

CANADA / JUDGMENT

Moreau v. Canada (Parliament)

2025 FC 1479

COURT

Federal Court

DECIDED

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T-1934-24 Citation: 2025 FC 1479 [ENGLISH TRANSLATION] Toronto, Ontario, September 26, 2025

PRESENT: Madam Justice Azmudeh BETWEEN: MICHAEL MOREAU Applicant and PARLIAMENT OF CANADA (AS REPRESENTED BY THE SPEAKER OF THE HOUSE OF COMMONS AND THE SPEAKER OF THE SENATE) Respondent AMENDED JUDGMENT AND REASONS I. Overview [1]

The Speaker of the House of Commons, as a respondent (the “respondent” or “the moving party” in this motion), has brought a motion seeking an order under Rule 220(1)(a) of the Federal Courts Rules, SOR/98-106 (the “Rules”) holding that Members of Parliament and their staff are not “federal institutions” within the meaning of subsection 3(1) of the Official Languages Act, RSC 1985, c 31 (4th Supp) (the “OLA”).

[2] Alternatively, the moving party is seeking an order, under Rule 221(1)(a) of the Rules or under the Court’s absolute jurisdiction to restrict the misuse of legal proceedings, striking out the application for remedy, without leave to amend, on the ground that it has no reasonable prospect of success.

[3] The moving party is also seeking costs. II. Relevant facts [4] The applicant, Michael Moreau, made an application for remedy under section 77 of the OLA. This application arose from a letter he had sent to his Member of Parliament in both official languages. In that letter, Mr. Moreau had written the greeting and opening pleasantries in French, had asked a question in English, and had once again used French for the closing. The Member of Parliament responded in French, which led Mr. Moreau to file a complaint with the Commissioner of Official Languages (the “Commissioner”), alleging a violation of the OLA. The Commissioner, relying on section 90 of the OLA, refused the complaint on the ground that Members of Parliament are not subject to OLA requirements. The applicant then filed an application for judicial review of this refusal.

- [5] More specifically, Mr. Moreau alleges that the response he received from his Member of Parliament violated Parts I and IV of the OLA and subsections 16(1), 17(1) and 20(1) of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 (“Charter”). A. Relevant legislation [6] The following rules are relevant in this case:
220. (1) Preliminary determination of question of law or admissibility—A party may bring a motion before trial to request that the Court determine
- (a) a question of law that may be relevant to an action;
 - (b) a question as to the admissibility of any document, exhibit or other evidence; or
 - (c) questions stated by the parties in the form of a special case before, or in lieu of, the trial of the action.
220. (1) Décision préliminaire sur un point de droit ou d’admissibilité—Une partie peut, par voie de requête présentée avant l’instruction, demander à la Cour de statuer sur:
- a) tout point de droit qui peut être pertinent dans l’action;
 - b) tout point concernant l’admissibilité d’un document, d’une pièce ou de tout autre élément de preuve;
 - c) les points litigieux que les parties ont exposés dans un mémoire spécial avant l’instruction de l’action ou en remplacement de celle-ci.
- (2) Contents of determination—Where, on a motion under subsection (1), the Court orders that a question be determined, it shall
- (a) give directions as to the case on which the question shall be argued;
 - (b) fix time limits for the filing and service of motion records by the parties; and
 - (c) fix a time and place for argument of the question.
- (2) Contenu de la décision—Si la Cour ordonne qu’il soit statué sur l’un des points visés au paragraphe (1), elle:
- a) donne des directives sur ce qui doit constituer le dossier à partir duquel le point sera débattu;
 - b) fixe les délais de dépôt et de signification du dossier de requête;
 - c) fixe les date, heure et lieu du débat.
- (3) Determination final—A determination of a question referred to in subsection (1) is final and conclusive for the purposes of the action, subject to being varied on appeal.

- (3) Décision définitive—La décision prise au sujet d'un point visé au paragraphe (1) est définitive aux fins de l'action, sous réserve de toute modification résultant d'un appel. Striking Out Pleadings Motion to strike Radiation d'actes de procédure Requête en radiation 221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it
- (a) discloses no reasonable cause of action or defence, as the case may be,
 - (b) is immaterial or redundant,
 - (c) is scandalous, frivolous or vexatious,
 - (d) may prejudice or delay the fair trial of the action,
 - (e) constitutes a departure from a previous pleading, or
 - (f) is otherwise an abuse of the process of the Court, and may order the action be dismissed or judgment entered accordingly. 221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
- a) qu'il ne révèle aucune cause d'action ou de défense valable;
 - b) qu'il n'est pas pertinent ou qu'il est redondant;
 - c) qu'il est scandaleux, frivole ou vexatoire;
 - d) qu'il risque de nuire à l'instruction équitable de l'action ou de la retarder;
 - e) qu'il diverge d'un acte de procédure antérieur;
 - f) qu'il constitue autrement un abus de procédure. Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence. III. Legal issues [7] I must dispose of two issues in this case:
- (a) Can the Court rely on Rule 220 to determine a question of law raised in this application? (b) Can the application be struck under Rule 221 or in accordance with the common law test set out in JP Morgan with respect to motions to strike an application? IV. Analysis A. Can the Court rely on Rule 220 to determine a question of law raised in this application? [8] I find that Rule 220 could be adapted to determine a question of law in an application; however, I conclude that it is inappropriate to use the Court's discretion to determine the question the moving party has put forward in this case.
- [9] The moving party asserts that, following the two-step procedure provided for by Rule 220, the underlying application must be dismissed.
- [10] First, the moving party is asking the Court to determine a question of law, namely, whether the definition of the term "federal institution" in subsection 3(1) of the OLA applies to the application. This issue is at the heart of Mr. Moreau's application. However, if the Court

establishes that there is no procedural mechanism allowing it to determine a question of law, it cannot dispose of the motion. The moving party argues that the Court could rule on this motion under Rule 220(1)(a) even if this is a Part IV rule pertaining to actions, because Rule 55 allows the Court to vary a rule in specific circumstances (*Constantinescu v Canada* (Correctional Service), 2021 FC 229 at para 99 [Constantinescu]). In *Constantinescu*, the Court relied on Rule 3 of the Rules to apply a procedure set out in Part IV (actions) to Part V (applications).

- [11] As part of the two-step procedure provided for by Rule 220, the Court first determines whether it should order that the proposed questions be decided before trial. Then, if it issues such an order, the Court must, after a new hearing, render a second decision disposing of the questions of law (*Perera v Canada* (C.A.), 1998 CanLII 9051 (FCA) at para 11).
- [12] I agree with the parties that Rule 220 specifically relates to an action under Part IV of the Rules. Mr. Moreau made an application under section 77 of the OLA. An application under section 77 stems from a prior complaint to the Commissioner, as was the case with Mr. Moreau's application. Exceptionally, in judicial reviews arising from section 77, no decision is actually reviewed, but the Court must nevertheless rule on the matter. However, in *Bossé v Canada* (Public Health Agency), 2023 FCA 199, the Federal Court of Appeal determined that even though an application under section 77 of the OLA is not an ordinary judicial review, it must be treated as such from a procedural standpoint. The Court wrote the following: ... As this Court indicated in *Canadian Food Inspection Agency v. Forum des Maires de la Péninsule Acadienne*, 2004 FCA 263 (at paras. 15–18) (*Forum des Maires*), this application for remedy cannot be characterized as an application for judicial review within the meaning of section 18.1 of the Federal Courts Act, R.S.C. 1985, c. F-7, but is basically similar to an action. Procedurally, however, section 80 of the OLA specifies that an application made under section 77 of the OLA “shall be heard and determined in a summary manner in accordance with any special rules made in respect of such applications pursuant to section 46 of the Federal Courts Act.” As the Court specified in *Forum des Maires*, in the absence of such special rules, an application for remedy under section 77 of the OLA proceeds in accordance with Part V of the Rules, which governs applications for judicial review. [Bossé at para 15.]
- [13] This application was made under section 77 of the OLA; such applications normally proceed as applications filed under Part V of the Rules. In light of section 80 of the OLA and of the Federal Court of Appeal case law clarifying the procedure, the moving party cannot ask that this rule be varied to account for specific circumstances. It has already been established in *Bossé* that despite the specific circumstances surrounding a complaint made under section 77 of the OLA, the procedure to follow is the procedure that governs applications. No [translation] “specific circumstance” distinguishes this application from other applications so as to justify the use of a rule specific to actions (*Bossé* at para 15; see also *Forum des maires de la Péninsule acadienne v Canada* (Food Inspection Agency), 2004 FCA 263 at para 15).

- [14] In the alternative, even if the Court wanted to vary Rule 220 to apply it to this situation, the moving party must still meet the legal test. Under Rule 220(1)(a), the question brought before the Court must satisfy three conditions: there is no dispute as to any fact material to the question of law to be determined; what is to be determined is a pure question of law; and its determination will be conclusive of a matter in dispute so as to eliminate the necessity of a trial or, at least, shorten or expedite the trial (*Google Canada Corporation v Paid Search Engine Tools, LLC*, 2021 FCA 63 at para 7 [Google]).
- [15] The determination of questions prior to the trial—or in this case, prior to the hearing—is an exceptional measure. It is a departure from the general rule that the whole of the case must be heard and determined all at once (*Google* at para 8). Furthermore, preliminary determinations are appropriate only when the Court is of the view that they will save time and expense (*Apotex Inc v Pfizer Ireland Pharmaceuticals*, 2012 FC 1301 at para 8). However, this remains a discretionary power (*R v Wilfred Nadeau Inc*, [1973] FC 1045, 1 NR 67 (CA)).
- [16] I agree with the moving party that the dispute does not relate to any fact material to the question of law. The facts—namely, that an email was sent to a Member of Parliament’s office, and the content of that email—are not in dispute. The applicant is also seeking a decision on a pure question of law, as the question concerns only the interpretation of a statute (*Canadian National Railway Co v Canada (Attorney General)*, 2014 SCC 40 at para 33). I also acknowledge that determining this question would render the holding of a hearing useless. However, I will not exercise my discretion to dispose of the question in this case.
- [17] The question of law is of course at the heart of the application, but to dispose of it, it is necessary to interpret section 90 of the OLA. The application flows from a complaint that the Commissioner of Official Languages refused because the complaint did not involve a specific situation within the purview of a “federal institution”. The Commissioner wrote the following: “In your specific case, Section 90 of the Act exempts Members of Parliament from official language obligations with respect to their private offices and their own staff. This includes means of communication such as the email you have received.” Section 90 of the OLA reads as follows: Parliamentary and judicial powers, privileges and immunities saved
90. Nothing in this Act abrogates or derogates from any powers, privileges or immunities of members of the Senate or the House of Commons in respect of their personal offices and staff or of judges of any Court.
- [18] The Commissioner relied on section 90 to refuse Mr. Moreau’s complaint, considering that language choice is a privilege granted to Members of Parliament. But the moving party is seeking a decision that involves interpreting the meaning of the expressions “federal institution” and “House of Commons”. Although the moving party mentioned section 90 in his memorandum to describe the statutory history, he did not analyze whether this alleged privilege is captured by section 90. The moving party is therefore asking the Court to circumvent the interpretation of an essential provision, which is at the heart of the complaint, by using a provision of the Rules that does not directly apply to applications.

- [19] The interpretation of this provision turns on whether the ability of a Member of Parliament and their office to communicate in either language is a privilege that Members of Parliament hold as individuals. The issue of parliamentary privilege is essential to Mr. Moreau's application and could be an integral part of a hearing on the merits (Mr. Moreau raises privilege in his notice of application [in the first ground of the application]). If the Court allows the motion under Rule 220, this would be tantamount to dismissing the matter on a pure question of law, as this case concerns the interpretation of subsection 3(1) and section 90 of the OLA, in the absence of existing case law. This would prevent the Court from correctly reviewing the entire scope of the OLA.
- [20] The moving party has not submitted any argument on whether it is a privilege to be able to communicate in either official language, but it would be necessary to further consider this issue to determine whether Members of Parliament benefit from a privilege. There is no case law on whether a Member of Parliament's power to communicate with their constituents in the official language of their choosing is a right, a privilege or an immunity. The Court must determine the scope of parliamentary privilege in Canada. This cannot be done by way of an interlocutory motion, as this question must be analyzed to determine whether Members of Parliament have the privilege of communicating in either official language within their personal offices.
- [21] Consequently, it is not for the Court to exercise its discretion and apply Rule 220 to an application when Rule 220 does not apply to it. B. Can the application be struck under Rule 221 or in accordance with the common law test set out in *JP Morgan* with respect to motions to strike an application? [22] I find that the application cannot be struck under Rule 221 or in accordance with the *JP Morgan* test.
- [23] Rule 221 is also in Part IV of the Rules and does not automatically apply to applications. Although there is no specific rule regarding motions to strike an application, the Federal Court has jurisdiction to do so. The test is set out and described in *JP Morgan* as a clear one (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*]). The Court states the following: The Court will strike a notice of application for judicial review only where it is "so clearly improper as to be bereft of any possibility of success" [footnote omitted]: *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, 1994 CanLII 3529 (FCA), [1995] 1 F.C. 588 (C.A.), at page 600. There must be a "show stopper" or a "knockout punch"—an obvious, fatal flaw striking at the root of this Court's power to entertain the application: *Rahman v. Public Service Labour Relations Board*, 2013 FCA 117, at paragraph 7; *Donaldson v. Western Grain Storage By-Products*, 2012 FCA 286, at paragraph 6; *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 S.C.R. 959. [*JP Morgan* at para 47.]
- [24] The Court must apply the "plain and obvious" test, which is sometimes referred to as the "issue doomed to fail" test. This means that the Court will strike an application only where it is "so clearly improper as to be bereft of any possibility of success" (*JP Morgan* at para 47). This means that if an issue is debatable, the motion to strike will be dismissed: "motions that

raise matters more properly addressed in the course of a hearing on the merits are inconsistent with this objective” (Benhsaien v Canada (Attorney General), 2024 FC 307 at paras 11–12, citing JP Morgan at para 48).

- [25] Mr. Moreau’s application stems from a question of statutory interpretation regarding the very reason the Commission refused to review his complaint. The issue of the scope of section 90 is unclear and is open to some debate. Without addressing the scope of section 90, the applicant has already conducted a good deal of statutory interpretation in arguing this motion (a section of his memorandum, between paragraphs 63 and 122, covers this argument, though it does not discuss parliamentary privilege). Through his motion, the moving party is asking the Court to carry out an in-depth analysis of how section 90 should be interpreted, although he did not make representations on its scope and even though there is no case law that directly tackles this issue, in order to find that the application is “doomed to fail” (Wenham v Canada (Attorney General), 2018 FCA 199 at paras 32–33).
- [26] This question is sufficiently complex for additional representations on section 90 to be needed to dispose of it. This is why it cannot be decided at the interlocutory stage through a motion to strike. C. Costs [27] Rule 400 of the Rules grants the Court “full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.” After considering the factors listed at Rule 400(3) of the Rules, I order that costs be in the cause. V. Conclusion [28] The motion is dismissed, with costs in the cause. JUDGMENT in T-1934-24 THIS COURT’S JUDGMENT is that: The motion is dismissed, with costs in the cause. “Negar Azmudeh” Judge Certified true translation Melissa Paquette, Senior Jurilinguist APPENDIX Official Languages Act (R.S.C., 1985, c. 31 (4th Supp.)), arts 77, 90 Loi sur les langues officielles, LRC 1985, c 31 (4e suppl), arts 77, 90. Application for remedy Recours 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. 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. Time limit Délai
- (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
- (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 oeuvre 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).

- (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 Autre délai
- (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.
- (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 oeuvre 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. Order of Court Ordonnance
- (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.
- (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. (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. (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. Conflict — Commissioner's order Incompatibilités : ordonnance du commissaire (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. (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). Other rights of action Précision
- (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.

- (5) Le présent article ne porte atteinte à aucun autre droit d'action. Parliamentary and judicial powers, privileges and immunities saved Privilèges parlementaires et judiciaires 90 Nothing in this Act abrogates or derogates from any powers, privileges or immunities of members of the Senate or the House of Commons in respect of their personal offices and staff or of judges of any Court. 90 La présente loi n'a pas pour effet de porter atteinte aux pouvoirs, privilèges et immunités dont jouissent les parlementaires en ce qui touche leur bureau privé et leur propre personnel ou les juges. FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-1934-24 STYLE OF CAUSE: MICHAEL MOREAU v. ONE PARLIAMENT FOR CANADA ET AL. PLACE OF HEARING: OTTAWA, ONTARIO DATE OF HEARING: MAY 8, 2025 JUDGMENT AND REASONS: AZMUDEH J DATED: SEPTEMBER 8, 2025 AMENDED: SEPTEMBER 26, 2025 APPEARANCES: Michael Moreau FOR THE APPLICANT (ON HIS OWN BEHALF) Alyssa Tomkins Emmanuelle Champagne Marc-André Roy Anne Burgess FOR THE RESPONDENT SOLICITORS OF RECORD: Speaker of the House of Commons Gowling WLG Ottawa, Ontario FOR THE RESPONDENT Speaker of the Senate Office of the Law Clerk and Parliamentary Counsel Ottawa, Ontario FOR THE RESPONDENT

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