

CANADA / JUDGMENT

Beniey v. Canada (Border Services Agency)

2025 FC 1445

COURT

Federal Court

DECIDED

2 September 2025

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Beniey v. Canada (Border Services Agency)

Court (s) Database

Federal Court Decisions

Date

2025-09-02

Neutral citation

2025 FC 1445

File numbers

T-1374-24

Decision Content

Date: 20250902

Docket: T-1374-24

Citation: 2025 FC 1445

[ENGLISH TRANSLATION]

Montréal, Quebec, September 2, 2025

PRESENT: The Honourable Madam Justice Ferron

BETWEEN:

RÉGIS BENIEY

Applicant

and

CANADA BORDER SERVICES AGENCY

Respondent

JUDGMENT AND REASONS

I. Overview [1] Régis Beniey, the applicant, applied to the Court for a remedy under sections 77 and 79 of the Official Languages Act, RSC 1985, c 31 (4th Supp) [Act] following the refusal of the Commissioner of Official Languages [Commissioner] to investigate his complaint against the Canada Border Services Agency [Agency], on the grounds that it had not been made within a reasonable time after its subject-matter arose, pursuant to paragraph 58(4)(d) of the Act. Mr. Beniey's complaint, filed on May 13, 2024, concerns events that allegedly took place in 2017 [Complaint].

[2] In short, Mr. Beniey argues that the Agency failed to comply with the rights and duties under parts IV, V and VII of the Act. In his notice of application dated May 30, 2024, Mr. Beniey describes his remedy as follows:

[translation]

The applicant is applying for a remedy based on sections 77 and 79 of the Official Languages Act, RSC 1985, c 31 (4th Supp) (hereinafter the "Act") against the Canada Border Services Agency (hereinafter the "Agency"). He is seeking an order imposing meaningful consequences, immediate changes, punitive measures, punitive damages, damages, an official and public letter of apology from the Minister, immediate correction of the actions taken and their consequences, and reparations for the harm done to his person, as well as relief for potential and proven harm suffered by all Francophones, as well as by members of the Customs and Immigration Union (hereinafter "CIU") and the Public Service Alliance of Canada (hereinafter the "PSAC").

[3] The Agency, the respondent in these proceedings, objects to Mr. Beniey's remedy. It essentially submits that it did not violate Mr. Beniey's rights by having him sign a form in English on July 28, 2017. In the alternative, it submits that there are no grounds for granting the relief Mr. Beniey seeks.

[4] For the reasons that follow, Mr. Beniey's application for a court remedy is dismissed.

II. Procedural issues [5] Mr. Beniey is representing himself. His oral submissions at the hearing were clear and well presented. However, his application for a remedy faces several significant procedural issues, as detailed below.

A. Audio recordings [6] First, in support of his application, Mr. Beniey filed his own affidavit (sworn on July 4, 2024), to which he has attached eight exhibits, including several recordings of meetings between himself and Agency managers. He was cross-examined on his affidavit on August 20, 2024.

[7] Mr. Beniey raised a concern about the recordings, which run to almost five hours, claiming that the Court had not been made aware of them prior to the hearing. However, as the Court assured him at the hearing, the Court listened to all of them afterwards.

B. Allegations not supported by admissible evidence [8] The Agency objects to the Court considering facts alleged in Mr. Beniey's memorandum of fact and law [Memorandum] or his notice of application that are not supported by an affidavit or that have not been disclosed pursuant to sections 306 or 307 of the Federal Courts Rules, SOR/98-106 [Rules]. It points out that the Rules are intended to, among other things, offer the respondent the opportunity to respond adequately to the opposing party's allegations by preparing in advance, and even to cross-examine the signatories to the affidavits if it so desires.

[9] It adds that Mr. Beniey cannot simply refer to facts in his notice of application or Memorandum without them being entered in evidence in accordance with the Rules. For documents to be validly entered in evidence, they must be attached to an affidavit (*Khodaverdi v Canada (The Attorney General)*, 2023 FC 1710 at paras 7–15; *Governor and Company of the Bank of Scotland v Nel (The)*, 1998 CanLII 9120 (FC) at paras 5–6).

[10] Thus, the Agency argues that the only elements that can serve as a factual framework for the case must be contained in Mr. Beniey's affidavit dated July 4, 2024, or in Isabelle Barbeau's affidavit dated August 1, 2024, filed by the Agency. It therefore objects to paragraphs 5, 6, 7, 8, 9, 10, 11, 17, 22, 24 and 28 found in the section [translation] "Background to the form entitled Consent to Undergo A Fitness to Carry Defensive Equipment Evaluation" in the Memorandum (beginning on page 359 of applicant's record), as well as in paragraphs 18, 19, 23 and 28, which can be found in the [translation] "Issues" section of the Memorandum (beginning on page 370). It should be noted that the numbering of the Memorandum starts over again from the "Issues" section onward.

[11] At the hearing, the Court took the objection under advisement, while informing Mr. Beniey that evidence in a case is indeed limited to what is submitted by affidavit, and that the Memorandum is not admissible evidence (*Bernard v Public Service Alliance of Canada and Treasury Board*, 2017 FCA 35 at paras 7–8 [Bernard]; *Canada (National Revenue) v Distribution Carflex Inc*, 2023 CanLII 110323 (FC) at para 27).

[12] The Rules regarding admissible evidence in proceedings before this Court are part of the law binding the parties and must be followed (*Lefebvre v Canada (Food Inspection Agency)*, 2024 FC 1906 at para 30 citing *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66 at para 14). They apply equally to self-represented litigants and the most experienced ones (*Davis v Canada (Royal Canadian Mounted Police)*, 2024 FCA 115 at para 53).

[13] Having analyzed the paragraphs under objection, the Court upholds the Agency's objection to all of the paragraphs mentioned above, with the exception of paragraph 23 of section entitled [translation] "Issues". In that paragraph, Mr. Beniey refers to statistics published by Statistics Canada, which are facts that are "capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy" (*R v Spence*,

2005 SCC 71 at para 53). These are thus facts of which the Court may take judicial notice, and one of the exceptions provided for in case law regarding the need to establish facts by admissible evidence therefore applies (Bernard at paras 7-8). As for the other paragraphs, they are inadmissible, and the Court will therefore not consider them.

C. No copy of Mr. Beniey's Complaint [14] In addition, the Agency raises another important procedural issue: Mr. Beniey has not entered in evidence his Complaint, which he allegedly filed with the Commissioner on May 13, 2024. Moreover, Mr. Beniey does not detail the content of his Complaint in his July 4, 2024, affidavit, and the only document in evidence that deals with the Complaint is the Commissioner's response dated May 22, 2024. The Court must therefore confine itself to this fragmentary information.

[15] The Court indeed notes that Mr. Beniey's Complaint is not in evidence and that the email refusing to investigate sent by the Commissioner on May 22, 2024, refers only summarily to the July 28, 2017, incident:

[translation]

On behalf of the Commissioner of Official Languages (the Commissioner), I am responding to the complaint you filed on May 13, 2024, alleging that on July 28, 2017, [the Agency] asked you to sign a form in English entitled "Consent to undergo a fitness to carry defensive equipment evaluation", despite the fact that your preferred official language is French.

[16] Considering that the Court's role in a proceeding based on subsection 77(1) of the Act is to analyze the merits of a complaint, and that its jurisdiction is limited to the sections and parts of the Act that are referred to in subsection 77(1) of the Act, Mr. Beniey's failure to include a copy of his Complaint is fatal to his remedy. In other words, the Court simply cannot exercise its role in the absence of this crucial piece of evidence.

[17] It should be noted that the Agency informed Mr. Beniey of this defect, as specifically indicated in paragraph 28 of its memorandum dated October 23, 2024. Mr. Beniey could have taken the necessary steps to correct the situation. He did nothing.

[18] This Court has previously held that it cannot judicially review a contested decision where the applicant has not included the said decision in its application record, as required by paragraph 309(2)(c) of the Rules (*Kelowna Flightcraft Air Charter Ltd v Withers*, 2006 FC 807 at paras 14, 36).

[19] Just as a contested decision is at the heart of an application for judicial review, it goes without saying that a complaint is at the heart of an application for remedy brought under subsection 77(1) of the Act. Thus, it was imperative that the Complaint be filed in the applicant's record so that the Court could judge its merits (see to this effect *Bossé v Canada* (Public Health Agency), 2023 FCA 199 at para 15: "That report, however, is not the subject of the application for remedy; rather, it is the merits of the complaint that the Federal Court must examine, the Commissioner's report being, in a way, only a prerequisite to the filing of the application for remedy provided for in section 77").

- [20] This is also confirmed by case law to the effect that Part V of the Rules governs applications commenced under that paragraph (*Lavigne v Canada Post Corporation*, 2009 FC 756 at para 26) as well as case law stating that only the sections and parts of the Act mentioned in subsection 77(1) of the Act can justify a remedy based on the latter (*Forum des maires de la Péninsule acadienne v Canada (Food Inspection Agency)*, 2004 FCA 263 at para 28 [*Forum des maires*]; see also *DesRochers v Canada (Industry)*, 2009 SCC 8 at paras 32–33 [*DesRochers*], where the Supreme Court notes that since 2005, subsection 77(1) has applied to sections 4 to 7, 10 to 13 and 91 as well as parts IV, V and VII of the Act).
- [21] These issues alone are sufficient to justify dismissing Mr. Beniey's application for remedy.
- [22] But there is more. Indeed, despite the above, and in the event that I am wrong, the Court has chosen to delve into Mr. Beniey's case, taking into account not only the affidavits filed by the parties and the exhibits, including the aforementioned recordings, but also the evidence identified in the notice of application. Here again, the Court concludes that Mr. Beniey's application for remedy must be dismissed.
- [23] Not only did the Agency commit no violation in 2017, according to the Act applicable at the time, but the issues raised by Mr. Beniey had also been rectified even before his Complaint was filed in May 2024. Moreover, even if there had been fault, Mr. Beniey failed to prove any damage.
- [24] In any event, given all the facts on the record, the Court finds that no remedy would have been required in this case.

III. Background [25] As pointed out by the Agency, Mr. Beniey raises several facts in his Memorandum that are not relevant to the purposes of his application for remedy. At the hearing, Mr. Beniey stated that these facts were intended to provide context for his Complaint, and it was on this limited basis that the Court considered them.

- [26] Although the parties' analyses vary as to the content of the exchanges and meetings that led to the Complaint, the Court mainly considered the following elements.
- [27] Mr. Beniey is a Francophone. French is his first language. At the time of the events relating to his Complaint, Mr. Beniey was a customs officer at the Queenston Bridge, in southern Ontario. His work environment was mainly English-speaking.
- [28] On July 15, 2017, Mr. Beniey participated in a meeting, held in English, with some local managers at his workplace, accompanied by his union representative. At that time, he was advised that his defensive equipment (firearm, etc.) would be taken away until a psychological evaluation could take place. He was advised that a letter would follow in the next few days to provide him with the details of the issues that had led to this decision. This meeting and a subsequent private meeting with his union representative are the subject of recording RB-1.

- [29] On July 27, 2017, Mr. Beniey took part in a meeting with some local managers at his workplace, accompanied by his union representative, again in English. At this meeting, a letter describing the accusations against him, a description of his job and a form, in English, entitled “Consent to Undergo A Fitness to Carry Defensive Equipment Evaluation” [Evaluation Form] were given to him to sign.
- [30] At the start of the meeting (recording RB-2 at around minute 2), Mr. Beniey expressed his surprise that the documents had been given to him in English, as he had previously requested that they be in French to make it easier for him to understand them.
- [31] Regarding the form he was asked to sign, the Court notes that Mr. Beniey’s comments during the meeting were clear. He explained that he did not sign voluntarily, but simply to avoid being sent home without pay (RB-2 recording at around minute 17). He noted that the form also states that he was able to obtain independent advice before signing, but that this was not the case. He and his union representative also questioned the type of assessment that his medical specialist would have to perform.
- [32] The recording shows that the manager was unable to answer Mr. Beniey’s questions, but that he took note of them and of some of the elements to be confirmed. Mr. Beniey also stated that the questions and answers should be provided in French, as his medical specialist would be French-speaking (recording RB-2 around minute 25). This request was reiterated to his union representative (recording RB-2 at around minute 35). He also asked for a French version of the letter containing the accusations (recording RB-2 at around minute 55).
- [33] That said, during this meeting, Mr. Beniey’s manager offered him the opportunity to submit written questions, in French, regarding the Evaluation Form (recording RB-2 at around minute 48).
- [34] On July 28, 2017, another meeting, held in English, took place between Mr. Beniey, his union representative and his manager. At this meeting, Mr. Beniey again requested that the letter to his doctor and the list of questions and answers be written in French, because he wanted to have his evaluation done in French (recording RB-3 from the beginning, and again around minute 9:00). His manager said that he would have these documents translated (recording RB-3 at around minute 2:30 and again at around minute 12:30).
- [35] During this meeting, it was confirmed to Mr. Beniey, as he had already been told, that if he refused to sign the Evaluation Form, he would be suspended without pay (recording RB-3 at around minute 16:40).
- [36] On the same day, July 28, 2017, at 5:29 a.m., Mr. Beniey sent an email in English to his manager and union representative, among other recipients, giving his consent to this evaluation subject to obtaining certain clarifications in French and after consulting his union representative. In the email, in accordance with what Mr. Beniey had verbally stated at the July 27, 2017, meeting, he writes: “Also since it was said to me that the failure to sign the consent form would result in an immediate leave without pay, we all agreed to a verbal

consent until the following questions I had could be addressed”. Later that day, Mr. Beniey signed the Evaluation Form in English, in the presence of his manager.

- [37] In view of the above, even though the above-mentioned meetings are very cordial, it appears quite clear that Mr. Beniey did not sign the Evaluation Form in English of his own free will, but out of obligation, to avoid being suspended without pay.
- [38] On August 2, 2017, Mr. Beniey’s manager sent him French translations of the other requested documents, namely, the letter addressed to Mr. Beniey’s healthcare professional and a list of questions and answers. No French version of the Evaluation Form was provided.
- [39] After signing the Evaluation Form in English, Mr. Beniey carried out several searches on the Agency’s intranet site and tried to contact several people in order to find the Evaluation Form in French, without success. However, he found another form entitled “Fitness to Carry Defensive Equipment Assessment” [Assessment Form] on the Agency’s intranet, in both English and French. According to him, the content of this form differs from that of the one he had signed.
- [40] The Court record discloses several exchanges regarding the content of the Assessment Form compared with the Evaluation Form used by local managers, and the legitimacy of the latter. In particular, the evidence shows that further to Mr. Beniey’s questions, the Agency’s regional managers contacted national management, who confirmed that the Evaluation Form is fully endorsed by the Agency, while stating that they would need to check whether it is substantially similar to the Assessment Form available on the intranet. For his part, Mr. Beniey was of the view that the Evaluation Form is not the appropriate or official form, and he withdrew his consent to sign it. He insisted on signing the Assessment Form, but his managers refused.
- [41] From these exchanges, the Agency came to understand, however, that Mr. Beniey wanted to obtain a copy of the Evaluation Form in French. The email dated September 13, 2017, forwarding a French copy of the form states, among other things, “Until this past weekend, I was not aware that you were looking for a French version of the consent form. Please find attached”.
- [42] In that email, the Agency reiterates to Mr. Beniey that it is still waiting for the name and contact details of the medical specialist Mr. Beniey selected to carry out the evaluation required since July, and confirms that if he does not cooperate fully, he will be suspended without pay.
- [43] On September 15, 2017, standing firm in his position, Mr. Beniey provided the Agency with a copy of the Assessment Form, in French, which he had signed. However, Mr. Beniey did not provide the Agency with the name of the doctor he wanted to consult, despite the Agency’s repeated requests to this effect. Since the Agency had already informed Mr. Beniey that September 15 was his final deadline for providing this information, he was suspended without pay.

- [44] The subsequent facts are not relevant to the analysis of the Complaint, which Mr. Beniey filed on May 13, 2024, nearly seven years later.
- [45] On May 22, 2024, the Commissioner sent a notice of refusal to investigate Mr. Beniey's Complaint pursuant to paragraph 58(4)(d) of the Act, owing to his failure to file his Complaint within a reasonable time after its subject-matter arose.
- [46] On May 30, 2024, Mr. Beniey filed his notice of application based primarily on sections 77 and 79 of the Act. He also relies on sections 16 to 23 of the Charter of Rights and Freedoms, s 7, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Canadian Charter], as well as parts IV, V and VII of the Act.

IV. Court's jurisdiction [47] The Agency submits that the real dispute concerns the content and legitimacy of the Evaluation Form, which are primarily management issues not subject to review by this Court.

- [48] The Court agrees that management issues do not fall within its jurisdiction. However, the facts underlying the Complaint are not limited to management issues. On the contrary, it is clear from the evidence, and particularly from the recordings filed by Mr. Beniey, that a language issue was also at the heart of his concerns, and it is this issue that is the focus of the application filed with this Court.
- [49] According to the information on the record, the Complaint filed with the Commissioner on May 13, 2024, alleges that on July 28, 2017, the Agency asked Mr. Beniey to sign a form in English entitled "Consent to Undergo a Fitness to Carry Defensive Equipment Evaluation", despite the fact that his preferred official language is French. Therefore, this is the only issue before this Court.

V. Legal framework [50] The remedy Mr. Beniey seeks is in substance based on section 77 of the Act. In *Forum des maires*, the Federal Court of Appeal established the principles surrounding the nature and scope of such a remedy. These principles were subsequently cited with approval by the Supreme Court of Canada in *DesRochers* and may be summarized as follows:

Although the court remedy based on section 77 of the Act is not an application for judicial review, it is governed procedurally by the Rules applicable to this type of application (*DesRochers* at para 32; *Forum des maires* at para 15 and Federal Courts Rules, SOR/98-106, s 300(b)).

The Commissioner is not a tribunal and therefore does not render a decision; he or she receives complaints, conducts an inquiry and then makes a report that may be accompanied by recommendations (Act, ss 63(1), 61(3); *Forum des maires* at para 16).

Since failure to act on the recommendations made in this report only leads to a political remedy, and to ensure that the Act "has some teeth" and that "the rights or obligations it recognizes or imposes do not remain dead letters", Parliament has provided a remedy in this Court, thus enabling the Commissioner or the complainant to obtain remedies at the Court's discretion (Act, ss 77–78; *DesRochers* at para 35; *Forum des maires* at paras 16–18).

The capacity as an applicant to the Court is derived from the capacity as a complainant to the Commissioner; the Commissioner's report is thus the source or precondition for the remedy, and the date of communication of the report serves as the point of departure for the calculation of the time periods (Act, s 77(1); DesRochers at para 34; Forum des maires at para 17).

This remedy is designed to verify the merits of the complaint, or more precisely the claims put forward by the complainant, and not the merits of the Commissioner's report (DesRochers at para 34; Forum des maires at para 17).

The merits of a complaint are determined as they existed at the time of the alleged breach, and it is therefore the facts that existed at the time the complaint was filed with the Commissioner that are determinative of the outcome of the application for remedy (DesRochers at paras 34, 37, 42; Forum des maires at paras 20, 53).

The Court hears the matter de novo and may consider any admissible evidence, including the Commissioner's report; the Court is not, however, bound by this report, which may be contradicted by any evidence (DesRochers at para 36; Forum des maires at para 20–21), and it may even, exceptionally, consider evidence that had not been brought to the Commissioner's attention (Act, s 79).

In order to grant relief to the applicant, the Court must first be satisfied that a federal institution has failed to comply with the Act (Act, s 77(4); Forum des maires at paras 20–21; Canada (Commissioner of Official Languages) v CBC/Radio-Canada, 2015 FCA 251 at paras 43, 48).

Any remedy that the applicant seeks must be justified by the facts existing at the time of the Court's decision and the circumstances prevailing at that time (DesRochers at paras 34, 37, 42; Forum des maires at paras 20, 53).

Finally, the Court must "exercise a discretion based on his or her careful perception of the nature of the right and of the infringement, the facts of the case, and the application of the relevant legal principles" (Forum des maires at para 57, citing the Supreme Court of Canada in Doucet-Boudreau v Nova Scotia, 2003 SCC 62, at paras 52–55).

[51] As previously mentioned, it should be noted that at paragraph 28 of Forum des maires, the Federal Court of Appeal concluded that "the remedy under section 77 is limited to complaints based on the sections and parts listed in subsection 77(1)" (see also DesRochers at paras 32–33, noting that, since 2005, subsection 77(1) has covered sections 4 to 7, 10 to 13 and 91 as well as parts IV, V and VII of the Act).

VI. Arguments of the parties A. Mr. Beniey [52] Mr. Beniey submits that the Agency did not respect his language rights and comply with its duties under the Act and the Canadian Charter. Specifically, his notice of application raises sections 24, 27, 34, 35 to 37 and 41 of the Act, which are found in parts IV, V and VII of the Act. His memorandum contains over 100 paragraphs (32 pages), and his oral submissions at the hearing lasted more than two hours. Thus, without setting aside any of Mr. Beniey's arguments, the Court takes the liberty of summarizing them as follows.

- [53] Firstly, with respect to Part IV of the Act, which concerns communications with and services to the public, Mr. Beniey cites subsection 24(1) of the Act, submitting that this duty is decisive because the consent forms for a psychological evaluation were sent from the Agency's headquarters, although the designation of an office and the procedural obligations in respect of first official language do not change depending on the type of procedure followed.
- [54] He adds that section 27 of the Act was drafted with a view to obliging Agency headquarters to always provide their services in both official languages, throughout Canada, and for all their employees, regardless of where they work, and especially regardless of their degree of proficiency in their second official language.
- [55] In his opinion, from the affidavit of the Agency's affiant and his answers on cross-examination, it is clear that the Agency voluntarily and consciously decided not to comply with the Act.
- [56] Secondly, as to Part V of the Act, which concerns language of work, Mr. Beniey refers to subsection 34(1) of the Act to argue that it clearly states that it is the duty of Agency headquarters to ensure that, in the National Capital Region, their work environment is conducive to the effective use of both official languages while allowing their staff to use either.
- [57] However, Mr. Beniey submits that the Agency has not presented any policy or regulation setting out the principles, rules, roles and responsibilities governing the use of the English-language form it made him sign under threat. According to him, this was a service rendered with an employee in the workplace, and the form came directly from headquarters, located in the National Capital Region.
- [58] Mr. Beniey also points out that the Agency has always been aware that sections 35 to 37 of the Act set out more precisely the duties of federal institutions regarding language of work. Thus, these sections have always created an obligation for Agency headquarters, as a federal institution, to take all measures to create and maintain a work environment conducive to the effective use of both official languages.
- [59] According to Mr. Beniey, the differences between the forms involved in this dispute would create inequality between Anglophones and Francophones.
- [60] Thirdly, with regard to Part VII of the Act, concerning the advancement of equality of status and use of English and French, Mr. Beniey submits that it is clear that the Agency had a duty under section 41. In his view, it is the responsibility of federal institutions—in this case the Agency—to ensure that the federal government's commitments with regard to enhancing the vitality of minorities and fostering English and French in the workplace, the protection and promotion of French, and the provision of services and communications in the minority language, as set out in subsections 41(1) to 41(12) of the Act and consistent with the objectives of the Act contained in section 2, are implemented by the taking of positive

measures (citing s 41(5) of the Act). Note, however, that Mr. Beniey is referring here to the Act as it existed at the time his Complaint was filed, in May 2024, and not as it existed at the time of the events giving rise to the Complaint, which took place in 2017. In 2017, section 41 contained just three subsections.

- [61] Under this argument, Mr. Beniey adds in his Memorandum that the successive incidents demonstrate that the Agency has never taken into consideration the values enshrined in subsection 16(1) of the Canadian Charter. At the hearing, Mr. Beniey stressed that it was assumed that the Canadian Charter applied and that he did not consider himself inferior to others because of his language or skin colour. He claimed that the Agency showed no deference to or consideration for his rights under the Canadian Charter.
- [62] Finally, on the subject of remedies, Mr. Beniey submits that the refusal to provide explanations, the threats of immediate reprisals to force a French-speaking employee to sign a form sent by headquarters and drafted solely in English, the refusal to cease this type of action dangerous to national unity, the Agency's posture of impunity, and the involvement of the highest-ranking Agency officials based in the national capital all illustrate in a damning way the contempt of this federal institution for the French language in Canada and for the citizens for whom this language, still very much alive, is a sacred birthright.
- [63] For these reasons, he believes it is vital that this Court take the firm, necessary and unprecedented steps necessary to ensure that the Agency as a whole changes immediately and implements real, substantive corrective measures so that its regional managers, senior management, headquarters and the president herself decide to respect the Canadian Constitution and the rights of French-speaking Canadians.

B. Agency [64] Aside from the above procedural and jurisdictional issues, on the merits of the Complaint, the Agency submits that it did not violate Mr. Beniey's rights by having him sign the Evaluation Form in English on July 28, 2017.

- [65] First, Mr. Beniey admitted that, at the time of the events at issue in this case, he was still employed by the Agency. Thus, since the facts underlying the Complaint took place in the context of an employment relationship, the Agency submits that Part IV of the Act, which concerns federal institutions' obligations to the public, is not relevant.
- [66] As for Part VII of the Act, as it existed at the time of the alleged facts, it did not confer individual rights on Mr. Beniey. It set out, rather, a general commitment by federal institutions to take positive measures to enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development, and to foster the full recognition and use of both English and French in Canadian society.
- [67] Regarding Part V of the Act, applicable to employees of federal institutions, the Agency submits that in unilingual regions, such as the one where Mr. Beniey worked at the material time, the Act sets out a comparability criterion: the treatment of both official languages in the work environments of the institution in parts or regions of Canada where one official

language predominates must be “comparable” to the treatment of both official languages in the work environments of the institution in parts or regions of Canada where the other official language predominates. However, the Agency has not submitted any authority to support its claim.

- [68] The Agency adds that Part V rights are not absolute and unlimited. As stated in section 34 of the Act, employees have the right to use English and French. The Act is not, however, intended to confer on all federal employees an absolute right to work exclusively in the language of their choice (citing *Tailleur v Canada (Attorney General)*, 2015 FC 1230 at para 112).
- [69] In this case, the Agency points out that Mr. Beniey alleges that the difference between the forms in question creates inequality between Anglophones and Francophones. However, according to the Agency, the principle of comparability in paragraph 35(1)(b) is applicable to the facts in this case. The duty of federal institutions whose offices are located in unilingual regions for the purposes of Part V is to ensure that the treatment of both official languages in the work environments of the institution in parts or regions of Canada where one official language predominates is comparable to the treatment of both official languages in the work environments of the institution in parts or regions of Canada where the other official language predominates.
- [70] The Agency submits that since Mr. Beniey worked in the Queenston Bridge region of southern Ontario, and since this region was not designated bilingual within the meaning of subsection 35(2) of the Act, the language of supervision was English (Annex B to Circular No. 1977-46, *Official Languages in the Public Service of Canada: A Statement of Policies*). In such a context, providing the form in this language did not constitute a violation of the Act by the Agency.
- [71] Furthermore, even though it had no duty to do so under Part V of the Act, the Agency nonetheless made considerable efforts to respond to Mr. Beniey’s concerns and questions in French. The Agency also mentions that, following exchanges on the subject, on September 13, 2017, Mr. Beniey received a copy in French of the form he had signed on July 28, 2017 (Evaluation Form), namely, the document entitled “Consentement à subir une évaluation de l’aptitude à porter de l’équipement de défense”.
- [72] In these circumstances, the Agency submits that the Court cannot find that the Agency violated the requirements of parts IV, V and VII of the Act when the Agency had Mr. Beniey sign a form in English on July 28, 2017, since his language of supervision was English and, in any event, Mr. Beniey could have signed the French version of the Evaluation Form, which was given to him on September 13, 2017.

- [73] However, Mr. Beniey refused to sign the French version of the Evaluation Form and instead insisted on using the Assessment Form, the French version of which he signed on September 15, 2017. So, from that point on, it is not a matter related to official languages, but rather one of the forms' content, which is a question of management rights and human resources.
- [74] Finally, with regard to the relief Mr. Beniey seeks, the Agency stresses that appropriate and just remedies must be determined in the light of the context and circumstances specific to the Agency and the breaches at issue at the time judgment was reserved in the case. The remedy will vary according to whether or not the violation has continued, and it must be fair to the federal institution. The Agency thus argues that if the federal institution has taken action and remedied the problems raised by the Complaint at the time of the hearing (or even, as in this case, before the Complaint was filed), the Court may choose not to order any relief (citing *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62 at paras 55, 58–59; *Forum des maires* at paras 20, 53, 62; and *DesRochers* at para 37).
- [75] In this case, the Agency submits that it updated its forms, in both English and French, on its internal website, even before the Complaint was filed. Consequently, in the event that the Court finds that the Agency violated the Act by having Mr. Beniey sign a form in English on July 28, 2017, given the evolution of the situation, the Agency submits that no relief should be granted. In the alternative, the Agency submits that the only appropriate remedy is a declaration that it violated Mr. Beniey's language rights on July 28, 2017, by having him sign a form available only in English, if the Court considers it desirable to exercise its discretion to grant relief.

VII. Analysis [76] Mr. Beniey had the burden of showing that the Agency violated a right or breached a duty under one of the sections referred to in subsection 77(1) of the Act (*Leduc v Canada*, 2000 CanLII 15454 (FC) at para 20; *Knopf v Canada* (House of Commons), 2006 FC 808 at para 38, appeal dismissed 2007 FCA 308, leave to appeal to SCC refused, 32416 (March 20, 2008); *National Police Federation v Canada* (Attorney General), 2024 FC 53 at para 15). He failed to do so.

- [77] As detailed below, not only were the alleged facts corrected before the Complaint was filed, but also, on the basis of the facts that existed in 2017, the Court is of the opinion that the Complaint was unfounded.

A. The facts underlying the Complaint were corrected at the time it was filed. [78] Nearly seven years elapsed between the events giving rise to the Complaint and Mr. Beniey's filing of it. At the hearing, he provided some information to explain the lateness of his application, but it was not entered in evidence. As already mentioned, the Court therefore cannot consider his explanations.

- [79] In any event, as mentioned above, the merit of a complaint "is determined as it existed at the time of the alleged breach", that is, according to the Act and according to the facts as they existed at the time the complaint was filed with the Commissioner (*DesRochers* at para 34; *Forum des maires* at para 20; *Fédération des francophones de la Colombie-Britannique v*

Canada (Employment and Social Development), 2018 FC 530 at para 68 reversed on other points by 2022 FCA 14, leave to appeal to SCC refused 40114 (February 2, 2023)). However, Ms. Barbeau's affidavit and cross-examination reveal that the forms used by the Agency, since at least April 2023, Ms. Barbeau's starting date, are available to Agency employees on the intranet in both official languages.

- [80] Ms. Barbeau also confirms that the Evaluation Form, the crux of Mr. Beniey's complaint, has been replaced by bilingual forms.
- [81] Thus, on the basis of the only information available to the Court concerning Mr. Beniey's Complaint, specifically, the content of the notice of refusal to investigate, and on the basis of the available evidence, it is clear to the Court that the Agency remedied any issue relating to the form that was the subject of the Complaint, even before it was filed.
- [82] The Complaint was therefore unfounded at the time it was filed in 2024 (Forum des maires at para 53). But there is more.

B. The Complaint is not founded in law [83] The Court is of the opinion that, in accordance with the Act in force in July 2017, it was not necessarily a violation of the Act for an employer in an English-speaking region (not designated bilingual) to transmit documents in English to an employee, even when that employee's first language was French.

- [84] Indeed, even assuming that the facts alleged in paragraph 29 of the Memorandum would be the same as those raised in the Complaint to the Commissioner (which, I repeat, the Court is not in a position to verify), the Court is of the opinion that parts IV and VII did not apply to the Complaint, and that there has been no violation of Part IV of the Act, for the reasons that the Agency details in its memorandum, with which the Court agrees.
- [85] In particular, the Court agrees with the Agency that Part IV of the Act covers communications with and services to the public by federal institutions. A holistic reading of the Act leads to the conclusion that this section does not apply to employees of federal institutions, where the alleged violations were committed in the course of the employment relationship. The mutually exclusive nature of the "employee" and "public" categories is made evident by section 31 of the Act, which provides, among other things, that in the event of inconsistency, the public's rights under Part IV prevail over those conferred by Part V on federal workers (see in particular *Tailleur* at paras 40, 54-60; see also *Temple v Via Rail Canada Inc*, 2009 FC 858 at paras 76 and 77). This also seems to be confirmed by the definition of "public" found in the Directive on Official Languages for Communications and Services [Directive] (available online), which excludes employees.
- [86] The Court is not persuaded by the argument Mr. Beniey made at the hearing that requiring an employee to undergo a psychological evaluation to determine his or her fitness to carry a firearm as part of his or her duties would constitute a service within the meaning of Part IV of the Act, even if this implies that a service will be provided by a medical specialist, a member of the public.

- [87] While it is true that the evidence on the record suggests that Mr. Beniey's managers wished to communicate the relevant documents themselves to the medical specialist who would be chosen by Mr. Beniey, there is no evidence that this was the case. Thus, in fact, the "communications with the public" argument Mr. Beniey raised cannot be accepted.
- [88] It is, rather, Part V of the Act, which imposes rights and duties with regard to language of work for federal employees, that applies. However, as can be seen from section 35 of the Act, these duties vary depending on whether the region in question is a designated bilingual region or not.
- [89] In this case, southern Ontario is not a designated bilingual region according to Treasury Board and Public Service Commission Circular No. 1977-46 of September 30, 1977, in Annex B (available online) (Act, s 35(2)), and thus paragraph 35(1)(b) of the Act applies.
- [90] The Agency argues that, in such a case, the Act sets out a comparability test, and the Court agrees, even though the Agency has not submitted any authority to support its argument. Indeed, although the wording of paragraph 35(1)(b) of the Act has remained unchanged for at least 23 years (see Official Languages Act, RSC 1985, c 31 (4th Supp), s 35, as it appeared on 21 December 2002), the exact content of this comparability standard does not appear to have been the subject of jurisprudential analysis.
- [91] *Dionne v Canada (Office of the Superintendent of Financial Institutions)*, 2019 FC 879 at paras 596–98 (rev'd on other grounds 2021 FCA 159), states the following about paragraph 35(1)(b) of the Act:
- [596] The only relevant provision that speaks to language rights in unilingual regions is section 35(1)(b) of the OLA, which reads as follows:

Duties of government

35 (1) . . .

- (b) in all parts or regions of Canada not prescribed for the purpose of paragraph (a), the treatment of both official languages in the work environments of the institution in parts or regions of Canada where one official language predominates is reasonably comparable to the treatment of both official languages in the work environments of the institution in parts or regions of Canada where the other official language predominates.

- [597] In the non-designated regions the concept of equality of status, use and privileges of the two languages is replaced by that of the dominant language. This would appear to be a highly relevant indicator of how this issue should be resolved.
- [598] As seen, the only statutory direction on work environments is that occurring within the workplaces of an institution. If an institution maintains offices in both dominant unilingual regions, then their work environments should be comparable. (Emphasis added.)

- [92] This is also stated in the Directive, in section 6.3.2 (Unilingual regions). According to this Directive, the Agency was responsible for “ensuring that, subject to the requirements set out in the Directive on Official Languages for People Management, communications and services intended exclusively for employees in unilingual regions are in the official language that predominates in the province or territory where the employees are located” (emphasis added).
- [93] In view of the above, and since English is predominant in the unilingual region of Queenston, Mr. Beniey has not persuaded the Court that his managers contravened the Act in sending him an English-language form.
- [94] Furthermore, the Court shares the Agency’s position that Part V rights do not confer on all federal employees an absolute right to work exclusively in the language of their choice. This is true even in designated bilingual regions (*Canada (Commissioners of Official Languages) v Office of the Superintendent of Financial Institutions*, 2021 FCA 159 at para 105; *Tailleur* at para 112).
- [95] Given the above, Mr. Beniey has not persuaded the Court that the Queenston managers had an obligation under Part V of the Act to provide Mr. Beniey with the Evaluation Form in French, even if this form originated from headquarters, located in the national capital and therefore in a bilingual region, as Mr. Beniey claims.
- [96] That said, while not a right in this regard, Mr. Beniey’s request to obtain the relevant documents in French, in order to fully understand their content, was legitimate. The company’s managers took all the necessary steps to send them to him within a reasonable timeframe. So even if there had been a violation, it was quickly rectified.
- [97] According to Mr. Beniey, the differences between the forms involved in this dispute create inequality between Anglophones and Francophones. However, it is not clear whether he is referring here to differences between the content of the Evaluation Form and that of the Assessment Form, or to differences between the English and French versions.
- [98] On several occasions, the applicant has stated that there are substantial differences between the Evaluation Form that he was asked to sign in English and the French version of the Assessment Form that he found on the Agency’s intranet, particularly with regard to the rights that each would guarantee the signing worker, without directing the Court to any concrete evidence. It appears from email exchanges between the applicant and Agency officials that certain differences may well have existed, particularly insofar as he was told that the Assessment Form—available on the intranet—would be modified to bring its content closer to that of the Evaluation Form he was asked to sign, but no differences prejudicial to him were identified. In any event, these differences seem to be about content, not language.
- [99] In the first case, the Court agrees with the Agency that insisting that Mr. Beniey sign the Evaluation Form, rather than the Assessment Form, is a matter of management rights, over which the Court has no jurisdiction. Essentially, any question which, in substance, concerns

the employer's right of management and its exercise vis-à-vis an employee, rather than language rights, falls outside the jurisdiction of this Court, insofar as the only question validly before it concerns potential breaches of the obligations which the Act imposes on the Agency in terms of official languages (*Rogers v Canada (Department of National Defence)*, 2001 FCT 90 at paras 28–29; *Knopf* at para 40).

- [100] As for the differences between the English and French versions of the same form, the evidence in the record does not indicate any inequality, and Mr. Beniey has provided no explanations in support of this argument.
- [101] Finally, and contrary to Mr. Beniey's claims that he was mistreated by the Agency, after listening to the numerous recordings and reviewing the email exchanges between Mr. Beniey and his managers, the Court finds no mistreatment of Mr. Beniey by the Agency. Therefore, the Court is of the opinion that there has been no violation of Part V of the Act in this case.
- [102] As for Part VII of the Act, although section 41 has not been exclusively declaratory in nature since 2005, thanks to the addition of subsections 2 and 3, which were in force at the time of Mr. Beniey's Complaint (*Desrochers* at para 20; *Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)*, 2022 FCA 14 [*Fédération des francophones de la Colombie-Britannique*] at paras 128–44), by virtue of subsection 41(2) of the Act, federal institutions such as the Agency had some discretion as to the choice of measures to be taken to achieve the three objectives set by subsection 41(1). As the Attorney General notes, in *Fédération des francophones de la Colombie-Britannique* (at para 163), the Federal Court of Appeal set out a two-step analysis for alleged breaches of section 41(2) such as the one claimed in this case by Mr. Beniey:

Federal institutions must first be sensitive to the particular circumstances of the country's various official language minority communities and determine the impact of decisions and initiatives in reference to those communities. Second, federal institutions must, when implementing their decisions and initiatives, act, to the extent possible, to enhance the vitality of these communities; or where these decisions and initiatives are susceptible of having a negative impact, act, to the extent possible, to counter or mitigate these negative repercussions.

- [103] Thus, while subsection 41(2) required the Agency to take measures aimed at, among other things, “enhancing the vitality of the English and French linguistic minority communities in Canada”, this provision does not prescribe specific measures.
- [104] Also, as Tremblay-Lamer J wrote in *Picard*, “courts must limit themselves to the factual circumstances relating to a particular decision rather than examining the government's entire language policy every time an application under Part VII is brought before them” (*Picard v Canada (Commissioner of Patents)*, 2010 FC 86 at para 68). In other words, invoking section 41 does not allow the applicant to ask the Court to examine all of the Agency's policies. In this case, his Complaint related to a specific decision made by the Agency on July 28, 2017, requiring him to sign a form in English.

- [105] Consequently, to win his case, Mr. Beniey first had to establish that the Agency had a duty to provide its French-speaking employees with French versions of the forms it uses internally, immediately, even in regions not designated bilingual, and not within a reasonable time, as it did in this case. He failed to meet his burden.
- [106] In *Association des juristes d'expression française du Nouveau-Brunswick*, Saint-Louis J concluded that, given the constitutional principle of the separation of powers and insofar as subsection 41(3) as it read in 2017 provides that it is the government's role to make regulations "prescribing the manner in which any duties . . . are to be carried out" under section 41, "the Court cannot substitute itself for the Governor in Council in establishing, in the absence of regulations, the manner in which its obligation [under 41(2)] should be carried out" (*Association des juristes d'expression française du Nouveau-Brunswick v Canada (Department of Justice)*, 2024 FC 1464, at para 55).
- [107] In the absence of evidence establishing that the objectives of subsection 41(1) could not be achieved in 2017 without requiring the Agency to make English and French versions of all forms it issues to its employees available without delay under any circumstances, even in non-designated bilingual regions, it is not for this Court to make such a determination.
- [108] As an adjunct to this, forcing the Agency to communicate with its employees in the language of their choice throughout the country could erase the distinction that the Act makes between regions designated bilingual and those that are not. Mr. Beniey cannot try to expand the obligations already imposed by Part V of the Act by relying on its Part VII, and the Court cannot upset the balance that Parliament chose with sections 35 and 36 (Picard at para 77).

C. In any event, there is no reason to award the remedies Mr. Beniey seeks. [109] As the Federal Court of Appeal reminds us in *Forum des maires*, "the Court has very wide latitude as to the choice of the remedy 'it considers appropriate and just in the circumstances'" (*Forum des maires* at para 56).

- [110] Moreover, the remedies sought by an applicant must be based on the situation prevailing at the time of the Court's decision. As the Federal Court of Appeal points out, "[n]eedless to say, if the alleged deficiencies have all been remedied at the time of the trial, and if the complaint is then no longer justified, the Judge may choose not to order any relief, except for example in the form of costs" (*Forum des maires* at para 53; see also *DesRochers* at para 37; Picard at para 78).
- [111] This was the case, for example, in *Forum des maires*, where the Federal Court of Appeal overturned the Federal Court's decision because the original complaint was no longer justified at the time of deliberation and the remedies ordered by the Federal Court were not appropriate and just in the circumstances (*Forum des maires* at para 85).

[112] Once again, in light of Ms. Barbeau's affidavit and cross-examination, both of which state that the allegedly problematic form was translated into both official languages even before the Complaint was filed, the Court is of the opinion that there is no factual basis to support the remedies Mr. Beniey seeks.

[113] In any event, even if there had been a violation, which is not the case, given the time Mr. Beniey took to act and the fact that the harm he alleges was minimal, the Court would have refused to award damages or other relief. In some respects, the situation seems to me analogous to *Leduc v Air Canada*, where Harrington J denied the applicant costs, particularly given the lateness of his action, despite the fact that he was successful on some points (2018 FC 1117 at para 64).

[114] Furthermore, Mr. Beniey submitted no evidence justifying punitive damages (*Lavigne v Canada (Human Resources Development) (T.D.)*, 1996 CanLII 3854 at para 28 citing the Supreme Court of Canada in *Vorvis v Insurance Corporation of British Columbia*, [1989] 1 SCR 1085 at paras 1101 and 1108).

VIII. Conclusion [115] For the above reasons, Mr. Beniey's application for a court remedy under subsection 77(1) of the Act is dismissed.

IX. Costs [116] The Court invited the parties to try to come to an agreement on costs within 10 days of the hearing or, failing that, to provide written submissions on costs within 30 days. The Court has received nothing on this subject from Mr. Beniey, but on August 7, 2025, it did receive a letter from the Agency confirming the lack of an agreement, given Mr. Beniey's silence despite the Agency's invitations to discuss the matter, as well as draft bills of cost from the Agency.

[117] The Agency submits [translation] "that this is not a case where the litigation has raised an important new principle and that the Court should therefore not depart from the general principle set out in subsection 81(1) of the Official Languages Act that costs of and incidental to all proceedings in the Court shall follow the event". The Court agrees.

[118] Having considered the bills of costs and the circumstances of this case, including the fact that the Complaint was filed almost seven years after the events alleged and that these were resolved even before the Complaint was filed, and on the basis of its discretionary powers, the Court finds that costs of \$9,000 in favour of the Agency are appropriate.

X. Obiter [119] At the hearing, Mr. Beniey admitted that he had used several strong, loaded words in his Memorandum. Although he also admits that the dispute between the parties is not a race-related one, he explains that the language used was intended to demonstrate how badly he had been treated by the Agency.

[120] With respect, the Court is of the opinion that the use of such words was excessive and out of place in the context of this litigation and invites Mr. Beniey to exercise restraint in the future. Accusing someone of slavery and racism can have serious consequences. It can also affect the credibility of those who use such language without a shred of evidence or foundation.

JUDGMENT in T-1374-24

THIS COURT’S JUDGMENT is as follows:

Mr. Beniey’s application for a court remedy under subsection 77(1) of Act is dismissed.

Mr. Beniey shall pay costs of \$9,000 to the Agency within 30 days of this judgment.

“Danielle Ferron”

Judge

Certified true translation

Michael Palles

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1374-24

STYLE OF CAUSE:

RÉGIS BENIEY v CANADA BORDER SERVICES AGENCY

PLACE OF HEARING:

Montréal, Quebec

DATE OF HEARING:

JULY 10, 2025

REASONS FOR JUDGMENT AND JUDGMENT:

FERRON J

DATED:

SEPTEMBER 2, 2025

APPEARANCES:

Régis Beniey

APPLICANT

(ON HIS OWN BEHALF)

Martin LeBlanc

Michèle Plamondon

FOR THE RESPONDENT

(CANADA BORDER SERVICES AGENCY)

SOLICITORS OF RECORD:

Michèle Plamondon

Martin LeBlanc

Department of Justice Canada

Ottawa, Ontario

FOR THE RESPONDENT

(CANADA BORDER SERVICES AGENCY)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/fc-cf/decisions/en/item/528866/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/beniley-v-canada-border-services-agency-2025>

Prepared on 28 October 2026 · Esheria