Federal Court Cour fédérale

Date: 20250411

Docket: T-2451-24

Citation: 2025 FC 675

Ottawa, Ontario, April 11, 2025

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MICHAEL MOREAU

Applicant/
Responding Party

and

AIR CANADA

Respondent/
Moving Party

ORDER AND REASONS

I. Overview

[1] On September 24, 2024, Mr. Moreau, the Applicant in the underlying proceeding, filed a Notice of Application [NoA] pursuant to section 77 of the *Official Languages Act*, RSC 1985, c 31 (4th Supp) [OLA] following complaints under the OLA against the Respondent, Air Canada, and seeking various equitable and other remedies.

[2] Air Canada now brings a motion pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*] seeking:

A. An order striking the NoA in its entirety;

B. In the alternative, an order striking the relief requested at one or more of paragraphs 1, 2, 3, 4, and 5 of the NoA, according to this Court's judgment;

C. Costs of this motion at the upper end of column III;

D. If this motion is granted in part, an order extending the deadline to file the Applicant's evidence to thirty days following the issuance of this Court's judgment, or alternatively, if this motion is dismissed in its entirety, an order extending the deadline to file the Respondent's evidence to thirty days following the issuance of this Court's judgment; and

E. Such further and other relief as this Court may consider just.

[3] Air Canada argues that the NoA is an abuse of process, that it is doomed to fail, and that it should therefore be struck.

[4] Mr. Moreau argues that his underlying application is not doomed to fail because it is based on specific legislative provisions whose meaning needs to be studied by this Court and the reliefs sought are available in the circumstances. Mr. Moreau submits the motion to strike is vexatious and is a means for Air Canada to escape from its responsibilities under the OLA. Therefore, to allow Mr. Moreau to be in a financial position to defend the public interest, he seeks costs on this motion in the amount of $5,000.

[5] The motion to strike is granted in part. My reasons follow.

II. The Underlying Application

[6] Prior to addressing the arguments of the Parties, it is helpful to understand the context in which they arise.

[7] Section 77 of the OLA provides that a person who has made a complaint to the Commissioner of Official Languages [Commissioner] in respect of rights or duties arising from prescribed sections of the OLA may—but not sooner than six months following the making of the complaint—apply to the Federal Court for a remedy if not informed of the results of that complaint:

77 (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV, V or VII, or in respect of section 91, may apply to the Court for a remedy under this Part.	**77 (1)** Quiconque a saisi le commissaire d'une plainte visant une obligation ou un droit prévus aux articles 4 à 7 et 10 à 13 ou aux parties IV, V, ou VII, ou fondée sur l'article 91, peut former un recours devant le tribunal sous le régime de la présente partie.
…	…
(3) Where a complaint is made to the Commissioner under this Act but the complainant is not informed of the results of the investigation of the complaint under subsection 64(1), of the actions taken to implement the recommendations that the Commissioner made under subsection 63(3), of the recommendations of the Commissioner under subsection 64(2) or of a decision under subsection	**(3)** Si, dans les six mois suivant le dépôt d'une plainte, il n'est pas avisé des conclusions de l'enquête, des mesures prises pour mettre en œuvre les recommandations faites aux termes du paragraphe 63(3), des recommandations visées au paragraphe 64(2) ou du refus opposé au titre du paragraphe 58(5), le plaignant peut former le recours à l'expiration de ces six mois.

58(5) within six months after the complaint is made, the complainant may make an application under subsection (1) at any time thereafter.	
(4) Where, in proceedings under subsection (1), the Court concludes that a federal institution has failed to comply with this Act, the Court may grant such remedy as it considers appropriate and just in the circumstances.	**(4)** Le tribunal peut, s'il estime qu'une institution fédérale ne s'est pas conformée à la présente loi, accorder la réparation qu'il estime convenable et juste eu égard aux circonstances.
…	…

[8] Mr. Moreau initiated a complaint with the Commissioner relating to the appointment of four individuals to executive positions within Air Canada: (1) the Vice President (Cargo); (2) the Executive Vice President (Marketing and Digital) and President of Aeroplan; (3) the Executive Vice President (Revenue & Network Planning) and President (Cargo); and (4) the Chief Financial Officer [the Positions in Issue].

[9] On September 23, 2024, Mr. Moreau filed the underlying NoA asserting he was last contacted by the Commissioner in respect of his complaint on March 7, 2024, that at least six months have passed since the complaint was made, and that he is therefore entitled to bring the NoA and obtain any remedy the Court considers appropriate and just in the circumstances. He seeks the following remedies:

A. A writ of *quo warranto* issued to dismiss the four incumbents of the Positions in Issue who, without right, are occupying or exercising a public office within a federal institution subject to the OLA;

B. In the alternative, a writ of *mandamus* obligating the positions' incumbents to take language training in order to meet the objective language requirements of their positions;

C. In the further alternative, an order declaring the Respondent contravened subparagraph 41(6)(c)(iii) and section 91 of the OLA by not assigning a language profile to the Positions in Issue;

D. A letter of apology in both official languages published on the Respondent's social networks highlighting this judgment;

E. A damages award under section 91 of the OLA totalling $40,000 ($10,000 for each position);

F. All with costs under subsection 81(2) of the OLA.

[10] Mr. Moreau's position is grounded in two core arguments. First, section 91 of the OLA imposes a positive legal obligation on Air Canada to objectively determine the language requirements of each of the four executive positions; second, that this Court has the jurisdiction to grant all of the remedies sought, including the issuance of a writ of *quo warranto* or, alternatively, of *mandamus*.

III. Test on a Motion to Strike an Application

[11] The *Rules* do not explicitly provide for the striking of an NoA. Instead, this Court derives its authority to do so from its "plenary jurisdiction to restrain the misuse or abuse of courts'

processes" (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at para 48).

[12] As recently reiterated by the Supreme Court of Canada in *Iris Technologies Inc v Canada*, 2024 SCC 24, at paragraph 26 [*Iris Technologies*]:

> … A court seized of a motion to strike assumes the allegations of fact set forth in the application to be true and an application for judicial review will be struck where it is bereft of any possibility of success (*JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557, at para. 47). It is understood to be a high threshold and will only be granted in the "clearest of cases" (*Ghazi v. Canada (National Revenue)*, 2019 FC 860, 70 Admin L.R. (6th) 216, at para. 10).

[13] Although *Iris Technologies* and the jurisprudence cited therein involve the consideration of applications for judicial review, "[t]he same principles apply on a motion to strike any type of notice of application" (*College of Immigration and Citizenship Consultants v Sandhu*, 2024 FC 1438 at para 7, citing *Wenham v Canada (Attorney General)*, 2018 FCA 199 at paras 32–33).

IV. Issues

[14] The Parties submit, and I agree, that the only issue before me on this motion is whether it is "plain and obvious" that Mr. Moreau's NoA, in whole or in part, will fail—that it is bereft of any possibility of success—should it proceed to an examination on its merits.

V. Analysis

[15] Air Canada argues that the NoA is an abuse of process and is doomed to fail because (1) some of the forms of remedy sought—i.e. *quo warranto*, *mandamus*, and a written and

publicized apology—are not available in the proceeding; (2) the declaration sought is in relation to an alleged violation of an OLA provision not in force at times relevant to the issues raised in the NoA; and (3) the NoA is based on a fundamentally flawed reading of section 91 of the OLA.

[16] I will first address Air Canada's arguments as they relate to the interpretation of section 91 of the OLA and then address whether any of the forms of relief sought are to be struck.

A. *The Interpretation of Section 91 of the OLA*

[17] Air Canada argues Mr. Moreau's interpretation of section 91 of the OLA is untenable when interpreted using the ordinary tools of statutory interpretation—a consideration of the provision in light of its text, context, and purpose (see e.g. *Williams v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 252 at paras 41–52, citing relevant and authoritative jurisprudence from the Supreme Court). Air Canada argues the NOA is therefore doomed to fail.

[18] Mr. Moreau submits that section 91 of the OLA creates a non-discretionary positive obligation for all language requirements to be objectively determined. In the case of the Positions in Issue, he submits Air Canada has not designated the positions as bilingual, resulting in the positions being designated as unilingual by default, a designation that has not been objectively determined as required to perform the functions of the roles and thereby violating section 91 of the OLA.

[19] Air Canada argues that the purpose of section 91 is to limit when bilingual requirements in relation to a position can be imposed. Consequently, Air Canada contends section 91 can only be violated if a bilingualism designation is wrongly required for a specific role; because Air Canada did not impose a bilingualism requirement, it could not have violated section 91 of the OLA. The NoA, therefore, is doomed to fail.

[20] The majority of the jurisprudence Air Canada has brought to my attention in support of the position advanced concerns situations in which a bilingual imperative requirement was imposed for the position. The sole exception is the decision in *Canada (Attorney General) v Shakov*, 2017 FCA 250, a case where a bilingual imperative designation was removed in order to allow Mr. Shakov to occupy a position. The specific question posed in the underlying application—whether the absence of an explicit language designation for a position constitutes in itself a language requirement that must therefore be objectively determined pursuant to section 91 of the OLA—has not, to my knowledge, been brought before the courts.

[21] In the circumstances, I am of the opinion that the question of interpretation raised is not so settled that I must conclude the NoA is bereft of any possibility of success should it proceed to a hearing.

[22] I therefore decline to strike the NoA in its entirety.

B. *Remedies*

[23] Air Canada further argues that the NoA is doomed to fail because none of the remedies sought can be granted. I agree in part.

(1) The remedies of *quo warranto* and *mandamus* are not available

[24] Air Canada argues, and I agree, that the extraordinary remedy of *quo warranto* or, in the alternative, *mandamus* is manifestly inapplicable in this instance. The jurisprudence clearly holds that Air Canada is a private-law business corporation. It is not part of the Government of Canada and is not subject to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*] (*Thibodeau v Air Canada*, 2005 FC 1156 at para 70, aff'd 2007 FCA 115;*Thibodeau v Air Canada*, 2014 SCC 67 at para 78). Air Canada, as a private-law business corporation, is not a governmental decision maker subject to a writ of *quo warranto* (*Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at paras 17–18, 20, 22). Mr. Moreau's arguments to the effect that this jurisprudence is distinguishable are not persuasive.

[25] Even if the jurisprudence were to support the view that writs of *quo warranto* or *mandamus* were available *vis-à-vis* Air Canada, this could only be so where the writs have been sought on an application for judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 [FCA] (s 18(3) of the FCA). In this instance, the NoA was brought pursuant to section 77 of the OLA; a proceeding that has been held to be more akin to an action that is governed by the procedural rules applicable to an application (*Forum des maires de la Péninsule acadienne v Canada (Food Inspection Agency)*, 2004 FCA 263 at para 15; *Bossé c Canada*

(Agence de la santé publique), 2023 CAF 199 at para 15; *Moreau c Canada (Commission des libérations conditionnelles)*, Order in T-2134-23 dated January 30, 2024, at para 14).

[26] Mr. Moreau acknowledges that a proceeding under section 77 of the OLA may not be an application for judicial review. However, he relies on subsection 77(4) of the OLA, which provides a court with the authority to "grant such remedy as [the court] considers appropriate and just in the circumstances." He argues the subsection 77(4) authority flows from section 24 of the *Charter* and submits subsection 18(3) of the FCA cannot be interpreted as taking away a remedy available pursuant to section 24 of the *Charter*.

[27] This argument was considered and rejected by this Court in proceedings involving Mr. Moreau (*Moreau v Canada (Parole Board)*, 2024 FC 1280 [*Moreau PB*]). While *Moreau PB* is not binding upon me, the principle of judicial comity requires that I should follow it in the interests of advancing certainty in the law, subject to certain identified exceptions, none of which apply in this case (*Almrei v Canada (Citizenship and Immigration)*, 2007 FC 1025 at paras 61–63).

[28] Paragraphs 1 and 2 of the NoA will be struck.

(2) The declaratory relief sought is only available in part.

[29] As alternative relief, Mr. Moreau seeks a declaration that Air Canada's failure to assign a language profile to the Positions in Issue contravened subparagraph 41(6)(c)(iii) and section 91 of the OLA.

[30] Air Canada argues that the declaration to the effect that Air Canada contravened subparagraph 41(6)(c)(iii) cannot be granted because (1) the statutory provision was not in force at the time the employees were hired; (2) part VII of the OLA (in which section 41 is included) applies only to the Government of Canada, and Air Canada is not and never was a part of the Government of Canada; and (3) the four individuals appointed to the executive Positions in Issue are admittedly bilingual.

[31] Air Canada makes no submissions as to the availability of declaratory relief as a remedy to address the alleged breach of section 91 of the OLA, but instead relies on its submissions challenging Mr. Moreau's interpretation of section 91.

[32] Mr. Moreau argues the declaration can be granted because section 41 was in force at the time the complaint was filed with the Commissioner and submits the declaration would have a positive effect on fostering bilingualism in Canada and promoting transparency in relation to language expectations within federal institutions. In any event, Mr. Moreau argues the declaratory relief is available solely in relation to the alleged violation of section 91 of the OLA.

[33] In my view, the NoA fails to establish that declaratory relief with respect to the alleged contravention of subparagraph 41(6)(c)(iii) is available for all the reasons identified in Air Canada's submissions. It is not in dispute that, at the time the Positions in Issue were staffed, subparagraph 41(6)(c)(iii) was not in force, and it is not alleged in the NoA that the provision in issue was intended to have either a retroactive or retrospective effect (*British Columbia v Imperial Tobacco*, 2005 SCC 49 at para 71). In this context, Air Canada could not have

contravened subparagraph 41(6)(c)(iii) of the OLA. On this basis alone, any prayer for relief arising from alleged non-compliance is doomed to fail.

[34] However, I do agree with Mr. Moreau's view that, in the event the Court, upon considering the merits of the NoA, were to conclude that section 91 of the OLA had been contravened, declaratory relief is a remedy the Court might consider.

[35] Only the reference to "subparagraph 41(6)(c)(iii)" at paragraph 3 of the NoA will be struck.

(3) The written public apology

[36] Relying on *National Bank of Canada v Retail Clerks' International Union*, 1984 CanLII 2, [1984] 1 SCR 269 (SCC) [*National Bank*], Air Canada submits that this Court cannot order the public apology sought by Mr. Moreau. Indeed, in *National Bank*, the Supreme Court of Canada called this type of relief "totalitarian and as such alien to the tradition of free nations like Canada" (at 296). In *Lafrenière v Canada (Attorney General)*, 2019 FC 219, Justice Luc Martineau, stated in *obiter* that "I strongly doubt that the Court has the statutory power, under sections 18 and 18.1 of the [FCA], to order the respondent to provide the applicant with a letter of apology in the context of a judicial review" (at para 87).

[37] Mr. Moreau denies that the written public apology is a compelled speech order but claims that it is merely an expression of regret that would help alleviate the harms Air Canada

committed. To support his position, Mr. Moreau relies on paragraph 95 of *Thibodeau v Greater Toronto Airports Authority*, 2024 FC 274 [*GTAA*].

[38] I disagree with Mr. Moreau on this issue. The jurisprudence cited above, including *GTAA* at paragraph 96, stands for the principle that, to force a party to express an opinion they do not hold, under penalty of contempt, is compelled speech.

[39] However in *Perera v Canada (CA)*, 1998 CanLII 9051, the Federal Court of Appeal held that, although an apology letter "by its very nature, would contravene paragraph 2(b) of the Charter," a remedy requiring such a letter "may … be granted if it is justifiable under section 1, a question that cannot be answered in the abstract without knowledge of all the circumstances of the case" (at para 27).

[40] Recognizing the possibility—albeit remote—that such a letter might be justified under section 1, I am not persuaded that the remedy sought is bereft of any possibility of success.

[41] Paragraph 4 of the NoA will not be struck.

(4) Damages

[42] Air Canada submits that there was no breach of section 91, so Mr. Moreau is not entitled to damages. Air Canada makes no argument as to whether Mr. Moreau would be entitled to damages should the Court examining the application on its merits find that Air Canada breached section 91.

[43] Relying on *Lavigne v Canada (Human Resources Development) (TD)*, 1996 CanLII 3854 (FC), Mr. Moreau submits that damages have been available under the OLA since 1996; he argues that there is no reason as to why he should not recover damages in the present case. He suggests the proper test should be the same as that used to determine remedies under section 24(1) of the *Charter*.

[44] Having concluded that the alleged breach of section 91 of the OLA is not bereft of any possibility of success I reach the same conclusion in respect of the damages remedy sought.

[45] Paragraph 5 of the NoA will not be struck.

VI. Costs

[46] Each of the parties seeks costs on an elevated standard. However, as there has been mixed success, costs shall be in the cause.

ORDER IN T-2451-24

THIS COURT ORDERS that:

1. The motion is granted in part.

2. Paragraphs 1 and 2 of the Notice of Application are struck.

3. The words "subparagraph 41(6)(c)(iii)" at paragraph 3 of the Notice of Application are struck.

4. The time limits for subsequent steps in the proceeding under Part 5 of the *Federal Courts Rules* will begin to run Monday, April 14, 2025.

5. Costs in the cause.

"Patrick Gleeson"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2451-24
STYLE OF CAUSE:	MICHAEL MOREAU v AIR CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GLEESON J.
DATED:	APRIL 11, 2025

WRITTEN REPRESENTATIONS BY:

Michael Moreau	FOR THE APPLICANT/ RESPONDING PARTY (ON HIS OWN BEHALF)
Michael Shortt Paolina Tosheva	FOR THE RESPONDENT/ MOVING PARTY

SOLICITORS OF RECORD:

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