Federal Court  Cour fédérale

Date: 20181107

Docket: T-2125-12

Citation: 2018 FC 1117

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, November 7, 2018

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

BRUNO LEDUC

Applicant

and

AIR CANADA

Respondent

JUDGMENT AND REASONS

I. *Nature of the matter*

[1] On November 11, 2009, Bruno Leduc boarded an international Air Canada flight in Fort Lauderdale, Florida, that was flying to Montréal, Quebec. While the aircraft was at the gate, Mr. Leduc was removed by three police officers. He claims that Air Canada decided to have him removed because he asked a customer service representative to serve him in French. According to Air Canada, Mr. Leduc was removed because he had been sitting in an unoccupied business

class seat and had ignored the Air Canada employees who had asked him to move to his assigned seat in economy class and also because he had used vulgar, impolite and abusive language towards its employees.

[2] This removal led to further recriminations and to two complaints to the Office of the Commissioner of Official Languages (OCOL).

[3] This Court has been asked to consider the claim for relief that Mr. Leduc filed against Air Canada under subsection 77(1) of the *Official Languages Act*, RSC 1985, c 31 (4th Supp) (OLA), further to an investigation conducted by OCOL.

[4] Mr. Leduc is claiming a total of $4,500 in damages. He is also asking the Court to render a declaratory judgment stating that Air Canada violated his language rights; order Air Canada to write him a letter apologizing for these violations; order Air Canada to lift the travel ban imposed against him and award legal and other costs in his favour.

[5] For the following reasons, it is my opinion that Air Canada violated Mr. Leduc's language rights on two occasions. However, a statement stipulating that Air Canada violated Mr. Leduc's language rights under section 23 of the OLA is the only just and appropriate remedy in these two cases.

II. *Chronology of events*

[6] Before conducting an in-depth review of this case, it would be useful to provide a brief chronology of events.

[7] This story begins with Mr. Leduc's removal from an Air Canada flight on November 11, 2009.

[8] On December 2, 2009, Mr. Leduc received a letter from Air Canada written in French. The letter explained that due to his conduct, Air Canada considered Mr. Leduc to be a security risk for passengers and crew and that he would no longer be accepted as a passenger, unless he could demonstrate to Air Canada, in writing, that he no longer presented a risk.

[9] Attached to this letter was Air Canada's contract policy (the tariff), which authorized Air Canada to refuse transport under similar circumstances. The tariff received by Mr. Leduc was written in English only.

[10] On December 11, 2009, Mr. Leduc called OCOL to file a complaint against Air Canada concerning the lack of French-language services on board the flight and the fact that the tariff attached to his letter had been written in English only. On December 17, 2009, Air Canada received a call from OCOL regarding this complaint. Air Canada sent a French version of the tariff to OCOL following this call.

[11] On August 25, 2010, OCOL sent a letter to Air Canada to report the outcome of its investigation into the complaint. OCOL concluded its letter by recognizing that Air Canada had taken a number of measures to improve bilingual service and by declaring that it considered the matter settled. The outcome of this investigation was explained to Mr. Leduc during a telephone conversation on December 15, 2010.

[12] On December 21, 2011, Mr. Leduc went to the airport in Montréal in order to take an Air Canada flight to Baie-Comeau. Air Canada did not allow him to board the aircraft; his travel ban was still in effect. In February 2012, Mr. Leduc filed a complaint with the Canadian Transportation Agency (CTA) and asked it to order Air Canada to lift the travel ban imposed against him. The CTA deemed the travel ban to be justified and dismissed the complaint in August 2012. The Federal Court of Appeal dismissed Mr. Leduc's application for leave to appeal on October 19, 2012.

[13] Mr. Leduc filed a second complaint with OCOL concerning the incident on November 11, 2009. On February 3, 2012, OCOL responded to an email from Mr. Leduc regarding this complaint and informed him that a new file would be opened. This complaint concerned the lack of French-language services following his removal from the flight.

[14] It is not clear when this second complaint was filed. On February 15, 2012, OCOL sent Air Canada a letter to inform it of this second complaint. The letter indicated that the complaint had been communicated in December 2011. However, according to the affidavit filed by Graham

Fraser, the Commissioner of Official Languages at the time, for the purpose of intervening in the file, the complaint had in fact been filed on February 3, 2012.

[15] On September 27, 2012, OCOL sent two separate letters to Mr. Leduc and Air Canada to inform them of the outcome of its investigation.

[16] In its letter to Air Canada, OCOL noted that Air Canada had failed to fulfill its obligations under the OLA: it had not served Mr. Leduc in French after his removal from the flight and had sent him a tariff written in English only. However, OCOL also noted that Air Canada had provided an action plan that would help the company monitor the delivery of services in both official languages.

[17] In the letter to Mr. Leduc, OCOL noted that it could not determine, with any certainty, that Air Canada had violated the OLA while Mr. Leduc was on board the aircraft. OCOL concluded that a complaint for violation of the OLA would be well founded with respect to the tariff provided in English. However, OCOL informed Mr. Leduc that this document had been sent in error and that Air Canada had forwarded a French version of the regulations. The French version was attached to the letter from OCOL.

[18] OCOL found that the second complaint, concerning the incident in the corridor of the boarding area and at the airport, was well founded because neither of the two employees present spoke French and because they had not asked a bilingual employee of Air Canada to serve

Mr. Leduc in French. OCOL concluded the letter by informing Mr. Leduc of his right to seek a remedy under section 77 of the OLA within 60 days.

[19] Mr. Leduc also filed three claims for damages against Air Canada with the Court of Québec, Small Claims Division, between January 2010 and May 2012. The three claims were consolidated into a single action and the full amount being claimed was for a total of $13,715.70. This amount was being requested to cover moral damages due to his removal in Fort Lauderdale, as well as Air Canada's refusal to transport him to Baie-Comeau and the loss of income resulting from this refusal. The third claim concerned the loss of an employment contract, because he could not travel from Montréal to Sept-Îles via Air Canada.

[20] On October 28, 2013, the Honourable Madam Justice Quenneville dismissed all three claims: *Leduc c Air Canada*, 2013 QCCQ 12682.

[21] On November 15, 2013, following this judgment, the Honourable Madam Justice Quenneville allowed an application by the Attorney General of Quebec, seeking to have Mr. Leduc declared a vexatious litigant by the Court of Québec: *Leduc c Québec (Procureur général)*, 2013 QCCQ 12686). This situation had stemmed from several applications, deemed to be abusive, which Mr. Leduc had filed with the Court of Québec. Consequently, Mr. Leduc no longer had the right to file proceedings or applications with the Court of Québec without the authorization of the Chief Justice of the Court of Québec.

[22] Air Canada filed this judgment in order to cast doubt on Mr. Leduc's credibility. However, Mr. Leduc was never declared a vexatious litigant before this Court, and I am not bound by the findings of Quenneville J. My decision in this case shall be based solely on the evidence presented before me: "The ability to judge a case only on the legal evidence adduced is an essential part of the judicial process." The evidence presented during a hearing involving the same parties may be quite different from the evidence presented in the context of another case: *Gordon v Canada (Minister of National Defence*, 2005 FC 223 at paragraph 13; *Barthe v The Queen* (1964), 41 CR 47 (QCCA).

[23] The hearings for this application were originally scheduled to be held on October 8 and 9, 2013. On October 2, 2013, OCOL asked that the hearings be suspended so that it could obtain intervenor status and in order to await the outcome of the appeal of the decision rendered in *Air Canada v Thibodeau*, 2012 FCA 246, before the Supreme Court. Several issues to be decided in the context of this application were also being examined by the Supreme Court, where OCOL vigorously opposed the decision rendered by the Federal Court of Appeal.

[24] In an order dated October 7, 2013, this Court postponed the hearing of this application *sine die*. On October 22, 2013, OCOL filed its application seeking leave to intervene.

[25] On October 28, 2014, the Supreme Court rendered its decision in *Thibodeau v Air Canada*, [2014] 3 SCR 340. A claim for damages for violating the OLA on board an international flight is now inadmissible due to the Convention for the Unification of Certain

Rules Relating to International Carriage by Air (the Montreal Convention), incorporated under Canadian federal law through the *Carriage by Air Act*, RSC 1985, c C-26.

[26] On May 25, 2018, after a long period of inactivity, Mr. Leduc requested that the case be placed on the roll. On June 4, 2018, OCOL withdrew its application seeking leave to intervene. Its intervention was no longer necessary due to the judgment rendered by the Supreme Court, as the Supreme Court had addressed all the issues which OCOL had intended to raise in the context of its intervention.

III. *The hearing*

[27] Considering that the parties had filed their documents in May 2013, on September 10, 2018, I issued an order authorizing Mr. Leduc to serve and file additional submissions within 14 days of the order and, without giving a choice in the matter, I authorized Air Canada to do the same within 21 days of the order.

[28] Air Canada filed an affidavit, an amended record as well as additional submissions within the deadline provided. Mr. Leduc did not make any filings within the deadline provided.

[29] However, after receiving Air Canada's additional documents, Mr. Leduc tried to file his own documents at the beginning of October, after his deadline had elapsed; Air Canada objected to his filing documents at that time. Mr. Leduc also tried to file other additional documents on the Saturday two days before the hearing.

[30] Considering that Mr. Leduc is not a lawyer, I invoked section 55 of the *Federal Courts Rules*, SOR/98-106, which provides that "[i]n special circumstances, in a proceeding, the Court may vary a rule or dispense with compliance with a rule."

[31] I therefore allowed Mr. Leduc to file all his additional documents with the exception of his recordings of telephone conversations with Air Canada personnel made earlier in the year. Air Canada was not aware that the conversations had been recorded and Mr. Leduc confirmed that the recordings, which I refused to listen to, did not contain any settlement offer.

[32] Consequently, I refused to accept the tape on the grounds that it was not relevant and had been filed too late.

[33] At the beginning of the hearing, Mr. Leduc suggested that I order the launch of a criminal investigation. He believed that an Air Canada employee had perjured herself in testimony before the Court of Québec, when she indicated that she had thought that French was the mother tongue of an Anglophone employee of Air Canada. I told him that I would do nothing of the sort.

[34] It is perhaps this kind of conduct that explains why Air Canada felt the need to point out that Mr. Leduc had been declared a vexatious litigant further to an application by the Attorney General of Québec.

IV. *The issues in dispute*

[35] This case raises the following issues:

1. Were Mr. Leduc's language rights violated on board the aircraft? If so, what remedy, if any, is appropriate?

2. Were Mr. Leduc's language rights violated after his removal from the aircraft, while he was at the airport? If so, what remedy, if any, is appropriate? More specifically, is a claim for damages under the OLA for this violation inadmissible, due to the Montreal Convention? Is Air Canada required to offer bilingual services after the boarding gate closes?

3. Were Mr. Leduc's language rights violated because Air Canada forwarded an English-only version of the tariff? If so, what remedy, if any, is appropriate?

4. Does this Court have jurisdiction to order Air Canada to lift the travel ban?

V. *Preliminary comment: the role of OCOL*

[36] Before considering the merits of this case, a number of clarifications concerning the role of OCOL and the nature of applications filed under section 77 of the OLA are required.

[37] OCOL was established under the OLA. This is a multi-faceted piece of legislation designed to ensure the equal status of French and English in Canada, including in the provision of services to the public and the work of federal institutions.

[38] For the purposes herein, suffice it to say that further to an investigation into a complaint by OCOL, the complainant may seek a legal remedy before this Court, under section 77 of the OLA.

[39] These proceedings have been initiated by way of an application to this Court rather than by way of an action and should be decided in a summary manner, as provided in sections 76 to 81 of the OLA.

[40] In these circumstances, OCOL is not an administrative tribunal which renders a judicial decision. Consequently, the application under review, filed under the OLA, is not an application for judicial review of a decision rendered by OCOL under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. Instead, it is a *sui generis* application concerning official languages. The remedy provided under section 77 of the OLA is similar to a *de novo* hearing: *DesRochers v Canada (Industry)*, [2009] 1 SCR 194 at paragraph 35. This Court is not bound by the opinion of OCOL; it may grant remedies even if OCOL concluded that the complaint is unfounded; the converse is also true: *Air Canada v Thibodeau*, 2012 FCA 246 at paragraph 2; *Forum des maires de la Péninsule acadienne v Canada (Food Inspection Agency)*, 2004 FCA 263 at paragraphs 20–21; *DesRochers v Canada (Industry)* at paragraph 36.

[41] I note that this Court has jurisdiction to grant four of the five remedies being sought by Mr. Leduc: damages if the Montreal Convention is not applicable; a declaratory judgment; an order requiring the Respondent to send the Applicant a letter of apology, in all likelihood,

reluctantly; and costs under section 81 of the OLA. However, this Court does not have jurisdiction to lift the travel ban imposed against Mr. Leduc.

VI. *The incident on board the aircraft: Air Canada Flight AC927 on November 11, 2009*

[42] The obligations provided under the OLA, including the obligation to offer services to members of the travelling public in both official languages in accordance with section 23, applies to Air Canada under section 10 of the *Air Canada Public Participation Act*, RSC 1985, c 35 (4th Supp).

[43] Air Canada recognizes that on the flight leg between Fort Lauderdale and Montréal, there is considered to be significant demand for the use of French within the meaning of section 7 of the *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48.

[44] If Mr. Leduc's language rights were violated on board the aircraft, he cannot claim damages. This was clearly established in *Thibodeau v Air Canada*, [2014] 3 SCR 340 at paragraphs 6, 36–39. It will suffice to note that Mr. Leduc's claim for damages for the violation of his language rights on board the aircraft is inadmissible, based on articles 17 to 19 and 29 of the Montreal Convention, which apply to each and every international flight.

[45] However, article 29 of the Montreal Convention only excludes actions for damages which are not provided in articles 17 to 19. Further to a reading of the Montreal Convention and the decision of the Supreme Court, a claim for non-monetary damages, such as a letter of

apology or a declaratory judgment, is not inadmissible. According to the Supreme Court, a letter of apology constituted a just and appropriate remedy for the violation of Mr. Thibodeau's language rights on board the Air Canada flight: *Thibodeau v Air Canada*, [2014] 3 SCR 340 at paragraph 132; *Air Canada v Thibodeau*, 2012 FCA 246 at paragraph 78.

[46] However, I am not convinced, based on a balance of probabilities, that Mr. Leduc's language rights were violated on board the aircraft.

[47] The evidence on record shows that all Air Canada employees who interacted with Mr. Leduc were capable of communicating in French. This was confirmed in the report on the investigation conducted by OCOL, forwarded in September 2012.

[48] According to the affidavit provided by Alexandra Jean-Louis, the customer service representative who had asked Mr. Leduc to move to his assigned seat, Mr. Leduc had only spoken to her in English. She confirmed that Mr. Leduc never indicated that he wanted to communicate in French. This version of events is corroborated by the affidavit provided by Georges Lévesque, a passenger and neutral third party who had been sitting in the vicinity of the incident that occurred in business class. Mr. Lévesque confirmed that Mr. Leduc's initial communication with Ms. Jean-Louis had been in English and that he never mentioned that he wanted to be served in French.

[49] I note that there is no independent evidence to corroborate Mr. Leduc's version of events.

[50] During the hearing, Mr. Leduc argued that I should not take Mr. Lévesque's affidavit into consideration because he may have been influenced by Air Canada.

[51] If Mr. Leduc doubted Mr. Lévesque's credibility, he should have cross-examined him on his affidavit as provided in sections 83 to 86 of the *Federal Courts Rules*. Mr. Leduc had ample opportunity to request such a cross-examination, as he in fact did in the cases of Ms. Dugas and Ms. Jean-Louis.

[52] According to the evidence on record, it is probable that in the aircraft, Air Canada did not violate Mr. Leduc's language rights. I have carefully analyzed the relevant evidence and by all indications, the allegation, i.e., that Air Canada failed to serve Mr. Leduc in French while on board the aircraft, despite his request for service in that language, is not true: *FH v McDougall*, [2008] 3 SCR 41 at paragraph 49.

VII. *The incident at the airport in Fort Lauderdale after his removal from the aircraft*

[53] According to the report by OCOL, the incident following Mr. Leduc's removal occurred [TRANSLATION] "between the counter and the entrance of the corridor leading to the aircraft". The report indicates that the two Air Canada employees in the corridor leading to the boarding area were not able to communicate with Mr. Leduc in French. They did not speak French and they did not find a bilingual employee or another way to serve Mr. Leduc in French. Ultimately, the opinion of OCOL was that Air Canada had an obligation to provide services in French in the corridor leading to the boarding area and at the airport, and that it failed to fulfill this obligation.

[54] I must note that Air Canada and OCOL found it difficult to investigate this complaint, because it was filed with OCOL over two years after the incident. I also note that according to the report by OCOL, Air Canada implemented [TRANSLATION] "a series of initiatives" at the airport in Fort Lauderdale [TRANSLATION] "in order to improve service provided to members of the public in both official languages."

[55] Nevertheless, I believe that Air Canada violated Mr. Leduc's language rights during and after disembarkation. It had an obligation to provide bilingual services by ensuring that Mr. Leduc could communicate in French with an employee of Air Canada after his removal. I understand that Air Canada had closed the boarding gate and did not expect that it would have to serve clients in the corridor leading to the boarding area or at the airport. For his part, Mr. Leduc did not expect to be removed from the aircraft.

[56] Air Canada did not have a specific obligation to ensure that the two employees at the counter could personally communicate in French. However, Air Canada was required to ensure that that there was a process in place that would allow Mr. Leduc to communicate with a representative of Air Canada after his removal, so that he could obtain answers to his questions. The absence of such a process on a flight leg where there is significant demand for French constitutes a violation of Mr. Leduc's language rights.

[57] I must now determine a just and appropriate remedy under the circumstances, in accordance with paragraph 77(4) of the OLA.

[58] In order to determine Mr. Leduc's right to monetary compensation for the events that occurred in the corridor leading to the boarding area and at the airport it is important to consider the applicability of the Montreal Convention. I feel like the lawyer considering the application of the Hague-Visby Rules described as follows by Lord Devlon in *Pyrene Company Ltd v Scindia Steam Navigation Company Ltd*, [1954] 1 Lloyd's Rep 321 at page 329: "Only the most enthusiastic lawyer could watch with satisfaction the spectacle of liabilities shifting uneasily as the cargo sways at the end of a derrick across a notional perpendicular projecting from the ship's rail."

[59] The Montreal Convention excludes any and all remedies not provided in articles 17 to 19 for anything that happens on board an international flight and anything that happens during embarkation and disembarkation: *Sakka et al v Société Air France et al*, 2011 ONSC 1995 at paragraphs 14, 32; *Thibodeau v Air Canada*, [2014] 3 SCR 340 at paragraph 57. I therefore find that the monetary damages being sought by Mr. Leduc for the incident that occurred in the corridor leading to the boarding area are inadmissible due to the Montreal Convention; he was in the process of disembarking the aircraft.

[60] It is highly likely that a monetary claim would be inadmissible for what happened after this incident, following disembarkation, in the airport. A number of decisions appear to have concluded that if the genesis of an incident originates between embarkation and disembarkation, the damages that arise thereafter, and which are linked to this incident, are subject to the Montreal Convention: *O'Mara v Air Canada et al*, 2013 ONSC 2931 at paragraph 73.

[61] I also note as an example, the decision rendered by the Ontario Superior Court of Justice in *Balani v Lufthansa*, In this case, a cabin attendant had refused to give a wheelchair to a passenger with a disability during disembarkation. The passenger subsequently suffered an injury at the airport. According to the Court, the incident was subject to the Warsaw Convention, the predecessor of the Montreal Convention, which is substantially similar: 2010 ONSC 3003. The Court did not have jurisdiction to hear this case, which, according to the Warsaw Convention, was subject to the jurisdiction of Germany.

[62] Even though this part of the claim may be inadmissible, due to the Montreal Convention, I do not believe that awarding damages, under subsection 77(4) of the OLA, for the violation at the airport is just and appropriate under the circumstances.

[63] According to the case law, the choice of an appropriate remedy under subsection 77(4) of the OLA is highly discretionary: *Thibodeau v Air Canada*, [2014] 3 SCR 340 at paragraph 117; *Lavigne v Canada (Human Resources Development)*, [1997] 1 FC 305. I note that such a remedy "must be relevant to the experience of the claimant and must address the circumstances in which the right was infringed or denied": *Forum des Maires de la Péninsule Acadienne v Canadian Food Inspection Agency*, 2004 FCA 263 at paragraphs 56–58, quoting from *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3.

[64] The incident in question occurred in November 2009. Mr. Leduc filed his complaint over two years later. I also note that this had an impact on the investigation conducted by Air Canada and OCOL. Moreover, Mr. Leduc waited almost four years after the Supreme Court's decision in

Thibodeau before requesting that this case be placed on the roll. His conduct leaves me to believe that the prejudice suffered as a result of the incident at the airport was minimal. Furthermore, I do not believe that it would be fair to order Air Canada to pay damages for an incident that had occurred almost nine years earlier.

[65] Even though OCOL concluded that this second complaint was well founded, it also concluded, in September 2012, that Air Canada had developed an action plan and taken measures to improve services in both official languages. Mr. Leduc filed several reports by OCOL concerning Air Canada's conduct vis-à-vis official languages. I note that these documents are admissible under section 79 of the OLA: they involve similar complaints and make reference to other complaints filed against Air Canada under the OLA. The objective of this provision is to provide the court with a comprehensive context of the language situation at the defendant company, so that the court may grant a just and appropriate remedy if applicable: *Thibodeau v Halifax International Airport Authority*, 2018 FC 223 at paragraphs 18–21.

[66] I note from a reading of these documents that Air Canada is often the subject of complaints concerning official languages. However, I also note the Federal Court of Appeal's comments in *Thibodeau* regarding these reports: they "essentially consist of statistics concerning complaints made, and do not really give us information on their content" (*Air Canada v Thibodeau*, 2012 FCA 246 at paragraph 71).

[67] I do not believe that it would be just and appropriate to award damages in this case. There is no indication that Air Canada failed to respect the measures implemented at the airport in Fort

Lauderdale following the investigation conducted by OCOL. On the contrary, according to correspondence from OCOL related to this case and attesting to several measures taken by Air Canada, it seems to me that the company has made a sincere effort to conduct its activities in accordance with the recommendations made by OCOL for the flight leg from Fort Lauderdale. The issue at the root of this complaint therefore appears to have been resolved.

[68] However, I am not questioning OCOL's findings that Mr. Leduc's complaint was well founded. As I explained above, the Montreal Convention does not preclude the non-monetary remedies sought by Mr. Leduc for the incident that occurred in the corridor leading to the boarding area and at the airport. I believe that a statement indicating that Air Canada violated Mr. Leduc's language rights in the corridor leading to the boarding area and at the airport in Fort Lauderdale is a just and appropriate remedy under the circumstances. Considering Mr. Leduc's conduct, I do not believe that it would be appropriate to order Air Canada to give him a letter of apology.

VIII. *The tariff written in English*

[69] On December 2, 2009, after the flight, Air Canada sent Mr. Leduc a letter in French. The relevant section reads as follows:

> [TRANSLATION]
>
> Moreover, we would like to draw your attention to rule AC35 of the applicable published tariffs that govern your contract of carriage with Air Canada, a copy of which is attached to this letter. As you will note after reading this rule, Air Canada is within its rights to deny you access to future flights, due to your conduct during boarding for flight AC927 on November 11, 2009.

[70] The English version of the *International Tariff* (CGR) – AC Rule: 0035 was attached to this letter. This tariff was an integral part of the contract of carriage between Air Canada and Mr. Leduc. It essentially provided the information set out in the above-referenced excerpt of the letter.

[71] According to sections 22 and 27 of the OLA, a federal institution's bilingual obligations in the context of communications with the public apply "in respect of oral and written communications and in respect of any documents or activities that relate to those communications or services." Air Canada had an obligation to ensure that Mr. Leduc, as a member of the public, could communicate with the company in the official language of his choice. By forwarding an English-only tariff to Mr. Leduc, the company did in fact violate his language rights, in principle. It had an obligation to provide him with a French version.

[72] However, I believe that this was a minor violation. As soon as OCOL informed Air Canada of this violation, it promptly provided a French version of the tariff, which was appended to the affidavit provided by Mr. Fraser. In August 2010, OCOL stated that it considered the matter to be settled. Moreover, the French letter to which this tariff was appended clearly explained the contents of this tariff. Therefore, I do not believe that damages or a letter of apology would constitute just and appropriate remedies under the circumstances.

[73] However, the fact remains that Air Canada violated Mr. Leduc's language rights by sending him a unilingual tariff. I am therefore rendering a declaratory judgment attesting to this violation.

IX. *The travel ban*

[74] Mr. Leduc is asking our Court to order Air Canada to immediately lift the travel ban imposed against him.

[75] M. Leduc is well aware of the fact that our Court does not have jurisdiction to render such an order. His recourse was to file a complaint with the CTA, which he did on February 3, 2012. In August 2012, the CTA dismissed the complaint. It concluded that the travel ban was justified and that Air Canada had not violated the provisions of its tariff.

[76] According to section 28 of the *Federal Courts Act*, the Federal Court of Appeal has exclusive jurisdiction over any judicial review of this decision rendered by the CTA. However, it denied Mr. Leduc's application for leave to appeal in October 2012. Mr. Leduc subsequently applied to the Federal Court of Appeal for reconsideration of this decision. This application was also denied.

[77] If Mr. Leduc believes that he has been rehabilitated and that Air Canada is now unduly maintaining the travel ban against him, his recourse is to file a new complaint with the CTA.

X. *Costs*

[78] Section 81 of the OLA provides that:

81(1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the	81(1) Les frais et dépens sont laissés à l'appréciation du tribunal et suivent, sauf ordonnance contraire de celui-

discretion of the Court and shall follow the event unless the Court orders otherwise.	ci, le sort du principal.
(2) Where the Court is of the opinion that an application under section 77 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.	2) Cependant, dans les cas où il estime que l'objet du recours a soulevé un principe important et nouveau quant à la présente loi, le tribunal accorde les frais et dépens à l'auteur du recours, même s'il est débouté.

[79] This case raised an important new principle when the date of the hearing was initially scheduled: how should the Montreal Convention be interpreted and applied vis-à-vis the OLA? However, this issue was settled by the Supreme Court in 2014. Air Canada maintains that after judgment was rendered in *Thibodeau*, Mr. Leduc did not have any good reason to proceed with his application.

[80] Even though this main issue was settled definitively some four years before the hearing in this case, there were other issues in dispute. I concluded that Mr. Leduc's language rights were not violated on board the aircraft, but that they were violated after his removal from the aircraft and again a few weeks later, when Air Canada sent him a tariff in English. Even though OCOL is convinced that Air Canada has rectified its practices accordingly, the Court must decide whether the complaint was justified at the time of its filing and not at the time of the hearing: *Forum des maires de la Péninsule acadienne v Canada (Canadian Food Inspection Agency)*, 2004 FCA 263; *DesRochers v Canada (Department of Industry)*, 2006 FCA 374, affirmed on appeal by *DesRochers v Canada (Industry)*, 2009 SCC 8, [2009] 1 SCR 194. If the complaint was justified

at the time of its filing, the application must be allowed and the applicant must be granted a just and appropriate remedy.

[81] In *DesRochers v Canada (Industry)* and *Forum des maires de la Péninsule acadienne v Canada (Canadian Food Inspection Agency)*, the Federal Court of Appeal did not say that costs should be awarded if the complaint was well founded in whole or in part at the time of its filing. Under section 400 of the *Federal Courts Rules*, this Court has the discretionary power to determine the amount and allocation of costs and also to determine by whom they are to be paid. One of the factors to be considered is whether the conduct of one party or a measure taken in the context of the complaint was vexatious or unnecessary.

[82] In this case, it was unnecessary for Mr. Leduc to seek an order requiring Air Canada to lift the travel ban imposed against him. He was well aware that issuing such an order fell outside the jurisdiction of this Court.

[83] I believe that it is vexatious that Mr. Leduc waited over two years after his removal from the aircraft in Fort Lauderdale to file his second complaint. This was detrimental to any investigation that Air Canada could have conducted in that regard.

[84] Mr. Leduc also demonstrated reprehensible conduct by ignoring the timeline that I set in the order concerning the filing of additional documents. This created unnecessary work for Air Canada.

[85] With respect to the tariff, when OCOL informed Air Canada of this error, it promptly provided a French version of the tariff.

[86] However, Mr. Leduc succeeded in obtaining a declaratory judgment stating that his language rights were violated at the airport in Fort Lauderdale after his removal from the aircraft and when he received an English version of the tariff.

[87] Under the circumstances, I believe that it is just and appropriate for each party to pay its own costs.

XI. *Conclusions*

[88] Mr. Leduc's applications seeking to obtain damages, letters of apology and the lifting of the travel ban against him are dismissed.

[89] However, I hereby declare that Air Canada violated Mr. Leduc's language rights on two occasions: (1) it failed to fulfill its obligation to serve him in French after his removal, in the corridor leading to the boarding area and at the airport in Fort Lauderdale; and (2) it did not communicate with him in the official language of his choice when it sent him an English-only version of the tariff.

[90] Each party shall pay its own costs.

JUDGMENT in docket T-2125-12

For these reasons, **THE COURT:**

1. **DECLARES** that Air Canada failed to fulfill its obligations under Part IV of the *Official Languages Act*:
   - on November 11, 2009, by failing to provide French Language services after the applicant's removal in the corridor leading to the boarding area and at the airport in Fort Lauderdale; and
   - on December 2, 2009, by sending the applicant a letter with an attached document written in English only;
2. **DISMISSES** the application concerning the incident on board the Air Canada flight;
3. **DISMISSES** the application for monetary remedies;
4. **DISMISSES** the request for letters of apology;
5. **DISMISSES** the application seeking to have the travel ban lifted.

WITHOUT COSTS.

"Sean Harrington"
Judge

Certified true translation
This 5th day of December, 2018.

Francie Gow, BCL, LLB

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2125-12
STYLE OF CAUSE:	BRUNO LEDUC v AIR CANADA
PLACE OF HEARING:	MONTRÉAL, QUEBEC
DATE OF HEARING:	OCTOBER 15, 2018
JUDGMENT AND REASONS:	HARRINGTON J.
DATED:	NOVEMBER 7, 2018

APPEARANCES:

Bruno Leduc	APPLICANT (ON HIS OWN BEHALF)
Louise-Hélène Sénécal	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Air Canada Centre Legal Affairs Dorval, Quebec	FOR THE RESPONDENT