

CANADA / JUDGMENT

Moreau v. Halifax Port Authority

2025 FC 345

COURT

Federal Court

DECIDED

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Moreau v. Halifax Port Authority

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[ENGLISH TRANSLATION]

Ottawa, Ontario, February 20, 2025

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

MICHAEL MOREAU

Applicant

and

HALIFAX PORT AUTHORITY and HIS MAJESTY IN RIGHT OF CANADA

Respondents

ORDER AND REASONS

I. Background [1] Michael Moreau [Applicant] filed an application against the Halifax Port Authority [HPA] as well as His Majesty in Right of Canada [Crown] for violations of his language rights under the Official Languages Act, RSC 1985, c 31 (4th Supp) [OLA]. In his application, Mr. Moreau claims damages and specifies that the proceedings must take place in French.

[2] The Applicant is now asking the Court for an extraordinary intervention through a mandatory injunction to force the Respondents to file their pleadings and their affidavit evidence in French but to otherwise communicate with him (by email or mail) in English, even though he chose French as the official language of the proceedings.

[3] For the reasons that follow, the Applicant's motion is dismissed. The pleadings have already been filed in French. In addition, the Applicant has no constitutional right and no right under the OLA to receive affidavit evidence in French or to require counsel to communicate with him or among themselves in English when he himself chose French to be the official language of the proceedings. Since his constitutional rights and his rights under the OLA have not been violated, the Applicant cannot obtain a mandatory injunction within the specific framework of this motion.

II. Facts [4] The Applicant filed a complaint with the Office of the Commissioner of Official Languages of Canada alleging that the information provided by the HPA on the French version of its website was not the same as that provided on the English version for several months.

[5] More specifically, the Applicant complained about three documents available in English that were not available on the French version of the website: a document entitled "One Port City: 50-Year Plan. Crossing the Horizon"; a press release dated October 6, 2023, announcing the "Report on Building Workforce Capacity for a Net Zero Future"; and the report itself, which was published only in English in October 2023. The Applicant also alleged that the French web page entitled "politiques et planification" did not include the same information as that provided on the English page.

[6] The Office of the Commissioner of Official Languages upheld the Applicant's complaints. The HPA then took steps to comply and to ensure that the French and English versions of the website were equivalent, and the Applicant said he was satisfied with the measures taken by the HPA.

[7] Nonetheless, the Applicant filed a notice of application against the HPA and the Crown for violating his language rights and requested a remedy under section 77 of the OLA.

- [8] The Applicant filed his application and his sworn statement in French and chose Halifax as the place of hearing. Following exchanges with counsel for the Respondents, Mr. Moreau stated that he would prefer to receive all electronic and informal correspondence in English but also asked that all the documents filed with the Court be in French.
- [9] Out of courtesy, counsel for the Crown respected the Applicant's preferences and has been communicating with him informally in English. For their part, counsel for the HPA still communicate with the Applicant informally in French, that is, the language he chose for the proceedings.
- [10] The HPA then served and filed an affidavit in defence, which was drafted in English.
- [11] The Applicant therefore filed this motion for a mandatory injunction, asking that the HPA and the Crown file their pleadings and evidence in French but communicate informally with him for any other reason in English.

III. Issues [12] Should the Court grant the Applicant a mandatory injunction requiring the Respondents to file their pleadings and evidence in French but to otherwise communicate with him in English?

IV. Analysis A. Test applicable to motions for an injunction [13] At paragraph 12 of *R v Canadian Broadcasting Corp*, 2018 SCC 5 [Canadian Broadcasting Corp], the Supreme Court of Canada [SCC] reiterated the test that applies to motions for an interlocutory injunction and affirmed that the test has three elements, as previously stated in *Manitoba (Attorney General) v Metropolitan Stores Ltd*, [1987] 1 SCR 110, 1987 CanLII 79 (SCC) [Metropolitan Stores] and *RJR-Macdonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334, 1994 CanLII 117 (SCC) [RJR-MacDonald]. The test requires the Applicant to demonstrate (1) that there is a "serious question to be tried", in the sense that the application is neither frivolous nor vexatious, in order to convince the Court that he will suffer (2) irreparable harm if an injunction is refused, and (3) that an assessment of the balance of convenience shows that he would suffer greater harm if the injunction is refused than the Respondents would if it is granted.

- [14] These requirements are conjunctive, and failure of any of the three elements of the test is fatal to the motion (*Canada (Citizenship and Immigration) v Ishaq*, 2015 FCA 212 at para 15). However, the three prongs of the test are not water-tight compartments. They are flexible and interrelated. They must be considered together and inform the overall approach with respect to the Court's discretion in the specific case. Indeed, the *prima facie* probity of the arguments of the case may have an impact on the Court's assessment of irreparable harm and of the balance of convenience in the next steps (*Indigenous Police Chiefs of Ontario v Canada (Public Safety)*, 2023 FC 916 at para 71 [Indigenous Police Chiefs of Ontario]).
- [15] The decision to grant an interlocutory injunction is discretionary (*Canadian Broadcasting Corp* at para 27). Ultimately, "[t]he fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case. This will necessarily be context-specific" (*Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25 [Google]).

To sum up, Google states that, in exercising their discretion, “the courts need to be mindful of overall considerations of justice and equity, and that the RJR-MacDonald test cannot be simply boiled down to a box-ticking exercise of the three components of the test” (Indigenous Police Chiefs of Ontario at para 72).

- [16] In this case, with respect to the first prong of the test, namely, whether there is a “serious question to be tried”, the injunction requested is mandatory in nature because the Applicant is asking the Court to require the Respondents to “undertake a positive course of action” (Canadian Broadcasting Corp at para 15), that is, to translate into French the affidavit evidence, which exists only in English, and to correspond with him in English despite his choice to proceed in French. These requests require the Respondents to take certain actions, as opposed to an injunction that would simply prohibit them from taking an action. In such circumstances, the Applicant must therefore establish that there is more than a serious question to be tried. In accordance with paragraphs 13 to 15 of Canadian Broadcasting Corp, he must show a “strong prima facie case” and demonstrate that he is “very likely to succeed” (Canadian Broadcasting Corp at paras 15, 17).
- [17] With respect to the second prong of the test, the only question is whether refusing to grant the relief requested could harm the Applicant’s interest and cause him prejudice that would not be compensated by damages should he succeed on the merits of the case (RJR-MacDonald at 334, 341). To meet this prong of the test, the Applicant must present solid evidence that enables the Court to assess the alleged irreparable harm. He must produce “evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted. Assumptions, speculations, hypotheticals and arguable assertions, unsupported by evidence, carry no weight” (Glooscap v Canada (National Revenue), 2012 FCA 255 at para 31 [Glooscap]; International Longshore and Warehouse Union v Canada (Attorney General), 2008 FCA 3 at paras 21, 23–26 [International Longshore]).
- [18] In the third prong of the test, the Court must determine which of the two parties would suffer the greatest harm if the injunction is granted or refused (RJR-MacDonald at 342). At that stage, there are many factors to consider in assessing the balance of convenience and they vary from case to case (RJR-MacDonald at 342, 349).

B. The Applicant met none of the three prongs of the test for a mandatory injunction (1) There is neither a serious question to be tried nor a strong prima facie case [19] The Applicant submits that he is “very likely to succeed” because the Respondents’ actions violate sections 16.1 and 19 of the Charter and sections 18, 25 and 41 of the OLA. His arguments deal with two types of communications, namely, “informal” communications by email or by mail between him and the Respondents (to be distinguished from oral and written pleadings) and with the HPA’s affidavit, which the Applicant is requesting to be translated into French.

- [20] In my view, the Applicant has not shown that he is “very likely to succeed” or even that there is “a serious question to be tried” in that the injunction sought would not be considered mandatory in nature.
- (a) “Informal” communications [21] First, the argument regarding section 16.1 of the Charter can be summarily rejected. That provision applies only to New Brunswick.
- [22] According to the Applicant, section 19 of the Charter and sections 18, 25 and 41 of the OLA impose on the HPA an obligation to “provide bilingual litigation services to the public”, to translate its evidence and to communicate with him in the language of his choice, in accordance with his instructions and the parameters he sets.
- [23] The scope of language rights is not as broad at the Applicant claims, and he is not “very likely to succeed” (Canadian Broadcasting Corp at paras 15, 17).
- [24] Subsection 19(1) of the Charter provides that “[e]ither English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament”. Thus, section 19 of the Charter enables “any person” to use either of the official languages in pleadings or in a process before a court, which implies that “[t]he judge and all court officials can use English or French as they wish, both in oral and in written communication” (R v Mercure, [1988] 1 SCR 234 at 273; see also MacDonald v City of Montreal, [1986] 1 SCR 460 at 483 [MacDonald]; Attorney General of Quebec v Blaikie, 1979 CanLII 21 (SCC), [1979] 2 SCR 1016 at 1030 [Blaikie]; Vanessa Gruben, “Le bilinguisme judiciaire” in Michel Bastarache and Michel Doucet, eds, Les droits linguistiques au Canada, 3rd ed (Cowansville: Yvon Blais, 2013) 301 at 322, 330 [Gruben]). This provision also provides “counsel representing the government party the constitutional right to use the official language of his or her choice” (Charlebois v Saint John (City), 2005 SCC 74 at para 55 [Charlebois]). In this regard, the SCC ruled that the rights guaranteed by section 19 of the Charter had the same scope as those protected by section 133 of the Constitution Act, 1867 (Mazraani v Industrial Alliance Insurance and Financial Services Inc, 2018 SCC 50 at paras 21–23, 34 [Mazraani]; Charlebois at para 20; Société des Acadiens v Association of Parents, [1986] 1 SCR 549 at 574; Gruben at 330, 332).
- [25] Section 18 of the OLA provides that “[w]here Her Majesty in right of Canada or a federal institution is a party to civil proceedings before a federal court, (a) Her Majesty or the institution concerned shall use, in any oral or written pleadings in the proceedings, the official language chosen by the other parties...” [emphasis added]. Therefore, section 18 of the OLA incorporates the rights set out in section 19 of the Charter and adds an obligation for the Crown or federal institution to use the official language chosen by the other party (Charlebois at para 55 (discussing subsection 19(2) of the Charter, the principle of which also applies to subsection 19(1)); Gruben at 330–31, 360–62; Gregory v Canada, 2019 FC 153 at para 38).

- [26] The obligation of the Crown or federal institution (and their individual counsel) to communicate in the official language chosen by the other party in oral and written pleadings therefore does not stem from section 19 of the Charter, but from section 18 of the OLA (Charlebois at para 55 (discussing section 22 of New Brunswick’s Official Languages Act, the wording of which is equivalent to section 18 of the OLA); Gruben at 360–61).
- [27] However, the purpose of these provisions does not include a party’s right to change course and impose a second official language on another person for strategic or simply emotional reasons. Neither section 19 of the Charter nor section 18 of the OLA enable a party to impose its own conditions regarding the use of both official languages, to switch from one official language to the other at will or to require the Crown or federal institution to respond in one official language or the other on the basis of the other party’s daily choice.
- [28] The purpose of protecting language rights, including in judicial matters, is to enable litigants and minority communities to have access to institutions in their official language and thus to promote the preservation and development of official language communities and the equality of status of French and English (R v Beaulac, [1999] 1 SCR 768 at paras 20, 25, 41 [Beaulac]; Mazraani at paras 27–28; St. John’s International Airport Authority v Thibodeau, 2024 FCA 197 at para 70).
- [29] It is important to note that, while section 18 of the OLA requires the Crown or federal institution to use the official language chosen by the other party, sections 16 and 20 of the Charter and Part IV of the OLA also require federal institutions to provide “services” in both official languages. Do these provisions impose an obligation on the Crown or federal institution to communicate with the other party in both official languages during the proceedings and thus allow for “hybrid” or “bilingual” court proceedings, that is, in both English and French interchangeably, just because the litigant so chooses?
- [30] It is not open to the Court to decide this issue definitively on a motion for a mandatory injunction. However, in my view, the Applicant has not shown a strong *prima facie* case with respect to this issue.
- [31] It is not in dispute that the Applicant has chosen French as the official language for the proceedings and that the Respondents have complied with this choice. Notwithstanding the issue of whether communications between the Crown or federal institution and the other party in the course of proceedings constitute a “service” within the meaning of sections 16 and 20 of the Charter and of Part IV of the OLA (an issue that the Court cannot decide definitively on a motion), the relevant provisions of the Charter and the OLA do not set out a right for any person to switch from one official language to the other at will and on the basis of changing circumstances and to require the Crown or federal institution to align its “service” to the person’s *ad hoc* changes. In other words, even if this were a “service” within the meaning of Part IV of the OLA, neither the Charter nor the OLA requires the Crown or federal institution to be able to provide the service in both official languages to the same member of the public for the same application when that member of the public has already

chosen one of the official languages for the provision of the “service” in question. In that respect, the Respondents argue that communications between counsel for the Crown or federal institution and the other party in the course of proceedings do not constitute a “service” to the public and that Part IV of the OLA does not apply, since counsel for the Crown or federal institution provide a “service” to their client, namely, the Crown or federal institution, not to the opposing party. According to the Respondents, on the contrary, section 18 of the OLA (Part III of the OLA) specifies that both Her Majesty in right of Canada and a federal institution (such as the HPA) must use the official language chosen by the other parties “in any oral or written pleadings” [emphasis added] and that there is no other obligation to communicate in the official language chosen in other contexts in the normal course of a proceeding, such as for informal communications between the parties. The Crown and the federal institution can therefore acknowledge the official language chosen by the litigant in a pleading and give instructions to their legal counsel in that language without worrying about then needing to otherwise communicate with the litigant in the other official language despite the litigant’s request.

- [32] The litigant may realize during the proceedings that the wrong choice was made and request to change the official language. Such a change may be legitimate and may be accepted. However, requiring the proceedings to actually take place in both official languages because the litigant asks to be communicated with in one official language for some aspects, but in the other official language for others, does not appear to fall within the purpose of sections 16 to 20 of the Charter or of Parts III and IV of the OLA. Requiring the Crown or federal institution to respond in both official languages at the Applicant’s discretion seems to exceed the purpose of the language protections under the Charter and the OLA in terms of judicial bilingualism.
- [33] It is important to note that the Applicant complained to the Office of the Commissioner of Official Languages (in English) about the HPA’s refusal to communicate with him informally by email in English. The opinion of the Office of the Commissioner of Official Languages, which is the entity responsible for investigating complaints under the OLA, may be consulted by the courts and may be persuasive (*Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)*, 2022 FCA 14 at para 161). The Office of the Commissioner of Official Languages refused to investigate the matter for the following reason:

The purpose of the Act is to ensure respect for English and French as the official languages of Canada, their equality of status and equal rights and privileges as to their use in all federal institutions. ... We have therefore determined that it is advisable not to conduct an investigation into your complaint for the following reason: The subject matter of the complaint does not involve a contravention or failure to comply with the spirit of the Act or does not for any other reason come within the authority of the Commissioner (58(4)(c)). Since you filed your notice to the HPA in French, that institution had the obligation, under the Act, to comply with your choice of language for the proceedings and communicate with you in your chosen official language,

which is French in this instance. The Act does not stipulate that a federal institution must communicate with its clients in both official languages, but rather, in the clients' preferred official language. Consequently, HPA does not have the obligation to provide a portion of documents in one official language and other documents in the second official language.

(Applicant's Record, Exhibit AR-32 of Mr. Moreau's Affidavit at 597).

- [34] The interpretation of the Office of the Commissioner of Official Languages is consistent with the SCC's teachings. At paragraph 28 of *Mazraani*, the SCC explains that sections 14 and 15 of the OLA restate the essence of the right guaranteed in section 19 of the Charter to "choose" an official language. The SCC went on to endorse the federal courts' efforts to implement this right:
- [29] A number of courts that have the constitutional duty to allow any person to speak in the official language of his or her choice have therefore adopted special measures to facilitate the exercise and assertion of this right. As we mentioned above, the Tax Court of Canada Rules (General Procedure) include standard forms that require the parties to specify the language in which their witnesses will be testifying. This requirement has the advantage of making it clear that the choice of language is not to be made by the court or by the other party, and also of encouraging discussions with witnesses on this subject and ensuring that the other party is informed in this regard. The Federal Courts have enacted similar rules (Federal Courts Rules, SOR/98-106, rr. 314 and 347). ...
- [35] Accordingly, it is open to judicial institutions to adopt measures so that litigants can make their choice. Once the choice has been made, the institution and the other actors involved in the court proceedings can rely on it and put in place the measures necessary to implement that choice. However, the scope of the right to choose an official language does not mean, as in the case at bar, that both languages can be chosen, that parameters can be imposed for the use of either official language and that the Crown or federal institution can be required to communicate in both official languages with the same litigant. Otherwise, no "choice" would be necessary because all litigants would always be able to request to communicate in both official languages. This exceeds the purpose of the guaranteed right, which is to protect the official language minority. In *Mazraani*, the SCC adds the following at paragraphs 40 and 42:
- [40] With these guideposts in mind, it bears repeating that the right at issue in this case is that of speaking in the official language of one's choice. As this Court explained in *Beaulac*, language rights protect a person's right to make a personal choice that does not depend on external factors such as the person's command of the chosen language or his or her linguistic heritage: "... Canadians [have the freedom] to freely assert which official language is their own language" (para. 34). When a person exercises this right, there is thus no need to verify whether he or she speaks better in one language or the other. A person may choose to stick to a single official language or may even change his or her mind while testifying.

...

- [42] ... The right is not a right to speak in one's mother tongue or in a language that the court deems to be the person's language: it is the right to make a personal choice. If what the right protected was merely speaking in one official language or the other, it would protect nothing: a person must speak a language in order to talk and must, at least summarily, choose one of the two languages before speaking. What the courts concerned must protect is not just the fact of speaking in one of the official languages, but also the free and informed nature of the choice to speak in one of them rather than the other. [Emphasis in original.]
- [36] Consequently, when a person exercises this right, it is not appropriate to verify whether the person speaks one official language better than the other (see *Ewonde v Canada*, 2017 FCA 112 at para 18). In this case, the Applicant indicated in his affidavit in support of the motion that his mother tongue is English. Nonetheless, he has the right to choose French as the official language to be used in the proceedings that he instituted against the Respondents. If needed, the litigant could realize that the original choice of official language was not optimal, change his or her mind and opt for the other official language.
- [37] However, the obligation to make "a choice" is real. The Crown and the federal institution must be able to plan for their obligations. Requiring the use of both official languages in the same proceeding at the Applicant's discretion implies that the Applicant is claiming the right not to make "a choice" and instead to require the Crown or federal institution to respond to him in both official languages on the basis of parameters he has imposed. In addition, the alleged right to "choose" both official languages or to not make "a choice" would require the Crown or federal institution to always hire bilingual counsel or to hire two counsel (one to communicate in each official language). This exceeds the purpose of the Applicant's language right. The Applicant does not have a constitutional right or one protected by the OLA to impose "hybrid" or "bilingual" court proceedings on the Respondents.
- [38] The fact that the Applicant's language right includes the obligation to make a choice has also been affirmed by the SCC on several occasions. For example, in *Blaikie*, the SCC ruled that section 133 of the Constitution Act, 1867 [which has the same wording on this point as section 19 of the Charter] grants any person involved in proceedings before the courts the right to use either French or English in any pleading or process (*Blaikie* at 1030; *MacDonald* at 513; *R v Tayo Tompouba*, 2024 SCC 16 at para 32; *Mazraani* at paras 21–23, 34; *Gruben* at 322, 330, 332).
- [39] In *Charlebois*, the SCC stated at paragraph 21 that "[i]n accordance with the constitutionally mandated general rule, each litigant can choose his or her official language of preference" [emphasis added]. The SCC then goes on to discuss section 22 of New Brunswick's Official Languages Act, SNB 2002, c O-0.5 (equivalent to section 18 of the OLA), and to explain that "[i]t is only where the other litigant is Her Majesty, or an "institution", that the statute gives precedence to the individual litigant's choice" (at para 21).

- [40] In *Centre québécois du droit de l'environnement v National Energy Board*, 2015 FC 192, Justice de Montigny (as he then was) ruled that the provisions of the OLA concerning language rights are consistent with the Charter and defined the rights covered by Part III of the OLA as including the right of every person to use either official language in any court or in any pleading in or process issuing from any such court. According to Justice de Montigny:
- [28] That provision is entirely consistent with section 133 of the Constitution Act, 1867, and sections 16 to 22 of the Constitution Act, 1982, which address language rights in the judicial system in Canada. Those provisions guarantee what is referred to as “optional unilingualism” at the option of the speaker. ... Put differently, it is the right to use either official language in any court or in any pleading in or process issuing from any such court that is guaranteed, and not the right that the official language used will be understood by the person to whom the pleading or process is addressed. ...

(*Centre québécois du droit de l'environnement v National Energy Board*, 2015 FC 192 at para 28, emphasis added)

- [41] Finally, in *Ewonde v Canada*, 2017 FCA 112 at paragraph 18, the Federal Court of Appeal affirmed that section 18 of the OLA requires a party to make a choice while also allowing the party to change that choice during the course of the proceedings, which would oblige the Crown to switch to the other official language “unless the Crown establishes that reasonable notice has not been given”. The party’s choice must therefore be real and cannot impose on the Crown or federal institution the obligation to continually make use of both official languages in the same proceeding. Under section 18 of the OLA, the Crown or federal institution has the right to expect all communications to be done in the language chosen by the party, and if the party changes the language, starting from that request to change, all communications must be done in the other language. But section 18 of the OLA does not grant a party the right to use both official languages in the same proceeding interchangeably and at any time for strategic or other reasons.
- [42] Therefore, subsection 19(1) of the Charter and Part III of the OLA grant any person involved in a proceeding before a court the right to use the language of his or her choice. They do not, however, allow any person to use both official languages at any time. These provisions do not give anyone the right to “bilingual” proceedings.
- [43] Finally, the Applicant’s other arguments regarding sections 25 and 41 of the OLA do not show that he is “very likely to succeed” (*Canadian Broadcasting Corp* at paras 15, 17).
- [44] First, section 25 of the OLA requires any person or organization that provides services to the public on behalf of federal institutions to be able to provide those services in both official languages. Although this is true, the other person or organization only has to provide the services under the same conditions as the federal institution itself would, if such were the case. In this case, counsel hired by the HPA to deal with the proceedings instituted by the Applicant in French, who are part of a private law firm, are the “other person or organization” in question. If section 25 of the OLA applied to them in these proceedings

(which I do not need to decide), counsel would be obliged to communicate with the Applicant under the same parameters as the federal institution itself, which is the HPA. As discussed above, the HPA's language obligations in this case are set out in section 18 of the OLA, and the HPA complied with them by hiring Francophone counsel. Since, in the circumstances, the HPA must communicate with the Applicant in French, which was the choice he made for these proceedings, the HPA is not obliged to communicate with the Applicant in English in the course of these proceedings. For the same reason, its counsel are not obliged to do so under section 25 of the OLA (if that provision applies). Obviously, if the Applicant communicates with the HPA as part of a request for service outside these proceedings, the HPA will have to respond to the Applicant in the language of his choice (as will any other person or organization mandated to respond to him on its behalf).

- [45] As for section 41 of the OLA, that provision describes Canada's commitment to strengthening linguistic minority communities, to protecting and promoting French and to advancing learning opportunities for members of English and French linguistic minority communities. The Applicant submits that this provision, specifically, subparagraph 41(6)(c) (v), requires the HPA to instruct its counsel to communicate with him in the official language of his choice because the justice sector is essential to enhancing the vitality of Francophone minority communities and aims to "protect and promote the presence of strong institutions serving those communities" [emphasis added]. However, once again, counsel for the HPA are communicating with the Applicant in the language of the linguistic minority community that he chose, namely, French, which is also the language of the linguistic minority community in Nova Scotia. Requiring counsel for the HPA to communicate with him in English, the majority language, exceeds the purpose of promoting the minority language and protecting institutions for the Francophone minority in Nova Scotia.
- (b) The Applicant is not entitled to obtain a translation of the affidavit evidence [46] Mr. Moreau has not shown a strong *prima facie* case for obtaining a translation of the HPA's affidavit and is therefore not "very likely to succeed" in that respect (Canadian Broadcasting Corp at paras 15, 17).
- [47] Subsection 19(1) of the Charter and Part III of the OLA do not grant a right to obtain a translation of the evidence. In *Charlebois*, the SCC held that the words "processes" and "oral or written pleadings" (included in subsection 19(1) of the Charter and section 18 of the OLA) "do not include evidence tendered in the course of a proceeding, whether it be in the form of an affidavit or not", nor do they include translating case law cited in support of arguments (*Charlebois* at paras 7, 53–55; see also *Gruben* at 323–24, 330–34, 343, 360–62, 401–02).

[48] In Mazraani, the SCC affirmed that “a judge cannot ask a person to speak in an official language other than the language of the person’s choice. A request to that effect is in and of itself a violation of s. 14 of the OLA, s. 19 of the Charter and s. 133 of the Constitution Act, 1867” (Mazraani at para 34). Therefore, a witness cannot be compelled to testify in an official language other than the one the witness has chosen, which includes affidavit evidence (see Mazraani at paras 34, 37).

[49] Mr. Moreau understands that his request for a translation of the HPA’s affidavit does not fall under any obligation set out in the OLA and cites Lavigne v Canada (Minister of Human Resources Development) et al, (1995) 96 FTR 68 (TD) at paragraphs 7 and 12 [Lavigne]. In that decision, the Court found that the respondent did not have to provide a translation of affidavits into English, thus clarifying the scope of the OLA to the effect that there was no obligation to provide a translation even when the affidavit was not drafted in the language initially chosen by the other party:

7 ... It follows that testimony by way of affidavit does not form part of the “pleadings” or “les plaidoiries” or “les actes de procédure” within the meaning of section 18 of the Official Languages Act and hence the respondents are subjected to no linguistic obligations with regard thereto. By parity of reasoning, the same extends to the documents annexed to these affidavits by way of exhibits.

12 I am also unable to identify any legal basis for the contention that the Crown or a federal institution has an obligation to provide a party with a translation of the affidavits sworn to by its witnesses, when it is written in the official language other than that chosen by the other party. ... There is therefore no constitutional right entitling a party to read affidavit evidence in the official language which he or she has chosen, and hence no corresponding obligation on the part of the governmental party to provide a translation.

(Lavigne at paras 7, 12; see also Chanel S de RL v Genève accessoires inc, 2008 FC 87 at para 13)

[50] Mr. Moreau submits, however, that the decisions holding that evidence does not have to be translated should be revisited (Canada (Attorney General) v Bedford, 2013 SCC 72 [Bedford]) and were decided per incuriam.

[51] Yet, not only did the SCC rule that language rights did not include a right to obtain a translation of evidence into the other official language (Charlebois at paras 7, 55; see also Gruben at 323–24, 330–34, 360–62, 401–02), but no evidence was filed by Mr. Moreau showing that there were “significant developments in the law, or ... a change in the circumstances or evidence that fundamentally shifts the parameters of the debate” (Bedford at paras 42–44). Therefore, Mr. Moreau has not shown a strong prima facie case for granting his motion.

- (2) There is no irreparable harm [52] The case law is clear that the three prongs of the RJR-MacDonald test must all be met to obtain an injunction. Since the Applicant has not established that there was a serious question to be tried or an issue on which he was “very likely to succeed” (Canadian Broadcasting Corp at para 17), his motion must fail. However, I also find that the Applicant has not met the second prong of the RJR-MacDonald test because he would not suffer irreparable harm if the motion were dismissed.
- [53] The Applicant claims that he would suffer irreparable harm because of “loss of enjoyment of life” and “avoidable suffering”. There is no medical evidence to support these claims—his [translation] “suffering” is “demonstrated” only by his own social media posts.
- [54] However, a review of these posts shows that the negative emotions mentioned are not conclusive because in some cases the Applicant questioned his own level of emotion and in other cases he stated that he liked the situation or laughed about it (Exhibits O, P, Q, U and Y of J. Gaudet’s Affidavit, HPA’s Record at 49, 51, 53, 61, 69).
- [55] An allegation of suffering or of loss of enjoyment of life is insufficient in itself to constitute tangible evidence of irreparable harm. In *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1232 [Lavergne-Poitras], in the context of a COVID-19 vaccine mandate, the applicant referred to “severe anxiety that both the prospect of vaccination and the loss of employment cause him” (at para 83) to demonstrate irreparable harm. The Court rejected his allegation, holding that the evidence was “far from sufficient to establish a degree of harm to his mental health that would qualify as irreparable” (at para 87). Since he did not submit any probative evidence of harm, the applicant provided only “general assertions, assumptions, or speculation”, which did not meet the parameters of the RJR-MacDonald test, and especially the burden of proof required to demonstrate irreparable harm (Lavergne-Poitras at para 87, citing *Gateway* at paras 14–16; *Glooscap* at para 31). The same conclusion applies here.
- [56] In addition, the Applicant’s posts show that, according to him, the harm suffered in his specific circumstances can be compensated by monetary damages. For example, the Applicant stated several times that the failure to communicate with him in the language of his choice represents an “easy 2k”, while he should ask for “\$5K (maybe ask for 10 in the NoA for wiggle room...)” (Exhibits R, S and T of J. Gaudet Affidavit, HPA’s Record at 55, 57, 59).
- [57] Finally, the violations alleged in this motion deal with rights that the Applicant claims are protected under the OLA. Damages can be awarded under section 77 of the OLA for such violations, and he is seeking such damages in his application. Accordingly, the alleged harm can be compensated by damages.

- [58] Therefore, in this case, the evidence produced by the Applicant is simply not sufficiently probative to establish that he would suffer irreparable harm if his motion for a mandatory injunction were not granted, especially since, once again, he stated that damages could compensate him adequately. The harm has therefore not been sufficiently established and it is not irreparable since it can be compensated by damages, as admitted by the Applicant himself.
- (3) The balance of convenience favours the Respondents [59] Although the Applicant's motion fails on the first two prongs of the test, I also find that he has not met the final prong of the RJR-MacDonald test, since the balance of convenience favours the Respondents.
- [60] At this stage, the Court must assess the nature of the relief sought, the nature of the harm alleged and the public interest (RJR-MacDonald).
- [61] In this case, the Applicant has the right to choose the language in which he institutes proceedings and to receive communications from the Respondents in that language. He has made that choice, and the Respondents communicate with him in French.
- [62] The Applicant could have chosen English. However, despite federal bilingualism, the Applicant has no right to request that the entire proceeding be conducted in both official languages simultaneously.
- [63] Most of all, in this case, the Applicant is trying to impose his demands on the basis of his own parameters simply because he claims to have the right to do so in a bilingual country. The Applicant also files complaints with the Office of the Commissioner of Official Languages at every opportunity.
- [64] Precisely because it feared that the Applicant would file a complaint against it if it agreed to communicate with him in English despite the fact that the proceedings were instituted in French, the HPA decided to continue in the language chosen by the Applicant, namely, French. Since the HPA responded to him in French as required by the pleading, and not in English as he was asking it to, the Applicant did in fact file a complaint with the Office of the Commissioner of Official Languages because of communication from the HPA in French, the language he had chosen for the proceedings, not in English, the language he had chosen for his "informal" communications. This complaint was summarily dismissed by the Office of the Commissioner of Official Languages (Exhibit Q of J. Gaudet's Affidavit, HPA's Record at 53). The HPA also states that, if it had to communicate in both official languages, there would inevitably be some errors, which would result in other complaints by the Applicant.
- [65] As for the Crown, it has accepted the Applicant's request and communicates with him informally in English.
- [66] It is clear that, in this case, a certain stability is needed for the Respondents with respect to the language they can proceed in, both for responding to the Applicant and for communicating among themselves. The Applicant has the right to select the language of his choice, which he has done, but he cannot impose the use of both official languages for

communicating during the proceedings, which would be the result of the injunction if it were granted in this case. Imposing both official languages in the proceedings could lead to uncertainty and errors with respect to the use of one or the other official language, depending on the context chosen by the Applicant, at the risk of other complaints being filed.

[67] Accordingly, the balance of convenience favours the Respondents in this case.

V. Costs [68] Since they were successful in this motion, the Respondents are entitled to their costs.

[69] The HPA submits that the Applicant's motion is vexatious, especially since the Office of the Commissioner of Official Languages has already dismissed his complaint on the matter (Exhibit Q of J. Gaudet's Affidavit, HPA's Record at 53). The HPA also notified the Applicant that it would claim its costs if the motion were filed (Exhibit L of J. Gaudet's Affidavit, HPA's Record at 36). The HPA also submits that the Applicant admitted at the hearing that he had received legal advice that his motion might be vexatious (Exhibits V and W, Exhibit Q of J. Gaudet's Affidavit, HPA's Record at 63, 65).

[70] The HPA considers that, in accordance with column III of Tariff B of the Federal Courts Rules (SOR/98-106), the total amount of costs payable is \$5,580, especially since the motion required the work of more than one counsel and a significant investment of legal resources. To arrive at that amount, the HPA is claiming \$1,260 for the preparation and filing of a contested motion (7 units) and 3 units for each hour of the motion hearing for an 8-hour hearing, for an amount of \$4,320.

[71] I have no doubt that the HPA has invested significant legal resources and that the costs in the amount claimed are only a fraction of the amount incurred to contest the motion. However, I consider that the motion hearing lasted half a day. A duration of 3 hours for the hearing is sufficient for the costs for the HPA, because some time was also allotted to the Crown to make its own representations.

[72] Accordingly, since the amount of each unit is assessed at \$180 according to the Rules, costs in the total amount of \$2,880 are payable to the HPA (\$1,260 for the preparation and filing of the contested motion (7 units) and \$1,620 for the hearing (3 hours at 3 units each)). An amount of \$2,880 is reasonable in this case, especially since the Applicant claimed \$5,000 in costs if his motion were successful.

[73] Since it is also entitled to its costs given the outcome of the motion, the Crown is claiming an amount of \$1,000. This amount is also reasonable in the circumstances. The lower amount claimed by the Crown can be explained by the fact that it was not the subject of the motion to have the affidavit evidence translated and that it benefited from having the HPA's written representations before preparing its own. Thus, the Crown was able to save on costs and on preparation time.

VI. Conclusion [74] Since the Applicant did not meet any of the prongs of the RJR-MacDonald test, the motion for an injunction is dismissed with costs in the amount of \$2,880 to the HPA and \$1,000 to the Crown, including disbursements.

ORDER in T-580-24

THE COURT'S JUDGMENT is as follows:

The motion is dismissed.

Costs in the amount of \$2,880 are payable within 60 days to the HPA, including disbursements.

Costs in the amount of \$1,000 are payable within 60 days to the Crown, including disbursements.

"Guy Régimbald"

Judge

Certified true translation

Margarita Gorbounova, Senior Jurilinguist

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-580-24

STYLE OF CAUSE:

MICHAEL MOREAU v HALIFAX PORT AUTHORITY and HIS MAJESTY IN RIGHT OF CANADA

PLACE OF HEARING:

halifax, NOVA SCOTIA

DATE OF HEARING:

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JUDGMENT AND REASONS:

RÉGIMBALD J.

DATED:

FEBRUARY 20, 2025

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