is obliged to consider the decision as a whole, to construe from it the *ratio decidendi* and to arrive at a determination as to whether the *proposed appeal involves matters* of such importance that leave to appeal should be granted. In this case, language rights would merely serve as a background to the matters to be considered on the proposed appeal. Those matters would necessarily be limited to findings of fact, an assessment of prejudice and considerations of the applicability of case law. I am of the opinion that those matters are not of sufficient importance to warrant granting leave to appeal in these circumstances.

Davies v. Corporation of the Municipality of Clarington, et al., 2010 ONSC 6103 (CanLII)

The Language of the Documents

[42] Mr. Regan points out that half of the Affidavit of Documents is in Polish as are a large number of the documents. He requests that Mr. Zuber be ordered to produce translations of the documents in English. Mr. Strype is prepared to provide only translations of the documents on which he will be relying. He also submits that a good number of them have already been translated by the defendants, so that a costly new translation of those is simply not necessary.

[43] Section 125 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“CJA”) provides:

> 125. (1) The official languages of the courts of Ontario are English and French.
>
> Proceedings in English unless otherwise provided
>
> (2) Except as otherwise provided with respect to the use of the French language,
>
> (a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and
>
> (b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator.

[44] Rule 34.09 of the *Rules [of Civil Procedure*] offers a suitable analogy:

> 34.09 (1) Where the person to be examined does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the person is examined, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation and the questions to and answers of the person being examined.
>
> (2) Where an interpreter is required by subrule (1) for the examination of,
>
> (a) a party or a person on behalf or in place of a party, the party shall provide the interpreter;
>
> (b) any other person, the examining party shall provide the interpreter,
>
> unless the interpretation is from English to French or from French to English and an interpreter is provided by the Ministry of the Attorney General.

[45] In accordance with section 125 of the *CJA* and *Rule* 1.04(2) of the *Rules*, as a general rule a person producing a document as relevant should be obliged to provide a translation of it in the official language in which the proceedings are being conducted as part of the document discovery process.

[46] In *Birshtein v Royz*, [2000] O.J. No. 957 (S.C.J.), Pitt J. ordered a party to provide a translation of a Russian manuscript of several hundred pages written by the defendant about the plaintiff. He ordered the plaintiff, who was relying on the document, to have the manuscript translated before further proceedings, in part because both the court and defence counsel. It is not clear from the endorsement how close the matter was to a hearing.

[47] In *Kyriazis v. Pineay*, [2001] O.J. No. 4017 (S.C.) at paras. 26- 29, Master Albert dismissed a motion by the plaintiff to have letters she wrote in Greek translated at the defendant's expense into English before "she is required to answer questions about them." She held:

> 28 The *Birshtein* case is distinguishable. There, the document was extensive and it was to be used in a public hearing in open court, namely an injunction motion. The court needed to know what the document said. Here, the letters are only 12 pages in length. They were put to the witness at discovery, which is not a court proceeding where the court needs to know what the text says, but rather is a private proceeding that does not call for the court's adjudication. If the documents are to be admitted in evidence at trial then an official translation will be required at the expense of the party seeking to rely on the document.

[48] With respect, a discovery is not a private proceeding. And it may call for adjudication on the propriety of questions, among other things. The need for translated documents prior to discovery is clear: *Tube-Mac Industries Ltd. v. Ratos AB* [2007] O.J. No. 2763 (S.C.) per Master Glustein. There may be situations where proportionality might suggest limits on translation, for example where the costs become oppressive. There may be other factors such as the conversancy of the parties and counsel with the foreign language. Here, however, the plaintiff has put forward Polish documents as relevant. In the context of a case worth $50 million, according to the plaintiff, and where all the defendants are functioning in English, proportionality suggests no such limits.

[49] I require Mr. Zuber to provide English translations of the documents that he has produced or will produce as relevant, subject to two caveats.

[50] First, since Mr. Regan frankly admits that a number of documents have already been translated by the defendants, I see no reason to compel the plaintiff to expend funds uselessly. The defendants will provide a full list and copies of any documents that they have translated to

Mr. Strype so that he can determine which documents are left to be translated. Second, I expect counsel to be cooperative in this exercise. Documents that have no real significance in this action need not be translated and if the parties are unable to agree on the status of a particular document, I may be spoken to.

Monteiro v. Toronto Dominion Bank, 2007 CanLII 9885 (ON SC)

[15] Secondly, documents from the court in Kuwait have been filed and are accompanied by a translation of the documents into the English language certified by affidavit of the translator. The original documents were produced at this hearing, but were not filed. True copies are included in the record. Counsel for Ms. Monteiro submits that the Kuwait Court documents have been filed in accordance with the requirements of s.125(2)(b) of the *Courts of Justice Act*.

[…]

[33] I am also in agreement with the submissions of counsel to Ms. Monteiro that the Kuwait judgments have been properly put before this Court and the requirements of section 125(2) of the *Courts of Justice Act* have been satisfied.

N.B. – This decision was confirmed on appeal: *Monteiro v. The Toronto Dominion Bank*, 2008 ONCA 137 (CanLII).

Venture Refractories inc. v. Technical Strategies incl., 2007 CanLII 19798 (ON SC)

Supplementary Affidavit of Documents:

[98] In his cross-examination of November 6, Mr. Hartshorn said the supplementary affidavit of documents was a complete pile of the paper work with respect to his costs incurred due to the plaintiff's faulty work. However, as plaintiff's counsel noted and my review of the documentation confirmed, almost half of the documents are written in Chinese.

[99] The plaintiff did not provide a requested translation of the documents as required by Section 125(2)(b) of the *Courts of Justice Act*, R.S.O. 1990, Chapt. C. 43.

Entral Group International Inc. v. 1438762 Ontario Inc., 2005 CanLII 18316 (ON SC)

[19] Next the defendants move for an order that the plaintiffs comply with subsection 125(2)(b) of the *Courts of Justice Act*. This subsection requires (except as otherwise provided with respect to the use of the French language) documents filed in this court to be in the English language or be accompanied by a translation of the document into the English language certified by affidavit of the translator.

[20] The defendants complain that one document which the plaintiffs have filed in this court, namely the amended statement of claim, contains schedules listing the titles of the songs the subject of the plaintiffs' claims for copy right infringement but that some of these song titles are in Chinese unaccompanied by any translation into English.

[21] Subsection 125(2)(b) of the *Courts of Justice Act* provides that documents filed in court "shall" be in English or "shall" be accompanied by a translation. Subsection 29(2) of the *Interpretation Act*, R.S.O. 1990 ch. I-11 provides that

> "In the English version of an Act, the word "shall" shall be construed as imperative…"

[22] If I were to disregard the fact that the plaintiffs have failed to comply with subsection 125(2)(b) of the *Courts of Justice Act* that would not serve anyone's interests. Without the required translation, it is highly likely that the trial judge (and appellate judges if the action goes that far) will not be able to understand material parts of the evidence. That could be prejudicial to all concerned.

[23] The plaintiffs complain that in some cases translation will be difficult because there is no literal and sensical translation for the title of a given song. I recognize that in the case of some languages which are no longer spoken or written, the meaning of some words in those languages is no longer known with the result that those words cannot be translated. Such is not the case before me. Here we are concerned with the Cantonese version of spoken Chinese. Cantonese is widely spoken in Hong Kong and in surrounding areas of the People's Republic of China. While there may well be instances where it will be difficult to translate a particular song title into English, I do not accept that it will be impossible to do so. The evidence for the plaintiffs goes to difficulty but not to impossibility.

[24] The plaintiffs also complain of the expense involved in translating the rest of the song titles into English. The evidence does not demonstrate that the cost of translating the rest of the song titles would be so heavy that I should disregard the plaintiffs' non-compliance with subsection 125(2)(b) of the *Courts of Justice Act*. There is no evidence as to the total cost of the translation required. The plaintiffs have obtained a quotation in the sum of $1,849 from a well-known translation service. This quotation, however, does not cover the cost of translating those song titles which are currently only transliterated from their Cantonese sounds using letters of the Roman alphabet. Translation will therefore cost something in excess of $1,849. That is not inordinate in an action in which the amount in issue is approximately $1,250,000. The evidence for the plaintiffs does not go so far as to say that the cost of completing the task of translating song titles will be prohibitive and that the plaintiffs will be forced to abandon material parts of their claims if required to translate all the song titles.

[25] In conclusion this is not a situation where, assuming the court may excuse non-compliance with subsection 125(2)(b) of the *Courts of Justice Act*, the court should do so. In any event I am not of the view that I have jurisdiction to excuse such non-compliance where the result would be the inability of the trial judge to understand material parts of the evidence. Such a result would be harmful to all the parties.

[26] If the stay order I have made is lifted I order that the plaintiffs comply with subsection 125(2)(b) of the *Courts of Justice Act* by amending the schedules to the amended statement of claim so that all the song titles are in the English language or by adding a translation of those schedules into the English language certified by affidavit of the translator.

Pietrocupa v. Bérard, 2002 CarswellOnt 2794, [2002] O.J. No. 3284 (ON SC) [hyperlink not available]

[3] Before turning to the background and analysis herein, I note that this has been a bilingual proceeding pursuant to sections 125 and 126 of the *Courts of Justice Act*, as the respondent, Ms. Bérard, is a Francophone, was self-represented and requested a bilingual hearing. The applicant, Mr. Pietrocupa, indicated at the outset of the hearing that he preferred to give his evidence in English as he had not been using French in the recent past and felt more comfortable in English. As well, his counsel, Mr. Juriansz, had no French. In the circumstances, I directed that a French-language interpreter be present and the interpreter Mr. Dowlatshahi, assisted Mr. Juriansz with the evidence of Ms. Bérard in French and my comments to Ms. Bérard in French and similarly Ms. Bérard with the evidence of Mr. Pietrocupa in English, and the questions of Mr. Juriansz in English.

[4] I have delivered the reasons in this judgment in English for the following reason. At the conclusion of the hearing I directed that there be written submissions on the issues. The submissions of Mr. Juriansz on behalf of the applicant were in English and were directed to Quebec counsel named by Ms. Bérard. The responding submissions were in French; although signed by Ms. Bérard, they were forwarded by Quebec counsel. In the circumstances, I granted Mr. Juriansz a period of time within which he could obtain an English translation of the French responding submissions. He obtained the translation and issued, in accordance with my directions, reply submissions in English to the attention of Quebec counsel. In the circumstances, on the balance of convenience, the language of communication of these reasons will be in English as I am confident that Quebec counsel who have assisted Ms. Bérard in this matter will be readily able to translate the same into French to further assist Ms. Bérard.

R. v. Bauer, 2005 CarswellOnt 3229, 2005 ONCJ 337 [hyperlink not available]

[33] The *Courts of Justice Act*: Additionally - or if I am mistaken that Section 530 of the *Criminal Code* applies to a defendant in a peace bond hearing, then alternatively, we must consider the impact of Sections 125 and 126 of the *Courts of Justices Act*.

[34] Section 125(1) provides that the official language of the courts of Ontario is English and French. Subsection (2) provides that proceedings are in English except as otherwise provided. Section 126(1) states, "A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding." R.S.O. 1990, c. C.43, 126(1)

[35] Section 126(2) outlines the rules for a proceeding conducted as a bilingual proceeding.

[36] Referring back to Section 532 of Part XVII - Language of the Accused, Section 532 provides that nothing in this part of the *Official Languages Act* derogates from, or otherwise adversely affects any right afforded by a law of a province in force, or thereafter coming into force, relating to the language of proceedings or testimony in criminal matters that is not inconsistent with this Part of that Act.

[37] Section 810 is in Part XXVII - Summary Convictions of the Criminal Code of Canada. Notwithstanding the person subject to an information under Section 810 is a defendant and not an accused or that an order is not a conviction, it is a criminal matter. It is subject to sanctions under the *Criminal Code* and a breach of an order is a criminal offence. Therefore, in my opinion, Section 126 of the *Courts of Justice Act* is applicable to a Section 810 hearing and is not inconsistent with Part XVII or the *Official Languages Act*.

[38] The Crown submits that Section 126 of the *Courts of Justice Act* applies only to a Francophone. This means someone who was raised with French as his or her first language. The plain reading of the section of the Act does not state this. The reference is to a person who speaks French. A plain reading does not say someone who only speaks French nor does it say someone who speaks French as a primary language.

[39] The Supreme Court of Canada guides my interpretation of this section when it says in *R. v. Beaulac*, "If the accused has sufficient knowledge of an official language to instruct counsel, he or she will be able to assert that that language is his or her language, regardless of his or her ability to speak the other language."

[40] In conclusion, I am satisfied that Section 126 of the *Courts of Justice Act* permits the defendant in a Section 810 proceeding the right to have a bilingual hearing where he can demonstrate that he has sufficient knowledge of the official language he has chose to retain and instruct counsel.

[41] I find that Walter Bauer has the ability on the evidence put before this court to retain and instruct counsel in the French language and he is entitled to a bilingual hearing. The applicant is not disentitled to a hearing in French by the regulations under the *Courts of Justice Act* as the application has been made more than seven days in advance of the hearing.

Canada (Commissioner of Official Languages) v. Canada (Department of Justice), 2001 FCT 239 (CanLII)

[157] The *Courts of Justice Act* provides: […]

[164] On the question of the judicial processing of prosecutions for federal contraventions, the Court was presented with, and even participated in, a virtually microscopic examination both of the provisions of sections 530 and 530.1 of the *Criminal Code* and of sections 125 and 126 of the Ontario *Courts of Justice Act*.

[…]

[167] Section 125(2) of the Ontario *Courts of Justice Act* clearly establishes the context, which is that English is the language of the administration of justice in Ontario unless otherwise provided and that those exceptions are delineated in detail by the provisions of the next section, section 126.

[168] It is clear that the *Courts of Justice Act* does not adopt the principle of the substantive equality of the two official languages that is recognized by the *Charter* and the *OLA* [*Official Languages Act*], and that in fact the principle that governs the *Courts of Justice Act* is that there is one principal language in the administration of the courts in Ontario, English, and that the place assigned to French is that of a secondary language that it is agreed will be accommodated. This is particularly clear when we consider the subsequent provisions of the *Courts of Justice Act*.

[169] The principle that underlies the Ontario *Courts of Justice Act* is precisely the principle that Mr. Justice Bastarache rejected in *R. v. Beaulac*, *supra*, when he interpreted the language rights guaranteed by the *OLA* and the *Charter*. He wrote:

> As mentioned earlier, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.

[170] It must be recalled that the *Criminal Code* establishes that the language of the accused is the rule, and this is not stated formally in the provisions of the Ontario *Courts of Justice Act*.

[171] It is clear that section 530(3) provides for an active offer of services in French, and that the judge must make the necessary arrangements so that the offer is made for an accused to be tried in French. No equivalent provision is made in the Ontario *Act*.

[172] Moreover, given the fact that sections 530 and 530.1 of the *Criminal Code* are no longer applied in respect of the processing of contraventions under the new scheme, accused individuals will no longer be able to file a complaint with the Commissioner of Official Languages, and this is no small matter.

Betzdearborn Canada Inc. v. Hartwick, 1998 CarswellOnt 352, 77 A.C.W.S. (3d) 162 (ON CJ) [hyperlink not available]

[2] The plaintiff submits that the schedule must be changed because the defendants delivered affidavits in the French language and an English translation was required which resulted in a need for an adjustment in the schedule. The plaintiff submits that he went to arrange his own translations after he was told by defendants' counsel that they would not be forthcoming, and that his own translations could not be done until January 22, 1998 and at a substantial cost. The defendants then did provide translations which were delivered on January 19, 1998 and an affidavit of translation was produced on January 20, 1998. The plaintiff now requires time to review the affidavits, prepare any supplementary materials and allow cross-examinations to be held as well as prepare for the motion which will take some time to argue.

[…]

[7] Costs of this motion for directions shall be payable forthwith to the plaintiff by the defendants fixed in the amount of $1,250.00 plus GST. Costs for the translation of the affidavits from French to English in the amount of $5,458.07 inclusive of GST shall be payable to the plaintiff given section 125(2)(b) of the *Courts of Justice Act*.

Casselman Electrique Ltée v. Gaudreau, 1997 CarswellOnt 5970, [1997] O.J. No. 2005 (ON CJ) [hyperlink not available]

[1] There are two official languages in the courts of Ontario. They are English and French. In Ontario, a party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. This is a substantive right conferred upon francophone citizens of Ontario pursuant to section 126 of the *Courts of Justice Act*.

[2] In designated areas within the Province, (Ottawa-Carleton and York being just two such areas) a party may file pleadings and other documents written in French. (s. 126(2).6, *C.J. Act*). In the present case, the statement of claim has been issued in the French language. That is the right of the plaintiff. The defendant is not entitled to insist on a translation as he could, if, for example, the pleading were issued in Italian, Spanish, or Russian. (See s. 125(2)(b) *C.J. Act.*)

[3] A requisition for a bilingual proceeding may be made at any time before the action is set down for trial. (*Regulation 185*, R.R.O. 1990.) In the present case, this has been done. The fact that the claim was issued prior to the requisition being filed does not entitle the defendant to a translation of the claim, the plaintiff having acted within its rights throughout.

[4] The defendant cites *Groulx v. Roman Catholic Episcopal Corporation*, [1991] O.J. No. 418, as authority for its argument. I note that this case was decided before the establishment of schedule 2 districts, and as such cannot be valid authority today.

[5] The defendant here is insisting upon a right he does not enjoy. Until recently, francophone citizens who could not readily understand the English language, were put to the necessity of hiring English counsel and translating English documents into the French language for ease of understanding. Sections 125 and 126 of the *Courts of Justice Act* levelled the playing field in a Province which values both official languages.

[6] The motion is dismissed with costs. Costs fixed in the amount of $1,200.00.

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126. (1) Bilingual proceedings

126. (1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.

R.S.O. 1990, c. C.43, s. 126 (1).

ANNOTATIONS

Ferro v. Chicoine et Syndicat des travailleuses et travailleurs unis de l'alimentation et du commerce, 2016 ONCS 7710 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[2] The Statement of Claim, the Notice of Motion and one of the plaintiff's memoranda are drafted in French. The intervener replied in French. The defendant replied in English, but the correspondence in the record suggests that he is bilingual. The oral arguments on the motion were made in English. The proceeding is therefore bilingual and section 126 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, applies. I find it appropriate to render this judgment in French.

Herscovitch v. Chatelain, 2016 ONSC 2378 (CanLII)

[5] Pursuant to s. 125 and s. 126 of the *Courts of Justice Act*, the official languages of the courts of Ontario are English and French and a party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. Whether the Respondent speaks, writes or works professionally in English as suggested by Ms. Carson is not the issue. I accept that French is her first language and the court is required to facilitate a bilingual proceeding.

W.F. v. CAS, 2015 ONSC 6751 (CanLII)

[16] The Appellant further submits that the motion judge erred in questioning the Appellant's right to a bilingual hearing. It is submitted:

[OUR TRANSLATION]

> It is worth commenting here on the remarks of Brownstone J. on the right recognized under sections 125 and 126 of the *Courts of Justice Act* for a proceeding to be conducted in French. French is one of the official languages of the Ontario justice system. To claim the right to a bilingual proceeding, one has to speak French, that is, one of the parties has to prove that they are sufficiently fluent in French to instruct their counsel in French. The rights set out in sections 125 and 126 are not subject to the discretion of the courts and are triggered as soon as the procedural requirements are satisfied.
>
> The idea that a judge, who might be unilingual, would conduct a voir-dire to test the applicant's language skills does not reflect the state of the law nor the state of the case law.
>
> However, the courts have clearly established that cost-effectiveness considerations cannot serve as a pretext to remove this right.
>
> W.F. communicates with her representatives solely in French. She may therefore require that the proceeding be conducted bilingually without being subjected to offensive remarks from a judge.

[…]

[19] It appears to me based on the quoted passages of the transcript that the Appellant speaks and understands French fluently. In my view the motions judge erred in fact in concluding otherwise. The Appellant's counsel (who was not the counsel who acted for the Appellant before

the motion judge) confirms that the Appellant communicates with him in French. Counsel for the Appellant does not request a remedy in respect of the motions judge's rulings and comments as to her request for a bilingual proceeding, but does request that this court enunciate that an error has been made in the court below in challenging the Appellant's request for a bilingual proceeding. A bilingual proceeding did take place at the request of the Appellant when she requested it. The motion judge correctly referred to the test relevant to a proceeding where a party requests that the proceeding take place as a bilingual proceeding. At page 6 of his reasons the motion judge stated,

> According to the Supreme Court of Canada, language rights should be interpreted purposively and remedially: *Reference Re Manitoba Language Rights*, 1992 CanLII 115 (SCC), [1992] 1 SCR 212; *Reference re Public Schools Act (Manitoba)*, 1993 CanLII 119 (SCC), [1993] 1 SCR 839. The right to require a bilingual proceeding is set out in s.126(1) of the *Courts of Justice Act*, which states,
>
> > A party to a proceeding **who speaks French** has the right to require that it be conducted as a bilingual proceeding. (emphasis mine)
>
> Provisions such as this have been accorded quasi-constitutional status: *R. v. McKenzie*, 2004 NSCA 10 (CanLII). It is settled law that the right of a party **who speaks French** to require that a proceeding be bilingual is a substantive and not merely procedural right. It is an absolute right: *Ndem v. Patel*, 2008 ONCA 148 (CanLII), [2008] OJ 748. Such a party need not prove that he or she cannot also communicate in English: *Tremblay v. Picquet*, [2010] O.J. 1216 (Ont.S.C.). **However, when such a request is made, it is incumbent upon the court to satisfy itself that the requesting party does in fact "speak French"**. It is clear that the requesting party's ability to "speak French" is a condition precedent to the right to a bilingual proceeding: *Mimico Co-operative Homes Inc. v. Ward*, [1997] OJ 519, 97 OAC 309; *A.J.W. v. B.W.*, 2014 ONSC 2745 (CanLII), [2014 OJ 2209. In applying the appropriate interpretation of the term "speaks French", I am guided by the Supreme Court of Canada's decision in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 SCR 768, [1999] SCJ 25, where an accused was denied a bilingual trial after making an application under s.530 of the *Criminal Code*, which provides:
>
> […]
>
> Bastarache J. considered what the words "language of the accused" meant:
>
> > 32 The expression "language of the accused" was not addressed at trial or in the Court of Appeal because it posed no problem to the parties. Admittedly, French was the maternal language of the accused and that fact was accepted as justification for invoking s. 530(4). The Attorney General of Canada explained that the definition of the language of the accused has been a contentious issue for many years. In *R. v. Yancey* (1899), 2 C.C.C. 320 (Que. Q.B. (Crown side)), at p. 323, the "habitua[l]" language of the accused was adopted. This solution was accepted in *Piperno v. The Queen*, 1953 CanLII 51 (SCC), [1953] 2 S.C.R. 292, at p. 296, and more recently in *Saraga v. The Queen*, Que. Sup. Ct., No. 500-01-01624L-876, November 18, 1988. Other courts have adopted the maternal language, or first language learned and still spoken; see *R. v. Brown*, Que. Sup. Ct., No. 700-01-3172-840, March 28, 1985, R.J.P.Q. 85-215; *R. v. Lorentz-Aflalo*, Que. Sup. Ct., No. 500-01-006114-877, October 8, 1987. In those cases, the court considered the language of education, the language used at home, the language used for social contacts and the language of the community to which the accused identifies. In *Saraga*, *supra*, Martin J. accepted the language of the preferred form of communication.

> 33 A simple approach, such as maternal language or language used in the home, is inappropriate inter alia because it does not provide a solution for many situations encountered in a multicultural society and does not respond to the fact that language is not a static characteristic. Some persons insist that they have two maternal languages. Some persons have a maternal language that is neither French nor English, and use in the home either the maternal language, or the maternal language and French, or English, or both English and French. Their language at work may be English or French. Their language in social contacts may not be the same as their language of work. Language of use can change when a person changes employment, marries or divorces, or makes new friends. Many other situations of this nature could be described. This is not necessary.
>
> 34 The solution to the problem, in my view, is to look at the purpose of s. 530. It is, as mentioned earlier, to provide equal access to the courts to accused persons speaking one of the official languages of Canada in order to assist official language minorities in preserving their cultural identity; *Ford*, *supra*, at p. 749. The language of the accused is very personal in nature; it is an important part of his or her cultural identity**. The accused must therefore be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself.** The principles upon which the language right is founded, the fact that the basic right is absolute, the requirement of equality with regard to the provision of services in both official languages of Canada and the substantive nature of the right all point to the freedom of Canadians to freely assert which official language is their own language. I note that s. 530(2) will apply to individuals who do not speak either of the two official languages. An accused's own language, for the purposes of s. 530(1) and (4), is either official language to which that person has a sufficient connection. It does not have to be the dominant language. If the accused has sufficient knowledge of an official language to instruct counsel, he or she will be able to assert that that language is his or her language, regardless of his or her ability to speak the other official language. **The Crown may challenge the assertion made, but it will have the onus of showing that the assertion is unfounded. The court, in such a case, will not inquire into specific criteria to determine a dominant cultural identity, nor into the personal language preferences of the accused. It will only satisfy itself that the accused is able to instruct counsel and follow the proceedings in the chosen language.** [Emphasis mine]

Although Bastarache J. sets out a relatively relaxed test for identifying the “language of the accused”, he makes it clear that not everyone can simply assert a right to a bilingual proceeding. Without a subjective connection to the official language, language rights are not triggered because there is no threat to the subjectively-felt cultural identity that these rights are intended to protect.

In my view, the words “speaks French” in the context of s.126 of the *Courts of Justice Act*, should be interpreted having regard to the intent and spirit of the provision: to permit francophone litigants, or litigants who are more comfortable communicating in French than in English, to participate in court proceedings in French. The words “speaks French” in this important legislative provision should connote something more than being able to order crème brulée in a restaurant. The party requesting a bilingual proceeding should be able to demonstrate that he/she has a working fluency in the French language sufficient to instruct counsel and follow the proceedings in French. In my view, anything less than this makes a mockery of s.126 and permits the invoking of this provision by obstructionist litigants and their counsel as a delay tactic or as a way of avoiding a particular judge. This strikes at the very heart of the integrity of the single-judge case management system, which is a hallmark of family court in this province. Unfortunately, this is a very real concern, given my 19 years’ experience on the Bench. Sadly, the circumstances of this case are by no means unusual or infrequent.

> I am not suggesting that a *voir dire* must be held each time a request for a bilingual proceeding is made, to determine whether the requesting party speaks French. For example, in cases where court documents have been prepared in French, or where the request for a bilingual proceeding is made promptly at the beginning of the case, or where a party's fluency in French is self-evident, the court need not make any inquiries and the request for a bilingual proceeding should be immediately granted. However, in circumstances giving rise to a suspicion that the request may not be a bona fide one – especially where the request is not made in a timely fashion, the court materials are in English and the requesting party's lawyer does not speak French – then the court should conduct a *voir dire* to satisfy itself that the requesting party does in fact "speak French" as contemplated by s.126. I appreciate that it can be difficult and awkward to assess someone's facility in a language that the assessor does not speak, but judges are routinely required to engage in similar inquiries when assessing the validity of a party's request for an interpreter (see for example *R. v. Wangchuk*, 2012 ONCJ 338 (CanLII)) or the competence of unaccredited interpreters, and so what is being suggested here is not foreign to judges. The presence of a French interpreter, who can be asked to converse with the requesting party, would generally be sufficient to assist the court in making a determination that the party "speaks French" with sufficient fluency to make the request for a bilingual hearing a bona fide one. Had such a voir dire been conducted in this case, it would have been abundantly clear to the case management judge that the mother's French language skills did not rise to the minimum level necessary to allow her to invoke s.126 of the *Courts of Justice Act*. Her request for a bilingual hearing was motivated by a desire to frustrate, obstruct and delay the inevitable disposition being ordered today. This was not fair to her children, whose permanency planning was significantly delayed by the transfer of this case to a bilingual judge. 2014 ONCJ 480 (CanLII)

[20] I do not have a ready solution for the problem that the motion judge stated gave rise to his concern with respect to the possibility of obstructionist litigants and their counsel invoking linguistic rights as a delay tactic, other than to note that it should be sufficient to advise all litigants of the right to a bilingual proceeding at the outset in order to ensure that they are aware of that right. It is my understanding that the bar is under an obligation to advise clients of the right to have a bilingual proceeding. This may not be sufficient to address what the motion judge states is a concern in his jurisdiction. In my experience in this jurisdiction there is not and never has been any such problem. Counsel for the Appellant referred to the decision of Rouleau J.A. in *Belende v. Patel*, 2008 ONCA 148 (CanLII), 89 O.R. (3d) 494.

> […]

[21] It is clear, as expressed by the decisions of the Supreme Court of Canada and the Court of Appeal quoted *supra*, that language rights cannot be infringed upon, and that a judge who attempts to weigh and evaluate the ability of a person to speak French in the matter which was attempted in this case invites an appeal, long delay, and potential prejudice to the children involved.

Kangudia v. Toronto Transit Commission, 2009 CanLII 60787 (ON SC)

[6] Unfortunately, the transcript erroneously contains only the English translation of the plaintiff's evidence that was given in French. As this action is a bilingual proceeding, the plaintiff was entitled to given his evidence in French during his cross-examination and it is that evidence, and not its translation, that is received as the plaintiff's evidence during his cross-examination.

Nottingham v. Emond, 1997 CanLII 17034 (ON SC)

[22] We must start with the proposition that, regardless of his level of English comprehension and expression, Mr. Emond was clearly entitled to a bilingual hearing; subsection 126(1) of the *Courts*

of Justice Act, R.S.O. 1990 c. C-43. This right was recognized and given effect to both at the hearing in Provincial Division and on the appeal in General Division.

Bajikijaie v. Mbuyi, 2009 CanLII 29486 (ON SCDC)

The Issue on Appeal

[1] This matter, involving modest amounts of money in an award for costs, raises important questions about the nature of bilingual proceedings and the interpretation of ss. 125 and 126(1) and (2) of the *Courts of Justice Act*.

[2] The Appellant, Benjamin Felix Bajikijaie, filed his Statement of Claim in French, triggering s. 126 of the *Courts of Justice Act*, as well as s. 3 of the *Regulation for Bilingual Proceedings* made under the *Courts of Justice Act*, O. Reg. 53.01. Master Hawkins is not bilingual. He was assigned to this file as the Case Management Master. He ordered that the action be discontinued on consent. He received written submissions and fixed costs in favour of the defendants. The Appellant seeks to appeal from the Master's order for costs, as the Appellant argues that the matter should have been dealt with by a bilingual Master.

[3] Hoy J., on April 10, 2008, granted leave to appeal the award of costs with respect to whether the Appellant's language rights had been infringed pursuant to section 62.02(4)(b). She relied upon the Court of Appeal decision in *Ndem v. Patel*, 2008 ONCA 148 (CanLII) in reaching her conclusion:

> [27] In *Ndem v. Patel*, the Court of Appeal set aside a summary judgment order, because the appellant's right to a bilingual hearing was violated, and referred the matter back to the court below, without consideration of the merits of the underlying claim. Rouleau J.A. wrote, "English and French are the official languages of the courts in Ontario, and the court has a responsibility to ensure compliance with language rights under s.126 of the *Courts of Justice Act*. A proper interpretation of this provision is one that is consistent with the preservation and development of official language communities in Canada and with the respect and preservation of their cultures: See *Beaulac*, paras. 25, 34 and 45. Violation of these rights, which are quasi-constitutional in nature, constitutes material prejudice to the linguistic minority."

Applicable Legislation

[4] Sections 125 and 126(1) and (2) of the *Courts of Justice Act* provide:

> *Official languages of the courts*
>
> 125.(1) The official languages of the courts of Ontario are English and French.
>
> *Bilingual proceedings*
>
> 126.(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.
>
> *Idem*
>
> The following rules apply to a proceeding that is conducted as a bilingual proceeding:
>
> . . .

> The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.

[…]

Case Law

[6] The case law is clear that the court system must accommodate the equal right to be heard in English and in French. The judgment in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 R.C.S. 768 at paragraph 39 confirms this overriding principle:

> Je tiens à souligner qu'un simple inconvénient administratif n'est pas un facteur pertinent. La disponibilité de sténographes judiciaires, la charge de travail des procureurs ou des juges bilingues et les coûts financiers supplémentaires de modification d'horaire ne doivent pas être pris en considération parce que l'existence de droits linguistiques exige que le gouvernement satisfasse aux dispositions de la Loi en maintenant une infrastructure institutionnelle adéquate et en fournissant des services dans les deux langues officielles de façon égale. Comme je l'ai dit plus tôt, dans un cadre de bilinguisme institutionnel, une demande de services dans la langue de la minorité de langue officielle ne doit pas être traitée comme s'il y avait une langue officielle principale et une obligation d'accommodement en ce qui concerne l'emploi de l'autre langue officielle. Le principe directeur est celui de l'égalité des deux langues officielles.

[7] The decision in *Belende v. Greenspoon* (2004), 2004 CanLII 5552 (ON CA), 189 O.A.C. 140 (C.A.) is unequivocal in its conclusion that filing the first document in French deems specification that all future proceedings are to be presided over by a bilingual person:

> [11] Section 3(1) of Regulation 53/01 adopted pursuant to the *Courts of Justice Act* provides that if the first document filed by a party to a proceeding is in French, that party is deemed to have specified for purposes of s.126 that all future hearings in the proceeding be presided over by a judge or officer who speaks English and French.

[…]

Conclusion

[22] I conclude that s. 3.(1) of *Regulation* 53.01 is mandatory in its terms: "if the first document that is filed by or issued at the request of a party to a proceeding is written in French, the party shall be deemed to have exercised the right under subsection 126(1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French."

[23] The deeming provisions that require all future hearings in the proceeding to be presided over by a bilingual person clearly have been breached. A hearing includes an ex-parte motion.

[24] The case should have been assigned to a bilingual Master as originally requested and contemplated by the parties. If a bilingual Master was not available, then it should have been assigned to a bilingual judge. The request for a bilingual master is clear in the Case History Report and initially this requirement was complied with.

[25] The administrative system unfortunately failed to adequately flag this case as a bilingual matter and it was assigned to Master Hawkins. The conclusion in this decision is in no way critical of the Master - it is the administrative system that has failed. I note that it is also incumbent upon

counsel and the parties in bilingual matters to ensure that the matter proceeds before the appropriate bilingual court officer, as inevitably there are errors that occur in the administrative system.

[26] Me. Côté's suggestion that his clients wished to proceed with the motion in English, and therefore a bilingual master was not necessary, does not respond to the problem. Me. Côté's clients of course had the right to plead and file documents in English. That right does not affect the requirement that a bilingual person be assigned to hear all matters in the file, even if Me. Côté chose to file his clients' documents in English.

[27] As the Court of Appeal made it clear in *Belende v. Greenspoon*, *supra*, the right to have a bilingual court officer is a substantive, not merely procedural right:

> [15] Where, as in the present case, the appellant has met the procedural requirements to trigger a right to a bilingual hearing this right is more than purely procedural, it is substantive and the appropriate remedy is to set aside the order: see *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768.

[28] It would be unusual in fixing costs not to review the pleadings in order to understand the nature of the proceedings and the context in which the costs award is sought. It is not clear whether the Master in this case reviewed the pleadings. It is clear that had he reviewed the Appellant's Statement of Claim he would not have understood it. Although the documents filed with the Master for the motion for costs were in English, they included the letter written in French founding the claim for defamation. Clearly he would not have understood this letter.

[29] For these reasons, I am of the view that the order of Master Hawkins should be set aside and that the issue of costs should be determined by a bilingual Master, with the Appellant having the opportunity to make submissions.

---

126. (2) Same

126. (2) The following rules apply to a proceeding that is conducted as a bilingual proceeding:

> **1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.**
>
> **2. If a hearing that the party has specified is held before a judge and jury in an area named in Schedule 1, the jury shall consist of persons who speak English and French.**
>
> **3. If a hearing that the party has specified is held without a jury, or with a jury in an area named in Schedule 1, evidence given and submissions made in English or French shall be received, recorded and transcribed in the language in which they are given.**
>
> **4. Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.**
>
> **5. Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.**

6. In an area named in Schedule 2, a party may file pleadings and other documents written in French.

7. Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.

8. The reasons for a decision may be written in English or French.

9. On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language.

R.S.O. 1990, c. C.43, s. 126 (2).

ANNOTATIONS

Belende v. Greenspoon, 2004 CanLII 5552 (ON CA)

[10] The Marchand J. judgment bears the same Court File Number as the one before Boyko J. Pursuant to the order of Boyko J., the mortgage action was to be a bilingual proceeding. Bilingual proceedings are governed by s. 126 of the *Courts of Justice Act*, R.S.O. 1990, c. C43. Section 126(2)(1) provides that:

> The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.

[11] Section 3(1) of *Regulation 53/01* adopted pursuant to the *Courts of Justice Act* provides that if the first document filed by a party to a proceeding is in French, that party is deemed to have specified for purposes of s. 126 that all future hearings in the proceeding be presided over by a judge or officer who speaks English and French.

[12] Section 126(3) of the *Courts of Justice Act* stipulates that s. 126(2)(1) applies with necessary modifications to appeals. Since the appellant's Notice of Appeal was filed in French, the appellant is deemed to have specified that all future hearings in the Court of Appeal were to be presided over by a judge or officer who speaks English and French.

[13] When the registrar hears a motion to strike an appeal pursuant to s. 61.13, the proceeding is a "hearing" as that term is understood in s. 126 and the registrar hearing that motion is "an officer" for purposes of that section.

[14] In the present case, the registrar who heard the motion did not speak English and French and, as a result, there was a breach of s. 126.

[15] Where, as in the present case, the appellant has met the procedural requirements to trigger a right to a bilingual hearing this right is more than purely procedural, it is substantive and the appropriate remedy is to set aside the order: see *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768.

Tremblay v. Picquet, 2010 ONSC 1776 (CanLII)

[4] It is settled law that the right of a party who speaks French to require that a proceeding be bilingual is a substantive, and not merely procedural, right. Such a party need not prove that he or she cannot also communicate in English. The rules governing the conduct of a bilingual

proceeding are found in subsection 2 of section 126 of the *Courts of Justice Act*. They allow a party to file documents in French in any court with the consent of the other party. Without that consent, which is not present in this case, the right to file documents in French is permitted in all Family Courts, the Ontario Court of Justice, Small Claims Courts, and in those Superior Court locations listed under Schedule 2. Simcoe is not one of those listed locations. Even when adjudicating upon a family law matter, the Superior Court of Justice is not a "Family Court" unless it meets the definition to be found at section 21.1 of the *Courts of Justice Act*. The Superior Court of Justice at Simcoe does not fit within those defining terms. Accordingly, under all of these circumstances, the respondent cannot file her documents in French at Simcoe unless some relief is granted.

[5] There does not appear to be any express jurisdiction to grant such relief directly, i.e. to grant an order that documents may be filed in French at Simcoe when the other party does not consent to that being done. I do not accept the argument of the respondent's counsel that such jurisdiction arises implicitly from the permissive language in section 126 of the *Courts of Justice Act* relative to such filings. I say this notwithstanding Mr. Justice Rivard's statement in *Wittenberg* v. *Fred Geisweiller/Locomotive Investments Inc*., reported at 1999 CanLII 14805 (ON SC), 1999 CanLII 14805, that section 126 should be given a broad interpretation to protect the underlying substantive right to a bilingual proceeding. There is a difference between making a broad interpretation and finding jurisdiction where none apparently exists.

Kangudia v. Toronto Transit Commission, 2009 CanLII 60787 (ON SC)

[6] Unfortunately, the transcript erroneously contains only the English translation of the plaintiff's evidence that was given in French. As this action is a bilingual proceeding, the plaintiff was entitled to given his evidence in French during his cross-examination and it is that evidence, and not its translation, that is received as the plaintiff's evidence during his cross-examination.

LeBlanc v. York Catholic District School Board, 2002 CanLII 37923 (ON SC)

[42] There remains one thing to add. It has to do with Mr. LeBlanc's complaint regarding the use of French language in this case. He not only wants the court (and the tribunals) to communicate with him in French but the parties and their lawyers to do so as well. In addition, he wants the parties to file their pleadings and other documents in French. Finally, what irritates Mr. LeBlanc most is that the parties send their documents to him with his address written in English rather than in French as indicated in his statement of claim, namely: Casier Postale 27602, Succursale Yorkdale, Toronto, Ontario, M6A 3B8. From his perspective, all of this translates into a failure to communicate with him.

[43] That is not the case in law. It is important that the court and the administration demonstrate an ability to communicate with Mr. LeBlanc in French and that they do so. However, there is no such obligation on the part of the English parties or their lawyers. Section 125 of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 provides that the official languages of the court in Ontario are French and English. Section 126(1) and (2) states:

> […]

[44] Thus Mr. LeBlanc has the right to a bilingual judge. He has the right to file his pleadings and his other documents in French, and he can plead in French. But he cannot insist that the other parties and their lawyers file their pleadings and their other documents in French or communicate with him in French, if they do not wish to do so. They have the right to use English.

[45] Finally, while it is preferable that the parties address their communications to Mr. LeBlanc at his address, written in French as he desires, it is not obligatory. The use of an English address does not provide a reason for Mr. LeBlanc not to accept their documents and then pretend that he

has not received them. I am satisfied that the defendants have served their documents in a manner which is appropriate under the *Rules of Civil Procedure*.

Nottingham v. Emond, 1997 CanLII 17034 (ON SC)

[22] We must start with the proposition that, regardless of his level of English comprehension and expression, Mr. Emond was clearly entitled to a bilingual hearing; subsection 126(1) of the *Courts of Justice Act*, R.S.O. 1990 c. C-43. This right was recognized and given effect to both at the hearing in Provincial Division and on the appeal in General Division.

Casselman Electrique Ltée v. Gaudreau, 1997 CarswellOnt 5970, [1997] O.J. No. 2005 (ON CJ) [hyperlink not available]

[1] There are two official languages in the courts of Ontario. They are English and French. In Ontario, a party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding. This is a substantive right conferred upon francophone citizens of Ontario pursuant to section 126 of the *Courts of Justice Act*.

[2] In designated areas within the Province, (Ottawa-Carleton and York being just two such areas) a party may file pleadings and other documents written in French. (s. 126(2).6, C.J. Act). In the present case, the statement of claim has been issued in the French language. That is the right of the plaintiff. The defendant is not entitled to insist on a translation as he could, if, for example, the pleading were issued in Italian, Spanish, or Russian. (See s. 125(2)(b) C.J. Act.)

[3] A requisition for a bilingual proceeding may be made at any time before the action is set down for trial. (*Regulation 185*, R.R.O. 1990.) In the present case, this has been done. The fact that the claim was issued prior to the requisition being filed does not entitle the defendant to a translation of the claim, the plaintiff having acted within its rights throughout.

[4] The defendant cites *Groulx v. Roman Catholic Episcopal Corporation*, [1991] O.J. No. 418, as authority for its argument. I note that this case was decided before the establishment of schedule 2 districts, and as such cannot be valid authority today.

[5] The defendant here is insisting upon a right he does not enjoy. Until recently, francophone citizens who could not readily understand the English language, were put to the necessity of hiring English counsel and translating English documents into the French language for ease of understanding. Sections 125 and 126 of the *Courts of Justice Act* levelled the playing field in a Province which values both official languages.

[6] The motion is dismissed with costs. Costs fixed in the amount of $1,200.00.

Bajikijaie v. Mbuyi, 2009 CanLII 29486 (ON SCDC)

The Issue on Appeal

[1] This matter, involving modest amounts of money in an award for costs, raises important questions about the nature of bilingual proceedings and the interpretation of ss. 125 and 126(1) and (2) of the *Courts of Justice Act*.

[2] The Appellant, Benjamin Felix Bajikijaie, filed his Statement of Claim in French, triggering s. 126 of the *Courts of Justice Act*, as well as s. 3 of the *Regulation for Bilingual Proceedings* made under the *Courts of Justice Act*, O. Reg. 53.01. Master Hawkins is not bilingual. He was assigned to this file as the Case Management Master. He ordered that the action be discontinued on consent. He received written submissions and fixed costs in favour of the defendants. The

Appellant seeks to appeal from the Master's order for costs, as the Appellant argues that the matter should have been dealt with by a bilingual Master.

[3] Hoy J., on April 10, 2008, granted leave to appeal the award of costs with respect to whether the Appellant's language rights had been infringed pursuant to section 62.02(4)(b). She relied upon the Court of Appeal decision in *Ndem v. Patel*, 2008 ONCA 148 (CanLII) in reaching her conclusion:

> [27] In *Ndem v. Patel*, the Court of Appeal set aside a summary judgment order, because the appellant's right to a bilingual hearing was violated, and referred the matter back to the court below, without consideration of the merits of the underlying claim. Rouleau J.A. wrote, "English and French are the official languages of the courts in Ontario, and the court has a responsibility to ensure compliance with language rights under s.126 of the Courts of Justice Act. A proper interpretation of this provision is one that is consistent with the preservation and development of official language communities in Canada and with the respect and preservation of their cultures: See *Beaulac*, paras. 25, 34 and 45. Violation of these rights, which are quasi-constitutional in nature, constitutes material prejudice to the linguistic minority."

Applicable Legislation

[4] Sections 125 and 126(1) and (2) of the *Courts of Justice Act* provide:

> *Official languages of the courts*
>
> 125.(1) The official languages of the courts of Ontario are English and French.
>
> *Bilingual proceedings*
>
> 126.(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.
>
> *Idem*
>
> The following rules apply to a proceeding that is conducted as a bilingual proceeding:
>
> . . .
>
> The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.

[…]

Case Law

[6] The case law is clear that the court system must accommodate the equal right to be heard in English and in French. The judgment in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 R.C.S. 768 at paragraph 39 confirms this overriding principle:

> Je tiens à souligner qu'un simple inconvénient administratif n'est pas un facteur pertinent. La disponibilité de sténographes judiciaires, la charge de travail des procureurs ou des juges bilingues et les coûts financiers supplémentaires de modification d'horaire ne doivent pas être pris en considération parce que l'existence de droits linguistiques exige que le gouvernement

satisfasse aux dispositions de la *Loi* en maintenant une infrastructure institutionnelle adéquate et en fournissant des services dans les deux langues officielles de façon égale. Comme je l'ai dit plus tôt, dans un cadre de bilinguisme institutionnel, une demande de services dans la langue de la minorité de langue officielle ne doit pas être traitée comme s'il y avait une langue officielle principale et une obligation d'accommodement en ce qui concerne l'emploi de l'autre langue officielle. Le principe directeur est celui de l'égalité des deux langues officielles.

[7] The decision in *Belende v. Greenspoon* (2004), 2004 CanLII 5552 (ON CA), 189 O.A.C. 140 (C.A.) is unequivocal in its conclusion that filing the first document in French deems specification that all future proceedings are to be presided over by a bilingual person:

> [11] Section 3(1) of *Regulation 53/01* adopted pursuant to the *Courts of Justice Act* provides that if the first document filed by a party to a proceeding is in French, that party is deemed to have specified for purposes of s.126 that all future hearings in the proceeding be presided over by a judge or officer who speaks English and French.

[…]

Conclusion

[22] I conclude that s. 3.(1) of *Regulation 53.01* is mandatory in its terms: "if the first document that is filed by or issued at the request of a party to a proceeding is written in French, the party shall be deemed to have exercised the right under subsection 126(1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French."

[23] The deeming provisions that require all future hearings in the proceeding to be presided over by a bilingual person clearly have been breached. A hearing includes an *ex-parte* motion.

[24] The case should have been assigned to a bilingual Master as originally requested and contemplated by the parties. If a bilingual Master was not available, then it should have been assigned to a bilingual judge. The request for a bilingual master is clear in the Case History Report and initially this requirement was complied with.

[25] The administrative system unfortunately failed to adequately flag this case as a bilingual matter and it was assigned to Master Hawkins. The conclusion in this decision is in no way critical of the Master - it is the administrative system that has failed. I note that it is also incumbent upon counsel and the parties in bilingual matters to ensure that the matter proceeds before the appropriate bilingual court officer, as inevitably there are errors that occur in the administrative system.

[26] M$^{e.}$ Côté's suggestion that his clients wished to proceed with the motion in English, and therefore a bilingual master was not necessary, does not respond to the problem. M$^{e.}$ Côté's clients of course had the right to plead and file documents in English. That right does not affect the requirement that a bilingual person be assigned to hear all matters in the file, even if M$^{e.}$ Côté chose to file his clients' documents in English.

[27] As the Court of Appeal made it clear in *Belende v. Greenspoon*, *supra*, the right to have a bilingual court officer is a substantive, not merely procedural right:

> [15] Where, as in the present case, the appellant has met the procedural requirements to trigger a right to a bilingual hearing this right is more than purely procedural, it is substantive

and the appropriate remedy is to set aside the order: see *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768.

[28] It would be unusual in fixing costs not to review the pleadings in order to understand the nature of the proceedings and the context in which the costs award is sought. It is not clear whether the Master in this case reviewed the pleadings. It is clear that had he reviewed the Appellant's Statement of Claim he would not have understood it. Although the documents filed with the Master for the motion for costs were in English, they included the letter written in French founding the claim for defamation. Clearly he would not have understood this letter.

[29] For these reasons, I am of the view that the order of Master Hawkins should be set aside and that the issue of costs should be determined by a bilingual Master, with the Appellant having the opportunity to make submissions.

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126. (2.1) Prosecutions

126. (2.1) When a prosecution under the *Provincial Offences Act* by the Crown in right of Ontario is being conducted as a bilingual proceeding, the prosecutor assigned to the case must be a person who speaks English and French.

1994, c. 12, s. 43 (1).

126. (3) Appeals

126. (3) When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications.

R.S.O. 1990, c. C.43, s. 126 (3).

ANNOTATIONS

Belende v. Greenspoon, 2004 CanLII 5552 (ON CA)

[12] Section 126(3) of the *Courts of Justice Act* stipulates that s. 126(2)(1) applies with necessary modifications to appeals. Since the appellant's Notice of Appeal was filed in French, the appellant is deemed to have specified that all future hearings in the Court of Appeal were to be presided over by a judge or officer who speaks English and French.

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126. (4) Documents

126. (4) A document filed by a party before a hearing in a proceeding in the Family Court of the Superior Court of Justice, the Ontario Court of Justice or the Small Claims Court may be written in French.

1994, c. 12, s. 43 (2); 1996, c. 25, s. 9 (17, 18).

126. (5) Process

126. (5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Family Court of the Superior Court of Justice or the Ontario Court of Justice may be written in French.

1994, c. 12, s. 43 (2); 1996, c. 25, s. 9 (17, 18).

ANNOTATIONS

R. v. Simard, [1995] O.J. No. 3989, 27 O.R. (3d) 116 (ON CA) [hyperlink not available]

[8] By virtue of s. 95(2) of the *Courts of Justice Act*, ss. 125(1) and 126(5) of this *Act* are also applicable to criminal proceedings except in so far as they are inconsistent with the *Criminal Code*. These provisions read as follows:

> 95(2) Sections 109 (constitutional questions) and 123 (giving decisions), section 125 and subsection 126(5) (language of proceedings) and sections 132 (judge sitting on appeal), 136 (prohibition against photography at court hearing) and 146 (where procedures not provided) also apply to proceedings under the *Criminal Code* (Canada), except in so far as they are inconsistent with that Act.
>
> . . . . .
>
> 125(1) The official languages of the courts of Ontario are English and French.
>
> . . . . .
>
> 126(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

[15] Section 126(5) of the *Courts of Justice Act*, *supra*, does not require that a process issued in a criminal proceeding be written in French. It is only a possibility. The subsection does not create an obligation in this respect, and s. 126(6) which requires that the courts translate such documents does not apply to a criminal proceeding as it is not mentioned in s. 95(2) of the *Courts of Justice Act*. In this respect, the provincial legislation corresponds to the *Criminal Code*.

---

126. (6) Translation

126. (6) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language.

R.S.O. 1990, c. C.43, s. 126 (6).

ANNOTATIONS

R. v. Simard, [1995] O.J. No. 3989, 27 O.R. (3d) 116 (ON CA) [hyperlink not available]

[15] Section 126(5) of the *Courts of Justice Act*, supra, does not require that a process issued in a criminal proceeding be written in French. It is only a possibility. The subsection does not create an obligation in this respect, and s. 126(6) which requires that the courts translate such

documents does not apply to a criminal proceeding as it is not mentioned in s. 95(2) of the *Courts of Justice Act*. In this respect, the provincial legislation corresponds to the *Criminal Code*.

Diaw v. Diaw, 2009 CanLII 15892 (ON SC)

[14] Counsel for the respondent argues that both the applicant and her counsel knew that the respondent did not understand English. In fact, a letter dated May 26th, 2008 written by the respondent, in French, to the applicant's counsel asked him to produce all documents (then a draft separation agreement) in French. That letter was never responded to by counsel for the applicant. Notwithstanding this request by the respondent, the application was issued in English only and no translation was requested by counsel for the applicant, pursuant to s. 126(6) of the *Courts of Justice Act*.

[15] In fairness to counsel for the applicant, as an officer of the court, Mr. Pizzale advised this court that in previous matters, he has requested from court staff in the County of Middlesex, for the translation of pleadings from one of the two official languages to the other, and that he has been informed that the court does not do translation and the party has to retain his or her own translator.

[16] Clearly, s. 126(6) of the *Courts of Justice Act* provides otherwise. Specifically, sub-paragraphs (4), (5) and (6) state:

[…]

[17] The County of Middlesex is a designated county for this purpose.

Analysis:

[18] Counsel for the respondent argues that the application ought to have been either issued in French or at the very worst translated into French before served on the respondent. As a finding of fact, counsel for the applicant knew that the respondent did not read English very well. As a result, the respondent did not understand from the initiating process, that he had to respond in writing within a period of time. Although the applicant deposes that she so advised him of that time requirement, it must be said that in litigation and especially in family law cases, often parties do not listen to each other. Can this court deny a fundamental right of justice to understand the process upon which the respondent is facing based on an affidavit that the adverse party advised this respondent that he had to respond accordingly? I think not, there has to be more.

[…]

[23] The applicant shall request from the court the translation of the application into French. The respondent shall serve and file his answer and financial statement within 30 days of receipt of the translated application. In so doing, presumably in French, the respondent shall seek from the court the translation of his answer and other pleadings into English for the applicant and, of course, vice versa regarding any reply.

---

126. (7) Interpretation

126. (7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English.

R.S.O. 1990, c. C.43, s. 126 (7).

ANNOTATIONS

Tremblay v. Picquet, 2010 ONSC 1776 (CanLII)

[8] The respondent disputes either type of relief being sought, arguing that the respondent can communicate in English, that his wife, who is assisting him with his case, cannot read French, and that it would be inconvenient to travel to Hamilton. The respondent's alleged ability to communicate in English does not disentitle her to a bilingual proceeding as is mentioned above. The applicant can speak and read French. Translation for the non-party wife can be provided by him or by the court itself under the provisions of subsection (7) of section 126 of the *Courts of Justice Act*. The minor inconvenience of travel to Hamilton is offset by the importance of the right being protected.

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126. (8) Parties who are not natural persons

126. (8) A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise.

R.S.O. 1990, c. C.43, s. 126 (8).

126. (9) Regulations

126. (9) The Lieutenant Governor in Council may make regulations,

(a) prescribing procedures for the purpose of this section;

(b) adding areas to Schedule 1 or 2.

R.S.O. 1990, c. C.43, s. 126 (9).

ANNOTATIONS

Whitfield v. Whitfield, 2016 ONCA 720 (CanLII)

(i) Costs of a bilingual proceeding

[34] The respondent submits that there were additional costs unnecessarily incurred as a result of the appellant requiring interpretation services during the bilingual trial because he does not understand the French language. She maintains that it would be unfair to require her to pay for those costs as it would be tantamount to punishing her for exercising her right to a bilingual proceeding.

[35] We disagree.

[36] First, there is no evidence to support the respondent's estimates of the time allegedly spent on interpretation during the trial, which, at almost a third of the trial, are excessive and not borne out by the trial transcript.

[37] Second, this was a bilingual civil proceeding pursuant to s. 126 of the *Courts of Justice Act*. As a result, each party had the respective right to lead evidence and make submissions in French or English, and receive the assistance of an interpreter, if required.

[38] Finally, any extra trial time taken up with interpretation is no different than any other step in a trial. There is no evidence that the appellant or his counsel were improperly using interpreters or otherwise wasting trial time.

[39] An examination of the trial transcript demonstrates that the trial was lengthy because of the number of witnesses called, including expert witnesses, and their cross-examinations, not because of the interpretation. All of this is normal trial time. The successful party, the appellant, is entitled to his reasonable costs for the trial, without any deduction to reflect the fact that he required the services of an interpreter.

R. v. Halich, 2015 ONCA 76 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[5] Before this court, the applicant insisted on the fact that he believed to have car insurance at the time of his arrest by the police. The *amicus* submits that the language rights of the applicant, who is Francophone, were not respected when he attended his appeal. He insists on the fact that it was clear that the applicant spoke French and that he was attempting to exercise his right to a bilingual proceeding. The provincial court judge should have proposed a bilingual appeal. Counsel for the Crown maintains that the applicant was not entitled to a bilingual appeal according to the laws and procedures applicable to proceedings for provincial offences and that even if he had been granted a bilingual appeal, the outcome would have been the same since the applicant confirmed that he had pled guilty.

[…]

[7] The case before us does not contain all the documents adduced before the trial court and on appeal. Specifically, it does not contain the documents that would tell us whether the applicant requested that his trial be bilingual (under sections 4 or 5 of *Regulation 53/01, Bilingual Proceedings*) despite the fact that he chose to be represented by an Anglophone paralegal resulting in the proceeding being conducted in English. It is also not clear whether the applicant requested a bilingual appeal before the Ontario Court of Justice before attending the appeal.

[8] Nonetheless, this case raises an issue that is relevant beyond the applicant's particular situation and that concerns the language rights of appellants in proceedings for provincial offences under section 126 of the *Courts of Justice Act* and the provisions of *Regulation 53/01* (specifically sections 4, 5, 7 and 8). Do Francophone appellants have a right to a bilingual appeal even if they did not request a bilingual trial? A factor that could be important in this analysis is that the court may, "where it considers it to be in the interests of justice", exercise the powers of a trial judge under subsection 117(1) of the *Provincial Offences Act*.

[9] For these reasons, I conclude that it is in the public interest and in the interest of the proper administration of justice that the motion for leave to appeal be allowed.

Belende v. Patel, 2008 ONCA 148 (CanLII)

[3] These were bilingual proceedings conducted under s. 126 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43. Three motions were scheduled for January 11, 2007, two in this case and one in another file involving the appellant. Before the hearing, the appellant was notified that a bilingual judge would not be available to hear the motions. On the hearing date, the appellant's agent

appeared and requested that the hearing of the motions be adjourned to a later date when a bilingual judge would be available.

The Decision Below

[4] The motion judge, who was not bilingual, denied the appellant's motion for an adjournment and proceeded to hear the three scheduled motions including the motion now under appeal. In that motion, the respondents sought the dismissal of the claim pursuant to Rules 20 and 21 [of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194].

[5] The motion judge explained that a bilingual judge was not available and that in his opinion, the appellant was "attempting to manipulate the bilingual obligation of provincial laws to his own purpose" in order to delay the proceedings. The motion judge stated as follows [at paras. 2-4]:

> The motions in this and a related matter were returnable on a day on which a French-speaking judge was unavailable. The actions of Mr. Ndem were responsible for that unavailability. In various proceedings in this Court, including this action, Mr. Ndem has objected to the presence of more than 16 individual judges as not being qualified to preside due to inadequacy in the French language. [page497]
>
> On at least three occasions, bilingual judges from outside Toronto have made special arrangements to preside, only to meet with complaint about their French speaking ability, or on occasion when Mr. Ndem did not appear, later providing a less than adequate excuse.
>
> Prior to the return of this motion, I was advised by the only bilingual judges available that due to Mr. Ndem's previous complaint, they did not wish to preside.

[6] The motion judge stated that in order to understand the appellant's position, he had obtained assistance from the respondents' counsel and also, "to the extent required", had had the appellant's written submissions translated into English. The motion judge also noted that to the best of his knowledge, the appellant was bilingual and that, moreover, an interpreter was available in the courtroom.

[7] Therefore, although it was a bilingual proceeding and the statement of claim and several documents in the file were written only in French, the motions were heard by a unilingual judge. In the result, the respondents' motion was granted and the appellant's action against them was dismissed. Although the appellant had filed a cross-motion, it appears that the cross- motion was not heard.

Analysis

[8] The appellant appeals (in part) on the basis that the motion judge's failure to adjourn the proceedings and to refer the matter to a bilingual judge violated the appellant's right to a bilingual proceeding under s. 126 of the *Courts of Justice Act*. He argues that since this is a fundamental right, the appeal should be allowed without proof that he suffered prejudice. For the reasons that follow, I agree with the appellant and would therefore allow the appeal.

[…]

(a) Refusal to grant the adjournment

(i) Appellant's complaints

[13] In his reasons, the motion judge referred to the difficulties many judges encountered in cases involving the appellant and the fact that the appellant had complained about their French language skills. Although the motion judge made these comments, there is nothing in the record that would allow us to assess these assertions. Specifically, there is nothing in the record to indicate what happened before the motion judge or to verify the complaints that the appellant has apparently filed.

[14] In my view, the fact that the appellant has complained about the French language skills of several Toronto judges does not necessarily lead to a conclusion that all the bilingual judges in the region are precluded from hearing cases involving him. In fact, the appellant even criticized the motion judge who nevertheless [page499] proceeded to hear the motions. What's more, the appellant has criticized judges of this court and still these judges continue to hear his appeals.

[15] The motion judge's comments might be read as suggesting that the appellant's criticisms amounted to an allegation of bias. However, criticism of a judge or an allegation of bias should not necessarily lead to the conclusion that a judge cannot preside, especially when this would lead to the loss of the right to a bilingual proceeding. Instead, a judge faced with such an allegation should receive supporting evidence and then decide, on a case by case basis, whether to recuse himself or herself.

[16] The right to a bilingual proceeding is conferred by s. 126 of the *Courts of Justice Act* which reads, in part, as follows:

> 126(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.
>
> (2) The following rules apply to a proceeding that is conducted as a bilingual proceeding:
>
> **1. The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.**

[17] Despite this provision, the respondents maintain that no right is absolute and that where there has been an abuse of process, the court may deny the right to bilingual proceedings.

[18] However, the right in s. 126 is not qualified by any grant of judicial discretion. Although it is true that the court has the inherent jurisdiction to control the conduct of the proceedings, it is also clear that the court's jurisdiction cannot be exercised in a manner that would conflict with the express provisions of a statute.

[19] What's more, a court has other means at its disposal to address a litigant's abuse of process. For example, the court may deny the litigant's application for an adjournment, stay the proceedings, or find the abuse to constitute a contempt of court. Moreover, the court may also prohibit a vexatious litigant from continuing the proceedings or initiating others. These provisions (and others) enable the court to control its process and to prevent abuse without violating the litigant's statutory right to a bilingual proceeding.

[20] In light of the foregoing, in my view, the motion judge should have adjourned the motions to a date when a bilingual judge was available. [page500]

(b) If an error was made, should the Court of Appeal make the decision that the motion judge should have made?

[21] The respondents submit that even if the appellant's right to a bilingual hearing was violated, this court should nevertheless dismiss the appeal since it is clear that the underlying claim is without merit. I disagree and would not consider the merits of the underlying claim.

[22] The right to a bilingual hearing is a particular kind of right. It is not a procedural right put into place to ensure respect for the principles of fundamental justice or the right to a fair trial. As indicated by the Supreme Court of Canada in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768, [1999] S.C.J. No. 25, at para. 41:

> Language rights have a totally distinct origin and role [when compared with the right to a fair trial]. They are meant to protect official language minorities in this country and to insure the equality of status of French and English.

[23] In *Ndem v. Greenspoon*, 2004 CanLII 5552 (ON CA), [2004] O.J. No. 3269, 189 O.A.C. 140 (C.A.), at para. 15, this court stated:

> Where, as in this case, the appellant has met the procedural requirements to trigger a right to a bilingual hearing, this right is more than purely procedural, it is substantive and the appropriate remedy is to set aside the order. (Citation omitted)

[24] Therefore, in my view, the appropriate disposition is to set aside the order and to refer the matter back to the court below. English and French are the official languages of the courts in Ontario, and the court has a responsibility to ensure compliance with language rights under s. 126 of the *Courts of Justice Act*. A proper interpretation of this provision is one that is consistent with the preservation and development of official language communities in Canada and with the respect and preservation of their cultures: see Beaulac, at paras. 25, 34 and 45. Violation of these rights, which are quasi- constitutional in nature, constitutes material prejudice to the linguistic minority. A court would be undermining the importance of these rights if, in circumstances where the decision rendered on the merits was correct, the breach of the right to a bilingual proceeding was tolerated and the breach was not remedied.

[…]

[27] I conclude with the observation that it is somewhat troubling that although the motions below were brought as part of a bilingual proceeding with sufficient notice, no bilingual judge was available to hear them. [See Note 1 below]

N.B. – See Note 1 referred to in paragraph 27 of the above judgment:

The need ofr (sic) more bilingual judges in Ontario courtrooms, particularly Toronto, was noted by the Honourable Coulter A. Osborne, Q.C., in a recent report, Civil Justice Reform Project (November 2007), online:

at p. 13, where he stated:

. . . [D]uring consulations, an ongoing need was noted for the appointment of more bilingual judges, particularly in Toronto (including the Court of Appeal). Any future appointments should consider the need for bilingual judges in regions which at a practical level are required to provide bilingual trials.

The Law and Analysis

[44] The law with respect to French language rights in court hearings in Ontario is found in sections 125 and 126 of the *Courts of Justice Act* and accompanying *regulation 53/01*.

[45] Without setting out all of the sections in detail (as the parties are well aware of them), in short the relevant parts of the legislation may be summarized as follows:

(a) The official languages of the courts in Ontario is French and English;

(b) While English is the default language of all proceedings, a party may request that a proceeding be conducted as a bilingual proceeding;

(c) Such a request may be in writing or orally;

(d) A bilingual proceeding will be conducted by a bilingual judge;

(e) Evidence shall be recorded and transcribed in the language in which it is given;

(f) Pleadings and documents may be filed in French as of right in all schedule 2 areas. In all other areas they may be filed in French on the consent of the parties;

(g) In the Ontario Court of Justice, Small Claims Court or the Family Court of the Superior Court of Justice an originating process may be written in French and documents may be filed in French. Any originating process or document filed in English or French may be translated into the other language at a party's request.

[46] While the father's counsel has no issue with the mother having a bilingual hearing, she objects to documents being filed in French. She argues that since Newmarket is not a designated schedule 2 area, French documents may not be filed without her consent. In contrast, the mother's counsel submits that sections 126(4) and (5) of the *CJA* are essentially exceptions to the schedule 2 requirement. It would not make sense that one could file an originating process in French and then not be able to file further documents in French.

[47] The mother's counsel relies on *Belende v. Greenspoon*, an endorsement of the Court of Appeal, dated May 6, 2004. In that case the appellant filed his notice of appeal in French. As such all future proceedings were deemed to be bilingual. The registrar struck the appeal. The registrar was not bilingual, and as such, the order was set aside. In that case, however, the mortgage had already been redeemed so the appeal was effectively moot.

[48] In *Belende v. Patel*, a Court of Appeal decision dated February 29, 2008, the appellant sought to set aside an order for summary judgment made against him on the grounds that the judge hearing the matter denied the appellant his right to a bilingual proceeding. The court held that such a right is not qualified by judicial discretion and that the right is more than purely procedural. It is a substantive right and the appropriate remedy where there has been a breach is to set aside the order.

[49] In *Tremblay v. Piquet*, the wife sought a bilingual proceeding and the right to file documents in French. As the matter proceeded in Simcoe, Ontario, which is a non-schedule 2 area, she was precluded from filing her documents in French without the husband's consent which was not given. The court transferred the matter to the Unified Family Court in Hamilton to allow the wife to file her documents in French.

[50] Finally, the mother relies on the case of *Wittenberg v. Fred Geisweiller/Locomotive Investments Inc.* 1999 CanLII 14805 (ON SC), 1999 CanLII 14805(SCJ) for the proposition that a waiver to the right of a bilingual proceeding must be clear and informed. The fact that a litigant goes forward with a proceeding in English at the judge's insistence is not sufficient.

[51] The father's counsel points out that other than the Tremblay case, the cases cited by the mother's counsel are appeals or cases involving final orders. She could not find any law on the appropriate remedy for interim orders. I do not doubt that little or no law exists in that area.

[52] Turning first in my analysis to the issue of filing French documents, I respectfully disagree with the father's counsel. While it is clear that Newmarket is not a designated schedule 2 area, that does not mean that section 126(4) of the *CJA* can be ignored. The Family Court of the Superior Court of Justice is clearly recognized as a court which will accept documents in French. While this may seem inconsistent with section 126(2) (in particular subsections (6) and (7)) of the *CJA*, I do not see it this way. I see it as the natural expansion of the right to a bilingual proceeding. This follows the reasoning in the Tremblay case above. In short, how is one's right to a truly bilingual proceeding to be properly effected if one is not allowed to file documents in French? The rights of the opposing party are protected by the ability to have any French documents translated into English on consent.

[53] As such, I find that the mother may file any future documents in this proceeding in French. If requested by the father, a translation into English may be requested.

[54] Turning now to the issue of the whether the previous orders should be set aside I find that they should not be for the following reasons:

(a) The mother, while being aware as far back as December 19, 2011 of the process to request a bilingual hearing, did not pursue it. I accept that at least at that point she was fully aware of her right to a bilingual hearing as the court adverted on several occasions to the process of requesting one.

(b) While the mother claims that she was fearful or did not understand what she had to do to request a bilingual hearing, her letters and emails to Ms. Irwin demonstrate that she was perfectly capable of making herself understood about her position in relation to access and her criticism of the father. It is, therefore, difficult to accept that she did not understand the court's recommendations in this regard at both the December 19, 2011 hearing and the January 2012 motion. It is true that the fact that she has a certain proficiency in English is not relevant to her right to a bilingual hearing. At the same time it must be relevant in terms of her understanding what steps were open to her in terms of requesting that hearing.

(c) While I do not ascribe much weight to this fact, it is true that the mother hired two Anglophone lawyers and was apparently able to properly instruct them. She did not make any complaints (that I am aware of) regarding the services of Mr. Sadvari or Ms. Di Battista. A quick view on the internet would no doubt have afforded her a choice of francophone counsel in Toronto and the Greater Toronto Area.

(d) The status quo in this matter cannot be erased. The trial has not been adjourned and the mother will have an opportunity to have this court consider all of the evidence afresh. As well, it cannot be ignored that even if the mother had had a bilingual hearing at the January 2012 motion, there would likely have been some order made changing the arrangements in the separation agreement as she had not seen the children in over a year. That situation did not arise because of any language difficulties.

(e) The case law cited by the mother does not relate directly to the issue that is before this court, i.e. the setting aside of interim orders. Further, in those cases there was either a refusal to conduct a bilingual hearing (*Balende v. Patel*) or a substantive step taken in English in a hearing that was already deemed bilingual (*Balende v. Greenspoon*). Neither of those fact situations are on all fours with this case.

(f) With respect to the Wittenberg case, there was no insistence by any judge in this case thus far that a proceeding go forward in English contrary to the wishes of the mother. Indeed the mother was encouraged to take steps to make a request for a bilingual hearing, but did not do so. This is not a case like Wittenberg where the court pushed ahead in the face of the mother saying she did not understand or was uncomfortable. I do not accept that she was fearful or that it was "risky" as she puts it. It was simply a poor decision on her part whose consequences, unfortunately, cannot now be undone.

(g) There are no transcripts of the various hearings which are impugned by the mother. As such, the court has only the contradictory affidavit evidence of the parties and the judges' endorsements with respect to what happened at those hearings. Accordingly, the court must proceed cautiously in terms of making any findings of fact about what was or was not said to the mother in terms of any waiver of her rights.

(h) The mother is now in a position where her rights have been fully recognized. The current motion as well as the upcoming trial will be presided over by a bilingual judge with the assistance of an interpreter and bilingual court reporter. Every possible step has been taken to ensure the mother will be able to express herself in her native language both personally in the course of her own evidence and through her lawyer, who is extremely competent in both languages.

[55] Given all of the above, I decline to vacate any of the previous orders and do not find that there has been any breach of the mother's right to a bilingual hearing. If such a breach has occurred, it has since been remedied by steps which have been in place since the October 2012 trial management conference.

[56] As to any argument concerning the effect and potential prejudice resulting from the interim orders made in January 2012, the response is as follows: first, a trial is pending to address all outstanding issues; and second, given the change in circumstances that had been in place for some period of time by January 2012, it is this court's view that some change to the custody and access arrangement would have been ordered in any event no matter the language in which that hearing took place.

Orders

[57] Given all of the above I make the following orders:

[…]

c. The mother's request to have all previous interim orders set aside on the grounds that her right to a bilingual hearing (both oral and written) have been infringed is dismissed.

d. The mother has the right to file any future documents in this proceeding in French. Upon the request of the father those documents may be translated into English.

[…]

N.B. – Application for leave to appeal was dismissed: Sera v. Ambroise, 2014 ONSC 2981 (CanLII):

[21] There is no doubt that French language rights are of fundamental importance in this province. Not only do they offer some measure of security to the francophone community, a community which has formed an integral part of the historical and cultural fabric of this province since Confederation, but they also serve the wider purpose of promoting access to justice for the greatest number of Ontario citizens.

[22] In my opinion, however, the facts of this case leave it outside the rarefied spectrum of language rights cases which might qualify as sufficiently important to warrant leave being granted. The Respondent's language rights were never denied to her. They were not suspended, trammeled or even questioned. At the earliest opportunity, they were afforded to her. They have been respected and now enshrined in the proceedings.

[23] The denial of the form of relief sought by the Respondent was based upon the motions judge's findings on matters wholly unrelated to substantive language rights: the Respondent's election not to avail herself of procedural steps, the Respondent's conduct during the litigation, the absence of substantial prejudice, the nature of the orders and the imminence of trial, the unalterable facts upon which the targeted orders were granted in the first place and the paucity of evidence on what took place at the hearings.

[24] The comments made by the motion judge in her supplementary endorsement touching on the importance of the issue of language rights were not misplaced. Indeed, her entire decision on the substantive relief sought is permeated by an overriding concern for the sanctity of French language rights. I share that concern. That does not, however, alter the basis upon which the motions judge made her decision. The question of whether the matters for the proposed appeal are important on a leave application should not be determined based merely upon the suggestion by the moving party that they involve language rights. To address the question appropriately, one is obliged to consider the decision as a whole, to construe from it the *ratio decidendi* and to arrive at a determination as to whether the *proposed appeal involves matters* of such importance that leave to appeal should be granted. In this case, language rights would merely serve as a background to the matters to be considered on the proposed appeal. Those matters would necessarily be limited to findings of fact, an assessment of prejudice and considerations of the applicability of case law. I am of the opinion that those matters are not of sufficient importance to warrant granting leave to appeal in these circumstances.

Tremblay v. Picquet, 2010 ONSC 1776 (CanLII)

[3] In this motion, the respondent seeks an order permitting her to file pleadings and other documents written in French. In the alternative, she asks that this matter be transferred to the Family Court of the Superior Court of Justice at Hamilton for reasons explained below.

[4] It is settled law that the right of a party who speaks French to require that a proceeding be bilingual is a substantive, and not merely procedural, right. Such a party need not prove that he or she cannot also communicate in English. The rules governing the conduct of a bilingual proceeding are found in subsection 2 of section 126 of the *Courts of Justice Act*. They allow a party to file documents in French in any court with the consent of the other party. Without that consent, which is not present in this case, the right to file documents in French is permitted in all Family Courts, the Ontario Court of Justice, Small Claims Courts, and in those Superior Court locations listed under Schedule 2. Simcoe is not one of those listed locations. Even when adjudicating upon a family law matter, the Superior Court of Justice is not a “Family Court” unless it meets the definition to be found at section 21.1 of the *Courts of Justice Act*. The Superior Court

of Justice at Simcoe does not fit within those defining terms. Accordingly, under all of these circumstances, the respondent cannot file her documents in French at Simcoe unless some relief is granted.

[5] There does not appear to be any express jurisdiction to grant such relief directly, i.e. to grant an order that documents may be filed in French at Simcoe when the other party does not consent to that being done. I do not accept the argument of the respondent's counsel that such jurisdiction arises implicitly from the permissive language in section 126 of the *Courts of Justice Act* relative to such filings. I say this notwithstanding Mr. Justice Rivard's statement in *Wittenberg* v. *Fred Geisweiller/Locomotive Investments Inc.*, reported at 1999 CanLII 14805 (ON SC), 1999 CanLII 14805, that section 126 should be given a broad interpretation to protect the underlying substantive right to a bilingual proceeding. There is a difference between making a broad interpretation and finding jurisdiction where none apparently exists.

[6] I turn now to consideration of the alternative relief sought, that being transfer of the matter to the Family Court at Hamilton where the filing of documents in French is permitted without consent. Rule 5 of the *Family Law Rules* grants jurisdiction to effect the transfer being requested "If it is substantially more convenient to deal with a case or any step in the case in another municipality…".

[7] Here there is no connection to Hamilton in evidence. The self-represented applicant resides in Lynedoch near Simcoe. The respondent resides in Belgium. Her counsel practices in Toronto. On the other hand, no substantive inconvenience would be triggered by moving the action to Hamilton, which is approximately one hour's travel time from Simcoe. There is no evidence that the calling of any witnesses beyond the parties themselves is anticipated or necessary. Transfer would overcome the anomaly of the Superior Court of Justice at Simcoe being one of the few courts in the province at which the filing of documents in French without consent is not permitted, thus allowing for the meaningful and complete exercise of the respondent's substantive right to a bilingual proceeding.

[8] The respondent disputes either type of relief being sought, arguing that the respondent can communicate in English, that his wife, who is assisting him with his case, cannot read French, and that it would be inconvenient to travel to Hamilton. The respondent's alleged ability to communicate in English does not disentitle her to a bilingual proceeding as is mentioned above. The applicant can speak and read French. Translation for the non-party wife can be provided by him or by the court itself under the provisions of subsection (7) of section 126 of the *Courts of Justice Act*. The minor inconvenience of travel to Hamilton is offset by the importance of the right being protected.

[9] This action shall be transferred to the Family Court at Hamilton.

Persaud v. Ngaluta, [2009] O.J. No. 6457 (ON SC) [hyperlink not available]

[7] Section 126 of the *Court of Justice Act* states, that a party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding". As pointed out in the authorities, this is not discretionary, but as of right.

[8] The trial, (sic) trial judge in his third option I was - - I assume was inferring that the adjournment would be to allow for a bilingual trial. For him to qualify his comments by stating that the only accomplishment of this option would be delay was not appropriate.

[9] Given the appellant's language issues expressed from the outset, and given the outstanding endorsement for the court to provide interpretation services, the appellant's rights as set out in Section 126 ought to have been preserved and the matter adjourned.

[10] As to the alleged waiver, clearly any waiver has to be voluntary and informed. If language is an issue it is difficult to find that the waiver was informed. Further, in the alleged waiver the appellant seemed to be concerned with the witness's re-attendance. The court could have easily adjourned the matter and instructed the witness to re-attend. I accept that there -- if there is a language issue a waiver in these circumstances, given the court's instructions with respect to interpretation, is tainted.

[11] To suggest the matter should go ahead for expediency reasons, expediency reasons does not recognize the rights prescribed in Section 126 of the *Courts of Justice Act*. The appellant had every right to expect assistance in the French language, given the earlier endorsement.

[12] It was suggested by counsel for, for the respondent that the appellant was quite competent in English. She referenced the appellant's conduct of an earlier motion. Her ability to ask questions and conduct cross-examinations is evident from the transcript. Even if that is the case being French she's entitled to the trial, (sic) trial being conducted in French. Accordingly, the judgment of Deputy Judge Barycky dated March 26, '08 in this matter is set, (sic) set aside and a new trial ordered to be conducted as a bilingual proceeding. Thank you. That's my judgment. Any further comments?

Grober Inc. v. Kaisin, 2005 CarswellOnt 4636, [2005] O.J. No. 3534 (ON SC) [hyperlink not available]

[2] A bilingual trial as opposed to a trial which is held in English or in French, is intended to be an exercise that is fair to all concerned. That is why it requires a bilingual judge who is able to understand and to address a witness or a party in his or her mother tongue. Particularly when the judge is the trier of fact presiding without a jury as is the case on this motion, the judge must be able to understand without the need of a translation, and that which might be lost in translation, even with someone as capable and experienced as Mme Lavoie.

[…]

[15] Regrettably, as a result of medical problems, I will simply put it that way, I being the only bilingual judge in this area, was unavailable, and I gather another bilingual resource could not be found to preside this motion. Therefore, it was put over and wasn't heard until today's date, the middle of March, that's unfortunate. Thus to the extent that the Court would be able in the normal course to criticize delay in filing pleadings, which were awaiting the result of this motion, that criticism disappears when the reason for the delay is made clear, that is the unavailability of resources that in my view should be more available. I note that any comments or criticism with respect of the lack of full availability of services to our francophone citizens are tempered by my appreciation that in the years I have been practicing law, and on the bench, there have been many changes in this province. Much progress has been made in recognizing what should be absolute equality in terms of entitlement to services of our francophone co-citoyens and co-citoyennes, co-citizens. In the designated jurisdictions, set out in Schedule 1 and Schedule 2 of Section 126 of the *Courts of Justice Act*, Anglophones and Francophones effectively have equal rights. It requires obviously some sensitivity and some compromise in many cases to have what is truly a bilingual trial.

[16] I was privileged a number of years ago to attend the court in L'Orignal, the Provincial Court Criminal Division as it then was, and was impressed with the bilingual nature of the proceedings in that court. The Court was able to switch with ease from English to French, back to English, and back to French, depending simply upon the first language or the preference of a witness when he or she took the stand. The proceedings moved smoothly with the upmost respect to all witnesses and other persons involved in the process no matter which language they spoke.

[17] That is what la famille Kaisin, the Kaisin family are entitled to or should be entitled to in this jurisdiction, and that's exactly what the plaintiff, albeit a corporation, Grober and its principles is entitled to as well. Neither the plaintiff nor the defendants in these two actions should be made in any way to feel second class or inferior. One of the principal reasons why I direct a change of venue in this case is to ensure that equality of treatment, that perception, that the litigants are able to see justice done with respect to these issues on a level of playing field.

[…]

[52] Particularly with M^{e} Escayola's assurance that this would be a jury trial, a trial here in Kitchener would be less expeditious and more expensive overall then a trial in L'Orignal. The only right which the Kaisin family would have, the defendants in the two actions, within the context of a bilingual trial in Kitchener would be the right to have a bilingual judge. They would not have the right to nor expect as a matter of the normal selection process to have a bilingual jury. I want to emphasize, both the plaintiff through its principles and the defendants should have a bilingual jury as the trier of fact. I say again, if the trial were to take place here there would be an anglophone jury, almost certainly. Any testimony given by the Kaisins or any francophone witnesses, witnesses who testified in French, such testimony would have to be translated into English by an interpreter. As I read Section 126 of the *Courts of Justice Act*, such interpretation - such interpreter would be provided by, paid for by the defendants. I find that remarkable.

[53] In all candor, had there been no application for change of venue in this case, if the trial were proceeding before me as a bilingual trial with a jury, I would have ordered that an interpreter be provided at no expense to the defendants. Even if an interpreter were provided, if the trier of fact is an anglophone jury, they would receive a good portion of the evidence certainly from the defendants, la famille Kaisin, and from a number of other francophone witnesses, they would receive that evidence second-hand through an interpreter. When I consider the instructions a judge then would give to a jury, instructions as to how to reach their verdict, I would be either speaking in French, in which case my instructions would be translated into English by an interpreter so that the defendants could understand without necessity of translation my instructions, or I would be giving my instructions in English, which would be more likely, so the jury would receive the instructions directly without interpretation, in which case the defendants would require an interpreter to understand my instructions. In L'Orignal, I'm satisfied that a truly bilingual jury can be provided to preside this trial. That jury, the most important element in this trial, the finders of fact will be able to understand the anglophone witnesses when they testify in English, the francophone witnesses when they testify in French, and the judge can at his discretion give his instructions, les directives au jury, either in English or in French, soit en Anglais soit en Français, peu importe, the jury will be able to understand.

[54] I want to emphasize so the record is clear, that even if the language issue had not been raised in this case, simply applying traditional principles, guiding a judge as to whether or not there should be an order for change of venue, I would have come to the same conclusion, specifically that the balance of convenience favours the trial being held in L'Orignal, based upon the prépondérance d'inconvénience, the balance of convenience or prejudice to the various witnesses, the parties in the case, and to my assessment of the nexus, le lien rational between the facts and circumstances, the issues in the case and the two jurisdictions, Kitchener or L'Orignal. However, even if by this traditional analysis I was torn so to speak, the entitlement of the defendants in both actions to be tried in a venue which most respects their rights as Franco-Ontarians, clearly determines the issue that this trial must be held in L'Orignal.

N.B. – Note that the above judgment was rendered orally in a combination of English and French.

Don Fry Scaffold Service Inc. v. Canadian Bonding Corp., 2004 CanLII 46661 (ON SC)

[12] The plaintiff asks that in assessing costs, the court take into account the defendant's insistence upon the proceeding being conducted as a bilingual proceeding pursuant to section 126 of the *Courts of Justice Act*. The defendant's right to bilingual trial is a fundamental right. A party ought not be penalized for exercising that right and will not be required to reimburse the plaintiff for extra costs incurred as a result of exercising that choice.

Elawar v. Fédération des Clubs de Motoneigistes du Québec Inc., 2001 CanLII 28080 (ON SC)

[24] Witnesses would come from both provinces. I counted at least eight for the defendants. That would only allow for one for each of the defendant parties to the motion. It would seem likely that there would be many more if the persons actually responsible on site were called. In addition, I expect that far more than one witness would be called in relation to the 17-day stay in the hospital. All of those witnesses will be francophones. They may well not be able to testify in English. The particular area of Quebec in which the incident took place is known for its linguistic purity and its uni-linguistic population. In MacDonald, supra, Justice Cunningham felt this was a factor favouring Quebec. If the action were to remain in Ontario, the defendants would certainly have the (sic) night to a bilingual proceeding under s. 126 of the *Courts of Justice Act*. While there are francophone and bilingual judges available here, it might be easier to arrange for a bilingual trial in Quebec.

Wittenberg v. Fred Geisweiller/Locomotive Investments Inc., 1999 CanLII 14805 (ON SC)

[1] The defendant appeals from a judgment obtained in the Small Claims Court. In his defence, the defendant had requested to "have the case heard in French." The first trial date provided for the case to be tried by a judge who spoke both French and English. The trial was postponed at the request of the defendant. The judge who presided at the second trial date was not a bilingual judge.

[2] At the trial, the defendant asked the presiding judge if his arguments could be heard in French. The judge responded to the effect that he was not bilingual and that a formal motion should have been made to have the trial conducted in French. The judge suggested that if argument was to be in the French language, it would have to be presented in writing. The judge then asked the defendant if he felt "hampered" by proceeding in English. The defendant responded that he did and gave his reasons for feeling this way. The trial judge then proposed that the trial proceed and suggested that if the defendant encountered some difficulty, the court would try to address those difficulties as they arose. The trial then proceeded entirely in the English language.

[3] Section 126(1) of the *Courts of Justice Act* reads as follows:

> A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.

[4] The right conferred upon Francophone citizens in Ontario pursuant to section 126 of the *Courts of Justice Act* is a substantive right. (see *Casselman Électrique Ltée v. Gaudreau* (January 31, 1997), Doc. Toronto 101629/96 (Ont. Gen. Div.))

[5] The defendant clearly was entitled to require that the trial be conducted as a bilingual proceeding. Although his request was for "the case to be heard in French," I am satisfied that this constituted a valid request for a bilingual proceeding.

[6] In failing to offer the defendant the bilingual proceeding he had requested, the trial judge erred. He should have adjourned the trial to an officer who spoke both French and English, thereby affording to the defendant his right to a bilingual proceeding.

[7] I do not accept that the approach taken by the trial judge to the defendant's request to be heard in the French language was consistent with his obligation under section 25 of the *Courts of Justice Act* to proceed in a summary way and ought not constitute a valid ground for appeal.

[8] The right conferred by section 25 is an important linguistic right intended to afford Francophones the opportunity to present their cases in their language. Section 25 gives direction to Small Claims Court judges to hear cases in a manner which will keep costs low and procedure simple. I do not believe, however, that section 25 is to be applied at the expense of the linguistic rights found in section 126. There are important historical, political and social reasons for legislation which protects linguistic rights of the Francophone population in Ontario. Section 126 is one example of such legislation and it should be given a broad interpretation. Section 126 should not be disregarded because of the procedural powers granted by section 25 of the *Courts of Justice Act*.

[9] The appellant requests a new trial as a result of the trial judge's failure or inability to grant to him a bilingual proceeding. The respondent submits that under section 134(6) of the *Courts of Justice Act*, I ought not direct a new trial because no "substantial wrong or miscarriage of justice has occurred."

[10] To deny a party the right to a bilingual proceeding under section 126 of the *Courts of Justice Act* is a substantial wrong which requires that a new trial take place. In my view, the failure of the trial judge to afford the defendant that right, when the defendant requested it, should in itself be sufficient to warrant that a new trial be ordered. In this case, the evidence is not only that the right of the defendant to a bilingual proceeding was not respected; the evidence indicates that the defendant did inform the court he felt hampered by his inability to present his argument in the French language. In those circumstances, the trial ought to have been adjourned to a judge who could provide a bilingual proceeding.

[11] I do not accept that the defendant waived his right to a bilingual proceeding under section 126. The waiver of such a right must be clear and informed. A reading of the transcript does not satisfy me it was clear or informed. In fact, the defendant appears to have continued with the trial as a result of the trial judge's insistence that he do so and not following a waiver of his right to a bilingual proceeding.

[12] The appeal will therefore be allowed and a new trial will be ordered. The new trial is to be a bilingual proceeding as provided under section 126 of the *Courts of Justice Act*.

Pietrocupa v. Bérard, 2002 CarswellOnt 2794, [2002] O.J. No. 3284 (ON SC) [hyperlink not available]

[3] Before turning to the background and analysis herein, I note that this has been a bilingual proceeding pursuant to sections 125 and 126 of the *Courts of Justice Act*, as the respondent, Ms. Bérard, is a Francophone, was self-represented and requested a bilingual hearing. The applicant, Mr. Pietrocupa, indicated at the outset of the hearing that he preferred to give his evidence in English as he had not been using French in the recent past and felt more comfortable in English. As well, his counsel, Mr. Juriansz, had no French. In the circumstances, I directed that a French-language interpreter be present and the interpreter Mr. Dowlatshahi, assisted Mr. Juriansz with the evidence of Ms. Bérard in French and my comments to Ms. Bérard in French and similarly Ms. Bérard with the evidence of Mr. Pietrocupa in English, and the questions of Mr. Juriansz in English.

[4] I have delivered the reasons in this judgment in English for the following reason. At the conclusion of the hearing I directed that there be written submissions on the issues. The submissions of Mr. Juriansz on behalf of the applicant were in English and were directed to Quebec counsel named by Ms. Bérard. The responding submissions were in French; although signed by Ms. Bérard, they were forwarded by Quebec counsel. In the circumstances, I granted Mr. Juriansz a period of time within which he could obtain an English translation of the French responding submissions. He obtained the translation and issued, in accordance with my directions, reply submissions in English to the attention of Quebec counsel. In the circumstances, on the balance of convenience, the language of communication of these reasons will be in English as I am confident that Quebec counsel who have assisted Ms. Bérard in this matter will be readily able to translate the same into French to further assist Ms. Bérard.

R. v. Bauer, 2005 CarswellOnt 3229, 2005 ONCJ 337 [hyperlink not available]

[33] The *Courts of Justice Act*: Additionally - or if I am mistaken that Section 530 of the *Criminal Code* applies to a defendant in a peace bond hearing, then alternatively, we must consider the impact of Sections 125 and 126 of the *Courts of Justices Act*.

[34] Section 125(1) provides that the official language of the courts of Ontario is English and French. Subsection (2) provides that proceedings are in English except as otherwise provided. Section 126(1) states, "A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding." R.S.O. 1990, c. C.43, 126(1)

[35] Section 126(2) outlines the rules for a proceeding conducted as a bilingual proceeding.

[36] Referring back to Section 532 of Part XVII - Language of the Accused, Section 532 provides that nothing in this part of the *Official Languages Act* derogates from, or otherwise adversely affects any right afforded by a law of a province in force, or thereafter coming into force, relating to the language of proceedings or testimony in criminal matters that is not inconsistent with this Part of that Act.

[37] Section 810 is in Part XXVII - Summary Convictions of the Criminal Code of Canada. Notwithstanding the person subject to an information under Section 810 is a defendant and not an accused or that an order is not a conviction, it is a criminal matter. It is subject to sanctions under the *Criminal Code* and a breach of an order is a criminal offence. Therefore, in my opinion, Section 126 of the *Courts of Justice Act* is applicable to a Section 810 hearing and is not inconsistent with Part XVII or the *Official Languages Act*.

[38] The Crown submits that Section 126 of the *Courts of Justice Act* applies only to a Francophone. This means someone who was raised with French as his or her first language. The plain reading of the section of the Act does not state this. The reference is to a person who speaks French. A plain reading does not say someone who only speaks French nor does it say someone who speaks French as a primary language.

[39] The Supreme Court of Canada guides my interpretation of this section when it says in R. v. Beaulac, "If the accused has sufficient knowledge of an official language to instruct counsel, he or she will be able to assert that that language is his or her language, regardless of his or her ability to speak the other language."

[40] In conclusion, I am satisfied that Section 126 of the *Courts of Justice Act* permits the defendant in a Section 810 proceeding the right to have a bilingual hearing where he can demonstrate that he has sufficient knowledge of the official language he has chose to retain and instruct counsel.

[41] I find that Walter Bauer has the ability on the evidence put before this court to retain and instruct counsel in the French language and he is entitled to a bilingual hearing. The applicant is not disentitled to a hearing in French by the regulations under the *Courts of Justice Act* as the application has been made more than seven days in advance of the hearing.

Canada (Commissioner of Official Languages) v. Canada (Department of Justice), 2001 FCT 239 (CanLII)

[157] The Courts of Justice Act provides:

> […]

[164] On the question of the judicial processing of prosecutions for federal contraventions, the Court was presented with, and even participated in, a virtually microscopic examination both of the provisions of sections 530 and 530.1 of the *Criminal Code* and of sections 125 and 126 of the Ontario *Courts of Justice Act*.

[165] Certainly, at first glance, the provisions of section 126 of the Ontario *Courts of Justice Act* seem to be comparable to section 530.1 of the *Criminal Code*, the effects of which have been suspended by the implementation of the *CA* [*Contraventions Act*] and the regulations thereunder.

[166] However, it must not be forgotten that, as was pointed out in *R. v. Beaulac*, *supra*, that in Canadian law, substantive equality is the applicable norm. It is advisable to reproduce the following excerpts of the decision *R. v. Beaulac*, which I have [besides] cited abundantly at question 2 *supra*:

> Equality does not have a lesser meaning in matters of language. With regard to existing rights, equality must be given true meaning. This Court has recognized that substantive equality is the correct norm to apply in Canadian law. Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada.
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> ...
>
> It seems to me that all persons living in a country which recognizes two official languages must have the right to use and be understood in either of those languages when on trial before courts of criminal jurisdiction. I repeat that a trial before a judge or jury who understand the accused's language should be a fundamental right and not a privilege. The right to be heard in a criminal proceeding by a judge or a judge and jury who speak the accused's own official language, even if it is the minority official language in a given province, surely is a right that is a bare minimum in terms of serving the interests of both justice and Canadian unity. It is essentially a question of fairness that is involved.
>
> ...
>
> This principle of substantive equality has meaning. ... It also means that the exercise of language rights must not be considered exceptional, or as something in the nature of a request for an accommodation. This being said, I note that this case is not concerned with the possibility that constitutionally based language rights may conflict with some specific statutory rights.
>
> ...

> Given the nature of language rights, the requirement of substantive equality, the purpose of s. 530, as described here, and the objective of s. 686, I believe that the violation of s. 530 constitutes a substantial wrong and not a procedural irregularity.
>
> (Emphasis added)

[167] Section 125(2) of the Ontario *Courts of Justice Act* clearly establishes the context, which is that English is the language of the administration of justice in Ontario unless otherwise provided and that those exceptions are delineated in detail by the provisions of the next section, section 126.

[168] It is clear that the *Courts of Justice Act* does not adopt the principle of the substantive equality of the two official languages that is recognized by the *Charter* and the *OLA* [*Official Languages Act*], and that in fact the principle that governs the *Courts of Justice Act* is that there is one principal language in the administration of the courts in Ontario, English, and that the place assigned to French is that of a secondary language that it is agreed will be accommodated. This is particularly clear when we consider the subsequent provisions of the *Courts of Justice Act*.

[169] The principle that underlies the Ontario *Courts of Justice Act* is precisely the principle that Mr. Justice Bastarache rejected in *R. v. Beaulac*, *supra*, when he interpreted the language rights guaranteed by the *OLA* and the *Charter*. He wrote:

> As mentioned earlier, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.

[170] It must be recalled that the *Criminal Code* establishes that the language of the accused is the rule, and this is not stated formally in the provisions of the Ontario *Courts of Justice Act*.

[171] It is clear that section 530(3) provides for an active offer of services in French, and that the judge must make the necessary arrangements so that the offer is made for an accused to be tried in French. No equivalent provision is made in the Ontario *Act*.

[172] Moreover, given the fact that sections 530 and 530.1 of the *Criminal Code* are no longer applied in respect of the processing of contraventions under the new scheme, accused individuals will no longer be able to file a complaint with the Commissioner of Official Languages, and this is no small matter.

[173] The Court also noted that only the summary convictions part of the *Criminal Code* has been imported in applying the *CA* in Ontario, under section 5 of the *Act*. The result of this is that an accused person has no remedy in respect of the rights set out in sections 530 and 530.1 of the *Criminal Code*. Those sections might have been used to protect an accused's rights if it were established in a provincial court that the rights provided by the Ontario *Courts of Justice Act* did not fully protect the rights provided in sections 530 and 530.1 of the *Criminal Code*.

[174] On this point, it was also established in this Court that section 30 of the *CA* has never been brought into effect, and this gives further weight to the argument set out supra. Section 30 of the *CA* provides:

30. The choice of a defendant in responding to a ticket as to the official language, being	30. L'indication au procès-verbal, par le défendeur, de la langue officielle étant la

the defendant's language, in which the defendant wishes to be tried is deemed to be an order granted under section 530 of the *Criminal Code* and accordingly sections 530.1 and 531 of that *Act* apply in respect of the choice.	sienne qu'il désire être celle du procès est présumée être une ordonnance rendue en vertu de l' article 530 du *Code criminel* et, par conséquent, les articles 530.1 et 531 de cette loi s'appliquent.

[175] Counsel for the applicant gave several examples of differences between the provisions of section 126 of the Ontario *Courts of Justice Act* and section 530.1 of the *Criminal Code*. For example, where section 530.1(b) of the *Criminal Code* provides that documents filed at the trial or preliminary inquiry may be filed in either language, the Ontario *Act* provides that a party may file pleadings and other documents written in French only in the areas named in Schedule 2, and that everywhere else in Ontario a party may file pleadings and other documents written in French if the other parties consent (my emphasis). The fact that the consent of the other party is required in order to file pleadings and documents in French is obviously a major impediment to the language rights set out in section 530.1.

[176] The provisions of sections 126(4) and 126(5) relate only to the filing of documents before the trial or preliminary inquiry, or the filing of pleadings. It seems plain that counsel who wishes to file a document in French at trial, during examination or cross-examination of a witness, could not do so without securing the consent of the other party or requesting an adjournment and obtaining a translation of the document, and this creates an unacceptable and inappropriate situation, in the circumstances.

[177] Counsel for the applicant also drew the Court's attention to the fact that the rights provided in section 530.1(e) give the accused the right to have a prosecutor who speaks his or her language. Section 126(2.1) of the *Courts of Justice Act* provides that in a bilingual proceeding, the prosecutor assigned to the case must be a person who speaks English and French, and in my view this covers the language rights provided in the section. However, counsel for the applicant argued forcefully that at the municipal level, the protection afforded to language rights is contractual, in that it is the agreement that requires the municipality to have a prosecutor who is bilingual. In the event that this right were not granted, for one reason or another, the accused could not argue violation of his or her quasi-constitutional rights, but merely his or her right to a fair hearing under section 164(4) of the *Act* since the accused is not a party to the agreement with the municipality.

[178] On this point, it is entirely conceivable that a French-speaking individual who also speaks English, but who nonetheless wishes to be tried in French in an Ontario city, might find himself or herself in a situation in which the city is not able to provide a prosecutor who is bilingual pursuant to the agreement entered into with the government. An individual who complained about this under the *Act* could end up with a decision by a provincial judge finding that his or her right to a fair hearing has not been infringed, since he or she was capable of understanding English and French, and the argument that the municipality failed to provide a French-speaking prosecutor would be rejected.

[179] In the same scenario, but with quasi-constitutional protection afforded to language rights, the question of whether or not there was a fair hearing is no longer important, since the mere fact that a prosecutor who spoke French could not be provided is in itself an infringement which could ultimately nullify the proceedings against the accused, if his or her language rights were violated.

[180] This is an important nuance that clearly establishes that language rights protection is definitely not the same at the municipal level as it is at the provincial or federal level.

[181] Counsel also pointed out that the provisions of section 530.1(f) of the *Criminal Code* grant an unconditional right to an interpreter to assist the accused, his or her counsel or a witness during the preliminary inquiry or at trial. Section 530.1(g) sets out the right to a transcript of everything that was said during the proceedings in the official language in which it was said, and to a transcript in the other official language of everything that was said. Item 9 of subsection 126(2) of the *Court of Justice Act* provides that the court shall provide interpretation of anything given orally in the other language and at examinations out of court, but not a transcript of the interpretation, as is provided in the *Criminal Code*; what is even more disquieting is that this service is provided only in the case of a party or a lawyer who speaks French but not English, which makes it virtually impossible, properly speaking, to use that provision, since it could apply only in the case of accused persons or counsel who speak only French and do not speak English. This is a significant erosion of rights in comparison to the rights guaranteed by sections 530 and 530.1 of the *Criminal Code*, not to mention that it must be rare for a lawyer practising in Ontario to speak only French and not English.

Schedule 1

Bilingual Juries

Paragraphs 2 and 3 of subsection 126 (2)

The following counties:

Essex

Middlesex

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

Timiskaming

The area of the County of Welland as it existed on December 31, 1969.

The Municipality of Chatham Kent.

The City of Hamilton.

The City of Ottawa.

The Regional Municipality of Peel.

The City of Greater Sudbury.

The City of Toronto.

1994, c. 12, s. 43 (3); 1997, c. 26, Sched.; O. Reg. 441/97, s. 1; 2002, c. 17, Sched. F, Table.

Schedule 2

Bilingual Documents

Paragraph 6 of subsection 126 (2)

The following counties:

Essex

Middlesex

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

Timiskaming

The area of the County of Welland as it existed on December 31, 1969.

The Municipality of Chatham Kent.

The City of Hamilton.

The City of Ottawa.

The Regional Municipality of Peel.

The City of Greater Sudbury.

The City of Toronto.

Bilingual Proceedings – Courts of Justice Act, O. Reg. 53/01

Bilingual juries

1. Bilingual juries

1. The following area is added to Schedule 1 to section 126 of the *Courts of Justice Act*:

1. County of Middlesex.

O. Reg. 53/01, s. 1.

Bilingual documents

2. Bilingual documents

2. The following area is added to Schedule 2 to section 126 of the *Courts of Justice Act*:

County of Middlesex.

O. Reg. 53/01, s. 2.

Exercising the Right to a Bilingual Proceeding

3. Filing first document in French

3. (1) Subject to subsection (2), if the first document that is filed by or issued at the request of a party to a proceeding is written in French, the party shall be deemed,

(a) to have exercised the right under subsection 126 (1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and

(b) to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French.

O. Reg. 53/01, s. 3 (1).

3. (2) Clause (1) (b) does not apply to a hearing if the document is filed or issued less than seven days before the hearing.

O. Reg. 53/01, s. 3 (2).

3. (3) On motion, the court may order that clause (1) (b) applies to a hearing despite subsection (2).

O. Reg. 53/01, s. 3 (3).

3. (4) Subsection (1) does not authorize a person to file a document written in French unless the person is authorized to do so under subsection 126 (4) or paragraph 6 or 7 of subsection 126 (2) of the *Courts of Justice Act*.

O. Reg. 53/01, s. 3 (4).

ANNOTATIONS

Bajikijaie v. Mbuyi, 2009 CanLII 29486 (ON SCDC)

The Issue on Appeal

[1] This matter, involving modest amounts of money in an award for costs, raises important questions about the nature of bilingual proceedings and the interpretation of ss. 125 and 126(1) and (2) of the *Courts of Justice Act*.

[2] The Appellant, Benjamin Felix Bajikijaie, filed his Statement of Claim in French, triggering s. 126 of the *Courts of Justice Act*, as well as s. 3 of the *Regulation for Bilingual Proceedings* made under the *Courts of Justice Act*, O. Reg. 53.01. Master Hawkins is not bilingual. He was assigned to this file as the Case Management Master. He ordered that the action be discontinued on consent. He received written submissions and fixed costs in favour of the defendants. The Appellant seeks to appeal from the Master's order for costs, as the Appellant argues that the matter should have been dealt with by a bilingual Master.

[3] Hoy J., on April 10, 2008, granted leave to appeal the award of costs with respect to whether the Appellant's language rights had been infringed pursuant to section 62.02(4)(b). She relied upon the Court of Appeal decision in *Ndem v. Patel*, 2008 ONCA 148 (CanLII) in reaching her conclusion:

> [27] In *Ndem v. Patel*, the Court of Appeal set aside a summary judgment order, because the appellant's right to a bilingual hearing was violated, and referred the matter back to the court below, without consideration of the merits of the underlying claim. Rouleau J.A. wrote, "English and French are the official languages of the courts in Ontario, and the court has a responsibility to ensure compliance with language rights under s.126 of the *Courts of Justice Act*. A proper interpretation of this provision is one that is consistent with the preservation and development of official language communities in Canada and with the respect and

preservation of their cultures: See *Beaulac*, paras. 25, 34 and 45. Violation of these rights, which are quasi-constitutional in nature, constitutes material prejudice to the linguistic minority."

[…]

Applicable Legislation

[5] Section 3 of *Regulation 53/01* is clear that once a party files a document in French, there is a mandatory deeming provision that all future proceedings shall be heard by a bilingual officer, master or judge. The Regulation provides:

EXERCISING THE RIGHT TO A BILINGUAL PROCEEDING

Filing first document in French

3.(1) Subject to subsection (2), if the first document that is filed by or issued at the request of a party to a proceeding is written in French, the party shall be deemed,

(a) to have exercised the right under subsection 126(1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and

(b) to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French.

Case Law

[6] The case law is clear that the court system must accommodate the equal right to be heard in English and in French. The judgment in *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 R.C.S. 768 at paragraph 39 confirms this overriding principle:

I wish to emphasize that mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling are not to be considered because the existence of language rights requires that the government comply with the provisions of the Act by maintaining a proper institutional infrastructure and providing services in both official languages on an equal basis. As mentioned earlier, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.

[7] The decision in *Belende v. Greenspoon* (2004), 2004 CanLII 5552 (ON CA), 189 O.A.C. 140 (C.A.) is unequivocal in its conclusion that filing the first document in French deems specification that all future proceedings are to be presided over by a bilingual person:

[11] Section 3(1) of *Regulation 53/01* adopted pursuant to the *Courts of Justice Act* provides that if the first document filed by a party to a proceeding is in French, that party is deemed to have specified for purposes of s.126 that all future hearings in the proceeding be presided over by a judge or officer who speaks English and French.

[…]

Conclusion

[22] I conclude that s. 3.(1) of *Regulation 53.01* is mandatory in its terms: "if the first document that is filed by or issued at the request of a party to a proceeding is written in French, the party shall be deemed to have exercised the right under subsection 126(1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French."

[23] The deeming provisions that require all future hearings in the proceeding to be presided over by a bilingual person clearly have been breached. A hearing includes an *ex-parte* motion.

[24] The case should have been assigned to a bilingual Master as originally requested and contemplated by the parties. If a bilingual Master was not available, then it should have been assigned to a bilingual judge. The request for a bilingual master is clear in the Case History Report and initially this requirement was complied with.

[25] The administrative system unfortunately failed to adequately flag this case as a bilingual matter and it was assigned to Master Hawkins. The conclusion in this decision is in no way critical of the Master - it is the administrative system that has failed. I note that it is also incumbent upon counsel and the parties in bilingual matters to ensure that the matter proceeds before the appropriate bilingual court officer, as inevitably there are errors that occur in the administrative system.

[26] M$^{e.}$ Côté's suggestion that his clients wished to proceed with the motion in English, and therefore a bilingual master was not necessary, does not respond to the problem. M$^{e.}$ Côté's clients of course had the right to plead and file documents in English. That right does not affect the requirement that a bilingual person be assigned to hear all matters in the file, even if M$^{e.}$ Côté chose to file his clients' documents in English.

[27] As the Court of Appeal made it clear in *Belende v. Greenspoon*, *supra*, the right to have a bilingual court officer is a substantive, not merely procedural right:

> [15] Where, as in the present case, the appellant has met the procedural requirements to trigger a right to a bilingual hearing this right is more than purely procedural, it is substantive and the appropriate remedy is to set aside the order: see *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768.

[28] It would be unusual in fixing costs not to review the pleadings in order to understand the nature of the proceedings and the context in which the costs award is sought. It is not clear whether the Master in this case reviewed the pleadings. It is clear that had he reviewed the Appellant's Statement of Claim he would not have understood it. Although the documents filed with the Master for the motion for costs were in English, they included the letter written in French founding the claim for defamation. Clearly he would not have understood this letter.

[29] For these reasons, I am of the view that the order of Master Hawkins should be set aside and that the issue of costs should be determined by a bilingual Master, with the Appellant having the opportunity to make submissions.

SEE ALSO:

Ontario (Attorney General) v. Fleet Rent-a-Car Ltd., 2002 CarswellOnt 4286, [2002] O.J. No. 4693 (ON SC) [hyperlink not available]

4. Provincial offences proceedings

4. If a defendant who is served with an offence notice, parking infraction notice or notice of impending conviction in a proceeding under the *Provincial Offences Act* gives notice under that Act of an intention to appear in court and, together with the notice of intention to appear, makes a written request that the trial be held in French, the defendant shall be deemed,

> **(a) to have exercised the right under subsection 126 (1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding; and**
>
> **(b) to have specified that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French.**

O. Reg. 53/01, s. 4.

ANNOTATIONS

R. v. Halich, 2015 ONCA 76 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[4] The applicant appealed. In his appeal before the judge of the Ontario Court of Justice, he was assisted by an interpreter. Through the interpreter, he stated, “I asked for an appeal in French to help me, so I came here to indicate that at the time that they stopped me, that I actually did have insurance”. He also said, “There was a problem of communication with the paralegal. That’s why I came by myself here today to defend myself, to explain, to explain my situation”. The judge asked the applicant to confirm that he had authorized his representative to plead guilty before the trial court. After the applicant confirmed this, the judge dismissed the appeal.

[5] Before this court, the applicant insisted on the fact that he believed to have car insurance at the time of his arrest by the police. The amicus submits that the language rights of the applicant, who is Francophone, were not respected when he attended his appeal. He insists that it was clear that the applicant spoke French and that he was attempting to exercise his right to a bilingual proceeding. The provincial court judge should have proposed a bilingual appeal to him. Counsel for the Crown maintains that the applicant was not entitled to a bilingual appeal according to the laws and procedures applicable to proceedings for provincial offences and that even if he had been granted a bilingual appeal, the outcome would have been the same since the applicant confirmed that he had pled guilty.

[...]

[7] The case before us does not contain all the documents adduced before the trial court and on appeal. Specifically, it does not contain the documents that would tell us whether the applicant requested that his trial be bilingual (under sections 4 or 5 of *Regulation 53/01, Bilingual Proceedings*) despite the fact that he chose to be represented by an Anglophone paralegal meaning that the proceeding was conducted in English. It is also not clear whether the applicant requested a bilingual appeal before the Ontario Court of Justice before attending the appeal.

[8] Nonetheless, this case raises an issue that is relevant beyond the applicant’s particular situation and that concerns the language rights of appellants in proceedings for provincial offences under section 126 of the *Courts of Justice Act* and the provisions of *Regulation 53/01*

(specifically sections 4, 5, 7 and 8). Do Francophone appellants have a right to a bilingual appeal even if they did not request a bilingual trial? A factor that could be important in this analysis is that the court may, "where it considers it to be in the interests of justice", exercise the powers of a trial judge under subsection 117(1) of the *Provincial Offences Act*.

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5. Requisition or statement

5. (1) In addition to the methods described in sections 3 and 4, a party to a proceeding may, subject to subsections (3) to (7), exercise the right under subsection 126 (1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding,

> **(a) by filing with the clerk or registrar of the court where the proceeding was commenced,**
>
> > **(i) a requisition in Form 1, titled "Bilingual Proceeding Requisition", dated March 2017 and available on the Internet through www.ontariocourtforms.on.ca", or**
> >
> > **(ii) a written statement that is separate from any other document in the proceeding and that expresses a desire that the proceeding be conducted as a bilingual proceeding; or**
>
> **(b) by making an oral statement to the court during an appearance in the proceeding that expresses a desire that the proceeding be conducted as a bilingual proceeding.**

O. Reg. 53/01, s. 5 (1); O. Reg. 121/17, s. 1.

5. (2) A requisition or statement under subsection (1),

> **(a) shall specify one or more future hearings in the proceeding that shall be presided over by a judge or officer who speaks English and French; and**
>
> **(b) may specify that all future hearings in the proceeding shall be presided over by a judge or officer who speaks English and French.**

O. Reg. 53/01, s. 5 (2).

5. (3) A requisition or statement under subsection (1) shall be filed or made at least seven days before the first hearing specified in the requisition or statement.

O. Reg. 53/01, s. 5 (3).

5. (4) Despite subsection (3), a requisition or statement under subsection (1) that specifies that the trial of an action be presided over by a judge who speaks English and French shall be filed or made,

> **(a) in an action in the Superior Court of Justice, before the action is placed on a trial list; and**
>
> **(b) in an action in the Small Claims Court, before the notice of trial is sent.**

O. Reg. 53/01, s. 5 (4).

5. (5) Despite subsection (3), a requisition or statement under clause (1) (a) that is filed by the applicant in an application and that specifies that the hearing of the application be presided over by a judge who speaks English and French shall be filed at the time the application is commenced.

O. Reg. 53/01, s. 5 (5).

5. (6) Despite subsection (3), a requisition or statement under subsection (1) that specifies that a trial under the *Provincial Offences Act* be presided over by a judge or officer who speaks English and French shall be filed or made,

> **(a) at the time a trial date is set, if a summons is served on the defendant under Part I or III of the *Provincial Offences Act*; or**
>
> **(b) at the time the defendant gives notice of an intention to appear in court, in any other case.**

O. Reg. 53/01, s. 5 (6).

5. (7) On motion, the court may permit a requisition or statement to be filed or made after the time prescribed by subsection (3), (4), (5) or (6).

O. Reg. 53/01, s. 5 (7).

5. (8) A party who files a requisition or statement under clause (1) (a) in a proceeding other than a proceeding under the *Provincial Offences Act* shall forthwith serve a copy of it on every other party in accordance with the rules of court.

O. Reg. 53/01, s. 5 (8).

ANNOTATIONS

R. v. Halich, 2015 ONCA 76 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[4] The applicant appealed. In his appeal before the judge of the Ontario Court of Justice, he was assisted by an interpreter. Through the interpreter, he stated, “I asked for an appeal in French to help me, so I came here to indicate that at the time that they stopped me, that I actually did have insurance”. He also said, “There was a problem of communication with the paralegal. That’s why I came by myself here today to defend myself, to explain, to explain my situation”. The judge asked the applicant to confirm that he had authorized his representative to plead guilty before the trial court. After the applicant confirmed this, the judge dismissed the appeal.

[5] Before this court, the applicant insisted on the fact that he believed to have car insurance at the time of his arrest by the police. The amicus submits that the language rights of the applicant, who is Francophone, were not respected when he attended his appeal. He insists that it was clear that the applicant spoke French and that he was attempting to exercise his right to a bilingual proceeding. The provincial court judge should have proposed a bilingual appeal to him. Counsel for the Crown maintains that the applicant was not entitled to a bilingual appeal according to the laws and procedures applicable to proceedings for provincial offences and that

even if he had been granted a bilingual appeal, the outcome would have been the same since the applicant confirmed that he had pled guilty.

[...]

[7] The case before us does not contain all the documents adduced before the trial court and on appeal. Specifically, it does not contain the documents that would tell us whether the applicant requested that his trial be bilingual (under sections 4 or 5 of *Regulation 53/01, Bilingual Proceedings*) despite the fact that he chose to be represented by an Anglophone paralegal meaning that the proceeding was conducted in English. It is also not clear whether the applicant requested a bilingual appeal before the Ontario Court of Justice before attending the appeal.

[8] Nonetheless, this case raises an issue that is relevant beyond the applicant's particular situation and that concerns the language rights of appellants in proceedings for provincial offences under section 126 of the *Courts of Justice Act* and the provisions of *Regulation 53/01* (specifically sections 4, 5, 7 and 8). Do Francophone appellants have a right to a bilingual appeal even if they did not request a bilingual trial? A factor that could be important in this analysis is that the court may, "where it considers it to be in the interests of justice", exercise the powers of a trial judge under subsection 117(1) of the *Provincial Offences Act*.

SEE ALSO:

Ontario (Attorney General) v. Fleet Rent-a-Car Ltd., 2002 CarswellOnt 4286, [2002] O.J. No. 4693 (ON SC) [hyperlink not available]

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6. Withdrawing requirement

6. (1) A party who has specified that a hearing be presided over by a judge or officer who speaks English and French may, with the written consent of all other parties filed with the court or with leave of the court, withdraw the requirement that the hearing be presided over by a judge or officer who speaks English and French.

O. Reg. 53/01, s. 6 (1).

6. (2) A party who, under subsection (1), wishes to withdraw the requirement that a hearing be presided over by a judge or officer who speaks English and French shall file the consents or make the motion for leave at the earliest possible opportunity.

O. Reg. 53/01, s. 6 (2).

Appeals

7. Filing first document in French

7. (1) Subject to subsection (2), when an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, if the first document that is filed by a party to the appeal is written in French, the party shall be deemed to have exercised the right under subsection 126 (3) of the *Courts of Justice Act* to have the appeal heard by a judge or judges who speak English and French.

O. Reg. 53/01, s. 7 (1).

7. (2) Subsection (1) does not apply to an appeal if the document is filed less than seven days before the hearing of the appeal.

O. Reg. 53/01, s. 7 (2).

7. (3) On motion, the court may order that subsection (1) applies to an appeal despite subsection (2).

O. Reg. 53/01, s. 7 (3).

7. (4) Subsection (1) does not authorize a person to file a document written in French unless the person is authorized to do so under subsection 126 (4) or paragraph 6 or 7 of subsection 126 (2) of the *Courts of Justice Act*.

O. Reg. 53/01, s. 7 (4).

ANNOTATIONS

R. v. Halich, 2015 ONCA 76 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[4] The applicant appealed. In his appeal before the judge of the Ontario Court of Justice, he was assisted by an interpreter. Through the interpreter, he stated, “I asked for an appeal in French to help me, so I came here to indicate that at the time that they stopped me, that I actually did have insurance”. He also said, “There was a problem of communication with the paralegal. That’s why I came by myself here today to defend myself, to explain, to explain my situation”. The judge asked the applicant to confirm that he had authorized his representative to plead guilty before the trial court. After the applicant confirmed this, the judge dismissed the appeal.

[5] Before this court, the applicant insisted on the fact that he believed to have car insurance at the time of his arrest by the police. The amicus submits that the language rights of the applicant, who is Francophone, were not respected when he attended his appeal. He insists that it was clear that the applicant spoke French and that he was attempting to exercise his right to a bilingual proceeding. The provincial court judge should have proposed a bilingual appeal to him. Counsel for the Crown maintains that the applicant was not entitled to a bilingual appeal according to the laws and procedures applicable to proceedings for provincial offences and that even if he had been granted a bilingual appeal, the outcome would have been the same since the applicant confirmed that he had pled guilty.

[...]

[7] The case before us does not contain all the documents adduced before the trial court and on appeal. Specifically, it does not contain the documents that would tell us whether the applicant requested that his trial be bilingual (under sections 4 or 5 of *Regulation 53/01, Bilingual Proceedings*) despite the fact that he chose to be represented by an Anglophone paralegal meaning that the proceeding was conducted in English. It is also not clear whether the applicant requested a bilingual appeal before the Ontario Court of Justice before attending the appeal.

[8] Nonetheless, this case raises an issue that is relevant beyond the applicant’s particular situation and that concerns the language rights of appellants in proceedings for provincial offences under section 126 of the *Courts of Justice Act* and the provisions of *Regulation 53/01*

(specifically sections 4, 5, 7 and 8). Do Francophone appellants have a right to a bilingual appeal even if they did not request a bilingual trial? A factor that could be important in this analysis is that the court may, “where it considers it to be in the interests of justice”, exercise the powers of a trial judge under subsection 117(1) of the *Provincial Offences Act*.

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8. Requisition

8. (1) In addition to the method described in section 7, a party may exercise the right under subsection 126 (3) of the *Courts of Justice Act* to have an appeal heard by a judge or judges who speak English and French by filing a requisition in Form 2, titled “Bilingual Proceeding Requisition - Appeals”, dated March 2017 and available on the Internet through www.ontariocourtforms.on.ca”, with the registrar or clerk of the court to which the appeal is taken,

(a) if the party is the appellant, at the time the notice of appeal is filed; and

(b) if the party is the respondent, within 10 days after the notice of appeal is served.

O. Reg. 53/01, s. 8 (1); O. Reg. 121/17, s. 3.

8. (2) On motion, the court to which the appeal is taken may permit a requisition under subsection (1) to be filed after the time prescribed by subsection (1).

O. Reg. 53/01, s. 8 (2).

8. (3) A party who files a requisition under subsection (1) shall forthwith serve a copy of it on every other party to the appeal in accordance with the rules of court.

O. Reg. 53/01, s. 8 (3).

ANNOTATIONS

R. v. Halich, 2015 ONCA 76 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[4] The applicant appealed. In his appeal before the judge of the Ontario Court of Justice, he was assisted by an interpreter. Through the interpreter, he stated, “I asked for an appeal in French to help me, so I came here to indicate that at the time that they stopped me, that I actually did have insurance”. He also said, “There was a problem of communication with the paralegal. That’s why I came by myself here today to defend myself, to explain, to explain my situation”. The judge asked the applicant to confirm that he had authorized his representative to plead guilty before the trial court. After the applicant confirmed this, the judge dismissed the appeal.

[5] Before this court, the applicant insisted on the fact that he believed to have car insurance at the time of his arrest by the police. The amicus submits that the language rights of the applicant, who is Francophone, were not respected when he attended his appeal. He insists that it was clear that the applicant spoke French and that he was attempting to exercise his right to a bilingual proceeding. The provincial court judge should have proposed a bilingual appeal to him. Counsel for the Crown maintains that the applicant was not entitled to a bilingual appeal according to the laws and procedures applicable to proceedings for provincial offences and that

even if he had been granted a bilingual appeal, the outcome would have been the same since the applicant confirmed that he had pled guilty.

[...]

[7] The case before us does not contain all the documents adduced before the trial court and on appeal. Specifically, it does not contain the documents that would tell us whether the applicant requested that his trial be bilingual (under sections 4 or 5 of *Regulation 53/01, Bilingual Proceedings*) despite the fact that he chose to be represented by an Anglophone paralegal meaning that the proceeding was conducted in English. It is also not clear whether the applicant requested a bilingual appeal before the Ontario Court of Justice before attending the appeal.

[8] Nonetheless, this case raises an issue that is relevant beyond the applicant's particular situation and that concerns the language rights of appellants in proceedings for provincial offences under section 126 of the *Courts of Justice Act* and the provisions of *Regulation 53/01* (specifically sections 4, 5, 7 and 8). Do Francophone appellants have a right to a bilingual appeal even if they did not request a bilingual trial? A factor that could be important in this analysis is that the court may, "where it considers it to be in the interests of justice", exercise the powers of a trial judge under subsection 117(1) of the *Provincial Offences Act*.

8.1 Consent to file documents in French

8.1 For the purposes of paragraph 7 of subsection 126 (2) of the *Courts of Justice Act*, a consent to file documents written in French shall be in writing, and the party who is filing the documents shall file the consent with the court.

O. Reg. 121/17, s. 4.

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9. Withdrawing requirement

9. (1) A party who has exercised the right under subsection 126 (3) of the *Courts of Justice Act* to have an appeal heard by a judge or judges who speak English and French may, with the written consent of all other parties filed with the court or with leave of the court, withdraw the requirement that the appeal be heard by a judge or judges who speak English and French.

O. Reg. 53/01, s. 9 (1).

9. (2) A party who, under subsection (1), wishes to withdraw the requirement that an appeal be heard by a judge or judges who speak English and French shall file the consents or make the motion for leave at the earliest possible opportunity.

O. Reg. 53/01, s. 9 (2).

Examinations out of Court

10. Examinations out of court

10. In a proceeding in which a party has exercised the right under subsection 126 (1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding, a party who seeks an appointment for an oral examination out of court shall, at the time of making the appointment, give the person with whom the appointment is made written notice that the examination is governed by paragraph 5 of subsection 126 (2) of the *Courts of Justice Act*, and,

> **(a) the person before whom the examination is held shall be a person who speaks English and French; and**
>
> **(b) the person before whom the examination is held shall ensure that an interpreter who speaks English and French is available for the examination.**

O. Reg. 53/01, s. 10.

Interpretation

11. Transcript of oral evidence

11. Unless the court orders otherwise, interpretation shall not be included in any transcript of oral evidence given at,

> **(a) a hearing to which paragraph 3 of subsection 126 (2) of the *Courts of Justice Act* applies; or**
>
> **(b) an examination out of court to which paragraph 5 of subsection 126 (2) of the *Courts of Justice Act* applies.**

O. Reg. 53/01, s. 11.

ANNOTATIONS

Banro Corporation v. Éditions Écosociété Inc., 2009 CanLII 18670 (ON SC)

[12] The defendants having exercised their right under Subsection 126(1) of the *Courts of Justice Act* to require that the proceeding be conducted as a bilingual proceeding, pursuant to Section 11 of Ontario *Regulation 53/01* under the *Courts of Justice Act*, the transcript of Mr. Deneault's oral evidence should have contained his evidence in the French language and should not have included the English interpretation of Mr. Deneault's evidence without leave of the Court.

12. Provincial offences proceedings

12. If an agent of the Attorney General or a municipality conducts a prosecution under the *Provincial Offences Act* in which the defendant has exercised the right under subsection 126 (1) of the *Courts of Justice Act* to require that the prosecution be conducted as a bilingual proceeding,

> **(a) oral interpretation provided by the court under paragraph 9 of subsection 126 (2) of the *Courts of Justice Act* shall be interpretation provided for the defendant only, unless the defendant's counsel does not understand English or French; and**
>
> **(b) each witness may choose whether he or she wishes to be questioned by the prosecutor in English or French.**

O. Reg. 53/01, s. 12.

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13. Witness who speaks neither English nor French

13. (1) At a hearing to which paragraph 3 of subsection 126 (2) of the *Courts of Justice Act* applies, a witness who speaks neither English nor French shall be questioned only in the one of those two languages that the judge determines is understood by all counsel, and the witness' testimony shall be interpreted only into that language.

O. Reg. 53/01, s. 13 (1).

13. (2) If a party does not understand the language in which a witness is being questioned under subsection (1), the court shall provide interpretation of the witness' questions and answers into English or French for that party only.

O. Reg. 53/01, s. 13 (2).

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14. Submissions or evidence in French where trier of fact is not bilingual

14. At a hearing to which subsection 126 (7) of the *Courts of Justice Act* applies, a party acting in person who intends to make submissions in French or a party who intends to call a witness who will give oral evidence in French shall advise the court in writing at least 10 days before the hearing, or subsequently with leave of the court.

O. Reg. 53/01, s. 14.

N.B. – See also FORM 1 ("BILINGUAL PROCEEDING REQUISITION") and FORM 2 ("BILINGUAL PROCEEDING REQUISITION – APPEALS").

Rules of Civil Procedure – Courts of Justice Act, R.R.O. 1990, Reg. 194

Rule 4 Court Documents

4.02.1 Bilingual Documents

4.02.1 A pleading or other documents written in French that may be filed under section 126 of the *Courts of Justice Act* may also include a version of all or part of the text written in English.

O. Reg. 653/00, s. 1.

Affidavits

4.06 Format

4.06 (1) An affidavit used in a proceeding shall,

[…]

4.06 (8) By a Person who does not Understand the Language

4.06 (8) Where it appears to a person taking an affidavit that the deponent does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the affidavit correctly.

R.R.O. 1990, Reg. 194, r. 4.06 (8).

ANNOTATIONS

Samrith v. Chea, 2017 ONSC 2307 (CanLII)

[6] Every person who commissions an affidavit has an obligation to satisfy herself or himself that the deponent understands the language used in the affidavit.

[7] The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 address directly the procedure to be followed when a deponent does not understand the language used in the affidavit. Rule 4.06(8) states:

> 4.06(8) Where it appears to a person taking an affidavit that the deponent does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the affidavit correctly.

[8] This requirement should apply also to family law proceedings via r. 1(7) of the *Family Law Rules*, O. Reg. 114/99.

[9] None of the affidavits signed by the applicant, including the affidavit for divorce, made any reference, in the jurat, that the affidavit was interpreted to the applicant.

[10] The result is that it is not possible to rely on the applicant's affidavit for divorce.

[11] It is troublesome that the applicant signed affidavits, in relation to obtaining an order for substituted service, that also were not in conformity with r. 4.06(8). However, there are also affidavits signed by the applicant's sister in relation to service, such that I am satisfied that it is not necessary to vacate the order for substituted service.

[12] Where it appears that a deponent may not understand the language used in the affidavit, the person taking the affidavit should adhere to the following procedure:

> (a) make a brief enquiry of the deponent to ascertain whether the deponent is able to read and understand the affidavit; if there is any reasonable concern on the part of the person taking the affidavit as to the deponent's ability to understand the affidavit, the affidavit should be interpreted to the deponent;
>
> (b) where interpretation is required, then the affidavit in its entirety shall be interpreted to the deponent by an interpreter and this interpretation must be done in the presence of the person taking the affidavit;
>
> (c) it is always a best practice to ensure that the interpreter is a person who has the necessary credentials to interpret the affidavit to the deponent; interpretation by friends or family of the deponent is discouraged, and generally should not be relied on;
>
> (d) the interpreter is required to take an oath or be affirmed, to be administered by the person taking the deponent's affidavit, to interpret the affidavit correctly; as a practical matter this condition is best satisfied by having the interpreter sign an affidavit setting out the interpreter's credentials, the fact that the interpreter correctly interpreted the entire affidavit to the deponent, and that the deponent understood the affidavit before signing it;
>
> (e) the jurat of the affidavit must contain the name of the interpreter, and must state that the interpreter interpreted the affidavit from one named language to another named language in the presence of the person taking the affidavit; the person taking the affidavit must also include in the jurat that he or she took the interpreter's oath or affirmation to interpret the affidavit correctly or, alternatively, the interpreter should file a separate affidavit as explained in paragraph (d).

[13] Further, I have no confidence that the applicant understood the application when she signed it; accordingly, the order requires the applicant to append the application as an exhibit to her form 36 affidavit given that that affidavit requires the applicant to depose whether the information contained in the application is correct.

[14] It is recognized that Ministry staff, who serve persons at the counter when documents are filed, often are busy given the number of persons they must assist. Generally, when an interpreter is required, there will not be sufficient time available for a Ministry staff person to preside over an interpreter translating an affidavit. In these circumstances, that process will need to be conducted elsewhere, including with the assistance of the Family Law Information Centre ("FLIC") and/or duty counsel, when a person is eligible for such assistance.

[15] It is commonplace for orders and judgments of this court to be based solely on affidavit material. Persons who commission affidavits must be vigilant to ensure that an interpreter is

utilized where a deponent appears not to understand the language of the affidavit; failure to do so may result in orders and judgments being made based on unreliable evidence.

[16] The court, generally, will have no knowledge as to whether an interpreter should have been used. The person who takes an affidavit is the "gatekeeper" and, as such, the court necessarily must place reliance on that person's assessment as to whether the deponent understood the language of the affidavit.

Vaticano Holdings v. Greco, 2011 ONSC 2513 (CanLII)

[28] Rule 4.06 (8) of the *Rules of Civil Procedure* provides that where it appears to a person taking an affidavit that the deponent does not understand the language used in the affidavit, the person shall certify in the jurat that the affidavit was interpreted to the deponent in the person's presence by a named interpreter who took an oath or made an affirmation before him or her to interpret the affidavit correctly. The affidavit of Domenico Greco, a person who does not read or write English, was sworn in the office of the defendants' solicitor, Mr. Baxi. There was no interpreter. There is no such certification in the jurat.

[29] With a non-English speaking deponent who does not read or write English, compliance with Rule 4.06 (8) of the *Rules of Civil Procedure* is mandatory.

[30] The problems with non-compliance with the *Rule* are evident in this case. On cross-examination, the deponent, Domenico Greco, an Italian speaker, testified that he was not aware of the nature and contents of the affidavit he signed on September 14, 2010, which was entirely in the English language. Furthermore, if the contents of the affidavit were made known to the deponent Domenico Greco before he signed - and that is not at all clear - the person allegedly interpreting was not a qualified interpreter but was an interested party, the deponent's son, Vito Greco, who neither took an oath nor made an affirmation to interpret the affidavit correctly.

[31] I conclude that the affidavit of Domenico Greco, dated September 14, 2010, should be given no weight. Therefore, there is no reliable affidavit evidence from the defendants of any representation to them by the plaintiffs or on their behalf that the plaintiff mortgagees would first take action against the Little Britain property and only take action against the Stouffville property if a shortfall resulted from the sale of the Little Britain property. In any event, when cross-examined on the affidavit with the assistance of an Italian/English interpreter, Domenico Greco denied that he had ever met with or spoken to Mr. Baglieri. In short, in cross-examination, Domenico Greco denied any representation had ever been made to him by Mr. Baglieri on behalf of the plaintiffs.

Windsor-Essex Children's Aid Society v. A.R.Y.K., 2015 ONCJ 402 (CanLII)

[13] The affidavit sworn by Ms. K. did not include the jurat expected when the affiant does not understand the language used in it: *Family Law Rules* r. 1(7) and *Rules of Civil Procedure* r. 4.06(8). The wording used in her affidavit is strikingly similar to that found in the affidavit of Mr. A. It appears the affidavit was written by Mr. A. For example, at paragraph 72 it states, "I express that Amneh felt betrayed..." This appears to be Mr. A. speaking in this affidavit. In that same paragraph it also states, "I declare that any and all prior consents signed by Amneh were given involuntary and they were revoked." Again, this appears to be written by Mr. A. From this same affidavit, a reader would not be alerted to the fact that Mr. K. had limited facility with the English language.

[14] In Mr. A.' affidavit, he deposed that his wife understood the Arabic language and a little English. He deposed that he correctly interpreted the contents of both Ms. B.'s and Ms. K.'s affidavit from English into the Arabic language and that his wife appeared to fully understand the contents. These statements indicate it was Mr. A. who wrote Ms. K.'s affidavit and translated it for her. In this case, where one of the reasons the Society intervened was because of domestic

conflict, little weight can be placed upon an affidavit which appears to have been written by Mr. A. for his wife to swear.

34.09 Interpreter

34.09 (1) Where the person to be examined does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the person is examined, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation and the questions to and answers of the person being examined.

R.R.O. 1990, Reg. 194, r. 34.09 (1).

34.09 (2) Where an interpreter is required by subrule (1) for the examination of,

> **(a) a party or a person on behalf or in place of a party, the party shall provide the interpreter;**
>
> **(b) any other person, the examining party shall provide the interpreter,**

unless the interpretation is from English to French or from French to English and an interpreter is provided by the Ministry of the Attorney General.

R.R.O. 1990, Reg. 194, r. 34.09 (2).

ANNOTATIONS

Deutsche Postbank v. Kosmayer, 2016 ONSC 7138 (CanLII)

[8] Justice Lauwers held that section 125 of the *Courts of Justice Act*, read together with rule 34.09 of the *Rules of Civil Procedure* requires the provision of translation by the party that produces foreign-language documents prior to examinations for discovery.

[9] Rule 34.09 of the *Rules of Civil Procedure* states that where an interpreter is required during an oral examination because the person to be examined does not understand the language in which the examination is to be conducted, that party shall provide the interpreter. He analogizes that if a party has put forward documents as relevant, then the opposing parties should be entitled to their translation. Justice Lauwers relies on Rule 1.04(2) which states: "Where matters are not provided for in these rules, the practice shall be determined by analogy to them".

[…]

[14] In this case, the evidence is silent as to whether an informal translation by plaintiff's counsel or their representatives exists but plaintiff's counsel has refused to provide one. The evidence is silent on how plaintiff's counsel intends to prepare the client for oral examinations. When questioned, plaintiff's counsel advised that counsel who will conduct the examination has no German knowledge and upon that counsel's instruction, the client reviewed and produced all relevant documentation which now forms Schedule "A' of the plaintiff's Affidavit of Documents. Counsel on the motion confirmed that counsel conducting the examination will meet with the client in order to be provided with an explanation or an informal or formal translation of all of the plaintiff's German-language documents in order to be prepared to attend with the client at the examination for discovery.

[15] I accept Lauwers, J's reasoning. Practical analogies are to be drawn within our Rules. In keeping with Rule 1.04 which encourages the just, most expeditious and economic resolution, it would certainly appear, and common sense dictates, that defence counsel should be provided with a translation. Given that plaintiff's counsel does not understand the documents contained in his client's Affidavit of Documents, and given that he himself is going to require a translation of some sort in order to attend at his client's examination for discovery, the defendants are entitled to understand the case they have to meet and in practical terms that requires that they receive translated documents. Further, by providing the translation, the parties are on a more level playing field.

[16] Having determined that the producing party does have an obligation to provide a translation at the discovery stage, the issue of proportionality must then be canvassed. The issue of conversancy of counsel in the language in question is in my view, one of the factors to be considered when looking at the issue of proportionality. Other factors would include the volume of documents to be translated and costs associated therewith, the parties, and the nature and amount in dispute. Here, the plaintiff has alleged fraud and conspiracy, claiming damages in the amount of $2.5 million plus punitive damages. The plaintiff is a large financial institution. Its employees appear to be conversant in English as well as German – in light of them following the (English-speaking) lawyer's instructions to collate all relevant (English and German) documents for its Affidavit of Documents.

[…]

[19] The estimated cost of translating the German-language emails ranges between $9300 and $21,500. In an effort to reach the most 'economic' resolution, the plaintiff shall produce the informal or formal translations of the 290 German-language emails. Should the defendants require translation of any additional documents that have been produced or may be produced as relevant by the plaintiff, they too shall be produced at the plaintiff's expense. The defendants shall within 14 days advise the plaintiff of any documents to be produced in addition to the 290 emails. Proportionality must be kept in mind and should the parties be unable to agree on those additional documents to be translated, they may request a case conference with me for assistance on that issue only.

Hoang v. Vicentini, 2012 ONSC 1329 (CanLII)

Analysis

[7] At the outset, I will say that this issue ought to have been dealt with prior to the trial of this action. The issue of whether a party to litigation needs an interpreter for their evidence is an important one, and must be given consideration by counsel to ensure that testimony, both at discovery and at trial, is accurate and unencumbered by the question of whether or not a party understood what was being asked.

[8] I have reviewed both discovery transcripts and I have considered the evidence of Mr. Hoang on the voir dire. Rule 34.09 of the *Rules of Civil Procedure* places the onus on the party who is to be examined and does not understand the language of the examination to take steps to arrange for an interpreter. While I appreciate that counsel for Hoang may have only met him for the first time the morning of the discovery on the 16th of April 2008, it ought to have been evident to her at that time that Hoang was having difficulty understanding the questions. There was no objection during the first discovery to continuing the discovery in the absence of an interpreter; nor did Hoang state that he did not understand any of the questions.

[9] At the second discovery, there was a Vietnamese interpreter arranged by the solicitor for Hoang. Counsel for the Plaintiffs inquired why there was an interpreter given that Hoang had not

had one at the first discovery. Hoang responded that he thought that he had answered some questions incorrectly at the first discovery because he did not understand what was being asked. Counsel for the Plaintiffs asked Hoang to correct any answers that he felt were inaccurate from the first discovery and he did so [questions 12-45].

[10] At the voir dire, Hoang confirmed that there were some questions that he did not understand from the first discovery and wished to correct or add to his original answers. He stated that he felt more comfortable giving his evidence through a Vietnamese interpreter and he therefore requested one for the second discovery.

[11] The issue of when the need for an interpreter arises has been examined by the Court in various circumstances. In *Mutual Tech Canada Inc. V. Law*, Juriansz J. [as he then was] stated

> In my view, the court, in controlling its procedure, has jurisdiction to order an interpreter be used whenever the court finds that it is appropriate in the circumstances to do so...The preservation and enhancement of the multicultural heritage of Canadians requires that witnesses who are unable to communicate in the language of the examination are provided with interpreters…

I agree.

[12] Mr. Justice Rosenberg had the occasion to consider a similar situation to the one at hand in *Espinosa v. Garisto*. In that case, during a trial, the solicitor for the Plaintiff submitted that the Plaintiff's discovery evidence should not be binding on him because he did not have an interpreter. The Plaintiff testified that he had asked for an interpreter but his lawyer told him he did not need one. Justice Rosenberg noted that the obligation was on the Plaintiff to secure an interpreter if one was necessary and, after reading the discovery transcript, the judge was satisfied that the Plaintiff responded to the questions that were asked. He noted that Rule 31.09 required a party to correct answers from a discovery that were incorrect or incomplete and this had not been done. He ordered the Plaintiff was bound by his discovery evidence.

[13] Finally, in *Skorski v. St. Catharines Canadian Polish Society* after the commencement of the trial, the Plaintiff moved for leave to give his evidence through an interpreter. Justice Quinn, in refusing the request, noted,

> Where a witness professes an inability to understand the English language, and this fact is disputed by one of the parties, I do not think it desirable to have the witness testify in English and take a "wait and see" stance on the question of whether the inability indeed exists. Surely such an approach is fraught with risk. If, part way through the testimony of the witness, it is determined that his ability to fully and fairly put forward his evidence is being impaired by a lack of comprehension of, or fluency in, the English language, and an interpreter is thereafter deemed necessary, what becomes of the evidence of the witness up to that point? In my view, the proper procedure is to conduct a voir dire in which the party seeking to use an interpreter must establish, on a balance of probabilities, the need for an interpreter and any party opposing the use of an interpreter may cross-examine the witness in order opt test his or her knowledge of the English language and thereby disprove the need…

[14] I find on the evidence that Hoang ought to give his evidence at trial through an interpreter. I am not, however, persuaded that the discovery evidence ought to be struck. Clearly, Hoang struggles at times with comprehension of questions put to him in English; that is why he requested an interpreter for the second discovery. He was given an opportunity to correct his answers from the first discovery and he did so. The correspondence leading up to the arrangement of the second discovery did not confirm that it was a fresh discovery through an interpreter; it appears to have been a continuation based on undertakings made at the initial

discovery. Further, at no time during either discovery did counsel for Hoang advise the solicitor for the Plaintiffs that the discovery evidence was compromised due to the lack of an interpreter. Pursuant to Rule 53.01(2), the Court has the positive duty to ensure that questions put to Hoang at this trial are fair, given the fact that he did not have the benefit of an interpreter at his initial discovery and I am alive to that concern.

[15] A review of the first discovery reveals questions being put to Hoang several times, much repetition and, in my view, improper questions being asked of the witness. Simply because questions were asked of a witness at an examination for discovery does not mean that the evidence is admissible at trial. Counsel for the Plaintiffs advised the Court that he does not intend to use questions 392-401 from the discovery taken on April 16, 2008. To avoid further interruption in proceeding with this case with the jury, I direct counsel for the Plaintiffs to provide a list of proposed read-ins from the discovery transcripts to the solicitor for the defendant Hoang and to the Court for review forthwith.

Tesfaslasie v. Bursey, 2011 CarswellOnt 16008, 2011 ONSC 2830 [hyperlink not available]

[1] MASTER J. HABERMAN: — Rule 34.09 provides that interpreters used for out of court proceedings must be "competent and independent." The motion before me raises issues with respect to each of those two criteria.

[…]

[8] When Mr. Opara arrived, he had a brief conversation with the interpreter and the examination finally began at 10:42 a.m. Initial questions on the record revealed that Mr. Jemstone:

* was not a certified interpreter;

* had never provided interpretation services at an examination for discovery;

* had volunteered in an immigration matter, for one person;

* did not provide interpretation services professionally; and that he

* ran a small home care business for the elderly.

[…]

[27] From my review of the transcript, I conclude that the interpreter was not "competent". Fluency in two languages is not necessarily, in itself, a sufficient base for providing oral translation services. Though Mr. Opara stated in submissions that he believed Mr. Jemstone was doing a fine job, he conceded that he did not speak this language or understand it himself. He was therefore in no position to judge.

[28] The current transcript is not helpful to either party. It is replete with disputes between counsel and instances of Mr. Opara taking offence and making demands for apologies on the record. His pride appears to have become a central theme, getting in the way of the matters in issue.

[29] I also have concerns about Mr. Jemstone's independence, as a result of Mr. Opara having assumed the position of his counsel and instructing him not to respond to questions concerning his qualifications. It was important for defence counsel to pursue this issue, even after having called an end to the discovery, as this was information that could have been helpful for the court.

[30] As it turned out, I was able to deal with this matter based on the transcript, itself.

[31] Accordingly, it is ordered that the current transcript shall not be used at trial for any other purpose. The plaintiff shall re-attend to be examined afresh, with the assistance of a competent and independent interpreter, to be retained by the plaintiff. Mr. Opara shall advise defence counsel of the particulars of the retainer (the name, affiliation and qualifications of the interpreter) at least two weeks before the scheduled date, to be arranged for a mutually convenient date.

Davies v. Corporation of the Municipality of Clarington, et al., 2010 ONSC 6103 (CanLII)

The Language of the Documents

[42] Mr. Regan points out that half of the Affidavit of Documents is in Polish as are a large number of the documents. He requests that Mr. Zuber be ordered to produce translations of the documents in English. Mr. Strype is prepared to provide only translations of the documents on which he will be relying. He also submits that a good number of them have already been translated by the defendants, so that a costly new translation of those is simply not necessary.

[43] Section 125 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("CJA") provides:

[…]

[44] Rule 34.09 of the *Rules* offers a suitable analogy:

[…]

[45] In accordance with section 125 of the *CJA* and Rule 1.04(2) of the *Rules*, as a general rule a person producing a document as relevant should be obliged to provide a translation of it in the official language in which the proceedings are being conducted as part of the document discovery process.

Rule 53 Evidence at Trial

53.01 Evidence by Witness

Oral Evidence as General Rule

53.01 (1) Unless these rules provide otherwise, witnesses at the trial of an action shall be examined orally in court and the examination may consist of direct examination, cross-examination and re-examination.

R.R.O. 1990, Reg. 194, r. 53.01 (1).

[…]

Interpreter

53.01 (5) Where a witness does not understand the language or languages in which the examination is to be conducted or is deaf or mute, a competent and independent interpreter shall, before the witness is called, take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

R.R.O. 1990, Reg. 194, r. 53.01 (5).

53.01 (6) Where an interpreter is required under subrule (5), the party calling the witness shall provide the interpreter, unless the interpretation is to be from English to French or from French to English and an interpreter is provided by the Ministry of the Attorney General.

R.R.O. 1990, Reg. 194, r. 53.01 (6).

ANNOTATIONS – SUBSECTIONS 5 AND 6

Royal Bank of Canada v. Welton, 2009 CanLII 55356 (ON SC)

[9] As I advised the Ren defendants both at the case conference and during the argument of the motion, the party who requires the assistance of an interpreter must provide one at his/her own expense unless English/French translation is required. The exception is set out in subsections (5) and (6) of Rule 53.01 of the *Rules of Civil Procedure*, which provides that a witness who does not understand English be provided with an interpreter by the party calling the witness. Mr. Davis advises that he will arrange for one when he calls Ms. Ren's parents as witnesses. As for issues raised by Ms. Ren as to the competence of the interpreter, those issues will be dealt with if/when they arise.

TARIFF A – LAWYERS' FEES AND DISBURSEMENTS ALLOWABLE UNDER RULES 57.01 AND 58.05

[...]

Part II — Disbursements

29.1 Where ordered by the presiding judge or officer, for translation into English or French of a document that has been filed, a reasonable amount.

Rules of the Small Claims Court – Courts of Justice Act, O. Reg. 258/98

Rule 18 – Evidence at Trial

18.03 (1) Summons to Witness

18.03 (1) A party who requires the attendance of a person in Ontario as a witness at a trial may serve the person with a summons to witness (Form 18A) requiring him or her to attend the trial at the time and place stated in the summons.

O. Reg. 258/98, r. 18.03 (1).

18.03 (5.1) Interpreter

18.03 (5.1) If a party serves a summons on a witness who requires an interpreter, the party shall arrange for a qualified interpreter to attend at the trial unless the interpretation is

from English to French or French to English and an interpreter is provided by the Ministry of the Attorney General.

O. Reg. 78/06, s. 37 (2).

Credit Unions and Caisses Populaires Act, 1994, S.O. 1994, c. 11

Part III – Establishing a Credit Union

Incorporation

19. (1) Language and form of corporate name

19. (1) The corporate name of a credit union must be in the language and form authorized in the articles and approved by the Superintendent.

2007, c. 7, Sched. 7, s. 10.

19. (2) Use of “credit union”

19. (2) Subject to subsections (3) and (4), the corporate name of a credit union must include the words “credit union” or “caisse populaire”.

2007, c. 7, Sched. 7, s. 10.

19. (3) Use of “caisse populaire”

19. (3) Only a corporation incorporated under this Act or a predecessor of this Act that provides financial services to its members and promotes the interests of the French-speaking community in Ontario by providing management and democratic control in French may include “caisse populaire” in its corporate name, and all other corporations incorporated under this Act or a predecessor of this Act shall include “credit union” in their corporate names.

2007, c. 7, Sched. 7, s. 10.

19. (4) Use of “Limited”, etc.

19. (4) The corporate name of a credit union must have at the end of it one of the following: “Limited”, “Ltd”, “Limitée”, “Ltée”, “incorporated”, “incorporée” or “Inc”.

2007, c. 7, Sched. 7, s. 10.

Part XI XI – Returns, Examinations and Records

Records and Documents

231. (1) Requirement to maintain records and documents, etc.

231. (1) Every credit union shall keep and maintain at its head office or at such other place in Ontario as may be specified in its by-laws such books, registers and other records and documents in either English or French as may be required by the regulations. 2007, c. 7, Sched. 7, s. 124.

General – Credit Unions and Caisses Populaires Act, O. Reg. 237/09

Part VI – Governing the Credit Union

25. Mandatory by-laws

25. The following are prescribed for the purposes of subsection 105 (2) of the Act as matters required to be governed by the by-laws of every credit union, to the extent the matters are not provided for by the Act or the regulations or set out in the articles of the credit union:

[…]

6. The language or languages in which the credit union will carry on business.

Crown Administration of Estates Act, R.S.O. 1990, c. C.47

Compensation agreements

[…]

5.1 (4) Translation

5.1 (4) A compensation agreement that is written in a language other than English or French shall be accompanied by a certified translation into English or French.

2009, c. 33, Sched. 2, s. 22.

5.1 (10) Same, additional documents

5.1 (10) If the Public Guardian and Trustee determines that an accounting is not acceptable, the Public Guardian and Trustee may require such additional documents as he or she may specify to be given to the Public Guardian and Trustee and to the heir, within such time as the Public Guardian and Trustee may specify.

2009, c. 33, Sched. 2, s. 22.

5.1 (11) Translation

5.1 (11) If an accounting or the documents given under subsection (10) are written in a language other than English or French, the copy of the accounting or documents given to the Public Guardian and Trustee shall be accompanied by a certified translation into English or French.

2009, c. 33, Sched. 2, s. 22.

Delegated Administrative Authorities Act, 2012, S.O. 2012, c. 8, Sched. 11

N.B. – This act is not yet in force.

Delegated Administrative Authorities

20. (1) Right to use French

20. (1) A person has the right to communicate in French with, and to receive available services in French from, a delegated administrative authority.

2012, c. 8, Sched. 11, s. 20 (1).

20. (2) Board to ensure

20. (2) The board of directors of the administrative authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

2012, c. 8, Sched. 11, s. 20 (2).

20. (3) Limitation

20. (3) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

2012, c. 8, Sched. 11, s. 20 (3).

20. (4) Existing delegations

20. (4) This section does not apply to a corporation that is deemed to be a delegated administrative authority under subsection 13 (1) until the day specified in a regulation made under clause 42 (1) (d).

2012, c. 8, Sched. 11, s. 20 (4).

20. (5) Definition

20. (5) In this section,

"service" means any service or procedure that is provided to the public by a delegated administrative authority in the administration of its delegated legislation and includes,

(a) responding to inquiries from members of the public, and

(b) any other communications for the purpose of providing the service or procedure.

2012, c. 8, Sched. 11, s. 20 (5).

Early Childhood Educators Act, 2007, S.O. 2007, c. 7, Sch. 8

Part III – College

6. (1) College established

6. (1) A college is established under the name College of Early Childhood Educators in English and Ordre des éducatrices et des éducateurs de la petite enfance in French.

2007, c. 7, Sched. 8, s. 6 (1).

Part X – Miscellaneous

48. (1) Right to use French

48. (1) A person has the right to use French in all dealings with the College.

2007, c. 7, Sched. 8, s. 48 (1).

48. (2) Definition

48. (2) In this section,

"dealings" means any practice or procedure available to the public or to members of the College and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.

2007, c. 7, Sched. 8, s. 48 (2).

Education Act, R.S.O. 1990, c. E.2

Interpretation and Other General Matters

1. (1) Interpretation, other general matters

1. (1) In this Act and the regulations, except where otherwise provided in the Act or regulations,

[…]

"English-language district school board" means an English-language public district school board or an English-language separate district school board; ("conseil scolaire de district de langue anglaise")

"English-language public board" means,

(a) an English-language public district school board, or

(b) a public school authority; (“conseil public de langue anglaise”)

“English-language public board supporter” means a person who is an owner or tenant of residential property in the area of jurisdiction of a board and who is not,

(a) a separate school supporter,

(b) a French-language public district school board supporter, or

(c) a Protestant separate school board supporter; (“contribuable des conseils publics de langue anglaise”)

“English-language Roman Catholic board” means,

(a) an English-language separate district school board, or

(b) a Roman Catholic school authority; (“conseil catholique de langue anglaise”)

“English-language Roman Catholic board supporter” means a Roman Catholic,

(a) who is shown as an English-language Roman Catholic board supporter on the school support list as prepared or revised by the assessment commissioner under section 16 of the *Assessment Act*, or

(b) who is declared to be an English-language Roman Catholic board supporter as a result of a final decision rendered in proceedings commenced under the *Assessment Act*,

and includes his or her Roman Catholic spouse; (“contribuable des conseils catholiques de langue anglaise”)

[…]

“French-language district school board” means a French-language public district school board or a French-language separate district school board; (“conseil scolaire de district de langue française”)

“French-language district school board supporter” means a French-language public district school board supporter or a French-language separate district school board supporter; (“contribuable des conseils scolaires de district de langue française”)

“French-language instructional unit” means a class, group of classes or school in which the French language or Quebec sign language is the language of instruction but does not include a class, group of classes or school established under paragraph 25 or 25.1 of subsection 8 (1); (“module scolaire de langue française”)

“French-language public district school board supporter” means a French-language rights holder,

(a) who is shown as a French-language public district school board supporter on the school support list as prepared or revised by the assessment commissioner under section 16 of the *Assessment Act*, or

(b) who is declared to be a French-language public district school board supporter as a result of a final decision rendered in proceedings commenced under the *Assessment Act*,

and includes his or her spouse if the spouse is a French-language rights holder; ("contribuable des conseils scolaires de district publics de langue française")

"French-language rights holder" means a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario; ("titulaire des droits liés au français")

"French-language separate district school board supporter" means a Roman Catholic French-language rights holder,

(a) who is shown as a French-language separate district school board supporter on the school support list as prepared or revised by the assessment commissioner under section 16 of the *Assessment Act*, or

(b) who is declared to be a French-language separate district school board supporter as a result of a final decision rendered in proceedings commenced under the *Assessment Act*,

and includes his or her Roman Catholic spouse if the spouse is a French-language rights holder; ("contribuable des conseils scolaires de district séparés de langue française")

"French-speaking person" means a child of a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French-language in Ontario; ("francophone")

Part II – School Attendance

Resident pupil qualification, secondary

[…]

36. (6) Certain elementary-only school authorities

36. (6) Subject to subsection (7), where a person is qualified to be a resident pupil of a school authority, other than a public school authority, that provides elementary education only, and the area of jurisdiction of the school authority is the same in whole or in part as the area of jurisdiction of a public district school board, the pupil shall be admitted to a secondary school operated by the public district school board or to a secondary school operated by another board,

(a) to which the first-mentioned district school board pays fees on the person's behalf; or

(b) with which the first-mentioned district school board has an agreement relating to the provision of education to the person.

1997, c. 31, s. 17.

36. (7) French-speaking persons

36. (7) Only a French-speaking person may be admitted to a school of a French-language public district school board under subsection (6).

1997, c. 31, s. 17.

---

45. (1) Admission where one parent is sole support

45. (1) Subject to subsection (2), where, for any reason, one parent of a person is the sole support of the person, and that parent,

(a) resides in a residence in Ontario that is not assessed for the purposes of any board; and

(b) boards the person in a residence that is not a children's residence as defined in Part IX (Residential Licensing) of the *Child, Youth and Family Services Act, 2017*,

the person shall, if otherwise qualified to be a resident pupil, be deemed to be qualified to be a resident pupil in respect of,

(c) a school section, if the residence is situate in the school section and the taxes on its assessment are directed to the support of public schools;

(d) a separate school zone, if the person is a Roman Catholic and the residence is situate in the separate school zone and the taxes on its assessment are directed to the support of separate schools; or

(e) a secondary school district, if the residence is situate in the secondary school district and the taxes on its assessment are directed to the support of public schools.

1997, c. 31, s. 22.

45. (2) Exception: French-language rights

45. (2) No person has the right under subsection (1) to attend a French-language instructional unit operated by a board unless the person is a French-speaking person.

1997, c. 31, s. 22.

Part II.1 – Miscellaneous

Provisions Relating to Public Boards

50.1 (1) Residents other than supporters entitled to vote

50.1 (1) Despite the provisions of this or any other Act but subject to subsection (2), a person who is not a supporter of any board who is entitled under subsection 1 (10) to vote in the area of jurisdiction of a public board and who wishes to be an elector for the public board at an election is entitled,

> **(a) to cause his or her name to be entered on the preliminary list for the voting subdivision in which he or she resides, as an elector for the public board; and**
>
> **(b) to be enumerated as an elector for the public board.**

1997, c. 31, s. 27.

50.1 (2) French-language rights

50.1 (2) Only a person who is a French-language rights holder has entitlements under subsection (1) in respect of a French-language public district school board.

1997, c. 31, s. 27.

Dispositions relatives aux conseils catholiques

54. (1) Residents other than supporters entitled to vote

54. (1) Despite the provisions of this or any other Act but subject to subsection (2), a Roman Catholic who is not a supporter of any board, who is a person entitled under subsection 1 (10) to vote in the area of jurisdiction of a Roman Catholic board and who wishes to be an elector for the Roman Catholic board at an election is entitled,

> **(a) to cause his or her name to be entered on the preliminary list for the voting subdivision in which he or she resides, as an elector for the Roman Catholic board; and**
>
> **(b) to be enumerated as an elector for the Roman Catholic board.**

1997, c. 31, s. 29.

54. (2) French-language rights

54. (2) Only a person who is a French-language rights holder has entitlements under subsection (1) in respect of a French-language separate district school board.

1997, c. 31, s. 29.

Part VIII – Compliance with Board Obligations

230.19 (1) Denominational, linguistic and cultural issues

230.19 (1) Nothing in this Part authorizes the Minister to interfere with or control,

[…]

(c) the linguistic or cultural aspects of a French-language district school board.

2000, c. 11, s. 7.

230.19 (2) Same

230.19 (2) The powers under this Part shall be exercised in a manner that is consistent with,

[…]

(c) the linguistic or cultural aspects of a French-language district school board.

2000, c. 11, s. 7.

Part IX – Finance

Division A – General

Legislative and Municipal Grants

234. (1) Legislative grants

234. (1) Subject to subsections (2) and (3), the Lieutenant Governor in Council may make regulations governing the making of grants, from money appropriated by the Legislature,

(a) for educational purposes;

(b) for the construction of child care facilities;

(c) for the construction of facilities for the co-ordination and provision of services and programs that,

(i) promote healthy emotional, social and physical development in children,

(ii) help children succeed in school, or

(iii) provide other assistance, advice, education or training relating to the care and development of children;

(d) to allow community groups to use school buildings and premises.

2006, c. 10, s. 28.

[…]

234. (2) Same

234. (2) Regulations made under subsection (1) shall ensure that the legislation and regulations governing education funding operate in a fair and non-discriminatory manner,

> **(a) as between English-language public boards and English-language Roman Catholic boards; and**
>
> **(b) as between French-language public district school boards and French-language separate district school boards.**

1997, c. 31, s. 113 (1).

234. (3) Same

234. (3) Regulations made under subsection (1) shall ensure that the legislation and regulations governing education funding operate so as to respect the rights given by section 23 of the *Canadian Charter of Rights and Freedoms*.

1997, c. 31, s. 113 (1).

ANNOTATIONS

Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General), [2001] 1 S.C.R. 470, 2001 SCC 15 (CanLII)

[14] Turning to education grants, we see that s. 234(1) of the new *Education Act* empowers the Lieutenant Governor in Council to "make regulations governing the making of grants for educational purposes from money appropriated by the Legislature". Of particular constitutional importance, subss. (2) and (3) of s. 234 restrict the exercise of this power. These provisions read:

> 234. . . .
>
> (2) Regulations made under subsection (1) shall ensure that the legislation and regulations governing education funding operate in a fair and non-discriminatory manner,
>
> > (a) as between English-language public boards and English-language Roman Catholic boards; and
> >
> > (b) as between French-language public district school boards and French-language separate district school boards.
>
> (3) Regulations made under subsection (1) shall ensure that the legislation and regulations governing education funding operate so as to respect the rights given by section 23 of the *Canadian Charter of Rights and Freedoms*.

[15] It should be recalled that s. 23 of the *Charter* protects minority language education rights in Canada. See *Mahe v. Alberta*, 1990 CanLII 133 (SCC), [1990] 1 S.C.R. 342; *Reference Re*

Public Schools Act (Man.), s. 79(3), (4) and (7), 1993 CanLII 119 (SCC), [1993] 1 S.C.R. 839; and *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3, 2000 SCC 1 (CanLII). The appellants have not raised any arguments with respect to the guarantees provided by s. 23, and there has been no suggestion that the *EQIA* [1997 *Education Quality Improvement Act*] violates s. 23. As a result, this appeal deals only with denominational rights under s. 93(1) of the *Constitution Act, 1867*, and nothing stated herein is intended to affect s. 23 rights.

Division D – Supervision of Boards' Financial Affairs

257.52 (1) Denominational, linguistic and cultural issues

257.52 (1) Nothing in this Division or Division C.1 authorizes the Minister to interfere with or control,

[…]

(c) the linguistic or cultural aspects of a French-language district school board.

1997, c. 31, s. 113 (4); 2009, c. 34, Sched. I, s. 16 (1).

257.52 (2) Same

257.52 (2) The powers under this Division and Division C.1 shall be exercised in a manner that is consistent with,

[…]

(c) the linguistic or cultural aspects of a French-language district school board.

1997, c. 31, s. 113 (4); 2009, c. 34, Sched. I, s. 16 (2).

ANNOTATIONS

Ontario English Catholic Teachers' Assn. v. Ontario (Attorney General), [2001] 1 S.C.R. 470, 2001 SCC 15 (CanLII)

[18] Division D of Part IX of the new *Education Act* provides for the supervision of school boards' financial affairs by the provincial Ministry of Education and Training. Under s. 257.30(1), the Minister of Education and Training may direct an investigation of the financial affairs of a board if: (a) the board has a deficit for a fiscal year; (b) the board fails to pay certain debentures, debt instruments or interest due; (c) the board fails to pay any other debts or liabilities when due and the default is occasioned from financial difficulties affecting the board; or (d) if "the Minister has concerns about the board's ability to meet its financial obligations". The investigator reports to the Minister (s. 257.30(5)), but "may not recommend that control and charge over the administration of the affairs of the board be vested in the Ministry unless the investigation discloses evidence of financial default or probable financial default, of a deficit or a probable deficit or of serious financial mismanagement" (s. 257.30(6)). After reviewing the investigator's report, the Minister may "give any directions to the board that he or she considers advisable" or may advise the Lieutenant Governor in Council to vest financial control of the board with the Ministry: s. 257.31. If the Lieutenant Governor in Council acts on this recommendation, the Minister assumes full control over the board: ss. 257.33 to 257.49.

[19] This power is also subject to important limitations. Most significantly, the Minister cannot interfere with: "(a) the denominational aspects of a Roman Catholic board; (b) the denominational aspects of a Protestant separate school board; or (c) the linguistic or cultural aspects of a French-language district school board": s. 257.52. Although the government has attempted to shield the exercise of the Minister's Division D powers from judicial scrutiny by enacting a privative clause (s. 257.40), an exception is provided in s. 257.40(5) for the review of decisions impacting the guarantees in s. 257.52. A further limitation on the exercise of Division D powers is provided by s. 257.50, which requires the Lieutenant Governor in Council to revoke the Minister's control over a board if "the Lieutenant Governor in Council is of the opinion that the affairs of a board no longer need to be administered under [Division D]" or if the board no longer has a deficit.

Division E – Education Development Charges

Miscellaneous

257.94 Different types of boards treated the same

257.94 In doing anything under this Division the Ontario Municipal Board shall treat English-language public boards, English-language Roman Catholic boards, French-language public district school boards and French-language separate district school boards in the same manner.

1997, c. 31, s. 113 (5).

Part X – Teachers, Designated Early Childhood Educators, Pupil Records and Education Numbers

Duties

264. (1) Duties of teacher

264. (1) It is the duty of a teacher and a temporary teacher,

[…]

language of instruction

> **(f) in instruction and in all communications with the pupils in regard to discipline and the management of the school,**
>
> > **(i) to use the English language, except where it is impractical to do so by reason of the pupil not understanding English, and except in respect of instruction in a language other than English when such other language is being taught as one of the subjects in the course of study, or**
> >
> > **(ii) to use the French language in schools or classes in which French is the language of instruction except where it is impractical to do so by reason of the pupil not understanding French, and except in respect of instruction in a**

language other than French when such other language is being taught as one of the subjects in the course of study;

[…]

264. (1.1) Sign language

264. (1.1) Despite clause (1) (f), a teacher or temporary teacher may use American Sign Language or Quebec Sign Language in accordance with the regulations.

1993, c. 11, s. 36.

Part XII – Language of Instruction

Provisions Relating to District School Boards and School Authorities

293. (1) Admission of pupils other than French-speaking persons where French is language of instruction

293. (1) A French-language district school board, on the request of the parent of a pupil who is not a French-speaking person, or of a person who has lawful custody of a pupil who is not a French-speaking person, or of a pupil who is an adult and is not a French-speaking person, may admit the pupil to a school of the board if the admission is approved by majority vote of an admissions committee appointed by the board and composed of,

(a) the principal of the school to which admission is requested;

(b) a teacher of the board; and

(c) a supervisory officer employed by the board.

1997, c. 31, s. 128.

293. (2) Same

293. (2) A school authority that operates a French-language instructional unit, on the request of the parent of a pupil who is not a French-speaking person, or of a person who has lawful custody of a pupil who is not a French-speaking person, or of a pupil who is an adult and is not a French-speaking person, may admit the pupil to the French-language instructional unit if the admission is approved by majority vote of an admissions committee appointed by the school authority and composed of,

(a) the principal of the school to which admission is requested;

(b) a teacher who uses the French language in instruction in the school; and

(c) a French-speaking supervisory officer employed by the school authority or arranged for in accordance with subsection (3).

1997, c. 31, s. 128.

293. (3) Where school authority has no French-speaking supervisory officer

293. (3) Where a school authority does not employ a French-speaking supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee.

1997, c. 31, s. 128.

ANNOTATIONS

Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General), [2015] 2 S.C.R. 282, 2015 SCC 25 (CanLII)

[69] There is no doubt that a province or territory can delegate the function of setting admission criteria for children of non-rights holders to a school board. This delegation can include granting a minority language school board wide discretion to admit the children of non-rights holders.

[70] There is also no doubt that a province or territory may pass legislation which offers protections higher than those protected by the *Charter*. Section 23 establishes a constitutional minimum: *Mahe*, at p. 379. Two important corollaries flow from this. First, because the *Charter* sets out minimum standards with which legislation must comply, any legislation which falls below these standards contravenes the *Charter* and is presumptively unconstitutional. Second, because the *Charter* sets out only minimum standards, it does not preclude legislation from going beyond the basic rights recognized in the *Charter* to offer additional protections. This fact was recognized by Dickson C.J. in *Mahe*, where he explained that s. 23 establishes "a minimum level of management and control in a given situation; it does not set a ceiling": p. 379. Provincial and territorial governments are permitted to "give minority groups a greater degree of management and control" than that set out in the provision: p. 379.

[71] Some provinces have accepted this invitation and granted school boards wide discretion to admit the children of non-rights holders. In Ontario, for example, s. 293 of the *Education Act*, R.S.O. 1990, c. E.2, provides in part that a French-language school board may admit the child of a non-rights holder if the admission is approved by a majority vote of an admissions committee. In Manitoba, s. 21.15(5) of the *Public Schools Act*, R.S.M. 1987, c. P250, allows the francophone school board to admit any other child beyond those entitled to admission under the act upon written request for admission to the board.

Abbey v. Essex County Board of Education, 1999 CanLII 3693 (ON CA)

[2] Susan Abbey is an Ontario parent. Her first language, and the language in which she received her primary school education, is English. She pays taxes to the public school board. Her three children have received practically their entire primary school education from French as a First Language schools (French Language Schools). Until September 1996, the local public school boards had purchased this service for the Abbey children through a purchase of services arrangement with the separate school boards.

[3] In 1989, Nicholas Abbey, the oldest child, was the first to attend a French Language school in Essex County. The Essex Public Board did not operate a French Language School, so an application was made to attend the French Language School operated by the nearest separate school board. Because his mother was English-speaking, Nicholas was accepted by way of its admissions committee, established pursuant to s. 289 of the *Education Act*, R.S.O. 1990, c. E.2.

Acceptance by the admissions committee meant that the French Language School's tuition fees would be paid by the local public school board.

[…]

[20] As stated earlier, the Essex Public Board does not have a French Language School. Instead, it pays the required tuition fees to French Language Schools operated by other boards, such as the Windsor Roman Catholic Separate School Board, for children in Ontario who are entitled to be educated in the French language. Access to French Language Schools is restricted to s. 23 rights-holders and to children like Nicholas Abbey who are admitted through committees administered pursuant to s. 289 of the *Education Act* (now s. 293).

French-Language Rights Holder Groups

294. (1) French-language rights holders groups

294. (1) In this section and in sections 295 to 299,

"Commission" means the Languages of Instruction Commission of Ontario continued under section 295; ("Commission")

"French-language rights holder", in relation to a school authority, means a person who is entitled to vote at an election of members of the school authority and who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario. ("titulaire des droits liés au français")

1997, c. 31, s. 128.

294. (2) Proposals of French-language rights holders groups

294. (2) A group of 10 French-language rights holders of a school authority may develop a proposal designed to meet the educational and cultural needs of the French-speaking persons who are resident pupils of the school authority and of the French-speaking community served by the school authority.

1997, c. 31, s. 128.

294. (3) Same

294. (3) A proposal under this section may relate to,

> **(a) the provision of suitable sites, accommodation and equipment;**
>
> **(b) the establishment, operation and management of French-language instructional units;**
>
> **(c) the establishment of or alteration of the area of jurisdiction of a French-language district school board;**

(d) the use of the French language and of the English language in French-language instructional units;

(e) the use of Quebec Sign Language as a language of instruction;

(f) the recruitment and appointment of the required teaching, supervisory and administrative personnel;

(g) the establishment of the course of study and the use of textbooks;

(h) the development and establishment of special education programs;

(i) the establishment of attendance areas for French-language instructional units;

(j) the provision of transportation for pupils;

(k) the entering into agreements with other boards in respect of the provision of instruction in the French language and supervisory and consultative services;

(l) the provision of board, lodging, and transportation for pupils;

(m) the development and establishment of adult education programs;

(n) the use of any facility and means necessary to meet the educational and cultural needs of the French-speaking community;

(o) the provision of summer school programs; and

(p) any other matter pertaining to French-language education for French-speaking persons.

1997, c. 31, s. 128.

294. (4) Consideration of proposals by school authority

294. (4) The school authority shall consider any proposal that is developed by a French-language rights holder group under this section and submitted to the school authority in writing.

1997, c. 31, s. 128.

294. (5) Same

294. (5) The school authority shall not refuse to approve the proposal without having given the French-language rights holder group an opportunity to be heard by the school authority.

1997, c. 31, s. 128.

294. (6) Same

294. (6) For the purposes of subsection (5), a group shall name one of its members to speak for the group.

1997, c. 31, s. 128.

294. (7) Approval of proposal under clause (3) (c)

294. (7) Where a school authority approves a proposal made under clause (3) (c), it shall give notice of the approval to the Minister, together with a recommendation that a regulation be made under subsection 58.1 (2) implementing the proposal.

1997, c. 31, s. 128.

294. (8) Notice of refusal

294. (8) A school authority that refuses to approve a proposal shall, within 30 days after receiving the proposal of the French-language rights holder group, forward to the group written reasons for the refusal.

1997, c. 31, s. 128.

294. (9) Referral by group to Languages of Instruction Commission

294. (9) On receipt of a refusal and the reasons for it under subsection (8), the French-language rights holder group may refer the matter to the Commission by sending to the Commission,

(a) a written request for consideration of the matter;

(b) the written proposal of the group; and

(c) the written reasons of the school authority for its refusal.

1997, c. 31, s. 128.

294. (10) Same

294. (10) A French-language rights holder group that refers a matter to the Commission shall send to the school authority a copy of the written request for consideration referred to in clause (9) (a).

1997, c. 31, s. 128.

N.B. – For more information concerning the areas of jurisdiction of Ontario's English-language Public District School Boards, English-language Separate District School Boards, French-language Public District School Boards and French-language Separate District School Boards, see the following regulation: *Continuation, Areas of Jurisdiction and Names of District School Boards – Education Act*, O. Reg. 486/01.

Class Size – Education Act, O. Reg. 132/12

2.1 Class size limit

2.1 (2) In each school year, 10 per cent or less of the classes of a board that have only pupils in junior kindergarten and kindergarten may have a class size that exceeds the class size limit, but that does not exceed 32, in any of the following circumstances:

> **[…]**
>
> **2. Not exceeding the class size limit would negatively affect a program, such as French immersion.**

O. Reg. 245/17, s. 1.

Hiring Practices – Education Act, O. Reg. 274/12

Part 1 – General Rules

1. Interpretation

1. (1) In this Regulation,

1. (3) Nothing in this Regulation shall be interpreted in a way that interferes with or controls,

> **(a) the denominational aspects of a Roman Catholic board;**
>
> **(b) the denominational aspects of a Protestant separate school board; or**
>
> **(c) the linguistic or cultural aspects of a French-language district school board.**

O. Reg. 274/12, s. 1 (3).

Continuing Education – Education Act, R.R.O. 1990, O. Reg. 285

Part II

6. (1) In this section,

"board" means the Conseil des écoles publiques d'Ottawa-Carleton, the Conseil des écoles catholiques de langue française de la région d'Ottawa-Carleton, the Conseil des écoles séparées catholiques de langue française de Prescott-Russell and The Metropolitan Toronto French-Language School Council; ("conseil")

"French-speaking person" means a child of a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the Canadian Charter of Rights and

Freedoms to have his or her children receive their primary and secondary school instruction in the French language in Ontario. (“francophone”)

R.R.O. 1990, Reg. 285, s. 6 (1); O. Reg. 96/95, s. 1.

6. (2) Despite section 5, a board shall not admit to a program that it operates or provides for another board a person who is not a French-speaking person.

R.R.O. 1990, Reg. 285, s. 6 (2).

6. (3) Subsection (2) does not apply to a person who is enrolled in an elementary school, a kindergarten or a junior kindergarten operated by the board or another board.

R.R.O. 1990, Reg. 285, s. 6 (3).

Election Act, R.S.O. 1990, c. E.6

Revision

21. (1) Application for additions, corrections, etc., to list

21. (1) Up to and including the day immediately preceding polling day, the returning officer shall consider all applications concerning the list of electors or the polling list with regard to the application for the addition or deletion of a name or the correction of an error and the returning officer’s decision is final.

R.S.O. 1990, c. E.6, s. 21 (1); 2010, c. 7, s. 16 (1).

[...]

21. (8) Interpreter where necessary

21. (8) Where the returning officer or his or her revision assistant does not understand the language spoken by an applicant or where the applicant is deaf, the applicant has the right to the assistance of an interpreter who, after taking the prescribed oath or affirmation, may translate any necessary declarations, documents or lawful questions put to the applicant and the answers, but in the event of inability to secure an interpreter, the application may for the time being, be refused.

R.S.O. 1990, c. E.6, s. 21 (8).

Ballots

34 (1) Form of ballot

34. (1) The ballots in every electoral district shall be as nearly alike as possible.

2007, c. 15, s. 19.

34. (2) Names of candidates

34. (2) The names of the candidates shall be shown on the ballot in accordance with the following rules:

> **[…]**
>
> **6. If the registered party has an official name in both English and French, both versions of the name shall be shown.**

Interpreter at the Poll

56. When language spoken by elector not understood

56. Where neither the deputy returning officer nor the poll clerk understands the language spoken by an elector or where the elector is deaf, the elector has the right to the assistance of an interpreter who, after taking the prescribed oath or affirmation, may translate any necessary declarations, documents or lawful questions put to the elector and the answers, but in the event of inability to secure an interpreter, the elector shall, for the time being, be refused a ballot.

R.S.O. 1990, c. E.6, s. 56.

Electricity Act, 1998, S.O. 1998, c. 15, Sch. A

Part II – Independent Electricity System Operator

9. (1) Obligation to provide information in French

9. (1) The IESO shall make information that is directed to the general public available in French, including information with respect to programs, services and general communications.

2014, c. 7, Sched. 7, s. 3 (1).

9. (2) Board to ensure compliance

9. (2) The IESO's board of directors shall take all reasonable measures and make all reasonable plans to ensure that the obligation placed on the IESO to make information directed to the general public available in French is met.

2014, c. 7, Sched. 7, s. 3 (1).

9. (3) Limitation, general

9. (3) The IESO's obligation to make information available in French is subject to the limits that are reasonable in the circumstances.

2014, c. 7, Sched. 7, s. 3 (1).

9. (4) Limitations, rules, manuals, etc.

9. (4) The IESO's obligation to make information available in French does not apply to the following:

> **1. Rules, manuals, standards, procedures or communications relating to the operation of the IESO-administered markets or the IESO-controlled grid.**
>
> **2. Rules, contracts or other program information related to the procurement of,**
>
> > **i. electricity supply, capacity or storage,**
> >
> > **ii. changes in electricity demand,**
> >
> > **iii. measures related to the conservation of electricity,**
> >
> > **iv. the management of electricity demand, or**
> >
> > **v. transmission systems or any part of such systems.**

2014, c. 7, Sched. 7, s. 3 (1); 2016, c. 10, Sched. 2, s. 4 (1, 2).

9. (5) Application to microFIT program, etc.

9. (5) The exception in paragraph 2 of subsection (4) does not apply to information with respect to,

> **(a) the microFIT Program; and**
>
> **(b) the rights and obligations of low-volume consumers under a conservation or demand management program.**

2014, c. 7, Sched. 7, s. 3 (1).

9. (6) Definitions

9. (6) In this section,

"low-volume consumer" has the same meaning as in section 56 of the *Ontario Energy Board Act, 1998*, as the definition reads on the day subsection 3 (1) of Schedule 7 to the *Building Opportunity and Securing Our Future Act* (Budget Measures), 2014 comes into force; ("petit consommateur")

"microFIT Program" means the micro Feed-in Tariff Program that is continued under subsection 25.32 (10) and that permits certain consumers of electricity to develop very small renewable energy projects. ("Programme de TRG pour les micro-projets")

2014, c. 7, Sched. 7, s. 3 (1); 2016, c. 10, Sched. 2, s. 4 (3).

Part IX – Regulations

114. Regulations

114. (1) The Lieutenant Governor in Council may make regulations,

[…]

(c) governing the IESO's obligation to make information available in French;

Employers and Employees Act, R.S.O. 1990, c. E.12

4. (1) Complaints by employees for non-payment of wages

4. (1) Upon the complaint on oath of an employee against his or her employer concerning any non-payment of wages a justice of the peace may summon the employer to appear at a reasonable time to be stated in the summons, and the justice or some other justice upon proof on oath of the personal service of the summons, or of its service as hereinafter authorized, shall examine into the matter of the complaint, whether or not the employer appears, and upon due proof of the cause of complaint the justice may discharge the employee from the service or employment of the employer, and may direct the payment to him or her of any wages found to be due, not exceeding the sum of $500 and the justice shall make such order as to him or her seems just and reasonable for the payment of such wages, with costs, and in case of the non-payment of the same, together with the costs, for the space of eight days after the order has been made the justice shall issue a warrant of distress for the levying of the wages, together with the costs of the order and of the distress.

R.S.O. 1990, c. E.12, s. 4 (1).

4. (2) Warrant for arrest

4. (2) Where the justice of the peace before whom a complaint is laid under this section is satisfied that the employer is about to leave Ontario, the justice of the peace may issue a warrant in Form 1, in English or French, for the arrest of the employer.

R.S.O. 1990, c. E.12, s. 4 (2).

Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009, S.O. 2009, c. 32

Duty to provide documents to foreign nationals

11. (1) Employer's duty

11. (1) A person who employs a foreign national shall give him or her a copy of the most recent documents published by the Director of Employment Standards under section 12

before the employment commences if the employer did not use the services of a recruiter in connection with the employment.

2014, c. 10, Sched. 1, s. 8 (1).

11. (2) Recruiter's duty

11. (2) If a recruiter contacts or is contacted by a foreign national in connection with employment, the recruiter shall give the foreign national a copy of the most recent documents published by the Director under section 12 as soon as is practicable after first making contact with him or her.

2014, c. 10, Sched. 1, s. 8 (1).

11. (3) Duties re languages other than English

11. (3) If the language of the foreign national is a language other than English, the employer or recruiter, as the case may be, shall make enquiries as to whether the Director has prepared a translation of the documents published under section 12 into that language and, if the Director has done so, the employer or recruiter shall also provide a copy of the translation to the foreign national.

2009, c. 32, s. 11 (3).

11. (4) Transition, employer's duty

11. (4) If the foreign national is employed by the employer on the day subsection 8 (2) of Schedule 1 to the *Stronger Workplaces for a Stronger Economy Act, 2014* comes into force, the employer shall give him or her a copy of the documents published by the Director under section 12 as soon after subsection 8 (2) of Schedule 1 to the *Stronger Workplaces for a Stronger Economy Act, 2014* comes into force as is practicable.

2014, c. 10, Sched. 1, s. 8 (2).

11. (5) Different categories

11. (5) If the Director has prepared and published different documents for different categories of foreign nationals employed in Ontario or attempting to find employment in Ontario, and a foreign national who is employed by an employer or who contacts a recruiter is in a category for whom a document was prepared and published, the provisions of this section shall be applied as if they referred to the documents prepared and published for that category.

2014, c. 10, Sched. 1, s. 8 (2).

Part II – Posting of Information Concerning Rights and Obligations

2. (1) Minister to prepare poster

2. (1) The Minister shall prepare and publish a poster providing such information about this Act and the regulations as the Minister considers appropriate.

2004, c. 21, s. 1.

[…]

2. (4) Where majority language not English

2. (4) If the majority language of a workplace of an employer is a language other than English, the employer shall make enquiries as to whether the Minister has prepared a translation of the poster into that language, and if the Minister has done so, the employer shall post and keep posted a copy of the translation next to the copy of the poster.

2004, c. 21, s. 1; 2014, c. 10, Sched. 2, s. 1 (1).

2. (5) Copy of poster to be provided

2. (5) Every employer shall provide each of his or her employees with a copy of the most recent poster published by the Minister under this section.

2014, c. 10, Sched. 2, s. 1 (2).

2. (6) Same – translation

2. (6) If an employee requests a translation of the poster into a language other than English, the employer shall make enquiries as to whether the Minister has prepared a translation of the poster into that language, and if the Minister has done so, the employer shall provide the employee with a copy of the translation.

2014, c. 10, Sched. 2, s. 1 (2).

2. (7) When copy of poster to be provided

2. (7) An employer shall provide an employee with a copy of the poster within 30 days of the day the employee becomes an employee of the employer.

2014, c. 10, Sched. 2, s. 1 (2).

2. (8) Same – transition

2. (8) If an employer has one or more employees on the day section 1 of Schedule 2 to the Stronger Workplaces for a Stronger Economy Act, 2014 comes into force, the employer shall provide his or her employees with a copy of the poster within 30 days of that day.

2014, c. 10, Sched. 2, s. 1 (2).

Part XVIII.1 – Temporary Help Agencies

Obligations and Prohibitions

74.7 (1) Information, rights under this Act

74.7 (1) The Director shall prepare and publish a document providing such information about the rights and obligations of assignment employees, temporary help agencies and clients under this Part as the Director considers appropriate.

2009, c. 9, s. 3.

74.7 (2) Same

74.7 (2) If the Director believes that a document prepared under subsection (1) has become out of date, the Director shall prepare and publish a new document.

2009, c. 9, s. 3.

74.7 (3) Same

74.7 (3) As soon as possible after a person becomes an assignment employee of a temporary help agency, the agency shall provide a copy of the most recent document published by the Director under this section to the employee.

2009, c. 9, s. 3.

74.7 (4) Same

74.7 (4) If the language of an assignment employee is a language other than English, the temporary help agency shall make enquiries as to whether the Director has prepared a translation of the document into that language and, if the Director has done so, the agency shall also provide a copy of the translation to the employee.

2009, c. 9, s. 3.

74.7 (5) Transition

74.7 (5) Where a person is an assignment employee of a temporary help agency on the day this section comes into force, the agency shall, as soon as possible after that day, provide the document required by subsection (3) and, where applicable, by subsection (4), to the employee.

2009, c. 9, s. 3.

Energy Consumer Protection Act, 2009, S.O. 2010, c. 8

Part II – Electricity Retailing and Gas Marketing

12. (1) Information required in contract

12. (1) A contract with a consumer shall,

(a) in the case of retailing of electricity and in the case of gas marketing,

(i) contain such information as may be prescribed, presented in the prescribed form or manner, if any, and under the prescribed circumstances, if any, and

(ii) be accompanied by such information or documents as may be required by regulation, provided in such languages as may be prescribed, and presented in the prescribed form or manner, if any, and under the prescribed circumstances, if any;

b) in the case of the retailing of electricity by a retailer,

(i) contain such information as may be required by a code issued under section 70.1 of the *Ontario Energy Board Act, 1998*, provided in such languages as may be required by the code, and presented in the form or manner, if any, and under the circumstances, if any, required by the code, if a condition of a licence requires the retailer to comply with the code, and

(ii) be accompanied by such information or documents as may be required by a code issued under section 70.1 of the *Ontario Energy Board Act, 1998*, provided in such languages as may be required by the code, and presented in the form or manner, if any, and under the circumstances, if any, required by the code, if a condition of a licence requires the retailer to comply with the code; and

c) in the case of gas marketing,

(i) contain such information as may be required by rules made by the Board pursuant to clause 44 (1) (c) of the *Ontario Energy Board, Act 1998*, provided in such languages as may be required by the rules, and presented in the form or manner, if any, and under the circumstances, if any, required by the rules, and

(ii) be accompanied by such information or documents as may be required by rules made by the Board pursuant to clause 44 (1) (c) of the *Ontario Energy Board Act, 1998*, provided in such languages as may be required by the rules, and presented in the form or manner, if any, and under the circumstances, if any, required by the rules. 2010, c. 8, s. 12 (1).

Part IV – Regulations

35. (1) Regulations, general

35. (1) The Lieutenant Governor in Council may make regulations prescribing anything that is required or permitted to be prescribed or that is required or permitted to be done in accordance with the regulations or as provided in the regulations.

2010, c. 8, s. 35 (1).

[…]

35. (3) Same, Part II

35. (3) For the purposes of Part II, the Lieutenant Governor in Council may make regulations,

> **[…]**
>
> **j) for the purposes of subsection 12 (1),**
>
> > **(i) governing information required to be contained in contracts, the form and manner of its presentation and the circumstances under which the information is to be provided,**
> >
> > **(ii) governing what information is required in the information and documents that must accompany contracts, the languages in which the information and documents may be provided, the form and manner of their presentation and the circumstances under which they are to be provided, and**
> >
> > **(iii) providing that such a regulation prevails over any code governing the conduct of a retailer issued by the Board under section 70.1 of the *Ontario Energy Board Act, 1998* or any rules that apply to gas marketing made by the Board under clause 44 (1) (c) of the *Ontario Energy Board Act, 1998*;**

General – Energy Consumer Protection Act, 2010, O. Reg. 389/10

Part I – Consumer protection

Application and Interpretation

2. Definitions

2. In this Part,

[…]

"unconscionable action" means an action by a supplier in connection with a contract if the supplier taking the action knows or ought to know,

(a) that, in the case of a representation made to the consumer, the consumer is not reasonably able to protect his or her interests because he or she does not understand the representation or its implications by reason of a physical or mental disability, ignorance, illiteracy, an inability to understand the language in which the representation is made or another disadvantage, or

(b) that the consumer is being subjected to undue pressure to enter into a contract with the supplier.

O. Reg. 389/10, s. 2.

Contracts

7. Contract requirements

7. (1) A contract must contain the following, be clearly legible and, except for the information to be added at the time the contract is entered into, must be in a typeface having a font size of at least 12:

[…]

7. (4) If a contract is in a language other than English, the contract is deemed to be void if it does not comply with the requirements of the Act, this Part or any applicable code, order or rule issued or made by the Board by reason that the wording is inaccurate, incomplete, unclear or capable of more than one meaning.

O. Reg. 389/10, s. 7 (4).

8. Disclosure statement

8. (1) A contract for the provision of electricity or gas must be accompanied by a disclosure statement,

(a) that contains such information as is required by any code, order or rule issued or made by the Board;

(b) that is provided in such language or languages as may be required or permitted by that code, order or rule;

O. Reg. 389/10, s. 8 (1).

8. (2) A renewal or extension form provided as required under section 15 must be accompanied by a disclosure statement,

(a) that contains such information as is required by a code, order or rule issued or made by the Board;

(b) that is provided in such language or languages as may be required or permitted by that code, order or rule;

O. Reg. 389/10, s. 8 (2).

8. (3) A disclosure statement required under subsection (1) or (2) must be accompanied by a price comparison,

(a) that contains such information as may be required by a code, order or rule issued or made by the Board;

(b) that is provided in such language or languages as may be required by a code, order or rule issued or made by the Board;

O. Reg. 389/10, s. 8 (3).

Family Responsibility and Support Arrears Enforcement Act, 1996, S.O. 1996, c. 31

Part VI – Other Enforcement Mechanisms

50. (1) Recognition of extra-provincial garnishments

50. (1) On the filing of a garnishment process that,

(a) is issued outside Ontario and is directed to a garnishee in Ontario;

(b) states that it is issued in respect of support or maintenance; and

(c) is written in or accompanied by a sworn or certified translation into English or French,

the clerk of the Ontario Court of Justice or Family Court shall issue a notice of garnishment to enforce the support or maintenance obligation.

1996, c. 31, s. 50 (1); 2005, c. 16, s. 30.

50. (2) Foreign currencies

50. (2) If the garnishment process refers to an obligation in a foreign currency, section 44 of the *Interjurisdictional Support Orders Act, 2002* applies with necessary modifications.

1996, c. 31, s. 50 (2); 2002, c. 13, s. 57 (3).

Recommended Standard Terms for Support Orders – Family Responsibility and Support Arrears Enforcement Act, O. Reg. 454/07

1. Recommended standard terms

1. (1) This Regulation sets out, for the purposes of clause 63 (1) (p.2) of the Act, the standard terms that are recommended for support orders.

O. Reg. 454/07, s. 1 (1).

1. (2) The standard terms set out in this Regulation are recommended to be used only if it is appropriate in the circumstances.

O. Reg. 454/07, s. 1 (2).

1. (3) The standard terms set out in this Regulation may be used in English or in French.

O. Reg. 182/08, s. 1.

Farm Registration and Farm Organizations Funding Act, 1993, S.O. 1993, c. 21

Eligible Francophone Organization

12. Francophone organization

12. One francophone organization representing farmers in the Province may be eligible for special funding under this Act if,

(a) it serves the socioeconomic and cultural interests of francophone farmers;

(b) it offers its services to farming businesses in the French language; and

(c) it meets the prescribed criteria for eligibility.

1993, c. 21, s. 12.

ANNOTATIONS

UCFO Special Funding (RE), 2014 ONAFRAAT 24 (CanLII)

Statutory Context

The *Farm Registration and Farm Organizations Funding Act, 1993* (the *Act*) provides for the possibility of special funding for one eligible francophone organization representing farmers in the Province. The L'Union des cultivateurs franco-ontariens (UCFO) has been found eligible to receive this special funding for many years. The special funding comes from other farm organizations accredited under the Act: the Christian Farmers Federation of Ontario (CFFO), the National Farmers Union – Ontario (NFU-Ontario) and the Ontario Federation of Agriculture (OFA).

Section 12 of the *Act* stipulates that "one francophone organization representing farmers in the Province may be eligible for special funding under this Act if,

(a) it serves the socioeconomic and cultural interests of francophone farmers;

(b) it offers its services to farming businesses in the French language; and

(c) it meets the prescribed criteria for eligibility.

(see Appendix A).

[…]

The purpose of the hearing is to determine whether the UCFO meets the conditions and criteria for eligibility for special funding set out in the *Act* and Sections 8(1) and 8(2) of Ontario Regulation 723/93 as amended effective July 1, 2014.

The Conditions, Criteria and Evidence

The UCFO submitted documents including a triennial report (2011-2014), its financial statements for 2013, copies of several editions of the Agricom journal as well as letters of support from the OFA, NFU-O, the Assemblee de la francophonie de l'Ontario and Mr. Grant Crack, MPP for Glengarry-Prescott-Russell. Messrs. Laflèche, Durand, Etter and Glaude testified.

The following is a summary of the evidence that addresses the criteria set out in the regulation:

1. Promoting francophones' awareness of agriculture and agricultural issues.

The UCFO publishes 22 editions of the Agricom newspaper annually, and reaches some 3,500 francophone farming families and stakeholders. Agricom is a hybrid of technical journal and community newspaper. Agricom received several prizes during the last three years from Association de la presse francophone (APF) for newspaper of the year (2012), for the quality of French (2012 and 2013) and for community engagement (2011).

Both the UCFO and Agricom have Facebook pages as well as websites. The UCFO also set up a specialized translation service from English to French in order to make more agriculture related material available in both official languages.

2. Advice to governments, administrative tribunals and advisory bodies on agricultural issues and program/policy development.

The UCFO communicates regularly with federal, provincial and municipal governments and elected representatives. Its triennial report outlines the different organizations and consultations in which it was involved, specifically with ministers and elected members associated with the French speaking community and agriculture, Canadian Heritage and the Agricultural Advisory Committee in the United Counties of Prescott-Russell. Members of the organization and its board of directors are also members of different boards and committees such as the Conseil de la coopération de l'Ontario and the Agricultural Management Institute.

3. Provides education and training on agricultural issues.

The UCFO published a training calendar during the past three years. Each course was attended with a total of about 100 producers participating in the continuing education programs. As well as its journal and website, the UCFO has three representatives on the community council of Alfred College of the University of Guelph.

The UCFO has been active in the discussions and negotiations to keep the French language Alfred College open following the decision of the University of Guelph to close the campus. Mr. Glaude was appointed special counsel to that effect.

4. Plans, promotes, and implements economic development programs.

The UCFO appoints delegates to the Prescott-Russell economic development committee, the Agricultural Adaptation Council and the Agricultural Management Institute, among others. It

regularly works with economic development organizations such as the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA), and is a founding member of the Reseau agroalimentaire de l'Est, which assists producers in commercialization training and opportunities.

5. Maintains ties with the accredited and Francophone organizations.

OFA attends the UCFO's annual meeting and vice versa. As well, the UCFO sits on the OFA's board of directors. Ties with the CFFO and NFU-O are maintained at the staff level of these organizations; a UCFO representative attends their annual general meetings.

With respect to francophone organizations, the UFCO is in regular communication with the Assemblée de la francophonie de l'Ontario as well as other Francophone organizations.

6. Board of directors elected by its members.

The UCFO's board of directors (called the Bureau central) has nine (9) members which are elected directly by the regular members.

7. Submission of financial and annual reports.

Following the adoption of the financial statements for 2011, 2012, 2013 at the annual general meeting, the UCFO submitted the financial statements to the Tribunal as well as to the other accredited organizations. The Tribunal notes that as the financial statements submitted were prepared prior to the coming into force of amendments to the Regulation on July 1, 2014, the format for those financial statements follows the criteria prior to that amendment.

8. N/A.

9. The UCFO was incorporated as a not-for-profit organization in 1945.

10. Has at least 40 members who carry on a farming business and have paid the membership fee.

The UCFO has 657 regular members (who are individuals) and a total of 699 members in all categories of membership, an increase of 8% since the last application to this Tribunal. 234 members carrying on a farming business have paid the membership fee.

11. At least 21 members who have a current farming business registration (new as of July 1, 2014)

The triennial report contains the business name and farming registration number of 25 UCFO members.

Decision and Reasons

Based on a review of the evidence and the criteria set out in the Act and Regulation, the UCFO meets the conditions and criteria required to justify its eligibility for special funding.

The Tribunal orders that the application by L'Union des cultivateurs franco-ontariens for special funding be granted pursuant to Section 19 of the Act. This ruling will be in effect for three years commencing November 9, 2014 and ending at midnight, November 8, 2017.

13. (1) Organization deemed eligible

13. (1) The prescribed francophone organization is eligible for special funding for a period of three years starting at the prescribed time.

1993, c. 21, s. 13 (1).

13. (2) Allocation

13. (2) The special funding shall be allocated to the eligible organization in the prescribed manner.

1993, c. 21, s. 13 (2).

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14. (1) Tribunal may review eligibility

14. (1) If, during the period of eligibility of an organization, a panel of at least three members of the Tribunal believes that the organization no longer qualifies for special funding under this Act, the chair may start a review of its eligibility.

1993, c. 21, s. 14 (1); 2006, c. 19, Sched. A, s. 8 (1).

14. (2) Notice

14. (2) The Tribunal shall give written notice of any review under this section to the francophone organization that is the subject of the review, to the Minister and to all of the accredited farm organizations.

1993, c. 21, s. 14 (2); 2006, c. 19, Sched. A, s. 8 (1).

14. (3) Where no review

14. (3) An organization prescribed in the regulations cannot be reviewed during the three years of deemed eligibility.

1993, c. 21, s. 14 (3).

---

15. (1) Hearing on review

15. (1) If a review is started, the Tribunal shall hold a hearing before determining whether the francophone organization continues to qualify for special funding.

1993, c. 21, s. 15 (1); 2006, c. 19, Sched. A, s. 8 (1).

15. (2) Party

15. (2) The francophone organization that is the subject of the review is a party to the review.

1993, c. 21, s. 15 (2).

15. (3) Submissions

15. (3) Any person or organization entitled to notice of the review may make submissions in a hearing relating to the francophone organization's eligibility for special funding.

1993, c. 21, s. 15 (3).

---

16. (1) Order on review

16. (1) If the Tribunal determines that the eligible francophone organization does not meet the conditions for special funding, the Tribunal may, by order,

> **(a) remove the eligibility of the organization; or**
>
> **(b) require the organization to meet specified conditions within a specified period of time in order to maintain its eligibility.**

1993, c. 21, s. 16 (1); 2006, c. 19, Sched. A, s. 8 (6).

16. (2) Suspension of eligibility

16. (2) If the Tribunal requires the organization to meet specified conditions, it may suspend the eligibility of the organization until those conditions are met.

1993, c. 21, s. 16 (2); 2006, c. 19, Sched. A, s. 8 (6).

16. (3) Further order

16. (3) If an order is made under clause (1) (b) and the organization does not meet the specified conditions within the specified time, the Tribunal may, after holding a hearing under section 15, make a further order under subsection (1).

1993, c. 21, s. 16 (3); 2006, c. 19, Sched. A, s. 8 (1).

16. (4) Removing eligibility

16. (4) An order to remove the eligibility of an organization takes effect on the date set out in the order.

1993, c. 21, s. 16 (4).

---

17. (1) Application for renewal

17. (1) The eligible francophone organization may apply to the Tribunal for a renewal of its eligibility under this Act if it does so during the period prescribed.

1993, c. 21, s. 17 (1); 2006, c. 19, Sched. A, s. 8 (1).

17. (2) Preserving status

17. (2) The eligibility of a francophone organization that applies for a renewal of the eligibility during the prescribed period remains in effect until the Tribunal makes its order pursuant to the application.

1993, c. 21, s. 17 (2); 2006, c. 19, Sched. A, s. 8 (1).

17. (3) Application for eligibility

17. (3) If the Tribunal makes an order removing the eligibility of an organization for special funding or if an organization's eligibility for special funding expires and is not renewed, any francophone organization representing farmers in the province may apply to the Tribunal to receive special funding for the purposes of this Act.

1993, c. 21, s. 17 (3); 2006, c. 19, Sched. A, s. 8 (1).

17. (4) Notice

17. (4) The Tribunal shall give written notice of all applications under this section to the Minister and to all of the accredited farm organizations.

1993, c. 21, s. 17 (4); 2006, c. 19, Sched. A, s. 8 (1).

ANNOTATIONS

UCFO Special Funding (RE), 2014 ONAFRAAT 24 (CanLII)

Statutory Context

The Farm Registration and Farm Organizations Funding Act, 1993 (the Act) provides for the possibility of special funding for one eligible francophone organization representing farmers in the Province. The L'Union des cultivateurs franco-ontariens (UCFO) has been found eligible to receive this special funding for many years. The special funding comes from other farm organizations accredited under the Act: the Christian Farmers Federation of Ontario (CFFO), the National Farmers Union – Ontario (NFU-Ontario) and the Ontario Federation of Agriculture (OFA).

[…]

This Tribunal last renewed the UCFO's eligibility for special funding for a period of three years ending November 8, 2014. The organization must generally submit an application for renewal to the Tribunal every three years (s. 19(3)). However, the present application was not made within the time frame set out in s. 9 of Regulation 723/93 under the Act, that is between nine and six months before the expiry of its eligibility. Therefore this application was not considered as a renewal under s. 17(1) of the Act, but rather treated as a new application under s. 17(3), despite the current eligibility not having expired at the time the application was made. This matter was heard on August 27, 2014 in Ottawa.

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18. (1) Hearing on application

18. (1) The Tribunal shall hold a hearing before determining whether an organization is to be eligible for special funding or whether an organization's eligibility is to be renewed.

1993, c. 21, s. 18 (1); 2006, c. 19, Sched. A, s. 8 (1).

18. (2) Submissions

18. (2) Any person entitled to notice of an application may make submissions in a hearing relating to the eligibility of a francophone organization.

1993, c. 21, s. 18 (2).

18. (3) Party

18. (3) The applicant for funding is a party to the hearing.

1993, c. 21, s. 18 (3).

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19. (1) Order on application

19. (1) If one or more organizations apply for eligibility and the Tribunal determines that only one organization meets the conditions for special funding, the Tribunal shall, by order, declare it to be the organization that is eligible for special funding.

1993, c. 21, s. 19 (1); 2006, c. 19, Sched. A, s. 8 (1).

19. (2) Several applicants

19. (2) If more than one organization applies for eligibility and the Tribunal determines that more than one organization meets the conditions for special funding, the Tribunal shall, by order, declare the organization that, in the Tribunal's opinion, best meets the conditions to be the organization that is eligible for special funding.

1993, c. 21, s. 19 (2); 2006, c. 19, Sched. A, s. 8 (1).

19. (3) Term of eligibility

19. (3) The eligibility of a francophone organization is in effect for three years starting at the prescribed time.

1993, c. 21, s. 19 (3).

---

20. (1) Organization is accredited

20. (1) If the organization that is eligible for special funding is accredited under this Act, it is no longer eligible for special funding.

1993, c. 21, s. 20 (1).

20. (2) One accreditation

20. (2) No other francophone organization is eligible for special funding while an organization referred to in subsection (1) is accredited.

1993, c. 21, s. 20 (2).

General

33. (1) Regulations

33. (1) The Lieutenant Governor in Council may make regulations,

> **[…]**
>
> **7. respecting the question of whether a farm organization offers its services to farming businesses in the French language and serves the socioeconomic and cultural interests of francophone farmers;**
>
> **[…]**
>
> **11. prescribing the francophone organization eligible for special funding under section 13 and the time at which that eligibility starts;**
>
> **[…]**
>
> **17. respecting allocation of money to the francophone organization eligible for special funding.**

1993, c. 21, s. 33 (1); 1999, c. 12, Sched. A, s. 12 (4).

General – Farm Registration and Farm Organizations Funding, O. Reg. 723/93

8. (1) Subject to the other provisions of this section, a francophone organization representing farmers in Ontario may be eligible for special funding if, in addition to meeting the criteria set out in clauses 12 (a) and (b) of the *Act*, it meets the following criteria:

> **1. It promotes knowledge of agriculture and agricultural issues amongst francophones in agricultural and rural areas of Ontario.**
>
> **2. It provides advice and analysis to governments, administrative tribunals or advisory bodies concerning agricultural issues and the development of programs or policies that are of interest to francophones carrying on farming businesses in Ontario.**

3. It provides education or training in respect of agricultural matters or provides information on obtaining such education or training to francophones carrying on farming businesses in Ontario.

4. It plans, promotes or implements or assists in planning, promoting or implementing economic development projects in agricultural and rural areas of Ontario.

5. It maintains a liaison with the accredited organizations and other francophone organizations representing farmers.

6. Persons sitting on its board of directors have all been elected, except for persons who were appointed to fill a vacancy or in other exceptional circumstances.

7. It prepares audited financial statements annually in accordance with subsection (2) and makes them available to the public within 30 days of its annual general meetings and, if the Tribunal has held any hearings under the Act, it submitted a copy of its most recent audited financial statements to the Tribunal before the hearing began.

[…]

9. It is incorporated under a general or special Act of the Legislature.

10. It has at least forty members who,

i. carry on a farming business in Ontario, and

ii. have paid the membership fee.

11. It has at least twenty-one members who carry on a farming business for which there is a current farming business registration.

O. Reg. 723/93, s. 8 (1); O. Reg. 442/09, s. 3; O. Reg. 50/14, s. 6 (1).

8. (2) An audited financial statement shall include:

1. The total amount of special funding received by the francophone organization in the year.

2. Financial statements and an auditor's report prepared by an auditor in accordance with generally accepted auditing standards.

3. The number of members in the organization.

O. Reg. 50/14, s. 6 (2).

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9. A francophone organization eligible for special funding may apply for renewal of its eligibility only during the period that is no sooner than nine months and no later than six months before the expiry of its eligibility.

O. Reg. 723/93, s. 9.

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10. In the *Act* and this Regulation,

"special funding" means the funding accredited organizations have agreed to pay to the eligible francophone organization.

O. Reg. 723/93, s. 10.

Forestry Workers Lien for Wages Act, R.S.O. 1990, c. F. 28

5. (1) Claim of lien to be filed

5. (1) The person claiming the lien shall state the claim in writing in Form 1 in English or in French, setting out briefly the nature of the claim, the amount claimed to be due and a description of the logs or timber upon which the lien is claimed.

R.S.O. 1990, c. F.28, s. 5 (1).

5. (2) Verified by affidavit

5. (2) The claim shall be verified by the affidavit in Form 2 in English or in French of the claimant or the solicitor or agent of the claimant.

R.S.O. 1990, c. F.28, s. 5 (2).

Franco-Ontarian Day Act, 2010, S.O. 2010, c. 4

[Ontario e-Laws website]

Preamble

The French language has been spoken in Ontario since the 17th century. The year 2010 represents the 400th anniversary of the French presence in this province, which began with a series of explorations that eventually led to the mapping of the vast waterways of the interior, the establishment of partnerships with First Nations and the first Francophone settlements in modern day Ontario.

The Francophone community of Ontario is the largest French-speaking community in Canada outside Quebec. French is one of the two official languages of Canada. In Ontario, it is recognized as an official language in the courts, in education and in the Legislature.

The Province of Ontario recognizes the importance of serving its citizens in French. In 1986, the Legislative Assembly unanimously passed the *French Language Services Act* which recognizes the right of Ontario citizens to receive government services in French as provided in that Act, and expresses the wish of the Legislative Assembly to preserve the cultural heritage of the Francophone community for future generations.

The Francophone community has made and continues to make a significant contribution to the vitality of Ontario's society. This linguistic, cultural and economic contribution is enriched by Francophones originating from outside the province who have chosen Ontario as their home.

Many Franco-Ontarians commemorate September 25 to celebrate their language and heritage and also take pride in their collective accomplishments. September 25 is the anniversary of the first unveiling of the Franco-Ontarian flag in Sudbury in 1975; the *Franco-Ontarian Emblem Act, 2001* recognizes the flag as the emblem of the Francophone community of Ontario.

By proclaiming September 25 as Franco-Ontarian Day, this Act officially recognizes the contributions of the Francophone community of Ontario to the social, economic and political life of the Province and the community's importance in Ontario's society.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Franco-Ontarian Day

1. September 25 in each year is proclaimed as Franco-Ontarian Day. 2010, c. 4, s. 1.

Franco-Ontarian Emblem Act, 2001, S.O. 2001, c. 5

Preamble

The French language has been present in Ontario for 350 years. The first French speakers to come to Ontario were the missionaries who established the mission of Sainte-Marie-among-the-Hurons in 1639.

The Ontario French-speaking community is the largest French-speaking community in Canada outside Quebec. French is one of the two official languages of Canada. In Ontario, it is recognized as an official language in the courts, in education and in the Legislative Assembly.

For nearly 40 years, the Province of Ontario has recognized the importance of serving its citizens in French upon request. It was when the present section 5 of the *French Language Services Act*, an Act also known as Law 8, came into force in November 1989, that the Province recognized that its citizens were entitled to those services upon request.

The Franco-Ontarian flag was unveiled for the first time on September 25, 1975 at Laurentian University in Sudbury. From then on, the Ontario French-speaking community has consistently used it as its emblem. It is therefore appropriate now to recognize it officially as the emblem of that community.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Definition

1. In this Act,

“Ontario French-speaking community” means the community of persons who have the right under subsection 23 (1) or (2) of the *Canadian Charter of Rights and Freedoms*, without regard to subsection 23 (3) of that Charter, to have their children receive their primary and secondary school instruction in the French language in Ontario.

2001, c. 5, s. 1.

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2. Franco-Ontarian emblem

2. The flag described in the Schedule to this Act is recognized as the emblem of the Ontario French-speaking community.

2001, c. 5, s. 2.

Schedule – Description of the Emblem of the Ontario French-Speaking Community

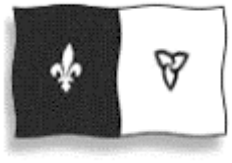
The emblem of the Ontario French-speaking community consists of two vertical bands of different colours.

The first band is mid green and has a white lily in the middle of the band.

The second band is white and has a mid green trillium in the middle of the band.

On the emblem, green represents summer and white represents winter. Together the two colours represent the diversity of Ontario’s climate. The lily evokes the French-speaking community worldwide, whereas the trillium is the floral emblem of Ontario.

The following is an illustration of the emblem:



Health Care Consent Act, 1996, S.O. 1996, c. 2, Sch. A

Part II – Treatment

Emergency Treatment

Emergency treatment

25. (1) Meaning of “emergency”

25. (1) For the purpose of this section and section 27, there is an emergency if the person for whom the treatment is proposed is apparently experiencing severe suffering or is at risk, if the treatment is not administered promptly, of sustaining serious bodily harm.

1996, c. 2, Sched. A, s. 25 (1).

[…]

25. (3) Emergency treatment without consent: capable person

25. (3) Despite section 10, a treatment may be administered without consent to a person who is apparently capable with respect to the treatment, if, in the opinion of the health practitioner proposing the treatment,

> **(a) there is an emergency;**
>
> **(b) the communication required in order for the person to give or refuse consent to the treatment cannot take place because of a language barrier or because the person has a disability that prevents the communication from taking place;**

Highway Traffic Act, R.S.O. 1990, c. H. 8

Part XV – Procedure, Arrests and Penalties

213. (1) When owner may appear before justice of the peace

213. (1) If an owner of a motor vehicle is served with a summons to appear in a local municipality other than that in which the owner resides for an offence against this Act, and the owner's defence is that neither the owner nor the owner's motor vehicle was at the place of the alleged offence at the time the offence occurred, and that the summons must have been issued against the owner through an error of the informant as to the number on the official number plate, then and in that case only the owner may appear before a justice of the peace in the local municipality in which the owner resides and, in the same manner as if the owner were being tried for an offence against this Act, the owner may give evidence corroborated by the evidence of at least two other credible witnesses that neither the owner nor the owner's motor vehicle was at the place of the alleged offence at the time the offence occurred, and that the summons must have been issued against the owner through an error of the informant as to the number on the official number plate.

R.S.O. 1990, c. H.8, s. 213 (1).

213. (2) Certificate

213. (2) The justice, if satisfied of the truth of the evidence, shall forthwith make out a certificate in English or in French in the form set out in the Schedule to this Act and forward it by registered mail to the justice before whom the summons is returnable.

R.S.O. 1990, c. H.8, s. 213 (2).

N.B. – For bilingual signage requirements in areas designated by the *French Language Services Act*, see the following regulations adopted under the *Ontario Highway Traffic Act*:

Accessible Parking for Persons With Disabilities, R.R.O. 1990, Reg. 581

Border Approach Lanes, O. Reg. 94/06

Designation of Bus By-pass Shoulders on King's Highway, O. Reg. 618/05

High Occupancy Vehicle Lanes, O. Reg. 620/05

Pedestrian Crossover Signs, O. Reg 402/15

Pilot Project - Hot Lanes, O. Reg. 227/16

Pilot Project - Three-Wheeled Vehicles, O. Reg. 28/16 [Ontario e-Laws website]

Restricted Use of Left Lanes by Commercial Motor Vehicles, R.R.O. 1990, Reg. 608

Signs, R.R.O. 1990, Reg. 615

Home Care and Community Services Act, 1994, S.O. 1994, c. 26

Part I – Purposes of Act

1. Purposes of Act

1. The purposes of this Act are,

[…]

(d) to recognize, in all aspects of the management and delivery of community services, the importance of a person's needs and preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors;

1994, c. 26, s. 1; 2011, c. 1, Sched. 6, s. 4 (1, 2); 2016, c. 23, s. 52.

Part III – Bill of Rights

3. (1) Bill of Rights

3. (1) A service provider shall ensure that the following rights of persons receiving community services from the service provider are fully respected and promoted:

[…]

3. A person receiving a community service has the right to be dealt with by the service provider in a manner that recognizes the person's individuality and that is sensitive to and responds to the person's needs and preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors.

1994, c. 26, s. 3 (1).

Part VII – Rules Governing Approved Agencies

22. (1) Plan of service

22. (1) When a person applies to an approved agency for any of the community services that the agency provides or arranges, the agency shall,

(a) assess the person's requirements;

(b) determine the person's eligibility for the services that the person requires; and

(c) for each person who is determined to be eligible, develop a plan of service that sets out the amount of each service to be provided to the person.

1994, c. 26, s. 22 (1).

[…]

22. (6) Person's preferences to be considered

22. (6) In developing, evaluating and revising a person's plan of service, an approved agency shall take into account the person's preferences, including preferences based on ethnic, spiritual, linguistic, familial and cultural factors.

1994, c. 26, s. 22 (6).

Housing Services Act, 2011, S.O. 2011, c. 6, Sch. 1

Part III – Service Managers

18. (1) Language of services

18. (1) A service manager shall provide its services that relate to housing in both English and French if any part of the service manager's service area is in an area that is designated in the Schedule to the *French Language Services Act*.

2011, c. 6, Sched. 1, s. 18 (1).

18. (2) Same

18. (2) In addition to what is required under subsection (1), a service manager shall provide services in both English and French to the prescribed housing providers.

2011, c. 6, Sched. 1, s. 18 (2).

18. (3) Requirement if services delegated

18. (3) If the provision of services is delegated under section 17,

> **(a) the requirement under subsection (1) applies to the delegate only if the delegate provides any of the services in an area that is designated in the Schedule to the *French Language Services Act*; and**
>
> **(b) the requirement under subsection (2) applies to the delegate.**

2011, c. 6, Sched. 1, s. 18 (3).

Part IV – Local Housing Corporations

General

31. Language of services

31. A local housing corporation shall provide its services that relate to housing in both English and French if the corporation provides any of such services in an area that is designated in the Schedule to the *French Language Services Act*.

2011, c. 6, Sched. 1, s. 31.

General – Housing Services Act, O. Reg. 367/11

Part IV – Service Managers — Part III of the Act

8. English and French services, s. 18 (2) of the Act

8. The housing providers set out in the following Table are prescribed, for the purposes of subsection 18 (2) of the Act, for the corresponding service manager set out in the Table.

TABLE

Item	Service Manager	Housing providers
1.	City of Greater Sudbury	La Ruche de Coniston

2.	**United Counties of Prescott and Russell**	**Longueuil/L'Orignal Municipal Non-Profit Housing Corporation**
		Centre d'accueil Roger Séguin
3.	**District of Nipissing Social Services Administration Board**	**Habitations Suprêmes North Bay Inc.**

Human Rights Code, R.S.O. 1990, c. H. 19

Part I – Freedom from Discrimination

1. Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

R.S.O. 1990, c. H.19, s. 1; 1999, c. 6, s. 28 (1); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (1); 2012, c. 7, s. 1.

ANNOTATIONS

Landriault v. Champlain (Canton), 2016 HRTO 846 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

[10] The Tribunal has rendered several decisions on the issue of whether language is a ground of discrimination under the *Human Rights Code*. See *Chau v. Olymel*, 2009 HRTO 1386 (CanLII); *Morin v. Kaymic Developments*, 2015 HRTO 1354 (CanLII), at para. 20; *Garcia-Ortiz v. Maison Mère Sœurs De La Charité d'Ottawa*, 2015 HRTO 893 (CanLII); *Woolrich v. Royal LePage Relocation Services*, 2010 HRTO 670 (CanLII); *Taylor v. Oraclepoll Research*, 2009 HRTO 2089 (CanLII); *Arnold v. Stream Global Services*, 2010 HRTO 424 (CanLII); and *Howard v. 407 ETR Concession* ("*Howard*"), 2011 HRTO 1511 (CanLII). Every time, the Tribunal concluded that language was not a ground of discrimination under the *Code*.

[11] However, the Tribunal found that, when language is inherently bound to a person's place of origin, the *Code* may prohibit some forms of discrimination related to the language spoken by a person, such as discrimination based on a grammatically wrong way of expressing oneself or an accent: *Segula v. Ferrante*, (1995), 27 C.H.R.R. D/412. Similarly, making fun of someone who does not speak another language has also been found to be an infringement of the *Code*: *Espinoza v. Coldmatic Refrigeration of Canada Inc.* (1995), 29 C.H.R.R. D/35, aff'd. [1998] O.J. No. 4019 (Ont. Div. Ct.).

[12] In this case, the applicant attempted to establish a link between language and protected grounds, such as ancestry, place of origin and ethnic origin (the "impugned protected grounds"). The applicant describes himself as [TRANSLATION] "a Canadian citizen who lives in Ontario and who is Francophone". At the summary hearing, even though he hesitated over answering the question, he explained that he understood a little English, but that he was much more fluent in French. After reviewing the matter, I find that the applicant cannot inherently bind his request to be served in French to the impugned protected grounds.

Commission de la sécurité professionnelle et d'assurance contre les accidents du travail, 2011 HRTO 1216 (CanLII) [judgment available in French only]

[OUR TRANSLATION]

Reasons

[17] The issue here is whether the [Workplace Safety and Insurance] Board violated the *Human Rights Code* by offering services in French from offices located outside the city where the applicant lives. The applicant received services in French but complained that these services were not equivalent to the services provided in English. An Anglophone worker injured in an accident at work applying for benefits can communicate in his language with staff at the office closest to him. If he wishes to meet with the employee responsible for his file, he simply has to go to the closest Board office. The Francophone worker cannot communicate with the Board in the same way in French.

[18] The *Code* does not prohibit discrimination on the basis of language. Discrimination based on language may infringe the *Code* if it is used as a proxy for discrimination based on another protected ground such as race, ethnicity or place of origin. See *Woolrich v. Royal LePage Relocation Services Inc.*, 2010 HRTO 670 (CanLII) at paragraph 34:

> With respect to the allegations regarding speaking French in the office, language is not a protected ground in the *Code* although it can, at times, be used as a proxy for race, ethnicity or place of origin based discrimination.

See also *Arnold v. Stream Global Services*, 2010 HRTO 424 (CanLII), where the Tribunal held as follows:

> In some circumstances, where language is inextricably linked with one's place of origin, the *Code* may prohibit some forms of discrimination linked to one's language . . . .

[19] In this case, the applicant is not arguing that discrimination on the basis of language is being used as a proxy for another form of discrimination. He submits that Canada is a bilingual country and that he should be entitled to services in French. He also states that Francophones in Hamilton all have similar experiences with Government of Ontario offices. The problem identified by the applicant is the availability of services in French in Ontario. The evidence adduced by the applicant does not establish a link between the availability of services in French and a prohibited ground of discrimination under the *Code*. Insofar as it is possible to interpret the applicant's case as an allegation that the respondents discriminated on the basis of place of origin, Quebec, my assessment of the witnesses' credibility has led me to the conclusion that the respondents' case is more credible. The onus is on the applicant to establish that the respondents violated the *Code*, and he failed to do so.

[20] Ontario is not an officially bilingual province, but the Ontarian legislator recognizes French speakers' right to services in French. See the *French Language Services Act*, .R.S.O. 1990, c. F.32. This statute defines the language obligations of government agencies and institutions, such

as the Board. It also creates the Office of the French Language Services Commissioner, which may receive complaints relating to failures to comply with the Act. The services provided to the applicant by the Board may not comply with the Act, but this possibility is not proof of a violation of the *Code*.

[21] For these reasons, I conclude that, in light of the evidence and the burden of proof, the respondents did not infringe section 1 of the *Code*.

Chau v. Olymel S.E.C\L.P, 2009 HRTO 1386 (CanLII)

[35] Even if I were to accept that Mr. Boudreault made a statement of some sort in reference to the applicant's English-language proficiency, the mere fact of the comment is not sufficient to establish *a prima facie* case of racial discrimination: see *Henry v. Kuntz*, 2004 HRTO 7 (CanLII) at paras. 356-357. While language is not a prohibited ground of discrimination, it can be a defining characteristic of ethnicity or race, and as a consequence can give rise to interests protected under the Code: see *Espinoza v. Coldmatic Refrigeration of Canada Ltd.* (1995), 95 C.L.L.C. 230-026, 29 C.H.R.R. D/35 (Ont. Bd. Of Inquiry), aff'd 1998 CarswellOnt 3825 (Ont. Dist. Ct.). The onus is on the applicant, however, to present sufficient facts to support a finding that language is being used as a proxy for racial or ethnic discrimination, which the applicant in this case failed to discharge.

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2. (1) Accommodation

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

R.S.O. 1990, c. H.19, s. 2 (1); 1999, c. 6, s. 28 (2); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (2); 2012, c. 7, s. 2 (1).

2. (2) Harassment in accommodation

2. (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

R.S.O. 1990, c. H.19, s. 2 (2); 1999, c. 6, s. 28 (3); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (3); 2012, c. 7, s. 2 (2).

ANNOTATIONS

Morin v. Kaymic Developments, 2015 HRTO 1354 (CanLII)

[20] In her Application, the applicant alleges that she was discriminated against on the grounds of ethnic origin because the individual respondent told her, in a sarcastic tone, that she would have to speak English as the individual respondent does not speak French. The *Code* does not provide protection from discrimination on the basis of language. In certain circumstances, language can have a connection to ethnic origin, but in the circumstances of this case, all the applicant has indicated is that the individual respondent's tone was sarcastic when she told her

she did not speak French and advised her she would have to speak English. This is not evidence that the individual respondent mocked the applicant for speaking French, and I do not find that the comment would rise to the level of operating as a proxy for ethnic origin. The applicant indicates that she concluded that the individual respondent did not like French people, but this speculation on her part is not evidence linking the respondent's alleged actions with the ground of ethnic origin and accordingly this allegation is dismissed as having no reasonable prospect of success.

B. (A.) and Colloredo-Mansfeld (Re), 1994 CarswellOnt 7317, 23 C.H.R.R. D/328 (HRTO) [hyperlink not available]

[1] The complainant, AB, is a francophone. He was bom and raised in the province of Quebec.

[…]

[3] By complaint dated January 19, 1990, AB alleged discrimination in accommodation on the basis of ancestry, place of origin, ethnic origin and reprisal against Mr. Colloredo-Mansfeld, Mrs. Clarke and Mr. Clark.

[…]

[14] In November 1988, Mrs. Clarke refused a cheque written in French by AB and left the following message on his answering machine:

> I'm Mrs. Clark and I'm not accepting your cheque. I just phoned the Rental Board and they said no, I can refuse your cheque 'cause you're not talking, you're discriminating my English language, and I wanted the cheque from Mr. [CD]. All my cheques are in but yours. So I'm not accepting your cheque in French (?) from you either, and there will be no games played, [as transcribed by Mark J. Nimigan, C.S.R., Official Examiner]

AB testified that he had written the rent cheques for September and October in French and these had been accepted without incident. AB gave evidence that the arrangement between him and CD was that they would alternate paying the rent on an annual basis and that CD had been delivering his cheques for the year ending in August 1988.

[15] AB's evidence was that he then spoke to Chris Clark who told him that, in addition to the problem of the cheque being in French which his mother could not understand, the apartment was registered in CD's name with the "Rental Board" and that, in the past, some cheques from AB had bounced. AB believed that these latter two reasons were "invented" and that this was a "declaration of war" over his right to write a cheque in French. He also stated in his testimony:

> There was an implied threat of eviction by telling me that not only was it because of the cheque, but because the apartment was not in my name. It was like an implied eviction. I was already evicted. I was not considered a tenant suddenly.

[…]

[70] I am prepared to accept that discrimination based on the use of the French language falls within the proscription in relation to ancestry. The only case cited on this point was *Cousens v. Canadian Nurses Association* (1981), 2 C.H.R.R. D/365. In that case, an anglophone was dismissed from his job so that the position could be filled by a francophone. The Board of Inquiry found that expressing preference for a francophone in addition to the requirement of being "fluently bilingual," particularly where there was no compelling job requirement for complete

mastery of French, was sufficient to constitute discrimination on the basis of ancestry. In reaching this conclusion, the Board stated [p. D/367, para. 3279]:

> The more difficult question is the significance of giving employment preference on the basis of whether or not a person is "Francophone." The Ontario Human Rights Code does not bar discrimination based on language. Therefore, in order to establish a contravention of the Code in a particular case, it would be necessary to demonstrate that the preference based on language extended to one of the grounds of discrimination which are prohibited by the Code. The potentially relevant ground in this case is "ancestry."

The Board then determined that "francophone" means having French as one's "mother tongue" and continued [p. D/368, paras. 3286 and 3290]:

> This Board has concluded that "mother tongue" is, in fact, closely enough associated to ancestry that to give preference in employment to a "Francophone" could constitute a contravention of the *Ontario Human Rights Code* on the basis of ancestry.
>
> . . . For many Canadians of French descent, exclusion based on "mother tongue" is, effectively, discrimination based on ancestry. Surely, the intent of the Ontario Human Rights Code is to prohibit such effective discrimination based on ancestry even though the particular manifestation may be in language.

[71] The alleged discriminatory act alleged here — the refusal to accept the cheque written in French — manifests itself solely in language. There was no convincing evidence that any of the respondents harboured an animus against persons from Quebec (place of origin) or against French Canadians (ethnic origin?). There was an uncorroborated allegation by AB that other tenants of French Canadian background had been harassed and referred to as "frogs" by Mr. Clark. There was evidence that there were other French Canadian tenants in the building at various times but none were called to give evidence. In argument, counsel for the Commission took the position that French Canadians were accepted in the building but only if they did not use the French language. There was no evidence to support this submission.

[72] The case for discrimination on the basis of ancestry, place of origin and ethnic origin is said to be buttressed by the use of Mr. Clark and Mrs. Clarke of the derogatory terms "frog" and "Frenchie" in reference to the complainant on several occasions to third parties. […]

[73] Where the case for discrimination must be based on circumstantial evidence, slurs, name-calling and derogatory comments and statements are all relevant. However, they are not determinative, especially in a situation such as this where there is clearly an atmosphere of mutual animosity stretching over a period of five years. In such circumstances, it is not surprising that the level of insults sunk to a very low level. I accept the evidence of the complainant and other Commission witnesses with respect to the use of derogatory epithets and comments but I am not persuaded that this assists greatly in determining the motive or motives behind the conduct of the respondents in this case.

[74] Apart from the cheque incident in 1986, the complainant and his room-mate testified that they were on reasonably friendly terms with Mr. Clark and Mrs. Clarke prior to November 1988. After that date, Mr. Clark and Mrs. Clarke became increasingly hostile and vindictive. It is submitted that this was because AB insisted on his right to use the French language. However, there was also the evidence of Mr. Zarzycki that he was the object of the same type of hostility and vindictiveness and subject to similar pressures with respect to termination notices and plumbing complaints during part of the same period. Ms. Starr testified that her friendship with Mr. Clarke [sic] broke down sometime in 1991 and that she thereafter experienced hostility and vindictiveness. In addition, we have the evidence of AB, both at the hearing and his November

1988 letters, that he had become aware of Mr. Clark and Mrs. Clarke engaging in illegal acts of reprisal and threats of termination against other tenants. This evidence was introduced by the Commission under the rubric of similar fact evidence to show the nature and extent of the hostility and vindictiveness of the respondents. It may be evidence of this but it is of no assistance in connecting these activities to a prohibited ground of discrimination. There was no common thread of ancestry or sexual orientation amongst the tenants who gave such evidence or were referred to in the evidence of AB. It is of no legal value.

[…]

[78] Counsel for the respondents took the position that the evidence showed nothing more than a long-festering landlord and tenant dispute. In his submission, its origins related neither to the ancestry nor the sexual orientation of the complainant but to "the trouble caused to the respondents by the complainant's correspondence to the other tenants of the building in November 1988.

[79] I am inclined to agree. In any case, I am not satisfied that the complainant has, on a balance of probabilities, met the onus of establishing that the harassment in accommodation to which he was no doubt subjected was based, even partly, on a ground prohibited under the Code. For greater certainty, this conclusion applies to sexual orientation as well as ancestry, place of origin and ethnic origin.

[…]

[84] We are left then with the incident of the refusal to accept the cheque in November 1988. The message left by Mrs. Clarke on the answering machine suggests two reasons for refusal. First, the cheque is not in English and, second, the cheque should have come from CD. The third basis for refusal — that some of AB's previous cheques had bounced — came later from Mr. Clark. In her evidence, Mrs. Clarke stated that she only told AB that she did not understand French and asked him to provide a cheque in English. This explanation is totally inconsistent with her taped statement. In cross-examination, counsel for the respondents suggested that AB's handwriting was almost indecipherable and anyone would have trouble determining whether the words and numbers were consistent. Mr. Clark denied any involvement in this incident. It was not contested that a similar incident had occurred in 1986 and that this had been resolved by the intervention of Mr. Colloredo-Mansfeld.

[85] I am prepared to find that the fact that AB's cheque was written in French was a proximate cause of the refusal by Mrs. Clarke to accept it. I am also satisfied that payment of rent falls within the protection afforded by s. 2(1) of the Code. It was the position of counsel for the respondents that Mrs. Clarke was the representative of the landlord for the purpose of collecting rent at this time. Accordingly, I find that she discriminated against AB because of ancestry. The evidence does not satisfy me that Mr, Clark was involved in this particular incident. Likewise, I find no evidence that Mr. Colloredo-Mansfeld authorized, condoned, adopted or ratified this particular action by Mrs. Clarke so as to be liable under s. 9 of the Code (see *Shaw v. Levac Supply Ltd.* (1990), 14 C.H.R.R. D/36 and *Fu v. Ontario Government Protection Service* (1985), 6 C.H.R.R. D/2797). The comments in his letter of December 27, 1988, appear to relate to AB's tenant activist activities and he had earlier, in 1986, specifically instructed Mrs. Clarke to accept cheques written in French.

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3. Contracts

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

R.S.O. 1990, c. H.19, s. 3; 1999, c. 6, s. 28 (4); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (4); 2012, c. 7, s. 3.

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5. (1) Employment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

R.S.O. 1990, c. H.19, s. 5 (1); 1999, c. 6, s. 28 (5); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (5); 2012, c. 7, s. 4 (1).

ANNOTATIONS

Segula v. Ferrante & Ball Packaging Products Inc., 1995 CarswellOnt 4221, 27 C.H.R.R. D/412 (HRTO) [hyperlink not available]

Decision

[68] While few boards across Canada have had the opportunity to consider the issue of whether language proficiency is related to race, ancestry or ethnic origin, as noted above at least some have considered that it can be, although it may not always be. I agree. A requirement to speak English where English is not the first language may amount to discrimination if the proficiency is not truly required by the particular job. In this case, I do not have to decide whether the criticisms of Ms. Segula's proficiency in English - that is her grammar and her spelling - were justified because I am of the view that the criticisms of her accent were not justified.

[69] While I believe that Mr. Ferrante did not intend to discriminate against Ms. Segula, his comments to her during her performance appraisal and over at least two or three years regarding her accent amounted to direct discrimination and, therefore, a breach of Section 5(1) of the *Code*. I heard no evidence to support a claim that Ms. Segula's accent was so strong that she was difficult or impossible to understand. Indeed, Ms. Segula's job as a data processor required very little oral English. When asked in cross-examination about the criticisms of Ms. Segula's English, Mr. Ferrante said at one point that he was only referring to her written English, her spelling and grammar. But at another point in his evidence he acknowledged that he criticized her accent and "broken English." There was no justification to criticize her accent. Thus, I do not find that in this case Ms. Segula's accent was related to her proficiency in English. I rely on the reasoning in Brooks and Gajecki that Ms. Segula's accent relates to her personal characteristics, which in this case is inherently related to her place of origin, and ethnic origin.

[70] As noted above, intent is not required in order to find a breach under Section 5(1) of the *Code*, and I am of the view that Mr. Ferrante had no intent to discriminate against Ms. Segula when he made comments about her accent. He honestly believed that Ms. Segula would improve her chances of promotion if she improved her accent. Given the evidence that he was also told by his superiors to improve his accent, I believe he was acting within the culture of the corporation. The company, of course, was well aware of Mr. Ferrante's remarks to Ms. Segula and did nothing

to stop them. He did, however, persist in making the comments about her accent, even when she made it clear that it was very offensive, and I have considered this fact in awarding Ms. Segula compensation for the breach of Section 5(1) of the *Code*.

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5. (2) Harassment in employment

5. (2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status or disability.

R.S.O. 1990, c. H.19, s. 5 (2); 1999, c. 6, s. 28 (6); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (6); 2012, c. 7, s. 4 (2).

ANNOTATIONS

Garcia-Ortiz v. Maison Mère Sœurs De La Charité d'Ottawa, 2015 HRTO 893 (CanLII)

Decision

[14] The applicant, who speaks at least three languages, including French and English, asserts that she is being discriminated on the basis of her ethnic origin, which she identifies as "Hispanic/Latina". The applicant has chosen to work in a workplace where the language of work is French. Essentially, at the summary hearing, she took the position that she prefers not to have to speak French at the workplace, during her break times. Language is not a ground protected by the Code, though the Tribunal has recognized that in certain circumstances, it may be a proxy for some protected ground, such as ancestry, place of origin, race or ethnic origin. See for example *Howard*: "It can be a defining characteristic of ethnicity or race and as a consequence can give rise to interests protected under the Code" and the discussion in *Islam v. Big Inc.*, 2013 HRTO 2009 (CanLII), starting at para. 251. The Tribunal has also stated that in this regard, "The onus is on the applicant, however, to present sufficient facts to support a finding that language is being used as a proxy for racial or ethnic discrimination" (*Chau*). Although given an opportunity to do so, at the summary hearing, the applicant did not allege that she was prevented from speaking Spanish, only that she was required to communicate in French. Given that the applicant self-identified as "Hispanic/Latina", with the very narrow exception noted below, I do not find that the applicant has made allegations capable of establishing language as a proxy for discrimination on the basis of ethnic origin or any related grounds such as place of origin or ancestry.

[15] In her Application, the applicant states that she was not able to communicate on shift in her "mother-tongues of Spanish or English". The only particularized incident is the above-noted reference to a conversation in English with a co-worker and the reference to the book she was reading in English. She has not linked English to her ethnic origin (or place of origin or ancestry), but instead self-identified as "Hispanic/Latina" which on its face indicates a link to a Spanish-speaking place of origin. She has indicated that both English and Spanish are "mother tongues" for her, though she has not indicated what language she sought to speak on the telephone. The focus of her submissions at the summary focused on the fact that communication had to be in French.

[16] But for the narrow exception noted below, the Applicant has not alleged facts that would establish this rule of general application can be said to have an adverse impact on her due to her ethnic origin or other Code-protected grounds. Accordingly, for the majority of the allegations she

makes, she has not been able to indicate on what basis she would be able to establish that the promulgation and enforcement of this rule had an adverse effect on her due to her ethnic origin or other Code-protected grounds.

[17] The power of the Tribunal is limited to dealing with applications alleging a violation of the Code, which prohibits discrimination on specific grounds. It does not have the power to deal with all claims of unfairness or all disputes between parties. Even if it were to be found to be unfair for the respondent employer to limit the language spoken in the break room of this French workplace to French, that is not sufficient to establish a violation of the Code.

[18] The CAD issued in this matter indicated clearly that at the summary hearing the applicant was to indicate what evidence she would rely upon to prove a link between the respondent's alleged actions and the grounds cited. In the course of the summary hearing, the applicant was given the opportunity to provide this explanation but was unable to do so for the majority of her allegations.

[19] The applicant must be able to show that in instituting a "French only" rule in the workplace, the respondent has treated her differently due to her ethnic origin or another Code protected ground for her Application to be successful. With the very narrow exception noted below, she has not, however, been able to identify any evidence which would, if proven, establish a connection between the "French only" policy at the workplace and her ethnic origin or another Code-protected ground. Without such evidence, her allegations cannot succeed.

[20] While the respondent employer denies having required individuals to leave the premises to talk on the telephone with their families in a language other than French, such a credibility finding as between the parties is not appropriate for determination at a summary hearing, and as the applicant identifies Spanish as one of her "mother tongues", and as she alleges that she had to leave the premises to speak on the telephone with her family, I do not find that it is appropriate to dismiss this one allegation only at this point as having no reasonable prospect of success. Rather, this one allegation only and the question of whether in the circumstances of this applicant, language may be a proxy for discrimination because of ethnic origin, will proceed to be determined at a hearing.

[21] I find that there is no reasonable prospect that the majority of the allegations made in this Application will succeed and they are dismissed. The only matter which will proceed to hearing is the allegation that the applicant was required to leave the premises to make telephone calls to her family.

Christie v. Trent University, 2015 HRTO 937 (CanLII)

Introduction

[1] When it was filed on April 10, 2012, this Application originally alleged discrimination with respect to employment because of several grounds, namely, place of origin, ethnic origin and age, contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"). A request to amend the Application to add the ground of ancestry was allowed on consent, because ancestry was arguably accurate as a characterization of the applicant's allegations. The applicant essentially believes that the respondent University discriminated against her when it did not offer her an interview for a tenure-track position as history professor for which she believes she was qualified.

[2] With respect to the allegation of discrimination because of place of origin and ethnic origin, the applicant indicated on the Application form: "I am a bilingual Anglophone but because the job was advertised as "French Canada" a person with a French name and French as their first language

was hired." With respect to the allegation of age, the applicant indicated on the Application form: "During previous legal actions, members (sic) the [the respondent's] History Department admitted to wishing to hire only "junior" scholars in jobs advertised at the assistant professor level."

[…]

[4] The applicant's allegations dealt with at the hearing are that the respondent did not hire her for a 2011 tenure-track position, advertised as focusing on "the history of French Canada and Quebec", ("the position"), because of her age, as well as because of her Anglophone background, or more accurately, because she was not French Canadian or Quebecoise, and because her first language was not French. The applicant, who considers herself a bilingual Anglophone, was not even offered an interview, even though she believes that she was more qualified than those who were interviewed. She believes that the candidates who were interviewed were preferred because they are from or are perceived to be from Quebec (place of origin), they are Francophone (ancestry, ethnic origin), and they are significantly younger than the applicant (age). The applicant alleges that she was adversely treated by the respondent which applied discriminatory factors in deciding not to grant her an interview and hire her for the position.

[…]

Summary of Findings

[16] At the hearing, each of the professors explained why the applicant was not selected for his or her personal list. The members generally articulated their respect for the applicant as a scholar with respect to Canadian history, but they did not recognize her as an expert in French Canada and Quebec history, given the publications listed in her cv. For the majority of the committee, specifically Drs. Andriewsky, Struthers, Anastakis, Palmer, Sangster and Miron ("the six members"), it was simply this perceived lack of expertise which immediately disqualified her in each of their assessments. (Understandably, the applicant made no allegation that any preference for someone with such expertise was discriminatory). Below, I review the testimony of each of the six members, and I examine the applicant's publications listed in her cv to justify my finding that the six members, all of whom determined the applicant was not an expert in the field advertised, were credible. I come to the conclusion that the six members, a clear majority of the committee, did not exclude the applicant from their personal lists for any reason related to the grounds alleged. They found that her cv did not demonstrate that she had the expertise they were looking for, and that was the simple reason for which they decided not to interview her.

[…]

Findings for Dr. Walden

[129] I find that Dr. Walden determined that the applicant's cv did not demonstrate that she was an expert in French Canada and Quebec history, and that this was a reason for his decision not to place her on his personal list. I also find, however, that his decision was influenced by his belief that she was less likely than other candidates to be accepted by Francophone Quebec historians for the following reasons: 1) she had not published enough in French; 2) she was not Francophone because French was not her first or dominant language; and 3) she would not be perceived as French-Canadian or from Quebec because she had not grown up or lived in Quebec for a long enough time to understand the culture of French Canadians in Quebec.

[130] I find, as stated above (in the analysis of the factors and preferences applied by Dr. Wright and Dr. Stapleton), that a preference for a candidate who published in French is not related to grounds cited in the Application. However, I find that Dr. Walden's preference for someone whose first or dominant language is French, and for someone who had grown up in or lived for a

substantial time in Quebec, creates a distinction related to ancestry, and place of origin. See below.

[…]

[134] With respect to requirements of language in Ontario, French in particular, the Tribunal has recognized that such a requirement may be linked to ancestry, place of origin and ethnic origin. See *Awan v. Loblaw Companies*, 2009 HRTO 1046 (CanLII); *Arnold v. Stream Global Services*, 2010 HRTO 424 (CanLII); *Tran v. Welcome Pharmacy (Queen) Ltd.*, 2012 HRTO 1445 (CanLII) and *Islam v. Big Inc.*, 2013 HRTO 2009 (CanLII).

[135] While Dr. Walden testified that he did not believe that he discriminated against candidates contrary to the *Code*, I find that he applied criteria that created a distinction on the basis of *Code* grounds. Dr. Walden's preference for candidates whose first or dominant language is French, and who grew up or lived a substantial time in Quebec, creates a distinction with respect to people whose place of origin is Ontario, where English is the dominant language, like the applicant's, and with respect to people whose ancestry is not French like the applicant's is not.

[136] I note that Dr. Walden is the only member of the committee who preferred candidates with those characteristics. This is not surprising because any requirement that candidates demonstrate that they engage with the Francophone academic milieu of Quebec can be met by English Canadians who are fluent in French and who do so engage. Dr. Stapleton and Dr. Wright were also eager that the successful candidate engage with the Francophone academic milieu of Quebec, but they had no issue with a candidate who was fluent in French even if it was not their first language.

[137] Dr. Walden's preference for people who grew up or spent a significant amount of their lives in Quebec would disproportionately exclude those who grew up in Ontario, and whose place of origin is consequently more likely to be Ontario than Quebec. Dr. Walden's preference for people whose first or dominant language is French would also disproportionately exclude those whose ancestry is not French. Dr. Walden's criteria disproportionately excludes candidates who are not from Quebec and whose first language is not French, but who are perfectly fluent in French, publish in French and who engage beautifully with the Francophone academic milieu of Quebec. His criteria were not bona fide, or reasonably necessary for the position. They were not required by the committee and no one else on the committee applied them. I find that they created a distinction on the basis of the applicant's English ancestry and her place of origin which appears to be Ontario. (Given that the applicant did not identify her ethnic origin, I cannot comment on whether the criteria applied by Dr. Walden created a distinction based on her ethnic origin).

[138] To determine whether the distinction used by Dr. Walden constitutes discrimination contrary to the *Code*, I must decide whether Dr. Walden's use of it hurt the applicant's chance of being selected for an interview by the committee and her chance of obtaining the job, thereby creating a disadvantage for her. (See *Ontario (Disability Support Program) v. Tranchemontagne*, 2010 ONCA 593 (CanLII), at para. 74, where the Court of Appeal held that the test for establishing discrimination under the *Code* is consistently expressed in the jurisprudence as requiring a distinction based on a prohibited ground that creates a disadvantage. See also the requirement that adverse treatment must be present to establish discrimination as articulated in *Shaw v. Phipps*, 2010 ONSC 3884 (CanLII), upheld 2012 ONCA 155 (CanLII)).

[139] Dr. Walden never said at the hearing that he would have selected the applicant for his personal list if her first language were French and if she were from Quebec. On the contrary, he was very clear that he did not consider her to be a specialist or expert in French Canada or Quebec history, a factor that was important to him, which makes sense given that the posting targeted such an expert, and every other member of the committee understood such an expertise

to be required. There is no need for me to decide, however, whether Dr. Walden would have placed the applicant on his personal list and recommended the applicant to the committee at the short-list meeting if it were not for the additional criteria he used. I say this because my task is to determine not whether Dr. Walden disadvantaged the applicant, but whether the respondent University, as represented by the committee, did so.

[140] The other members of the committee were very clear that the applicant was not qualified for the position given that her application failed to demonstrate an expertise in the required area. The vast majority of the committee members eliminated the applicant immediately upon assessing whether she met their first requirement – being a specialist in the field – and determining that her publications indicated she did not meet it. Dr. Walden did not discuss the applicant with the other members of the committee. However, if he had, the evidence indicates that the majority would not have been swayed from their reasoned determinations that the applicant did not specialize in French Canada and Quebec History. Given each member had a vote in the event that consensus was not established, (i.e., in the case that Dr. Walden might have wanted the applicant interviewed), it is not probable and there is no reasonable possibility, that the applicant would have made the short-list. I am satisfied that even if Dr. Walden had placed the applicant's name on his personal list, the other members of the committee would not have agreed to interview her for the position. There is no need for me to analyze how remote her obtaining the position was if she had obtained an interview, and I find that Dr. Walden's use of his own criteria for his own list played no part in the respondent's rejection (through the committee of nine) of the applicant for the position.

[141] In conclusion, I find that Dr. Walden's decision not to interview the applicant, even assuming it was influenced by distinctions based on *Code* grounds, did not disadvantage her. While the applicant's ancestry and place of origin were factors in Dr. Walden's decision, and while I allow for the possibility that he may have included the applicant on his personal list had he not applied those factors, I find that the respondent University did not discriminate against the applicant. I say this because Dr. Walden was only one of nine members on the committee representing the respondent, and the other eight members clearly decided not to recommend that the applicant be offered an interview, let alone the position, for reasons which were not related to alleged *Code* grounds. The disadvantage to the applicant occurred, but it did so for reasons unrelated to the *Code*. The applicant has therefore not established on a balance of probabilities that the respondent discriminated against her.

Islam v. Big Inc., 2013 HRTO 2009 (CanLII)

[251] The application of the respondents' "English in the kitchen" rule pertains to language, which is not specifically included as a ground of discrimination under the *Code*. Language has been accepted by this Tribunal as an aspect of "place of origin" and "ancestry" in cases in which adverse differentiation or adverse effect in employment has been associated with accent or language facility. See for example: *Cousens v. Canadian Nurses Assn.* (1981), 2 CHRR D/365, *Bains v. Ontario Hydro* (1982), 3 CHRR D/1136, *Iancu v. Simcoe County Board of Education* (1983), 4 CHRR D/1203, *A. v. Colloredo-Mansfeld* (No. 3) (1994), 23 CHRR D/328, *Segula v. Ferrante* (1995), 27 CHRR D/412, *Espinoza v. Coldmatic Refrigeration of Canada Inc.*, (1995), 29 CHRR D/35 and *DeFazio v. Ottawa (City)*, 2011 HRTO 440 (CanLII).

[252] The respondents' unwritten rule was that English was to be spoken in the kitchen as a general rule, and that there was an exception for the use of Bengali at moments when the only staff in the kitchen were Bengali-speakers, or when Mr. Islam required instruction in Bengali. However, in the circumstances of this case, the evidence indicates that the respondents did not always give effect to the exception relating to Mr. Islam's needs.

[253] It is clear that workplace language requirements can breach s.11 of the *Code* where they create adverse conditions because of place of origin or ancestry, unless there is an applicable exception in the *Code*, or unless such rules are established as permissible in the circumstances pursuant to subsection 11(a).

[254] As noted above, language in the workplace is a complicated issue. The respondents did give some evidence pertaining to the reasonableness of this rule; they said it was for safety reasons, although they did not elaborate on this. Ms Bigue also indicated that the respondents "would remove themselves and speak Bangladeshi only and tell each other stories and laugh" and that this could make new staff uncomfortable.

[255] As I understand the applicant's submissions, they did not argue that the rule as stated, with its exception to accommodate Mr. Islam's needs, was not bona fide; there was no suggestion that the rule was made in bad faith or for some ulterior purpose that would implicate s. 5 of the *Code*.

[256] To establish reasonableness, the respondent must show that the "requirement, qualification or factor" is reasonably necessary to the operation of the business or service, that there is a rational, objective basis for the requirement and that there is no reasonable alternative: *Ontario (Human Rights Commission) v. Borough of Etobicoke*, 1982 CanLII 15 (SCC), [1982] 1 S.C.R. 202 at pp. 208-09, *Caldwell v. Stuart*, 1984 CanLII 128 (SCC), [1984] 2 S.C.R. 603 at pp. 622-23, *Brossard (Ville) v. Quebec (Commission des droits de la personne)*, 1988 CanLII 7 (SCC), [1988] 2 S.C.R. 279 at pp. 310-12, *Central Alberta School District # 23 v. Renaud*, 1992 CanLII 81 (SCC), [1992] 2 S.C.R. 970.

[257] In its unanimous decision in *British Columbia (Public Service Employee Relations Commission v. BCGSEU*, 1999 CanLII 652 (SCC), [1999] 3 S.C.R. 3, the Supreme Court of Canada held that, to establish that a requirement that disadvantages a group protected by human rights legislation is "reasonable", the respondent must show that the requirement was reasonably necessary to the accomplishment of a legitimate purpose related to the enterprise (at paras. 54, 62, emphasis added).

[258] In determining whether the rule was reasonable, it appears to me that both the rule itself and its application must be considered. Two aspects of the respondents' application of the rule cause me concern. First, when it appeared to her that the rule was being breached, Ms Bigue made mocking comments on more than one occasion, amounting to harassment, rather than determining why the applicants were speaking Bengali (whether it was to instruct Mr. Islam), and thereby dealing with the situation as the application of a reasonable workplace rule by a reasonable employer.

[259] The second issue related to the rule is how the respondents dealt with workplace friction arising from the use of Bengali. The respondents admitted that the use of Bengali by the applicants gave rise to friction between themselves and the applicants. The respondents were also aware that the use of Bengali gave rise to friction between the applicants and other employees. It appears that their sole response to this was to reiterate that English must be spoken and to make mocking comments, which further poisoned the working environment. Their failure to address with all staff the requirement for language accommodation in the kitchen and to work out appropriate compromises clearly also left the applicants vulnerable to the hostility of other employees.

[260] For the above reason, I conclude that the workplace language rule in this case was not reasonably applied and that it therefore does not meet the test of reasonableness.

[261] If I am wrong in this conclusion, I note also that there was insufficient evidence by which I could conclude that the respondents met their duty to accommodate as required under s. 11(2).

The only evidence relevant to accommodation was the exception to the rule that related to instructing Mr. Islam. As noted above, the respondents testified that the use of Bengali gave rise to friction between themselves and the applicants. However, they gave no evidence of any effort, in any individual situation in which the "English in the kitchen" rule was being broken, to determine why Bengali was being spoken and whether it came within the exception to deal with needs related to Mr. Islam's place of origin and ancestry. This would have been a reasonable first inquiry related to the procedural duty to accommodate.

[262] As noted above, the respondents understood that Eid-al-Fitr "was like our Christmas"; a holiday or celebratory occasion within the Muslim faith. When Mr. Hossain asked for time off for Eid, he was in effect asking that a "requirement" for the purposes of s. 11 of the *Code*, that is, the requirement to work on Eid evening, not be applied to him. In those circumstances, the respondents were required to consider whether Mr. Hossain's attendance at work that evening was essential, and as part of the "reasonable and bona fide" analysis, to decide whether he could be accommodated to the point of undue hardship.

[…]

[268] Mocking the use of Bengali with "blah blah blah" on more than one occasion is certainly disrespectful and fits the definition of harassment for the purposes of subsection 5(2).

Tran v. Welcome Pharmacy (Queen) Ltd., 2012 HRTO 1445 (CanLII)

[42] In my view, the fact that a person of a different race, ancestry or ethnicity was selected over the applicant is not proof, in itself, of discrimination. However, given the applicant's greater experience and longer service as a pharmacist with the respondents, I am satisfied that the applicant has established a *prima facie* case of discrimination that requires the respondents to provide a non-discriminatory reason for their actions. I find, however, that the respondents have provided a credible non-discriminatory explanation for their decisions that led to the termination of the applicant's employment.

[…]

[49] Throughout the hearing, the applicant placed significant emphasis on the respondents' practice of hiring employees who speak the language of the ethnic groups who live near their stores. The applicant testified that Ms. Valenton had an advantage over him because she spoke Filipino in a neighbourhood where there are many Filipino speakers. The evidence, however, was that the applicant's ability to speak Vietnamese was also valuable because there are also a large number of Vietnamese speaking people in the Parkdale area. I find that language was not the reason the respondents decided to hire Mr. Valenton and dismiss the applicant.

[50] In any event, language is not a prohibited ground of discrimination (see for example, *Howard v. 407 ETR Concession*, 2011 HRTO 1511 and *Chau v. Olymel S.E.C\L.P*, 2009 HRTO 1386 (CanLII)). Accordingly, there is nothing per se discriminatory about hiring an employee because he or she can speak a language that will enhance his or her ability to perform the duties of a position. The Tribunal, however, has found that language can be so inextricably linked to one's place of origin that it can be a proxy for race, ethnicity or place of origin. The Ontario Board of Inquiry found a violation of the *Code* in *Espinoza v. Coldmatic Refrigeration of Canada Inc.* (1995), 29 C.H.R.R. D/35 (Ont. Board of Inquiry) where Spanish speaking employees from South and Central America were treated differently and ridiculed for using their common language. In such circumstances the *Code* may prohibit discrimination linked to language. Therefore, the onus is on the applicant to present evidence that could lead to a finding that the respondents used language as a proxy for his ancestry, place of origin or ethnic origin. I find the applicant provided no such evidence.

Ren v. Leon's Furniture, 2011 HRTO 1676 (CanLII)

[1] This Decision arises from a Complaint filed by Joyce Ren ("complainant") against Leon's Furniture Limited ("corporate respondent") and four individual employees of the corporate respondent ("individual respondents"). The complainant alleges that her right to equal treatment with respect to employment without discrimination because of race, colour and sex, her right to be free from harassment in the workplace because of sex and her right to claim and enforce her rights without reprisal have been infringed by the respondents contrary to ss.5, 7(2) and 8 of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"). The Complaint was referred to the Tribunal by the Ontario Human Rights Commission ("Commission") prior to the substantial amendments to the *Code*, which came into force on June 30, 2008.

[…]

[43] The complainant testified about the incidents involving her food, hygiene and language issues. She testified that Mr. Xavier was in his office when he told her to brush her teeth, chew gum and eat her Chinese food at home. He also made a comment to her about not speaking Chinese in front of the customers. The complainant explained that the customers had asked her to speak Chinese. She was on commission and felt it was good service to the customer to speak their language. The complainant testified that she knew it was unfair but did not saying anything about it because she was "pretty new" and so was Mr. Xavier.

[…]

[181] The complainant alleged that she was not permitted to speak her first language, Cantonese, with customers and that she was forced to speak with them in English. Mr. Xavier testified that English is the language used to initially greet a customer but if the customer is more comfortable in another language, the sales associate is encouraged to speak in that language as an aspect of their service to the customer. Ms. Van Opynen confirmed the same policy. There was no evidence that the complainant was ever disciplined for not adhering to the policy.

[182] Mr. Xavier testified that the sales associates were instructed to approach prospective customers in English first but that they are encouraged to serve customers in other languages based on the customer's preference. Mr. Barnett testifed that the complainant would attempt to secure herself an advantage in this highly competitive sales environment by handing out business cards, which was prohibited, and making it known to customers that she spoke Cantonese. I accepted that the rule against approaching a customer in a language other than English was directed at ensuring that associates were not taking prospective customers out of turn.

[183] Accordingly, with respect to the allegations on the basis of race and colour, I find that there is insufficient evidence to substantiate a breach of the *Code*.

Howard v. 407 ETR Concession, 2011 HRTO 1511 (CanLII)

[15] The allegation of discrimination and/or harassment by her supervisor based on her accent was first raised by the applicant at the hearing. An adverse inference can be drawn by the failure to raise this allegation in her Application or in a timely manner. In the absence of a clear and consistent account of the allegation, and the establishment of some link to the decision to terminate her employment, a prima facie case cannot be established. Assuming the allegation about her accent to be true, the mere fact of such comments is not sufficient to establish a prima facie case of racial discrimination. See *Chau v. Olymel S.E.C\L.P*, 2009 HRTO 1386 (CanLII) (at paragraph 35). Additionally, language is not a prohibited ground of discrimination, but can be a defining characteristic of ethnicity or race, and as a consequence can give rise to interests protected under the *Code*. See *Espinoza v. Coldmatic Refrigeration of Canada Ltd.* (1995), 95 CLLC 230-026, 29 CHRR D/35 (Ont. Bd. Of Inquiry), aff'd 1998 CarswellOnt 3825 (Ont. Dist. Ct.).

The onus is on the applicant to present sufficient facts to support a finding that language is being used as a proxy for racial or ethnic discrimination. The applicant in this case failed to discharge this onus.

[16] In raising the new allegations about comments based on accent, it was somewhat unclear if the applicant was specifically alleging that the respondent had harassed her contrary to section 5(2) of the *Code*. I did, however, consider this and came to the same conclusion I did with respect to the allegations in the context of discrimination. Namely that the applicant failed to establish that her general allegations relating to comments about her accent were a proxy for race or ethnicity.

Woolrich v. Royal LePage Relocation Services, 2010 HRTO 670 (CanLII)

Language spoken in the office

[34] With respect to the allegations regarding speaking French in the office, language is not a protected ground in the *Code* although it can, at times, be used as a proxy for race, ethnicity or place of origin based discrimination: see *Saadi v. Audmax*, 2009 HRTO 1627 (CanLII), also referencing *OHRC Policy on Racial Discrimination*. See also *Arnold v. Stream Global Services*, 2010 HRTO 424 (CanLII), in which the Tribunal analyzed the link between language and grounds including ethnic origin. In that case, as here, the employer had need of employees with fluency in French in order to deal with Canadian or global customer demands. In *Arnold*, the Tribunal noted that:

> In some circumstances, where language is inextricably linked with one's place of origin, the Code may prohibit some forms of discrimination linked to one's language, such as speaking less grammatically or speaking with an accent: *Segula*, *supra*. Similarly, mocking a person who speaks another language has been found to amount to a breach of the Code: *Espinoza v. Coldmatic Refrigeration of Canada Inc.* (1995), 29 C.H.R.R. D/35 aff'd [1998] O.J. No. 4019 (Ont. Div. Ct.).

[35] I do not find that the request made to the applicant and others when in internal meetings to use English so that all could follow the conversation constituted a proxy for discrimination on any of the grounds alleged against the applicant. I have not found that the applicant was mocked on the occasions when she chose to speak French or that she was instructed that she could not speak French in the workplace. In fact when she asked that a certain document be provided to her in French that was forthcoming.

[36] The applicant was not discriminated against on the basis of when she chose to speak French at the workplace or her opportunity to do so.

Arnold v. Stream Global Services, 2010 HRTO 424 (CanLII)

Analysis and Decision

[17] The applicant submits that she performs the same work as the employees in the French queue and therefore the only basis for treating the workers in the English Queue differently is language. She alleges that her language proficiency is related to her place of origin or her ancestry. She self-identifies as an English speaking Canadian.

[18] The respondent submits that language is not a prohibited ground of discrimination under the *Code*. The respondent acknowledges that in some circumstances where a person's language proficiency or accent is inextricably linked or associated with their ethnic origin, place of origin or ancestry, the Tribunal may find a breach of the *Code*: *Segula v. Ferrante* (1995), 27 C.H.R.R. D/412. However, this is not one of those cases.

[19] The *Code* does not specifically prohibit employers from making distinctions in employment on the basis of language. Most Ontario employers require that their employees speak English with a level of fluency commensurate with the work requirements. In some circumstances, such as the present, the employer also has need of employees with fluency in French in order to deal with Canadian or global customer demands.

[20] In some circumstances, where language is inextricably linked with one's place of origin, the *Code* may prohibit some forms of discrimination linked to one's language, such as speaking less grammatically or speaking with an accent: *Segula*, *supra*. Similarly, mocking a person who speak another language has been found to amount to a breach of the *Code*: *Espinoza v. Coldmatic Refrigeration of Canada Inc.* (1995), 29 C.H.R.R. D/35 aff'd [1998] O.J. No. 4019 (Ont. Div. Ct.).

[21] However, this case does not engage any of the above circumstances or the prohibited grounds under the *Code*. The applicant admits and it is self-evident that workers who speak French possess a skill set that she does not possess. The undisputed statement of facts also establishes that the reason for the pay differential between workers in the French queue and workers in the English queue was the shortage of qualified French speaking candidates. In order to attract workers with French language capacity, the respondent offered a wage premium. The *Code* does not prohibit wage premiums based on skills sets, including French language proficiency. In a bilingual country where the English language dominates, proficiency in the French language is likely to be in demand.

[22] This is not a situation where the employees in the French queue are paid more because they have an ethnic origin linked to a French speaking place. They are paid more because they can speak French fluently and that skill set is required for the work they do. Regardless of their ethnic origin, place of origin, or ancestry, they are paid the premium wage because they are fluent in French.

[23] The applicant's lack of fluency in French is not sufficiently linked to her place of origin, ethnic origin or ancestry to amount to a breach of the *Code*. The applicant and other Canadians from English speaking households are capable of becoming fluent in French and attracting the wage premium associated with this work.

[24] I find that the wage differential in question does not amount to discrimination on any prohibited ground in the *Code*.

Dhamrait v. JVI Canada, 2010 HRTO 1085 (CanLII)

Use of Punjabi

[62] The facts regarding this issue are undisputed. The sole issue for me to determine is whether the nature of the general manager's comments and the way they were made amount to discrimination pursuant to the *Code*.

[63] Although Mr. Schrank testified that the applicants also spoke Punjabi while they worked, neither party has raised this as an issue: the respondents do not state this was a factor in the decision to lay the applicants off and the applicants (who dispute that they used Punjabi in the workplace) do not allege they were treated unfairly or in a discriminatory manner in this regard. Ms. Stairs' comments were made exclusively in the context of the applicants' use of Punjabi in the lunchroom during their lunch break.

[64] Language is not a protected ground in the *Code*, although it can be a proxy for or indicator of discrimination based, for example, race, ethnicity or place of origin: see *Saadi v. Audmax Inc.*, 2009 HRTO 1627 (Ont. Human Rights Trib.) (CanLII). In *Nemati v. Women's Support Network of*

York Region, 2010 HRTO 327 (Ont. Human Rights Trib.) (CanLII), the Tribunal held that since modes of self-expression can be heavily influenced by personal characteristics included as grounds under the *Code*, a corporate culture that requires a particular mode of self-expression can lead to actions or omissions that breach the *Code*.

[65] Punjabi is the applicants' first language. Neither applicant had comfort or fluency in English and it clearly would have been difficult and burdensome for them to speak to each other during their non-working hours in English.

[66] Ms. Stairs readily acknowledged that the applicants are entitled to speak Punjabi to each other during their lunch break. In light of this, her evidence about why she made comments to the applicants is difficult to interpret and, in my view, lacks credibility. In any event, I need not determine why the comments were made. I must simply decide whether they constituted differential treatment on the basis of the prohibited grounds raised by the applicants.

[67] In the circumstances, I find that Ms. Stairs's comments about the applicants' use of Punjabi constitute differential treatment based on race and ethnic origin. In the circumstances, suggesting to the applicants that they express themselves in English during their non-working hours imposes a burden on them that is not imposed on other employees who do not share the applicants' race and ethnic background. Similarly, even if the respondent's intention was not to prevent the applicants from speaking Punjabi, her ambiguous comments made the applicants feel uncomfortable and were embarrassing to them. I note that these comments were made publicly and repeatedly.

[68] Ms. Stairs acknowledged that she might have spoken to the applicants privately, but she said she felt the circumstances did not warrant it. Despite this, she made the same kind of comment on at least two occasions.

[69] Ms Stairs seems to suggest that by speaking Punjabi, the applicants deterred from the overall teamwork environment in the workplace. Based on the evidence, I am not satisfied that anyone but Ms. Stairs was concerned about the applicants' use of Punjabi. In any event, in the circumstances, discomfort with the use of a different language does not, in my view, justify urging or requiring the use of a more common language, particularly during non-working hours.

[70] I find that Ms. Stairs's comments to the applicants about the use of Punjabi constitute discrimination under the *Code*.

Nemati v. Women's Support Network of York Region, 2010 HRTO 327 (CanLII)

[88] I agree with the respondent that the type of evidence that was adduced in Bhadauria as to cultural characteristics was not brought by the applicant in this case. However, the applicant did bring evidence, which I accept, that because of her place of origin, English is not her first language, and that this caused her some difficulties in meeting the respondent's requirements which will be further discussed later. The language-related evidence is germane to her claim of discrimination on the basis of place of origin. Language has been accepted as an aspect of place of origin and ancestry. Most cases in which language has been considered as an aspect of place of origin involve situations in which lack of facility with English or French, or accent, is made an issue in employment. Adverse differentiation or adverse effect in employment associated with accent or language facility can breach of the *Code*. See for example: *Cousens v. Canadian Nurses Assn.* (1981), 2 C.H.R.R. D/365 (Ont. Bd.Inq.), *Bains v. Ontario Hydro* (1982), 3 C.H.R.R. D/1136 (Ont. Bd.Inq.), *Iancu v. Simcoe County Board of Education* (1983), 4 C.H.R.R. D/1203 (Ont. Bd.Inq.) *A. v. Colloredo-Mansfeld* (No. 3) (1994), 23 C.H.R.R. D/328 (Ont. Bd.Inq.), *Segula v. Ferrante* (1995), 27 C.H.R.R. D/412 (Ont. Bd.Inq.) and *Espinoza v. Coldmatic Refrigeration of Canada Inc.*, (1995), 29 C.H.R.R. D/35 (Ont. Bd.Inq.).

[89] The applicant gave evidence, which I accept, about feeling socially isolated within the workplace. She made unsuccessful attempts to connect socially with co-workers that could not have gone unnoticed in a very small workplace. What is not clear, however, is the connection between the applicant's social isolation and the grounds of discrimination cited in the Application. There can certainly be situations in which individual actions and workplace practices causing social isolation might infringe the *Code*. However, social isolation can also be related to personality clashes, or to personal characteristics not protected by the *Code*, for example shyness, diffidence, or a habitually quiet demeanour.

[90] It is a significant circumstance that the only employee who was a recent immigrant, and the only person for whom English was a second language, was feeling socially isolated in this office. However, in this case, the applicant presented insufficient evidence that would link her race, colour, ancestry, place of origin or sex with her social isolation.

[…]

[111] A respondent may make an unreasonable or unfair decision to terminate an individual's employment; that alone does not demonstrate a breach of the *Code*. However, discrimination can be proven by inferences drawn from circumstantial and comparative evidence. In this case, the applicant who was the only recent immigrant in the workplace and the only person for whom English was a second language, was hastily dismissed from her job in what I find to be ambiguous circumstances. Comparing the evidence related to the two incidents, it appears that an employee with language difficulties relating to her place of origin was subjected to more severe discipline than an employee with no such difficulties, on the basis of a more ambiguously-worded employment policy, in a situation involving similar safety issues, and in circumstances in which the respondent had less information to support its conclusion on the facts and insufficient information to conclude that a breach of legal obligations or employment policy had taken place.

[112] In these circumstances, I find a breach of section 5 of the *Code*. In doing so, I do not find that the respondent was motivated by dislike of immigrants whose first language is not English—there was no evidence of such motivation. Nor is such motivation a finding a requirement for establishing a breach of the *Code*. As noted by the Supreme Court of Canada in *Ontario Human Rights Commission v. Simpsons-Sears*, [1985] 2 S.C.R. 536, 1985 CanLII 18 (SCC), 1985 CanLII 18, and in numerous decisions since then, intent to discriminate is not a governing factor in construing human rights legislation. It is the result or effect of the alleged discriminatory action that is significant.

Awan v. Loblaw Companies, 2009 HRTO 1046 (CanLII)

[37] The applicant and Ms. Baines both testified that this label had the effect of isolating them from others in the department and I appreciate why they found the label inappropriate. Not all forms of inappropriate behaviour or remarks are covered by the *Code*. Language itself is not a ground that is listed in the *Code*. Comments relating to the language or languages spoken by a person might nevertheless be discriminatory if the comments were linked to a prohibited ground, such as place of origin, ancestry, citizenship or ethnic origin. In this case, the label referred to the bilingual status of the applicant and Ms. Baines and it does not appear there was any link to a prohibited ground. I conclude that the label does not constitute discrimination under the *Code*.

Taylor v. Oraclepoll Research, 2009 HRTO 2089 (CanLII)

[3] The Tribunal does not have a general power to inquire into all claims of unfair treatment. Its jurisdiction is based on the provisions of the *Code*, which prohibits discrimination in employment on the grounds of, among other things, disability. Although on the Application form the applicant has checked off "disability" as the ground of discrimination, she does not allege that she is disabled within the meaning of the *Code*. Having inadequate, or being perceived as having inadequate, French language skills is not a "disability" within the meaning of the *Code*.

Meng v. College of Massage Therapists of Ontario, 2014 CanLII 12147 (ON HPARB)

III. REGISTRATION REGULATION

[10] The requirements for registration as a Registered Massage Therapist are set out at sections 5 and 6 of the *Registration Regulation* O. Reg. 864/93 of the *Massage Therapy Act*, 1991 (the *Regulation*).

[…]

[12] Section 6(5) of the *Regulation* adds the following requirement for registration:

5. The applicant must be able to speak and write English or French with reasonable fluency.

IV. THE COMMITTEE'S ORDER

[13] The Committee considered the Applicant's application for registration at its meeting on December 18, 2012 and, in a decision dated March 8, 2013, decided to direct the Registrar to refuse to issue a certificate of registration to the Applicant. The Committee was not satisfied that the Applicant met the language fluency requirement for registration.

[14] The Committee also found that the Applicant's lack of willingness to meet with College personnel and her lack of awareness of the registration requirements afforded reasonable grounds to believe that she would not practise massage therapy in a safe manner and with decency, honesty and integrity, and in accordance with the law, as required by paragraph 4 of section 5(1) of the *Regulation*.

[15] Finally, the Committee required the Applicant to satisfactorily prove language fluency through completion of a standard language test at her expense.

[…]

Discrimination

[44] The Board does not find that the language fluency requirement in the Regulation is discriminatory or contrary to the *Human Rights Code*.

[45] The Applicant called no witnesses and provided no evidence in support of her contention that the College had discriminated against her. There was no evidence before the Board indicating that persons born in non-English/non-French speaking countries were unable to meet the standard of "reasonable fluency" because of their country of origin or indeed that the Applicant would be unable to meet that standard.

[46] The *Ontario Human Rights Code* provides, "Every person has a right to equal treatment with respect to membership in any … occupational association or self-governing profession without

discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability."In this case, the Applicant presented no evidence of systemic discrimination against persons born in non-English/non-French speaking countries in regard to the College's language requirement, or that her right to equal treatment under the law had been violated in any way by the requirement. Consequently, the Board is unable to make a finding that the College discriminated against the Applicant by requiring her to meet the language requirement of section 6(5) of the *Regulation*.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) v. Maple Leaf Consumer Foods Inc., 2006 CanLII 27507 (ON LRB)

[5] As a preliminary issue the responding party (the "employer") seeks that the ballots from the vote on May 19, 2006 be declared void, that a new vote be ordered and that the Board either translate ballots in Chinese and Punjabi, as well as English and French and/or allow the presence and use of an interpreter to assist the voters at the vote.

[…]

[34] Regarding issue number 6, counsel submits the Board has violated the *Human Rights Code* (the "*Code*"), specifically section 5 and section 6 of the *Code*.

[35] Section 5 and 6 of the *Code* provides:

> 5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, martial status, family status or disability.
>
> 6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, martial status, family status or disability.

[36] In brief on this point, counsel submits "that the individuals who were denied translated ballots or translators were also denied equal treatment and were subject to discrimination".

[37] Finally, counsel for the employer acknowledged that the case law of the Board in similar situations had not ordered a new vote. Counsel submits that in this instance new arguments have been raised regarding section 2(d) and section 14 of the *Charter*. Counsel further maintains that the case law is wrong and in any event is several years old. In his view, Charter and human rights issues have evolved significantly since those decisions and thus the Board should be re-considering this important issue.

[…]

[47] In regards to issue number 6 and the argument that the Board has breached section 5 and 6 of the *Code*, counsel pointed out that the Board in *AluminArt Products Limited*, [1991] OLRB Rep. July 797 has rejected such argument. While counsel for the employer suggests the case is incorrect, counsel for the union submits that the decision is correctly decided on this issue and there is no reason to depart from such reasoning.

[…]

The Decision

[49] On the first issue the Board finds that the employer has no standing to bring this motion. On the other issues the Board is not persuaded that it has breached either the *Charter* and/or the *Code*.

[…]

[51] The Board would therefore conclude that the responding party has no standing to bring this motion. However in the event the Board is incorrect in arriving at this conclusion, it will nevertheless deal specifically with the submissions of the parties dealing with the *Charter* and the *Code*.

[52] As envisaged by the Act the vote process in an application for certification is directed to be on a relatively fast time line. After an application is filed an employer is given two days to respond and the vote is, in most cases, conducted within five days of the application. This does not occur in a vacuum – as set out previously to be successful in having the Board order a vote, the applicant (“union”) must demonstrate that at least 40% of the individuals in the bargaining unit proposed in the application were members of the union at the time the application was made.

[53] To demonstrate membership the union files membership cards. This occurs during an organizational drive that usually, depending on the size of the proposed bargaining unit, takes weeks if not months. During this period of campaigning both the union and the employer often seek support for their views through leaflets distributed to individual employees. The vote therefore is ordered after the culmination of an organizing campaign and is designed to rapidly determine whether a union has the necessary support to obtain certification.

[54] In *AluminArt Products Limited*, *supra*, the issue was much the same as occurred in this instance. The Board at paragraph 16 pointed out the difficulties in considering the translation issue:

> [16] The Board is not insensitive to the difficulties persons not literate in English may experience in Canadian society, nor do we wish to see employees' rights to meaningfully participate in processes that affect them unnecessarily impeded. But there are other concerns the Board must balance in carrying out its mandate under the Act, and in certification proceedings in particular parties in the community are well aware that very often "justice delayed is justice denied". The positions here advanced by the intervener, and the employer presumably on behalf of its employees, would mean that (quite apart from "translation time" itself) no certification process could proceed without either the Board exhaustively determining in advance what languages are required (or claimed to be required) in a given case, or having the result subject to challenge and litigation on "language" issues after the processing and determination of the application have been completed. In response to the intervener's suggestion of a "bright-line" test whereby the Board would simply establish in advance a numerical "cut-off" point to be applied to all cases, once one moves beyond the specific mandate of the French Language Services Act, it is not obvious where the Board would derive the authority to decide what number or proportion of employees in a workplace asserting a right to accommodation of alleged language difficulties is "sufficient" to warrant such accommodation.

[55] It is interesting to note, for example, in *Northfield Metal Products Inc.*, *supra*, that in that instance “illiteracy of many of the ethnic employees and the presence of people of ten different Loatian dialects in the bargaining unit were particularized”.

[56] In *R-Theta Inc.*, *supra*, at paragraph 56 the Board noted the breath of what the employer is asking in a similar fact situation. At paragraph 56 the Board stated:

> [56] Before turning to our view of the *Charter* in this context, it is appropriate to note the breadth of what employer counsel is suggesting. It is his view that the Board is under an obligation to inquire of the majority language of every workplace with which it deals and then translate all its communications into that language. This is not the practice of any public body of which we are aware nor was it suggested that it was. Neither federal nor provincial elections are conducted as he suggests. The Francophone community has been known to comment that it is difficult to obtain services even in the second official language of this country. It is asserted that what he asks is easily done; once translated, the forms would be available when needed. Even if the law were not subject to change on a regular basis, or budgets for even the services the Board has provided in the past not shrinking, this assertion does not appear to take into account the very large number of languages in the workplaces of Ontario, as well as the fact that the Board has to communicate flexibly with its users and the forms are not the only, or necessarily the main, vehicle of communication. And it is just not administratively feasible to communicate in a plethora of languages within the time lines required of the Board by the Act with current resources. It is administratively difficult to get five day votes on even in English and French.

[57] The Board would point out in *R-Theta Inc.*, *supra*, the Board did acknowledge that if "the *Charter* required that we do so, we agree the resources would have to be found".

[58] Counsel for the union is correct that in similar situations before the Board on this issue, the Board in several decisions to date has rejected any argument that the failure of the Board to provide translation or a translator is contrary to the *Charter* or the *Code*.

[59] The Board has followed a practice set out in *AluminArt Products Limited*, *supra*, that considered earlier decisions of the Board and stated at paragraph 15:

> [15] This review indicates that the Board has drawn a number of conclusions concerning the use of languages other than Canada's official languages. First, employees who are not proficient in the English language are still required and able to function in society, including the processes of the Board. Second, the responsibility to ensure such employees understand the certification procedure where someone feels there may be a problem, is that of the parties. The arguments presented by counsel for the respondent and intervener do not justify a repudiation of the Board's conclusions.

[60] It is against this background that the applicant for the reasons set out above submits these decisions are wrong and in any event should not be followed.

[61] The Board disagrees and is not persuaded that it should part from a practice that has been in existence for well over thirty years. Neither is the Board persuaded that it has breached the *Charter* and/or the *Code*.

[62] The employer has asserted that the Board has breached sections 2(d), 14 and 15 of the *Charter* and sections 5 and 6 of the *Code*.

[…]

[71] In regards to the argument on the *Code* again the Board has considered this mater in *AluminArt Products Limited*, *supra*. Though counsel for the employer argues such decision is incorrectly decided, the Board does not agree. There at paragraph 18 the Board held:

> [18] With respect to the employer's arguments advanced on behalf of the employees under Ontario's *Human Rights Code*, we do not accept (nor, as noted in the cases quoted earlier, does our experience bear out) the simple equation the employer seeks to draw between language disability and "ethnic origin". But even if we did, we are not persuaded that the matter at issue here would fall within the *Code*'s intended meaning of "contract", of "membership in a trade union", or even of "employment" itself, as argued by the employer. Indeed, it appears to us that the whole line of argument developed by the employer under the *Code* in this case would dramatically affect the status of linguistic disability in society generally, and we are not prepared to embrace such a change without specific legislative guidance to do so.

[72] Further the Board would adopt the reasoning of the Court in *R. v. MacKenzie*, *supra*, at paragraph 33 that “Appellate courts repeatedly have stated that “language” is not an analogous ground of subsection 15(1). The reason is that sections 16-23 of the charter deal specifically with language rights. If “language” also was subject to the over-arching coverage of subsection 15(1) then the ambit of the protection in sections 16-23 would have little meaning”.

[73] In this instance where fast votes are the legislative intent, it would, in the Board’s view, cause serious administrative problems if the employer’s argument prevailed. The existing procedure to have the parties assume the responsibility of explaining the certification procedure to employees if there is a language concern is, in the Board’s view, the proper method to follow. It is to be noted that in this instance the parties did issue leaflets in Punjabi and Chinese explaining the certification process, including a sample ballot. It is significant that in this instance there was a very high turnout of individuals voting: 197 out of a possible 216 individuals on the voters’ list with only three spoiled ballots.

[74] For all of the above reasons this preliminary motion is dismissed.

Canadian Union of Public Employees, Local 3045 (Re), 1998 CanLII 19038 (ON LA)

The facts

The employer is a municipality in Northern Ontario with, by all accounts, harmonious relations with the union. It provides a range of municipal services including Public Works/Sanitation, Recreation, Administration, and various Social Services. These social services include a Family Resource Centre (FRC) which is largely, if not exclusively, funded by the Province of Ontario. The FRC is a 10 bed residential facility opened in 1985. It provides crisis shelter and counselling to female persons (and their younger children) of any race or language group from a catchment area comprising about one-third of Ontario's land mass -- a curved swath of sparsely inhabited territory from approximately Red Lake in the west to James Bay in the north and east. It is open 24 hours per day year round. An exhibit in evidence described its clientele in the 1985- 1997 period as about 70% 'Native' and about 30% 'Other.' Race, being an issue in this case, it is necessary to note that of the present eight staff members of the FRC one (the ex parte incumbent) is Native, the other seven Non-native. However, one of those seven (the Supervisor) described herself in evidence as "Metis, non -status."

[…]

Romaniuk testified that the whole theme of the October 1991 report was to reach out to Natives so as to encourage their use of the FRC. During 1992 the employer negotiated with COMSOC a means to implement these and various other recommendation of the report. However, before the final execution of an agreement with COMSOC in August 1992 an opportunity had arisen, through normal staff turnover, to implement the recommendation underlined above. A full-time Residential Counsellor staff member had quit so the employer, in May 1992, posted th e job as

provided for in the collective agreement. That job posting effectively summarized the job duties (as themselves summarized above) and went on to say candidates for the job required "Native Ancestry and Native Language Skills." A new job description, not shared with the union, also said the same thing.

The only person to apply was Bea Wilson who was a part-timer at the FRC at the time. She met all the hiring specifications and knew the work. She was appointed to the position by Resolution of the municipal Council effective 25 May 1992. Therefore, the union seniority list shows her seniority date as 25 May 1992. Karen Evans, the grievor, has a seniority date of 9 March 1992.

[…]

Argument and Decision

The union was careful to frame its argument on the human rights issues at stake here and to point out this is not a job description grievance or in any way a denigration of Wilson. The crux of the union's argument, which is entirely accepted, was to the effect that the *Human Rights Code* protects everyone and that what the employer has done here was direct discrimination against Evans based on her race. Furthermore, had the now repealed *Employment Equity Act* still been in place what happened would have still been in violation of that Act's s. 11(3) which specifically stated that measures to advance the interests of visible minorities, aboriginal people, women and disabled individuals could not be done at the expense of collectively bargained seniority rights. While this aspect of the union's argument is actually irrelevant in view of the repeal of the Employment Equity Act it helps put the undoubtedly noble objectives of the employer in doing what it did in the proper context. Just as noble objectives in the *Employment Equity Act* could not override acquired seniority rights, so also I believe the noble objectives of the employer in the present post-Employment Equity era should not override those same rights.

While debate about whether human rights are finite or infinite may go on for ever, the expansion of rights for one individual or group should not be achieved by the contraction of rights acquired by another individual or group unless that second individual or group agrees, or unless it is done legislatively under full constitutional *Charter* protection. In this case the union did not agree that Evans seniority rights to retain her full-time employment should be sacrificed in favour of Wilson because Wilson's native ancestry was an ancillary virtue and a 'plus' to the FRC. If the employer had observed the collective agreement and specifically the language governing seniority and bumping rights in 14.01 no grievance could have arisen. This is because Evans has greater seniority than Wilson and both are said to be competent at their work. Further, there not being a recognized classification of 'Native' Residential Counsellor (it is not shown in either the seniority list per article 12.0 2 or the 24.01 pay schedule) means that if Evans had bumped Wilson she would not be bumping into a 'Native' position because no such position exists. She would only have been bumping a person who happens to be of native ancestry with some knowledge of so me native languages, but not fluency in any.

Implicit in the employer's defence was the fact that the supposed creation of the Native Residential Counsellor position was shared at a staff briefing session with a certain local union officer in her capacity as an employee in the FRC back in 1991 and 1992. Leaving aside the fact that there was no documentation of this (though the actual briefing is not disputed) and that 5.03 prohibits 'side deals' between the employer and individual employees, there was no e vidence that the employer, per article 5.01, actually negotiated with the union on this matter. Instead, the employer informed a union official it was going to make native ancestry and language skills a selection standard. However, even if those discussions were to be afforded compliance with 5.01 and non-violation of 5.03 (which they are not) the employer did not comply with 13.01 or 13.09 which, taken together, require the union and affected employees to be notified in writing of the proposed changes 30 days in advance.

Romaniuk's testimony that when the supposed 'Native' position was created "no one thought ahead to what would happen later" if a layoff were to be required is accepted. But it must also be considered in the context of her statement that it was understood that what was to happen "would not negatively affect any existing staff." However, she claimed that what this meant was that it "would not negatively affect any existing staff at this time." However, there was no corroboration of that key caveat and nor was it in writing.

To add understanding as to how existing staff (Evans) have been negatively affected by the 1997 layoff -- which it is accepted was not anticipated in the heady days of employment equity in the early 90s -- reference must also be made to the employer's 1992 agreement with COMSOC which was carefully worded to prevent such a thing happening. While COMSOC endorsed the 'outreach to native people' philosophy contained in the consultant report it was also careful to include in the August 1992 agreement the condition that "no right under section 5 of the *Human Rights Code* will be infringed. Breach of this condition is sufficient grounds for cancellation of this agreement."

Moreover, in 1992 COMSOC was equally careful to have the workplan for the FRC incorporated into the agreement. The flavour of the workplan in many places is that the union was to be co-opted into much of the decision making about the creation of the 'Native' position. This also did not happen although Sinclair's testimony is accepted that the employer tried in negotiations (evidently without success) to have one FRC union employee "proficient in oral and written Ojibway or Oji-Cree." While the workplan, in good faith, clearly contemplated the union being c o-opted such did not happen.

In its defence the employer drew attention to *Re Canadian Charter of Rights and Freedoms* s. 15, as quoted above. In the employer's view s. 15(2) as applied to these facts means that the blanket protections afforded by s. 15(1) can be swept aside by a program or activity (ie: the FRC) that has as its object the amelioration of conditions of disadvantaged individuals or groups (ie: native people). In other words, since the FRC has a 70% native clientele who are deemed a disadvantaged group then the rights other employees have acquired either by provincial statute or collective bargaining can be ignored. That argument just does not hold water.

Firstly, the FRC was not founded just to serve native females, but rather all needy females in its catchment area. Therefore, the fact that 70% of its clientele is native is irrelevant; it exists to ameliorate those females in need, not just natives. Secondly, if the employer's Charter argument were valid it would presume that the admonitions about observing the *Ontario Human Rights Code* found in the COMSOC agreement were either superfluous or in direct contradiction of the *Charter*. If that view were to be upheld it would allow any public body such as a municipality to override both the *Charter* and the *Human Rights Code* if it were to claim what it was doing was for the purpose of ameliorating conditions of a particular class of person. This is not accepted as being the intent of the constitution makers when the *Charter* was fashioned. Thirdly, this argument presumes that other post-1982 legislation intended to 'ameliorate' (such as the now defunct *Employment Equity Act*) must have been redundant when passed. If s. 15(2) of the *Charter* can sweep aside the protections of s. 15(1) then carefully crafted legislation like the late *Employment Equity Act* would have been unnecessary in the first place. The then Ontario government's employment equity objectives could have been achieved by a directive to (particularly) municipalities to utilize the sweeping aside tool of s. 15(2) of the *Charter*. Since this was not done it is reasonable to conclude that the legislature then, like I now, did not consider s. 15(2) a safe tool to use. Finally, and as discussed above, s. 15(2) does not contemplate the contraction of the rights of one individual or group so as to permit the expansion of the rights of another individual or group. Thus, s. 15(2) is not grounded on the false principle that 'I win, so you must lose.' Rather, it is my view that the 1982 constitution makers intended s. 15(2) to be utilized in a positive sense rather than in the negative one posited by employer counsel in this case. For example, amelioration/compensation to civilian Japanese-Canadian war time internees per

Charter s. 15(2) would not offend s. 15(1) equality rights of other persons so long as those rights were not themselves infringed by the amelioration.

Supplementing the above argument the employer also proposed that authority for what had happened was to be found in the *Ontario Human Rights Code* wherein the s. 5(1) protections the union relied on are modified per s. 24(1) which allows "a ... social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, ... [to give] preference in employment to persons similarly identified if the qualification is a reasonable and bona fide qualification because of the nature of the employment."

The employer pleads it, and more specifically the FRC, is a social institution or organization and thus exempt from s. 5(1). Since to meet that definition is a prerequisite for the exemption it will not be necessary to examine the reasonableness or bona fides of the 'Native' Residential Counsellor selection standard, even assuming the position was properly created, which it was not. Firstly, the Town of Geraldton is the employer, the FRC is not. Although the FRC is in the Social Services department and does provide a social service the Town itself can in no way be described as a social institution or organization any more than any other municipality can. Moreover, its work spans many services as described above -- Sanitation, Recreation, and more. Nor is it primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, etc, etc. It serves all residents of the Town. The fact that some of the FRC's clients come from reserves away from the Town does not make the whole municipal corporation a social institution any more than a grocery store is a social institution. Secondly, this exemption was put into the *Code* to allow organizations such as retirement homes whose 'target market' was, say, a particular religious or ethnic group to give preference in employment to members of that religious or ethnic group if the preference was reasonable considering the nature of the employment. Thus, for example, a retirement home catering primarily to, say, Italian-Canadians, could legitimately employ only other linguistically qualified Italian-Canadians in its Recreation, Health Care, or Activation departments. Whether such exemption should also apply to, say, the retirement home's Boiler Room positions is arguable. Again, the FRC is not primarily for native people. Nor, is the municipality a religious, philanthropic, educational, fraternal or social institution or organization.

In its argument the union had correctly pointed out through reference to *Re International Nickel Co. of Canada Ltd. and United Steelworkers, Local 6500*, (1975), 9 L.A.C. (2d) 173 (Gorsky) which itself through reference to *Pleet v. Canadian Northern Quebec R.W. Co.*, as affirmed [1923] in 4 D.L.R. 1112, 26 C.R.C. 238, which itself referenced *Ashton & Co. v. London & North-Western R.W. Co.*, [1918] 2 K.B. 488, as confirmed on appeal in 1920, that:

> "he who relies on an exception to a general rule must prove he comes within that exception."

Based on the above analysis of the employer's arguments respecting both the *Charter* and the *Human Rights Code* I am not persuaded the employer, per Ashton, has proven that either of the claimed exceptions apply to this case.

[…]

In the result, the grievance succeeds. The matter of quantum damages to the grievor and related adjustments is remitted to the parties.

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6. Vocational associations

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

R.S.O. 1990, c. H.19, s. 6; 1999, c. 6, s. 28 (7); 2001, c. 32, s. 27 (1); 2005, c. 5, s. 32 (7); 2012, c. 7, s. 5.

ANNOTATIONS

Cheng v. College of Massage Therapists of Ontario, 2014 CanLII 25305 (ON HPARB)

I. ORDER

[1] Upon conducting a hearing of the application for registration of Delon Dik-Lung Cheng (the Applicant) as a Registered Massage Therapist, it is the decision of the Health Professions Appeal and Review Board (the Board) to confirm the decision of the Registration Committee (the Committee) of the College of Massage Therapists of Ontario (the College) to direct the Registrar of the College to issue a certificate of registration to the Applicant if he successfully completes a College recognized language proficiency examination for English within 90 days of the date of release of this decision and meets all other registration requirements including providing proof of professional liability insurance with a limit of a $5,000,000 per occurrence valid for at least one year.

[…]

Discrimination

[51] The Board does not find that the language fluency requirement in the [*Registration*] *Regulation* [*O. Reg 864/93* of the *Massage Therapy Act, 1991*] is discriminatory or contrary to the *Human Rights Code*.

[52] The Applicant called no witnesses and provided no evidence in support of his contention that the language fluency requirement or the failure to exempt the Applicant from that requirement was discriminatory against him. There was no evidence before the Board to show that persons born in non-English or non-French speaking countries were unable to meet the standard of "reasonable fluency" because of their country of origin or indeed that the Applicant would be unable to meet that standard.

[53] The Ontario *Human Rights Code* provides, "Every person has a right to equal treatment with respect to membership in any … occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability." In this case, the Applicant presented no evidence of systemic discrimination against persons born in non-English/non-French speaking countries in regard to the College's language requirement, or that her right to equal treatment under the law had been violated in any way by the requirement. Consequently, the Board is unable to make a finding that the College discriminated against the Applicant by requiring him to meet the language requirement of section 6(5) of the *Regulation*.

[54] The Board further notes that the Divisional Court in the case referred to in paragraph 41 above, has found that the imposition of a language fluency requirement is not discriminatory.

See also : Wang v. College of Massage Therapists of Ontario, 2014 CanLII 75178 (ON HPARB), N.W. v. College of Massage Therapists of Ontario, 2015 CanLII 27957 (ON HPARB) and Lee v. College of Massage Therapists of Ontario, 2015 CanLII 24853 (ON HPARB).

LPG v. College of Audiogists and Speech Language Pathologist of Ontario, 2009 CanLII 92443 (ON HPARB)

The Ontario Human Rights Code

[56] The Applicant also argued that the College's refusal to issue her a Certificate of Registration based on her failure to demonstrate English proficiency was discriminatory. She recognized that the College's requirement of a formal language assessment is reasonable but found that the standards it set were unrealistic and unreasonable. She found that "setting standards that most of the applicants cannot attain seems to be a veiled form of discrimination. The Board carefully considered this argument with reference to Ontario's *Human Rights Code* ("*HRC*").

[57] The Board has jurisdiction to decide this issue and to interpret and apply the provisions of the *HRC* in doing so. Section 6 of the *HRC* explicitly confirms the right of every person to equal treatment with respect to membership in any self-governing profession without discrimination based on a number of specific grounds, including place of origin.

[58] It is important to note that even facially neutral regulations or policies can have a discriminatory effect on an individual based on place of origin. Section 11(1) of the *HRC* deals with constructive discrimination. It provides that:

> A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,
>
> (a) the requirement, qualification or factor is reasonable and bona fide in the circumstances; or
>
> (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

[59] The Registration Regulation imposes a requirement to demonstrate language proficiency on applicants whose first language is not English or French and whose audiology or speech-language pathology education was not completed in English or French. This provision can have the effect of imposing an additional requirement on some individuals based on their place of origin.

[…]

[65] We have considered the question of whether the College's language proficiency requirement is reasonably necessary to the accomplishment of the professional purpose. In doing so, we have also considered the factors going to the availability of accommodations which would not rise to the level of undue hardship that were outlined by the Court.

[66] When the College registers an applicant, it is certifying to the public and other members of the profession that the registrant meets professional standards. As the Board noted in the *Kaleem* and *Elyasi* decisions, the College has a right (and arguably an obligation) to seek objective assurance that an applicant seeking registration with the College meets professional standards when it is certifying to the public and other members of the profession that a member

meets the standards expected of the profession. In our view, a registration requirement, which requires that applicants demonstrate English or French language proficiency, is reasonably necessary for the accomplishment of the College's purposes and in order for it to fulfil its public protection mandate.

[67] The College requires only certain applicants to meet the language proficiency requirement. An applicant must provide proof of "reasonable fluency" in English or French if: (1) the applicant's first language is not English or French; and (2) the applicant graduated from a university where the language of instruction was not English or French. The Registration Committee required the Applicant to provide proof of fluency because her first language is Portuguese and her education was completed in Portuguese, not English or French. In our view, the language proficiency requirement is imposed in circumstances where it is reasonable to question whether the person has the level of language proficiency required to meet professional standards, and to require reasonable proof of language fluency.

[68] The Board also considered the particular methods the College chose for purposes of demonstrating language proficiency. The College has selected specific standardized tests for purposes of demonstrating reasonable fluency. The tests include the two taken by the Applicant (the TOEFL and the IELTS), as well as a third test for demonstrating fluency in the French language. The College also clearly sets out for applicants the minimum scores that must be achieved on each of the tests.

[69] The College argues that the tests selected to measure language proficiency provide an objective evaluation of an applicant's English or French language abilities, and that use of an objective measure ensures that the registration process is fair, transparent and impartial. The College also notes that the language proficiency tests required are relatively inexpensive (ranging from $160 to $300) and easily accessible across Ontario on a monthly basis. The College argues that there is no information before the Board that demonstrates that access to the TOEFL or IELTS is restricted or otherwise unduly burdensome or prejudicial, or that the tests themselves are flawed or discriminatory.

[70] Standardized tests are widely used in the professional regulatory environment to provide an objective assessment of qualifications, skills, knowledge and other matters, including language proficiency. As noted by the College, requiring applicants to demonstrate fluency by way of standardized, widely used and recognized tests helps ensure that the process of determining fluency is independent, objective, transparent, fair and impartial. Individual testing would be costly and inefficient such that it would impose undue hardship on the College, and in the Board's view would not provide a consistent, standardized and objective evaluation as offered by the TOEFL and the IELTS in terms of whether an applicant meets the fluency standard expected of the profession.

[71] The tests chosen by the College for purposes of demonstrating English language proficiency are broadly used in academic, professional and other settings, and are widely available across the province. While the Board appreciates that the cost of writing the tests is not insignificant, given the value of objective, standardized testing when assessing qualifications of individuals seeking to be registered as healthcare professionals, we do not believe that the testing requirement places an undue burden on affected individuals.

[72] We find that the language proficiency tests and standards are reasonably necessary to the accomplishment of the professional purpose.

Summary

[73] In summary, the Board has considered the Applicant's application for registration, the Registration Committee's decision, and the materials upon which it was based, as well as the parties' written submissions in this review. The requirements for registration are clearly stated in the Regulation and set out in the College's "Proficiency in English and French Policy". The Board finds that the Applicant does not substantially qualify for registration and that the Registration Committee exercised its powers properly in this case.

[74] The Applicant expressed a genuine and heartfelt desire to practice audiology and speech-language pathology in the province, and we are sympathetic to the frustration she must feel as a result of the Committee's decision. While it is regrettable that the Applicant achieved marks below the minimum standards set in the College Policy, the Board finds that the Committee's decision was made in accordance with the applicable provisions of the Regulation and the College Policy, and is in keeping with the College's public protection mandate. The Board finds that the College has established, on a balance of probabilities, that the language proficiency requirement and standard is a *bona fide* occupational requirement for registration as an audiologist and speech-language pathologist. We see no basis for interfering with the Registration Committee's decision in this case.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) v. Maple Leaf Consumer Foods Inc., 2006 CanLII 27507 (ON LRB)

[5] As a preliminary issue the responding party (the "employer") seeks that the ballots from the vote on May 19, 2006 be declared void, that a new vote be ordered and that the Board either translate ballots in Chinese and Punjabi, as well as English and French and/or allow the presence and use of an interpreter to assist the voters at the vote.

[…]

[34] Regarding issue number 6, counsel submits the Board has violated the *Human Rights Code* (the "*Code*"), specifically section 5 and section 6 of the *Code*.

[35] Section 5 and 6 of the *Code* provides:

[36] In brief on this point, counsel submits "that the individuals who were denied translated ballots or translators were also denied equal treatment and were subject to discrimination".

[…]

[47] In regards to issue number 6 and the argument that the Board has breached section 5 and 6 of the *Code*, counsel pointed out that the Board in *AluminArt Products Limited*, [1991] OLRB Rep. July 797 has rejected such argument. While counsel for the employer suggests the case is incorrect, counsel for the union submits that the decision is correctly decided on this issue and there is no reason to depart from such reasoning.

[…]

THE DECISION

[71] In regards to the argument on the *Code* again the Board has considered this mater in *AluminArt Products Limited*, *supra*. Though counsel for the employer argues such decision is incorrectly decided, the Board does not agree. There at paragraph 18 the Board held:

> [18] With respect to the employer's arguments advanced on behalf of the employees under Ontario's *Human Rights Code*, we do not accept (nor, as noted in the cases quoted earlier, does our experience bear out) the simple equation the employer seeks to draw between language disability and "ethnic origin". But even if we did, we are not persuaded that the matter at issue here would fall within the *Code's* intended meaning of "contract", of "membership in a trade union", or even of "employment" itself, as argued by the employer. Indeed, it appears to us that the whole line of argument developed by the employer under the *Code* in this case would dramatically affect the status of linguistic disability in society generally, and we are not prepared to embrace such a change without specific legislative guidance to do so.

[72] Further the Board would adopt the reasoning of the Court in *R.* v. *MacKenzie, supra,* at paragraph 33 that “Appellate courts repeatedly have stated that “language” is not an analogous ground of subsection 15(1). The reason is that sections 16-23 of the charter deal specifically with language rights. If “language” also was subject to the over-arching coverage of subsection 15(1) then the ambit of the protection in sections 16-23 would have little meaning”.

[73] In this instance where fast votes are the legislative intent, it would, in the Board’s view, cause serious administrative problems if the employer’s argument prevailed. The existing procedure to have the parties assume the responsibility of explaining the certification procedure to employees if there is a language concern is, in the Board’s view, the proper method to follow. It is to be noted that in this instance the parties did issue leaflets in Punjabi and Chinese explaining the certification process, including a sample ballot. It is significant that in this instance there was a very high turnout of individuals voting: 197 out of a possible 216 individuals on the voters’ list with only three spoiled ballots.

[74] For all of the above reasons this preliminary motion is dismissed.

Insurance Act, R.S.O. 1990, c. I. 8

Part IV – Fire Insurance

148. (1) Statutory conditions

148. (1) The conditions set forth in this section shall be deemed to be part of every contract in force in Ontario and shall be printed in English or French in every policy with the heading “Statutory Conditions” or “Conditions légales”, as may be appropriate, and no variation or omission of or addition to any statutory condition is binding on the insured.

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149. Limitation of liability clause

149. A contract containing,

(a) a deductible clause;

(b) a co-insurance, average or similar clause; or

(c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional,

shall have printed or stamped upon its face in red ink or bold type the words "The policy contains a clause that may limit the amount payable", or the French equivalent failing which the clause is not binding upon the insured.

R.S.O. 1990, c. I.8, s. 149; 1997, c. 19, s. 10 (28).

Part VI – Automobile Insurance

Application and Policy

234. (1) Statutory conditions

234. (1) The conditions prescribed by the regulations made under paragraph 15.1 of subsection 121 (1) are statutory conditions and shall be deemed to be part of every contract to which they apply and shall be printed in English or French in every policy to which they apply with the heading "Statutory Conditions" or "Conditions légales", as may be appropriate.

Physical Damage Cover

261. (2) Stamping required

261. (2) Where a clause is inserted in accordance with subsection (1) or (1.1), there shall be printed or stamped upon the face of the policy in conspicuous type the words "This policy contains a partial payment of loss clause" or the French equivalent.

R.S.O. 1990, c. I.8, s. 261 (2); 1996, c. 21, s. 23 (2).

Direct Compensation — Property Damage

263. (5.3) Stamping required

263. (5.3) If a contract contains an agreement referred to in subsection (5.1) or a provision required by subsection (5.2.1), the policy shall have printed or stamped on its face in conspicuous type the words "This policy contains a partial payment of recovery clause for property damage" in English or "La présente police comporte une clause de recouvrement partiel en cas de dommages matériels" in French, as may be appropriate.

1993, c. 10, s. 21 (2); 1996, c. 21, s. 24 (3).

Part VII – Accident and Sickness Insurance

300. Statutory conditions

300. Subject to section 301, the conditions set out in this section shall be deemed to be part of every contract other than a contract of group insurance or of creditor's group insurance, and shall be printed in English or French in or attached to the policy forming part of such contract with the heading "Statutory Conditions" or "Conditions légales", as may be appropriate, and no variation or omission of or addition to any statutory condition not authorized by section 301 is binding on the insured.

Interjurisdictional Support Orders Act, 2002, S.O. 2002, c. 13

Part V – Appeals and Miscellaneous

43. (1) Translation

43. (1) An order or other document that is to be sent to a reciprocating jurisdiction that requires it to be translated into a language other than English or French shall be accompanied by a certified translation into that language.

2002, c. 13, s. 43 (1).

43. (2) Same

43. (2) An order or other document from a reciprocating jurisdiction that is written in a language other than English or French shall be accompanied by a certified translation into English or French.

2002, c. 13, s. 43 (2).

International Commercial Arbitration Act, R.S.O. 1990, c. I. 9

Schedule – UNCITRAL Model Law on International Commercial Arbitration

(As adopted by the United Nations Commission on International Trade Law on 21 June, 1985)

Chapter V. Conduct of Arbitral Proceedings

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.

Chapter VIII. Recognition and Enforcement of Awards

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 this State, the party shall supply a duly certified translation thereof into such language.

International Interests in Mobile Equipment Act (Aircraft Equipment), 2002, S.O. 2002, c. 18, Sch. B

Schedule 1 – Convention on International Interests in Mobile Equipment

[…]

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.

Schedule 2 – Protocol to the Convention on International Interests in Mobile Equipment in Matters Specific to Aircraft Equipment

[…]

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 Act, R.S.O. 1990, c. I. 10

Schedule – United Nations Convention on Contracts for the International Sale of Goods

[…]

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.

Juries Act, R.S.O. 1990, c. J. 3

Preparation of Jury Rolls

8. (1) Entry of names in jury roll

8. (1) The sheriff shall open the returns to jury service notices received by the sheriff and shall cause the name, address and occupation of each person making such a return, who is shown by the return to be eligible for jury service, to be entered in the jury roll alphabetically arranged and numbered consecutively.

R.S.O. 1990, c. J.3, s. 8 (1); 1994, c. 27, s. 48 (4).

8. (2) English, French and bilingual jurors

8. (2) The jury roll prepared under subsection (1) shall be divided into three parts, as follows:

> **1. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand English.**
>
> **2. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand French.**
>
> **3. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand both English and French.**

1994, c. 27, s. 48 (5).

ANNOTATIONS

R. v. Nahdee, 1993 CarswellOnt 135, [1993] O.J. No. 2425 (ON CJ) [hyperlink not available]

[12] Secondly, s. 8(2) makes special provision for a county which includes an area referred to in the Courts of Justice Act which provides for bilingual juries. It's unnecessary to quote that section. Thirdly, s. 8(6) provides for the process in unorganized territories. It's unnecessary to quote that section.

Justices of the Peace Act, R.S.O. 1990, c. J. 4

2.1 (1) Justices of the Peace Appointments Advisory Committee

2.1 (1) A committee known as the Justices of the Peace Appointments Advisory Committee in English and Comité consultatif sur la nomination des juges de paix in French is established.

2006, c. 21, Sched. B, s. 3.

[…]

2.1 (3) Composition

2.1 (3) The Advisory Committee is composed of seven core members as follows:

[…]

4. Four persons appointed by the Attorney General.

2006, c. 21, Sched. B, s. 3.

2.1 (4) Regional Members

2.1 (4) In addition to the core members appointed under subsection (3), the Advisory Committee shall include the following regional members in respect of its functions in a particular region:

[…]

3. Not more than five other persons appointed by the Attorney General.

2.1 (5) Criteria

2.1 (5) In the appointment of members under paragraph 4 of subsection (3) and paragraph 3 of subsection (4), the importance of reflecting, in the composition of the Advisory Committee as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

2006, c. 21, Sched. B, s. 3.

N.B. – This provision closely resembles subsection 43(3) of the Courts of Justice Act in its mention of Ontario's linguistic duality.

[…]

2.1 (19) Annual report

2.1 (19) The Advisory Committee shall submit to the Attorney General an annual report in English and in French of its activities.

2006, c. 21, Sched. B, s. 3.

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3. Oath of office

3. Every justice of the peace, before beginning the duties of office, shall make the following oath or affirmation in French or in English:

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8. (1) Review Council

8. (1) The council known in English as the Justices of the Peace Review Council and in French as Conseil d'évaluation des juges de paix is continued.

2006, c. 21, Sched. B, s. 7.

[…]

8. (3) Composition

8. (3) The Review Council is composed of,

> **[…]**
>
> **(g) four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.**

2006, c. 21, Sched. B, s. 7.

8. (4) Criteria

8. (4) In the appointment of members under clause (3)(g), the importance of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance shall be recognized.

2006, c. 21, Sched. B, s. 7.

N.B. – This provision closely resembles subsections 33(3) and 49(4) of the *Courts of Justice Act* in its mention of Ontario's linguistic duality.

Other duties of Review Council

9. (1) Provision of information to public

9. (1) The Review Council shall provide, in courthouses and elsewhere, information about itself and about its role in the justice system, including information about how members of the public may obtain assistance in making complaints.

2006, c. 21, Sched. B, s. 7.

9. (2) Same

9. (2) In providing information, the Review Council shall emphasize the elimination of cultural and linguistic barriers and the accommodation of the needs of persons with disabilities.

2006, c. 21, Sched. B, s. 7.

9. (3) Assistance to public

9. (3) Where necessary, the Review Council shall arrange for the provision of assistance to members of the public in the preparation of documents for making complaints.

2006, c. 21, Sched. B, s. 7.

9. (4) Telephone access

9. (4) The Review Council shall provide province-wide free telephone access, including telephone access for the deaf, to information about itself and its role in the justice system.

2006, c. 21, Sched. B, s. 7.

[…]

9. (7) Annual report

9. (7) After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs, in English and French, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the justice of the peace, the complainant or a witness. 2006, c. 21, Sched. B, s. 7.

---

10. (1) Rules

10. (1) The Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council shall make the rules available to the public.

2006, c. 21, Sched. B, s. 8.

10.1 (1) Use of official languages of courts

10.1 (1) The information provided under subsections 9 (1), (3) and (4) and any rules established under subsection 10 (1) shall be made available in English and French.

2006, c. 21, Sched. B, s. 8.

10.1 (2) Same

10.1 (2) Complaints against justices of the peace may be made in English or French.

2006, c. 21, Sched. B, s. 8.

10.1 (3) Same

10.1 (3) A hearing under section 11.1 shall be conducted in English, but a complainant or witness who speaks French or a justice of the peace who is the subject of a complaint and who speaks French is entitled, on request,

> **(a) to be given, before the hearing, French translations of documents that are written in English and are to be considered at the hearing;**
>
> **(b) to be provided with the assistance of an interpreter at the hearing; and**
>
> **(c) to be provided with simultaneous interpretation into French of the English portions of the hearing.**

2006, c. 21, Sched. B, s. 8.

10.1 (4) Bilingual hearing

10.1 (4) The Review Council may direct that a hearing to which subsection (3) applies be conducted bilingually, if it is of the opinion that it can be properly conducted in that manner.

2006, c. 21, Sched. B, s. 8.

10.1 (5) Part of hearing

10.1 (5) A direction under subsection (4) may apply to a part of the hearing and, in that case, subsections (6) and (7) apply with necessary modifications.

2006, c. 21, Sched. B, s. 8.

10.1 (6) Same

10.1 (6) In a bilingual hearing,

> **(a) oral evidence and submissions may be given or made in English or French, and shall be recorded in the language in which they are given or made;**
>
> **(b) documents may be filed in either language; and**
>
> **(c) the reasons for a decision may be written in either language.**

2006, c. 21, Sched. B, s. 8.

10.1 (7) Same

10.1 (7) In a bilingual hearing, if the complainant or the justice of the peace who is the subject of the complaint does not speak both languages, he or she is entitled, on request, to have simultaneous interpretation of any evidence, submissions or discussions spoken in the other language and translation of any document filed or reasons written in the other language.

2006, c. 21, Sched. B, s. 8.

N.B. – This provision closely resembles section 51.2 of the *Courts of Justice Act*.

---

13. (1) Standards of conduct

13. (1) The Associate Chief Justice Co-ordinator of Justices of the Peace may establish standards of conduct for justices of the peace, including a plan for bringing the standards into effect, and shall implement the standards and plan when they have been reviewed and approved by the Review Council.

2006, c. 21, Sched. B, s. 12.

13. (2) Duty of Associate Chief Justice Co-ordinator of Justices of the Peace

13. (2) The Associate Chief Justice Co-ordinator of Justices of the Peace shall ensure that any standards of conduct are made available to the public, in English and French, when they have been approved by the Review Council.

2006, c. 21, Sched. B, s. 12.

N.B. – This provision closely resembles section 51.9 of the *Courts of Justice Act*.

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14. (1) Continuing education

14. (1) The Associate Chief Justice Co-ordinator of Justices of the Peace shall establish a plan for the continuing education of justices of the peace, and shall implement the plan when it has been reviewed and approved by the Review Council.

2002, c. 18, Sched. A, s. 11 (6).

[…]

14. (3) Plan to be made public

14. (3) The Associate Chief Justice Co-ordinator of Justices of the Peace shall ensure that the plan for continuing education is made available to the public, in English and French, when it has been approved by the Review Council.

2002, c. 18, Sched. A, s. 11 (6).

N.B. – This provision closely resembles section 51.10 of the *Courts of Justice Act*.

Labour Relations Act, 1995, S.O. 1995, c. 1, Sch. A

Negotiation of Collective Agreements

26. Oath of Office

26. Each member of a conciliation board shall, before entering upon his or her duties, take and subscribe before a person authorized to administer oaths or before another member of the board, and file with the Minister, an oath in the following form, in English or in French:

Administration

110. (1) Board

110. (1) The board known as the Ontario Labour Relations Board is continued under the name Ontario Labour Relations Board in English and Commission des relations de travail de l'Ontario in French.

1995, c. 1, Sched. A, s. 110 (1).

[…]

110. (8) Oath of office

110. (8) Each member of the Board shall, before entering upon his or her duties, take and subscribe before the Clerk of the Executive Council and file in his or her office an oath of office in the following form in English or French:

Land Titles Act, R.S.O. 1990, c. L. 5

Part VII – Subsequent Registrations

General

84. Registrations in languages other than English

84. Where an instrument, application or related attachment is written wholly or in part in a language other than English there shall be produced with the instrument, application or related attachment a translation into English, together with an affidavit by the translator stating that he or she understands both languages and has carefully compared the translation with the original and that the translation is in all respects a true and correct translation.

R.S.O. 1990, c. L.5, s. 84.

---

85. (2) Regulations

85 (2) The Minister may make regulations,

> **[…]**
>
> **(b) prescribing a lexicon of French-English terms to be used in connection with the prescribed forms of instruments, applications and related attachments and deeming the corresponding forms of expression in the lexicon to have the same effect in law;**

Procedures and Records – Land Titles Act, R.R.O. 1990, Reg. 690

Part II – Dealings After First Registration

14. Application to Amend the Register

14. (3) Despite section 85 of the Act, where a form is prescribed in the English language for an instrument, deposit or any related attachment but no form is prescribed in the French language and the land registrar is of the opinion that a translation of the form in the French language presented for registration is an accurate translation of the form prescribed in the English language, the French translation is a prescribed form for the purposes of the Act and the regulations.

R.R.O. 1990, Reg. 690, s. 14 (3).

14. (4) Despite subsection (1), all land titles divisions are designated for the purposes of section 85 of the Act if the instrument or application to be registered is the bilingual version of any of the forms described in section 2 of Regulation 688 of the Revised Regulations of Ontario, 1990 (Form of Documents) made under the *Land Registration Reform Act*.

O. Reg. 439/11, s. 11 (2).

14. (5) If the instrument or application to be registered is the bilingual version of any of the forms described in section 2 of Regulation 688 of the Revised Regulations of Ontario, 1990 (Form of Documents) made under the *Land Registration Reform Act*, if words have been added to the instrument or application and if the land registrar is of the opinion that all the words that have been added appear in both the English and French languages, the instrument or application may be registered.

O. Reg. 439/11, s. 11 (2).

Law Society Act, R.S.O. 1990, c. L. 8

Part II – Hearing Division

49.24 (1) French-speaking panelists

49.24 (1) A person who speaks French who is a party to a proceeding before the Hearing Division may require that any hearing in the proceeding be heard by panelists who speak French.

1998, c. 21, s. 21; 2013, c. 17, s. 26.

ANNOTATIONS

Landry v. Law Society of Upper Canada, 2011 CanLII 99902 (ON SC)

[2] The applicant is also seeking orders directing the Hearing Panel and the Law Society of Upper Canada (the "Law Society") to respect the language rights guaranteed by s. 49.24 of the *Law Society Act*, R.S.O. 1990, c. L.8 and s. 5(1) of the *French Language Services Act*, R.S.O. 1990, c. F.32 and, in particular, the right to receive the Hearing Panel's reasons for decision in French after a hearing in French or a bilingual hearing, or the right to receive the reasons for decision in French and English simultaneously after a hearing in French or a bilingual hearing.

[…]

[47] Section 49.24 of the *Law Society Act* confirms that a party who speaks French may require that any hearing before the Hearing Panel be held before members who speak French:

> French-speaking panellists
>
> 49.24 (1) A person who speaks French who is a party to a proceeding before the Hearing Panel may require that any hearing in the proceeding be heard by panelists who speak French.
>
> (2) Repealed: 2006, c. 21, Sched. C, s. 51.

[48] The applicant exercised the language rights guaranteed to her by s. 49.24 of the *Law Society Act*. The hearing was conducted entirely in French. However, the applicant received the reasons for decision in English and a French translation six weeks later.

[49] The Law Society admits that releasing the reasons in English before the French translation was available does not comply with the spirit of the legislation providing for a hearing in French, which is found in s. 49.24 of the *Law Society Act*.

[50] The Law Society denies that the Hearing Panel has an obligation to write reasons in French in a proceeding conducted in French under s. 49.24 of the Act, provided that the reasons are translated into French simultaneously. The new Rule 15 of the Law Society's Rules of Practice and Procedure expressly provides for this.

[51] In the circumstances, when the Hearing Panel writes its reasons in English in a proceeding that was conducted in French, the Law Society admits that the reasons in English and the French translation should ordinarily be released at the same time.

[52] The fact that six weeks passed before the applicant received the French translation of the reasons shows a lack of respect for language rights and a lack of sensitivity that are distressing.

[53] Although the Law Society's conduct was regrettable, the Divisional Court clearly has no power, on an application for judicial review, to award any payment either as punitive damages or as compensatory damages, as requested by the applicant.

[54] We are of the opinion that all of the issues are premature, including the language issues.

[55] The Appeal Panel has jurisdiction to deal with procedural fairness and language rights issues. The applicant will have an opportunity to raise these issues in the appeal from the final judgment of the Hearing Panel.

Landry v. Law Society of Upper Canada, 2010 CanLII 100058 (ON SC)

[13] The Law Society had a positive duty under s. 49.24(1) of the *Law Society Act* to create a francophone panel in a timely manner. Moreover, it had the power to appoint one or more persons as temporary members of the Hearing Panel so as to comply with the requirement that it hold a hearing in French pursuant to s. 49.24.1(1).

[…]

[15] Even if the applicant created the emergency situation, it was important that a Francophone panel be formed as soon as possible. The absence of any evidence from the Law Society to explain what happened leads us to conclude that the Law Society did not take all necessary steps to show that it had performed its positive duties in respect of the language rights protected by s. 49.24 of the *Law Society Act*. For example, the affidavits filed by the Law Society did not include an affidavit from the person responsible for forming the panels required in the case at bar.

[16] That said, the applicant did not meet the requirements for a permanent stay. The case at bar is not similar to that cited by Mr. Champagne. In *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, 2003 SCC 62 (CanLII), [2003] 3 S.C.R. 3, [2003] S.C.J. No. 63, the government flouted language rights in the field of education, protected by s. 23 of the *Canadian Charter of Rights and Freedoms*. This case concerns a statutory duty of the Law Society.

[…]

[19] Finally, there is another possible remedy, that of continuing the temporary stay granted by Maranger J. on April 16 until the appeal is resolved. In this way, her rights to have an appeal in French will be respected and at the same time the public interest protected. The Law Society has a duty to supervise the competence and honesty of its members in their dealings with the public.

[20] The intervenors, AJEFO and RÉCLEF, asked the court to require the Law Society to prepare a formal policy and a written agreement concerning its duties to appoint temporary members, that is, steps that should be taken to initiate the procedure set out in s. 49.24.1 of the *Law Society Act*.

[21] Although we consider that the Law Society has not shown that it initiated this procedure, the fact remains that it is up to the Law Society to formulate its internal procedure. The case before the court does not prompt the latter to require such a procedure.

49.24.1 (1) Temporary panelists

49.24.1 (1) If, in the opinion of the chair or, in the absence of the chair, the vice-chair, it is not possible or practical to assign members of the Hearing Division to a hearing in compliance with a requirement of this Act or of the regulations or in compliance with a requirement made under subsection 49.24 (1), the chair or vice-chair may appoint one or more persons as temporary members of the Hearing Division for the purposes of that hearing in order to comply with such requirement, and temporary members of the Hearing Division shall be deemed to be members of the Hearing Division for the purposes of compliance with such requirement.

2006, c. 21, Sched. C, s. 52; 2013, c. 17, s. 26.

49.24.1 (2) Eligibility for appointment

49.24.1 (2) The chair or vice-chair shall not appoint a person as a temporary member of the Hearing Division under subsection (1) unless the person meets the requirements set out in the by-laws and is,

(a) a bencher;

(b) a licensee; or

(c) a person approved by the Attorney General for Ontario.

2006, c. 21, Sched. C, s. 52; 2013, c. 17, s. 18.

ANNOTATIONS

Landry v. Law Society of Upper Canada, 2010 CanLII 100058 (ON SC)

[13] The Law Society had a positive duty under s. 49.24(1) of the *Law Society Act* to create a francophone panel in a timely manner. Moreover, it had the power to appoint one or more persons as temporary members of the Hearing Panel so as to comply with the requirement that it hold a hearing in French pursuant to s. 49.24.1(1).

[…]

[20] The intervenors, AJEFO and RÉCLEF, asked the court to require the Law Society to prepare a formal policy and a written agreement concerning its duties to appoint temporary members, that is, steps that should be taken to initiate the procedure set out in s. 49.24.1 of the *Law Society Act*.

[21] Although we consider that the Law Society has not shown that it initiated this procedure, the fact remains that it is up to the Law Society to formulate its internal procedure. The case before the court does not prompt the latter to require such a procedure.

Legal Aid Services Act, 1998, S.O. 1998, c. 26

Part VII – General

85. (3) Same

85. (3) An officer or employee of the Corporation may advise the applicant of the names of those lawyers or service-providers within the area who can take instructions in a language in which the applicant can converse.

1998, c. 26, s. 85.

Legislation Act, 2006, S.O. 2006, c. 21, Sch. F

Part III – Regulations

21. (1) Registrar's duty not to file

21. (1) The Registrar shall refuse to file a regulation if the regulation is not bilingual but purports to amend a bilingual regulation.

2006, c. 21, Sched. F, s. 21 (1).

Part V – Change Powers

42. (2) Same

42. (2) The Chief Legislative Counsel may make the following changes to consolidated laws:

> **[…]**
>
> **2.2 Make such minor changes as may be required to make the form of expression of an Act or regulation in French or in English more compatible with its form of expression in the other language.**

Part VI – Interpretation

General Rules of Construction

65. Bilingual texts

65. The English and French versions of Acts and regulations that are enacted or made in both languages are equally authoritative.

2006, c. 21, Sched. F, s. 65.

ANNOTATIONS

R. v. Hajivasilis, 2013 ONCA 27 (CanLII)

[47] I also agree with counsel for the appellant that a comparison of the English and French titles of the *HTA* [*Highway Traffic Act*] supports his position. The French title of the *HTA* is "Code de la route". The French version defines "highway" as "voie publique". The title of the French version of the *HTA* considered along with the definition of "highway" in the French version suggests that the *Act* is not limited to "highways". The French and English versions of a statute are equally authoritative: *Legislation Act*, 2006, S.O. 2006, c. 21, Sch. F., s. 65.

Ontario Human Rights Commission v. Christian Horizons, 2010 ONSC 2105 (CanLII)

The French version of the provision

[53] Christian Horizons found support for its argument that the focus should be on the purpose or perspective of the religious group from the French version of the provision. According to s. 65 of the *Legislation Act*, 2006, S.O. 2006, c. 21, Sch. F, the English and French versions of Acts and regulations enacted in both languages are equally authoritative. Christian Horizons argues that the French version shows more clearly than the English version that one is to consider the objectives of the religious group in determining whether the second element of the special employment provision is satisfied.

[54] The French version reads:

> 24(1) Ne constitute pas une atteinte au droit, reconnu à l'article 5, à un traitement égal en matière d'emploi le fait:
>
> (a) qu'un organisme ou un groupement religieux, philanthropique, éducatif, de secours mutuel ou social dont le principal objectif est de servir les intérêts de personnes identifiées par la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la croyance, le sexe, l'age, l'état matrimonial ou un handicap n'emploie que des personnes ainsi identifiées ou leur accorde la préférence si cette qualité requise est exigée de façon raisonnable et de bonne foi compte tenu de la nature de l'emploi; (Emphasis added)

[55] The French version focuses on the principal objective of the religious organization, because it requires a determination as to whether the principal objective of the organization is to serve those identified by creed. In contrast, the English version appears to focus on the interests being served without explicit reference to purpose or objective.

[56] Christian Horizons submits, and we agree, that the French version suggests that the proper approach to the interpretation of the section is to focus on the subjective purpose of the group. In the case of a religious group providing charitable services, the question to be determined is whether its principal objective is to serve a religious calling or mission in carrying out this work.

Labourers' International Union of North America v. Weathertech Restoration Services Inc., 2008 CanLII 65327 (ON LRB)

[87] A few final observations are warranted. In my view, the result reached in this decision is supported by reference to the French version of the Act. Section 65 of the *Legislation Act*, 2006, S.O. 2006, c. 21 provides that the English and French versions of the Act are "equally authoritative". As a result, reference may usefully be made to the French version of the Act to determine whether the Legislature intended the word "shall" in subsection 128.1(3) of the English version of the Act to be mandatory in nature. In the French version of the Act, subsection 128.1(3) of the Act reads as follows:

(3) Dans les deux jours, exception faite des samedis, dimanches et jours fériés, qui suivent la réception de l'avis prévu au paragraphe (2), l'employeur fournit à la Commission:

a) d'une part, les noms des employés compris dans l'unité de négociation proposée dans la requête le jour de son dépôt;

b) d'autre part, s'il lui donne une description écrite de l'unité de négociation qu'il propose, conformément au paragraphe 7 (14), les noms des employés compris dans cette unité de négociation le jour du dépôt de la requête.

[88] It is noteworthy that the Legislature used the phrase "l'employeur fournit à la Commission" in the French version of subsection 128.1(3) of the *Act*. The verb utilized in the French version of the provision is "fournir", meaning "to furnish" or "to provide". Notably, the verb tense used in the French version of subsection 128.1(3) of the *Act* is the present tense. Translated into the English language, the provision states that within the two day time limit identified by section 128.1 of the *Act*, the employer "provides" to the Board the materials set out in subsection 128.1(3). The language does not state that the employer "must provide" ("doit fournir") this information, nor does it state that the employer "shall provide" ("fournira") this information.

[89] Neither the English nor the French version of the Act has paramountcy (see the discussion in Sullivan on the Construction of Statutes, cited above, at page 96 and following). As a result, both the French and the English version of the Act must be considered in order to determine the intention of the Legislature. Where the two versions of a bilingual enactment appear to say different things, an adjudicator is obliged, if at all possible, to find an acceptable meaning common to both versions of the legislation. This obligation is reflected by what Professor Sullivan identifies in her text as the "shared or common meaning" rule of interpretation. This rule reflects the proposition that where there is a discrepancy between the two versions of bilingual legislation, a meaning that is common to both or shared by both ought to be adopted unless that common or shared meaning is for some reason unacceptable. The best way to reconcile conflicting versions of legislation is to identify and adopt a meaning that may be plausibly attributed to both (see Sullivan on the Construction of Statutes, cited above, at page 100).

[90] In the instant case, reconciling the differences reflected by the two versions of subsection 128.1(3) can be effected by adopting an interpretation of the English version of subsection 128.1(3) of the Act that is directory rather than mandatory. Because the French text of subsection 128.1(3) of the Act does not utilize a verb tense that is consistent with a mandatory obligation, adopting an interpretation of the English version of subsection 128.1(3) of the Act that determines the word "shall" to be mandatory is inconsistent with the principle of seeking a shared or common meaning for both the French and the English texts. If the Board were to conclude that the word "shall" in subsection 128.1(3) of the Act is directory, and not mandatory, the inconsistency is eliminated.

SEE ALSO:

R. v. Raham, 2010 ONCA 206 (CanLII)

R. v. Bharath, 2016 ONCJ 382 (CanLII)

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66. Bilingual names

66. If the Act or regulation that creates or continues an entity refers to it by both an English and a French name, or if the English and French versions of the Act or regulation refer to the entity by different names, it may be referred to for any purpose by either name or by both names.

2006, c. 21, Sched. F, s. 66.

Part VII – Unconsolidated Acts and Regulations

98. (5) French version

98. (5) If the Chief Legislative Counsel causes an Act to be consolidated under subsection (4), he or she shall, in the case of a public Act, or may, in the case of a private Act,

(a) prepare a French version of the Act; and

(b) cause the French version to be consolidated and published on the e-Laws website as consolidated law together with the English version.

2009, c. 33, Sched. 2, s. 43 (34).

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99. French version

99. (4) If the Chief Legislative Counsel causes a regulation to be consolidated under subsection (3), he or she may,

(a) prepare a French version of the regulation; and

(b) cause the French version to be consolidated and published on the e-Laws website as consolidated law together with the English version.

2009, c. 33, Sched. 2, s. 43 (35).

Liquor Licence Act, R.S.O. 1990, c. L. 19

Responsible Use

30.1 (1) Requirement to display sign

30.1 (1) No person shall sell or supply liquor or offer to sell or supply liquor from a prescribed premises unless,

(a) the premises prominently displays a warning sign containing the prescribed information that cautions women who are pregnant that the consumption of alcohol during pregnancy is the cause of Fetal Alcohol Spectrum Disorder;

(b) the sign is posted at the premises in accordance with the prescribed criteria; and

(c) the sign satisfies any other criteria that are prescribed.

2004, c. 12, s. 1.

30.1 (2) Language of sign

30.1 (2) A sign under subsection (1) shall be in English and may be in any other language that is prescribed.

2004, c. 12, s. 1.

30.1 (3) Regulations

30.1 (3) The Lieutenant Governor in Council may make regulations,

(a) prescribing premises and types of premises that are required to display a sign under subsection (1);

(b) governing signs for the purposes of subsection (1);

(c) prescribing languages, other than English, which may be used in a sign for the purposes of subsection (2) and specifying areas of the Province where a sign in a prescribed language may be displayed.

2004, c. 12, s. 1.

General – Liquor Licence Act, R.R.O. 1990, Reg. 718

26.1 Warning Regarding Consumption of Alcohol During Pregnancy

26.1 (1) The warning sign referred to in subsection 30.1 (1) of the Act shall be in the form posted on the website of the Alcohol and Gaming Commission of Ontario and bearing the words "WARNING: Drinking alcohol during pregnancy can cause birth defects and brain damage to your baby".

O. Reg. 434/04, s. 1; O. Reg. 296/15, s. 11 (1).

26.1 (2) In addition to the warning sign referred to in subsection (1), the warning sign may be in French and if a warning sign in French is used, it shall be in the form posted on the website of the Alcohol and Gaming Commission of Ontario and bearing the words "AVERTISSEMENT: La consommation d'alcool pendant la grossesse peut occasionner des anomalies congénitales et des lésions cérébrales à votre bébé".

O. Reg. 434/04, s. 1; O. Reg. 296/15, s. 11 (2).

Local Health System Integration Act, 2006, S.O. 2006, c. 4

Preamble

The people of Ontario and their government,

> **[…]**
>
> **(f) believe that the health system should be guided by a commitment to equity and respect for diversity in communities in serving the people of Ontario and respect the requirements of the *French Language Services Act* in serving Ontario's French-speaking community;**

Part III – Planning and Community Engagement

14. (2) Councils

14 (2) The Minister shall establish the following councils:

> **[…]**
>
> **2. A French language health services advisory council to advise the Minister about health and service delivery issues related to francophone communities and priorities and strategies for the provincial strategic plan related to those communities.**

2006, c. 4, s. 14 (2).

14. (3) Members

14. (3) The Minister shall appoint the members of each of the councils established under subsection (2) who shall be representatives of the organizations that are prescribed.

2006, c. 4, s. 14 (3).

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16. (1) Community engagement

16. (1) A local health integration network shall engage the community of diverse persons and entities involved with the local health system about that system on an ongoing basis, including about the integrated health service plan and while setting priorities.

2006, c. 4, s. 16 (1).

[…]

16. (4) Duties

16. (4) In carrying out community engagement under subsection (1), the local health integration network shall engage,

> **[…]**
>
> **(b) the French language health planning entity for the geographic area of the network that is prescribed.**

2006, c. 4, s. 16 (4).

Engagement With the Francophone Community Under Section 16 of the Act – Local Health System Integration Act, 2006, O. Reg. 515/09

1. Purposes

1. The purposes of this Regulation are,

> **(a) to prescribe a French language health planning entity for the geographic area of each local health integration network for the purposes of clause 16 (4) (b) of the Act; and**
>
> **(b) to set out the duties of each local health integration network for engaging the French language health planning entity for the geographic area of the network for the purposes of section 16 of the Act.**

O. Reg. 515/09, s. 1.

---

2. French language health planning entity

2. (1) For the purposes of clause 16 (4) (b) of the Act and for each local health integration network, the Minister shall select an entity as the French language health planning entity for the geographic area of the network in accordance with this section,

> **(a) no later than six months after this Regulation comes into force for the first entity selected for the area; and**
>
> **(b) upon the cancellation or the expiry of the selection of an entity for the area under this section.**

O. Reg. 515/09, s. 2 (1).

2. (2) The Minister shall not select an entity as the French language health planning entity for the geographic area of a local health integration network unless the entity meets the following criteria:

> **1. It is incorporated under the laws of Ontario and is a going concern.**

2. It has a demonstrated relationship with the Francophone community in the area.

3. It has experience with or knowledge of the local health system and the health needs of the Francophone community in the area, including the needs of diverse groups within the Francophone community.

4. It has demonstrated an awareness of or involvement in the planning or delivery of health services.

5. It has demonstrated the capacity and skills to engage the network about the local health system under subsection 16 (1) of the Act to further the purpose of the Act, including the ability to provide timely advice consistent with the planning cycles of the network.

6. It agrees to engage the network on the matters listed in clauses 3 (1) (a) to (f) of this Regulation in accordance with section 16 of the Act.

7. It agrees to engage the network on the matters listed in clauses 3 (1) (a) to (f) of this Regulation in the best interests of the Francophone community in the area and not seek to obtain any benefit for itself.

8. It agrees to enter into an agreement with the network about roles and responsibilities relating to the matters listed in clauses 3 (1) (a) to (f) of this Regulation.

O. Reg. 515/09, s. 2 (2).

2. (3) The Minister may select an entity to act as the French language health planning entity for the geographic area of more than one local health integration network but shall ensure that there are at least five French language health planning entities selected in Ontario.

O. Reg. 515/09, s. 2 (3).

2. (4) The Minister shall consult with a local health integration network before selecting the French language health planning entity for the geographic area of the network.

O. Reg. 515/09, s. 2 (4).

2. (5) If an entity selected as a French language health planning entity ceases to meet the criteria set out in subsection (2) after having been selected, the Minister may cancel the selection and, in that case, shall select another entity to act as the French language health planning entity.

O. Reg. 515/09, s. 2 (5).

2. (6) Subject to subsection (5), the selection of an entity as a French language health planning entity expires five years after it was made, at which time that Minister shall make a selection as required under subsection (1), either reselecting the same entity or selecting another entity.

O. Reg. 515/09, s. 2 (6).

3. Community engagement

3. (1) For the purposes of section 16 of the Act and subject to subsection (2), each local health integration network shall engage the French language health planning entity selected under section 2 of this Regulation for the geographic area of the network to advise the network on,

(a) methods of engaging the Francophone community in the area;

(b) the health needs and priorities of the Francophone community in the area, including the needs and priorities of diverse groups within that community;

(c) the health services available to the Francophone community in the area;

(d) the identification and designation of health service providers for the provision of French language health services in the area;

(e) strategies to improve access to, accessibility of and integration of French language health services in the local health system; and

(f) the planning for and integration of health services in the area.

O. Reg. 515/09, s. 3 (1).

3. (2) Before carrying out the engagement mentioned in subsection (1), a local health integration network shall enter into an agreement with the French language health planning entity selected under section 2 for the geographic area of the network about roles and responsibilities relating to the matters listed in clauses (1) (a) to (f).

O. Reg. 515/09, s. 3 (2).

French Language Health Services Advisory Council – Local Health System Integration Act, 2006, O. Reg. 162/07

1. French language health services advisory council

1. The following organizations are prescribed for the purposes of appointing members to the French language health services advisory council under subsection 14 (3) of the Act:

1. Alliance des réseaux ontariens de santé en français.

2. Assemblée de la francophonie de l'Ontario (AFO).

3. Association française des municipalités de l'Ontario (AFMO).

4. Fédération des aînés et des retraités francophones de l'Ontario (FAFO).

5. Groupe francophone de l'Association des centres de santé de l'Ontario.

6. Regroupement des intervenantes et intervenants francophones en santé et en services sociaux de l'Ontario (RIFSSSO).

7. Union Provinciale des Minorités Raciales et Ethnoculturelles Francophones de l'Ontario (UP-MREF).

O. Reg. 162/07, s. 1.

Long-Term Care Homes Act, 2007, S.O. 2007, c. 8

Preamble

The people of Ontario and their Government:

[…]

Respect the requirements of the *French Language Services Act* in serving Ontario's Francophone community;

Part III – Admission of Residents

44. (1) Authorization for admission to a home

44. (1) A person who has been determined to be eligible for long-term care home admission may apply to a placement co-ordinator for an authorization of admission, by the appropriate placement co-ordinator, to such long-term care home or homes as the person selects.

2007, c. 8, s. 44 (1).

[…]

44. (3) Assistance with choosing homes

44. (3) The placement co-ordinator who determined that the applicant is eligible for long-term care home admission shall, if the applicant wishes, assist the applicant in selecting the long-term care home or homes with respect to which the applicant will apply for authorization of admission.

2007, c. 8, s. 44 (3).

44. (4) Person's preferences

44. (4) In assisting the applicant under subsection (3), the placement co-ordinator shall consider the applicant's preferences relating to admission, based on ethnic, religious, spiritual, linguistic, familial and cultural factors.

2007, c. 8, s. 44 (4).

Part II – Residents: Rights, Care and Services

Nursing and Personal Support Services

43. Communication methods

43. Every licensee of a long-term care home shall ensure that strategies are developed and implemented to meet the needs of residents with compromised communication and verbalization skills, of residents with cognitive impairment and of residents who cannot communicate in the language or languages used in the home.

O. Reg. 79/10, s. 43.

Keeping of Waiting List

165. Keeping of waiting lists

165. (1) Each placement co-ordinator shall keep a waiting list for admission to each of the long-term care homes for which the placement co-ordinator is designated.

O. Reg. 79/10, s. 165 (1).

165. (2) In addition to the waiting lists under subsection (1), the placement co-ordinator shall, if applicable, keep a separate waiting list for each unit or area within a home that is primarily engaged in serving the interests of persons of a particular religion, ethnic origin or linguistic origin as referred to in clause 173 (1) (b).

O. Reg. 79/10, s. 165 (2).

N.B. – For more information on the requirements to be placed on a waiting list, see sections 166 and following of this Regulation.

Transfer List

207. Transfer list

207. (1) Every licensee of a long-term care home shall keep a transfer list consisting of,

[…]

(g) where the home has a unit or area within the home that is primarily engaged in serving the interests of persons of a particular religion, ethnic origin or linguistic origin, the names of residents,

(i) who are requesting a transfer to the unit or area or out of the unit or area and based on the class of accommodation requested, and

(ii) who are in the unit or area and are requesting a change in class of accommodation within that unit or area.

O. Reg. 79/10, s. 207 (1).

Information

225. Posting of information

225. (1) For the purposes of clause 79 (3) (q) of the Act, every licensee of a long-term care home shall ensure that the information required to be posted in the home and communicated to residents under section 79 of the Act includes the following:

[…]

225. (3) The licensee shall ensure that the fundamental principle set out in section 1 of the Act and the Residents' Bill of Rights are posted in both English and French.

O. Reg. 79/10, s. 225 (3).

Marriage Act, R.S.O. 1990, c. M. 3

24. (3) Form of ceremony

24. (3) No particular form of ceremony is required except that in some part of the ceremony, in the presence of the person solemnizing the marriage and witnesses, each of the parties shall declare:

I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,

Je déclare solennellement que moi, AB, je ne connais aucun empêchement légal à mon mariage avec CD,

and each of the parties shall say to the other:

I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (*or* to be my lawful wedded husband *or* to be my lawful wedded partner *or* to be my lawful wedded spouse),

Je demande aux personnes qui sont ici présentes d'être témoins que moi, AB, je prends CD comme légitime épouse (*ou* comme légitime époux *ou* comme partenaire conjugal légitime *ou* comme légitime conjoint(e)),

after which the person solemnizing the marriage shall say:

I, EF, by virtue of the powers vested in me by the *Marriage Act*, do hereby pronounce you AB and CD to be married,

En vertu des pouvoirs qui me sont conférés par la *Loi sur le mariage*, moi, EF, je vous déclare mariés(ées), AB et CD.

2005, c. 5, s. 39 (4).

24. (4) Language

24. (4) For the purposes of subsection (3), it is sufficient to use only the English or only the French language.

R.S.O. 1990, c. M.3, s. 24 (4).

Métis Nation of Ontario Secretariat Act, 2015, S.O. 2015, c. 39

Preamble

[...]

The citizens of the Métis Nation of Ontario identify as descendants of the Métis people that emerged in west central North America with their own language (Michif), culture, traditions and way of life. These Métis people collectively refer to themselves as the Métis Nation, which includes Métis communities within Ontario.

Municipal Act, 2001, S.O. 2001, c. 25

Part VI – Practices and Procedures

First Meeting

232. (1) Declaration of office

232. (1) A person shall not take a seat on the council of a municipality, including a person appointed to fill a temporary vacancy on an upper-tier council under section 267 but not including a person appointed to act in place of a head of council under section 242, until the person takes the declaration of office in the English or French version of the form established by the Minister for that purpose.

2001, c. 25, s. 232 (1).

By-laws

247. (1) Language of by-laws

247. (1) The by-laws and resolutions of a municipality shall be passed in English or in both English and French.

2001, c. 25, s. 247 (1).

247. (2) Official plan

247. (2) An official plan adopted by a municipality shall be in English or in both English and French.

2001, c. 25, s. 247 (2).

247. (3) Proceedings

247. (3) Every council and every committee of council may conduct its proceedings in English or French or in both English and French.

2001, c. 25, s. 247 (3).

247. (4) Minutes

247. (4) Despite subsection (3), the minutes of the proceedings shall be kept in English or in both English and French.

2001, c. 25, s. 247 (4).

247. (5) Proviso

247. (5) Nothing in this section,

> **(a) affects an obligation imposed by or under any Act to make, keep, use, file, register or submit any record in the language or languages specified by or under the Act; or**
>
> **(b) affects any requirement at law to give reasonable notice.**

2001, c. 25, s. 247 (5).

247. (6) Translations

247. (6) If a record is submitted by a municipality to a provincial ministry in French, the municipality shall, at the request of the minister of that ministry, supply an English translation of it.

2001, c. 25, s. 247 (6).

ANNOTATIONS

Galganov v. Russell (Township), 2012 ONCA 409 (CanLII)

[23] In appealing the application judge's holding, Brisson makes two related arguments. He submits that the power to legislate languages must be expressly found in the enabling statute,

and that no such power exists in this case. The only provision in the Act expressly concerning language is s. 247, which provides that the by-laws and resolutions of a municipality, official plan and minutes of proceedings shall be in English or in both English and French. Second, Brisson submits that, in any event, the power to enact the By-law cannot be derived from the general municipal powers under the Act; these are mere statements of principles.

[…]

[42] Brisson relies on two decisions in support of his submission that the power to legislate in relation to language on a commercial sign must be expressly stated in the enabling statute: *Chaperon v. Sault Ste. Marie (City)* (1994), 1994 CanLII 7284 (ON SC), 19 O.R. (3d) 281 (Gen. Div.) and *Trumble v. Kapuskasing (Town)* (1986), 1986 CanLII 2488 (ON SC), 57 O.R. (2d) 139 (H.C.J.), aff'd (1988), 1988 CanLII 4768 (ON CA), 63 O.R. (2d) 798 (C.A.). In *Chaperon*, the issue was the validity of a by-law declaring English the official language of the City of Sault Ste. Marie. In *Trumble*, the validity of a by-law declaring the Town of Kapuskasing an officially bilingual municipality was at issue. In both cases, the argument was that authority to pass the respective by-laws arose from provisions of the Municipal Act which were similar in wording to s. 247 of the Act. It will be recalled, that that section states that the by-laws and resolutions of a municipality, the official plan and the minutes of proceedings may be in English or in both English and French. Section 247 is not put forward as the source of the Township's power in this case and, in my opinion, these decisions are simply not relevant.

Tax Matters – Property Tax Bill Form And Content – Municipal Act, O. Reg. 75/01

1. Application of regulation

1. (1) This Regulation sets out the form and content required for tax notices under section 343 of the Act.

O. Reg. 301/03, s. 2 (1).

1. (2) A tax notice set out in Schedule 1, 2 or 3 may be provided in English only, in French only or bilingually.

O. Reg. 216/15, s. 1.

Tax Notices for All Classes of Property — Schedule 1

4. Assessment, municipal tax and education tax information

4. (2) The following municipal tax information shall be in the following areas, as set out in Schedule 1:

> **1. A heading identifying the levying municipality, in area "3.3.1". The heading may set out "municipal levies" or its French equivalent or substitute for the word "municipal" the name, municipal status or tier level of the levying municipality, as in "London Levies", "City Levies" or "Lower-tier Levies" or their French equivalents.**

Municipal Elections Act, 1996, S.O. 1996, c. 32, Sch.

General

9. (1) Language of notices and forms

9. (1) Notices, forms and other information provided under this Act shall be made available in English only, unless the council of the municipality has passed a by-law under subsection (2).

1996, c. 32, Sched., s. 9 (1).

9. (2) By-law

9. (2) A municipal council may pass a by-law allowing the use of,

(a) French, in addition to English, in prescribed forms;

(b) French, other languages other than English, or both, in notices, forms (other than prescribed forms) and other information provided under this Act.

1996, c. 32, Sched., s. 9 (2).

9. (3) Non-application

9. (3) This section does not apply with respect to notices, forms and other information provided under this Act in respect of the election of the persons described in clauses 9.1 (1) (a) and (b).

1999, c. 14, Sched. F, s. 6 (2).

9.1 (1) Bilingual notices and forms

9.1 (1) This section applies with respect to notices, forms and other information provided under this Act in respect of the election of,

(a) members of a French-language district school board; or

(b) members of a school authority that,

(i) has established, operated or maintained a French-language instructional unit within the year before voting day, or

(ii) is subject to an agreement, resolution or order under Part XII of the *Education Act* that requires the school authority to establish, operate or maintain a French-language instructional unit.

1999, c. 14, Sched. F, s. 6 (3).

9.1 (2) Language of notices, etc.

9.1 (2) Notices, forms and other information provided under this Act with respect to the matters described in subsection (1) shall be made available in English and French and shall not be provided in any other language unless the council of the municipality has passed a by-law under subsection (3).

1999, c. 14, Sched. F, s. 6 (3).

9.1 (3) By-law

9.1 (3) A municipal council may pass a by-law allowing the use of languages other than English and French in notices, forms (other than prescribed forms) and other information provided under this Act with respect to the matters described in subsection (1).

1999, c. 14, Sched. F, s. 6 (3).

9.1 (4) Interpretation

9.1 (4) In this section, "French-language district school board", "French-language instructional unit" and "school authority" have the same meaning as in subsection 1 (1) of the *Education Act*.

1999, c. 14, Sched. F, s. 6 (3).

Northern Services Boards Act, R.S.O. 1990, c. L. 28

Part I – Local Services Boards

Procedures for establishment of Local Services Board

3. (2) Calling of meeting

3. (2) Any ten inhabitants desiring the establishment of a Local Services Board may in writing authorize and name one of their number to call a meeting of the inhabitants to consider the desirability of establishing a Local Services Board.

[…]

3. (4) Notice

3. (4) The notice calling the meeting,

(a) shall be in both English and French in Form 1;

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20. Challenge to eligibility

20. Where the eligibility of any inhabitant to vote or to seek office is challenged, the chair shall require that the inhabitant whose eligibility has been challenged swear an affidavit in English or French before him or her in Form 2 and, where the inhabitant swears such affidavit, the inhabitant may thereupon vote at the meeting or be eligible to seek office.

R.S.O. 1990, c. L.28, s. 20; 1998, c. 16, s. 7.

Not-for-Profit Corporations Act, 2010, S.O. 2010, c. 15

N.B. – At the date of publication, this law had not yet come into force.

Part II – Incorporation

Rules re name of corporation

11. (2) Language

11. (2) Subject to the regulations, a corporation may have a name that is,

(a) English only;

(b) French only;

(c) one name that is a combination of English and French; or

(d) one name in English and one name in French that are equivalent but are used separately.

2010, c. 15, s. 11 (2).

11. (3) Same

11. (3) A corporation that has a name that is described in clause (2) (d) may be legally designated by its English name or its French name.

2010, c. 15, s. 11 (3).

[…]

11. (6) Use of name

11. (6) Subject to this Act and the regulations, a corporation may use its name in the form and language permitted by its articles.

2010, c. 15, s. 11 (6).

208. Regulations

208. The Minister may make regulations,

> **[…]**
>
> **4. governing corporations' names, including prescribing rules and requirements respecting their form and language, prescribing permitted words, expressions, punctuation and other marks and prescribing prohibited words, expressions, punctuation and other marks;**

Occupational Health and Safety Act, R.S.O. 1990, c. O.1

Part III – Duties of Employers and Other Persons

25. (1) Duties of employers

25. (1) An employer shall ensure that,

> **[…]**

25. (2) Idem

25. (2) Without limiting the strict duty imposed by subsection (1), an employer shall,

> **[…]**
>
> **(i) post, in the workplace, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the workplace, outlining the rights, responsibilities and duties of workers;**

ANNOTATIONS

Ontario (Ministry of Labour) v. Semple Gooder Roofing Corporation, 2015 ONCJ 183 (CanLII)

[193] During cross-examination, he [McGoey] testified that about 90 percent of their 140 to 150 roofers are "Portuguese roofers and second generation" (Transcript, March 25, 2014, at p. 53).

[194] Mr. McGoey is aware of his statutory obligation under ss.25(2)(i) of the legislation to post in the workplace a copy of the Act and any explanatory material prepared by the Ministry both in English and in Portuguese that outlines the rights, responsibilities and duties of workers.

Part IV – Toxic Substances

37. (1) Hazardous material identification and data sheets

37. (1) An employer,

(a) shall ensure that all hazardous materials present in the workplace are identified in the prescribed manner;

(b) shall obtain or prepare, as may be prescribed, a current safety data sheet for all hazardous materials present in the workplace; and

(c) shall ensure that the identification required by clause (a) and safety data sheets required by clause (b) are available in English and such other languages as may be prescribed.

R.S.O. 1990, c. O.1, s. 37 (1); 2015, c. 27, Sched. 4, s. 2 (1, 2).

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41. (1) Hazardous physical agents

41. (1) A person who distributes or supplies, directly or indirectly, or manufactures, produces or designs a thing for use in a workplace that causes, emits or produces a hazardous physical agent when the thing is in use or operation shall ensure that such information as may be prescribed is readily available respecting the hazardous physical agent and the proper use or operation of the thing.

41. (2) Duty of employer

41. (2) Where an employer has a thing described in subsection (1) in the workplace, the employer shall ensure that the information referred to in that subsection has been obtained and is,

(a) made available in the workplace for workers who use or operate the thing or who are likely to be exposed to the hazardous physical agent; and

(b) furnished by the employer to the committee or health and safety representative, if any, for the workplace or a worker selected by the workers to represent them, if there is no committee or health and safety representative.

41. (3) Notices

41. (3) An employer to whom subsection (2) applies shall post prominent notices identifying and warning of the hazardous physical agent in the part of the workplace in which the thing is used or operated or is to be used or operated.

41. (4) Idem

41. (4) Notices required by subsection (3) shall contain such information as may be prescribed and shall be in English and such other language or languages as may be prescribed.

R.S.O. 1990, c. O.1, s. 41.

67. Traffic Control

67. (2) If a worker at a project on a highway may be endangered by vehicular traffic unrelated to the project, the project shall make use of as many of the following measures as is necessary to adequately protect the worker:

1. Barriers.

2. Barricades.

3. Delineators.

4. Lane control devices.

5. Warning signs.

6. Flashing lights.

7. Flares.

8. Traffic control devices.

9. Blocker trucks.

10. Crash trucks.

11. Sign trucks.

12. Speed control devices.

13. Longitudinal buffer areas.

O. Reg. 145/00, s. 21.

67. (6) A worker who is required to set up or remove measures described in subsection (2) on a roadway or a shoulder of a roadway,

[…]

(c) shall be given adequate written and oral instructions, in a language that he or she understands, with respect to setting up or removing the measures.

O. Reg. 145/00, s. 21.

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69. (4) A worker who is required to direct vehicular traffic,

[…]

(d) shall be given adequate written and oral instructions, in a language that he or she understands, with respect to directing vehicular traffic, and those instructions shall include a description of the signals that are to be used.

O. Reg. 145/00, s. 23.

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106. Equipment, General

106. (1.5) The employer shall,

(a) ensure that the signaller has received adequate oral training in his or her duties and has received adequate oral and written instructions in a language that he or she understands; and

Designated Substances – Occupational Health and Safety Act, O. Reg. 490/09

Assessment and Control Program

20. (8) Control program

20. (8) An employer shall,

(a) provide a copy of the control program to every member of the joint health and safety committee;

(b) acquaint every worker affected by the control program with its provisions; and

(c) make a copy of the control program available to workers both in English and the majority language of the workplace.

O. Reg. 490/09, s. 20 (8).

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21. (5) Ethylene oxide, emergency program

21. (5) An employer shall,

(a) provide a copy of the control program to every member of the joint health and safety committee;

(b) acquaint every worker affected by the control program with its provisions; and

(c) make a copy of the control program available to workers both in English and the majority language of the workplace.

O. Reg. 490/09, s. 20 (8).

Ontario College of Teachers Act, 1996, S.O. 1996, c. 12

Part X – Miscellaneous

44. (1) Right to use French

44. (1) A person has the right to use French in all dealings with the College.

44. (2) Council to ensure

44. (2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College.

44. (3) Limitation

44. (3) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

44. (4) Definition

44. (4) In this section,

"dealings" means any service or procedure available to the public or to members of the College and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.

1996, c. 12, s. 44.

Accreditation of Teacher Education Programs – Ontario College of Teachers Act, 1996, O. Reg. 347/02

Part II – Accreditation Committee

6. Accreditation panel

6. (1) The chair of the Accreditation Committee shall establish accreditation panels.

O. Reg. 347/02, s. 6 (1); O. Reg. 247/16, s. 1 (1).

6. (5) If the language of instruction of the program to be reviewed by the panel is English or French, the chair of the Committee shall appoint to an accreditation panel only persons who are fluent in the language of instruction.

O. Reg. 347/02, s. 6 (5); O. Reg. 247/16, s. 1 (4).

Appointments to Council – Ontario College of Teachers Act, 1996, O. Reg. 345/96

1. Appointments to Council

1. (1) The Lieutenant Governor in Council shall appoint persons under clause 4 (2) (b) of the Act who are, in the opinion of the Lieutenant Governor in Council, able to represent the public interest and the interests of the education community.

O. Reg. 345/96, s. 1.

1. (2) The Lieutenant Governor in Council shall ensure that at least three members of the Council appointed under clause 4 (2) (b) of the Act are French speaking and at least one member is an aboriginal person.

O. Reg. 121/15, s. 1.

Election of Council Members – Ontario College of Teachers Act, 1996, O. Reg. 293/00

Right to Use French or English

21. (1) An elector has the right to use French or English in all dealings with the Registrar relating to the election of members to the Council.

O. Reg. 293/00, s. 21 (1); S.O. 2009, c. 33, Sched. 13, s. 4.

21. (2) An elector has the right to vote in French or English.

O. Reg. 293/00, s. 21 (2).

Ontario College of Trades and Apprenticeship Act, 2009, S.O. 2009, c. 22

Part XI – Appointments Council and Classification Roster

63. (1) Appointments Council and Classification Roster

63. (1) The College of Trades Appointments Council is continued under the name College of Trades Appointments Council and Classification Roster in English and Conseil des nominations et Registre du classement de l'Ordre des métiers in French.

2016, c. 37, Sched. 17, s. 14 (1).

63.1 (10) Duty to make appointments

63.1 (10) The Appointments Council shall appoint,

(a) the members of the Board;

(b) the members of the divisional boards and trade boards; and

(c) the members of the roster of adjudicators.

2016, c. 37, Sched. 17, s. 14 (1).

63.1 (11) Reflecting diversity

63.1 (11) When carrying out its functions under subsection (10), the Appointments Council shall take into account the importance of reflecting across the governing structure of the College,

(a) Ontario's English and French linguistic duality;

(b) the diversity of Ontario's population;

(c) gender balance;

(d) representation from unionized and non-unionized and from large, medium and small business environments; and

(e) the various geographic areas of Ontario named in a Board regulation.

2016, c. 37, Sched. 17, s. 14 (1).

Part XIV – Miscellaneous

77. (1) Right to use French

77. (1) Everyone has the right to use French in all dealings with the College.

2009, c. 22, s. 77 (1).

77. (2) Definition

77. (2) In this section,

"dealings" means any practice or procedure available to the public or to members of the College and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.

2009, c. 22, s. 77 (2).

General Regulation of The Board – Ontario College of Trades and Apprenticeship Act, 2009, O. Reg. 93/13

1. Notice for Board meetings

1. The Registrar shall ensure that notice for Board meetings that are to be open to the public meet the following requirements:

> **1. Notice of the meeting must be posted on the College's website.**
>
> **2. Notice of the meeting must be in both English and French.**

Ontario Colleges of Applied Arts and Technology Act, 2002, S.O. 2002, c. 8, Sch. F

2. (3) Carrying out its objects

2. (3) In carrying out its objects, a college may undertake a range of education-related and training-related activities, including but not limited to,

> **[…]**
>
> **(b) offering its courses in the French language where the college is authorized to do so by regulation;**

---

8. (1) Regulations

8. (1) The Lieutenant Governor in Council may make regulations,

> **[…]**
>
> **(f) respecting the languages of instruction, including authorizing specified colleges to offer any or all of their programs in the French language and excluding others from doing so;**

General – Ontario Colleges of Applied Arts and Technology Act, 2002, O. Reg. 34/03

Colleges of Applied Arts and Technology

3. Grants to French language colleges

3. (1) It is a condition of the payment of legislative grants to a French language college that, except for instruction of English as a second language,

(a) all programs and services offered by the college that are funded in whole or in part through provincial government general purpose operating grants shall be offered only in French; and

(b) all programs and services delivered by the college on behalf of the provincial government shall be delivered only in French.

O. Reg. 34/03, s. 3 (1).

3. (2) No English language college may provide French language programs and services, except for instruction of French as a second language, unless the college has entered into a joint agreement in writing with all of the French language colleges.

O. Reg. 34/03, s. 3 (2).

3. (3) In this section,

"English language college" means any college named in this Regulation other than a French language college; ("*collège de langue anglaise*")

"French language college" means the college known as Collège d'arts appliqués et de technologie La Cité collégiale or the college known as Collège Boréal d'arts appliqués et de technologie. ("*collège de langue française*")

O. Reg. 34/03, s. 3 (3); O. Reg. 301/10, s. 2.

Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B

Part II – The Board

28.7 (5) Verification

28.7 (5) For the purposes of the verification of a contract required under Part II of the *Energy Consumer Protection Act, 2010*, a directive,

(a) may require the Board to prepare specified information, including preparing the information in languages specified in the directive, and to do so within the time specified in the directive; and

Ontario Flag Day Act, 2015, S.O. 2015, c. 21

Preamble

Ontario has a rich history and diverse heritage.

From the early Aboriginal peoples who first called this land home, to Anglophone and Francophone settlers like Henry Hudson and Samuel de Champlain, to the millions of immigrants who continue to arrive on our shores from around the world, Ontario is one of the most diverse places in the world.

Ontario has been built through the hard work of generations of people, through their commitment to values such as mutual respect and acceptance and their enduring belief in and support for freedom, democracy and human rights.

Ontarians from across our province have made and continue to make great contributions to the economic, social, political and cultural life of our province, our country and the world.

First recognized on May 21st, 1965, the Ontario flag symbolizes each of these contributions as well as our rich history, diverse heritage, distinct values and shared successes. The Ontario flag represents all those who call Ontario home.

Paying tribute to the Ontario flag allows us to celebrate all Ontario citizens and their countless contributions while honouring our history, heritage, values and successes.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

---

1. Ontario Flag Day

1. May 21 in each year is proclaimed as Ontario Flag Day.

Ontario French-language Educational Communications Authority Act, 2008, S.O. 2008, c. 10

3. Working language

3. The working language of the Authority is French.

2008, c. 10, s. 3.

---

4. Objects of Authority

4. The objects of the Authority are, with regard to the interests and needs of the francophone community, to,

> **(a) initiate, acquire, produce, distribute, exhibit or otherwise deal in programs and materials in the educational broadcasting and communications fields;**
>
> **(b) engage in research in those fields of activity consistent with the objects of the Authority under clause (a);**
>
> **(c) discharge such other duties relating to educational broadcasting and communications as the Board considers to be incidental or conducive to the attainment of the objects mentioned in clauses (a) and (b); and**
>
> **(d) establish and administer distance education programs.**

2008, c. 10, s. 4.

Ontario Labour Mobility Act, 2009, S.O. 2009, c. 24

Part II – Labour Mobility Code

9. (4) Other exceptions

9. (4) Despite subsection (2), if the conditions set out in subsection (6) are met, the Ontario regulatory authority is not prohibited from requiring that the individual do one or both of the following as a condition of being certified in the regulated occupation:

> **1. Demonstrate proficiency in English or in French if equivalent proficiency in the language was not a condition of certification of the individual by the out-of-province regulatory authority.**

2009, c. 24, s. 9 (4).

Ontario Municipal Board Act, R.S.O. 1990, c. O. 28

Part IV – General Municipal Jurisdiction

61. (1) Form of certificate

61. (1) The certificate of the Board to the validity of any debenture of a municipality shall be in the following form:

61. (2) Language

61. (2) The certificate may be written in English, in French or in both languages.

R.S.O. 1990, c. O.28, s. 61.

Partnerships Act, R.S.O. 1990, c. P. 5

Limited Liability Partnerships

44.3 (1) Business name

44.3 (1) No limited liability partnership formed or continued by an agreement governed by this Act shall carry on business unless it has registered its firm name under the *Business Names Act*.

1998, c. 2, s. 6.

[…]

44.3 (3) Firm name

44.3 (3) The firm name of a limited liability partnership mentioned in subsection (1) shall contain the words "limited liability partnership" or "société à responsabilité limitée" or the abbreviations "LLP", "L.L.P." or "s.r.l." as the last words or letters of the firm name.

1998, c. 2, s. 6; 2006, c. 19, Sched. G, s. 7 (1).

44.3 (3.1) Same

44.3 (3.1) A limited liability partnership mentioned in subsection (1) may have a firm name that is in,

> **(a) an English form only;**
>
> **(b) a French form only;**
>
> **(c) a French and English form, where the French and English are used together in a combined form; or**
>
> **(d) a French form and an English form, where the French and English forms are equivalent but are used separately.**

2006, c. 19, Sched. G, s. 7 (2).

44.3 (3.2) Same

44.3 (3.2) A limited liability partnership mentioned in subsection (1) that has a firm name described in clause (3.1) (d) may be legally designated by the French or English version of its firm name.

2006, c. 19, Sched. G, s. 7 (2).

Pay Equity Act, R.S.O. 1990, c. P. 7

Part I – General

7.1 (1) Posting of notice

7.1 (1) Every employer to whom Part III applies and any other employer who is directed to do so by the Pay Equity Office shall post in the employer's workplace a notice setting out,

> **(a) the employer's obligation to establish and maintain compensation practices that provide for pay equity; and**
>
> **(b) the manner in which an employee may file a complaint or objection under this Act.**

7.1 (2) Language

7.1 (2) The notice shall be in English and the language other than English that is understood by the greatest number of employees in the workplace.

Proxy Method of Comparison – Pay Equity Act, O. Reg. 396/93

1. (1) In this Regulation,

[…]

"community health centre" means an employer,

(a) who provides primary health care services primarily to,

(i) a group or groups of individuals who, because of culture, sex, language, socio-economic factors or geographic isolation, would be unlikely to receive some or all of those services from other sources, or

(ii) a group or groups of individuals who, because of age, sex, socio-economic factors or environmental factors, are more likely to be in need of some or all of those services than other individuals, and

(b) who receives funding from the Ministry of Health in accordance with the number or type of services provided; ("centre de santé communautaire")

Personal Property Security Act, R.S.O. 1990, c. P. 10

Part IV – Registration

42.1 (1) Powers of registrar

42.1 (1) The registrar may make orders,

[…]

(g) specifying a lexicon of French-English terms to be used in connection with required forms and deeming the corresponding forms of expression in the lexicon to have the same effect in law.

2012, c. 8, Sched. 45, s. 4.

N.B. – At the date of publication, this provision was not yet in force.

Part VII – Application and Transition

78. (3) Entries in registration system

78. (3) The registrar shall, with respect to each mortgage, charge and assignment, and each assignment thereof, registered under the former Act for which no certificate of discharge has been registered as of the 10th day of October, 1989, enter into the central file of the registration system established for the purposes of this Act,

[…]

(c) a notation, in English or French, indicating that the registration was made under the *Corporation Securities Registration Act* or a predecessor of that Act and that a copy of the instrument is available for inspection in the offices (giving the appropriate address) of the Ministry of Consumer and Business Services.

R.S.O. 1990, c. P.10, s. 78 (3); 2001, c. 9, Sched. D, s. 13.

N.B. – On a day to be named by proclamation of the Lieutenant Governor, clause (c) is amended by striking out "the Ministry of Consumer and Business Services" and substituting "the Ministry". See: 2012, c. 8, Sched. 45, ss. 9, 10.

Pounds Act, R.S.O. 1990, c. P. 17

8. (1) Statement of demand to be delivered to poundkeeper by impounder

8. (1)The person distraining and impounding the animal shall, at the time of the impounding, deposit poundage fees, if demanded, and within twenty-four hours thereafter deliver to the poundkeeper duplicate statements in writing of the person's demands against the owner for damages, if any, not exceeding $20, done by such animal, exclusive of poundage fees, and shall also give a written agreement, with a surety if required by the poundkeeper, in the following form or in words to the same effect in English or in French:

Public Inquiries Act, 2009, S.O. 2009, c. 33, Sch. 6

Languages

21. (1) Languages of order

21. (1) Each order made by the Lieutenant Governor in Council under this Act must be made in both English and French.

2009, c. 33, Sched. 6, s. 21 (1).

21. (2) Exception

21. (2) Where an order is not ready in both English and French at the same time and the Lieutenant Governor in Council determines that the health or safety of the public would not be served by waiting, the order may be made in one language and the version in the other language shall be made as soon as practicable.

2009, c. 33, Sched. 6, s. 21 (2).

21. (3) Languages of report

21. (3) The commission's report shall be delivered, in accordance with the order establishing the commission, in both English and French at the same time.

2009, c. 33, Sched. 6, s. 21 (3).

21. (4) Simultaneous public release

21. (4) Where the commission's report is made available to the public, it shall be released in both English and French at the same time.

2009, c. 33, Sched. 6, s. 21 (4).

21. (5) Exception

21. (5) Where the commission's report is not ready in both English and French at the same time and the Lieutenant Governor in Council determines that the health or safety of the public would not be served by waiting, the Lieutenant Governor in Council may, by order,

> **(a) allow one version of the report to be delivered or released at a time later than the other version;**
>
> **(b) allow one version of the report to be delivered after the date required for its delivery; and**
>
> **(c) provide that the Government of Ontario will translate the delayed version of the report, and that version shall be considered to be the official report of the commission for all purposes.**

2009, c. 33, Sched. 6, s. 21 (5).

Procedures under Other Acts

Former Part II inquiries

33. (3) Power to summon witnesses, papers, etc.

33. (3) The person or body conducting the inquiry may require any person by summons,

> **(a) to give evidence on oath or affirmation at the inquiry; or**
>
> **(b) to produce in evidence at the inquiry such documents and things as the person or body conducting the inquiry may specify,**

relevant to the subject matter of the inquiry and not inadmissible in evidence under subsection (13).

2009, c. 33, Sched. 6, s. 33 (3).

33. (4) Form and service of summons

33. (4) A summons issued under subsection (3) shall be in either the English or French version of the form prescribed by the regulations and shall be served personally on the person summoned and he or she shall be paid at the time of service the like fees and allowances for attendance as a witness before the person or body conducting the inquiry as are paid for the attendance of a witness summoned to attend before the Superior Court of Justice.

2009, c. 33, Sched. 6, s. 33 (4).

Special procedure under other Acts

34. (11) Languages of final reports

34. (11) The final report of a person or body conducting the inquiry shall be submitted in both English and French at the same time.

2009, c. 33, Sched. 6, s. 34 (11).

34. (12) Same

34. (12) When the final report is made available to the public, it shall be released in both English and French at the same time.

2009, c. 33, Sched. 6, s. 34 (12).

34. (13) Exception

34. (13) The Lieutenant Governor in Council may order that subsection (11), subsection (12) or both subsections do not apply to a final report if, in the opinion of the Lieutenant Governor in Council, the health or safety of the public would not be served by delaying the submission, release or both because only one language version is ready.

2009, c. 33, Sched. 6, s. 34 (13).

34. (14) Same

34. (14) If an order is made under subsection (13), the other language version shall be submitted, released or both, as the case may be, as soon as possible.

2009, c. 33, Sched. 6, s. 34 (14).

Public Libraries Act, R.S.O. 1990, c. P. 44

General

11. (1) Notice of vacancies

11. (1) The clerk of the appointing municipality or county or, in the case of a union board, the clerks of the affected municipalities shall give public notice of vacancies on the board by publishing a notice of them, inviting applications, in a newspaper of general circulation in the municipality.

R.S.O. 1990, c. P.44, s. 11 (1).

11. (2) Idem

11. (2) The notice referred to in subsection (1) shall be in English or in both English and French, as may be appropriate.

R.S.O. 1990, c. P.44, s. 11 (2).

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17. Language

17. A board may conduct its meetings in English or French or in both English and French and subsections 247 (1), (4), (5) and (6) of the *Municipal Act, 2001* or subsections 195 (1), (4), (5) and (6) of the *City of Toronto Act, 2006*, as the case may be, apply with necessary modifications.

2002, c. 17, Sched. C, s. 24 (6); 2006, c. 32, Sched. C, s. 53 (1).

---

20. Powers and duties of board

20. A board,

> **(a) shall seek to provide, in co-operation with other boards, a comprehensive and efficient public library service that reflects the community's unique needs;**
>
> **(b) shall seek to provide library services in the French language, where appropriate;**

Reciprocal Enforcement of Judgments (U.K.) Act, R.S.O. 1990, c. R. 6

Schedule – Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters

Part IV – Procedures

Article VI

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

(a) the judgment of the original court or a certified copy thereof;

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

Part VII – Final Provisions

Article XIV

[...]

DONE in duplicate at Ottawa, this 24th day of April 1984 in the English and French languages, each version being equally authentic.

Registry Act, R.S.O. 1990, c. R. 20

Instruments that may be Registered

43. Registrations in languages other than English

43. Where an instrument, document or related attachment is written wholly or in part in a language other than English there shall be produced with the instrument, document or related attachment a translation into English, together with an affidavit by the translator stating that he or she understands both languages and has carefully compared the translation with the original and that the translation is in all respects a true and correct translation. R.S.O. 1990, c. R.20, s. 43.

---

44. (1) Registration of instruments and documents in French language

44. (1) Despite section 43, where an instrument, document or related attachment is in a prescribed form, the instrument may be registered or the document deposited if,

(a) the instrument or document affects the title to land in a registry division or part thereof that is designated by regulation; and

(b) the instrument or document is otherwise acceptable for registration or deposit.

R.S.O. 1990, c. R.20, s. 44 (1).

44. (2) Regulations

44. (2) The Minister may make regulations,

[…]

(b) prescribing a lexicon of French-English terms to be used in connection with the prescribed forms of instruments, documents and related attachments and deeming the corresponding forms of expression in the lexicon to have the same effect in law;

Records – Registry Act, R.R.O. 1990, Reg. 995

28. Registration and Deposit of Instruments and Documents in French

28. (1) The following registry divisions are designated for the purposes of section 44 of the *Act*:

[…]

28. (3) Despite section 43 of the Act, where a form is prescribed in the English language for an instrument, deposit or any related attachment but no form is prescribed in the French language and the land registrar is of the opinion that a translation of the form in the French language presented for registration is an accurate translation of the form prescribed in the English language, the French translation is a prescribed form for the purposes of the Act and the regulations.

R.R.O. 1990, Reg. 995, s. 28 (3).

28. (4) Despite subsection (1), all registry divisions are designated for the purposes of section 44 of the Act if the instrument to be registered or document to be deposited is the bilingual version of the forms described in section 2 of Regulation 688 of the Revised Regulations of Ontario, 1990 (Form of Documents) made under the *Land Registration Reform Act*.

O. Reg. 437/11, s. 5 (2).

28. (5) If the instrument to be registered or the document to be deposited is the bilingual version of the forms described in section 2 of Regulation 688 of the Revised Regulations of Ontario, 1990 (Form of Documents) made under the *Land Registration Reform Act*, if words have been added to the instrument or document and if the land registrar is of the opinion that all the words that have been added appear in both the English and French languages, the instrument may be registered or the document may be deposited.

O. Reg. 437/11, s. 5 (2).

Regulated Health Professions Act, 1991, S.O. 1991, c. 18

Schedule 2 – Health Professions Procedural Code

Miscellaneous

86. (1) Right to use French

86. (1) A person has the right to use French in all dealings with the College.

1991, c. 18, Sched. 2, s. 86 (1).

86. (1.1) Language preferences

86. (1.1) The College shall identify and record the language preference of each College member and identify the language preference of each member of the public who has dealings with the College.

2007, c. 10, Sched. M, s. 68.

86. (2) Council to ensure right

86. (2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College.

1991, c. 18, Sched. 2, s. 86 (2).

86. (3) Definition

86. (3) In this section,

"dealings" means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.

1991, c. 18, Sched. 2, s. 86 (3).

86. (4) Limitation

86. (4) A person's right under subsection (1) is subject to the limits that are reasonable in the circumstances.

1991, c. 18, Sched. 2, s. 86 (4).

ANNOTATIONS

Berge v. College of Audiologists and Speech-Language Pathologists of Ontario, 2016 ONSC 7034 (CanLII)

Analysis of the Issues

Issue # 1 - Does the absence of a French version of Professional Misconduct, O. Reg. 749/93 (the College's professional misconduct regulation; the "Regulation") deprive the College of jurisdiction to hold a discipline hearing?

[87] The Notices of Hearing charge a breach of the Regulation. The Appellant argues that the absence of a French version of the Regulation violates s. 86 of the *RHPA* [*Regulated Health Professions Act*] [sic] and thereby invalidates the Regulation in its entirety. (The Appellant refers to s. 86 of the *RHPA*. Since there is no s. 86 in this Act, this is presumed to refer to s. 86 of the [*Health Professions Procedural*] *Code*). She states that the lack of a French version of the Regulation deprived her of the opportunity to compare and contrast a French version with the English version and to choose the potentially more favourable version.

[88] The Tribunal rejected the Appellant's argument. It explained that s.86 of the *Code* does not give members of the College the absolute right to conduct all dealings with the College in French. The right is limited by ss. 86(2) and (4) of the *Code* to what is reasonable. Further, the Tribunal noted that there is no mandatory requirement under the *Legislation Act*, 2006, S.O. 2006, c. 21 Sched. F to publish all regulations in French.

[89] The Tribunal explained that the intent of s. 86 is to "ensure that a member can deal with the College in French, if that is their preference, not to allow for comparison between two versions of the same regulation to look for consistency between them". All of the communication (oral and written) between the College and the Appellant, including the hearing, had been in English, with no complaint.

[90] This is not a true question of jurisdiction. The tribunal was interpreting its own Code and the *Legislation Act*, which is clear. Accordingly the standard of review is reasonableness.

[91] The Tribunal's decision was reasonable. The Appellant's argument is premised on a non-existent legal right. There is no requirement that the Regulation be promulgated in French.

[92] The *Legislation Act* governs the language requirements of Ontario statutes and regulations and specifically provides for different language requirements for statutes and regulations. It is clear that while an act must be published in both languages, this mandatory requirement does not apply to a regulation.

[93] Section 98 of the *Legislation Act* requires that acts such as the *RHPA* "shall" be published in both languages. Section 99 of the *Legislation Act* deals with regulations and contains permissive language concerning the promulgation of a French version of English regulations. As a result, while regulations may be in French, it is not necessary. The relevant parts of sections 98 and 99 of the Legislation Act provide as follows:

> 98.(4) The Chief Legislative Counsel may at any time cause an Act that is unconsolidated and unrepealed to be consolidated and published on the e-Laws website as consolidated law. 2009, c. 33, Sched. 2, s. 43 (34).
>
> (5) If the Chief Legislative Counsel causes an Act to be consolidated under subsection (4), he or she shall, in the case of a public Act, or may, in the case of a private Act,
>
> (a) prepare a French version of the Act; and
>
> (b) cause the French version to be consolidated and published on the e-Laws website as consolidated law together with the English version.

…

99. (3) The Chief Legislative Counsel may at any time cause a regulation that is unconsolidated and unrevoked to be consolidated and published on the e-Laws website as consolidated law. 2009, c. 33, Sched. 2, s. 43 (35).

(4) If the Chief Legislative Counsel causes a regulation to be consolidated under subsection (3), he or she may,

(a) prepare a French version of the regulation; and

(b) cause the French version to be consolidated and published on the e-Laws website as consolidated law together with the English version.

[Emphasis added.]

[94] The Tribunal considered Section 86 of the *Code* that states:

86. (1) A person has the right to use French in all dealings with the College.

(1.1) The College shall identify and record the language preference of each College member and identify the language preference of each member of the public who has dealings with the College.

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College.

(3) In this section,

"dealings" means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.

(4) A person's right under subsection (1) is subject to the limits that are reasonable in the circumstances.

[Emphasis added.]

[95] As noted, the Tribunal explained that s. 86(1) of the *Code* is limited by ss. 86(2) and (4) to what is "reasonable" in the circumstances. The Tribunal explained why the Appellant's position was not reasonable. Further, the definition of "dealings" in ss. 86(3) of the *Code* provides a number of instances describing the word "dealings" and does not include the need to provide regulations in French.

[96] In summary, there is no basis for the Appellant's argument.

DA v. JJM, 2013 CanLII 92289 (ON HPARB)

[35] The obligation on the College to provide French language services is set out in section 86 of the [*Health Professions Procedural*] *Code*. Section 86 confers specific linguistic rights to a person who wishes to use French in its dealings with the College. As indicated by Justice Rouleau, linguistic rights are a particular kind of right. It is not a procedural right put into place to ensure respect for the principles of fundamental justice or the right to a fair trial. Justice Rouleau qualifies linguistic rights as being quasi-constitutional in nature. Language rights have a totally

distinct origin and role and they are not to be compared to the right to a fair trial or seen as equivalent to natural justice considerations. As stated by both Justices Bastarache and Rouleau, linguistic rights are meant to protect official language minorities in this country (or this province) and to ensure the equality of status of French and English.

[36] As noted in previous decisions of the Board, the College has obligations pursuant to section 86 of the *Code* to enable "a person to use French in all dealings with the College", "subject to the limits that are reasonable in the circumstances." In its previous decisions, the Board has found that to provide meaningful and practical substance to one's right to use French in all dealings with the College, the College's should:

- use official translators to translate documents filed in French with the College;
- provide a bilingual investigator to the parties;
- constitute a panel of members capable of reading and understanding French documents; and
- provide French correspondence and a French version of the Committee's decision to individuals who have indicated their preference to proceed in French.

[37] In this particular case, it appears a French version of the complaint form and information in French relating to the complaint process generally made available on the public website would have assisted the Applicant greatly. Such a form and accompanying information should be made available either by way of an electronic interface (as was apparently provided in English on the College's website) or in a printable PDF form that a person can fill and send to the College. French language services need to be provided in a proactive way and seen as a viable means to resolve complaints.

[38] Furthermore, for those parties who identify themselves as francophone, the Committee should issue its decision in a French translation. In the Board's view, this recommendation should be given paramount priority.

[39] The Board therefore recommends that the College adopt a French Language Services Policy that provides a bilingually friendly service to ensure that the College respects its linguistic obligations under section 86 of the *Code* and ensures that francophone individuals, such as the Applicant, are not required to locate an English speaking intermediary in order to ensure their issues and complaints are understood by the Committee and the Committee's decision, in turn, is understood by the parties participating in the process.

Credger v. College of Nurses of Ontario, 2011 CanLII 1312 (ON HPARB)

IX. ADDENDUM & GENERAL RECOMMENDATION

[23] Section 86(1) of the [*Health Professions Procedural*] *Code* states, "A person has the right to use French in all dealings with the College". In her application of November 25, 2008, the Applicant stated that her language of preference in dealing with the CNO [College of Nurses of Ontario] was French.

[24] The Board observes that, with the exception of the Applicant's actual examination score from January 14, 2009, all College correspondence to her has been in English.

[25] The Board recommends that the College ensure its communications procedures are designed for compliance with linguistic obligations under section 86(1) of the *Code*.

N.B. – See also: Tshibola v. College of Nurses of Ontario, 2011 CanLII 12801 (ON HPARB); L.M. v. A.K.M., 2011 CanLII 18449 (ON HPARB)

GL v. GD, 2011 CanLII 31041 (ON HPARB)

VI. RECOMMENDATION

[27] In his letter to the Board requesting a review of the Committee's decision, the Applicant alluded to the possibility that the Committee had not considered all the facts of his case because his original documents were written in French and had to be translated in English. The matter was raised anew by the Applicant during the Review.

[28] The quality and thoroughness of the translation of the Applicant's documents from French to English was of concern to the Board. In response to questions from the Board, the College representative indicated that two College investigators had shared the task of translating the Applicant's documents. The College representative also specified that one of the panel members of the Committee could read French.

[29] The Board notes that the documents were not translated by a professional translator who was independent from the decision maker. The Committee must thoroughly review and consider all relevant documents submitted by the parties in a complaint to the College. The Committee cannot rely on the best efforts of College employees, who, while they may be fluent in French, are not qualified or certified as professional translators. Without the benefit of an independent and professional translation, parties submitting such documents cannot be confident that the Committee has fully understood their concerns.

[30] The Board notes that section 86 of the [*Health Professions Procedural*] *Code* provides, "a person has the right to use French in all dealings with the College", "subject to the limits that are reasonable in the circumstances".The word "dealings" is defined in section 86(3) of the *Code* as "any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews".

[31] In the Board's view, in order to provide meaningful and practical substance to one's "right to use French in all dealings with the College", when a complainant or a College member indicates a desire to "deal" in French with the College, either verbally or in writing, through submission of letters or materials in French, the College must constitute a Committee where all three members can understand and read French fluently. Given the pool of doctors that are fluent in French and English in Ontario, this should be reasonable in the circumstances. Alternatively, if the College cannot constitute a bilingual Committee, it should be able to rely on an official translation policy for dealing with documentation that has been submitted in French. Finally, according to the Board, the College's obligations under section 86 mean that bilingual decisions should be issued to parties who deal with the College in French, and that all correspondence with them should be in the language of their choice.

[32] The Board recommends that the College review its linguistic obligations as set out under section 86 of the *Code*.

M.C. v. N.O., 2010 CanLII 64199 (ON HPARB)

[34] The Board notes that section 86 of the [*Health Professions Procedural*] *Code* provides that "a person has the right to use French in all dealings with the College", "subject to limits that are reasonable in the circumstances". "Dealings" is defined as including "giving or receiving communications". In the Board's view, in order to provide meaningful and practical substance to

one's "right to use French in all dealings with the College", where not all members of a Committee understand written French, it is essential that documents submitted to the College in French be fully and competently translated into English. Because it is important that all documents submitted by the parties in a complaint to the College be thoroughly reviewed and considered by the Committee, it is not sufficient for the Committee to rely on the best efforts of College employees, who, while they may be fluent in French, are not qualified or certified as professional translators. Therefore, the Board recommends that the College develop a policy for dealing with documentation that has been submitted in French that will result in a consistent practice regarding all Committee matters.

Resource Recovery and Circular Economy Act, 2016, S.O. 2016, c. 12, Sch. 1

Miscellaneous

56. (1) Right to use French

56. (1) A person has the right to communicate in French with, and to receive available services in French from, the Authority.

56. (2) Definition

56. (2) In subsection (1),

"service" means any service or procedure that is provided to the public by the Authority in carrying out its powers and performing its duties under this Act or any other Act and includes,

(a) responding to inquiries from members of the public, and

(b) any other communications for the purpose of providing the service or procedure.

56. (3) Authority's duty

56. (3) The Authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

56. (4) Limitation

56. (4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

Retirement Homes Act, 2010, S.O. 2010, c. 11

Part VII – General

110. (1) Right to use French in dealings with Authority

110. (1) Everyone has the right to use French in all prescribed dealings with the Authority.

2010, c. 11, s. 110 (1).

110. (2) Publication

110. (2) The Authority shall ensure that all communications, information and notices with respect to any prescribed dealings with licensees, residents or members of the public are made available in French in accordance with the regulations.

2010, c. 11, s. 110 (2).

General – Retirement Homes Act, O. Reg. 166/11

Residents' Rights

9. Agreement before resident commences residency

9. The agreement that subsection 53 (1) of the Act requires the licensee of a retirement home to enter into with a resident of the home shall contain,

> **(a) the heading "*Retirement Homes Act, 2010* Provisions" or the equivalent of that heading in the language of the agreement if the agreement is not in English;**

---

10. Package of information for residents

10. For the purposes of clause 54 (2) (v) of the Act, the package of information mentioned in clause 54 (1) (a) of the Act that a licensee of a retirement home is required to give to every resident of the home shall include,

> **[…]**
>
> **(g) a statement as to whether or not services in the home are provided in French or in any other languages in addition to English and, if so, a list of those languages;**

---

11. Posted information

11. (1) For the purposes of paragraph 4 of subsection 55 (2) of the Act, the following information is prescribed as information that must be posted in a retirement home under that subsection:

> **[…]**
>
> **2. A statement as to whether or not services in the home are provided in French or in any other languages in addition to English and, if so, a list of those languages.**

Standards Relating to Other Care Services

41. Dementia care program

41. (1) If the licensee of a retirement home provides a dementia care program to a resident of the home, the licensee shall ensure that the program complies with this section.

O. Reg. 166/11, s. 41 (1).

41. (2) The program shall include,

> **[…]**
>
> **(d) strategies for communicating with the resident if the resident has compromised communication and verbalization skills, a cognitive impairment or cannot communicate in the languages used in the retirement home; and**

General

64. Right to use French in dealings with the Authority

64. (1) Everyone has the right to use French in any dealing with the Authority.

O. Reg. 166/11, s. 64 (1).

64. (2) If a person requests that a communication, information or notice be made available in French, the Authority shall do so promptly.

O. Reg. 166/11, s. 64 (2).

64. (3) The Authority shall make the following available in French as soon as it is reasonably practicable to do so:

> **1. All communications, information and notices that are in writing and that the Authority directs at the public.**

2. Anything that the Authority is required to make available to the public under the Act, including,

i. its by-laws,

ii. all forms that it develops,

iii. the code of ethics that it is required to establish under section 26 of the Act,

iv. its annual reports required under section 31 of the Act,

v. all information required to be contained in the registers under subsection 106 (1) of the Act, and

vi. all statistical information about retirement homes that it publishes or makes available to the public.

O. Reg. 166/11, s. 64 (3).

School Boards Collective Bargaining Act, 2014, S.O. 2014, c. 5

Interpretation and Application

1. (3) Constitutional rights and privileges

1. (3) This Act and the *Labour Relations Act, 1995* do not prejudicially affect any right or privilege guaranteed by section 93 of the *Constitution Act, 1867* or by section 23 of the *Canadian Charter of Rights and Freedoms*, and every authority given by this Act and the *Labour Relations Act, 1995* shall be exercised in a manner consistent with those rights and privileges.

Scope of Central and Local Bargaining

26. (1) Linguistic rights and privileges

26. (1) This section applies if a council is designated as the employer bargaining agency for a particular central table and if l'Association des conseils scolaires des écoles publiques de l'Ontario or l'Association franco-ontarienne des conseils scolaires catholiques is a member of the council.

26. (2) Notice re: prejudicial effect

26. (2) A council member referred to in subsection (1) may give written notice to the parties at the central table and to the Crown that a particular matter or proposal that is the subject of central bargaining may prejudicially affect the linguistic rights and privileges referred to in subsection 1 (3).

Science North Act, R.S.O. 1990, c. S. 4

2. (6) Services in French and English

2. (6) The programs and services of the Centre shall be available in both French and English.

R.S.O. 1990, c. S.4, s. 2 (6).

Short Forms of Leases Act, R.S.O. 1990, c. S. 11

1. Effect of lease made according to Sched. A and Col. 1 of Sched. B

1. Where a lease under seal, made according to the form set forth in Schedule A, in English or French, or any other such lease expressed to be made in pursuance of this Act or referring thereto, contains any of the forms of words contained in Column One of Schedule B and distinguished by any number therein, the lease has the same effect as if it contained the form of words contained in Column Two of Schedule B distinguished by the same number as is annexed to the form of words used in the lease; but it is not necessary in any such lease to insert any such number.

R.S.O. 1990, c. S.11, s. 1.

Social Work and Social Service Work Act, 1998, S.O. 1998, c. 31

Part IX – Miscellaneous

48. (1) Right to use French

48. (1) A person has the right to use French in all dealings with the College.

1998, c. 31, s. 48 (1).

48. (2) Same

48. (2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use French in all dealings with the College.

1998, c. 31, s. 48 (2).

48. (3) Limitation

48. (3) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

1998, c. 31, s. 48 (3).

48. (4) Definition

48. (4) In this section,

"dealings" means any practice or procedure available to the public or to members of the College and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.

1998, c. 31, s. 48 (4).

Statistics Act, R.S.O. 1990, c. S. 18

4. (1) Oath of office and secrecy

4. (1) No person shall collect, compile, analyse or publish statistical information under this Act until taking and subscribing before the person's minister or deputy minister, or a person designated in writing by either of them, an oath of office and secrecy in the following form in English or in French:

Statute Labour Act, R.S.O. 1990, c. S. 20

Statute Labour in Unincorporated Townships

Road Commissioners

10. (1) Meeting for election of road commissioners

10. (1) Twenty resident landholders,

[…]

have the right to have a public meeting called for the purpose of electing road commissioners.

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13. (1) Notice of meeting

13. (1) The notice calling the meeting shall be in Form 1, and,

[…]

13. (2) Idem

13. (2) The notice shall be in English, and may also be in French.

R.S.O. 1990, c. S.20, s. 13.

19. Objections to voters

19. If an objection is made to the right of any person to vote at the meeting, the person shall name the property in respect of which he or she claims the right to vote, and the chair shall administer to the person an oath, or affirmation if he or she is by law permitted to affirm, according to the following form in English or French, whereupon the person shall be permitted to vote:

20. Declaration of office

20. The commissioners elected shall take a declaration of office in Form 2 in English or French before a justice of the peace and shall hold office until their successors are elected at the meeting called as provided in section 28 or, where no such meeting is called, until the 31st day of May in the year following that in which they were elected.

R.S.O. 1990, c. S.20, s. 20.

30. (2) Security

30. (2) The secretary-treasurer before entering on his or her duties shall take a declaration of office in Form 2 in English or French before a justice of the peace, and shall give security satisfactory to the commissioners which shall be lodged for safekeeping with the chair.

R.S.O. 1990, c. S.20, s. 30.

32. (1) Statute labour book

32. (1) The secretary-treasurer shall keep a statute labour book in Form 3 and shall enter therein the name of every person liable for the performance of statute labour or payment of the commutation and the lot or parcel of land in respect of which he or she is liable.

32. (2) Idem

32. (2) The statute labour book shall be in English, and may also be in French.

33. (1) Notice to perform statute labour

33. (1) The secretary-treasurer shall serve each notice to perform statute labour in Form 4 or, where a resolution has been passed and sanctioned as provided by section 27, to pay the commutation thereof in Form 5 personally or by leaving it at the usual place of abode of the person to whom it is directed with a grown up person residing there or by sending it

by registered mail addressed to the person to whom it is directed at the post office nearest to his or her last known place of residence.

33. (2) Idem

33. (2) The notices shall be in English, and may also be in French.

---

34. (1) Return of arrears to sheriff

34. (1) On or before the 1st day of June in the year following that in which default was made, the secretary-treasurer shall make a return in Form 6 to the sheriff for the district showing each lot or parcel of land in respect of which default has been made, the name of the owner or locatee, the amount chargeable at the date of the return and the year for which the amount in arrear was imposed.

34. (2) Idem

34. (2) The return shall be in English, and may also be in French.

Statutory Powers Procedure Act, R.S.O. 1990, c. S. 22

12. (2) Form and service of summons

12. (2) A summons issued under subsection (1) shall be in the prescribed form (in English or French) and,

[...]

12. (4) Bench warrant

12. (4) A judge of the Superior Court of Justice may issue a warrant against a person if the judge is satisfied that,

[...]

12. (4.1) Same

12. (4.1) The warrant shall be in the prescribed form (in English or French), directed to any police officer, and shall require the person to be apprehended anywhere within Ontario, brought before the tribunal forthwith and,

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25.1 (1) Rules

25.1 (1) A tribunal may make rules governing the practice and procedure before it. 1994, c. 27, s. 56 (38).

[...]

25.1 (4) Public access

25.1 (4) The tribunal shall make the rules available to the public in English and in French.

1994, c. 27, s. 56 (38).

Succession Law Reform Act, R.S.O. 1990, c. S. 26

Schedule – Convention Providing a Uniform Law on The Form of an International Will

Article I

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its official language or languages.

Article XVI

1. The original of the present Convention, in the English, French, Russian and Spanish languages, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

Annex – Uniform Law on the Form of an International Will

Article 3

1. The will shall be made in writing.

2. It need not be written by the testator himself.

3. It may be written in any language, by hand or by any other means.

Taxation Act, 2007, S.O. 2007, c. 11, Sch. A

Part VIII – Administration and Enforcement

146. (1) Offence, secrecy

146. (1) Every person is guilty of an offence who, while employed directly or indirectly in the administration of this Act or in the development and evaluation of tax policy for the Government of Ontario, or after ceasing to be so employed,

[…]

146. (4) Annual return

146. (4) Despite subsection (1), the following information in respect of a corporation may be disclosed to an authorized person employed in the Ministry of Government Services or an authorized agent of that Ministry for the purposes of the administration of the *Corporations Information Act*:

[…]

8. The corporation's preferred official language.

Toronto Islands Residential Community Stewardship Act, 1993, S.O. 1993, c. 15

9. (1) Protected occupant status

9. (1) Any individual occupying a house on the Islands on the day this Act comes into force may apply to the Commissioner, within sixty days after the day this Act comes into force, for a determination of his or her status as a protected occupant.

1993, c. 15, s. 9 (1).

[…]

9. (11) Writ of possession

9. (11) Where an individual continues to occupy a house after he or she ceases to be entitled to occupy the house as a protected occupant, the Trust shall apply to a judge of the Superior Court of Justice for an order for a writ of possession.

1993, c. 15, s. 9 (11); 2006, c. 19, Sched. C, s. 1 (1).

9. (12) Service and contents of notice

9. (12) The application under subsection (11) shall be served on the protected occupant at least four clear days before the day for the return of the application and it shall contain the following warning in English or French, as may be appropriate:

Workplace Safety and Insurance Act, 1997, S.O. 1997, c. 16, Sch. A

Part XIII – Administration of the act

General

178. French language services

178. Services under this Act shall be made available in the French language where appropriate.

1997, c. 16, Sched. A, s. 178.

Ontario – Other Regulations

Registration – Audiology and Speech-Language Pathology Act, 1991, O. Reg. 21/12

Part II – Records

31. Records to be in English or French

31. Every record must be legible and must be written in English or French.

O. Reg. 164/15, s. 3.

Building Code – Building Code Act, 1992, O. Reg. 332/12

1.8.1.1. Language Used on Required Signs

(1) All required signs in this Code shall be displayed in the English language or in the English and French languages, including operational material on all life safety equipment and devices.

Restrictions Respecting Names – Business Names Act, O. Reg. 122/91

3. If the name contains characters from an alphabet other than the Roman alphabet, the name shown in the registration must consist of a translation of the name into a language which contains only letters from the Roman alphabet.

O. Reg. 122/91, s. 3.

General – Business Regulation Reform Act, 1994, O. Reg. 442/95

7. The following information is prescribed for the purposes of clause (i) of the definition of "business information" in section 2 of the Act:

> **[…]**
>
> **2. The name, phone number and mailing address of the person or persons designated by the business for the purpose of receiving communications and correspondence on behalf of the business, and whether the preferred language of communication is English or French.**

General – Change of Name Act, R.R.O. 1990, Reg. 68

1. Election by Spouse, etc.

1. (1) An election under subsection 3 (1) of the Act (election by spouse, etc., to change surname) shall be made by filing the form approved by the Registrar General with the Registrar General and providing the applicable prescribed document, if any.

R.R.O. 1990, Reg. 68, s. 1 (1); O. Reg. 67/09, s. 1 (1).

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7. General

7. (1) If all or part of a prescribed document that a person is required to submit to the Registrar General under this Regulation is written in a language other than English or French, the person shall submit with the document,

> **(a) a translation into English or French done by a person whom the Registrar General views as a professional translator, together with the translator's written declaration described in subsection (2); or**
>
> **(b) a translation into English or French, together with the translator's written declaration described in subsection (2) that is sworn under oath.**

O. Reg. 489/16, s. 3.

7. (2) The translator's declaration shall state that,

(a) the translator understands the language of the translated document and the language of the original document; and

(b) the translator is of the opinion that the translation is complete and correct.

O. Reg. 489/16, s. 3.

General – Corporations Information Act, R.R.O. 1990, Reg. 182

1.1 (1) An initial return under subsection 2 (1) of the Act shall set out the following information in respect of a corporation:

[…]

12. Whether the language of preference for communication with the corporation is English or French.

O. Reg. 12/91, s. 1; O. Reg. 255/92, s. 1; O. Reg. 178/94, s. 1 (1); O. Reg. 59/95, s. 2 (1-3); O. Reg. 564/98, s. 1 (1, 2).

---

2. An initial return under subsection 3 (1) of the Act shall set out the following information in respect of an extra-provincial corporation:

[…]

12. Whether the language of preference for communication with the corporation is English or French.

General – Film Classification Act, 2005, O. Reg. 452/05

Regulation of Licensees

17. Labelling of films for distribution

17. (1) No person shall distribute or offer to distribute a film classified on or after January 1, 2006, including a film whose classification the Film Board has reconsidered after that day but not including a film approved or deemed to be approved under section 8 or a film distributed for the purpose of exhibition only, unless the cassette or exterior container of the film indicates the classification of the film.

O. Reg. 452/05, s. 17 (1).

17. (2) If the film is not a video game, the indication of the classification of the film required under subsection (1) shall,

(a) be done using the symbol set out in Schedule 1 that corresponds to the classification of the film; or

(b) be in the form authorized by the Canadian Home Video Rating System.

O. Reg. 452/05, s. 17 (2).

17. (3) If the film is a video game that the Film Board has classified, the indication of the classification of the film required under subsection (1) shall be done using the symbol set out in Schedule 1 that corresponds to the classification of the film.

O. Reg. 452/05, s. 17 (3).

17. (4) The symbol required by clause (2) (a) or subsection (3) shall be the symbol in English and, if the person who distributes or offers to distribute the film so wishes, may also be the symbol in French.

O. Reg. 452/05, s. 17 (4).

---

19. Advertising of films for exhibition

19. (1) Every person who displays or otherwise uses advertising matter, except a trailer, in connection with the exhibition of a film shall indicate on the advertising,

(a) the classification of the film;

(b) the symbol set out in Schedule 1 that corresponds to the classification of the film; and

(c) if the Film Board has issued a content advisory for the film under subsection 6 (5) of the Act, the content advisory.

O. Reg. 452/05, s. 19 (1).

19. (2) The symbol required by clause (1) (b) shall be the symbol in English and, if the person who uses advertising matter in connection with the exhibition of the film so wishes, may also be the symbol in French.

O. Reg. 452/05, s. 19 (2).

---

20. Signs for films for exhibition

20. (1) A Class A, Class B or Class C Exhibitor licensee that exhibits a film, other than a trailer, shall display a sign at all times in a conspicuous place at the principal entrance to the premises where the licensee exhibits the film.

O. Reg. 452/05, s. 20 (1).

20. (2) The sign shall indicate,

(a) the classification of the film;

(b) the symbol set out in Schedule 1 that corresponds to the classification of the film; and

(c) if the Film Board has issued a content advisory for the film under subsection 6 (5) of the Act, the content advisory.

O. Reg. 452/05, s. 20 (2).

20. (3) The sign shall be in English and, if the person who exhibits the film so wishes, may also be in French.

O. Reg. 452/05, s. 20 (3).

20. (4) The symbol required by clause (2) (b) shall be the symbol in English and, if the person who exhibits the film so wishes, may also be the symbol in French.

O. Reg. 452/05, s. 20 (4).

General – Immunization of School Pupils Act, R.R.O. 1990, Reg. 645

1. Record of Immunization

1. A record of immunization maintained by a medical officer of health with respect to a pupil shall contain the following information, except for any items of information that are not reasonably possible for the medical officer of health to obtain:

[…]

10. The preferred language or languages of the pupil's parents.

1.1 Reports from schools

1.1 (1) For the purposes of assisting in the accurate maintenance of records of immunization, every person who operates a school shall submit reports containing records for each pupil in the school to the medical officer of health for the health unit in which the school is located.

O. Reg. 260/13, s. 1.

[…]

1.1 (4) If a person who operates a school has collected and maintains any of the following information about a pupil, the pupil's record in a report under subsection (1) shall contain that information:

[…]

10. The preferred language or languages of the pupil's parents.

O. Reg. 260/13, s. 1.

Mine Development and Closure Under Part VII of the Act – Mining Act, O. Reg. 240/00

Schedule 1 – Mine Rehabilitation Code of Ontario

Part 2 – Open Pits

27. If signs are used in conjunction with another measure, the signs,

[…]

(c) shall have at least the words "Danger — Open Hole", in both English and French, in letters that are at least 3.5 cm in size.

Mortgage Brokerages: Standards of Practice – Mortgage Brokerages, Lenders and Administrators Act, 2006, O. Reg. 188/08

Public Relations

6. Use of name, etc., in public relations materials

6. (4) If, in its public relations materials, a brokerage refers to a broker or agent, the materials must include at least one reference to the broker or agent that includes one of the following titles, and the materials may also include an equivalent title in another language:

1. When referring to a broker, the title "mortgage broker", "broker", "courtier en hypothèques" or "courtier" or an abbreviation of any of those titles.

2. When referring to an agent, the title "mortgage agent", "agent" or "agent en hypothèques" or an abbreviation of any of those titles.

O. Reg. 188/08, s. 6 (4).

Mortgage Brokers and Agents: Standards of Practice – Mortgage Brokerages, Lenders and Administrators Act, 2006, O. Reg. 187/08

8. Use of name, etc., in public relations materials

8. (3) In the public relations materials, at least one reference to the broker or agent must include one of the following titles and the materials may also include an equivalent title in another language:

1. When referring to a broker, the title "mortgage broker", "broker", "courtier en hypothèques" or "courtier" or an abbreviation of any of those titles.

2. When referring to an agent, the title "mortgage agent", "agent" or "agent en hypothèques" or an abbreviation of any of those titles.

O. Reg. 187/08, s. 8 (3).

Code of Ethics and Operation of Committees – Motor Vehicle Dealers Act, O. Reg. 332/08

Discipline and Appeals Committees

12. Oath or affirmation of office

12. Every person appointed under subsection 17 (3) of the Act as a member of a committee and every person appointed under subsection 11 (1) of this Regulation as a chair or vice-chair of a committee shall, before beginning his or her duties, take and sign the following oath or affirmation in either English or French:

Registration – Naturopathy Act, O. Reg. 84/14

4. Terms, conditions and limitations of every certificate

4. Every certificate of registration is subject to the following terms, conditions and limitations:

[…]

3. A member shall only use titles and abbreviations of titles respecting the profession in accordance with the following:

i. A member who holds a General certificate of registration may only use one or more of the titles "Naturopath", "Naturopathic Doctor", "Naturopathe" and "Docteur en naturopathie", and may only use the abbreviation "ND" for an English title and "DN" for a French title.

ii. A member who holds an Inactive certificate of registration may only use one or more of the titles "Naturopath (Inactive)", "Naturopathic Doctor (Inactive)", "Naturopathe (Inactif)" and "Docteur en naturopathie (Inactif)" and may only use the abbreviation "ND (Inactive)" for an English title and "DN (Inactif)" for a French title.

General – Occupational Therapy Act, 1991, O. Reg. 226/96

Part VIII – Registration

43. Use of Title

43. A member who uses an abbreviation indicating that the member is registered or is recognized as an occupational therapist shall use the abbreviation "OT Reg. (Ont.)" in English or "Erg. Aut. (Ont.)" in French.

O. Reg. 122/01, s. 1.

Distance Education Programs – Ontario Educational Communications Authority Act, O. Reg. 392/02

Principal

15. Other duties of principal

15. (4) The principal shall retain on file up-to-date copies of outlines of all courses taught and, in the case of courses provided in a French-language instructional unit operated under Part XII of the *Education Act*, the outlines shall be written and provided in the French language.

O. Reg. 392/02, s. 15 (4).

Invoicing Requirements – Ontario Rebate for Electricity Consumers Act, 2016, O. Reg. 364/16

2. Invoices – electricity vendors

2. (1) Subject to section 4, the following rules apply in the case of an invoice issued by an electricity vendor for a billing period in respect of an eligible account, commencing with the first invoice with respect to a period in which financial assistance is provided:

> **1. The total amount of the credited financial assistance for the billing period and, if applicable, the amount of any credits for financial assistance for previous billing periods that were not provided in previous billing periods, must be clearly shown as a line item on the face of the invoice at an appropriate location below the itemized charges for electricity, delivery, regulatory charges, debt retirement charge and harmonized sales tax and below any line item related to financial assistance under the Ontario Electricity Support Program, but above the net amount of the invoice after deducting the credit.**
>
> **2. The line item must be displayed no less prominently than the itemized charges referred to in paragraph 1.**

3. The credit must be labelled as follows: “8% Provincial Rebate”.

4.-6. Revoked: O. Reg. 166/17, s. 2 (2).

O. Reg. 166/17, s. 2 (1, 2).

2. (2) Revoked: O. Reg. 166/17, s. 2 (3).

2. (3) Where the invoice is presented in French, any requirement as to wording stipulated in the rules under subsection (1) may be met by using the equivalent wording in French.

General – Ontario Works Act, 1997, O. Reg. 134/98

Part III – Employment and Employment Assistance

25. Interpretation

25. (1) For the purposes of this Regulation, community participation and the employment measures set out in section 26 are employment assistance activities.

O. Reg. 134/98, s. 25.

25. (2) In this Part,

“literacy” means,

(a) literacy in either English or French, and

(b) numeracy.

O. Reg. 314/01, s. 1.

General – Payday Loans Act, 2008, O. Reg. 98/09

Protection of Borrowers

14. Poster for payday loan agreements

14. (1) A licensee shall display a poster in English at each of the offices authorized by the licence and shall ensure that the poster is visible to borrowers immediately upon entering the office and that it complies with this section.

O. Reg. 98/09, s. 14 (1).

[…]

14. (3) The poster shall consist of the following with respect to a payday loan agreement that the licensee offers to make with a borrower, if the licensee is a lender, or that the

licensee offers to assist a borrower in obtaining, if the licensee is a loan broker, and shall not include anything else: […]

14. (4) Despite the French version of subsection (3), the specific words that subsection requires be included in the poster shall be those set out in the English version of that subsection.

O. Reg. 98/09, s. 14 (4).

General – Police Services Act, O. Reg. 268/10

Part I – Oaths and affirmations

1. Member of the board

1. The oath or affirmation of office to be taken by a member of the board shall be in one of the following forms set out in the English or French version of this section: […]

O. Reg. 268/10, s. 1.

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2. Police officer, etc.

2. The oath or affirmation of office to be taken by a police officer, special constable or First Nations Constable shall be in one of the following forms set out in the English or French version of this section: […]

O. Reg. 268/10, s. 2.

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3. Auxiliary member of a police force

3. The oath or affirmation of office to be taken by an auxiliary member of a police force shall be in one of the following forms set out in the English or French version of this section: […]

O. Reg. 268/10, s. 3.

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4. Secrecy

4. The oath or affirmation of secrecy to be taken by a police officer, auxiliary member of a police force, special constable or First Nations Constable shall be in the following form set out in the English or French version of this section: […]

O. Reg. 268/10, s. 4.

Part III – Registration

3. Content of application

3. (1) In addition to the information that may be required by the Superintendent under section 13 of the *Act*, a person applying for registration with respect to a private career college shall include the following information in the application:

[…]

4. If the applicant intends to advertise,

i. a copy of the advertising and marketing materials proposed to be used in any form of written publication, including publication on the internet, in all the languages in which the advertisement is to appear, and

ii. a copy of the text of a proposed radio or television broadcast in all the languages in which the text is to be broadcast.

5. If an advertisement or material referred to in paragraph 4 is to be published or broadcast in a language other than English or French, a translation of the text prepared by a person whose primary employment is translation or who has trained as a translator.

O. Reg. 415/06, s. 3 (1); O. Reg. 132/16, s. 1.

Part V – Advertisement

16. Content of advertisement

16. (1) Every private career college shall ensure that an advertisement of the college or of a vocational program offered at the college meets the following requirements:

[…]

6. If the advertisement refers to a vocational program and the program's language of instruction is neither English nor French, the advertisement shall state the program's language of instruction.

O. Reg. 415/06, s. 16 (1); O. Reg. 466/16, s. 5.

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17. Advertising records

17. (1) A private career college shall maintain a copy of the following material related to each advertisement:

[…]

3. If the advertisement has been published or broadcast in a language other than English or French, a translation of the text prepared by a person whose primary employment is translation or who has trained as a translator.

O. Reg. 415/06, s. 17 (1); O. Reg. 466/16, s. 6.

Part VI – Admissions Requirements and Contracts

20. Contract terms

20. (1) Every contract entered into by a private career college and a student for the provision of a vocational program shall include the following terms:

[…]

4. The language of instruction for the vocational program.

O. Reg. 415/06, s. 20 (1); O. Reg. 132/16, s. 2; O. Reg. 466/16, s. 8 (1, 2).

Part VII.1 – Information Concerning Students and Graduates

36.1 Information, students and graduates

36.1 (1) On the request of the Superintendent, private career colleges shall provide the following information about a current student or graduate:

[…]

8. Whether the individual's first language is English or French.

O. Reg. 187/13, s. 1.

Forms – Provincial Offences Act, O. Reg. 108/11

1. Forms

1. (1) In this Regulation, when a form is referred to by number, the reference is to the form with that number that is described in the Table of Forms at the end of this Regulation and is available on the Internet through www.ontariocourtforms.on.ca.

O. Reg. 108/11, s. 1.

1. (2) A form issued pursuant to Part II of the *Act* (Commencement of Proceedings for Parking Infractions) may be provided in either English or French or in both languages, whether or not the form shown on www.ontariocourtforms.on.ca is in both languages.

O. Reg. 462/11, s. 1.

Proceedings Commenced by Certificate of Offence – Provincial Offences Act, R.R.O. 1990, Reg. 950

5. (1) The words or expressions set out in Column 2 of a Schedule may be used in a certificate of offence, offence notice or summons to designate the offence described in the provision set out opposite in Column 3 of the Schedule under the Act or regulation set out in the heading to the Schedule.

R.R.O. 1990, Reg. 950, s. 5; O. Reg. 324/17, s. 1.

5. (2) For the purposes of subsection (1), either the English version or the French version, if any, of a Schedule may be used.

O. Reg. 259/08, s. 2.

Registration – Psychotherapy Act, 2007, O. Reg. 67/15

General

5. Terms, conditions and limitations of every certificate

5. Every certificate of registration is subject to the following terms, conditions and limitations:

[…]

2. A member shall only use titles and abbreviations of titles respecting psychotherapy in accordance with the following rules:

i. A member who holds a Registered Psychotherapist certificate of registration may only use one or more of the titles "Registered Psychotherapist" or "Psychothérapeute autorisé", and may only use the abbreviation "RP" for the English title and "PA" for the French title.

ii. A member who holds a Qualifying certificate of registration may only use one or more of the titles "Registered Psychotherapist (Qualifying)" or "Psychothérapeute autorisé (stagiaire)", and may only use the abbreviation "RP (Qualifying)" for the English title and "PA (stagiaire)" for the French title.

iii. A member who holds a Temporary certificate of registration may only use one or more of the titles "Registered Psychotherapist (Temporary)" or "Psychothérapeute autorisé (temporaire)", and may only use the abbreviation

"RP (Temporary)" for the English title and "PA (temporaire)" for the French title.

iv. A member who holds an Inactive certificate of registration may only use one or more of the titles "Registered Psychotherapist (Inactive)" or "Psychothérapeute autorisé (inactif)", and may only use the abbreviation "RP (Inactive)" for the English title and "PA (inactif)" for the French title.

General – Public Accounting Act, 2004, O. Reg. 238/05

Compilations

5. Notice re compilations

5. (1) Subject to subsection (4), the notice in subsection 2 (3) of the Act shall be comprised of,

(a) a notice that in English is entitled "Notice to Reader" using the language set out in subsection (2) and a conspicuous notice on each page of the compilation or associated materials stating in English "Unaudited — see Notice to Reader"; and

(b) a notice that in French is entitled "Avis au lecteur" using the language set out in subsection (3) and a conspicuous notice on each page of the compilation or associated materials stating in French "Non vérifié — voir l'Avis au lecteur".

O. Reg. 238/05, s. 5 (1); O. Reg. 248/07, s. 1 (1, 2).

5. (2) The Notice to Reader in English shall use the following language: […]

5. (3) The Notice to Reader in French shall use the following language: […]

5. (4) The notice under this section,

(a) shall be in English, if the compilation or associated materials are in English;

(b) shall be in French, if the compilation and associated materials are in French; or

(c) shall be in English and French, if the compilation and associated materials are in English and French.

O. Reg. 238/05, s. 5 (4).

Oaths and Affirmations – Public Service of Ontario Act, 2006, O. Reg. 373/07

1. Oath or affirmation of allegiance

1. (1) The following oath or affirmation of allegiance to the Crown is prescribed for the purposes of subsection 5 (1) of the *Act*: […]

1. (2) The public servant may make the oath or affirmation in either English or French.

O. Reg. 373/07, s. 1 (2).

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3. Oath or affirmation of office

3. (1) The following oath or affirmation of office is prescribed for the purposes of section 6 of the Act: […]

3. (2) The public servant may make the oath or affirmation in either English or French.

O. Reg. 373/07, s. 3 (2).

Code of Ethics – Real Estate and Business Brokers Act, 2002, O. Reg. 580/05

Procedures of Discipline Committee and Appeals Committee

42. Composition and appointment of committees

42. (8) The board of the administrative authority shall appoint,

> **(a) from among the members of the discipline committee, one person as chair of the discipline committee and one person as vice-chair of the discipline committee; and**
>
> **(b) from among the members of the appeals committee, one person as chair of the appeals committee and one person as vice-chair of the appeals committee.**

O. Reg. 580/05, s. 42 (8).

[…]

42. (11) Every person appointed under subsection (8) or under subsection 21 (3) of the Act as a chair, vice-chair or member of a committee shall, before beginning his or her duties, take and sign the following oath or affirmation in either English or French: […]

O. Reg. 580/05, s. 42 (11).

General – Skin Cancer Prevention Act (Tanning Beds), O. Reg. 99/14

N.B. – The statements required by Schedule A, B, C, and D may appear in English or French.

Amusement Devices – Technical Standards and Safety Act, 2000, O. Reg. 221/01

9. Technical dossiers

9. (1) A technical dossier shall be presented in English, meet the requirements of this Regulation and the code adoption document and be presented for examination in a form acceptable to the Director.

O. Reg. 249/08, s. 8 (1).

Division of Ontario into Geographic Areas – Territorial Division Act, 2002, O. Reg. 180/03

4. *French Language Services Act*

4. Nothing in this Regulation affects the geographic areas to which the Schedule to the *French Language Services Act* applies on the day this Regulation comes into force.

O. Reg. 180/03, s. 4.

Registration – Traditional Chinese Medicine Act, 2006, O. Reg. 27/13

4. Requirements for issuance of certificate of registration, any class

4. (1) An applicant must satisfy the following requirements for the issuance of a certificate of registration of any class:

> **[…]**
>
> **4. The applicant must be able to speak, read and write either English or French with reasonable fluency.**

4. (2) An applicant for a Grandparented certificate of registration does not have to meet the requirement in paragraph 4 of subsection (1).

O. Reg. 27/13, s. 4 (2).

ANNOTATIONS

College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v. Federation of Ontario Traditional Chinese Medicine Association, 2015 ONSC 661 (CanLII)

[19] Under s. 4(1) 4 of the *Registration Regulation*, an applicant for registration "must be able to speak, read and write either English or French with reasonable fluency." However, applicants for a Grandparented Certificate of Registration do not have to meet this language requirement.

[20] The College asserts that the Grandparented Class permits those practitioners who were practising traditional Chinese medicine in Ontario before 1 April 2013, and who meet what the College describes as "the basic, non-exemptible requirements" identified in the *Registration Regulation*, to obtain a certificate of registration, regardless of whether the practitioner undertook formal education or was, instead, trained on the job by a master.

[21] Under s. 6 of the *Registration Regulation*, an applicant for a Grandparented Certificate of Registration:

> 1. Must have completed a minimum of 2,000 traditional Chinese medicine patient visits in Canada, which may include traditional Chinese acupuncture patient visits, within the five-year period immediately prior to 1 April 2013;
>
> 2. Must have submitted the completed application to the Registrar on or before 1 April 2014;
>
> 3. Must have successfully completed the Safety Program that was set or approved by the Council or by a body that is approved by the Council for that purpose; and
>
> 4. Must have successfully completed the jurisprudence course set or approved by the Registration Committee.

[22] Applicants for registration in the Grandparented Class who do not have sufficient English or French language skills are allowed to have the assistance of translators to take the Safety Program and the jurisprudence course. They must also provide a written language plan which addresses inter-professional and continuity of care issues that may arise from the applicant's lack of fluency in English or French.

[23] The Grandparented Class is, however, a temporary class of membership and, as the regulation presently stands, will be revoked on 1 April 2019. After that date the practitioners of TCM who wish to continue doing so in Ontario will have to register in the General Class.

[24] To transition to a General Class Certificate of Registration, a Grandparented member will have to meet the language requirement of s. 4(1) 4 of the *Registration Regulation* and provide evidence of an additional three years of 1,200 traditional Chinese medicine patient visits (over and above the 2,000 patient visits information submitted for the Grandparented registration) plus complete a "Prior Learning Assessment" process, which includes submitting evidence of experience and training.

Yuan, Li v. Transitional Council of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario, 2014 ONSC 351 (CanLII)

Application of Section 15 of the *Charter*

[11] Section 4(1) of the *Registration Regulation* requires that applicants for membership in the TCM [Traditional Chinese Medicine] College be able to speak, read and write either English or French with reasonable fluency. Section 4(2) exempts members of the Grand-parented class from this requirement, and s.7(1) requires such a member to practise in accordance with a written plan submitted by the member and that has been approved by a panel of the Registration Committee as being one that effectively deals with inter-professional and continuity of care issues arising from the member's lack of fluency in English or French. The practitioner Applicants pointed out that TCM is culturally, racially and linguistically Chinese-based and therefore there should be no language restrictions. They submitted that the language fluency requirements in the *Registration Regulation* were discriminatory and contravened s.15 of the *Charter*.

[12] However, in *Lalonde v. Ontario (Commission de restructuration des services de santé)*, [2001] O.J. No. 4767 (Ont. C.A.) at paras. 96 to 101, the Ontario Court of Appeal ruled that language alone is not a protected ground under s.15 of the *Charter*, and that the *Charter* cannot be used directly or indirectly to expand language rights beyond the English and French languages protected under s.16.

[13] It is clear that the *TCMA* and its Regulations do not prohibit the practice of TCM in Chinese or in any other language. Language fluency requirements are also common to all other health professions in Ontario, the public interest being the ability of health care providers to respond to inquiries about patients from other health professionals, to comprehend patient records from other health professionals, to provide speedy and accurate information about a patient during emergency and to communicate and work collaboratively with other parts of the health care community. These are not discriminatory requirements.

[14] Applicants for membership in the TCM College must also pass an exam in jurisprudence (dealing with the structure of the *TCMA* and its Regulations, privacy, ethics and other legal issues generally relevant to health care) and another exam in safety. Associated with registration in the College, s.12 of the *TCMA* permits the enactment of regulations requiring successful completion of examinations set by the College. The exams are a test of their knowledge of the prescribed legal and safety information and are in accord with the College's duty to serve and protect the public interest.

[15] The College accommodates registrant candidates who have language difficulties by permitting the use of a dictionary, a translator, unlimited opportunity to rewrite and even permission to take the exam home where translation assistance might be available. Also, the Grand-parented members are exempted from the language fluency requirement if they practise according to an approved plan as already discussed.

[16] The practitioner Applicants submitted that they did not have sufficient English or French to pass the exams, although they could communicate sufficiently in their practices. Also, they did not regard the accommodations as sufficient to overcome the discrimination they alleged and which they suggested might bar them and other qualified practitioners from practice, or might discourage qualified practitioners from even trying to register.

[17] We conclude that the exams are not a test of English or French language fluency, and that in any event there is reasonable accommodation to assist those with language difficulties. Also, none of the practitioner Applicants have attempted to take the exams, even with the accommodations offered and consequently there is no evidence of any discriminatory impact. In the absence of such evidence, there can be no breach of s.15.

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7. Terms, etc., Grandparented class

7. (1) The following are terms, conditions and limitations on every Grandparented certificate of registration:

> **[…]**
>
> **4. A member who is unable to speak, read and write either English or French with reasonable fluency must practise the profession in accordance with a written plan submitted by the member that has been approved by a panel of the Registration Committee as being one that effectively deals with inter-professional and continuity**

of care issues arising from the member's lack of language fluency in English and French.

O. Reg. 27/13, s. 7 (1).

Note: On April 1, 2019, the day that is the sixth anniversary of the day section 5 of the Act comes into force, section 7 is revoked. (See: O. Reg. 27/13, ss. 24 (1), 25 (3))

ANNOTATIONS

Yuan, Li v. Transitional Council of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario, 2014 ONSC 351 (CanLII)

Application of Section 15 of the *Charter*

[11] Section 4(1) of the *Registration Regulation* requires that applicants for membership in the TCM [Traditional Chinese Medicine] College be able to speak, read and write either English or French with reasonable fluency. Section 4(2) exempts members of the Grand-parented class from this requirement, and s.7(1) requires such a member to practise in accordance with a written plan submitted by the member and that has been approved by a panel of the Registration Committee as being one that effectively deals with inter-professional and continuity of care issues arising from the member's lack of fluency in English or French. The practitioner Applicants pointed out that TCM is culturally, racially and linguistically Chinese-based and therefore there should be no language restrictions. They submitted that the language fluency requirements in the *Registration Regulation* were discriminatory and contravened s.15 of the *Charter*.

[12] However, in *Lalonde v. Ontario (Commission de restructuration des services de santé)*, [2001] O.J. No. 4767 (Ont. C.A.) at paras. 96 to 101, the Ontario Court of Appeal ruled that language alone is not a protected ground under s.15 of the *Charter*, and that the *Charter* cannot be used directly or indirectly to expand language rights beyond the English and French languages protected under s.16.

[13] It is clear that the *TCMA* and its Regulations do not prohibit the practice of TCM in Chinese or in any other language. Language fluency requirements are also common to all other health professions in Ontario, the public interest being the ability of health care providers to respond to inquiries about patients from other health professionals, to comprehend patient records from other health professionals, to provide speedy and accurate information about a patient during emergency and to communicate and work collaboratively with other parts of the health care community. These are not discriminatory requirements.

[14] Applicants for membership in the TCM College must also pass an exam in jurisprudence (dealing with the structure of the *TCMA* and its Regulations, privacy, ethics and other legal issues generally relevant to health care) and another exam in safety. Associated with registration in the College, s.12 of the *TCMA* permits the enactment of regulations requiring successful completion of examinations set by the College. The exams are a test of their knowledge of the prescribed legal and safety information and are in accord with the College's duty to serve and protect the public interest.

[15] The College accommodates registrant candidates who have language difficulties by permitting the use of a dictionary, a translator, unlimited opportunity to rewrite and even permission to take the exam home where translation assistance might be available. Also, the Grand-parented members are exempted from the language fluency requirement if they practise according to an approved plan as already discussed.

[16] The practitioner Applicants submitted that they did not have sufficient English or French to pass the exams, although they could communicate sufficiently in their practices. Also, they did not regard the accommodations as sufficient to overcome the discrimination they alleged and which they suggested might bar them and other qualified practitioners from practice, or might discourage qualified practitioners from even trying to register.

[17] We conclude that the exams are not a test of English or French language fluency, and that in any event there is reasonable accommodation to assist those with language difficulties. Also, none of the practitioner Applicants have attempted to take the exams, even with the accommodations offered and consequently there is no evidence of any discriminatory impact. In the absence of such evidence, there can be no breach of s.15.

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13. Terms, etc., Student class

13. The following are terms, conditions and limitations on every Student certificate of registration:

> **1. The member shall only practise the profession while under the supervision of a member who holds a Grandparented or General certificate of registration who can communicate with the member in the member's language and who has been approved by the Registrar.**

Note: On April 1, 2019, the day that is the sixth anniversary of the day section 5 of the Act comes into force, paragraph 1 is amended by striking out "Grandparented or". (See: O. Reg. 27/13, ss. 24 (2), 25 (3))

General – Veterinarians Act, R.R.O. 1990, Reg. 1093

Part VII – Administration

52. (1) The Registrar shall enter in the register the following information for each member:

> **[…]**
>
> **9. The language or languages in which the member can offer professional services.**

N.B. – See ONTARIO – REGULATION ON PROFESSIONAL ORDERS regarding language proficiency.

General – Vital Statistics Act, R.R.O. 1990, Reg. 1094

0.2 (1) If all or part of a document that a person is required to submit to the Registrar General under this Regulation is written in a language other than English or French, the person shall submit with the document,

(a) a translation into English or French done by a person whom the Registrar General views as a professional translator, together with the translator's written declaration described in subsection (2); or

(b) a translation into English or French, together with the translator's written declaration described in subsection (2) that is sworn under oath.

O. Reg. 490/16, s. 2.

0.2 (2) The translator's declaration shall state that,

(a) the translator understands the language of the translated document and the language of the original document; and

(b) the translator is of the opinion that the translation is complete and correct.

O. Reg. 490/16, s. 2.

Ontario – Regulations on Professional Orders

1 – NOTICE OF MEETINGS AND HEARINGS IN ENGLISH AND/OR FRENCH

N.B. – Certain regulations on professional orders in Ontario require the publication of notices of certain meetings and hearings in English and/or French. See, for example, the following provision of Ontario Regulation 218/94 (General) under the Dental Hygiene Act, 1991, S.O. 1991, C. 22:

PART IV – NOTICE OF MEETINGS AND HEARINGS

13. (1) The Registrar shall ensure that notice is given in accordance with this Part with respect to each of the following that is required to be open to the public under the Act:

1. A meeting of the Council.

2. A hearing of the Discipline Committee respecting allegations of a member's professional misconduct or incompetence.

O. Reg. 13/08, s. 1.

13. (2) The notice must, where possible, be posted not less than 14 days before the date of the meeting or hearing on the website of the College.

O. Reg. 13/08, s. 1.

13. (3) The notice must be published in English and in French.

O. Reg. 13/08, s. 1.

Other regulations on professional orders with similar provisions may be found in the following list :

General, O. Reg. 203/94 -- Chiropody Act, 1991, S.O. 1991, c. 20 (Here an additional right is provided: information concerning a hearing into allegations of professional misconduct or incompetence held by a panel of the Discipline Committee is provided in French upon request).

General, O. Reg. 604/98 -- Dental Technology Act, 1991, S.O. 1991, c. 23 (Here the notice must be published in French “on request”.)

General, O. Reg. 206/94 -- Denturism Act, 1991, S.O. 1991, c. 25 (Here an additional right is provided: information concerning a hearing into allegations of professional misconduct or incompetence held by a panel of the Discipline Committee is provided in French upon request).

General, O. Reg. 593/94 -- Dietetics Act, 1991, S.O. 1991, c. 26

Dentistry, R.R.O. 1990, Reg. 547 -- Drug and Pharmacies Regulation Act, R.S.O. 1990, c. H. 4

General, O. Reg. 544/94 -- Massage Therapy Act, 1991, S.O. 1991, c. 27 (Here an additional right is provided: information concerning a hearing of a panel of the Discipline Committee respecting allegations of a member’s professional misconduct or incompetence must be available in English and French).

General, O. Reg. 207/94 -- Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28

General, O. Reg. 335/12 -- Midwifery Act, 1991, S.O. 1991, c. 31 (Here an additional right is provided: information concerning a hearing of a panel of the Discipline Committee respecting allegations of a member’s professional misconduct or incompetence shall be available in English and French).

General, O. Reg. 226/96 -- Occupational Therapy Act, 1991, S.O. 1991, c. 33

General Regulation of The Board, O. Reg. 93/13 -- Ontario College of Trades and Apprenticeship Act, 2009, S.O. 2009, c. 22

General, O. Reg. 119/94 -- Optometry Act, 1991

General, O. Reg. 202/94 -- Pharmacy Act, 1991, S.O. 1991, c. 36 (Here an additional right is provided: information concerning a hearing into allegations of professional misconduct or incompetence held by a panel of the Discipline Committee is provided in French upon request wherever reasonably possible).

General, O. Reg. 596/94 -- Respiratory Therapy Act, 1991, S.O. 1991, c. 39

2 – LANGUAGE PROFICIENCY

N.B. – Certain regulations on professional orders in Ontario require candidates to comprehend and communicate in either English or French. See, for example, the following provision of Ontario Regulation 218/94 (General) under the Dental Hygiene Act, 1991, S.O. 1991, C. 22:

PART VII – REGISTRATION

29. (1) It is a registration requirement for a certificate of registration of any class that the applicant provide details of any of the following that relate to the applicant: […]

29. (4) In addition to the requirements in subsection (1), the following are registration requirements for a registration of any class:

[…]

3. The applicant must be able to effectively comprehend and communicate in either English or French, both orally and in writing.

O. Reg. 36/12, s. 1.

While the exact wording of the provisions differ (some require effectively comprehending and communicating, while others require reasonable fluency, for example), other regulations on professional orders with similar provisions may be found in the following list :

General, O. Reg .257/00 -- Ambulance Act, R.S.O. 1990, c. A.19 (Here the requirement applies to the English language only)

Registration, O. Reg. 21/12 -- Audiology and Speech-Language Pathology Act, 1991, S.O. 1991, c. 19

Registration, O. Reg. 830/93 -- Chiropody Act, 1991, S.O. 1991, c. 20

Registration, O. Reg. 137/11 -- Chiropractic Act, 1991, S.O. 1991, c. 21

Registration, O. Reg. 874/93 -- Dental Technology Act, 1991, S.O. 1991, c. 23

General, O. Reg. 205/94 -- Dentistry Act, 1991, S.O. 1991, c. 24

Registration, O. Reg. 833/93 -- Denturism Act, 1991, S.O. 1991, c. 25

General, O. Reg. 593/94 -- Dietetics Act, 1991, S.O. 1991, c. 26

Dentistry, R.R.O. 1990, Reg. 547 -- Drug and Pharmacies Regulation Act, R.S.O. 1990, c. H. 4

Registration, O. Reg. 221/08 -- Early Childhood Educators Act, 2007, S.O. 2007, c. 7, Sch. 8

Registration, O. Reg. 18/14 -- Homeopathy Act, 2007, S.O. 2007, c. 10, Sch. Q

General, O. Reg. 401/12 -- Kinesiology Act, 2007, S.O. 2007, c. 10, Sch. O

Registration, O. Reg. 864/93 -- Massage Therapy Act, 1991, S.O. 1991, c. 27

General, O. Reg. 207/94 -- Medical Laboratory Technology Act, 1991, S.O. 1991, c. 28

Registration, O. Reg. 866/93 -- Medical Radiation Technology Act, 1991, S.O. 1991, c. 29

Registration, O. Reg. 865/93 -- Medicine Act, 1991, S.O. 1991, c. 30

Registration, O. Reg. 168/11 -- Midwifery Act, 1991, S.O. 1991, c. 31

Registration, O. Reg. 84/14 -- Naturopathy Act, 2007, S.O. 2007, c. 10, Sch. P

General, O. Reg. 275/94 -- Nursing Act, 1991, S.O. 1991, c. 32

Construction Projects, O. Reg. 213/91 -- Occupational Health and Safety Act, R.S.O. 1990, c. O.1 (Here the requirement applies to the English language only)

Mines and Mining Plants, R.R.O. 1990, Reg. 854 -- Occupational Health and Safety Act, R.S.O. 1990, c. O.1 (Here the requirement applies to the English language only)

General, O. Reg. 226/96 -- Occupational Therapy Act, 1991, S.O. 1991, c. 33

Registration, O. Reg. 869/93 -- Opticianry Act, 1991, S.O. 1991, c. 34

Registration, O. Reg. 837/93 -- Optometry Act, 1991, S.O. 1991, c. 35

General, O. Reg. 202/94 -- Pharmacy Act, 1991, S.O. 1991, c. 36

General, O. Reg. 532/98 -- Physiotherapy Act, 1991, S.O. 1991, c. 37

General, R.R.O. 1990, Reg. 941 -- Professional Engineers Act, R.S.O. 1990, c. P. 28 (Here the requirement applies only to the English language)

Registration, O. Reg. 74/15 -- Psychology Act, 1991, S.O. 1991, c. 38

Registration, O. Reg. 67/15 -- Psychotherapy Act, 2007, S.O. 2007, c. 10, Sch. R

General, O. Reg. 596/94 -- Respiratory Therapy Act, 1991, S.O. 1991, c. 39

Registration, O. Reg. 383/00 -- Social Work and Social Service Work Act, 1998, S.O. 1998, c. 31

Registration, O. Reg. 27/13 -- Traditional Chinese Medicine Act, 2006, S.O. 2006, c. 27 (Note that there is an exception – see the annotations to Registration, O. Reg. 27/13 -- Traditional Chinese Medicine Act, 2006, S.O. 2006, c. 27 above)

General, R.R.O. 1990, Reg. 1093 -- Veterinarians Act, R.S.O. 1990, c. V. 3