

Date: 20071105

Docket: A-402-06

Citation: 2007 FCA 308

**CORAM: DÉCARY J.A.
LINDEN J.A.
TRUDEL J.A.**

BETWEEN:

HOWARD P. KNOFF

Appellant

and

**SPEAKER OF THE HOUSE OF COMMONS
and ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Ottawa, Ontario, on September 4, 2007.

Judgment delivered at Ottawa, Ontario, on November 5, 2007.

REASONS FOR JUDGMENT BY:

TRUDEL J.A.

CONCURRED IN BY:

**DÉCARY J.A.
LINDEN J.A.**

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REASONS FOR JUDGMENT

TRUDEL J.A.

[1] This is an appeal of the decision of Layden-Stevenson J. of the Federal Court (2006 FC 808) dismissing the appellant's application brought under Part X of the *Official Languages Act*, R.S.C. 1985, c. 31 (4th supp.) ("Act").

The Facts

[2] On April 20, 2004, the appellant appeared before the House of Commons Standing Committee on Canadian Heritage to testify as a specialized lawyer on matters relating to copyright reform, World Intellectual Property Organization treaty ratification, and private copying.

[3] Prior to his appearance, he sent four documents to the Committee's clerk requesting their distribution to its members. The clerk accepted the documents and made copies of them. However, the Committee members decided not to allow for their distribution because the documents were in English only.

[4] This decision gave effect to a rule of procedure previously adopted by the Committee, which provides for the distribution of documents to its members only when they are available in both official languages (minutes of proceedings of the Committee, February 24, 2004). The Committee reaffirmed the same rule at its organizational meeting for the First Session of the 38th Parliament on October 18, 2004.

[5] The appellant opines that a witness before a parliamentary committee has the right to submit documents in either official language for contemporaneous distribution to committee members as part of his or her testimony. When appearing in front of the Committee, the appellant states:

... I think it's more important that the committee be informed than that everything be bilingual...

[6] November 11, 2004, the appellant filed a complaint with the Commissioner of Official Languages pursuant to section 58 of the Act. He repeated his previous statement: "I have a right to ask the members to read my material in the language of my choice. I would rather that it not be read by one or more members than it be inadequately or inaccurately translated". By letter dated March 1, 2005, the Commissioner dismissed his complaint.

[7] Therefore, the appellant brought an Application pursuant to the provisions of Part X of the Act and claimed a violation of his language rights under the Act, the *Charter of Rights and Freedoms* (“Charter”), and the *Constitution Act, 1867*.

[8] Justice Layden-Stevenson dismissed the Application without costs. The applications judge reviewed the facts and the position of the parties thoroughly. She resolved the case at bar through determination of the following issues:

- (a) whether Mr. Knopf’s language rights were violated; and
- (b) whether parliamentary privilege applied to the proceedings of the Committee.

[9] The Committee adequately respected Mr. Knopf’s right to address himself to its members in the language of his choice. The first judge was right in concluding that the Committee, through its decision not to distribute the documents sent by the appellant, did not infringe on Mr. Knopf’s language rights, as provided for in section 4 of the Act.

[10] As a result, addressing the question of parliamentary privilege becomes unnecessary. Consequently, my summary of the first judgment and of the parties’ submissions, as well as my analysis of the applicable law are limited to this specific issue.

[11] It is useful, at this moment, to set out the relevant statutory provisions:

Constitution Act, 1867 (U.K.), 30 & 31 Vict., c.3, reprinted in R.S.C. 1985, App. II, No.5, section

133:

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

133. Dans les chambres du parlement du Canada et les chambres de la législature de Québec, l'usage de la langue française ou de la langue anglaise, dans les débats, sera facultatif; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces chambres, l'usage de ces deux langues sera obligatoire; et dans toute plaidoirie ou pièce de procédure par-devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l'autorité de la présente loi, et par-devant tous les tribunaux ou émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l'une ou de l'autre de ces langues.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

Les lois du parlement du Canada et de la législature de Québec devront être imprimées et publiées dans ces deux langues.

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, subsections 17(1) and 20(1):

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

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

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

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 :

- | | |
|--|---|
| <p>(a) there is a significant demand for communications with and services from that office in such language; or</p> | <p>a) l'emploi du français ou de l'anglais fait l'objet d'une demande importante;</p> |
| <p>(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.</p> | <p>b) l'emploi du français et de l'anglais se justifie par la vocation du bureau.</p> |

Official Languages Act, R.S.C. 1985, c. 31 (4th supp.), subsection 4(1) and section 25:

- | | |
|--|--|
| <p>4. (1) English and French are the official languages of Parliament, and everyone has the right to use either of those languages in any debates and other proceedings of Parliament.</p> | <p>4. (1) Le français et l'anglais sont les langues officielles du Parlement; chacun a le droit d'employer l'une ou l'autre dans les débats et travaux du Parlement.</p> |
| <p>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.</p> | <p>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.</p> |

Judgment of the Federal Court

[12] The applications judge is of the opinion that subsection 4(1) of the Act protects an individual's right to use the official language of his or her choice. It does not dictate the form of the individual's interaction with the Committee:

[39] Mr. Knopf was entitled to speak to the Committee in the official language of his choice. That right was respected. Mr. Knopf's request that his documents be circulated did not fall

within the parameters of the right enshrined in subsection 4(1) of the OLA. Rather, it was a challenge to the manner in which the Committee conducts its business. It was a challenge to the procedure adopted by the Committee regarding the distribution of documents. This is not, in my view, a language rights issue.

[13] Citing section 133 of the *Constitution Act, 1867*, she further states that «In the context of proceedings before Parliament, the word “use” provides Mr. Knopf with the right to speak in the official language of his choice», thus concluding that Mr. Knopf’s choice of addressing the House Committee in either English or French was respected.

Position of the Parties in Appeal Regarding the Language Rights Issue

[14] The appellant argues that the first judge erred in law in failing to declare a violation of his rights under the Act, the Charter, and the *Constitution Act, 1867*. Contrary to a finding of the Federal Court, he states that his application is not the result of his disappointment because the Committee did not consider his submission sufficiently. He declares that it involves a language right, not a political right.

[15] In his opinion, it is an error to limit the meaning of the word “use” in subsection 4(1) of the Act to oral speech excluding the right, for a witness, to make written submissions or present written material in either official language as an integral part of his or her testimony.

[16] Finally, the appellant is unsatisfied with the conclusions of the first judge on costs under subsection 81(2) of the Act. He believes that “there is an important and untested principle at stake here, which goes to the root of parliamentary democracy in a bilingual society.”

[17] Accordingly, he seeks (a) a reversal of the first decision; (b) a declaration that his language rights, as provided by sections 16 and 17 of the Charter, and section 4 of the Act were violated by the Committee; (c) a declaration that members of the public have the right, when appearing in front of a Committee of the House of Commons, to submit relevant documents in either official language for contemporaneous distribution to Members of the Committee and (d) a declaration that all parliamentary committees shall comply with the provisions of the Act and the Charter in allowing distribution of relevant documents in either official language, without the need to translate the documentation prior to distribution to Committee Members.

[18] As for costs, the appellant seeks (a) that there be no order as to costs between him and the Speaker of the House of Commons and (b) that there be an order against the Attorney General of Canada pursuant to subsection 81(2) of the Act, or alternatively that there be no costs in this matter.

[19] The Speaker of the House of Commons submits that this Court lacks the jurisdiction to determine the appellant's Charter rights or to make any ruling regarding the decisions, reports, or proceedings of the Committee. His Memorandum of Facts and Law deals mostly with parliamentary privilege which I indicated it is not necessary to deal with.

[20] In any event, he agrees with, and supports the position of the Commissioner of Official Languages and the Attorney General that the rights of the applicant under the Act and the Charter

were not violated. The Speaker of the House of Commons seeks dismissal of the appeal without costs.

[21] The Attorney General suggests that the teleological construction of the Act confirms the first judgment. He seeks dismissal of the appeal with costs in this Court.

Analysis

[22] Part X of the Act provides that any person who has made a complaint to the Commissioner in respect of a right or duty under section 4 may apply to the Federal Court for a remedy under that Part (subsection 77(1)).

[23] Subsection 77(4) specifies that:

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

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 eut égard aux circonstances.

[24] The House of Commons being defined as a federal institution (section 3 of the Act), I entertain no doubt that the Federal Court has the jurisdiction to hear Mr. Knopf's appeal regarding the alleged violation of his language rights.

[25] Turning now to the appellant's arguments, I find that he failed to show that the applications judge erred in her appreciation of the evidence. The Agreed Statement of Facts essentially lists all

the facts of this case. Any additional facts ensue from the uncontradicted affidavits of the appellant and the Speaker.

[26] The appellant disagrees with Justice Layden-Stevenson's finding that the essence of his complaint is that the Committee did not sufficiently consider his submission and that his application involves a political issue, rather than a language right.

[27] There is some evidence on record upon which she could rely to reach that conclusion. The appellant unequivocally shows his disappointment that the Committee did not accept his submissions both in his letter of complaint to the Commissioner of Official Languages and his affidavit.

[28] During his oral argument, the appellant insisted that the Court consider his case with a prospective view so that future witnesses appearing before a Parliamentary committee will be authorized to require the distribution of documents written or published in one of the official languages.

[29] I do not propose to widen the debate to consider theoretical situations that is cases where documents were refused by a committee's clerk, or where a witness expressed himself or herself using means other than oral speech. This is not the case to do so, nor is it the case to discuss parliamentary privileges enjoyed by a committee of the House of Commons.

[30] In the case at bar, the appellant testified in front the Committee in English, the language of his choice, and referred to his written documents as shown by the partial transcript filed in support of his affidavit. He had sent those documents prior to his testimony and they were received by the Committee's clerk and copied. They simply were not distributed. The Chair of the Committee explained the procedure to the appellant as follows:

I understand that you may not be aware of our policy. This committee educates itself in both official languages. So it's not that we will not see the document. We will see it in both official languages. We don't preclude ourselves from reading it because it's only in one language. We educate ourselves in both.

[31] As mentioned earlier, the appellant submits that by referring to the verb "to speak", Justice Layden-Stevenson limited the meaning of the word "use" in section 4(1) of the Act and the relevant legislation to oral speech. He suggests that it includes also the right to make written submissions, or present written material in either official language as an integral part of one's testimony.

[32] A careful reading of the first judgment does not warrant the appellant's interpretation. The first judgment and the authorities cited by the applications judge do not suggest such a restriction.

[33] In all fairness, one has to read Justice Layden-Stevenson's finding entirely. She writes:

[36] ... In short, an individual has the choice of addressing the House in either English or French. In the context of proceedings before Parliament, the word "use" provides Mr. Knopf with the right to speak in the official language of his choice. [emphasis added]

[34] The verb “to speak” refers to more than the faculty of speech. *The Canadian Oxford Dictionary*, 2d ed., also defines it as:

... **2. transitive a** utter (words). **b** make known or communicate (*one’s opinion, the truth, etc.*) in this way (*never speaks sense*). **3 intransitive a** [...] hold a conversation (*spoke to him for an hour, spoke with them about their work*). **b** mention in writing etc. (*speaks of it in his novel*). **c** [...] articulate the feelings of (another person etc.) in speech or writing (*speaks for our generation*). **4 intransitive a** address; converse with (a person etc.)

[35] Justice Layden-Stevenson does not restrict the word “speak” to oral speech. Rather, she states that subsection 4(1) of the Act provides the appellant with a right to address the House in the language of his choice. She is of the opinion that the appellant’s request that his documents be circulated does not fall within the parameters of subsection 4(1) of the Act. For the following reasons, I agree with her finding.

[36] It is trite law that language rights have to be interpreted purposively and liberally (*Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3; *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3; *R. v. Beaulac*, [1999] 1 S.C.R. 768).

[37] This purpose is to be sought by reference to the character and the larger objects of the Charter and the Act, the historical origins of the concepts enshrined, the manner in which the right is expressed and the implications to be drawn from the context in which the right is to be found, including other parts of the Charter or the Act. (*R. v. Big M Drug Mart Ltd*, [1985] 1 S.C.R. 295 at 344; *Reference Re Motor Vehicle Act (British Columbia)*, [1985] 2 S.C.R. 486 at 499-500; Peter W. Hogg, *Constitutional Law of Canada*, 2006 Student ed. (Toronto, Carswell, 2006) at 770; Henry

Brun & Guy Tremblay, *Droit Constitutionnel*, 4th ed. (Cowansville, Qc: Yvons Blais, 2002) at 929).

[38] Subsection 4(1) of the Act reiterates the right first recognized by section 133 of the *Constitution Act* and reaffirmed by subsection 17(1) of the Charter. These three sections recognize the right of any person participating in parliamentary proceedings “to use” (“d’employer”) English or French. Subsection 4(1) of the Act, as well as subsection 17(1) of the Charter create a scheme of unilinguism at the option of the speaker or writer, who cannot be compelled by Parliament to express himself or herself in another language than the one he or she chooses (See *MacDonald v. City of Montreal*, [1986] 1 S.C.R. 460 at para.60).

[39] However, in some other language rights provisions, such as subsection 20(1) of the Charter and section 25 of the Act, the legislator chose the term “to communicate” (“communiquer”). In my opinion, this is not accidental.

[40] To “communicate” presupposes interactions, bilateral actions between the parties. The verb “to use” does not encompass such interaction. The right is unilateral: one has the right to address the House of Commons in the official language of his choice. In the case at bar, Mr. Knopf made his opinion known on particular topics of interest to the Committee and filed his documents. There stops his right under subsection 4(1) of the Act.

[41] I do not read into subsection 4(1) of the Act any requirement for a Committee to distribute documents to its members in one official language. Subsection 4(1) of the Act provides the appellant with a right to address the Committee in the language of his choice only. Once this right has been exercised, subsection 4(1) of the Act does not compel the Committee to act in a certain way with the oral or written information provided to it.

[42] Justice Layden-Stevenson was right in finding that the distribution of documents does not fall within the scope of subsection 4(1) of the Act. The right to use an official language of choice does not include the right to impose upon the Committee the immediate distribution and reading of documents filed to support one's testimony. The decision on how and when to treat the information received from a witness clearly belongs to the Committee. I find, therefore, that the appellant's language rights were not infringed upon.

[43] As prescribed by section 81 of the Act, the Federal Court, as the «Court» defined in section 76 of the same Part of the Act may, at its discretion, award costs to the applicant. The Federal Court may exercise its discretion even when the applicant has not been successful in the result if it finds that the application under section 77 raised an important new principle in relation to the Act (See *Canada (Information Commissioner) v. Canada (Minister of National Defence)*, [1999] F.C.J. No. 522 (C.A.) at paragraph 36; *Bellemarre v. Canada (A.G.)*, 2004 FCA 31, at paragraph 11-15 – leave denied, [2004] S.C.C.A. No. 379).

[44] Layden-Stevenson J. exercised her discretion and the appellant failed to show cause for this Court to intervene.

[45] The Attorney General asks for his costs following this appeal in accordance to Rule 400, *Federal Courts Rules*, S.O.R./98-106.

[46] I propose to dismiss the appeal without costs as far as the Speaker is concerned and with costs against the Attorney General.

“Johanne Trudel”

J.A.

“I agree
Robert Décary J.A.”

“I agree
A.M. Linden J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-402-06

APPEAL FROM THE ORDER OF THE FEDERAL COURT (LAYDEN-STEVENSON, J.) DATED JUNE 26, 2006 IN DOCKET NUMBER T-770-05.

STYLE OF CAUSE: HOWARD P. KNOPF v.
SPEAKER OF THE HOUSE OF
COMMONS AND
THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: SEPTEMBER 4, 2007

REASONS FOR JUDGMENT BY: TRUDEL J.A.

CONCURRED IN BY: DÉCARY J.A.
LINDEN J.A.

DATED: NOVEMBER 5, 2007

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