

Federal Court



Cour fédérale

**Date: 20230301**

**Docket: T-1862-17**

**Citation: 2023 FC 289**

**Ottawa, Ontario, March 1, 2023**

**PRESENT: Associate Judge Mireille Tabib**

**BETWEEN:**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION, AND THE MINISTER OF  
PUBLIC SAFETY AND EMERGENCY  
PREPAREDNESS**

**Plaintiffs**

**and**

**BOZO JOZEPOVIC**

**Defendant**

**REASONS FOR ORDER**

[1] The Defendant, Bozo Jozepovic, brought this motion seeking to compel the Plaintiffs (the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness) to provide, at public expense, the services of an interpreter fluent in English and Serbo-Croatian to assist him throughout the trial of this matter. That trial is set to begin on March 6, 2023 and to proceed over 26 days. In the alternative, the Defendant seeks an Order of

advanced costs in his favour for the purpose of paying these costs. I heard the motion on February 16, 2023, and issued an Order on February 17, 2023, dismissing the motion with reasons to follow. The following are the reasons for that Order.

[2] At issue in this action is whether the Defendant, Bozo Jozepovic, obtained Canadian citizenship by false representations or fraud, or by knowingly concealing material circumstances with respect to his involvement in war crimes or in crimes against humanity.

[3] The evidence shows that Mr. Jozepovic is not sufficiently fluent in English or French to fully and effectively participate in his defence at trial. The Plaintiffs further concede that section 14 of the *Charter* finds application in a proceeding such as this, where the Defendant faces the potential revocation of his Canadian citizenship.

Section 14 reads as follows:

14 A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

14 La partie ou le témoin qui ne peuvent suivre les procédures, soit parce qu'ils ne comprennent pas ou ne parlent pas la langue employée, soit parce qu'ils sont atteints de surdité, ont droit à l'assistance d'un interprète.

[4] The Plaintiffs however argue that section 14 of the *Charter* does not guarantee a general, derivative right to have the cost of interpretation paid by the government. They say that in a case such as this, the provision of interpretation services at public expense can only be justified upon a showing, by the Defendant that he is in fact unable to pay for the cost of interpretation.

[5] The Defendant's position is to the effect that the right to an interpreter protected under section 14 is absolute and unrestricted, and that, in any event, he has established that he is unable to pay for the services.

[6] The issues to be determined on this motion are therefore limited to the following:

1. Does section 14 of the *Charter* impose a substantive constitutional obligation on the government to provide free interpretation services in a proceeding such as the present one?
2. If not, has the Defendant established that he is unable to pay interpretation services so as to trigger an obligation on the government to provide assistance?

I. The Scope of Section 14

[7] The seminal decision on section 14 of the *Charter* is *Tran v R* [1994] 2 SCR 951 [*Tran*].

The Defendant argues that it stands for the proposition that s 14 of the *Charter* creates and declares a positive duty on the part of the state to locate, retain, and pay for a litigant's interpretation services, irrespective of demonstrating a financial need. *Tran*, however, contains the following important caveat:

At the outset, I would like to make it very clear that the discussion of s. 14 of the *Charter* which follows relates specifically to the right of an accused in criminal proceedings, and must not be taken as necessarily having any broader application. In other words, I leave open for future consideration the possibility that different rules may have to be developed and applied to other situations which properly arise under s. 14 of the *Charter* -- for instance, where the proceedings in question are civil or administrative in nature.

[8] Indeed, in *Canada (Minister of Citizenship and Immigration) v Phan*, 2003 FC 1194 [*Phan*], this Court was faced with a preliminary motion for state-funded interpretation services in a citizenship revocation matter very similar to this one. It held that the initial responsibility of the litigant requiring the services of an interpreter is to pay that interpreter's fees, but that where the Court is satisfied that the litigant is unable to pay the necessary fee, the Court may order the Crown to do so [*Phan* paras 44-45].

[9] The Defendant argues that *Phan* should not be followed, because the Court failed to take into account the teachings of *Tran* in reaching its conclusion. I do not agree. The Court in *Phan* may not have specifically cited to *Tran*, but that is not to say that it ignored it or was unaware of its existence. As mentioned, the Supreme Court expressly contemplated that the applicability of *Tran* is confined to the rights of an accused in a criminal trial. Indeed, the Court in *Tran* defined the purpose of section 14 through the specific lens of the legal rights comprised in sections 8 to 14 of the *Charter*, as components of the general right expressed in section 7. It concluded, at p 967, para g: "Indeed, the close connection between s. 14 and these other Charter guarantees suggests that the right to interpreter assistance in the criminal context should be considered a "principle of fundamental justice" within the meaning of s. 7 of the Charter."

[10] The judge in *Phan* recognized that although section 14 was "primarily directed" to rights in criminal proceedings, it nevertheless applied to judicial proceedings in civil cases and in quasi-judicial proceedings. The applicability of section 14 was not in dispute. Rather, the issue before the Court was whether it established a right to interpretation services at public expense. The Court held that, in civil or quasi-judicial proceedings, leaving the primary responsibility of

paying interpreters fees to the litigant requiring the service does not violate the litigant's right to a fair trial, so long as it has not been established that the litigant is unable to pay those costs.

[43] That being said, it is well established that the right provided by section 14 of the *Charter* is not absolute. In *Roy v. Hackett* [(1987), 1987 CanLII 4212 (ON CA), 45 D.L.R. (4th) 415 (Ont. CA.)], Justice Lacourcière for the Court made this point at page 426. At the same time, he noted at page 425:

There is no doubt that the right to a fair trial is not limited to criminal trials but also applies to cases where the proceedings are quasi-judicial, as in the case before us.

[citation omitted]

I am satisfied that this reference is a proceeding that is "quasi-judicial" in the sense in which Justice Lacourcière employed that term.

[44] In *Wyllie v. Wyllie* [1987 CanLII 2877 (BC SC), 37 D.L.R. (4th) 376 (B.C.S.C.)], Skipp L.J.S.C., after referring to paragraph 2(g) of the Canadian Bill of Rights and section 14 of the *Charter*, concluded in the following terms:

I am of the view that under s. 14 of the *Charter*, a litigant in a civil proceeding "has the right to the assistance of an interpreter". I am of the further view that the initial responsibility of the litigant requiring the services of an interpreter is to pay that interpreter's fee, and I therefore decline the order sought by the plaintiff.

The question that remains unanswered is, is there an obligation upon the court or the Crown in civil proceedings to pay an interpreter's fee upon the court being satisfied that the litigant requiring an interpreter is unable to pay the necessary fee? The wording of s. 14 is bold and unequivocal and it might well be that upon the basis of impecuniosity that a court would so order.

[45] I adopt the conclusion of Skipp L.J.S.C. as my own. There was no evidence whatsoever before me of impecuniosity on the part of the Defendant. In the circumstances, the question that remained open following *Wyllie v. Wyllie*, continues to remain open.

[11] I cannot see how the conclusion that s. 14 does not protect the right to state-funded interpretation services in non-penal cases absent evidence of impecuniosity offends the teachings of *Tran*. Similar conclusions were drawn, albeit in proceedings of a different nature, in *Filgueira v Garfield Container Transport Inc.*, 2006 FC 785 at para 34, 38-39, *Royal Bank of Canada v Welton*, 2009 CanLII 55356 (ON SC) at paras 6-7, and *McCulloch Finney c Canada (Attorney General)*, 2009 QCCS 4646 at paras 90-93. Indeed, not all legal rights protected by the *Charter* include the right to be provided with the means to exercise them at the state's expense, regardless of financial need (see for example *R v Prosper* [1994] 3 SCR 236 at 238).

[12] The Defendant's argument to the effect that section 14 confers an unconditional right to state-funded interpretation services is premised on the notion that section 14 of the *Charter* has gained recognition as a "positive right" rather than a negative one. Negative rights are described as rights of non-interference, where violation occurs by direct state intervention. Positive right, however, may be violated by mere inaction or the state's failure to actively provide the conditions for their fulfillment. In the Defendant's argument, because section 14 confers a positive right to the services of an interpreter, the state has a duty to provide, at its costs, the means for its fulfillment. The Defendant's argument is flawed in two principal respects.

[13] First, there is no jurisprudential support for the proposition that section 14 has indeed been recognized as a conferring a broad positive right in all circumstances. As mentioned, the analysis and conclusions in *Tran* are specific to criminal proceedings. The other case on which the Defendant relies for this proposition is the dissenting opinion of Justice Arbour in *Gosselin v Quebec (Attorney General)* 2002 SCC 84 at paras 319-320. However, that passage only

identifies “the right to an interpreter in penal proceedings” as imposing positive obligations. No cases have been cited in which the unconditional right to interpretation services has been recognized in civil or non-penal procedures.

[14] Second, there is no established principles for defining protected rights as “positive” or “negative”, or the scope of the state’s obligations even in respect of so-called positive rights. The Defendant’s argument conflates, without a sound basis in law, the notion of ensuring procedural fairness by ensuring *access* to interpretation services with the provision of state funding to retain these services. The content of the state’s positive obligations, even when they arise, depends on what is necessary, in the circumstances of the case, to meet the purpose and objectives served by the particular *Charter* right.

[15] The rights protected by section 14 aim to ensure the fairness of proceedings [*Tran* at p. 975]. In proceedings where a litigant’s section 7 rights are engaged, the content of the state’s obligation may be as extensive as the Defendant suggests. However, I refrain from making that determination, because the question of whether section 7 implies an unconditional right to state-funded interpretation services is not at issue before me. As the Defendant himself concedes and as previously determined in an earlier decision in this case (2021 FC 536), this action does not engage the protections guaranteed by section 7 of the *Charter*. The proceedings could result in the revocation of the Defendant’s Canadian citizenship and the stigma of being declared a war criminal or of having committed crimes against humanity, but they do not result in imprisonment, automatic expulsion from Canada or deportation so as to engage section 7 rights.

Accordingly, there are no reasons to depart from the principle that the rights protected by section 14 in the context of this action are not absolute.

[16] *Phan*, above, is on all four with the circumstances of this matter and I find no reason to distinguish it. I am satisfied that while the right to the assistance of an interpreter is guaranteed by section 14 of the *Charter* in citizenship revocation matters, that right does not include the right to have those services paid by the state regardless of financial need. There is no inherent unfairness in requiring the Defendant to bear the initial responsibility for paying the costs of interpretation services needed, unless the Court is satisfied that he is unable to do so.

## II. Financial Need

[17] The Plaintiffs do not dispute that the rights guaranteed by section 14 of the *Charter* should not be defeated by a party's financial inability to pay for interpretation services.

Accordingly, it is unnecessary to consider as a threshold issue whether the procedural means to protect this right should be viewed as a matter of awarding advanced costs pursuant to the principles of *British Columbia (Minister of Forests) v Okanagan Indian Band* 2003 SCC 71, as a matter of relieving the Defendant from the application of Rule 93 of the *Federal Courts Rules*, or as a special procedural order required to insure the just determination of issues and the respect of the rules of natural justice in light of the *Charter*. The ultimate issue is the same: has the Defendant established, to the satisfaction of the Court, that he is unable to pay for the cost of securing the assistance of an interpreter for the duration of the trial?

[18] The Defendant himself evaluates this cost at between \$4320 and \$6000.



[19] On the evidence before me, I am not satisfied that the Defendant is unable to pay these costs.

[20] Mr. Jozepovic has sworn an affidavit in support of this motion. In it, he asserts that he is the sole wage earner of his household. He says that he lives with his wife, who collects CPP benefits and a disability pension, and his son, who is a full-time student. He asserts that the house in which he lives is owned by his wife and that they cannot take further debt on the mortgage. He also states that his daughter called Legal Aid and was told that he did not qualify.

[21] Mr. Jozepovic's testimony on cross-examination reveals significant contradictions and inconsistencies with the statements made in his affidavit. For example, the household also includes his daughter, who is employed as a correctional officer. The house is jointly owned by Mr. Jozepovic, his wife and his daughter. Mr. Jozepovic did not know the value of the house, which brings in question his statement that no further debt can be taken on the mortgage. Finally, Mr. Jozepovic stated that no one had inquired to Legal Aid Ontario on his behalf.

[22] Documents that were requested ahead of the cross-examination in a Notice to Attend were only provided after the conclusion of the cross-examination. They reveal facts that are troubling and cast further doubt on the assertion made in Mr. Jozepovic's affidavit to the effect that he cannot afford the \$6000 needed to pay for interpretation services. For instance, it appears that a new mortgage in the amount of \$600,000 was taken out in December 2022. There is no indication of where or to whom the loan amount was paid out. The sole monthly bank statement provided for a joint account between Mr. Jozepovic and his wife, for December 2022, shows

“payroll deposits” totaling some \$14,800. Counsel for Mr. Jozepovic explained, in an unsworn letter, that Mr. Jozepovic’s wife received these payments as a one-time lump sum payment to cut off her disability payments. It is impossible to verify that statement. Mr. Jozepovic refused to provide bank statements and RRSP statements going back five years, although he was asked to do so ahead of his attendance. His claim, on cross-examination, that he used to have an RRSP but that it was liquidated in its entirety in 2022 or 2021 cannot be verified.

[23] I also note, although it was not raised on cross-examination, that Mr. Jozepovic stated in his affidavit that he owns his own truck, which he drives for himself as his main source of revenue. Although I accept that Mr. Jozepovic is ill and cannot drive the truck himself, his affidavit recognizes that he has had additional drivers from time to time. No explanation has been provided as to why he could not, simply by hiring drivers to operate his truck during his illness, raise the \$6000 he says he needs to pay for interpretation services.

[24] The courts have traditionally placed a heavy evidentiary burden on litigants who attempt to establish that they are indigent so as to benefit from an advanced order of cost. The Federal Court of Appeal has emphasized the obligation of the moving party to provide a very complete account of all potential sources of funding, including family and friends. Litigants must explain in sufficient detail the specific financial circumstances of potential alternative sources of funds, such as a spouse or extended family members, and provide valid reasons why they do not have access to those alternative resources (*Al Telbani v Canada (Attorney General)* 2012 FCA 188).

[25] Even assuming, but without determining, that in the context of the application of section 14 of the *Charter*, the courts should take a more generous and open-minded approach to assessing financial need, the evidence presented by the Defendant is so riddled with contradictions and deficient in details as to his own resources, that it fails to satisfy even a low threshold.

[26] The Defendant pleads that he did his best to provide information in a tight timeframe, that translation issues account for the discrepancies between his affidavit and his cross-examination testimony, and that the Court should show leniency and understanding if the evidence is not as complete as it should be.

[27] The timeframe in which this motion was put together and presented was of the Defendant's own making. The possibility that the Defendant would make a motion for advanced costs was raised as early as December 8, 2022, in relation to the costs of interpretation services for witnesses to be called by the Defendant. I do not agree that the Defendant had a sound reason to hold off on gathering the evidence needed for such a motion because he assumed that his personal interpretation needs would be fulfilled by the Plaintiffs. That assumption is not supported by existing jurisprudence of the Court, nor by the practice of the Refugee Board to provide interpretation services in the course of refugee determination proceedings. It is based on a novel and expansive interpretation of the *Charter*, which I rejected.

[28] Moreover, the deficiencies in the evidence are owed, in large part, to the Defendant's express refusal to provide the documents requested by the Plaintiffs, rather than to his inability to access same at short notice.

[29] I am not satisfied that the Defendant is unable to pay for or afford the services of an interpreter for the duration of the trial.

---

"Mireille Tabib"  
Associate Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1862-17

**STYLE OF CAUSE:** THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION, AND THE MINISTER OF PUBLIC  
SAFETY AND EMERGENCY PREPAREDNESS v  
BOZO JOZEPOVIC

**PLACE OF HEARING:** OTTAWA, ONTARIO

**DATE OF HEARING:** FEBRUARY 16, 2023

**ORDER AND REASONS:** ASSOCIATE JUDGE TABIB

**REASONS DATED:** MARCH 1, 2023

**APPEARANCES:**

Sean Gaudet FOR THE PLAINTIFFS  
Ms. Alison Engel-Yan  
Judy Michaely

Ronald Poulton FOR THE DEFENDANT  
Edward Babin

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE PLAINTIFFS  
Department of Justice  
Toronto, ON

Poulton Law Office FOR THE DEFENDANT  
Professional Corporation  
Toronto, ON

Babin, Bessner, Spry FOR THE DEFENDANT  
Law Office  
Toronto, ON