

CANADA / JUDGMENT

Marleau v. Canada (Justice)

2025 FC 184

COURT

Federal Court

DECIDED

30 January 2025

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Marleau v. Canada (Justice)

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2025 FC 184

File numbers

T-1362-20

Decision Content

Date: 20250130

Docket: T-1362-20

Citation: 2025 FC 184

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 30, 2025

PRESENT: The Honourable Mr. Justice Duchesne

Case Management Judge

BETWEEN:

PATRICK MARLEAU

Applicant

(Responding Party)

and

THE MINISTER OF JUSTICE

Respondent

(Moving Party)

ORDER

- [1] The respondent has brought a motion in writing seeking an order under paragraph 50(1)(b) of the Federal Courts Act, RSC 1985, c F-7 (Act) to stay this proceeding until a final determination is made in court file no. 500-17-109358-195, pending before the Quebec Superior Court (Joyal-Larocque case), given the similarity of the remedy sought by the applicants in the two cases.
- [2] The applicant opposes the respondent's motion. He argues that dismissing the respondent's motion and allowing his proceeding to continue is in the interests of justice, since the basis of his application and the legal issues it raises are different from those involved in the Joyal-Larocque case, despite the apparent similarity of the orders sought by the parties.
- [3] Having regard to all the circumstances, the respondent has not satisfied the Court that staying the applicant's proceeding is in the interests of justice. The respondent's motion is dismissed for the reasons that follow.

I. Facts [4] In 2019, Mr. Joyal and Mr. Larocque filed a statement of claim against the Attorney General of Canada and the Attorney General of Quebec before the Quebec Superior Court.

- [5] Mr. Joyal and Mr. Larocque are asking the Quebec Superior Court to issue a declaratory judgment under article 142 of the Quebec Code of Civil Procedure (Code), on the basis of the inherent superintending and reforming power over public bodies set out in article 34 of the same Code and subsections 16(1) and 24(1) of the Canadian Charter of Rights and Freedoms. They are also asking for injunctive relief in connection with the application of section 55 of the Constitution Act, 1982 (CA 1982).
- [6] They allege that section 55 of the CA 1982 imposes three implied duties on Canada: (1) the ongoing duty to enter into talks with the other provinces regarding the enactment of a French version of 22 unilingual constitutional texts listed in the schedule to the CA 1982; (2) the ongoing duty to discuss the accuracy of the French version of those texts with the other provinces; and (3) the ongoing duty to table, for adoption by Parliament, a constitutional resolution for the enactment of the French version of those texts.

- [7] Mr. Joyal and Mr. Larocque are asking the Quebec Superior Court to declare that Canada is subject to and in breach of these three duties. They are also asking the Court to compel Canada to comply with these duties and to periodically report to the Quebec Superior Court until the duties set out in section 55 of the CA 1982 are fulfilled. Similar findings against the Government of Quebec are also sought.
- [8] The statement of claim has been amended since it was filed, but the substance of the allegations remains unchanged.
- [9] The evidence in the record does not allow the Court to properly determine the status of that proceeding with any certainty. At most, the evidence shows that a timetable was set by order of the Superior Court on September 19 or 20, 2024, for the following: production of the respondents' evidence, conduct of out-of-court examinations, communication of undertakings made during the examinations, debate on objections raised, and perfection of the record scheduled for January 2026. In short, it would appear that the case is in its preliminary stages, despite the fact that more than five years have elapsed since the commencement of the proceeding.
- [10] Mr. Marleau commenced his proceeding before the Federal Court on November 13, 2020. He filed an application for a remedy against the Department of Justice under sections 41 and 77 and subsection 81(2) of the Official Languages Act (OLA). He seeks a declaration that the Department of Justice is violating section 41 of the OLA by failing to take positive measures to ensure the enactment of the French version of the constitutional texts in the schedule to the CA 1982. His application follows a complaint he made to the Commissioner of Official Languages and the Commissioner's final investigation report finding that the applicant's complaint was justified.
- [11] He seeks an order directing the Department of Justice to take "positive measures" to ensure the enactment of the French version of the constitutional texts in the schedule to the CA 1982. He argues that subsections 41(1) and (2) of the OLA provide that every federal institution, including the Department of Justice, has the duty to [translation] "ensure that positive measures are taken to implement the commitment" of the government to enhancing the vitality of the English and French linguistic minority communities in Canada, and that these positive measures are set out in section 55 of the CA 1982. He submits that, by failing to actively take positive measures to ensure the enactment of the French version of the constitutional texts in the schedule to the CA 1982, the Department of Justice is violating section 41 of the OLA.
- [12] He also alleges that the Department of Justice must pay him damages for its violation of section 41 of the OLA.

II. Issue [13] The only issue is whether this Court should stay the proceeding until a final determination is rendered in the Joyal-Larocque case pending before the Quebec Superior Court.

III. Arguments (a) Respondent [14] The respondent submits that the Court may stay proceedings under paragraph 50(1)(b) of the Act if it is in the interests of justice that the proceedings be stayed. He argues that the interests of justice justify delaying Mr. Marleau's application for a remedy, having regard to all the circumstances, and that no party to the case will be unfairly prejudiced by a stay of proceedings. He suggests that the sound use of judicial resources justifies staying the proceedings on the basis that "the public purse" that would be used in the litigation of two similar cases "deserve[s] respect" (*Coote v Lawyers' Professional Indemnity Company*, 2013 FCA 143 at paras 12-13).

[15] He indicates that the issues, the documentary evidence and the findings sought in the two cases are virtually identical, and that the two proceedings pursue the same objective, namely, the implementation of section 55 of the CA 1982. He also notes that Mr. Marleau is represented by the same counsel as Mr. Joyal and Mr. Larocque.

[16] He submits that a final decision in the Joyal-Larocque case will likely be determinative of Mr. Marleau's application, since the former more comprehensively and specifically targets the duties imposed by section 55 of the CA 1982. However, he acknowledges that Mr. Marleau's proceeding is comparatively narrower, since it has been brought under subsection 77(1) of the OLA and aims to establish the merits of Mr. Marleau's complaint as of the date it was filed with the Commissioner of Official Languages (*DesRochers v Canada (Industry)*, 2009 SCC 8 at para 34).

[17] The respondent argues that Mr. Marleau acknowledged the similarities between the cases in his correspondence with the Court, writing that [translation] "The Marleau and Joyal cases therefore raise related issues regarding the enactment of the French version of certain constitutional texts"; that "The historical factual matrix underlying the Joyal and Larocque proceeding and this one is essentially the same. There is accordingly a great deal of overlap in the documentary evidence adduced to support the allegations in both proceedings"; and that "The applicants in the Joyal-Larocque proceeding and in this proceeding are represented by the same counsel".

[18] He submits that the two cases seek a finding imposing the same duties on Canada, namely, to require it to take positive measures to ensure the enactment of the French version of constitutional texts and to require it to prepare and provide reports to the Court on the measures taken in that regard.

[19] He argues that without the order sought, the Superior Court and the Federal Court will both have to render decisions on proceedings that have the same goal, the same factual matrix, and virtually identical documentary evidence consisting of several thousand pages of documents. The concurrent pursuit of these two proceedings runs counter to the principle of proportionality.

- [20] He argues that the presence of virtually identical evidence in the two cases entails a duplication of proceedings, not only on the merits of the case, but also on issues relating to the presentation of evidence. For example, if the Quebec Superior Court grants Canada's motion to strike a portion of Mr. Joyal's affidavit, Canada will have to contemplate bringing a similar motion in this case, resulting in a proliferation of proceedings on the same subject matter in two different courts.
- [21] The respondent submits that the additional delay in determining Mr. Marleau's application that would result from a stay of proceedings would not prejudice Mr. Marleau, given that Mr. Marleau himself requested and obtained six extensions of time in this case over a period of three years, citing the delayed progress in the Joyal-Larocque case as justification for the extension of time in his own proceeding. Given the correlation between the two cases, the resolution of the Joyal-Larocque case would inevitably advance the issues in this proceeding.
- (b) Applicant [22] The applicant argues that staying his application is not in the interests of justice. He submits that his case differs from that of Mr. Joyal and Mr. Larocque in terms of the parties involved and the substance of the legal issues.
- [23] He states that he is asking this Court to determine whether the respondent has complied with his ongoing duties under section 41 of the OLA. He indicates that the order sought in the Joyal-Larocque case turns on the interpretation that the Quebec Superior Court will give to section 55 of the CA 1982, and that this interpretation does not address the legal issue relating to section 41 of the OLA.
- [24] Since the legal basis for each case is completely separate from the other, it stands to reason that the remedy sought is also different. Mr. Marleau is asking this Court to issue findings based on its jurisdiction under subsection 77(4) of the OLA, including an award of damages. No such remedy is sought by Mr. Joyal and Mr. Larocque in their case. Finally, Mr. Marleau argues that he would certainly be prejudiced if his proceeding were stayed for several years. His complaint, filed in 2019, was found to be justified by the Commissioner of Official Languages, and the respondent has still not implemented all of the recommendations made by the Commissioner, thus allowing the violation of Mr. Marleau's rights to continue. Mr. Marleau has provided no evidence to support this argument.
- (c) Respondent in reply [25] The respondent submits that the applicant's notice of application and response confirm that his application for a remedy seeks to implement section 55 of the CA 1982 indirectly, while the Joyal-Larocque case seeks to implement it directly.
- [26] He reiterates that the notice of application is based entirely on the premise that section 41 of the OLA is a vehicle for the implementation of section 55 of the CA 1982. According to Mr. Marleau, the duties arising from section 41 of the OLA are dictated by the alleged duties arising from section 55 of the CA 1985.

- [27] However, the process contemplated by section 55 of the CA 1982—and, according to Mr. Marleau, incorporated in section 41 of the OLA—can only be implemented once: when all pre-1982 constitutional texts have official status in French, it will no longer have a purpose. It is therefore not in the interests of justice to accept the concurrent conduct of the Marleau and Joyal-Larocque cases, and the duplication of resources that it would imply.
- [28] The respondent concedes that, in form, the Marleau and Joyal-Larocque proceedings were commenced by separate applicants, in separate forums, on separate legal bases. However, one must look beyond form and find that, in substance, the two proceedings are the same: they both aim to engage the courts in the implementation of section 55 of the CA 1982.
- [29] He argues that Mr. Marleau is wrong to claim otherwise by stating in his response to this motion that neither his complaint nor the report from the Commissioner of Official Languages specifically addressed section 55 of the CA 1982. Regardless of the content of his initial complaint or of the Commissioner's report, an application for a remedy under paragraph 77(1) of the OLA is heard *de novo*, and the *de novo* debate is limited by the notice of application. Considered this way, the notice of application clearly seeks an order to enforce the performance of the alleged duties arising from section 55 of the CA 1982, which, according to Mr. Marleau, were incorporated in section 41 of the OLA.
- [30] The respondent reiterates that it is not in the interests of justice to accept the concurrent conduct of two proceedings seeking the implementation of the same process—and the duplication of resources that would inevitably result therefrom—when that process can be implemented only once.

IV. Analysis [31] Paragraph 50(1)(b) of the Federal Courts Act reads as follows:

Stay of proceedings authorized

Suspension d'instance

50 (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

- (a) on the ground that the claim is being proceeded with in another court or jurisdiction; or
- (b) where for any other reason it is in the interest of justice that the proceedings be stayed.

50 (1) La Cour d'appel fédérale et la Cour fédérale ont le pouvoir discrétionnaire de suspendre les procédures dans toute affaire :

- a) au motif que la demande est en instance devant un autre tribunal;
- b) lorsque, pour quelque autre raison, l'intérêt de la justice l'exige.

- [32] Mr. Marleau's application is not pending before the Quebec Superior Court. Paragraph 50(1)(a) of the Act therefore does not apply. Only paragraph 50(1)(b) of the Act applies here.

- [33] The prevailing case law on the interpretation of paragraph 50(1)(b) of the Act echoes the words of the Federal Court of Appeal in *Mylan Pharmaceuticals ULC v AstraZeneca Canada, Inc*, 2011 FCA 312 at paragraph 5, where an application for a stay of proceedings is in reality an application for the Court not to exercise its jurisdiction to hear and determine an application until some time later:
- This Court deciding not to exercise its jurisdiction until some time later. When we do this, we are exercising a jurisdiction that is not unlike scheduling or adjourning a matter. Broad discretionary considerations come to bear in decisions such as these. There is a public interest consideration—the need for proceedings to move fairly and with due dispatch—but this is qualitatively different from the public interest considerations that apply when we forbid another body from doing what Parliament says it can do. As a result, the demanding tests prescribed in *RJR-MacDonald* do not apply here. This is not to say that this Court will lightly delay a matter. It all depends on the factual circumstances presented to the Court. In some cases, it will take much to convince the Court, for example where a long period of delay is requested or where the requested delay will cause harsh effects upon a party or the public. In other cases, it may take less.
- [34] The Federal Court of Appeal reiterated the legal test applicable to an application for a stay such as that made by the respondent in *Viterra Inc v Grain Workers' Union (International Longshoremen's Warehousemen's Union, Local 333)*, 2021 FCA 41, noting that the test is “whether, in all of the circumstances, the interests of justice support the [proceeding] being delayed”. The circumstances as a whole may, but need not, include some of the considerations set out in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), such as whether there is a serious issue to be tried, the existence or not of irreparable harm and the overall balance of convenience or interests (*Clayton v Canada (Attorney General)*, 2018 FCA 1 at para 26).
- [35] The Court’s assessment of the circumstances must be guided by the principles set out in Rule 3 of the Federal Courts Rules, including securing “the just, most expeditious and least expensive determination of every proceeding on its merits” (*Coote v Lawyers' Professional Indemnity Company*, 2013 FCA 143 at para 12).
- [36] Finally, although the criteria in *White v EBF Manufacturing Limited*, 2001 FCT 713, to assist the Court in determining whether to stay proceedings in the context of related actions before different courts under paragraph 50(1)(a) of the Act do not directly apply to an application for a stay under paragraph 50(1)(b), they can guide the Court in determining whether the stay of proceedings sought is in the interests of justice (*1395804 Ontario Ltd (Blacklock's Reporter) v Canada (Attorney General)*, 2016 FC 719 at para 38), while taking into account the fact that one of the parties may be unfairly prejudiced by the stay.
- [37] The evidence in the record on this motion is limited to an affidavit that provides minimal evidence regarding the status of the Joyal-Larocque case before the Quebec Superior Court, as well as affidavits produced in the two cases that are not particularly helpful in

determining whether or not a stay of proceedings is in the interests of justice. No probative evidence has been adduced regarding the steps completed and yet to be completed in the two cases, the anticipated time before a hearing date on the merits of either case, the prejudice that would result from a stay of proceedings, the amount of public funds wasted on the respondent's separate defences, or the duplication of the work of counsel who, the Court notes, are the same for the parties in both cases. This lack of evidence does not allow the Court to determine whether either of the parties would be prejudiced in any way if proceedings were stayed or if this motion were dismissed. Similarly, no evidence has been adduced with regard to the resources to be expended in preparing and arguing one case on its merits compared to the other.

- [38] The analysis of the issue here is facilitated by the respondent's admission in reply, despite the absence of probative evidence to support his argument: the applications for a remedy in the Marleau and Joyal-Larocque cases were made by separate applicants, in separate forums, on separate legal bases. The respondent argues that these are distinctions of form only, not of substance, and that the outcome sought in the two cases must be considered first, given their close similarity.
- [39] The identity of the parties, the forum, and the legal basis for an application for remedy are not matters of form. These proceeding parameters are substantive; they affect the merits of an application for a remedy at its source and distinguish one proceeding from another.
- [40] An applicant who applies for a remedy against a respondent who has no duty to the applicant or who has not rendered a decision in their regard is liable to have their proceeding dismissed because it is likely certain to fail (*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013 FCA 250; *Hunt v Carey Canada Inc*, 1990 CanLII 90 (SCC)). The identity of the parties, the legal relationships between them, and the legal standards to be met in the context of their relationship are matters of substance, not form, and they allow the Court to properly assess whether a stay of legally distinct albeit similar cases is in the interests of justice.
- [41] The identity of the forum seized of the matter is also an issue that affects the merits of a proceeding. A forum that lacks jurisdiction over the legal merits of a proceeding clearly cannot render a valid decision disposing of a case or a similar case (*Windsor (City) v Canadian Transit Co*, 2016 SCC 54; section 76 and subsection 77(1) of the OLA). Again, this is one of several circumstances that enables the Court to properly assess whether staying a case involving different parties before two courts, only one of which has jurisdiction to decide the issue presented, is in the interests of justice.
- [42] The legal basis of an application or applications for remedy is a central substantive issue in determining whether it is possible to obtain a judgment that determines the merits of another proceeding, even where the parties, issues and forum are not identical. Applications that are based on separate legal arguments remain separate proceedings with separate and different issues, even if they seek a similar outcome.

- [43] Although I accept that the unnecessary use of resources and the duplication of judicial and legal resources are to be avoided, the respondent, having adduced no probative evidence on this subject, has not convinced me that pursuing Mr. Marleau's case before this Court while the Joyal-Larocque case continues before the Quebec Superior Court amounts to a duplication of judicial and legal resources.
- [44] The Quebec Superior Court does not have jurisdiction to hear Mr. Marleau's application for a remedy. Although his application proposes a novel interpretation of the law, linking the normative content of certain provisions of the OLA to section 55 of the CA 1982, it only indirectly involves section 55 and, even then, only if Mr. Marleau's interpretation of section 41 of the OLA is accepted without qualification. The Quebec Superior Court does not have jurisdiction to decide that issue and will not be able to decide it even if it renders a decision in the Joyal-Larocque case before this Court renders a decision in Mr. Marleau's case. Before this Court and the Quebec Superior Court are separate albeit similar issues that deserve to be decided by the court of competent jurisdiction seized by the parties in the most expeditious and least expensive manner possible. This is not a duplication of judicial resources, but rather a sound administration of justice that allows the parties to present their arguments on the issues they raise before a decision maker who has jurisdiction to decide them.
- [45] The similarities in the questions of fact and factual matrices, the overlap in the documentary evidence, and the examination and consideration of these elements by the same set of counsel representing the applicants and the respondent before this Court and before the Quebec Superior Court should lead to some economy of resources for the parties, even though different procedural grounds may be raised before each court, in accordance with its own rules of procedure. Nothing in the evidence adduced for this motion suggests that the work done for one case could not be used, at least in part, in preparation for the other.
- [46] Considering all the circumstances, I am not convinced that the interests of justice will be served by forcing Mr. Marleau to await the outcome of a proceeding commenced by others before the Quebec Superior Court for orders that do not and cannot determine the merits of his application for remedy under the OLA before proceeding with his case. Granting the stay sought by the respondent is not in the interests of justice.

V. Conclusion [47] The respondent's motion is dismissed.

- [48] The applicant indicates in his written representations that he is seeking his costs of the motion. The parties are encouraged to attempt to resolve the costs issue among themselves by February 7, 2025. The parties may serve and file written representations of no more than three double-spaced pages, excluding schedules and authorities, until February 10, 2025, failing which this Order will be made on a without costs basis.

THIS COURT ORDERS that:

The respondent's motion is dismissed.

Costs of this motion will be determined following receipt of written representations as to costs.

The parties are to provide the Court with their availability to take part in a virtual management conference by February 14, 2025, to set a date for a management conference to discuss and set a timeline for the next steps in this proceeding.

L

"Benoit M. Duchesne"

Judge

Case Management Judge

Certified true translation

Vera Roy, Senior Jurilinguist

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-1362-20

STYLE OF CAUSE:

PATRICK MARLEAU v THE MINISTER OF JUSTICE

DATE OF HEARING:

JANUARY 30, 2025

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, IN ACCORDANCE WITH RULE 369
OF THE FEDERAL COURTS RULES

ORDER AND REASONS BY:

BM DUCHESNE J

DATED:

JANUARY 30, 2025

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