

CANADA / JUDGMENT

Jalbert v. Canada (Revenue Agency)

2025 FC 331

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[ENGLISH TRANSLATION]

Ottawa, Ontario, February 20, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

JAMIL JALBERT

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Background [1] The applicant, Jamil Jalbert [applicant], challenges the “bilingual” designation of positions by the Canada Revenue Agency [CRA] under section 77(1) of the Official Languages Act, RSC 1985, c 31 (4th Supp) [OLA]. The applicant alleges that the CRA breached its obligations under section 91 of the OLA in four staffing processes for auditor positions at the CRA’s Eastern Quebec Tax Services Office [EQTSO] because the language requirements for the positions were arbitrarily and frivolously established. In particular, the applicant alleges that the CRA considered criteria for which no objective data existed or that did not have a direct impact on the language needs of the positions.

[2] After considering the evidence before me, the parties’ submissions and the applicable law, I cannot conclude that there has been a breach of section 91 of the OLA. The language requirements established in the staffing processes for the positions in this case were not imposed “frivolously or arbitrarily”. I find that they were imposed objectively, on the basis of the tasks involved and in accordance with the law.

[3] This application was heard jointly with the complaints of Josée Collard and Jean Couillard [associate applicants] (dockets T-908-20, T-909-20 and T-910-20).

II. Overview [4] Mr. Jalbert has been a CRA employee since 2008 and has held various positions over the years at the EQTSO. At the time of the impugned staffing processes, he was unilingual Francophone.

[5] The EQTSO is one of the CRA’s four tax services offices in Quebec. It handles complex tax audit and collection files. It has 633 employees in three main locations: Quebec City, Chicoutimi and Rimouski. For language-of-work purposes within the meaning of Part V of the OLA, the EQTSO is located in a unilingual region, but it remains a designated bilingual office for the purposes of communications with and services to the public under Part IV of the OLA.

[6] The EQTSO implements certain CRA tax compliance programs delivered by auditors in “AU”-classified positions. Auditors deal with tax non-compliance through, for example, targeted education, reviews, audits and, if necessary, penalties or criminal investigations. The type and volume of files handled by EQTSO auditors vary depending on the compliance program involved.

[7] In 2015, the applicant applied to staffing process #00014430 [#430], launched by the EQTSO and calling for applications to positions at the AU-02 level. The linguistic profile on the job posting indicated “various language requirements”. On November 25, 2015, Mr. Jalbert attended an information meeting organized by EQTSO managers. The purpose of the meeting was to inform employees interested in that staffing process of the way applications

would be assessed to build the staff inventory and appoint candidates to positions. In response to a question on the language requirements of the positions to be filled, the managers at that meeting stated that they intended to staff all the positions with bilingual candidates and that it was unlikely that unilingual candidates would be selected. Despite this comment, on May 9, 2016, the applicant was appointed to a unilingual French AU-02 position following the staffing process.

- [8] The applicant alleges that, in 2016, he intended to apply for staffing process #50734350 [#350]. On May 27, 2016, he attended a meeting where the managers involved in that staffing process explained that all of the positions to be filled would be staffed by bilingual candidates, and that a unilingual person could be appointed only if that person committed to achieving the bilingual linguistic profile within 12 months of being appointed. Following that meeting, the applicant decided not to apply because he was unilingual Francophone. Despite these statements by management, other unilingual Francophone employees at the EQTSO applied and were appointed following the staffing process.
- [9] In 2018, the applicant applied to staffing process #53074104 [#104] for positions dealing with tax avoidance audit, offshore compliance, tax promoters, and related party audit, and he was added to the eligibility pool. Then, to continue on in the process, candidates were invited to a second-language evaluation. Mr. Jalbert told the CRA that he did not think it was necessary to assess his language skills at that step of the process since there were no specific job offers and there was a possibility that he would be offered a unilingual position in that pool. Accordingly, he did not show up for the assessment. The CRA took his absence from the language test as a refusal to be assessed and he was immediately removed from the pool. Mr. Jalbert tried to be added back to the pool by filing a grievance, but the grievance was denied.
- [10] Mr. Jalbert did not apply to the staffing processes for AU-03 positions at the EQTSO that followed process #104 because of the language requirements. Indeed, all postings until 2021 were for jobs designated as “bilingual imperative”.
- [11] In 2018, the applicant and associate applicants individually filed complaints with the Office of the Commissioner of Official Languages of Canada [Commissioner] against the CRA, questioning the “bilingual” designation of certain positions at the EQTSO. The complaints were consolidated into a single file for the purposes of the investigation into the “bilingual” designation of the four positions in issue.
- [12] In 2022, the applicant obtained a bilingual CBB rating. Since April 11, 2022, he has held the position of business intelligence officer (AU-03) in the Business Intelligence and Quality Assurance Division of the Montréal Tax Services Office.
- [13] In June 2020, following his investigation, the Commissioner produced a final investigation report. The Commissioner recognized the CRA’s need to ensure that it has a bilingual workforce and also that it is [translation] “important to know its clients’ preferred language, the request rate or the workload in each official language, [and] to take into account the nature of the work done and of the services offered, the work tools available, and the

internal organization of work”. The Commissioner noted that some auditors at the EQTSO would have to work in English. He also stated that the linguistic designation of positions must take into account the CRA’s obligations under Part IV of the OLA to communicate with and provide services to Canadians in both official languages. The Commissioner noted that the [translation] “complainants argue that the English-language workload at the EQTSO is not high enough to justify the number of bilingual positions” and that they [translation] “do not dispute the fact that some positions require knowledge of English to serve taxpayers in that language”.

- [14] The Commissioner concluded that aspects associated with the bilingual workforce and the workload, namely the language of the documents in a file and the language of interaction with stakeholders, are objective factors. They are closely related to the duties and responsibilities of the positions concerned and to the institution’s requirement to provide services to the public in both official languages.
- [15] However, the Commissioner criticized the CRA for taking into account factors that were not objective when determining the language requirements of the positions, such as considerations other than their associated duties and responsibilities. The Commissioner also criticized it for not having a formal process for documenting the assessment of language requirements.
- [16] The Commissioner made three recommendations to the CRA. The first was to implement a formal, documented process for assessing the language requirements of positions at the EQTSO. The second was to conduct an objective analysis to establish the language requirements of the positions filled or to be filled through the processes that are the subject of the complaints, taking into account all of the duties and responsibilities of the positions, including bilingual capacity in each work unit and the obligations set out in section 91 of the OLA. The third suggested ensuring that the language requirements of the positions that are the subject of the complaints are amended to accurately reflect the duties and responsibilities associated with the positions.
- [17] In May 2022, the Commissioner issued a preliminary follow-up report after the final investigation report from June 2020. This preliminary report analyzed the CRA’s implementation of the above recommendations in the final investigation report.
- [18] In January 2023, the Commissioner issued a final report on the follow-up to the recommendations made in response to the complaints in issue. This report considered the comments of the CRA, the applicant and the associate applicants regarding the 2022 preliminary follow-up report and provided an update on the implementation of the recommendations in the June 2020 final investigation report.

III. Issue and applicable law [19] In issue is whether the language requirements relating to the impugned staffing processes were objectively justified in accordance with section 91 of the OLA at the time the processes were launched.

- [20] An application for a remedy under section 77 of the OLA is a *sui generis* proceeding in which the Court is asked to determine whether conduct that has been the subject of a complaint to the Commissioner breached the OLA (*Marchessault v Canada Post Corporation*, 2003 FCA 436 at para 10).
- [21] A proceeding under subsection 77(1) of the OLA must be heard *de novo*, even though it requires that a complaint be filed with the Commissioner first. The Court must generally determine the merits of a complaint based on the facts as of the time of the alleged breach, that is, the facts that existed as of the date the complaint was filed with the Commissioner (*DesRochers v Canada (Industry)*, 2009 SCC 8 at paras 34–37 [*DesRochers*]; *Canadian Food Inspection Agency v Forum des Maires de la Péninsule Acadienne*, 2004 FCA 263 at paras 20–21 [*Forum des Maires*]).
- [22] The Commissioner’s reports are admissible in evidence, but they are not binding on the judge and may be contradicted like any other evidence. The conclusion that an OLA breach has occurred, in any given case, must be reached after the judge has heard and weighed the evidence advanced by both parties. It is important to note the distinct role and mandate of the Commissioner, which are more in the nature of an ombudsman’s than of a more limited court remedy (*Forum des Maires* at para 21).
- [23] The purpose of section 91 of the OLA is to ensure that language requirements, which must be objectively required, cannot be imposed “frivolously or arbitrarily” (*Rogers v Canada (Department of National Defence)*, 2001 FCT 90 at para 27 [*Rogers*]).
- [24] Under section 91 of the OLA, a federal institution cannot, in the guise of purportedly giving effect to its obligations under Part IV or V of the OLA, set language requirements that are not objectively related to the provision of bilingual services in the particular setting where those functions are performed by the employee. Language requirements must be justified in light of the duties performed in the positions concerned by the staffing actions in issue (*Temple v Via Rail Canada*, 2009 FC 858 at paras 81–82 [*Temple*]; *Canada (Attorney General) v Viola (CA)*, 1990 CanLII 13036 (FCA), [1991] 1 FC 373 at 388). To intervene, the judge assessing the case must make “a finding that there was no evidentiary base to the designation, or that the designation was evidently unreasonable, or that there was an error of law somewhere” (*Rogers* at para 25).
- [25] The applicant assumes “a fairly heavy burden” in establishing that the designation of a bilingual position “lacks objectivity” (*Professional Institute of the Public Service v Canada (TD)*, 1993 CanLII 2921 (FC), [1993] 2 FC 90 at 106 [*Professional Institute of the Public Service*]).

- [26] So long as there is a factual basis on which a particular staffing action is taken, and so long as that action is in conformity with relevant statutes and more discrete regulations, this Court cannot and should not intervene. That a court might have reached another conclusion, or that a court might have preferred an alternative to the staffing action taken, are no grounds for judicial intervention (Professional Institute of the Public Service at 114).
- [27] We must keep in mind the object of the OLA, which is to ensure equality of status of French and English and equal rights and privileges as to their use in all federal institutions across Canada (Canada (Commissioner of Official Languages) v Office of the Superintendent of Financial Institutions, 2021 FCA 159 at paras 64–66, citing Thibodeau v Air Canada, 2014 SCC 67 at para 9). As stated in its Preamble, the OLA was enacted to “enhanc[e] the vitality and suppor[t] the development of English and French linguistic minority communities—taking into account their uniqueness, diversity and historical and cultural contributions to Canadian society—as an integral part of the two official language communities of Canada, and to foste[r] full recognition and use of English and French in Canadian society”.
- [28] In addition, the OLA has quasi-constitutional status. Its constitutional roots and crucial role in relation to bilingualism justify that interpretation. Indeed, it reflects both the Constitution of the country and the social and political compromise out of which it arose (Lavigne v Canada (Office of the Commissioner of Official Languages), 2002 SCC 53 at para 23).

IV. Analysis A. Positions in issue [29] In this case, four staffing processes posted between 2015 and 2018 are in issue. The purpose of these processes was to establish a candidate inventory for various classifications of auditor positions at the EQTSO. The candidates entered in this inventory were not guaranteed a position but became eligible for the next step, appointment. The specific steps will be described further on in this decision.

- [30] The evidence supporting the language requirements and linguistic designation of the positions in issue came from the respondent’s affidavits, namely the testimonies of a manager in the audit sector at the EQTSO, a director at the EQTSO, and a director general of regional service delivery at Shared Services Canada. The affidavits were accompanied by sixty exhibits, including audit reports from the EQTSO on the analysis of the bilingual capacity of the various positions. The respondent submits that the ratings for “bilingual” designations (e.g., CBB) properly reflect the level of language required to perform tasks and that every auditor on staff must be able to do the same work. This work is highly technical.
- [31] An auditor’s job includes conducting investigations that require communicating with stakeholders and third parties. Auditors are responsible for each file assigned to them, and audits can take up to an average of two years from beginning to end of the investigation. This is specialized work, and the auditor must be able to analyze the taxpayer’s documents and information (which may be provided in writing or orally during calls or interviews).

- [32] Staffing process #430, which closed on November 20, 2015, concerned the positions of income tax auditor (AU-02), tax avoidance auditor (AU-02) and international tax auditor (AU-02). The first position, income tax auditor (AU-02), was open to both unilingual Francophone and bilingual BBB candidates. The other two were reserved for bilingual CBB candidates.
- [33] For staffing process #430, the “bilingual” designation of the positions of income tax auditor, tax avoidance auditor, and international tax auditor were challenged. The income tax auditor position had two different workloads: general audit [SME] and Financial Transactions and Reports Analysis Centre of Canada [FINTRAC]. In the case of the SME workload, most of the work is done in French, which explains the possibility of hiring unilingual Francophone candidates. However, a few bilingual positions are required since, although most clients work locally or regionally, some operate outside Quebec. FINTRAC files entail a regional caseload that is concentrated in the Montréal area and exclusive to the EQTSO. Most of the files in this inventory are in English.
- [34] Next, tax avoidance auditors also have two types of workloads: tax avoidance and offshore compliance. Tax avoidance auditors working on tax avoidance files serve internal clients, taxpayers in Quebec and taxpayers across the country. Since their workload stems mainly from basic and large businesses files, English is present in most of their caseload.
- [35] Auditors working in offshore compliance have a client base that includes taxpayers in Quebec and the Maritimes. In addition to the tasks they have in common with their tax avoidance counterparts, these auditors must contact third parties located across Canada and elsewhere in the world to obtain information on assets held abroad. Their workload focuses on operations outside the country and requires the ability to read documents in English and interact with Anglophone third parties in all files.
- [36] Finally, the position of international tax auditor entails a workload focused on foreign transactions and requires consulting documents in English as well as interacting with Anglophone third parties. Clients include taxpayers in Quebec and across the country.
- [37] Staffing process #350 was for the position of income tax auditor (AU-03) only. Unilingual Francophone and bilingual BBB candidates were eligible for the position if they applied before May 24, 2016.
- [38] Staffing process #350 sought candidates for income tax auditor positions with two workloads, either general audit (basic file) or large businesses. In general audit (basic files), auditors work with a clientele of Quebec companies earning between \$20 million and \$250 million in sales. By contrast, auditors assigned to large businesses have a clientele of Quebec companies with revenues over \$250 million. Generally, the higher a company’s sales revenue, the more likely it is to operate outside Quebec and therefore the more likely it is that the workload will entail English. The majority of files for these two workloads were identified as English. However, some files may be processed in French by unilingual Francophone candidates.

- [39] Staffing process #53618066 [#066] sought candidates for the positions of international tax auditor (AU-03) and tax avoidance auditor (AU-03), both of which require a bilingual CBB linguistic profile. That process ended on October 14, 2018.
- [40] In staffing process #066, the tax avoidance auditor position has four different workloads: tax avoidance, offshore compliance, tax promoters, and related party audits. The international tax auditor position includes the tax avoidance and large businesses workloads. Regardless of workload, all tax avoidance auditors and international tax auditors deal with taxpayers from across the country. For workloads like offshore compliance, tax promoters and related party audits, part of the client base is located in the Maritimes (and in Ontario, for related party audits). English is present in almost all files.
- [41] Staffing process #104 was for the position of offshore compliance tax avoidance auditor (AU-03) with a bilingual CBB linguistic profile requirement. Candidates had until November 19, 2018, to apply.
- [42] The purpose of process #104 was to establish a candidate inventory for tax avoidance auditor positions. The job posting specifically targeted the offshore compliance workload, but a candidate appointed through this process could have been assigned to a different workload. As already explained in the analysis of staffing process #066, tax avoidance auditors have a client base located partly outside Quebec, and English is required in almost all of their files.

B. Staffing processes for the positions in issue [43] In considering the evidence related to the staffing processes for the targeted positions, I find that, for the reasons that follow, the applicant failed to discharge the “fairly heavy burden” imposed on him under section 91 of the OLA. This evidence includes the linguistic profiles list in effect within the CRA in Quebec since April 1, 2013, and the analysis of the linguistic profiles of bilingual positions in each of the three language skills. I am satisfied that the language requirements in the staffing processes in issue were objectively justified based on the tasks and responsibilities of the target positions.

- [44] The context of the CRA’s staffing processes is relevant. Each process involves four steps: planning, review of prerequisites, assessment, and candidate appointment.
- [45] Generally, at the planning step, the manager responsible for the process identifies the requirements of the staffing process as essential or as assets. The manager must also determine the language requirements of the positions to be staffed, making sure that they reflect the duties and tasks related to those positions. For example, a position may be designated English essential, French essential, reversible (English or French), or bilingual.
- [46] When a position to be staffed is designated bilingual, the manager applies the pre-established linguistic profile from the linguistic profiles list. Linguistic profiles are presented in the form of three letters (e.g., “CBB”) reflecting the results of a detailed analysis of the tasks and responsibilities of each position type, in accordance with the requirements of the Treasury Board Secretariat. These profiles are expressed by a ranking from “A” to “C” according to the level of proficiency required for each of the three language skills: reading,

writing, and oral interaction. “A” refers to the lowest level, “B” represents the minimum level for a bilingual position, and “C” represents the highest level.

- [47] The evidence submitted in this proceeding includes documents titled “review of proficiency levels for bilingual positions” for each applicable position (or for each position in issue). These documents provide, in the “job summary” section, details of the tasks that the person will be required to perform according to each of the following language skills: reading comprehension, written expression, and oral interaction. Under “results”, the A, B, or C ratings for the English and French language level are indicated under each category identified above. In the “analysis” section, the tasks described are explained according to the expected result, taking into account the required linguistic profile.
- [48] Without going into the details of each “review of proficiency levels for bilingual positions”, I note that these documents identify the tasks and work of an auditor position according to language skill (reading comprehension, written expression, and oral interaction), the expected skills in these categories, and the required language level in English and in French specific to each position in issue.
- [49] In the second step of the process, review of prerequisites, managers determine candidates’ eligibility based on the information they provided when they applied. Candidates who meet the essential requirements as well as the language requirements and who applied before the closing date will proceed to the next step.
- [50] In the third step of the process, assessment, managers assess candidates on the basis of essential requirements and sometimes asset qualifications. In this case, an inventory (or pool) of partially assessed candidates was created following this step. Managers will be able to select candidates from this pool in a future appointment process. To proceed to the final step and become eligible for appointment, candidates must undergo further assessment.
- [51] In the final step of the process, candidate appointment, managers assign a position to a candidate on the basis of merit and the requirements of the position to be staffed. Candidates are selected from the pool established in the assessment step as they must meet staffing and language requirements.
- [52] The staffing processes in issue followed these steps.
- [53] I agree with the respondent that none of the processes here created a specific position or a particular position to be filled. In fact, each competition advertised a “job notice” and not a number of positions to be filled or a specific position or workload. The goal was to create an inventory of qualified candidates. A manager at the EQTSO could then meet future staffing needs starting with inventory candidates.

C. The language designations were not frivolous or arbitrary [54] The applicant challenges the “bilingual” designation of the positions in issue. He claims that the CRA considered non-objective criteria and used outdated data to establish the language requirements of the positions. The applicant submits that the CRA relied on linguistic profiles established in 2013. These profiles

have erroneously remained the same even though the CRA's needs, organization and programs have evolved since then, as have the tools available to auditors. When it established the language requirements for the auditor positions in issue, the CRA did not take into account the actual tasks to be performed, the actual workload, or the actual needs of the EQTSO's clients. The linguistic profiles established in 2013 do not reflect the changes made to the CRA's programs and work organization since then.

- [55] In particular, the applicant argues that the CRA considered criteria for which there was no objective data or that did not have a direct impact on the language needs of the positions to justify the decision regarding the language requirements of those positions after the fact. Instead, the CRA relied on anecdotes, assumptions and generalizations that had no objective basis to justify designating the positions in question as "bilingual".
- [56] The applicant points out that the bilingual capacity analysis report developed by the EQTSO in 2021 following the recommendations of the Office of the Commissioner of Official Languages [2021 Report] cannot be used by the CRA as justification for the language requirements of bilingual positions. The 2021 Report is based on a methodology that lacks objectivity, and it was written to justify the positions in issue after the fact.
- [57] In short, the applicant argues that this has caused the number of bilingual positions required by the EQTSO to be grossly inflated. The CRA was not able to demonstrate at any point that all AU-03 level positions should objectively be classified as bilingual imperative. Lastly, the applicant alleges that the CRA used non-objective criteria in a way that limited his and the associate applicants' career advancement as unilingual Francophone employees at the EQTSO. The applicant describes feeling pressured by the EQTSO. He subsequently filed a grievance against the employer.
- [58] By contrast, the respondent points to contradictions in the facts alleged by the applicant. First, it was wrong to allege that all of the positions contemplated in the staffing processes in issue were designated as "bilingual". Staffing processes #430 and #350 were open to bilingual candidates and unilingual Francophone candidates. Second, it was wrong to assert that the meeting at which managers discouraged the applicant from applying to staffing process #350 influenced the applicant's decision not to apply. That meeting took place on May 27, 2016, three days after the close of the staffing process.
- [59] The respondent also notes that the Commissioner addressed the issue of [translation] "the adequacy of the bilingual workforce". However, he did not address the issue of whether the designation of positions as bilingual was objective. The respondent further indicates that the record before the Commissioner was not the same as the one before the Court. The evidence as to the workload of the positions in issue was not before the Commissioner.
- [60] Moreover, the respondent explains that the applicant does not directly address the language requirements of the positions concerned by the various staffing processes. He did not point to any evidence proving that the language requirements were unjustified in light of the workload of the positions in issue. The respondent affirms that the methodology found in

the 2021 Report was developed by the CRA to calculate its [translation] “target” bilingual workforce in response to the Commissioner’s recommendation, not to establish the target language requirements. The [translation] “target” bilingual workforce is the staff required to be able to communicate with and serve members of the public in the official language of their choice at all times. The methodology in the 2021 Report was not used to determine the language requirements in issue at the time of the staffing processes; it only retrospectively confirms the correctness of those designations. Given the retroactive nature of the 2021 Report, the applicant’s criticism of this methodology fails to demonstrate the merits of his complaints at the time of the alleged breach.

- [61] The respondent submits that the unilingual designation sought by the applicant in this context is unrealistic because of the nature of the files and the unpredictability of the language of files. CRA files are lengthy, and reassigning an auditor in the course of an audit would be inefficient and lead to the duplication of work. It is clear that an obligation to have a bilingual auditor would be the most favourable practice, and it would ensure service levels in the other official language.
- [62] The respondent highlighted the evidence in the record on the language needs associated with the positions in issue to show that opening the entire staffing process to bilingual candidates was justified, given the tasks and the operational needs of the workloads.
- [63] I agree that a taxpayer’s preferred language indicated on tax forms is an important factor, but it is not always determinative in predicting the extent of the work that might be done in English as part of an audit. I accept that the same types of tasks and duties (reading comprehension, written expression, and oral interaction) described in the documents on language skills for bilingual positions apply to each auditor position.
- [64] I also accept the respondent’s evidence that since 2015, the programs delivered by the EQTSO have taken on an increasingly international dimension. Several of the positions in issue in this litigation involve cross-border transactions (outside the EQTSO region), and the auditor might be called upon to work with other CRA offices across Canada. This broader international aspect requires the ability to work in English with individuals located in other provinces and abroad, which leads to an increased need for bilingual auditors.
- [65] I accept that it is difficult to accurately predict the language of work at the beginning of a file other than general audit or EQTSO regional audit files. Indeed, although all auditors’ tasks may be similar, the work that could lead to more English-language elements in certain files varies depending on classification. Any file that is identified as in French on the basis of the language of the taxpayer’s tax return—the standard criterion at the CRA—could still become bilingual in the course of an audit. The audit language used in a file varies depending on the workload. For example, the audit language of a more local workload often coincides with the language of the taxpayer’s tax return, given the nature of the documents in issue. However, in the case of workloads with a regional, national or international component or involving large businesses, the language of the taxpayer’s tax return is no longer a reliable indicator of

the audit language.

- [66] The respondent correctly points out that the applicant does not dispute the fact that some audit files in the EQTSO's workload require English. Nor does the applicant object to the details outlining the tasks and responsibilities of auditors in the positions in issue. Rather, the applicant's complaint concerns the number of positions designated as bilingual and the methodology used to establish language requirements, according to which the mere possibility that a document, stakeholder or third party might require working in English is sufficient to require designating a position as "bilingual". In other words, the applicant takes issue with the bilingual staffing of the target positions when the tasks and responsibilities described with respect to the different workloads of the auditor positions are not designated as bilingual.
- [67] In light of the job descriptions and responsibilities of the various positions in issue, I accept the rationale establishing the need for positions designated as "bilingual". It is clear that bilingual employees were needed to process English-language files in the various auditor positions. I cannot conclude that these language requirements were frivolously or arbitrarily initiated (Rogers at para 27). As the case law confirms, if the evidence objectively supports the "bilingual" designation of the position, I cannot intervene.
- [68] I also accept the respondent's evidence that the linguistic designation of the positions in issue is based on facts showing that the type of workload associated with each auditor position has a direct impact on the proportion of English-language files. For example, an auditor's job involves analyzing documents, contracts, case law, opinions, and tax plans that may be provided in either language. Consequently, it is not reasonable to have a unilingual Francophone auditor in charge of a file and delegate a task to a bilingual auditor every time the unilingual auditor comes across an English-language element. The respondent submits that the delegation "solution" has been rejected by this Court (Professional Institute of the Public Service at 112; *Tailleur v Canada (Attorney General)*, 2015 FC 1230 at para 108 [Tailleur]).
- [69] Moreover, the respondent was able to demonstrate to the Court that the staffing processes in issue were objectively justified when they were opened up to bilingual and unilingual Francophone candidates. The language requirements are analyzed based on objective data that are justified in light of operational needs.
- [70] The Court cannot agree with the applicant's argument that the linguistic profiles list is based on old, outdated data because it has not been revised since 2013. It should be noted that justification for the language requirements of positions is determined as of the time of the alleged breach (DesRochers at para 34).

- [71] In this case, the language requirements were established on the basis of the job descriptions for the positions' different workloads between 2015 and 2018. The applicant has failed to demonstrate that the linguistic profiles from 2013 were no longer justified when the processes in issue were launched. There is nothing in the evidence to support the inference that the job descriptions had become obsolete. Therefore, I cannot conclude that the linguistic profiles list that the CRA considered in its staffing process was no longer reliable.
- [72] Thus, I find that the CRA's justification for designating the target positions as "bilingual" did not contravene the requirements of the OLA.

D. A simple mathematical correlation is not possible or practical in this case [73] In his June 2020 final investigation report, the Commissioner concluded that he could not clearly determine the actual workload in English and in French of the various work units. The Commissioner rightly recognized that the factors and elements associated with a file are subject to a certain degree of unpredictability, that it is reasonable to consider that they are difficult to measure, and that [translation] "a simple mathematical correlation with the number of positions designated as bilingual is not possible or practical". I agree.

- [74] I adopt the Commissioner's findings that if there is any doubt as to the adequacy of the bilingual workforce, a position required to serve clients in the official language of their choice should be designated as "bilingual". I further agree with the Commissioner that it is [translation] "also important to note that, generally speaking, institutions are in the best position to determine the exact number of designated bilingual positions they need, according to the information available to them or that may be reasonably obtained".
- [75] The case law confirms that the CRA must meet the standard of substantive equality in its provision of services to members of the public by ensuring that the public receives service of equal quality in either official language (Tailleur at para 108). Moreover, I must consider not only the demand for bilingual services, but also the proactive obligations of federal institutions to promote the public's right to use the official language of their choice where that language is in a minority setting (Temple at paras 85–88, 107; Rogers at paras 30–35). The federal institution must be conducive to effective practices to ensure the availability of bilingual services as well as to protect the minority official language (Temple at para 78; Professional Institute of the Public Service at 109).
- [76] In Rogers, for example, the applicant calculated that the tasks involving both official languages constituted only 4.3% of the total tasks of the position. Justice Nadon (as he then was) pointed out that the need for both official languages could not be calculated or evaluated, because contact with students and external agencies in French may not be limited to the two tasks identified. Even if both languages were required only for those two tasks, the quality of the language had to be appropriate (Rogers at para 35). The analysis is the same in this case; here, too, the applicant uses a mathematical calculation to assess the bilingual workforce.

[77] The Court cannot agree with the applicant's arguments; he appears to be demanding precisely what the Commissioner describes as [translation] "a mathematical correlation that is not possible or practical" with the calculation of percentages.

E. Conclusion [78] According to the criteria set out in the case law, the language requirements associated with the impugned staffing processes must not have been initiated frivolously or arbitrarily and must be objectively established. Considering these principles along with the evidence submitted, I cannot conclude that the CRA's designation of bilingual positions contravened the OLA.

[79] In conclusion, the applicant has failed to meet the burden of proof set out in section 91 of the OLA. The job descriptions and the tasks of the positions demonstrate that there is an evidentiary basis to the "bilingual" designations, that the designations are clearly reasonable, and that there is no error of law (Rogers at para 27).

[80] For the reasons above, this application under subsection 77(1) of the OLA is dismissed.

F. Appropriate remedy [81] In view of the dismissal of the action, the Court will not need to address damages. However, in the interests of completeness, I will perform an analysis of the relief sought.

[82] At the outset, the applicant sought a reference under Rule 153 of the Federal Courts Rules, SOR/98-106, to determine the remedy, including damages in amounts equivalent to the wages lost, the reduction in his pension plan and the limitations on his professional development. He also seeks moral damages for the retaliation in connection with the complaint he filed and for the toxic environment that ensued. He alleges that this situation caused him a great deal of stress. He says he felt disappointed, humiliated and betrayed by the CRA's actions. He also suffered a loss of motivation at work.

[83] The respondent submits that an award of damages is not appropriate in all circumstances. The relief sought by the applicants for amounts equivalent to wages lost and a reduction in their pension plan presupposes that they would have obtained the positions in issue. However, there is no evidence in the record to demonstrate that this is the case. The applicants establish no causal link between the breach and the alleged damages. The respondent argues that the damages claimed do not accomplish the public law objectives sought by their award, namely compensation, vindication of the right, and deterrence of future breaches. If, however, the Court determines that there has been a breach of section 91 of the OLA, declaratory relief would suffice.

[84] I am also of the view that the applicant's application for reference was late. Reference under Rule 153 was not pleaded in the notice of application and was not part of the disclosure of evidence during the proceedings (which include the respective parties' records and cross-examinations). The applicant raised the issue of reference for the first time in his memorandum of fact and law.

- [85] Accordingly, the issue of reference was the subject of a direction I sent to the parties requesting that they provide more details regarding their arguments on Rule 153 at the hearing.
- [86] I understand the applicant's explanation that a damages analysis might prove unnecessary and that the significant resources and expense associated with calculating damages could be wasted if the applicant were to fail. A reference would have more effectively separated the issues before the Court. However, this discussion was never undertaken by the parties. The introduction of a reference procedure in the applicant's memorandum at the end of the proceedings and after the conclusion of the parties' cross-examinations took the respondent by surprise.
- [87] It would have been preferable to address the issue of reference at the outset, in the notice of application, or by presenting a bifurcation motion under Rule 107, which provides that the Court may, "at any time, order the trial of an issue or that issues in a proceeding be determined separately". In any event, the question of whether a reference under Rule 153 would have been appropriate in this case is now moot.
- [88] Furthermore, even if the applicant had been successful in this case, I would not have awarded the damages sought as a remedy. With respect, I could not have granted the relief sought by the applicant for his lost wages or for the reduction in his pension plan. Such relief presupposes that he would have obtained the positions in issue, a conclusion that I cannot reach.
- [89] Generally speaking, the applicant had no guarantee that he would obtain the target positions as a result of the staffing processes. The evidence shows that none of the staffing processes for the target positions created a specific position. The purpose of the staffing processes was to create an inventory of positions, namely a pool of potential candidates. The job notices in this case make no mention of the number of positions to be filled. Even if the positions had been designated as unilingual, the applicant would only have been added to the inventory of potential candidates who meet the essential criteria.
- [90] In addition, none of the applicants met the requirements for the tax avoidance auditor position in staffing process #066 because they did not have the required international and tax reorganization experience. The applicants were not qualified for this inventory, as work experience was an essential requirement. This process also did not result in any appointments at the EQTSO.
- [91] More specifically with regard to the applicant and staffing process #350, Mr. Jalbert never applied, although he attributes his decision to refrain from applying to the meeting with the director of May 27, 2016.
- [92] With respect to staffing process #104 for offshore compliance tax avoidance auditors, who require a high degree of reading proficiency in the second official language, the applicant did not show up for the language test, which is an essential requirement. On November 20,

2018, a letter was sent to him confirming that he met the necessary staffing requirements, subject to the official language, security and performance requirements that still needed to be confirmed or assessed. The letter indicated that such confirmation or assessment would be required as part of the process.

- [93] On January 7, 2019, a second letter reiterating the need to confirm those requirements was sent to the applicant. On March 20, 2019, a third letter was sent to him, inviting him to an assessment of his written proficiency in his second language on March 28, 2019. The letter indicated that if he failed to appear for the assessment, his application could be excluded from the process. Mr. Jalbert communicated his refusal to proceed with the language assessment, which was an essential requirement of the competition. In accordance with the staffing process, the applicant's application was withdrawn.
- [94] The applicant did not apply to any of the other staffing processes in issue. The evidence does not support the fact that the applicant was denied a position because of the linguistic designation of the bilingual positions. Furthermore, even if the applicant was removed from the process, it was not final. The evidence demonstrates that, in each staffing process, candidates who were removed from the process could be added back to the inventory provided they met the requirements at a later date.
- [95] Lastly, I note that the grievances described by the applicant and associate applicants regarding the advancement of unilingual Francophone employees at the EQTSO and their negative treatment during staffing periods and during the complaints to the Commissioner fall more within the scope of section 39 of the OLA.
- [96] As Justice Martineau explained in *Temple*, while a breach of section 91 of the OLA permits the Court to issue a remedy under subsection 77(4), there can be no Court remedy in the case of a breach to section 39. Section 39 is in Part VI of the OLA, which is not mentioned in the provisions covered by section 77. Consequently, the Court has no jurisdiction to remedy a breach of section 39 of the OLA under subsection 77(4). In other words, if the CRA acted in an arbitrary or discriminatory manner toward the applicant, this is not a remedy provided for in subsection 77(1) of the OLA.
- [97] Section 91 of the OLA is exclusively focused on individual staffing actions (*Temple* at paras 76, 90, 119–120). Therefore, I need not decide the work environment or harassment issues described by the applicant.

V. Costs [98] A successful applicant is entitled to costs.

- [99] At the hearing, the parties confirmed that they had reached an agreement on costs. To the extent that a reference under Rule 153 is not appropriate, the parties agreed on a total amount of \$11,300.
- [100] In the circumstances, I am of the view that a lump sum cost award of \$11,300 is appropriate.

Translation certified true

on this 2nd day of December 2025.

Vera Roy, Senior Jurilinguist

JUDGMENT in T-910-20

THIS COURT'S JUDGMENT is as follows:

(1) This application under subsection 77(1) of the OLA is dismissed.

(2) The respondent is awarded costs in the lump sum amount of \$11,300.

“Phuong T.V. Ngo”

Judge

Translation certified true

on this 12th day of February 2026.

Vera Roy, Senior Jurilinguist Appendix

Official Languages Act, RSC 1985, c 31 (4th Supp) [OLA]:

Application for remedy

77 (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV, V or VII, or in respect of section 91, may apply to the Court for a remedy under this Part.

Time limit

- (2) An application may be made under subsection (1) within 60 days—or within any further time that the Court may allow, on request made either before or after the expiry of those 60 days—after
 - (a) the results of an investigation of the complaint by the Commissioner are reported to the complainant under subsection 64(1),
 - (a.1) the complainant is informed of the actions taken to implement the recommendations that the Commissioner made under subsection 63(3),
 - (b) the complainant is informed of the recommendations of the Commissioner under subsection 64(2), or
 - (c) the complainant is informed of the Commissioner's decision to refuse or cease to investigate the complaint under subsection 58(5).

Application six months after complaint

- (3) Where a complaint is made to the Commissioner under this Act but the complainant is not informed of the results of the investigation of the complaint under subsection 64(1), of the actions taken to implement the recommendations that the Commissioner made under subsection 63(3), of the recommendations of the Commissioner under subsection 64(2) or of a decision under subsection 58(5) within six months after the complaint is made, the complainant may make an application under subsection (1) at any time thereafter.

Order of Court

- (4) Where, in proceedings under subsection (1), the Court concludes that a federal institution has failed to comply with this Act, the Court may grant such remedy as it considers appropriate and just in the circumstances.

Conflict – compliance agreement

(4.1) If there is a conflict between a provision of an order made under paragraph 64.4(1)(a) and a provision of an order made under subsection (4), the order made under subsection (4) prevails to the extent of the conflict.

Conflict – Commissioner's order

(4.2) If there is a conflict between a provision of an order filed under subsection 64.6(1) and a provision of an order made under subsection (4), the order made under subsection (4) prevails to the extent of the conflict.

Other rights of action

- (5) Nothing in this section abrogates or derogates from any right of action a person might have other than the right of action set out in this section.

Recours

77 (1) Quiconque a saisi le commissaire d'une plainte visant une obligation ou un droit prévus aux articles 4 à 7 et 10 à 13 ou aux parties IV, V, ou VII, ou fondée sur l'article 91, peut former un recours devant le tribunal sous le régime de la présente partie.

Délai

- (2) Sauf délai supérieur accordé par le tribunal sur demande présentée ou non avant l'expiration du délai normal, le recours est formé dans les soixante jours qui suivent la communication au plaignant des conclusions de l'enquête, des mesures prises pour mettre en œuvre les recommandations faites aux termes du paragraphe 63(3), des recommandations visées au paragraphe 64(2) ou de l'avis de refus d'ouverture ou de poursuite d'une enquête donné au titre du paragraphe 58(5).

Autre délai

- (3) Si, dans les six mois suivant le dépôt d'une plainte, il n'est pas avisé des conclusions de l'enquête, des mesures prises pour mettre en œuvre les recommandations faites aux termes du paragraphe 63(3), des recommandations visées au paragraphe 64(2) ou du refus opposé au titre du paragraphe 58(5), le plaignant peut former le recours à l'expiration de ces six mois.

Ordonnance

- (4) Le tribunal peut, s'il estime qu'une institution fédérale ne s'est pas conformée à la présente loi, accorder la réparation qu'il estime convenable et juste eu égard aux circonstances.

Incompatibilités : accord de conformité

- (4.1) Les dispositions de l'ordonnance rendue au titre du paragraphe (4) l'emportent sur les dispositions incompatibles de l'ordonnance visée à l'alinéa 64.4(1)a).

Incompatibilités : ordonnance du commissaire

- (4.2) Les dispositions de l'ordonnance rendue au titre du paragraphe (4) l'emportent sur les dispositions incompatibles d'une ordonnance déposée aux termes du paragraphe 64.6(1).

Précision

- (5) Le présent article ne porte atteinte à aucun autre droit d'action.

...

Staffing generally

91 Nothing in this Act authorizes the application of official language requirements to a particular staffing action unless those requirements are objectively required to perform the functions for which the staffing action is undertaken.

[...]

Dotation en personnel

91 La présente loi n'a pour effet d'autoriser la prise en compte des exigences relatives aux langues officielles, lors d'une dotation en personnel, que si cette prise en compte s'impose objectivement pour l'exercice des fonctions en cause.

FEDERAL COURT

SOLICITORS OF RECORD

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T-910-20

STYLE OF CAUSE:

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NGO J

DATED:

FEBRUARY 20, 2025

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