Federal Court of Appeal | Cour d'appel fédérale

Date: 20250704

Docket: A-160-25

Citation: 2025 FCA 130

CORAM: **MONAGHAN J.A.**
WALKER J.A.
PAMEL J.A.

BETWEEN:

MICHAEL MOREAU

Appellant

and

OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 4, 2025.

REASONS FOR ORDER BY: MONAGHAN J.A.

CONCURRED IN BY: WALKER J.A.
PAMEL J.A.

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REASONS FOR ORDER

MONAGHAN J.A.

[1] In June 2024, while on vacation, Michael Moreau observed a federal sign that he considered damaged in a manner that resulted in the information displayed on the sign not appearing in English and French. This led Mr. Moreau to file a complaint with the Office of the Commissioner of Official Languages alleging a violation of Part IV of the *Official Languages*

Act, R.S.C. 1985, c. 31 (OLA). The Commissioner advised Mr. Moreau that the complaint would not be investigated because it was a maintenance issue rather than a violation of the OLA.

[2] Subsection 77(1) of the OLA provides:

> 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 [Federal] Court for a remedy under this Part.

[3] Relying on that provision, Mr. Moreau brought an application in the Federal Court against the Department of Fisheries and Oceans Canada (DFO) seeking an order declaring DFO in breach of the OLA and nominal damages. The notice of application is in English and was assigned Federal Court file T-2313-24. I will refer to this matter as the "First Application".

[4] In these circumstances, Rule 304(1)(c) of the *Federal Courts Rules*, S.O.R./98-106 requires the notice of application to be served on the Commissioner. Although such service does not make the Commissioner a party to the proceeding, the Commissioner may apply to intervene: OLA, s. 78(3); *Federal Courts Rules*, Rule 109.

[5] Mr. Moreau chose to serve the notice of application in the First Application—written entirely in English—by email sent to legal counsel employed by the Office of the Commissioner. In his email, also written entirely in English, Mr. Moreau asked the recipient to return an acknowledgement of receipt card attached to his email. The acknowledgement of receipt card (Carte d'Accusé de Réception) was written entirely in French.

[6] The legal counsel responded by email written in both official languages, with the English text followed by the same text in French. Legal counsel acknowledged receipt of the notice of application but did not return a signed acknowledgement of receipt card to Mr. Moreau. Rather, she expressed a willingness to correspond with Mr. Moreau in the official language of his choice and to adopt the language of proceedings for any pleading. She, however, expressed some discomfort with signing a document solely in French when the language of communications and proceedings were in English, and Mr. Moreau had previously asked her to communicate with him in English.

[7] Because he did not receive the signed acknowledgement of receipt card, Mr. Moreau filed a complaint with the Office of the Commissioner against the Commissioner. The complaint was investigated but determined to be unfounded and Mr. Moreau was advised the file was closed. This led Mr. Moreau to file a notice of application in the Federal Court, again relying on subsection 77(1) of the OLA. I will refer to this as the "Second Application".

[8] In the Second Application, Mr. Moreau sought:

1. An order compelling the Commissioner to adopt a policy mandating acceptance of service of documents drafted in any official language;

2. An order declaring the Commissioner to have breached Parts III, IV, V and VII of the OLA by not signing the acknowledgement of receipt card written in French; and

3. A letter of apology in both official languages, nominal damages and costs.

[9] The Commissioner brought a motion in the Federal Court to strike the Second Application in its entirety. The Commissioner submitted that, taking the facts set forth in the Second Application as true, it is plain and obvious that the Second Application is doomed to fail and bereft of any possibility of success.

[10] The Federal Court agreed with the Commissioner that the high threshold to strike an application, as articulated in *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588, 176 N.R. 48 (F.C.A.) and *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*], was met. The Federal Court concluded that the Commissioner had no duty to sign and return the acknowledgement of receipt card and that the Commissioner had not violated any duty under the OLA. Accordingly, by order dated April 14, 2025, it struck the Second Application: Federal Court file T-3666-24, *per* St-Louis ACJ.

[11] Mr. Moreau appealed that decision to this Court. The Commissioner filed a notice of appearance and then brought the motion that is the subject of these reasons. In that motion, the Commissioner seeks an order striking Mr. Moreau's notice of appeal in its entirety, submitting that the appeal has no reasonable prospect of success and is manifestly doomed to fail.

[12] This Court has the power to quash an appeal that has no reasonable prospect of success and is manifestly doomed to fail: *Tétreault c. Boisbriand (Ville)*, 2023 CAF 159 at para. 8, leave to appeal to SCC refused, 41182 (29 August 2024); *Martinez v. Canada (Communications Security Establishment)*, 2019 FCA 282 at para. 9, leave to appeal to SCC refused, 39061 (30 April 2020); *Lessard-Gauvin c. Canada (Procureur général)*, 2013 CAF 147 at para. 8.

[13] I agree with the Commissioner that Mr. Moreau's appeal has no reasonable prospect of success and therefore should be quashed.

I. Grounds of Appeal and Standard of Review

[14] Mr. Moreau's notice of appeal raises the following issues:

1. Did the Federal Court err in interpreting subsection 77(1) of the OLA and thereby concluding that it did not have jurisdiction to grant Mr. Moreau the relief he sought under Part III of the OLA?

2. Did the Federal Court err in interpreting section 22 and paragraph 24(3)(a) of the OLA and thereby concluding that communication in both official languages was not a violation of Part IV of the OLA?

3. Did the Federal Court err in refusing to consider Mr. Moreau's affidavit and in concluding the Part V allegation in the Second Application was bald, incomplete and imprecise?

4. Did the Federal Court err in its interpretation of Part VII of the OLA by concluding that it was not engaged?

[15] The Federal Court's decision to strike Mr. Moreau's notice of application is discretionary. This Court thus reviews that decision applying the appellate standard of review from *Housen v. Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras. 66, 79. Accordingly, we can interfere only if the

Federal Court made an error of law or a palpable and overriding error on a question of fact or mixed fact and law.

[16] The only issue on this motion is whether Mr. Moreau's appeal has any reasonable prospect of success. In assessing that, in addition to the parties' submissions on the motion, we consider the notice of appeal, the applicable standard of review and the Federal Court's reasons.

II. The Federal Court Made No Reviewable Errors

A. *The Commissioner had no duty to sign the acknowledgement of receipt card*

[17] At the outset, it is important to recognize that the Second Application relates to the Commissioner's failure to sign and return the acknowledgement of receipt card attached to Mr. Moreau's email serving the notice of application for the First Application on the Commissioner. The Federal Court found that the Commissioner acknowledged receipt of that notice of application in the responding email. Mr. Moreau does not argue that the Commissioner did not acknowledge receipt, only that the Commissioner did so otherwise than by using the specific card that Mr. Moreau requested the Commissioner to sign and return.

[18] The Federal Court concluded that the OLA did not impose any duty on the Commissioner to sign and return the acknowledgment of receipt card. It also concluded that the *Federal Courts Rules* did not require the Commissioner to sign and return that card because Mr. Moreau served the notice of application by email. As the Federal Court said, an acknowledgement of receipt

form is relevant when an originating document is served on an individual by mail to the individual's last known address and is accompanied by an acknowledgement of receipt form: *Federal Courts Rules*, Rule 128(1)(d).

[19] I see no error in these conclusions, nor does Mr. Moreau contest them on appeal. Rather, he focuses on obligations imposed by the OLA.

[20] While Mr. Moreau's complaint to the Office of the Commissioner did not indicate which OLA provision he was asserting was breached, the investigator considered the complaint to be under Part IV. However, as will be seen, before the Federal Court Mr. Moreau alleged several provisions of the OLA were breached.

B. *The Federal Court did not err in interpreting subsection 77(1) of the OLA*

[21] Before the Federal Court, Mr. Moreau argued there was a breach of Part III. Part III comprises sections 14 to 20 and addresses official languages in the federal courts. Those provisions grant certain rights and impose certain duties in that context. For this purpose, a "federal court" is defined as "any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament": OLA, s. 3(2).

[22] The Federal Court concluded that it had no jurisdiction to grant the relief Mr. Moreau sought based on Part III because subsection 77(1) does not apply to Part III. In doing so, the Federal Court relied on *Forum des maires de la Péninsule acadienne v. Canada (Food*

Inspection Agency), 2004 FCA 263 at para. 25 [*Forum de maires*], and *National Police Federation v. Canada (Attorney General)*, 2024 FC 53 at paras. 10, 18-20.

[23] In response to this motion to strike, Mr. Moreau says *Forum des maires* is distinguishable because it dealt with Part VII of the OLA, not Part III. He says that subsection 82(1) of the OLA, which establishes paramountcy of certain parts of the OLA over other Acts of Parliament, led this Court to decide as it did in *Forum des maires* because that provision does not include Part VII. In contrast, Mr. Moreau says that Part III is listed in subsection 82(1).

[24] I disagree. *Forum des maires* is dispositive. Section 77 does not give the Federal Court jurisdiction to provide a remedy in a complaint regarding a breach of any provision found in Part III: *Forum des maires* at para. 28. Part III is expressly excluded from subsection 77(1).

[25] Thus, I see no reviewable error in the Federal Court's conclusion that it had no jurisdiction under subsection 77(1) to grant the relief Mr. Moreau sought based on an alleged breach of Part III of the OLA. This ground of appeal has no prospect of success.

C. *The Federal Court did not err in concluding there was no breach of section 22 or paragraph 24(3)(a) of the OLA*

[26] Every federal institution has a duty to ensure that any member of the public can communicate with and obtain available services from its head or central office in either official language: OLA, s. 22. That duty is extended to other offices and facilities of federal institutions

in certain circumstances: OLA, s. 24(3). The parties do not suggest the Office of the Commissioner is not a federal institution for this purpose.

[27] The Federal Court concluded that the Commissioner did not breach these duties by refusing to sign and return the acknowledgement of receipt card. Relying on *Kaudjhis v. Canada (Public Safety and Emergency Preparedness)*, 2020 FC 567 at para. 19, the Federal Court said that the OLA does not preclude bilingual communication; "in other words, a bilingual communication cannot amount to a Part IV violation".

[28] Mr. Moreau disagrees. He asserts that the Commissioner implicitly refused to provide service in French by responding in both languages.

[29] Mr. Moreau argues that the "Commissioner cannot free himself from his obligation to provide litigation services solely in French at the explicit request of a party by providing bilingual communication instead": Applicant's Memorandum of Fact and Law at para. 29. He says that his "complaint's essence is about the failure of the [Commissioner] to return a French acknowledgement of receipt card in [his] preferred language, French, and whether such [an] obligation exists": para. 14.

[30] I agree with the Commissioner that these submissions have no prospect of success.

[31] Mr. Moreau's email communication with the Commissioner was in both official languages, using English in the email and Second Application and French in the

acknowledgement of receipt card. The Commissioner, in turn, responded in both official languages. In addition to acknowledging receipt of Mr. Moreau's email and the Second Application, the responding email expressed a willingness to communicate with Mr. Moreau in his official language of choice and asked him to confirm that choice.

[32] In these circumstances, the Federal Court made no error in concluding that the Commissioner did not breach any duty imposed by sections 22 or 24. This ground of appeal has no prospect of success.

D. *The Part V allegations were bald, incomplete and imprecise*

[33] Section 37 of the OLA requires every federal institution with authority to direct, or provide services to, other federal institutions to ensure it exercises its powers and carries out its duties in relation to those other institutions in a manner that accommodates the use of either official language by the institutions' employees.

[34] In the Second Application Mr. Moreau alleged that section 37 was engaged because the Commissioner's conduct "uniquely affected him due to his identity as a federal public servant" which "means the complaint was filed in [his] capacity as a public servant". The Second Application alleged that the Office of the Commissioner "has special duties in serving or directing other federal institutions (*i.e.*, investigations and orders)".

[35] On the motion to strike before the Federal Court, the Commissioner asserted that the allegation was bald, incomplete and imprecise, and did not amount to a cognizable administrative law claim. The Commissioner submitted that the notice of application did not factually set out which federal institution Mr. Moreau alleged the Office of the Commissioner had the authority to direct or provide services to when accepting service of the originating document in the First Application.

[36] Mr. Moreau attempted to file an affidavit as part of his responding motion record. The Commissioner objected to the affidavit being admitted on the motion to strike.

[37] The Federal Court found that the affidavit was inadmissible because its purpose was to supplement or buttress Mr. Moreau's notice of application. In doing so, the Federal Court relied on *JP Morgan* at paragraph 52.

[38] As to the merits of the Commissioner's submissions on the motion regarding the Part V allegation, the Federal Court explained that Rule 301 of the *Federal Courts Rules* requires a notice of application to contain a complete and concise statement of the grounds to be argued. Relying on *JP Morgan* at paragraphs 39 and 40, the Federal Court elaborated on what this means: the notice of application must include all the legal bases and material facts that, if taken as true, will support granting the relief sought and the material facts necessary to show that the Federal Court can and should grant the relief sought.

[39] Applying this test, the Federal Court concluded that the Part V allegation was “bald, incomplete and imprecise as [Mr. Moreau] does not outline in his Notice of Application which federal institution the Office of the Commissioner had the authority to direct or provide services to”.

[40] On appeal, Mr. Moreau claims the Federal Court made a palpable and overriding error in refusing to admit his affidavit and in concluding that the Part V allegation was “bald, incomplete and imprecise”.

[41] I disagree.

[42] The Federal Court did not make a palpable and overriding error in refusing to admit Mr. Moreau’s affidavit. Nor did it make such an error in characterizing Mr. Moreau’s notice of application insofar as it concerned Part V of the OLA.

[43] The Federal Court cited and applied the correct law. Subject to limited exceptions, which the Federal Court found inapplicable to Mr. Moreau’s affidavit, no evidence is admissible on a motion to strike an application: *JP Morgan* at paras. 52-64. I see no error in the Federal Court’s conclusions regarding the admissibility of Mr. Moreau’s affidavit.

[44] Moreover, Part V, where section 37 is found, is concerned with the language of work in federal institutions. It provides that English and French are the languages of work in all federal

institutions and that all federal institutions' employees have the right to use either official language in accordance with Part V: OLA, s. 34(1).

[45] While on this motion Mr. Moreau asserts that he is an employee of a federal institution, he does not suggest that his contact with the Commissioner was related to his duties as an employee, nor could he reasonably do so based on the context of his complaint. His complaint relates to the response to service of the originating document for the First Application which itself concerns a complaint against a federal institution, other than the one by which Mr. Moreau is employed, relating to a sign he saw while on vacation.

[46] There is no merit to Mr. Moreau's suggestion that the Federal Court erred in its conclusions concerning his allegations related to Part V of the OLA. Accordingly, this ground of appeal has no prospect of success.

E. *The Federal Court did not err in concluding that Part VII was not engaged*

[47] Finally, in the Second Application, Mr. Moreau asserted that the Office of the Commissioner is obliged to take positive measures to foster the full recognition and use of both official languages in Canadian society, citing section 41, found in Part VII of the OLA.

[48] Mr. Moreau asserted that this entitles him to claim "the positive measure" of the Commissioner's "signature of [sic] a form in French without question, irrespective of the language used in other proceedings" such that the appropriate and reasonable response was "to assume [Mr. Moreau] might prefer both official languages and behave accordingly". He said that

the objectives of the provisions would be accomplished if the Office of the Commissioner "provide[d] legal services in both official languages". (Parenthetically, I observe the Commissioner did exactly that—responded to Mr. Moreau's communication in both official languages.)

[49] The Federal Court agreed with the Commissioner that Part VII of the OLA does not compel the Commissioner to sign the acknowledgement of receipt card and so was not engaged.

[50] In his notice of appeal, Mr. Moreau asserts that that Commissioner has a "non-discretionary positive obligation arising from the combined operation of paragraphs 41(6)(c)(ii) and (v)…to sign an acknowledgement of receipt card in French even when service is completed via email in English": para. 5.

[51] I see no merit to this ground of appeal. Rather, I agree with the Federal Court that Part VII imposes no obligation on the Commissioner to sign and return the acknowledgement of receipt card. Part VII is not engaged.

[52] In his representations on this motion, Mr. Moreau submits the Federal Court found that Part VII imposes no specific obligations on federal institutions and its conclusions are inconsistent with the availability of a remedy under section 77.

[53] I disagree.

[54] First, the Federal Court did not find the Commissioner had no obligations under Part VII, but rather that the Commissioner complied with its obligations under the OLA "by both seeking clarification as to [Mr. Moreau's] preferred official language and by accepting service…in a communication written entirely in both official languages". Second, nowhere does the Federal Court suggest that section 77 precludes a remedy where Part VII obligations are not met. Rather, because the Commissioner complied with its obligations under the OLA, Mr. Moreau was not entitled to a remedy.

[55] Accordingly, there is no merit to this ground of appeal.

III. Conclusion

[56] I agree with the Commissioner that the Federal Court made no reviewable error in striking the Second Application. I also agree with the Commissioner that Mr. Moreau's appeal is bereft of merit, has no prospect of success and should be quashed.

[57] Mr. Moreau suggests he is entitled to costs of this motion even if he is unsuccessful, claiming the Second Application raises an important new principle: OLA, s. 81(2). I disagree.

[58] The Commissioner seeks costs of this motion of $2,500. I consider that amount appropriate in the circumstances.

[59] Accordingly, I would grant the Commissioner's motion, strike the notice of appeal, and order Mr. Moreau to pay the Commissioner costs in an all-inclusive lump sum amount of $2,500.

"K.A. Siobhan Monaghan"
J.A.

"I agree.
Elizabeth Walker J.A."

"I agree.
Peter G. Pamel J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-160-25
STYLE OF CAUSE:	MICHAEL MOREAU v. OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	MONAGHAN J.A.
CONCURRED IN BY:	WALKER J.A. PAMEL J.A.
DATED:	JULY 4, 2025

WRITTEN REPRESENTATIONS BY:

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Isabelle Hardy	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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