

Federal Court



Cour fédérale

Date: 20200827

Docket: T-1023-19

Citation: 2020 FC 858

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 27, 2020

PRESENT: The Honourable Mr. Justice Bell

BETWEEN:

MICHEL THIBODEAU

Plaintiff

and

**ADMINISTRATION DE L'AÉROPORT
INTERNATIONAL DE ST. JOHN'S**

Defendant

ORDER AND REASONS

I. Background

[1] The Commissioner of Official Languages (the “Commissioner”) brings a motion in which he seeks permission to intervene in the within matter on four (4) distinct questions. The defendant, St. John’s International Airport Authority (the “Airport”), consents to the

Commissioner's request to intervene on questions 1 and 2. The Airport opposes the Commissioner's motion to intervene on questions 3 and 4. The plaintiff, Michel Thibodeau (Mr. Thibodeau) consents to the motion to intervene on all four (4) questions.

[2] By way of background, I would note that Mr. Thibodeau is no stranger to litigation involving language rights, nor is he unfamiliar with the processes before the Commissioner and the courts. According to the record before me, Mr. Thibodeau had, as of April 1, 2020, twenty (20) pending complaints against the Airport and dozens against other organizations. Between January 2017 and mid-2019, Mr. Thibodeau filed more than 200 complaints with the Commissioner's office. In addition, he has appeared before all levels of the courts, including the Federal Court, the Federal Court of Appeal and the Supreme Court of Canada, on language issues.

II. Bases Upon Which Intervener Status Requested

[3]The Commissioner originally sought to intervene on the following four questions, which are set out in paragraph 15 of his Notice of Motion:

Notice of Motion for Leave to Intervene (Rules 109 and 369 of the *Federal Courts Rules*) of the Commissioner of Official Languages of Canada, dated March 5, 2020

[...]

15. The Commissioner has a particular interest in the issues raised in this proceeding, as :

Avis de requête en autorisation d'intervenir (Règles 109 et 369 des *Règles des cours fédérales*), du Commissaire des langues officielles du Canada, en date du 5 mars 2020

[...]

15. Le commissaire a un intérêt particulier dans les questions soulevées dans le présent litige

puisque :

- | | |
|---|---|
| <p>a. The Courts have not yet ruled on the interpretation of section 4 of the <i>ATA</i>. The interpretation advanced by the Respondent is contrary to the conclusions of the investigation reports issued by the Commissioner in the present case as well as to his interpretation maintained since the adoption of this disposition. A restrictive interpretation as proposed by the Respondent will have a direct impact on the Commissioner's investigative power and his power to issue recommendations to federal institutions.</p> | <p>a. Les tribunaux ne se sont pas encore prononcés à ce jour sur l'interprétation de l'article 4 de la <i>LCA</i>. L'interprétation avancée par la défenderesse est contraire aux conclusions des rapports d'enquête émis par le commissaire dans le présent recours ainsi qu'à son interprétation maintenue depuis l'adoption de cette disposition. Une interprétation restrictive telle que proposée par la défenderesse aura un impact direct sur le pouvoir d'enquête et le pouvoir de faire des recommandations du commissaire.</p> |
| <p>b. None or very few decisions have addressed the scope of the notion of "travelling public" pursuant to section 23 of the <i>OLA</i>. However, the Respondent proposes a restrictive interpretation of this concept to circumscribe its obligations under Part IV of the <i>OLA</i>. A clarification from this Court could have a great impact on the Commissioner's ongoing and future investigations in connection with the</p> | <p>b. Aucune ou très peu de décisions judiciaires ont abordé l'interprétation de la notion de « public voyageur » prévue à l'article 23 de la <i>LLO</i>. Or, la défenderesse propose une interprétation restrictive de cette notion pour circonscrire ses obligations sous la partie IV de la <i>LLO</i>. Une clarification de cette Cour pourrait avoir un grand impact</p> |

activities of airport authorities. This decision also risks creating a precedent for complaints made against other federal institutions covered by section 23 of the *OLA*, such as train stations and port authorities.

sur les enquêtes en cours et futur du commissaire en lien avec les activités des administrations aéroportuaires. Cette décision risque également de créer un précédent sur les plaintes faites à l'encontre des autres institutions visées par l'article 23 de la *LLO* comme les gares et les autorités portuaires.

c. The position submitted by the Respondent on Part X of the *OLA* calls into question complainants' right to file complaints and to claim remedies for breaches for which they would not have been personally affected. The Court is also called upon to rule on the impact of the Commissioner's recommendations on the complainants' rights to file new complaints for breaches already under investigation. A decision of this Court that would limit complainants' rights to such an extent would have a definite impact on the exercise of the Commissioner's mandate to investigate.

c. La position mise de l'avant par la défenderesse sur la partie X de la *LLO* remet en question le droit des plaignants de faire des plaintes et d'intenter des recours pour des violations pour lesquelles ils n'auraient pas été lésés personnellement. La Cour est également appelée à se prononcer sur l'impact des recommandations du commissaire sur le droit des plaignants de faire de nouvelles plaintes pour des violations déjà sous enquête. Une décision de cette Cour qui limiterait de cette façon les droits des plaignants de faire des plaintes ou d'intenter des recours aurait un impact certain sur le pouvoir d'enquête du commissaire.

d. Lastly, the Respondent submits that the nature of the damages that may be awarded under subsection 77(4) of the *OLA* can be ordered only against federal institutions and not against private entities subject to the *OLA* through specific legislation. If accepted, this restrictive interpretation could have an impact on the effectiveness of the legal remedies provided for in Part X of the *OLA*, as well as the implementation of the rights it seeks to protect.

[...]

d. Finalement, la défenderesse soumet que la nature des dommages pouvant être octroyée sous le paragraphe 77(4) de la *LLO* ne peut viser que les institutions fédérales et non à l'encontre d'institutions expressément assujetties à la *LLO* par le biais d'une loi particulière. Si retenue, cette interprétation restrictive pourrait avoir un impact sur l'efficacité des recours judiciaires prévus à la partie X de la *LLO*, ainsi que la mise en œuvre des droits qu'elle vise à protéger.

[...]

III. Legislative Provisions

[4] The relevant legislative provisions are set out in the Schedule attached to these Reasons.

IV. Applicable Jurisprudence

[5] This Court must take into account a number of factors when deciding whether to grant a party intervener status (*Rothmans, Benson & Hedges Inc v Canada (Attorney General)*, [1990] 1 FC 90, 103 NR 391 (FCA); recently affirmed in *Sport Maska Inc v Bauer Hockey Corp*, 2016 FCA 44, 480 NR 387 at para 41 [*Sport Maska*]). *Sport Maska* sets out six (6) non-exhaustive

factors. It is not necessary that all the factors be satisfied for a party to be granted intervener status. They are:

- A. Is the proposed intervener directly affected by the outcome?
- B. Does there exist a justiciable issue and a veritable public interest?
- C. Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?
- D. Is the position of the proposed intervener adequately defended by one of the parties to the case?
- E. Are the interests of justice better served by the intervention of the proposed third party?
- F. Can the Court hear and decide the cause on its merits without the proposed intervener?

[6] In *Canada (Attorney General) v Pictou Landing First Nation*, 2014 FCA 21, 456 NR 365 at para 10 [*Pictou Landing*], Stratas JA, sitting alone as motions judge, considered the following additional factors:

- 1. Is the proposed intervention inconsistent with the imperatives in Rule 3 [*Federal Courts Rules*, SOR/98-106], namely securing “the just, most expeditious and least expensive determination of every proceeding on its merits”?
- 2. Have the specific procedural requirements of Rules 109(2) and 359-369 been met?

[7] In effect, the criteria to be met are flexible because every motion to intervene is different. The flexibility of the criteria permit the Court to consider the facts, the questions of law and the

unique context of each case. In *Sport Maska*, the Federal Court of Appeal emphasized in para 42 that “the fifth factor, i.e. ‘[a]re the interests of justice better served by the intervention of the proposed third party?’ is such that it allows the Court to address the particular facts and circumstances of the case in respect of which the intervention is sought.” Consequently, the Court may, “in any given case, ascribe the weight that the Court wishes to give to any individual factor” (*Sport Maska* at para 41).

[8] The Federal Court of Appeal in *Sport Maska* also pointed out in paragraph 40 that the Court, in the majority of cases, can hear and decide a case without interveners, and that the “more salient question is whether the intervener will bring further, different and valuable insights and perspectives that will assist the Court in determining the matter (*Pictou Landing*, para 9, last bullet)”. This requirement is essentially the same as the one prescribed in paragraph 109(2)b) of the *Rules*.

V. Analysis

[9] The Airport consents to the Commissioner’s request to intervene on the first two (2) questions. While I am not bound by that consent and must exercise my own discretion (*Atlas Tube Canada ULC v Canada (National Revenue)*, 2019 FCA 120, 304 ACWS (3d) 683 at para 2), I am satisfied the test set out in Rule 109 and the relevant jurisprudence are met with respect to questions 1 and 2. Leave to intervene will therefore be granted on those two (2) questions.

[10] I now turn to questions 3 and 4 as set out in the original Notice of Motion. The Airport strenuously contests the Commissioner’s motion to intervene on the latter two (2) questions. In

addition, the Airport contends the Commissioner, in his Reply, now seeks to intervene on different questions from those set out in his original Notice of Motion. Set out below are the differing versions of the Commissioner's proposed intervention on questions 3 and 4. The original request is found in the left-hand column while that set out in the Reply is found in the right-hand column.

**Original Issue as Presented
in Commissioner's Motion**

[Translation] [15(c), i.e. issue 3] The position submitted by the Respondent on Part X of the OLA calls into question complainants' right to file complaints and to claim remedies for breaches for which they would not have been personally affected. . . . A decision of this Court that would limit complainants' rights to make complaints or to apply for remedies to such an extent would have a definite impact on the exercise of the Commissioner's mandate to investigate.

**New Issue as Presented in
Commissioner's Reply**

[Translation] Contrary to the defendant's arguments, the Commissioner does not intend to question the plaintiff's standing to make complaints under subsection 58(2) or to apply for remedies under section 77 of the OLA. The Commissioner seeks instead to respond to the defendant's arguments on the analytical framework of section 77 of the OLA by reaffirming the applicable principles of interpretation, namely that the merit of a remedy is not related to the fact that a plaintiff must have been personally affected by the breach of the institution at issue.

Recall that the Commissioner initially indicated that he would not intervene on the issue of remedies. In the Commissioner's affidavit sworn to on March 5, 2020 he stated in paragraph 30 that:

Translation: If I am granted leave to intervene in this case, I will not take a position with regard to the facts in dispute or on Mr. Thibodeau's claim . . .

See also paragraph 19 of the Commissioner's motion, where he declares:

Translation: Since the purpose of the Commissioner's intervention is simply to present a legal position on the legal issues that the defendant raised in its memorandum, and since the Commissioner will not rule on the merits of the plaintiff's claims, his intervention at this stage will not cause any prejudice to the parties.

[11] I would dismiss the Commissioner's motion to intervene on the third question for the simple reason that the Commissioner appears not to know with any degree of certainty the nature of his proposed intervention in that regard. The Court is unable to discern with certainty the nature of the proposed intervention given the varying statements made by the Commissioner. I agree with the Airport's contention that the Commissioner appears, in his Reply, to be attempting to amend the request sought in his original Notice of Motion, but has not sought leave to do so.

[12] In the event I am incorrect and the Commissioner's original motion is not altered by his Reply, I would still dismiss his request to intervene on question number 3 as originally crafted. I reach this conclusion for the following reason. Nowhere in the *Official Languages Act*, RSC 1985, c 31 (4th Supp) is the Commissioner permitted to award damages, nor is he held out as having any particular expertise in that domain. The issue of damages and entitlement thereto is a matter for the Courts and best addressed by the Courts after having heard the evidence and the arguments advanced by two opposing litigants. The Commissioner's input into such an issue, would, with respect, constitute a distraction from the legitimate *lis* between the parties in that regard. Furthermore, on a micro level particular to this case, I am convinced there is nothing the Commissioner can bring to the table on the issue of damages that Mr. Thibodeau is unable to advance. I reach this conclusion for the following reasons:

- A. A brief survey of the reported cases shows Mr. Thibodeau has been involved before the Courts in *Air Canada (Re)* (2004), 71 OR (3d) 784 (SCJ) [*Air Canada (Re)*]; *Thibodeau v Air Canada*, 2004 FC 800; *Air Canada v Thibodeau*, 2007 FCA 115, affirming *Thibodeau v Air Canada*, 2005 FC 1156 and *Thibodeau v Air Canada*, 2005 FC 1621; *Air Canada v Thibodeau*, 2011 FCA 343; *Air Canada v Thibodeau*, 2012 FCA 14; *Thibodeau v Air Canada*, 2014 SCC 67, affirming *Air Canada v Thibodeau*, 2012 FCA 246; *Thibodeau v Halifax International Airport Authority*, 2018 FC 223; *Thibodeau v Air Canada*, 2019 FC 1102 and *Thibodeau v Canada (Senate)*, 2019 FC 1474.
- B. In the 2004 case of *Air Canada (Re)*, the underlying facts were that Mr. Thibodeau was on an Air Canada flight between Ottawa and Montreal, at which time he was not served drinks in the French language. In December of 2001, the Commissioner concluded that Air Canada had violated Mr. Thibodeau's language rights. Mr. Thibodeau then filed a claim for compensation, pursuant to section 77 of the *Official Languages Act* to the court-appointed monitor for Air Canada under the *Companies' Creditors Arrangements Act*. The monitor rejected the claim, but Mr. Thibodeau appealed to an adjudicator appointed under that *Act*. Mr. Thibodeau claimed compensatory damages of \$25,000 and punitive and exemplary damages of \$500,000. In a separate proceeding before the Federal Court, Mr. Thibodeau claimed non-monetary relief (see *Thibodeau v Air Canada*, 2005 FC 1621). Before both the adjudicator and the Federal Court, the Commissioner sought and was granted the right to intervene. Mr. Thibodeau was eventually awarded \$1,000 plus costs when the Superior Court of Justice

dismissed his appeal and affirmed the adjudicator's award. The Federal Court ordered Air Canada to write Mr. Thibodeau a letter of apology and pay him costs. The letter and costs were upheld when the airline appealed (see *Air Canada v Thibodeau*, 2007 FCA 115), a proceeding where the Commissioner was also permitted to intervene.

- C. In the most recent case cited above, *Thibodeau v Canada (Senate)*, 2019 FC 1474, one of the issues concerned the appropriate compensation to Mr. Thibodeau because water fountains in the East block of Parliament were adorned only with the word "PUSH", without the French equivalent of "POUSSEZ". Mr. Thibodeau claimed and received \$1,500 in damages and \$700 in costs.
- D. In the 2019 case of *Thibodeau v Air Canada*, 2019 FC 1102, Mr. Thibodeau and his spouse sought damages, once again pursuant to s 77(1) of the *Official Languages Act*, for eight (8) distinct violations of their language rights, one of which was that the manufacturer had engraved the word "LIFT" on the seat belt buckle of an aircraft, without the accompanying French equivalent. Mr. and Mrs. Thibodeau obtained \$1,500 in damages for each violation, for a total award of \$12,000. A summary of the arguments made by Mr. and Mrs. Thibodeau as it relates to damages is found at paragraph 58 of the decision:

Mr. and Mrs. Thibodeau argue that damages may be granted under subsection 24(1) of the Charter and subsection 77(4) of the Act (*Lavigne v Canada (Human Resources Development)*, 1997 1 FC 305 (FCTD); *Thibodeau v Air Canada*, 2011 FC 876 at paragraph 36 [*Thibodeau 2011*]). They submit that the first three steps of the analysis established by the Supreme Court in *Vancouver (City) v Ward*, 2010 SCC 27 [*Ward*] are satisfied: their language rights have been breached; the damages will be able

to compensate them, defend language rights and deter future breaches; and the other remedies could not fully compensate them (*Ward* at paragraphs 4, 33, 38). With regard to the third step consisting of determining the amount of damages, Mr. and Mrs. Thibodeau refer to the decisions in *Ward*, *Thibodeau 2005*, *Thibodeau 2011*, *Air Canada v Thibodeau*, 2012 FCA 246 [*Thibodeau FCA*] and *Thibodeau v Air Canada*, 2014 SCC 67 [*Thibodeau SCC*] and highlight the history of Air Canada violating their language rights over the past 18 years. They suggest the amount of \$1,500 per violation as damages.

- E. In *Thibodeau v Air Canada*, 2019 FC 1102, the plaintiffs did not seek punitive damages in their Notice of Application. They did, however, address the matter in argument. At paragraph 66, the Court observed:

In their notice of application, Mr. and Mrs. Thibodeau did not seek punitive damages, but they did suggest, in their memorandum and at the hearing, that punitive damages could be necessary to compensate the prejudice suffered, recognize the importance of language rights and deter Air Canada from continuing to violate the language rights of Francophones.

[13] A review of the jurisprudence involving Mr. Thibodeau and the Court's observations regarding Mr. Thibodeau's argument in *Thibodeau v Air Canada*, 2019 FC 1102 referred to in paragraphs 12(D) and (E) above, demonstrate Mr. Thibodeau is very capable of presenting his arguments on damages and does not require the assistance of the Commissioner. Additionally, at the time the Commissioner filed the motion to intervene, Mr. Thibodeau was self-represented. Since that time, the Court Registry received, on July 23, 2020, a notice of appointment of solicitor on behalf of Mr. Thibodeau. Given that he is now represented there is no need for the Commissioner to intervene on this question of damages. The Federal Court will not require any

intervention by the Commissioner to decide the question. In sum, on the issue of the third potential question about which the Commissioner wishes to intervene, I am of the view the Commissioner does not meet parts A, C, D, E, and F of the *Sport Maska* test set out in paragraph 5, *supra*.

[14] With respect to proposed issue number 4, the Airport makes similar observations as it does with respect to question number 3, namely, that the scope of the proposed intervention is set out differently in the Reply than in the original Notice of Motion. The Commissioner attempts to amend his grounds for intervention via his Reply. Again, the original request is found in the left-hand column while that set out in the Reply is found in the right-hand column.

**Original Issue as Presented
in Commissioner’s Motion**

Translation: [15(d), i.e. issue 4] The defendant submits that the nature of the damages that can be awarded under subsection 77(4) of the OLA applies only to federal institutions and not to institutions explicitly subject to the OLA by means of a particular statute.

**New Issue as Presented in
Commissioner’s Reply**

Translation: In respect of the fourth point of law that the Commissioner raised in his Motion, . . . the Commissioner intends to demonstrate to the Court that the wording of subsection 77(4) of the OLA mirrors that of subsection 24(1) of the Charter. Thus, subsection 77(4) of the OLA receives the same interpretation and gives rise to the full range of remedies that can be awarded under the Charter. In this sense, the guiding principles in *Ward* remain a relevant jurisprudential basis for the plaintiff’s claim.

[15] The Airport further contends the proposed issue justifying intervention by the Commissioner is again inconsistent with the position taken by him in his affidavit and Notice of Motion. I agree with both the Airport's contentions. Regardless, presuming I am incorrect in my conclusion that the Commissioner is attempting to use the Reply to amend the basis for his intervention, it is evident from a reading of the jurisprudence and the issues raised in this litigation between these particular parties that the Commissioner can bring nothing to the table that the parties are unable to bring. Again, I am of the view that the Commissioner fails to meet parts A, C, D, E, and F of the *Sport Maska* test as it relates to the question number 4 for which he seeks to intervene.

VI. Costs

[16] The Airport contends that costs should be awarded against the Commissioner given his attempts to amend the Notice of Motion via his Reply. According to the Airport, the Commissioner's attempt to change the basis of his intervention, without notice, resulted in additional expenses. I agree that the Commissioner's conduct should attract costs consequences. In *Eli Lilly and Co v Apotex Inc*, 2004 FC 1015, 132 ACWS (3d) 665 at para 6, Hugessen J described as "unfair and unjust" the plaintiffs' attempt to widen the scope of their motion by arguing matters in their memorandum and orally that they did not mention in their notice of motion. This reasoning was also applied in *Apotex Inc v Abbott Laboratories Ltd*, 2017 ONSC 1348, 145 CPR (4d) 185. The judges in both cases awarded costs to the responding party.

[17] Rule 400 lists many factors that I may consider when exercising my discretion to award costs. Particularly relevant is subparagraph 400(3)(k)(i): "whether any step in the proceeding was

improper, vexatious or unnecessary.” The Commissioner’s Reply was improper for the above reasons. The Commissioner shall therefore pay the Airport lump sum costs in the amount of \$3,000 all-inclusive of disbursements.

ORDER

THIS COURT ORDERS that:

1. The motion of the Commissioner of Official Languages for Canada (“the Commissioner”) to intervene in the application of Mr. Michel Thibodeau is granted in part.
2. The style of cause is amended to include “Commissioner of Official Languages of Canada” as “Intervener”.
3. The Commissioner is permitted to intervene only on the following questions:
 - a. The interpretation of section 4 of the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5; and
 - b. The interpretation of the phrase “travelling public” in section 23 of the *Official Languages Act*, RSC 1985, c 31 (4th Supp).
4. The Commissioner shall have the right, within the scope of questions 3a and 3b above, to make written and oral representations to the Court, to present evidence by affidavit and to appeal the decision of the Court.
5. The Commissioner shall serve and file any affidavit, memorandum of fact and law and book of authorities within 30 days of this order. The Commissioner’s memorandum of fact and law shall not exceed 15 pages, apart from annexes.
6. Excepting the costs award in this Order, the Commissioner shall not be awarded costs nor shall costs be awarded against the Commissioner.

7. The Commissioner shall pay costs to the St. John's International Airport Authority in the amount of \$3,000 all inclusive, in any event of the cause.

"B. Richard Bell"

Judge

ANNEX

Federal Court Rules, SOR/98-106 ***Règles des cours fédérales, DORS/98-106***

Leave to intervene

109 (1) The Court may, on motion, grant leave to any person to intervene in a proceeding.

Contents of notice of motion

(2) Notice of a motion under subsection (1) shall

(a) set out the full name and address of the proposed intervenor and of any solicitor acting for the proposed intervenor; and

(b) describe how the proposed intervenor wishes to participate in the proceeding and how that participation will assist the determination of a factual or legal issue related to the proceeding.

Directions

(3) In granting a motion under subsection (1), the Court shall give directions regarding

(a) the service of documents; and

(b) the role of the intervenor, including costs, rights of appeal and any other matters relating to the procedure to be followed by the intervenor.

Autorisation d'intervenir

109 (1) La Cour peut, sur requête, autoriser toute personne à intervenir dans une instance.

Avis de requête

(2) L'avis d'une requête présentée pour obtenir l'autorisation d'intervenir :

a) précise les nom et adresse de la personne qui désire intervenir et ceux de son avocat, le cas échéant;

b) explique de quelle manière la personne désire participer à l'instance et en quoi sa participation aidera à la prise d'une décision sur toute question de fait et de droit se rapportant à l'instance.

Directives de la Cour

(3) La Cour assortit l'autorisation d'intervenir de directives concernant :

a) la signification de documents;

b) le rôle de l'intervenant, notamment en ce qui concerne les dépens, les droits d'appel et toute autre question relative à la procédure à suivre.

[...]

Motions in writing

369 (1) A party may, in a notice of motion, request that the motion be decided on the basis of written representations.

Request for oral hearing

(2) A respondent to a motion brought in accordance with subsection (1) shall serve and file a respondent's record within 10 days after being served under rule 364 and, if the respondent objects to disposition of the motion in writing, indicate in its written representations or memorandum of fact and law the reasons why the motion should not be disposed of in writing.

Reply

(3) A moving party may serve and file written representations in reply within four days after being served with a respondent's record under subsection (2).

Disposition of motion

(4) On the filing of a reply under subsection (3) or on the expiration of the period allowed for a reply, the Court may dispose of a motion in writing or fix a time and place for an oral hearing of the motion.

[...]

Procédure de requête écrite

369 (1) Le requérant peut, dans l'avis de requête, demander que la décision à l'égard de la requête soit prise uniquement sur la base de ses prétentions écrites.

Demande d'audience

(2) L'intimé signifie et dépose son dossier de réponse dans les 10 jours suivant la signification visée à la règle 364 et, s'il demande l'audition de la requête, inclut une mention à cet effet, accompagnée des raisons justifiant l'audition, dans ses prétentions écrites ou son mémoire des faits et du droit.

Réponse du requérant

(3) Le requérant peut signifier et déposer des prétentions écrites en réponse au dossier de réponse dans les quatre jours après en avoir reçu signification.

Décision

(4) Dès le dépôt de la réponse visée au paragraphe (3) ou dès l'expiration du délai prévu à cette fin, la Cour peut statuer sur la requête par écrit ou fixer les date, heure et lieu de l'audition de la requête.

[...]

Awarding of Costs Between Parties

Discretionary powers of Court

400(1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.

[...]

(3) In exercising its discretion under subsection (1), the Court may consider

[...]

(k) whether any step in the proceeding was

(i) improper, vexatious or unnecessary...

Airports Transfer (Miscellaneous Matters) Act (SC 1992, c 5)

[...]

Adjudication des dépens entre parties

Pouvoir discrétionnaire de la Cour

400 (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.

[...]

(3) Dans l'exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l'un ou l'autre des facteurs suivants :

[...]

k) la question de savoir si une mesure prise au cours de l'instance, selon le cas :

(i) était inappropriée, vexatoire ou inutile...

Loi relative aux cessions d'aéroports (LC 1992, ch 5)

4 (1) Where the Minister has leased an airport to a designated airport authority, on and after the transfer date Parts IV, V, VI, VIII, IX and X of the *Official Languages Act* apply, with such modifications as the circumstances require, to the authority in relation to the airport as if

(a) the authority were a federal institution; and

(b) the airport were an office or facility of that institution, other than its head or central office.

Idem

(1.1) Where the Minister has sold or otherwise transferred an airport to a designated airport authority, on and after the transfer date Parts IV, VIII, IX and X of the *Official Languages Act* apply, with such modifications as the circumstances require, to the authority in relation to the airport as if

(a) the authority were a federal institution; and

4 (1) À la date de cession par bail d'un aéroport à une administration aéroportuaire désignée, les parties IV, V, VI, VIII, IX et X de la *Loi sur les langues officielles* s'appliquent, avec les adaptations nécessaires, à cette administration, pour ce qui est de l'aéroport, au même titre que s'il s'agissait d'une institution fédérale, et l'aéroport est assimilé aux bureaux de cette institution, à l'exclusion de son siège ou de son administration centrale.

Idem

(1.1) À la date de cession autrement que par bail d'un aéroport à une administration aéroportuaire désignée, les parties IV, VIII, IX et X de la *Loi sur les langues officielles* s'appliquent, avec les adaptations nécessaires, à cette administration, pour ce qui est de l'aéroport, au même titre que s'il s'agissait d'une institution fédérale, et l'aéroport est assimilé aux bureaux de cette institution, à l'exclusion de son siège ou de son administration centrale.

(b) the airport were an office or facility of that institution, other than its head or central office.

Construction

(2) Nothing in subsection 23(2) of the *Official Languages Act* shall, in relation to an airport transferred to a designated airport authority by the Minister, be construed or applied so as to impose a duty on any institution other than that authority.

Official Languages Act (RSC 1985, c 31 (4th Supp))

Commissioner may apply or appear

78 (1) The Commissioner may

[...]

Capacity to intervene

(3) Nothing in this section abrogates or derogates from the capacity of the Commissioner to seek leave to intervene in any adjudicative proceedings relating to the status or use of English or French.

Interprétation

(2) Le paragraphe 23(2) de la *Loi sur les langues officielles* n'a pas pour effet d'imposer, pour ce qui est d'un aéroport cédé par le ministre à une administration aéroportuaire désignée, une obligation à une autre institution que celle-ci.

Loi sur les langues officielles (LRC (1985), ch 31 (4^e suppl))

Exercice de recours par le commissaire

78 (1) Le commissaire peut selon le cas :

[...]

Pouvoir d'intervenir

(3) Le présent article n'a pas pour effet de porter atteinte au pouvoir du commissaire de demander l'autorisation d'intervenir dans toute instance judiciaire relative au statut ou à l'usage du français ou de l'anglais.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1023-19

STYLE OF CAUSE: MICHEL THIBODEAU v ADMINISTRATION DE
L'AÉROPORT INTERNATIONAL DE ST. JOHN'S

DEALT WITH IN WRITING WITHOUT APPEARANCE OF THE PARTIES

ORDER AND REASONS: BELL J.

DATED: AUGUST 27, 2020

IN WRITING:

Ronald F. Caza et
Marie-Pier Dupont

FOR THE PLAINTIFF

Michael Shortt
Amy Tang

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