Federal Court Cour fédérale

Date: 20240220

Dockets: T-2013-19
T-534-21

Citation: 2024 FC 274

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 20, 2024

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

MICHEL THIBODEAU

Applicant

and

GREATER TORONTO AIRPORTS AUTHORITY

Respondent

and

COMMISSIONER OF OFFICIAL LANGUAGES

Intervener

JUDGMENT AND REASONS

I. Overview

[1] The Greater Toronto Airports Authority [GTAA] is a non-profit corporation that operates Toronto Pearson International Airport [the Airport], among other things. The applicant, Michel Thibodeau, who is not represented by counsel, is applying for remedies under subsection 77(1) of the *Official Languages Act*, RSC 1985, c 31 (4th Supp) [the OLA], against the GTAA, alleging that it has failed to meet its language duties under the OLA and has therefore violated the language rights associated with those duties. The alleged violations are related to three complaints that he made to the Commissioner of Official Languages [the Commissioner] under section 55 of the OLA, namely one complaint in docket T-534-21 and two complaints in docket T-2013-19, with both matters being heard in succession on the same day. The Commissioner prepared investigation reports and made recommendations in relation to each of the complaints. In addition, in an order dated November 26, 2020, the Commissioner was granted intervener status in docket T-2013-19 only. The Commissioner did not intend to take a position on the merits of Mr. Thibodeau's application; rather, the Commissioner's objective was to present to the Court the principles of interpretation that apply to the *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48 [the Regulations], in order to clearly delineate the scope of third-party contractor services under subsection 12(1) of the Regulations and the scope of airport authorities' duties.

[2] Mr. Thibodeau is seeking remedies under subsection 77(4) of the OLA, namely, public interest standing, a public statement that the GTAA violated his language rights, and a formal letter of apology. He is also asking the Court to award him $4,500 in damages ($1,500 for each violation) and $5,000 in costs. I will deal with both applications at the same time because a

number of issues are common to both. For the reasons that follow, I will allow Mr. Thibodeau's applications in part and grant remedies in this case.

II. Complaints

T-534-21—Press Release complaint

[3] The facts in docket T-534-21 are not in dispute. The GTAA owns and operates the torontopearson.com website [the Website], and it has acknowledged that Mr. Thibodeau's language rights were violated in the case of the complaint regarding a press release entitled "Toronto Pearson to welcome 9.8M passengers this summer" [the Press Release] dated June 28, 2017, and posted the following day on the Website without being simultaneously posted in French, i.e., the Press Release was not available in both official languages. Mr. Thibodeau's complaint to the Commissioner on July 14, 2017 [the Press Release complaint], was communicated to the GTAA on July 18, 2017, and the GTAA corrected the situation and published the French version of the Press Release six days later, on July 24, 2017.

[4] The Commissioner filed his final investigation report on June 11, 2018, finding that the Press Release complaint was well founded and that the GTAA had failed to meet its language duties under Part IV of the OLA. However, the Commissioner noted that the GTAA [TRANSLATION] "[had] made progress with regard to press releases being published in both official languages on the website" and recommended that the GTAA review its communications policies within three months of the date of the final investigation report to ensure that press releases on the Website were available simultaneously in both official languages.

[5] The final follow-up report, filed by the Commissioner on January 26, 2021, states that the GTAA responded to the recommendation by claiming, but not showing, that the delay in issuing the French-language Press Release was the result of exceptional circumstances rather than any lack of knowledge or understanding of its language duties, or any systemic problems in meeting those duties. The GTAA stated that, normally, press releases for the public are issued simultaneously in both official languages, and the English and French versions of press releases are posted simultaneously on the Website. The GTAA acknowledged that it did not have written policies for everything it did; however, it asserted that it ensured that employees drafting and issuing press releases had the knowledge required to carry out their day-to-day duties, that employees were aware that press releases had to be issued in both French and English, and that both French and English versions were required before a press release could be posted on the Website.

[6] However, the Commissioner noted that the recommendation in his final investigation report had not been implemented and that the GTAA had failed to provide any documentation showing that it had reviewed its policies to ensure that communications to the public, including press releases, were posted simultaneously in both official languages on the Website. Moreover, the Commissioner noted that the GTAA had no formal written policy on issuing communications to the public and that, although the GTAA had stated that its press releases were issued in both official languages and that the delay in issuing the press release referred to in the initial complaint was the result of exceptional circumstances, the documentation provided by Mr. Thibodeau combined with the Commissioner's investigations showed that the problem was ongoing. Consequently, the Commissioner asked the GTAA to act on the recommendation

immediately, by adopting a communications policy and communicating it to communications staff. The Commissioner believed that an official communication policy, if enforced, would enable the GTAA to prevent future incidents similar to the one described in the complaint.

[7] As mentioned, the GTAA has acknowledged that, under the OLA, it must ensure that its airport-related press releases are available in both official languages, and it states that policies and procedures, particularly with regard to the translation of press releases, have been implemented to this end. The GTAA submits before to me, as it had advised the Commissioner, that the issuance of the Press Release in English without the French version was merely an oversight—perhaps the result of exceptional circumstances, rather than a lack of knowledge or understanding of its language duties—and that the oversight was promptly corrected once brought to the GTAA's attention. Since the GTAA has acknowledged that Mr. Thibodeau's language rights were violated in the case of the Press Release complaint, the issue before me concerns the remedies that should be granted to Mr. Thibodeau, in particular the nature of those remedies, including the quantum of any damages.

[8] However, Mr. Thibodeau's present application specifically seeks a declaration that the GTAA failed to meet its language duties under the OLA, thereby violating language rights not only in relation to the Press Release but also in relation to a number of press releases that were not available in French on the Toronto Pearson International Airport website in recent years. I note that the evidence in the record includes complaints made by Mr. Thibodeau to the Commissioner in January 2021, after the present application had been filed, regarding other alleged violations of the OLA in relation to GTAA press releases to the public issued in 2017,

2018, 2019 and 2020. However, a number of these new complaints are still pending, with the Commissioner's final investigation report still outstanding at the time of the hearing before me; in fact, the GTAA asserted before me that, apart from the complaints that form the basis of docket T-2013-19, it had only recently become aware of the new complaints of possible previous violations. For the purposes of the present application and the declaratory relief by sought by Mr. Thibodeau, it does not seem appropriate for me to consider the purported previous violations of the OLA that are still under investigation. The GTAA does not, in fact, object to any declaration by the Court of violations in respect of the Press Release complaint, but it does object to any general declaration in respect of purported previous violations, given that no such violations are at issue before me.

[9] That said, the GTAA submits that Mr. Thibodeau is not entitled to damages because they would be neither fair nor appropriate, particularly since Mr. Thibodeau failed to demonstrate that the alleged violations of his language rights resulted in any actual harm, and that the complaint is simply part of Mr. Thibodeau's longstanding crusade against federal institutions, in which he actively seeks out potential language violations for personal gain. I will consider these issues below.

T-2013-19—CIBC and Booster Juice complaints

[10] The two complaints in docket T-2013-19 relate to the GTAA's duties with regard to services provided by third-party contractors, under subsection 12(1) of the Regulations.

A. *The CIBC complaint*

[11] The incident in question reportedly occurred on February 3, 2018, and Mr. Thibodeau's complaint to the Commissioner against the Airport is dated March 3, 2018. Mr. Thibodeau's complaint with respect to CIBC [the CIBC complaint] regards unilingual English or predominantly English signage on CIBC's automated teller machines [ATMs] and in CIBC's advertising at the Airport. Specifically, the CIBC complaint is composed of three parts:

a) ATM signage—Signage is only in English or predominantly in English—the photographs provided by Mr. Thibodeau show signs on ATMs such as "Foreign Cash", "CAD and USD Cash" and "Multiple Currencies available here" with no French equivalents.

b) Branch advertising—Signage at CIBC banking centres is only in English or predominantly in English, for example, "How can we help you?" signs and taglines in big letters, advertisements and taglines such as "We're here for all your banking needs", and posters bearing the taglines "Bank before you fly", "Do any last minute banking", "Branch on your right" and "Relax and recharge in our branch" with no French equivalents.

c) Travel insurance advertising—Signage for CIBC travel insurance is only in English or predominantly in English, for example, "Purchase travel insurance" with no French equivalent.

[12] The Commissioner filed his final investigation report in October 2019; he determined that the CIBC branches located at the airport provided services to the travelling public pursuant to a contract within the meaning of paragraph 12(1)(a) of the Regulations, including travel insurance and foreign exchange services, and that the ATM signage and CIBC advertisements complained of were in English only. Consequently, the GTAA had violated Part IV of the OLA, and Mr. Thibodeau's complaint was well founded. The Commissioner noted that these services, as well as ATM signage, must be provided or made available to the travelling public in both official languages, in accordance with subsection 23(2) of the OLA, and that advertisements and other

signage related to these services must also be in both official languages, in accordance with subsection 12(3) of the Regulations.

[13] In response to the preliminary investigation report, the GTAA stated that it was advising CIBC to ensure that signage and print and electronic advertising for the services covered by the Regulations are in both official languages, and that it was currently in discussions with CIBC about changes to the sale and purchase of currency where in-person service is offered in English only. Although CIBC's ATMs at the airport are accessible in both English and French, the GTAA confirmed that the signage on some ATMs was in English only, and that these ATMs would be updated this year with bilingual signage. However, regarding the sale of travel insurance by CIBC, the GTAA simply noted that, since this service was not provided in person at airport branches, customers had to contact CIBC by telephone to purchase insurance. As a result, English-speaking and French-speaking customers are treated equally, as they must all access the service by telephone; the telephone service is bilingual.

[14] The Commissioner commended the GTAA for its efforts in ensuring that signage and advertising at CIBC branches located at the airport were in both official languages. However, it recommended that the GTAA take the necessary steps within six months of the date of the final investigation report to ensure that this signage and these advertisements, as well as those on the ATMs, are of equal quality in both official languages.

[15] The GTAA argues before me that, in the present case, it concedes that there were two specific instances in which Mr. Thibodeau's language rights were violated, namely the ATM

signage and the advertising related to the sale of travel insurance. In both cases, however, the GTAA claims to have acted promptly to ensure that CIBC made the necessary corrections.

[16] As for the rest, these are not violations of the OLA. The GTAA asserts that the general branch advertisements all relate to traditional banking services, rather than to one of the services prescribed in subsection 12(1) of the Regulations; general banking services are not services covered by the Regulations and are therefore not subject to bilingualism requirements. According to the GTAA, there is nothing in the OLA or the Regulations to support the fact that advertising or communications relating to banking services or products that are not designated as services prescribed by regulation are subject to bilingualism obligations. According to the GTAA, Mr. Thibodeau claims that, since CIBC offers certain services covered by the Regulations (ATMs, foreign exchange services and travel insurance), all its services—including banking services—are services prescribed by regulation. Such reasoning, argues the GTAA, is not consistent with the Regulations, and only those services that Parliament expressly lists as falling within the scope of a federal institution's language obligations should give rise to such obligations.

[17] In any event, the GTAA reiterates that Mr. Thibodeau is not entitled to damages, as they are neither just nor appropriate, especially since, as was the case with the complaint regarding the press release, Mr. Thibodeau has failed to demonstrate that the alleged violations of his language rights have resulted in actual harm. This is also because the complaints are part of Mr. Thibodeau's longstanding crusade against federal institutions, in particular airport

authorities, whereby he actively seeks out potential violations of his language rights for personal financial gain.

B. *The Booster Juice complaint*

[18] The incident in question reportedly occurred on January 26, 2019, and Mr. Thibodeau's complaint to the Commissioner against the airport is dated February 8, 2019. The Booster Juice restaurant (a juice and smoothie bar) is a third-party service provider of the GTAA that operates, at one of its counters located at the airport, a play area adjacent to the Booster Juice counter, which offers an interactive experience for young travellers. The Booster Juice complaint was with respect to a unilingual English sign located at the entrance to the play area, which read "Toronto Pearson Booster Juice FIT & FUN ZONE" [the Booster Juice complaint].

[19] Before examining the issue of the Booster Juice complaint, I must point out that section 77 of the OLA grants the Court only limited jurisdiction over the complaint filed with the Commissioner by Mr. Thibodeau. In this case, the complaint filed by Mr. Thibodeau and dealt with by the Commissioner concerns only a specific inscription, namely the sign at the entrance to the play area. Mr. Thibodeau maintains before me that inside the play area, there are two tables with built-in electronic screens, larger free-standing screens on which video games are broadcast in English only, and two screens mounted on the wall. "Toronto Pearson Booster Juice FIT & FUN ZONE" can be seen on the side of one table and on the wall-mounted screens. In addition, a large neon sign reading "BOOST YOUR LIFE" can be found on a wall in the play area. No French equivalent was posted on either sign. However, these signs were not part of Mr. Thibodeau's complaint to the Commissioner and, as such, I cannot deal with them.

[20] The Commissioner filed his investigation report in December 2019, confirming that Mr. Thibodeau's complaint was founded and that GTAA had failed to comply with Part IV of the OLA. In response to the Commissioner's preliminary investigation report, the GTAA explained that the play area is not used as a restaurant, and that it is not part of a restaurant under subsection 23(2) of the OLA and paragraph 12(1)(a) of the Regulations but is, rather, a play area. However, it appears that Booster Juice has nonetheless made changes to the play area, notably by adding signs in French. The Commissioner disagreed with the GTAA and concluded that paragraph 12(1)(a) of the Regulations states that services offered by restaurants are part of the contracted services that must be provided to the travelling public in both official languages. Since Booster Juice provides restaurant services under a contract with the GTAA, and since the play area is part of the Booster Juice counter in question, its signs are covered by subsection 12(2) of the Regulations and must be readily visible in both English and French. Recommendations, remedial measures and timelines were articulated by the Commissioner, which included recommendations that the GTAA take all necessary measures to ensure that Booster Juice signage at the airport is of equal quality in both official languages, and to remind airport service providers that all signage and written communications concerning services to the travelling public listed in subsection 12(1) of the Regulations must be of equal quality in both official languages.

[21] As in the case of the CIBC complaint, the GTAA asserts before me that the Booster Juice complaint is unfounded in law and should be dismissed. Indeed, the dispute between the parties centres primarily on the interpretation that should be given to the case law on the language rights of the travelling public and to the OLA, but in particular to the types of services provided by

third-party contractors pursuant to subsection 12(1) of the Regulations. This interpretation, combined with an understanding of the main jurisprudential principles governing language rights, will together serve to confirm whether the GTAA breached its duties in relation to the scope of its obligations which devolve to third-party contractors operating a business in its airport.

[22] The central questions to be decided in T-2013-19 are as follows:

a) How are we to interpret subsection 12(1) of the Regulations in light of the main jurisprudential and legislative principles regarding language rights in order to give effect to the Regulations?

b) Does the evidence relating to the challenged complaints reveal a breach of the GTAA's language obligations with respect to the provision of services by third-party contractors at Pearson International Airport under the OLA and section 12 of its Regulations? In particular, what interpretation should be given to the notion of "services", as detailed in section 12 of the Regulations?

c) What remedy, if any, is appropriate?

III. Analysis

[23] The laws, regulations and other statutory instruments relevant to this case have been reproduced in the Annex. I note that the Court's role is to carry out a *de novo* revue of Mr. Thibodeau's application. The case law is clear: I am not bound by the findings or recommendations of the Commissioner's reports. They are simply admissible evidence that may be challenged like any other evidence on the record (*Thibodeau v Air Canada*, 2005 FC 1156, [2006] 2 FCR 70 at para 62).

A. *The OLA—Principles of interpretation applicable to language rights*

[24] It is not disputed that the relevant provisions of the OLA and the Regulations apply to the GTAA. Moreover, the parties agree that the OLA enjoys a special status in the Canadian legal framework, and the case law has long recognized its quasi-constitutional status (*Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53 [*Lavigne*] at para 23; *Thibodeau v Air Canada*, 2014 SCC 67 [*Thibodeau 2014*] at para 12). This special status stems from its "constitutional roots" and "its crucial role in relation to bilingualism" (*Lavigne* at para 23). Indeed, the principles contained in the provisions of the OLA—with the exception of those in Part V—stem directly from sections 16 to 20 of 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 [the Charter]. Thus, the provisions of the OLA take precedence over all other federal statutory or regulatory provisions, with the exception of those of the *Canadian Human Rights Act*, RSC 1985, c H-6.

[25] It is also important to remember the purpose of the OLA, set out in section 2, which at the relevant time read as follows:

> (a) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;
>
> (b) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and

> (c) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.
>
> [Emphasis added.]

[26] The OLA, by virtue of its preamble, is an extension of the rights and guarantees recognized in the Charter and belongs to that privileged category of quasi-constitutional legislation which reflects "certain basic goals of our society" and must be so interpreted "as to advance the broad policy considerations underlying it" (*Doucet v Canada*, 2004 FC 1444 at para 16, citing *Canada (Attorney General) v Viola*, 1990 CanLII 13036 (FCA), [1991] 1 FC 373 (CA) [*Viola*] at page 386).

[27] Subsections 23(1) and (2) of the OLA deal with the duty of federal institutions that provide services or make them available to the travelling public. These institutions must "ensure that any member of the travelling public can communicate with and obtain those services in either official language from any office or facility of the institution in Canada or elsewhere where there is significant demand for those services in that language". Subsection 23(2) also specifies the duties of these federal institutions in relation to services to the travelling public prescribed by regulation that are provided or made available by another person or organization pursuant to a contract.

[28] Section 25 of the OLA specifies the obligations related to services provided by third parties. It reads as follows:

> Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or

> organization in either official language in any case where those services, if provided by the institution, would be required under this Part to be provided in either official language.

[29] The guiding principles governing the interpretation of the language rights in Canada—and therefore, by extension, the OLA—derive from the case law of the Supreme Court since the end of the 20th century. This implies that the Court is bound to interpret language rights according to the purposive approach, that is, an analysis that is based on the rights' purpose (*R v Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 SCR 768 [*Beaulac*] at para 25), and that requires giving Charter rights a generous and liberal interpretation to fully realize the purpose of the OLA, thereby advancing, in all cases, the preservation and development of official language minorities in Canada (*Beaulac* at paras 22–25; *DesRochers v Canada (Industry)*, 2009 SCC 8, [2009] 1 SCR 194 [*DesRochers*] at para 31; *Association des parents de l'école Rose-des-vents v British Columbia (Education)*, 2015 SCC 21 at para 32; *Mazraani v Industrial Alliance Insurance and Financial Services Inc*, 2018 SCC 50 at para 20; *R v Poulin*, 2019 SCC 47 [*Poulin*] at para 53; *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at paras 239–40). This interpretive principle is based on the constitutional principle of the protection of minorities, and it illustrates the need to correct societal inequalities by mitigating the vulnerability of minority cultures and ensuring that members of the minority groups and majority groups have equal opportunities (*Thibodeau v Canada (Senate)*, 2019 FC 1474 [*Senate*] at para 27, citing *Reference re Secession of Quebec*, [1998] 2 SCR 217 at paras 79-82). Thus, I must reject any strict or restrictive interpretation, considering the importance of language rights in Canadian society (*Beaulac* at paras 2 and 25).

[30] Moreover, for its interpretation to be consistent with the objectives of the OLA, substantive equality, as opposed to formal equality—which will require a comparison between the services offered to the linguistic majority community and those offered to the linguistic minority community—is to be the norm, and the exercise of language rights is not to be considered a request for accommodation (*DesRochers* at para 31); the components of substantive equality are the equality of status and use of English and French, which stems directly from section 2 of the OLA and section 16 of the Charter, and the equality of access to services of equal quality for members of both official language communities in Canada (*Beaulac* at para 22; *Thibodeau v Air Canada*, 2019 FC 1102 [*Air Canada 2019*] at para 40). Finally, the principle of a liberal and purposive interpretation of the OLA "translates into a residual presumption: if the application of the usual methods does not allow one to decide between two possible interpretations of the Act, one must choose the interpretation that maximizes the scope of language rights. A similar presumption applies to the Charter. . . . Since the Act is intended to give effect to certain Charter rights, it is logical that the same presumption should apply" [citation omitted] (*Thibodeau v St. John's International Airport Authority*, 2022 FC 563 [under appeal] [*St. John's Airport*] at para 23).

[31] That said, and although the interpretation of the OLA, like that of the Charter, is liberal and generous, the purposive approach should not be confused with liberal interpretation; as the Supreme Court stated in *R v Grant*, 2009 SCC 32, [2009] 2 SCR 353 [*Grant*]:

> While the twin principles of purposive and generous interpretation are related and sometimes conflated, they are not the same. The purpose of a right must always be the dominant concern in its interpretation; generosity of interpretation is subordinate to and constrained by that purpose. While a narrow approach risks impoverishing a *Charter* right, an overly generous approach risks

> expanding its protection beyond its intended purposes. In brief, we must construe the language [of the sections of the statute] in a generous way that furthers, without overshooting, its purpose. [References and citations omitted.] (*Grant* at para 17; *Poulin* at paras 53-55.)

[32] Moreover, while language rights are to be given a liberal interpretation within the outer bounds of the purpose of the applicable law, the words used remain important and, within the purposive approach, the analysis must begin by considering the text of the provision and "must not overshoot (or, for that matter, undershoot) the actual purpose of the right" (*Quebec (Attorney General) v 9147-0732 Quebec inc*., 2020 SCC 32, [2020] 3 SCR 426 [*9147-0732 Quebec inc*.] at para 8). While constitutional norms are deliberately expressed in general terms, the words used remain the most primal constraint on judicial review and form the outer bounds of a purposive inquiry (*9147-0732 Québec inc*. at paras 8–10; *Poulin* at paras 53–55; *Caron v Alberta*, 2015 SCC 56, [2015] 3 SCR 511 [*Caron*] at para 36). Indeed, the Commissioner accepts that the purposive interpretation does not exclude the principles of statutory interpretation under the usual approach, which requires consideration of the text, the entire context, the scheme of the Act, and Parliament's purpose (*Thibodeau 2014* at para 112; *St. John's Airport* at para 23).

[33] Finally, the Commissioner adds, because of the fragility of official language minority communities, the Supreme Court has recognized the remedial character of language rights.

1. The *Official Languages (Communications with and Services to the Public) Regulations*

[34] The main issue in this case is whether the GTAA has complied with its language obligations under the Regulations with respect to the provision of services by third-party

contractors operating a business at the airport. Before turning to the legislative interpretation of the Regulations, it is important to understand the impetus behind them. When the OLA was enacted in 1988, the Governor in Council was given the task of specifying the conditions necessary to implement the rights set out in Part IV of the OLA and section 20 of the Charter. This study was carried out by the Standing Joint Committee of the Senate and House of Commons on Official Languages through an extensive consultation process with various stakeholders, resulting in the adoption of the Regulations, which officially came into force in 1992.

[35] In this case, the Regulations implement subsection 20(1) of the Charter and certain key sections of Part IV of the OLA, which relate to communications with and services to the public. In particular, subsection 12(1) of the Regulations specifies which services provided pursuant to a contract are covered by the duty, set out in subsection 23(2) of the OLA, to provide services to the travelling public in both official languages: these include in paragraph 12(1)(a) “restaurant, cafeteria . . . services”, which is what the Booster Juice complaint is concerned with, and in paragraph 12(1)(b) “self-service equipment, including automated banking machines”, as in the CIBC complaint. The Regulations have made it possible to standardize the rules and criteria applicable to the scope of the language obligations of federal institutions, in particular by defining what constitutes “services to the travelling public as may be prescribed by regulation of the Governor in Council that are provided or made available by another person or organization pursuant to a contract”, referred to in subsection 23(2) of the OLA, while also setting out how the Regulations are to be applied.

[36] Thus, the question is, how are we to interpret the Regulations, since they derive from a quasi-constitutional statute? Although Mr. Thibodeau does not specifically address the question of the interpretative principles of law that apply to section 12 of the Regulations, the Commissioner argues that, given the quasi-constitutional nature of the OLA and the rights guaranteed under it, the Regulations must be interpreted in the same way as the OLA; therefore, it is essential that the Court adopt a purposive approach in interpreting the Regulations, as required by *Beaulac*, as well as a liberal and generous interpretation, based on the purpose which underlies the entire federal language regime, in order to guarantee the respect and implementation of the language rights of the travelling public. Thus, in response to the issues raised by the parties, the Commissioner states that the Court must interpret subsections 12(1) and (2) of the Regulations and give them a scope that takes into account the nature and purpose of the language rights conferred on the travelling public under Part IV of the OLA, as well as the principle of substantive equality. A broad and liberal interpretation, the Commissioner asserts, is justified by the particular nature and purpose of the Regulations, which favour the implementation of quasi-constitutional rights as much as the OLA itself, as well as by the special process for enacting the Regulations and the link between subsection 23(2) of the OLA and section 12 of the Regulations. The Regulations are not made according to a typical enactment process, as the specific steps to be followed in making them are established by the OLA (see sections 84 to 88 of the OLA) and include a consultation process with linguistic minorities to ensure that the Regulations are consistent with the objectives of the OLA; in the Commissioner's view, subsection 23(2) of the OLA cannot be dissociated from the regulatory provision of the OLA set out in section 12 of the Regulations to ensure a harmonious interpretation of the two provisions, which must be read together.

[37] For my part, we must answer the question starting with first principles; as a general rule, the approach to statutory interpretation must be followed, with necessary adaptations, in interpreting regulations (*Glykis v Hydro-Québec*, 2004 SCC 60, [2004] 3 SCR 285 [*Glykis*] at para 5). In addition, in this case, the OLA and its regulations and policies together form a comprehensive statutory regime that governs the application and implementation of language rights within federal institutions; if the purpose of the OLA is to clarify and develop constitutional rights, its Regulations must be recognized as a key instrument for applying the fundamental values expressed in the OLA and the Charter. As the Regulatory Impact Analysis Statement [Regulatory Impact Analysis Statement] published with the Regulations makes clear, the Regulations implement certain key sections of Part IV of the OLA, which relate to communications with and services to the public; it is therefore impossible to dissociate the purpose of the Regulations from the purpose of Part IV of the OLA. Certain regulations, such as the ones at issue here, give a concrete scope to the rights and guarantees that have their source in the Charter; it would therefore be logical for the interpretation of the Regulations to be guided by the same principles applicable to so-called quasi-constitutional statutes, which the Regulations are intended to implement. Indeed, as Justice Martineau stated in *Norton v Via Rail Canada*, 2009 FC 704 at para 98, the OLA's regulations "must always be interpreted and applied in a manner consistent with the general objectives of the preamble of the OLA and a recognition of the fundamental values of the Charter and Canadian policy in the matter of bilingualism".

[38] In this case, I see no reason to depart from the general principle of interpretation of regulations set out in *Glykis* when the statute in question is quasi-constitutional in nature. I am satisfied that, if the purpose of the OLA is to clarify and develop constitutional rights, its

Regulations must be recognized as a key instrument for implementing the fundamental values expressed in the OLA and the Charter. The purpose of the Regulations is to clarify the scope of the language obligations set out in Part IV of the OLA. Thus, while the Court must refrain from questioning the political choices of Parliament in drafting the wording of the Regulations, it seems clear to me that the Regulations must nevertheless be interpreted according to the rules applicable to its quasi-constitutional enabling legislation, and that the interpretation of the wording of the Regulations must in no way limit or restrict the scope of its enabling legislation. Such an interpretation is the only way to ensure that the objectives of the OLA in relation to the travelling public are fully realized. Without qualifying the Regulations as quasi-constitutional, I am of the opinion that the principles of interpretation applicable to the OLA also apply to its Regulations. Since the OLA is a quasi-constitutional statute, its Regulations must therefore be interpreted using a purposive approach including the same broad and liberal interpretation applicable to language rights. It must be borne in mind that the Supreme Court in *Beaulac* clearly stated that a broad and liberal interpretation of Charter rights must be applied at all times, thereby fully achieving the purpose of the OLA, which is to advance, in all cases, the preservation and development of official language minorities in Canada (*Beaulac* at paras 22–25).

[39] The GTAA does not directly question the principle that the Regulations must be interpreted in the same way as the OLA, but stresses that the primacy of the text of the Regulations is more important than for other quasi-constitutional legislative instruments, given the detailed and complete list of services provided for in subsection 12(1) of the Regulations. In the GTAA's view, despite the rule in favour of a broad and liberal interpretation of language

rights, the text of subsection 23(2) of the OLA and subsection 12(1) of the Regulations limits their scope in that it restricts bilingualism requirements to the manner set out in the Regulations, with the emphasis on the notion of "service". Consequently, a measured approach to the interpretation of the obligation imposed on the GTAA and the burden placed on third-party service providers is required. For his part, the Commissioner asserts that the words of section 12 of the Regulations are not as detailed as the GTAA suggests, and that, even if one were to examine the text of the Regulations, a strict, cautious or restrictive interpretation of language rights no longer has a place in Canadian law.

[40] As I have already pointed out, words matter and have meaning, and the policy choices of Parliament must be respected; the text of subsection 23(2) of the OLA and subsection 12(1) of the Regulations limits the scope of these provisions in that it restricts bilingualism requirements to what is provided for in the Regulations. To a certain extent, the GTAA is right in saying that the very text of subsection 23(2) of the OLA and subsection 12(1) of the Regulations illustrates a restrictive approach to the promotion of the travelling public's language rights. Unlike the situation in *St. John's Airport*, in this case, Parliament has chosen which services to the travelling public that are provided or made available by a third party or organization pursuant to a contract with the federal institution for the provision of those services must necessarily be provided or made available in both official languages; the fact that a choice of services prescribed by regulation has been made implies restrictions. However, the issue here is not the restrictive nature of the choices made, but rather the manner—restrictive or expansive—in which we must interpret the services that have been chosen and that appear on the list in subsection 12(1) of the Regulations.

[41] Mr. Thibodeau maintains that the principles of the OLA require that all signage, services and amenities offered at airports be bilingual. I cannot agree with this proposition; while this is the case for services provided to the travelling public directly by the GTAA (subsection 23(1) of the OLA), the OLA has established a specific legislative framework for third-party contractors, which specifies which services prescribed by regulation must be provided or made available to the travelling public in both official languages (subsection 23(2) of the OLA). Crucial to the interpretation of this provision is the fact that subsection 23(2) of the OLA is entirely dependent on the identification of services set out in section 12 of the Regulations. As such, Parliament—in specifying the services prescribed by regulation provided pursuant to a contract covered by subsection 12(1) of the Regulations—chose to designate certain specific service sectors as being protected by the federal government for the travelling public; while the OLA must be interpreted broadly and liberally following a purposive approach, the analysis must begin with an examination of the text of the provision. As I mentioned earlier, the words used remain the principal constraint on judicial assessment and form the outer bounds of a purposive inquiry. In short, the interpretation must still flow reasonably from the text. As stated by Justice Cromwell and Justice Karakatsanis in *Caron* at paragraph 38, "[t]he Court must generously interpret constitutional linguistic rights, not create them".

2. The interpretation of section 12 of the Regulations

[42] Section 23 of the OLA reads as follows:

Communications with and Services to the Public	**Communications avec le public et prestation des services**
Travelling public	**Voyageurs**

23 (1) For greater certainty, every federal institution that provides services or makes them available to the travelling public has the duty to ensure that any member of the travelling public can communicate with and obtain those services in either official language from any office or facility of the institution in Canada or elsewhere where there is significant demand for those services in that language.	23 (1) Il est entendu qu'il incombe aux institutions fédérales offrant des services aux voyageurs de veiller à ce que ceux-ci puissent, dans l'une ou l'autre des langues officielles, communiquer avec leurs bureaux et en recevoir les services, là où, au Canada comme à l'étranger, l'emploi de cette langue fait l'objet d'une demande importante.
Services provided pursuant to a contract	**Services conventionnés**
(2) Every federal institution has the duty to ensure that such services to the travelling public as may be prescribed by regulation of the Governor in Council that are provided or made available by another person or organization pursuant to a contract with the federal institution for the provision of those services at an office or facility referred to in subsection (1) are provided or made available, in both official languages, in the manner prescribed by regulation of the Governor in Council.	(2) Il incombe aux institutions fédérales de veiller à ce que, dans les bureaux visés au paragraphe (1), les services réglementaires offerts aux voyageurs par des tiers conventionnés par elles à cette fin le soient, dans les deux langues officielles, selon les modalités réglementaires.
[Emphasis added.]	[Non souligné dans l'original.]

[43] Section 12 of the Regulations reads as follows:

PART III	**PARTIE III**

Contract for Services to the Travelling Public	**Services conventionnés**
12 (1) For the purposes of subsection 23(2) of the Act, services to the travelling public are the following:	12 (1) Les services visés au paragraphe 23(2) de la Loi offerts aux voyageurs sont les suivants :
(a) restaurant, cafeteria, car rental, travel insurance, ground transportation dispatch, foreign exchange, duty free shop and hotel services;	a) les services offerts par les restaurants, les cafétérias, les agences de location de voitures, les bureaux de change et les boutiques hors taxes, la vente d'assurance-voyage, la répartition du transport terrestre et les services hôteliers;
(b) self-service equipment, including automated banking machines and vending machines, and the provision of instructions for the use of public telephones and electronic games; and	b) les appareils libre-service, notamment les guichets bancaires automatiques et les distributeurs automatiques, et la communication des instructions d'utilisation des téléphones publics et des jeux électroniques;
(c) passenger screening and boarding services, public announcements and the provision of other information to the public, and carrier services, including counter services for tickets and check-in but excluding carrier services in respect of buses provided at railway stations or ferry terminals.	c) le contrôle et l'embarquement des passagers, la communication d'annonces et d'autres renseignements au public et les services fournis par les transporteurs, lesquels comprennent les services au comptoir de billetterie et d'enregistrement mais non le service d'autobus offert par les transporteurs aux gares ferroviaires ou de traversiers.
(2) Where a service referred to in subsection (1) is provided	(2) Si la prestation des services visés au

by means of printed or pre-recorded material, such as signs, notices and menus, car rental contracts and travel insurance policies for the travelling public, the material shall be provided in both official languages.	paragraphe (1) comporte l'utilisation d'une documentation imprimée ou enregistrée, notamment des panneaux indicateurs, avis, menus, polices d'assurance-voyage et contrats de location de voiture à l'intention des voyageurs, cette documentation doit être dans les deux langues officielles.
(3) Where a service referred to in subsection (1) is provided by means other than those referred to in subsection (2), the service shall be offered to the travelling public by such means as will enable any member of that public to obtain those services in the official language of his or her choice.	(3) Si un moyen autre que la documentation mentionnée au paragraphe (2) est utilisé aux fins de la prestation des services visés au paragraphe (1), ce moyen doit permettre à chaque voyageur d'obtenir ces services dans la langue officielle de son choix.
[Emphasis added.]	[Non souligné dans l'original.]

[44] Subsection 12(1) of the Regulations lists the services that are referred to in subsection 23(2) of the OLA, namely the services to the travelling public that must be provided or made available in both official languages where there is significant demand. The first issue is the importance of the concept of "travelling public" in interpreting section 12 of the Regulations. The Commissioner notes that while section 22 of the OLA establishes the general framework of the obligations assigned to the federal institutions, subsection 23(1) of the OLA specifies the target public of certain institutions, namely those that offer services to the "travelling public", where there is significant demand according to the criteria specifically set out in section 7 of the Regulations. Indeed, section 23 of the OLA lists the language obligations of these federal

institutions by linking them to the specific identity of the public they serve. According to the GTAA, the Commissioner's argument is that determining whether a service is referred to must be evaluated from the perspective of the travelling public, but that such a subjective approach, which relies on public perception or belief, does not take into consideration the text and purpose of these provisions. However, this is not exactly what the Commissioner submits. As indicated above, the Commissioner instead argues that when interpreting subsections 12(1) and (2) of the Regulations, the Court must give them a scope that takes into consideration the nature and the purpose of the language rights conferred on the travelling public under Part IV of the OLA.

[45] I agree. In my opinion, it is clear that subsection 23(2) of the OLA imposes an obligation on the GTAA—because there is a significant demand—for the prescribed services offered by third party contractors to be offered in both official languages, and this obligation is dependent on the presence of certain services, the nature of which is closely tied to the needs and reality of the travelling public. The OLA does not provide any clues that would allow for the type of prescribed services offered by third party contractors to be defined, other than suggesting that their nature is closely tied to the needs and reality of the travelling public. This can be seen in the choice of services to be protected. Subsection 12(1) of the Regulations includes restaurant, hotel, travel insurance, and car rental services, all undoubtedly essential services for the travelling public and considered to be federal services for which the Regulations were designed, according to the Regulatory Impact Analysis Statement, in order to provide fair and reasonable access to all Canadians in the official language of their choice. Even more significant is that subsection 12(1) of the Regulations does not include certain services that are often found in airports today, such as spas, clothing and magazine shops, shoeshine services, massage stands, high-tech gadget stores,

convenience stores and, of course, banking services. It seems that a conscious choice was made with regard to the services that are closely tied to the needs and reality of the travelling public.

B. *Interpreting the concept of service*

[46] This leads us to the concept of "service". The GTAA and the Commissioner agree that it is the type of service and not the type of business operated by the third-party contractors that triggers the application of the various obligations set out in subsections 12(2) and (3) of the Regulations. I agree, so the issue then becomes establishing how to interpret the concept of service in a manner that allows for the purpose of subsection 23(2) of the OLA to be fully achieved.

[47] The Commissioner argues that as soon as a service referred to in a complaint is a component of a prescribed service, and therefore an integral part of it, on the basis of an analysis of objective indicators of the nature, function and proximity of that service, in relation to the service referred to in section 12 of the Regulations, the service referred to in the complaint must be offered in both official languages. It follows that if, further to such an analysis, we note that the service referred to in a complaint is distinct from the prescribed service, such an obligation does not exist.

[48] On the other hand, the GTAA submits that the Commissioner is asking the Court to make the provision say more than what it is saying and to add elements to the list of prescribed services. According to the GTAA, Parliament has clearly determined an exhaustive list of services. According to the GTAA, the provision tells an airport authority that, when it enters into

contracts with businesses that provide prescribed services, only the activities that are necessary, essential and directly related to the provision of the prescribed services under subsection 12(1)—for example, the elements or steps strictly necessary to provide restaurant service are limited to the host or hostess who greets clients at the door, the server who serves the clients, the menus and the sale of food and drink—must be provided in both official languages, and any components or facilities offered by a third party that are not directly required to provide the prescribed service listed in subsection 12(1) of the Regulations are not covered by that provision. As a result, the third-party contractors would not be required to issue written or visual communications in both official languages unless they were specifically related to one of the services listed in section 12 of the Regulations.

[49] In my opinion, the difficulty lies in the fact that restaurants, for example, are constantly changing the way they offer their services, even expanding their service offerings beyond the sale of food and drink. How would related services or components of the service such as coat checks, seating areas where clients are entertained while they wait for a table to become available, recycling bins, the sale of merchandise and other branded promotional items (such as those at the Hard Rock Café), children's play areas (such as the modular play structures often seen in McDonald's restaurants), valet services or even the washrooms inside the premises and operated by the restaurant (as opposed to the washrooms located outside the restaurants, which are operated by the GTAA and treated separately under the OLA and the Regulations)? Should these services not be included in the concept of prescribed restaurant service? The GTAA went so far as to submit that, subject to regulations, if Booster Juice decided to open a passenger lounge similar to Air Canada's and offer its juices and food to the travelling public in both

official languages, it would not be necessary for the washrooms in the lounges to have bilingual signage.

[50] According to the GTAA, nothing in the OLA or the Regulations would permit going beyond the words chosen by the Governor in Council. That would mean that any component of a restaurant's offer of services beyond the steps or elements strictly necessary for the sale of food and drink would not be subject to the obligation to be offered in both official languages. However, related services, such as washrooms and recycling bins, could be offered in the language of the majority only.

[51] According to the Commissioner, the GTAA is advocating for a restrictive approach to commercial activities that would be included in the prescribed services and, with the GTAA's proposed approach, the related or associated services aimed at improving the clients' experience would not be subject to the official languages requirement. The Commissioner submits that relying on a literal and restrictive interpretation would lead to a hermetic, or even compartmentalized, definition of services provided by third-party contractors, and limiting the application of subsections 12(1) and (2) of the Regulations to the terms based on their wording would prevent the full achievement of the objective under subsection 23(2) of the OLA. Instead, a process must be established to determine what the terms used in subsection 12(1) of the Regulations include.

[52] I agree with the Commissioner. Limiting our understanding of subsection 23(2) of the OLA and section 12 of the Regulations to the simplest expression of the concept of service

would be inconsistent with the purposive approach, according to which language rights are to be interpreted in relation to the purpose of the OLA, and would be diametrically opposed to the need for a broad and liberal interpretation, as the Supreme Court asks. Moreover, this approach does not take into consideration the development of technology and improvements to the ways in which the prescribed services are offered to the travelling public. Today, the concept of services includes multiple dimensions and components and, to avoid the fragmentation of language rights into categories of services clearly designated as essential for the travelling public, it is imperative to adopt a broader vision of services than that proposed by the GTAA, but without, as the Supreme Court cautioned in *Caron*, creating new rights. It seems to me that splitting up the elements of the prescribed service offering would impede the concrete implementation of the travelling public's language rights and would go against the key principles required to interpret the OLA, in particular, the principle of substantive equality, according to which members of the travelling public who belong to the linguistic minority should not have compartmentalized or fragmented access to services provided pursuant to a contract.

[53] As a result, with regard to the service referred to in the complaint, I agree with the Commissioner's position. The analysis must be done with regard to the nature, function and proximity of the service referred to in the complaint to better distinguish whether it is a component or integral and functional part of the service prescribed under subsection 12(1) of the Regulations. With regard to printed material under subsection 12(2) of the Regulations, we must focus on the type of message being sent to the travelling public and determine whether this message informs the travelling public of a specific service or the full range of services offered by a third-party contractor and whether, in this range of services, there are some that are listed in

subsection 12(1) of the Regulations. Otherwise, in my opinion, it would be too easy for a third-party contractor that offers a multitude of services, only a few of which are prescribed services, to bypass the OLA language requirements with general advertisements. Therefore, to fully achieve the purpose of the OLA, which is to preserve and develop official language minorities in Canada in all cases, it is clear that a service that is integrated in the categories of services listed in subsection 12(1) of the Regulations, and not only the steps or elements that are strictly necessary to provide these categories of prescribed services, must be offered in both official languages.

[54] For the purposes of the analysis in this case, I would add that there does not seem to be any disagreement that advertising signs or other marketing initiatives are methods used for the purposes of providing prescribed services such as those set out in subsections 12(2) and (3) of the Regulations. In this case, the GTAA admits that the unilingual billboards advertising CIBC's travel insurance violated the requirements of the OLA.

C. *The CIBC complaint*

[55] As for the CIBC complaint, as a starting point for the analysis, and although this point was not determinative in itself, we are dealing with a business whose essential basic services—banking services—are not referred to in subsection 12(1) of the Regulations, but it is nonetheless a business that includes a series of prescribed services in its service offering, namely, currency exchange, the sale of travel insurance and ATMs. It seems to me that identifying the basic service of the business is significant in terms of the issue of whether the service referred to in the

complaint is a component of a prescribed service of that business. In this case, the GTAA's evidence at paragraphs 15 to 17 of Kurush Minocher's affidavit is that CIBC is

> . . . a financial institution that offers banking and related services at Toronto Pearson pursuant to an agreement with the GTAA. The CIBC services are offered through CIBC Banking Centres, as well as through automated banking machines ("ABMs"). At the CIBC Banking Centres, representatives offer banking services, such as the opening of an account, the setting up of pre-authorized bill payments, e-transfers, currency exchange and the sale of travel medical insurance. [Emphasis added.]

[56] As noted above, the GTAA submits that its obligations are limited to the steps or elements that are necessary or essential for providing the prescribed services and therefore, although it acknowledges that the service offering, including the advertising of its ATM and the sale of travel insurance, must be in both official languages, the offer of services and the advertising for its banking services are not subject to this rule. Thus, it feels that the advertising for the banking centres associated with the CIBC trademark, such as "How can we help you?"; "We're here for all your banking needs"; "Bank before you fly"; "Do any last minute banking"; "Branch on your right" and "Relax and recharge in our branch" is general advertising and, contrary to the specific advertising for its travel insurance products, is not covered by subsection 12(1) of the Regulations.

[57] I find it difficult to agree with the GTAA that I should somehow distinguish between the idea of traditional banking services which the advertising is intended to promote, and services involving currency exchange and the sale of travel insurance. The scope of banking services is not defined or limited in any way by the OLA or the Regulations. In fact, from what I can see from the evidence on the record—both the objective evidence and Mr. Minocher's affidavit—the

prescribed services involving currency exchange and the sale of travel insurance, i.e. the services offered at the CIBC banking centre, have become an integral part of CIBC's banking services. Although the evidence is limited, it may very well be that in order to obtain CIBC travel insurance, travellers must call a specific telephone number to speak to an insurance broker authorized to sell CIBC travel insurance. However, it seems to me that the role of banking centres and the representatives who work in them is to serve as the first point of contact with the travelling public for the prescribed services, and they are therefore integrated into those services.

[58] The GTAA proposes that the Court consider whether the sign in question is related to the availability of the prescribed service, or describes the service or provides information about it. The GTAA claims that the advertising for the CIBC banking centres refers to a "Banking Centre" that offers a variety of services, just like CIBC branches, including the prescribed services of currency exchange and the sale of travel insurance. It is recognized that where signs refer to the availability of a prescribed service such as travel insurance, they should be in both official languages. According to the GTAA, however, when the availability of a prescribed service is not mentioned, the sign is a general advertisement that does not address the prescribed service and is therefore not subject to the language requirements of the OLA.

[59] I cannot agree with the GTAA's arguments, because it becomes difficult, if not impossible, to separate advertising for the CIBC banking centre, that is, the nature of the services referred to in the complaint, from the advantage this advertising creates for the prescribed services involving currency exchange and the sale of travel insurance. It seems to me that when the CIBC poster states, "We're here for all your banking needs"; "Bank before you fly"; "Relax

and recharge in our branch"; "Branch on your right" or "Do any last minute banking", we could well be dealing with general advertising. However, the prescribed services involving currency exchange and the sale of travel insurance are included in what is provided in response to banking needs. Another question that arises is whether the service referred to in the complaint brings customers to the prescribed service. Indeed, the more customers the service referred to in the complaint attracts to the prescribed services, the more the signage and billboards regarding the services referred to in the complaint will be considered an essential component or integral part of this category of prescribed service. In this case, therefore, it seems to me that when the advertising invites or encourages the travelling public to use CIBC banking centres, this creates business for the representatives providing the banking services [TRANSLATION] "such as currency exchange and the sale of travel insurance", which are both prescribed services.

[60] The GTAA asserted before me that if general advertising is found to be subject to the language requirements of the OLA, the consequences will be enormous for a third-party contractor providing only one prescribed service. This is because all of its advertising at the airport would have to be in both official languages, and such a requirement would far exceed the objectives of the OLA, which are simply to ensure that travellers at an airport can obtain a very defined list of prescribed services in the official language of their choice, no more and no less. Personally, I do not see the looming apocalypse predicted by the GTAA. Ultimately, an analysis is required to establish whether the service referred to in the complaint is a component of, and therefore integrated into, a prescribed service, and only if such is the case will there be a requirement for the service referred to in the complaint to be provided in both official languages.

[61] I cannot agree with the GTAA's assertion that if a traveller goes to one of CIBC's banking centres and is offered travel insurance by a representative, that offer must be available in both official languages, while the advertising signage that directed that person to the banking centre would not have to be in both official languages if it did not specifically mention the sale of travel insurance. Once again, it seems to me that the GTAA's attempt to dissect the various elements of the prescribed service offer hinders the effective implementation of travellers' language rights and is contrary to the main principles applicable to the interpretation of the OLA. In my opinion, CIBC's general advertisements are an integral part of the prescribed services provided by the third-party contractor and therefore should be bilingual. Otherwise, it is possible that members of the linguistic majority who are attracted by these advertisements to the banking centre offering the prescribed services will have unequal access to these services compared with the linguistic minority.

[62] Therefore, the signs for CIBC's banking centres and ATMs, the advertising and signage at banking centres and the advertising for services provided pursuant to a contract by the banking centres, which are referred to in the CIBC complaint, are signs within the meaning of subsection 12(2) of the Regulations and must be in both official languages. I therefore find that the GTAA contravened the OLA in this regard and that Mr. Thibodeau's language rights were violated as a result.

D. *The Booster Juice complaint*

[63] The situation with the Booster Juice complaint is somewhat the reverse of that involving the CIBC. To begin with, we are dealing with a business whose restaurant services, the normal

part of its services, are clearly covered by the Regulations as they are closely tied to the needs and reality of the travelling public. However, the business decided to expand its service offering to include a service not specifically listed in subsection 12(1) of the Regulations, a play area.

[64] The GTAA maintains that its obligations are limited to ensuring that the prescribed services provided by third parties are available in both official languages, i.e. that each step or element necessary for the provision of the prescribed services should be analyzed separately, and that only those elements that are essential for this purpose, because they are an integral part of the prescribed services, must be provided in both official languages. The GTAA quotes a definition in which "restaurant" is [TRANSLATION] "a commercial establishment where meals or refreshments may be purchased" in an effort to limit restaurant services as closely as possible to this definition. Disregarding the Commissioner's view that restaurant services go beyond the mere sale of food and beverages and that the definition of restaurant does not limit the nature of restaurant services, the GTAA argues that providing a play area is clearly not covered by section 12 of the Regulations. Although the play area is associated with the Booster Juice counter and is adjacent to the point of sale for a prescribed service, it is not a restaurant, a cafeteria or a step or element in the provision of restaurant services, but rather an activity space designed primarily for children to play in, and is physically separated from the restaurant area occupied by the juice bar. According to the GTAA, therefore, the "FIT & FUN ZONE" play area is distinct from the restaurant services, and consequently, although Booster Juice operates a restaurant, which is a prescribed service under subsection 12(1) of the Regulations, the operation of the play area is not an integral part of the prescribed restaurant service and is consequently not covered by

the Regulations. Therefore, Booster Juice was not required to have bilingual signage, and there is therefore no violation of subsection 23(2) of the OLA in this case.

[65] Leaving aside for the moment the fact that the nature or scope of restaurant services—as was the case with banking services—is not defined or limited in any way by the OLA or the Regulations, once again, such reasoning can only lead to an approach that dissects the elements of the prescribed service in such a way that hinders the practical implementation of travellers' language rights. As with the CIBC complaint, the Court should focus on objective indicators of the nature, function and proximity of the service referred to in the complaint, to more accurately determine whether it is a component or an integral and functional part of a service referred to in subsection 12(1) of the Regulations.

[66] In fact, during the hearing, I questioned the GTAA's lawyer about the nature and functioning of the play area and why Booster Juice had created such an area for children in the first place. He did not venture to comment, simply stating that there was no evidence on this point. At first glance, it is clear to me that this space is designed to attract customers, and to help Booster Juice manage the flow of customers waiting at the counter to buy their drinks. It would therefore be reasonable to assume that Booster Juice created this play area as part of its promotional strategy. Furthermore, as I mentioned earlier, the "FIT & FUN ZONE" play area is adjacent to the juice and smoothie bar, which is the point of sale for a prescribed service.

[67] It should be borne in mind that the Booster Juice complaint involved a unilingual English sign at the entrance to the play area that displayed the Booster Juice logo and read, "Toronto

Pearson Booster Juice FIT & FUN ZONE". Before me, the GTAA conceded that Booster Juice's logo on the sign is indeed an advertisement for Booster Juice, but argued that the "FIT & FUN ZONE" sign refers to one thing—the presence of the play area—and that travellers can easily use this play area without having to buy a smoothie. In itself, the "FIT & FUN ZONE" sign is not an advertisement for the restaurant services, but rather for the play area. The GTAA argues that the real question is whether, for travellers who want to go buy a smoothie, being exposed to what is written on the sign is part of their travel experience as smoothie buyers. According to the GTAA, the answer to this question must be no, because going to the play area is not an essential and indispensable step or element in the purchase of a smoothie. In fact, travellers do not even need to go to the play area to buy their smoothies.

[68] I cannot agree with such a narrow approach to determining language rights in this country. I recognize that, if a third-party contractor decided to open a children's play area as its principal activity and members of the travelling public had to pay to access this play area, one could argue that such a service would not be required to be offered in both official languages. But that is not the case here: Booster Juice has expanded its corporate footprint by including a special children's play area. It seems that the main aim of this area is to advertise its juice bar, attract potential clients to the prescribed service and accommodate any excessively long lines at its counter. The evidence on the record shows that the play area uses the same colours as Booster Juice and displays signs promoting the prescribed service offered by this third-party contractor. It is clearly part of Booster Juice's marketing strategy to have a play area right next to its airport counter. Frankly, I see no relevant difference between CIBC's travel insurance advertising, which, as the GTAA has already recognized, should have been disseminated in both official

languages, and the installation of the play area. Both seem to have only one goal, to attract the travelling public to a prescribed service, the only difference being that the first is a component of the printed material of a prescribed service within the meaning of subsection 12(2) of the Regulations, that is, the sale of travel insurance policies, while the second is a means other than material used to provide restaurant services under subsection 12(3) of the Regulations. Since the play area is, by its nature, function and proximity, integrally linked to Booster Juice's provision of restaurant services and is among the choices the third-party contractor has made to promote and offer a prescribed service, it cannot be dissociated from the provision of this prescribed service as a whole. Anything else would be at odds with the purposive approach and broad, liberal interpretation that we must apply to interpret the Regulations in accordance with the purpose of subsection 23(2) of the OLA; it is the only way to give full effect to the travelling public's language rights.

[69] I agree that members of the travelling public can use the play area with their children without having to buy a smoothie or that they can use Booster Juice's restaurant service without accessing the play area, but that is not the point. Again, one of the issues is whether the service referred to in the complaint leads customers to the prescribed service; in this case, that seems to be the very goal of the play area. Even if the only purpose of the sign at the entrance to the play area, which reads "Toronto Pearson Booster Juice FIT & FUN ZONE", is to identify the play area and to advertise it, the fact remains that the play area as such exists to promote Booster Juice's smoothie bars. The play area is simply another form of marketing, similar to written signs and advertising, and therefore a means to provide the prescribed service, as provided for in section 12 of the Regulations. Once again, when advertising invites or encourages the travelling

public to use the play area, this advertising is part of the prescribed services and must therefore be provided in both official languages. The unilingual English sign at the entrance to the play area reading “FIT & FUN ZONE” is a means used to deliver the prescribed service provided by Booster Juice. It is therefore an integral part of this service.

[70] The GTAA insists on their argument, mentioning, for example, the possibility for Booster Juice to simply open a play area at the airport without also operating a smoothie bar. The GTAA submits that since Booster Juice is not providing restaurant services in that case, the play area should not be considered to be a component of a prescribed service that has to be provided in both official languages. I do not find this hypothetical example helpful. In the case before me, Booster Juice is providing a prescribed service at the airport, which is supported by the attached play area for marketing purposes. In my view, prescribed services are not, as the GTAA submits, strictly limited to the most basic steps or components of the provision of such services. On the contrary, they can include any extensions to the service a third-party contractor may choose to include, such as cloakrooms, valet parking, merchandise counters, children’s play areas and even washrooms, which, according to the GTAA, are not covered by section 12 of the Regulations because they are not part of the steps of or an essential element in providing restaurant services. It is inconceivable that one might be entitled to receive a service in the official language of one’s choice while seated at a table in a restaurant, but that this entitlement disappears on the way to the washrooms in that same restaurant solely because washrooms are not explicitly mentioned in subsection 12(1) of the Regulations. Clearly, any objective, reasonable person would be unable to draw such an imaginary line or such a distinction. Indeed, I suspect that was hardly Parliament’s intention. In my opinion, such complementary services may eventually, and after

appropriate analysis, be considered to be part of the full range of the prescribed services, provided to improve the overall customer experience, attract customers and market the service offering.

[71] The sign at the entrance to the play area reading "Toronto Pearson Booster Juice FIT & FUN ZONE" is used in the context of providing a prescribed service, namely, restaurant services, and, in accordance with subsection 12(2) of the Regulations, must be provided in both official languages. I therefore find that the GTAA contravened the OLA in this regard and, consequently, that Mr. Thibodeau's language rights were violated.

[72] Finally, as I mentioned earlier, Mr. Thibodeau's initial complaint only concerned the unilingual English sign at the entrance of the play area reading, "Toronto Pearson Booster Juice FIT & FUN ZONE". The record before me contains evidence regarding other potential contraventions involving the play area, such as electronic screens broadcasting video games only in English, as well as a sign next to a screen reading "Toronto Pearson Booster Juice FIT & FUN ZONE" and, on a wall in the play area, a big neon sign reading "BOOST YOUR LIFE", both of which are only in English. Neither sign displayed a French equivalent. Mr. Thibodeau is relying on this Court's decision in *Thibodeau v Air Canada*, 2011 FC 876, [2013] 2 FCR 83 at paragraph 95 [*Air Canada 2011*], to support his claim that I can take evidence of other violations into account when considering whether the play area is part of a systemic problem and that, if I conclude that the play area must be provided in both official languages, it would be a mistake to simply rule on the issue of the unilingual English sign at the entrance of the play area. The difficulty I have with this is that none of these other potential contraventions of the OLA have

been the subject of a complaint before the Commissioner. I therefore cannot see how I could take them into account here.

IV. Remedy

[73] In *Doucet-Boudreau*, the Supreme Court reminded us that a right is given life only when there is an effective remedy for a violation. Without this, the Crown and its institutions benefit from violations arising out of the inequality of history (*Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62, [2003] 3 SCR 3 at paras 25 and 45 [*Doucet-Boudreau*]). This is why it is imperative to grant an appropriate and just remedy in this case.

[74] A quick reading of section 77 of the OLA reveals just how much this provision reflects the wording of subsection 24(1) of the Charter. Indeed, the Court has recognized that the principles for interpreting subsection 24(1) of the Charter may be applied to subsection 77(4) of the OLA (*Air Canada 2019* at para 64, citing *Air Canada 2011* at para 36). Such an approach is warranted not only because some of the language in subsection 77(4) of the OLA and subsection 24(1) of the Charter is almost identical, but especially because the OLA "is an extension of the rights and guarantees recognized in the Charter, . . . it belongs to that privileged category of quasi-constitutional legislation which reflects 'certain basic goals of our society' and must be so interpreted 'as to advance the broad policy considerations underlying it'" (François Larocque, "Les recours en droits linguistiques" in Michel Bastarache and Michel Doucet, eds, *Les droits linguistiques au Canada*, 3rd ed, Cowansville, Quebec, Yvon Blais, 2013 [Larocque, *Recours en droits linguistiques*] at 1081, citing *Viola* at para 386). The Court's toolbox is therefore filled with a wealth of legal tools and case law allowing it to use its discretion to grant

an appropriate and just remedy, be it in the form of monetary compensation or non-monetary relief. The hardest thing to pin down in the context of language rights is the definition of "appropriate and just".

[75] In this case, and as I have said earlier, the remedies sought by Mr. Thibodeau consist of the Court's giving him public interest standing, a formal letter of apology, a declaration from the Court, damages in the amount of $3,000 ($1,500 per complaint) in docket T-2013-19 and $1,500 in docket T-534-21, and costs of $5,000, that is, $2,500 per docket.

[76] The GTAA has not concealed its contempt for the tactics employed by Mr. Thibodeau to assert his rights. Even though it does not doubt Mr. Thibodeau's sincerity when he arrived at the airport, noticed a contravention of the OLA and claimed that all signage had to be in both official languages, the GTAA has included in the record a total of 410 complaints against airport authorities in Canada and a total of 158 complaints against other federal institutions, all filed by Mr. Thibodeau under the OLA between January 2016 and September 1, 2021, and submits that, if the true issue is resolving what Mr. Thibodeau cares about, that is, correcting certain practices, this can be done without having to go before the Federal Court to seek damages.

[77] The GTAA characterizes Mr. Thibodeau's efforts as a great crusade against federal institutions, particularly airport authorities, where he is actively seeking out potential language violations for his own financial gain. If that is indeed the case, my immediate reaction would be, "good for him!" if it results in drawing public attention to this issue and ensuring that federal institutions are true to Canadian values and show more respect for the language rights enshrined

in the Charter. Without canaries in coal mines, like Mr. Thibodeau, the intoxicating mantra of streamlining expenditures can easily override the need to remain true to these values. It seems to me that the preservation and development of official language minorities in Canada can only be achieved when we shed light on language rights violations and that public attention and judicial pronouncements on violations will change Canadian social mores. In turn, we will be able to benefit from the gains we have made over the years in the area of language rights. I can only echo Justice Martineau in *Senate* at paragraph 68, who wrote that Mr. Thibodeau's complaints contribute to "institutional awareness-raising" among airport authorities and other federal institutions, and, like whistleblowers and hackers who expose shortcomings in institutional procedures and systems and make these shortcomings public, Mr. Thibodeau is, rightly or wrongly, seeking to expose these shortcomings in how federal institutions give effect to his language rights.

[78] As noted by Justice Martineau in *Senate* at paragraph 6, Mr. Thibodeau "has made it his mission to defend French in federal institutions", and "[t]his life path has made him a regular in the courts of this vast country". This reminds me of an excerpt from Plato's *Apology of Socrates*: "*… for if you kill me you will not easily find another like me. I was attached to this city by the god—though it seems a ridiculous thing to say—as upon a great and noble horse which was somewhat sluggish because of its size and needed to be stirred up by a kind of gadfly. It is to fulfill some such function that I believe the god has placed me in the city. I never cease to rouse each and everyone of you, to persuade and reproach you all day long and everywhere I find myself in your company*." (Plato, *Apology*, translation by G.M.A. Grube, page 8 in *Readings in Ancient Greek Philosophy: from Thales to Aristotle*, 2nd ed. Indianapolis: Hackett Publishing

Company, 2000). Even though Mr. Thibodeau may be considered a gadfly by some, the proverbial thorn in the side of airport authorities, the protection of language rights in Canada nonetheless requires continuous vigilance. I hope that one day we will no longer need the Michel Thibodeaus of this world, but until then, passionate advocates for language rights have a place in our society. Here, though, Mr. Thibodeau's intentions, whether noble or not, have nothing to do with the issue, which is much narrower: did the GTAA poorly implement the language requirements of the OLA?

[79] I recognize that Mr. Thibodeau is very familiar with language rights litigation and the complaint mechanisms and processes available to assert his rights. Before me, the GTAA stated that it shares Mr. Thibodeau's sense of the importance of language rights in Canada and his concerns about these rights, and that it would be happy to work with Mr. Thibodeau to eliminate all of the transgressions of the OLA, which, according to the GTAA, are mostly simple errors committed in good faith that were quickly rectified after the GTAA was made aware of them. The GTAA does not like Mr. Thibodeau's method, however, which is to systematically go to court and seek damages even though the GTAA is taking steps to correct its practices.

[80] I understand the GTAA's concern, but as is clear from Justice Grammond's decision in *Thibodeau v Edmonton Regional Airports Authority*, 2022 FC 565 [appealed] [*Edmonton Airports*], there is no rule that each contravention of the OLA automatically results in a $1,500 award of damages per incident. Instead, the Court must analyze all the factors and take into account all the circumstances of each contravention in determining the appropriate and just remedy, including the right to damages (*Edmonton Airports* at paras 36–38). Moreover, it is clear

that damages are merely one form of compensation when a person's language rights are violated, and not the form that must necessarily be awarded. Mr. Thibodeau may well have to contemplate other strategies to ensure compliance in future. It seems to me that, if the GTAA were truly concerned about Mr. Thibodeau's spontaneous and robotic claims for compensation, without having an opportunity to negotiate the sought amount unless a complaint is filed with the Court, it could, in accordance with the *Federal Courts Rules*, SOR/98-106, contemplate making Mr. Thibodeau a written offer to settle and, if he refuses it, have him risk incurring huge costs should any potential damages in his favour be lower than the GTAA's offer to settle.

[81] In any event, since I have established that Mr. Thibodeau's language rights have been infringed, the next step is to order an appropriate and just remedy under subsection 77(4) of the OLA. Remedies may also be based on subsection 24(1) of the Charter. Together, these provisions enable the Court, in the case of a violation of the Charter or the OLA, to grant the remedy it considers appropriate and just in the circumstances (*Air Canada 2019* at para 60).

A. *Damages*

[82] In *Vancouver (City) v Ward*, 2010 SCC 27 [*Ward*], the Supreme Court recognized that "s. 24(1) is broad enough to include the remedy of damages for Charter breach" (*Air Canada 2019* at para 61, citing *Ward* at para 21). An award of damages may meet the conditions established in *Doucet-Boudreau* for recognizing an appropriate and just remedy (*Air Canada 2019* at para 61, citing *Ward* at para 20). The Supreme Court proposed an analytical framework that sets out the circumstances in which a Charter breach may give rise to damages. The first step in the inquiry is to establish that a Charter right has been breached. The second step is to show

why damages are a just and appropriate remedy, having regard to whether they would fulfill one or more of the related functions of compensation, vindication of the right, and/or deterrence of future breaches. At the third step, the state has the opportunity to demonstrate, if it can, that countervailing factors defeat the functional considerations that support a damage award and render damages inappropriate or unjust. The final step is to assess the quantum of the damages (*Air Canada 2019* at para 62, citing *Ward* at para 4).

[83] The "appropriate and just" nature of damages for Charter violations is assessed on the basis of three objectives: compensation of the victim, vindication of the right, and deterrence (Larocque, *Recours en droits linguistiques* at 1044). As Justice Grammond stated in *St. John's Airport*, "[a]n award that focuses only on personal loss may well neglect the real impacts of a breach of the Act. In most cases therefore, the award of damages will focus on vindication of the right and deterrence" (*St. John's Airport* at para 76).

[84] In the present case, a precedents-based analysis appears to be the best means of homing in on an appropriate range of damages. However, there is very little case law on remedies for violations of language rights based on subsection 77(4) of the OLA; most of the remedies awarded have been based on subsection 24(1) of Charter. In fact, most of the case law on monetary damages has been inspired by previous lawsuits brought by Mr. Thibodeau himself.

[85] In *Senate*, above, in which Mr. Thibodeau was awarded $1,500 in damages because of unilingual English signage on a water fountain in the Senate, Justice Martineau found that, even in cases of a good-faith omission or oversight, "there is no *de minimis* violation of a protected

constitutional or quasi-constitutional right; any violation that is tolerated, not reported or not corrected ultimately erodes the relevance of protected rights, normalizing their perpetration" (*Senate* at para 69). He added, "The past is an indication of what the future holds. Awarding damages to the applicant speaks to the value that the Court places on protecting minorities and ensuring that this type of remedy has a place in advancing the equality of status between the two official languages" (*ibid*).

[86] In *Edmonton Airports*, Justice Grammond allowed Mr. Thibodeau's application and ordered the Edmonton Regional Airports Authority to pay him damages in the amount of $5,000. In his view, awarding damages was necessary to the vindication of the rights recognized by the OLA and deterrence (*Edmonton Airports* at para 3). Justice Grammond found that Mr. Thibodeau's *modus operandi*—which the Edmonton Regional Airports Authority argued amounted to a "commodification" of the rights guaranteed by the OLA—did not make the vindication of rights recognized by the OLA and deterrence any less necessary (*Edmonton Airports* at paras 2 and 3). Moreover, and as I have already stated, instead of awarding a set amount of $1,500 per complaint filed by Mr. Thibodeau, as Mr. Thibodeau requested, Justice Grammond analyzed the "factors . . . which demonstrate the seriousness of the breach at issue" (*Edmonton Airports* at paras 36–38). He also took into account the mitigating factors in that case. After weighing all the various factors, he concluded that it was appropriate and just to order the Edmonton Regional Airports Authority to pay damages to Mr. Thibodeau in the amount of $5,000 (*Edmonton Airports* at para 41).

[87] In *St. John's Airport*, another judgment penned by Justice Grammond, the judge again awarded a total of $5,000 in damages to Mr. Thibodeau for all six of the complaints filed. As in *Edmonton Airports*, he concluded that the Court "must consider all the circumstances and determine an amount that is usually modest and that ensures vindication and deterrence in respect of all the complaints that are the subject of this application" (*St. John's Airport* at para 97).

[88] I agree with my colleague Justice Grammond that determining the quantum of damages is not an exact science and that it is not possible, or desirable, to insist on perfect consistency with the amounts awarded in other cases. Although the Court has in the past favoured awarding a set amount of $1,500 per violation, I find it necessary to depart from such an approach. In my opinion, this approach lacks flexibility and cannot be tailored to the circumstances of a case. Instead, I favour a case-by-case analysis, in light of all the circumstances of the case.

[89] In the case at hand, as regards the complaint concerning the press release, I acknowledge that the GTAA has a policy of preparing all press releases in both official languages, although compliance with this policy is not perfect and the violation in this case concerns what the GTAA calls an isolated case attributable to unfortunate, unusual circumstances, including delays caused by third-party translation service suppliers, occasional staff shortages and human errors; but the fact remains that a violation of Mr. Thibodeau's language rights occurred. I also note that in the final investigation report on this complaint, the Commissioner found that the GTAA had improved its compliance with the OLA over the years with regard to press releases posted on its website, and that the French version of the press release in question was ready and was published

six days after the GTAA was notified of the complaint. However, it seems that the GTAA's bilingual press release policy was not a written one, and Mr. Minocher's affidavit offers few details on exactly how the GTAA ensures that its employees responsible for preparing press releases have the knowledge they need to carry out their day-to-day tasks, or on how its employees make sure that both the English and French versions have been prepared before a press release is published on the website. In my view, a written policy would help attract attention to the importance of language rights and to the need to guarantee systematic compliance with the obligations set out in the OLA, bearing in mind that there is no such thing as a "*de minimis* violation of a protected constitutional or quasi-constitutional right" (*Senate* at para 69). I find that awarding damages in this case is justified to send the message that the GTAA could do more to avoid language rights violations in the area of press releases. However, given that this truly appears to be an isolated contravention of the OLA, having regard to all the factors, I consider that an amount of $500 is an appropriate and just remedy for this violation of Mr. Thibodeau's language rights.

[90] Concerning the CIBC complaint, it should be noted that this complaint had three elements. As regards the ATM signage and the advertising related to the sale of travel insurance, in its response to the Commissioner, the GTAA stated it planned to advise CIBC to make sure its services as prescribed by regulation, as well as the signage and advertising related to them, are in both official languages; the GTAA also planned to discuss with CIBC the implementation of certain changes to ensure that this would indeed happen. In fact, the GTAA confirmed to me at the hearing that CIBC's airport ATMs with English-only notices or signage and those whose French acronym was smaller than the English one, including the currency exchange signage,

have been updated and now have bilingual signage with the same size of characters for each version. However, I have very little sympathy for the GTAA as far as these two elements of the complaint are concerned. Contrary to the situation surrounding the press release, the violations related to the ATMs and the travel insurance advertising were clearly visible to anyone passing through the terminal. It is hard for the GTAA to plead ignorance in this regard; it seems to me that it simply allowed these violations to continue, and that the only reason they were corrected was Mr. Thibodeau's complaint. This leads me to believe that any policy or initiative the GTAA may have requiring third-party contractors to offer their prescribed services in both official languages fails to include the simple measure of having an employee with a notepad tour the terminal from time to time. Monitoring compliance is an ongoing obligation that airport authorities cannot contract out to third parties. It was suggested to me that more than a year was needed to change to ATM's signage, possibly because CIBC was in the process of changing its logo and therefore had to do it all at once. I am astounded at the suggestion that upholding constitutionally guaranteed language rights could be put on the back burner until a more convenient time. In this respect, I am of the opinion that a considerably larger amount than what Mr. Thibodeau asked for in relation to these two language rights violations would have been warranted in the circumstances; however, I am limited to the amounts sought by Mr. Thibodeau in this regard.

[91] As for the banking centre advertising, this element is certainly a controversial issue, pitting the GTAA's narrow approach to language obligations surrounding prescribed services against the more holistic approach adopted on behalf of Mr. Thibodeau. I will take this into account. However, it took Mr. Thibodeau's complaint and the hearing before the Court to

establish that Mr. Thibodeau's language rights had been violated. In this case, developments in the law related to language rights would justify awarding damages.

[92] Ultimately, I conclude that awarding $1,500 in damages for the three elements of the complaint concerning CIBC is just and reasonable in the circumstances.

[93] For my part, I have very few reserves concerning the Booster Juice complaint. I can find no redeeming qualities in the GTAA's arguments. However, the evidence shows that, even though the GTAA does not believe that the sign in question should have to be in both official languages, the GTAA confirmed to the Commissioner that, to improve the traveller experience at the airport, changes were made to the "Toronto Pearson Booster Juice FIT & FUN ZONE" to include a notice in French. I will certainly take this into consideration; however, I have to wonder whether the changes made to the sign make it compliant with the OLA. But what is most troubling is the fact that it took a complaint by Mr. Thibodeau to bring about a change. All in all, an amount of $1,500 in damages, as sought by Mr. Thibodeau, is in my view just and reasonable in the circumstances.

[94] Therefore, I find that it is appropriate and just to order the GTAA to pay a total amount of $3,500 in damages as remedy for the two complaints in T-2013-19 and the one complaint in T-534-21.

B. *Other remedies*

[95] Mr. Thibodeau also demands that the GTAA write him a formal letter of apology. I acknowledge that such a letter is the morally right thing to do, but also aims to placate the aggrieved individual and remedy the affront to his or her dignity. A formal letter of apology is not an admission of guilt or liability, but an expression of regret that may attenuate the wrong done; it is a form of judicial relief that costs nothing but has the effect of a salve on a wound. I acknowledge that for Mr. Thibodeau, this wound is a deep one.

[96] However, as I stated above, the GTAA has made no secret of its contempt for the tactics used by Mr. Thibodeau to assert his rights. Therefore, I doubt how sincere such a letter would be. I adopt as my own the words of Justice Grammond, who found that ordering such a remedy "would add nothing useful to the award of damages" (*St. John's Airport* at para 102). I will therefore not require the GTAA to write Mr. Thibodeau a formal letter of apology. I am of the opinion a declaration by the Court is needed, given the GTAA's repeated violations of language rights. Accordingly, I find that such a declaration could motivate the GTAA to be more proactive, so that the problem of disregard for language rights at the GTAA is resolved through a preventive approach instead of a reactive one.

[97] Mr. Thibodeau also asks that he be recognized as having public interest standing and seeks costs. First, Mr. Thibodeau has not persuaded me that it was necessary for me to recognize that he has public interest standing in the case at bar.

[98] As for costs, the GTAA submits that an order for costs in favour of Mr. Thibodeau would be inappropriate, as he has exploited the OLA for personal gain. As I stated above,

Mr. Thibodeau's motivation is less problematic. Under subsection 81(1) of the OLA, the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise. Since I am allowing Mr. Thibodeau's application in part, I see no reason to depart from this rule. Recent case law agrees. I am also aware that enforcing language rights in this country takes time and effort, and Mr. Thibodeau states that he has devoted nearly four years of his life to this case. Therefore, pursuant to my discretionary power, I award Mr. Thibodeau a total amount of $3,000 in damages, that is, $1,500 per docket, taxes and disbursements included (*Thibodeau v Halifax International Airport Authority*, 2018 FC 223 at paras 41–43).

[99] Finally, I hope I have made clear that an appropriate and just remedy reflects the seriousness our society ascribes to any violation of the OLA. As Justice Décary noted, the OLA serves as a special tool for the recognition, affirmation and extension of the linguistic rights recognized by the Charter (*Canada (Commissioner of Official Languages) v Air Canada*, [1999] FCJ No 738 (QL) at para 16). This is why there is no *de minimis* violation of a protected constitutional or quasi-constitutional right, since, as I mentioned above, "any violation that is tolerated, not reported or not corrected ultimately erodes the relevance of protected rights, normalizing their perpetration" (*Senate* at para 69). Accordingly, even if it is a minor violation, omission or oversight in good faith, every breach must be acknowledged. With constant vigilance, one day, such remedies will no longer be necessary.

[100] To sum up, whether under the Charter, the OLA or its Regulations, a purposive interpretation of the remedies to be granted in the context of violations of language rights

breathes life into the age-old maxim *ubi jus ibi remedium*: where there is a right, there is a remedy. This is why it is important for the Court to make a clear pronouncement as to the just and appropriate remedy to be granted to Mr. Thibodeau. In so doing, it must "exercise a discretion based on [its] careful perception of the nature of the right and of the infringement, the facts of the case, and the application of the relevant legal principles", having regard to the principles inherent to language rights (*Doucet-Boudreau* at para 52).

JUDGMENT in T-2013-19 and T-534-21

THIS COURT ORDERS as follows:

1. The applications are allowed in part.

2. Mr. Thibodeau's language rights were violated by the Greater Toronto Airports Authority.

3. The Greater Toronto Airports Authority is ordered to pay Mr. Thibodeau the amount of $3,500 in damages.

4. The Greater Toronto Airports Authority is ordered to pay Mr. Thibodeau costs in the amount of $3,000, including taxes and disbursements.

"Peter G. Pamel"
Judge

Certified true translation

Annex

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

Official Languages of Canada	**Langues officielles du Canada**
16 (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.	16 (1) Le français et l'anglais sont les langues officielles du Canada; ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions du Parlement et du gouvernement du Canada.
Official languages of New Brunswick	**Langues officielles du Nouveau-Brunswick**
(2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.	(2) Le français et l'anglais sont les langues officielles du Nouveau-Brunswick; ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions de la Législature et du gouvernement du Nouveau-Brunswick.
Advancement of status and use	**Progression vers l'égalité**
(3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.	(3) La présente charte ne limite pas le pouvoir du Parlement et des législatures de favoriser la progression vers l'égalité de statut ou d'usage du français et de l'anglais.
English and French linguistic communities in New Brunswick	**Communautés linguistiques française et anglaise du Nouveau-Brunswick**
16.1 (1) The English linguistic community and the French linguistic community in New	16.1 (1) La communauté linguistique française et la communauté linguistique

Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

anglaise du Nouveau-Brunswick ont un statut et des droits et privilèges égaux, notamment le droit à des institutions d'enseignement distinctes et aux institutions culturelles distinctes nécessaires à leur protection et à leur promotion.

Role of the legislature and government of New Brunswick

(2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

Rôle de la législature et du gouvernement du Nouveau-Brunswick

(2) Le rôle de la législature et du gouvernement du Nouveau-Brunswick de protéger et de promouvoir le statut, les droits et les privilèges visés au paragraphe (1) est confirmé.

Proceedings of Parliament

17 (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament.

Travaux du Parlement

17 (1) Chacun a le droit d'employer le français ou l'anglais dans les débats et travaux du Parlement.

Proceedings of New Brunswick legislature

(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.

Travaux de la Législature du Nouveau-Brunswick

(2) Chacun a le droit d'employer le français ou l'anglais dans les débats et travaux de la Législature du Nouveau-Brunswick.

Parliamentary statutes and records

18 (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.

Documents parlementaires

18 (1) Les lois, les archives, les comptes rendus et les procès-verbaux du Parlement sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et

celles des autres documents ayant même valeur.

New Brunswick statutes and records

(2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.

Documents de la Législature du Nouveau-Brunswick

(2) Les lois, les archives, les comptes rendus et les procès-verbaux de la Législature du Nouveau-Brunswick sont imprimés et publiés en français et en anglais, les deux versions des lois ayant également force de loi et celles des autres documents ayant même valeur.

Proceedings in courts established by Parliament

19 (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

Procédures devant les tribunaux établis par le Parlement

19 (1) Chacun a le droit d'employer le français ou l'anglais dans toutes les affaires dont sont saisis les tribunaux établis par le Parlement et dans tous les actes de procédure qui en découlent.

Proceedings in New Brunswick courts

(2) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.

Procédures devant les tribunaux du Nouveau-Brunswick

(2) Chacun a le droit d'employer le français ou l'anglais dans toutes les affaires dont sont saisis les tribunaux du Nouveau-Brunswick et dans tous les actes de procédure qui en découlent.

Communications by public with federal institutions

Communications entre les administrés et les institutions fédérales

20 (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

20 (1) Le public a, au Canada, droit à l'emploi du français ou de l'anglais pour communiquer avec le siège ou l'administration centrale des institutions du Parlement ou du gouvernement du Canada ou pour en recevoir les services; il a le même droit à l'égard de tout autre bureau de ces institutions là où, selon le cas :

a) l'emploi du français ou de l'anglais fait l'objet d'une demande importante;

b) l'emploi du français et de l'anglais se justifie par la vocation du bureau.

Communications by public with New Brunswick institutions

(2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.

Communications entre les administrés et les institutions du Nouveau-Brunswick

(2) Le public a, au Nouveau-Brunswick, droit à l'emploi du français ou de l'anglais pour communiquer avec tout bureau des institutions de la législature ou du gouvernement ou pour en recevoir les services.

. . .

. . .

Enforcement

Recours

Enforcement of guaranteed rights and freedoms

Recours en cas d'atteinte aux droits et libertés

24 (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.	24 (1) Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.
. . .	. . .

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

Purpose	**Objet**
2 The purpose of this Act is to	2 La présente loi a pour objet :
(a) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;	a) d'assurer le respect du français et de l'anglais à titre de langues officielles du Canada, leur égalité de statut et l'égalité de droits et privilèges quant à leur usage dans les institutions fédérales, notamment en ce qui touche les débats et travaux du Parlement, les actes législatifs et autres, l'administration de la justice, les communications avec le public et la prestation des services, ainsi que la mise en œuvre des objectifs de ces institutions;
(b) support the development of English and French linguistic minority communities and generally advance the equality of status and use	b) d'appuyer le développement des minorités francophones et anglophones et, d'une façon générale, de favoriser, au sein de la

of the English and French languages within Canadian society; and

(c) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

société canadienne, la progression vers l'égalité de statut et d'usage du français et de l'anglais;

c) de préciser les pouvoirs et les obligations des institutions fédérales en matière de langues officielles.

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Communications with and Services to the Public

Communications avec le public et prestation des services

Travelling public

23 (1) For greater certainty, every federal institution that provides services or makes them available to the travelling public has the duty to ensure that any member of the travelling public can communicate with and obtain those services in either official language from any office or facility of the institution in Canada or elsewhere where there is significant demand for those services in that language.

Voyageurs

23 (1) Il est entendu qu'il incombe aux institutions fédérales offrant des services aux voyageurs de veiller à ce que ceux-ci puissent, dans l'une ou l'autre des langues officielles, communiquer avec leurs bureaux et en recevoir les services, là où, au Canada comme à l'étranger, l'emploi de cette langue fait l'objet d'une demande importante.

Services provided pursuant to a contract

(2) Every federal institution has the duty to ensure that such services to the travelling public as may be prescribed by regulation of the Governor in Council that are provided or made available by another person or organization pursuant to a contract with

Services conventionnés

(2) Il incombe aux institutions fédérales de veiller à ce que, dans les bureaux visés au paragraphe (1), les services réglementaires offerts aux voyageurs par des tiers conventionnés par elles à cette fin le soient, dans les

the federal institution for the provision of those services at an office or facility referred to in subsection (1) are provided or made available, in both official languages, in the manner prescribed by regulation of the Governor in Council.

deux langues officielles, selon les modalités réglementaires.

Nature of the office

24 (1) Every federal institution has the duty to ensure that any member of the public can communicate in either official language with, and obtain available services in either official language from, any of its offices or facilities in Canada or elsewhere

(a) in any circumstances prescribed by regulation of the Governor in Council that relate to any of the following:

(i) the health, safety or security of members of the public,

(ii) the location of the office or facility, or

(iii) the national or international mandate of the office; or

(b) in any other circumstances prescribed by regulation of the Governor in Council where, due to the nature of the office or facility, it is reasonable that

Vocation du bureau

24 (1) Il incombe aux institutions fédérales de veiller à ce que le public puisse communiquer avec leurs bureaux, tant au Canada qu'à l'étranger, et en recevoir les services dans l'une ou l'autre des langues officielles :

a) soit dans les cas, fixés par règlement, touchant à la santé ou à la sécurité du public ainsi qu'à l'emplacement des bureaux, ou liés au caractère national ou international de leur mandat;

b) soit en toute autre circonstance déterminée par règlement, si la vocation des bureaux justifie l'emploi des deux langues officielles.

communications with and services from that office or facility be available in both official languages.

Services Provided on behalf of Federal Institutions

Where services provided on behalf of federal institutions

25 Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language in any case where those services, if provided by the institution, would be required under this Part to be provided in either official language.

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Duties and Functions of Commissioner

Duties and functions

55 The Commissioner shall carry out such duties and functions as are assigned to the Commissioner by this Act or any other Act of Parliament, and may carry out or engage in such other related assignments or activities as may be authorized by the Governor in Council.

Services fournis par des tiers

Fourniture dans les deux langues

25 Il incombe aux institutions fédérales de veiller à ce que, tant au Canada qu'à l'étranger, les services offerts au public par des tiers pour leur compte le soient, et à ce qu'il puisse communiquer avec ceux-ci, dans l'une ou l'autre des langues officielles dans le cas où, offrant elles-mêmes les services, elles seraient tenues, au titre de la présente partie, à une telle obligation.

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Mandat du commissaire

Fonctions du commissaire

55 Le commissaire exerce les attributions que lui confèrent la présente loi et toute autre loi fédérale; il peut en outre se livrer à toute activité connexe autorisée par le gouverneur en conseil.

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Part X

Court Remedy

Application for remedy

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.

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Order of Court

77 (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.

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Costs

81 (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

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Consultations

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Partie X

Recours judiciaire

Recours

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.

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Ordonnance

77 (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.

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Frais et dépens

81 (1) Les frais et dépens sont laissés à l'appréciation du tribunal et suivent, sauf ordonnance contraire de celui-ci, le sort du principal.

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Consultations

84 If the Governor in Council proposes to make a regulation under a provision of this Act, the minister of the Crown who is responsible for the provision shall, at a time and in a manner appropriate to the circumstances, seek the views of members of the English and French linguistic minority communities and, if appropriate, members of the public generally on the proposed regulation.

84 Si le gouverneur en conseil a l'intention de prendre un règlement en vertu d'une disposition de la présente loi, le ministre fédéral responsable de la disposition consulte, selon les circonstances et au moment opportun, les minorités francophones et anglophones et, éventuellement, le grand public sur le projet de règlement.

Tabling of draft of proposed regulation

85 (1) If the Governor in Council proposes to make a regulation under a provision of this Act, the minister of the Crown who is responsible for the provision shall lay a draft of the proposed regulation before the House of Commons at least 30 days before a copy of the regulation is published in the *Canada Gazette* under section 86.

Dépôt d'avant-projets de règlement

85 (1) Si le gouverneur en conseil a l'intention de prendre un règlement en vertu d'une disposition de la présente loi, le ministre fédéral responsable de la disposition en dépose un avant-projet à la Chambre des communes au moins trente jours avant la publication du règlement dans la *Gazette du Canada* au titre de l'article 86.

Calculation of thirty day period

(2) In calculating the thirty day period referred to in subsection (1), there shall not be counted any day on which the House of Commons does not sit.

Calcul de la période de trente jours

(2) Seuls les jours de séance de la Chambre des communes sont pris en compte pour le calcul de la période de trente jours visée au paragraphe (1).

Publication of proposed regulation

86 (1) Subject to subsection (2), a copy of each regulation

Publication des projets de règlement

86 (1) Tout projet de règlement pris en vertu d'une

that the Governor in Council proposes to make under a provision of this Act shall be published in the *Canada Gazette* at least 30 days before its proposed effective date, and a reasonable opportunity shall be afforded to interested persons to make representations to the minister of the Crown who is responsible for the provision with respect to the proposed regulation.

disposition de la présente loi est publié dans la Gazette du Canada au moins trente jours avant la date prévue pour son entrée en vigueur, les intéressés se voyant accorder toute possibilité de présenter au ministre fédéral responsable de la disposition leurs observations à cet égard.

Exception

(2) No proposed regulation need be published under subsection (1) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

Exception

(2) Ne sont pas visés les projets de règlement déjà publiés dans les conditions prévues au paragraphe (1), même s'ils ont été modifiés par suite d'observations présentées conformément à ce paragraphe.

Calculation of 30-day period

(3) In calculating the 30-day period referred to in subsection (1), only the days on which both Houses of Parliament sit shall be counted.

Calcul de la période de trente jours

(3) Seuls les jours où siègent les deux chambres du Parlement sont pris en compte pour le calcul de la période de trente jours visée au paragraphe (1).

Tabling of regulation

87 (1) A regulation that is proposed to be made under paragraph 38(2)(a) and prescribes any part or region of Canada for the purpose of paragraph 35(1)(a) shall be laid before each House of Parliament at least thirty

Dépôt des projets de règlement

87 (1) Les projets de règlements d'application de l'alinéa 38(2)a) visant à désigner un secteur ou une région du Canada pour l'application de l'alinéa 35(1)a) sont déposés

sitting days before the proposed effective date thereof.

devant chaque chambre du Parlement au moins trente jours de séance avant la date prévue pour leur entrée en vigueur.

Motion to disapprove proposed regulation

(2) Where, within twenty-five sitting days after a proposed regulation is laid before either House of Parliament under subsection (1), a motion for the consideration of that House to the effect that the proposed regulation not be approved, signed by no fewer than fifteen Senators or thirty Members of the House of Commons, as the case may be, is filed with the Speaker of that House, the Speaker shall, within five sitting days after the filing of the motion, without debate or amendment, put every question necessary for the disposition of the motion.

Motion de désapprobation

(2) Dans le cas où une motion signée par au moins quinze sénateurs ou trente députés, selon le cas, et visant à empêcher l'approbation du projet de règlement est remise dans les vingt-cinq jours de séance suivant son dépôt au président de la chambre concernée, celui-ci met aux voix, dans les cinq jours de séance suivants et sans qu'il y ait débat ou modification, toute question nécessaire pour en décider.

Where motion adopted

(3) Where a motion referred to in subsection (2) is adopted by both Houses of Parliament, the proposed regulation to which the motion relates may not be made.

Adoption

(3) Il ne peut être procédé à la prise du règlement ayant fait l'objet d'une motion adoptée par les deux chambres conformément au paragraphe (2).

Prorogation or dissolution of Parliament

(4) Where Parliament dissolves or prorogues earlier than twenty-five sitting days after a proposed regulation is

Prorogation ou dissolution du Parlement

(4) Il ne peut non plus y avoir prise du règlement lorsque le Parlement est dissous ou prorogé dans les vingt-cinq

laid before both Houses of Parliament under subsection (1) and a motion has not been disposed of under subsection (2) in relation to the proposed regulation in both Houses of Parliament, the proposed regulation may not be made.

jours de séance suivant le dépôt du projet et que la motion dont celui-ci fait l'objet aux termes du paragraphe (2) n'a pas encore été mise aux voix.

Definition of *sitting day*

(5) For the purposes of this section, *sitting day* means, in respect of either House of Parliament, a day on which that House sits.

Définition de *jour de séance*

(5) Pour l'application du présent article, *jour de séance* s'entend, à l'égard d'une chambre du Parlement, de tout jour où elle siège.

Review by parliamentary committee

88 The administration of this Act, any regulations, policies and directives made under this Act and the reports of the Commissioner, the President of the Treasury Board and the Minister of Canadian Heritage made under this Act shall be reviewed on a permanent basis by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established for that purpose.

Suivi par un comité parlementaire

88 Le Parlement désigne ou constitue un comité, soit du Sénat, soit de la Chambre des communes, soit mixte, chargé spécialement de suivre l'application de la présente loi, des règlements, principes et instructions en découlant, ainsi que la mise en oeuvre des rapports du commissaire, du président du Conseil du Trésor et du ministre du Patrimoine canadien.

Official Languages (Communications with and Services to the Public) Regulations, SOR/92-48

PART I
Significant demand

PARTIE I
Demande importante

7 (1) For the purposes of subsection 23(1) of the Act, there is significant demand for

7 (1) Pour l'application du paragraphe 23(1) de la Loi, l'emploi des deux langues

services to the travelling public, other than air traffic control services and related advisory services, from an office or facility of a federal institution in both official languages if the facility is an airport, railway station or ferry terminal or the office is located at an airport, railway station or ferry terminal and at that airport, railway station or ferry terminal over a year at least 5% of the demand from the public for services is in the minority official language.

officielles fait l'objet d'une demande importante à un bureau d'une institution fédérale en ce qui a trait aux services offerts aux voyageurs, à l'exclusion des services de contrôle de la circulation aérienne et des services consultatifs connexes, lorsque le bureau est un aéroport, une gare ferroviaire ou de traversiers ou un bureau situé dans l'un de ces lieux et qu'au moins cinq pour cent de la demande de services faite par le public à cet aéroport ou à cette gare, au cours d'une année, est dans la langue de la minorité.

(2) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public from an office or facility of a federal institution in an official language where the office or facility provides those services on a route and on that route over a year at least 5 per cent of the demand from the travelling public for services is in that language.

(2) Pour l'application du paragraphe 23(1) de la Loi, l'emploi d'une langue officielle fait l'objet d'une demande importante à un bureau d'une institution fédérale en ce qui a trait aux services offerts aux voyageurs lorsque le bureau offre ces services sur un trajet et qu'au moins cinq pour cent de la demande de services faite par les voyageurs sur ce trajet, au cours d'une année, est dans cette langue.

(3) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public, other than air traffic control services and related advisory services, from an office or facility of a federal institution in both official languages where the facility is an airport or the office is

(3) Pour l'application du paragraphe 23(1) de la Loi, l'emploi des deux langues officielles fait l'objet d'une demande importante à un bureau d'une institution fédérale en ce qui a trait aux services offerts aux voyageurs, à l'exclusion des services de contrôle de la circulation aérienne et des

located in an airport and over a year the total number of emplaned and deplaned passengers at that airport is at least 1,000,000.

services consultatifs connexes, lorsque le bureau est un aéroport ou un bureau situé dans un aéroport et que le nombre total de passagers embarqués et débarqués à l'aéroport, au cours d'une année, s'élève à au moins un million.

(4) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public from an office or facility of a federal institution in both official languages where

(4) Pour l'application du paragraphe 23(1) de la Loi, l'emploi des deux langues officielles fait l'objet d'une demande importante à un bureau d'une institution fédérale en ce qui a trait aux services offerts aux voyageurs, dans l'une ou l'autre des circonstances suivantes :

(a) the facility is a railway station that serves the travelling public and

a) le bureau est une gare ferroviaire desservant les voyageurs qui est :

(i) is located in a CMA that has at least 5,000 persons of the English or French linguistic minority population, or

(i) soit située dans une région métropolitaine de recensement dont la population de la minorité francophone ou anglophone compte au moins 5 000 personnes,

(ii) is located outside a CMA and within a CSD that has at least 500 persons of the English or French linguistic minority population and the number of those persons is equal to at least 5 per cent of the total population of the CSD;

(ii) soit située à l'extérieur d'une région métropolitaine de recensement et à l'intérieur d'une subdivision de recensement dont la population de la minorité francophone ou anglophone compte au moins 500 personnes et représente au moins cinq pour cent de l'ensemble de

	la population de cette subdivision;
(b) the facility is a ferry terminal located in Canada and over a year the total number of arriving and departing passengers at that ferry terminal is at least 100,000;	b) le bureau est une gare de traversiers située au Canada et le nombre total de passagers embarqués et débarqués à cette gare, au cours d'une année, s'élève à au moins 100 000;
(c) the office or facility provides those services on board an aircraft	c) le bureau offre les services à bord d'un aéronef :
(i) on a route that starts, has an intermediate stop or finishes at an airport located in the National Capital Region, the CMA of Montreal or the City of Moncton or in such proximity to that Region, CMA or City that it primarily serves that Region, CMA or City,	(i) soit sur un trajet dont la tête de ligne, une escale ou le terminus est un aéroport situé dans la région de la capitale nationale, dans la région métropolitaine de recensement de Montréal ou dans la ville de Moncton, ou un aéroport situé à proximité de l'une de ces régions ou ville qui la dessert principalement,
(ii) on a route that starts and finishes at airports both of which are located in Ontario, Quebec or New Brunswick, or	(ii) soit sur un trajet dont la tête de ligne et le terminus sont des aéroports situés tous les deux en Ontario, au Québec ou au Nouveau-Brunswick,
(iii) on a route that starts and finishes at airports that are located in two of those provinces;	(iii) soit sur un trajet dont la tête de ligne et le terminus sont des aéroports situés dans deux de ces trois provinces;
(d) the office or facility provides those services on board a train	d) le bureau offre les services à bord d'un train :

(i) on an interprovincial route that starts in, finishes in or passes through Ontario, Quebec or New Brunswick, or

(i) soit sur un trajet interprovincial dont la tête de ligne ou le terminus est situé en Ontario, au Québec ou au Nouveau-Brunswick, ou qui traverse l'une de ces provinces,

(ii) on a route that starts and finishes at railway stations both of which are located in Ontario, Quebec or New Brunswick; or

(ii) soit sur un trajet dont la tête de ligne et le terminus sont des gares ferroviaires situées toutes les deux en Ontario, au Québec ou au Nouveau-Brunswick;

(e) the office or facility provides those services on board a ferry on a route on which over a year there are at least 100,000 passengers.

e) le bureau offre les services à bord d'un traversier sur un trajet dont le nombre total de passagers, au cours d'une année, s'élève à au moins 100 000.

(5) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public, other than air traffic control services and related advisory services, from an office or facility of a federal institution in both official languages if the office or facility is a train station or airport and is located in a provincial or territorial capital or the office or facility is located in an airport that is located in a provincial or territorial capital.

(5) Pour l'application du paragraphe 23(1) de la Loi, l'emploi des deux langues officielles fait l'objet d'une demande importante à un bureau d'une institution fédérale en ce qui a trait aux services offerts aux voyageurs, à l'exclusion des services de contrôle de la circulation aérienne et des services consultatifs connexes, lorsque le bureau est une gare ferroviaire ou un aéroport situé dans une capitale provinciale ou territoriale ou est situé dans un aéroport situé dans une telle capitale.

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PART III

PARTIE III

Contract for Services to the Travelling Public

12 (1) For the purposes of subsection 23(2) of the Act, services to the travelling public are the following:

(a) restaurant, cafeteria, car rental, travel insurance, ground transportation dispatch, foreign exchange, duty free shop and hotel services;

(b) self-service equipment, including automated banking machines and vending machines, and the provision of instructions for the use of public telephones and electronic games; and

(c) passenger screening and boarding services, public announcements and the provision of other information to the public, and carrier services, including counter services for tickets and check-in but excluding carrier services in respect of buses provided at railway stations or ferry terminals.

(2) Where a service referred to in subsection (1) is provided by means of printed or pre-recorded material, such as

Services conventionnés

12 (1) Les services visés au paragraphe 23(2) de la Loi offerts aux voyageurs sont les suivants :

a) les services offerts par les restaurants, les cafétérias, les agences de location de voitures, les bureaux de change et les boutiques hors taxes, la vente d'assurance-voyage, la répartition du transport terrestre et les services hôteliers;

b) les appareils libre-service, notamment les guichets bancaires automatiques et les distributeurs automatiques, et la communication des instructions d'utilisation des téléphones publics et des jeux électroniques;

c) le contrôle et l'embarquement des passagers, la communication d'annonces et d'autres renseignements au public et les services fournis par les transporteurs, lesquels comprennent les services au comptoir de billetterie et d'enregistrement, mais non le service d'autobus offert par les transporteurs aux gares ferroviaires ou de traversiers.

(2) Si la prestation des services visés au paragraphe (1) comporte l'utilisation d'une

signs, notices and menus, car rental contracts and travel insurance policies for the travelling public, the material shall be provided in both official languages.

documentation imprimée ou enregistrée, notamment des panneaux indicateurs, avis, menus, polices d'assurance-voyage et contrats de location de voiture à l'intention des voyageurs, cette documentation doit être dans les deux langues officielles.

(3) Where a service referred to in subsection (1) is provided by means other than those referred to in subsection (2), the service shall be offered to the travelling public by such means as will enable any member of that public to obtain those services in the official language of his or her choice.

(3) Si un moyen autre que la documentation mentionnée au paragraphe (2) est utilisé aux fins de la prestation des services visés au paragraphe (1), ce moyen doit permettre à chaque voyageur d'obtenir ces services dans la langue officielle de son choix.

Official Languages	**Langues officielles**
Application of Official Languages Act	**Loi sur les langues officielles**
4 (1) Where the Minister has leased an airport to a designated airport authority, on and after the transfer date Parts IV, V, VI, VIII, IX and X of the Official Languages Act apply, with such modifications as the circumstances require, to the authority in relation to the airport as if	4 (1) À la date de cession par bail d'un aéroport à une administration aéroportuaire désignée, les parties IV, V, VI, VIII, IX et X de la Loi sur les langues officielles s'appliquent, avec les adaptations nécessaires, à cette administration, pour ce qui est de l'aéroport, au même titre que s'il s'agissait d'une institution fédérale, et l'aéroport est assimilé aux bureaux de cette institution, à l'exclusion de son siège ou de son administration centrale.
(a) the authority were a federal institution; and	
(b) the airport were an office or facility of that institution, other than its head or central office.	

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS:	T-2013-19 AND T-534-21
STYLE OF CAUSE:	MICHEL THIBODEAU v GREATER TORONTO AIRPORTS AUTHORITY
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	FEBRUARY 21, 2023
JUDGMENT AND REASONS:	PAMEL J
DATED:	JANUARY XX, 2024

APPEARANCES:

Michel Thibodeau	FOR THE APPLICANT (ON HIS OWN BEHALF)
Alexandre Fallon	FOR THE RESPONDENT
Élie Ducharme Isabelle Hardy	FOR THE INTERVENER

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Commissioner of Official Languages of Canada Gatineau, Quebec	FOR THE INTERVENER