Federal Court of Appeal | Cour d'appel fédérale

Date: 20251007

Dockets: A-405-24
A-420-24

Citation: 2025 FCA 182

[ENGLISH TRANSLATION]

CORAM: **DE MONTIGNY C.J.**
LOCKE J.A.
GOYETTE J.A.

BETWEEN:

MICHAEL MOREAU

Appellant

and

ONE PARLIAMENT FOR CANADA (AS REPRESENTED BY THE SPEAKER OF THE HOUSE OF COMMONS AND THE SPEAKER OF THE SENATE AND HIS MAJESTY THE KING)

Respondents

Heard at Ottawa, Ontario, on September 29, 2025.

Judgment delivered at Ottawa, Ontario, on October 7, 2025.

REASONS FOR JUDGMENT BY: DE MONTIGNY C.J.

CONCURRED IN BY: LOCKE J.A.
GOYETTE J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY C.J.

[1] The appellant seeks an order overturning two Federal Court decisions rendered on November 27 and December 11, 2024. The two appeals essentially raise the same issues and have been consolidated at the request of the parties, in accordance with Rule 105 of the *Federal Courts Rules*, SOR/98-106 (Rules).

I. Background

[2] The facts underlying the two appeals are not in dispute. On June 10, 2024, acoustic feedback (also known as the Larsen effect) occurred during Question Period in the House of Commons. As a result of this incident, the simultaneous interpretation of the proceedings of the House of Commons was interrupted, which the Speaker of the House of Commons commented on, only in English.

[3] The next day, on June 11, 2024, the appellant filed a complaint with the Commissioner of Official Languages, alleging that the incident had been a violation of the language rights of Members of Parliament, who had been deprived of translation services while the debate was interrupted. On June 21, 2024, the Commissioner refused the appellant's complaint on the ground that it was inadmissible under subsection 58(1) of the *Official Languages Act*, R.S.C. 1985, c. 31 (OLA).

[4] On August 20, 2024, the appellant made an application under section 77 of the OLA challenging the refusal of his complaint to the Commissioner. He called upon the Federal Court to grant a number of declaratory remedies against the House of Commons. He alleged that the incident at the heart of his complaint, the suspension of translation services for a few minutes on account of the Larsen effect, had been a violation of Parts I, IV and VII of the OLA and of sections 7 and 15 and subsections 16(1), 17(1) and 20(1) of the *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 (Charter). It is important to mention that in his application, which was written in

English, the appellant identified the respondent as “One Parliament for Canada (As represented by the Speaker of the House of Commons and the Speaker of the Senate and His Majesty the King)”. It should be noted that this expression is derived from section 17 of the *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3 (1867 CA), which defines the Parliament of Canada as consisting of the King, an Upper House styled the Senate, and the House of Commons.

[5] On October 22, 2024, the Speaker of the Senate asked the appellant to amend his notice of application to remove her as a respondent because she is not at all affected by the application for remedy or involved in the allegations. After the appellant refused to comply with this request, the Speaker of the Senate brought a motion before the Federal Court on November 8, 2024, under Rules 104 and 303, seeking to be removed as a party and to have the style of cause amended. His Majesty the King did the same thing on November 5, 2024.

[6] In an order issued on November 27, 2024, Justice Lafrenière of the Federal Court allowed the Speaker of the Senate’s motion. On December 11, 2024, Justice Gascon of that same court also allowed His Majesty the King’s motion. In both cases, the Federal Court noted that neither the alleged shortcomings or facts, nor the remedies sought concern His Majesty the King or the Speaker of the Senate. In addition, the Federal Court found that no Act of Parliament provides for naming His Majesty the King or the Speaker of the Senate as a respondent in this dispute.

[7] It is these two decisions that are appealed before us.

II. Issues

[8] The appellant submits that the Federal Court erred in law in finding that, first, the doctrine of issue estoppel does not preclude His Majesty the King and the Speaker of the Senate from asking to be removed as parties, and that second, “One Parliament for Canada” is not a federal institution within the meaning of subsection 3(1) of the OLA. The appellant also alleges that the Federal Court made an error of fact in determining that the respondents are not necessary to adjudicate the matter.

III. Analysis

[9] The Federal Court’s decisions on the joinder of parties, in application of Rule 104, are discretionary: *Stevens v. Canada (Commissioner, Commission of Inquiry) (C.A.)*, [1998] 4 F.C. 125 at para. 10. Insofar as such decisions involve the application of legal rules to facts, they may therefore be set aside only if the appellant can show that a palpable and overriding error was made. In contrast, errors that involve an extricable question of law must be reviewed on a standard of correctness: *Housen v. Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215; *Seismotech IP Holdings Inc. v. Ecobee Technologies ULC*, 2024 FCA 144 at para. 5; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras. 72 and 74.

[10] Rule 303(1) is clear: an application must name as a respondent every party directly affected by the remedies sought and, if applicable, the parties required to be included under an Act. When a person is not a proper party, nor a necessary party given the allegations made and

remedies sought, they may cease to be a party under Rule 104(1): *Canada (Fisheries and Oceans) v. Shubenacadie Indian Band*, 2002 FCA 509 at paras. 6–8.

[11] In that case, this Court specified that a person should not be named as a defendant if the originating document "states no cause of action against them, seeks no relief against them, and makes no allegations against them" (at para. 6). The mere fact that the person may adduce relevant evidence or may be adversely affected by the outcome of the litigation will not be sufficient to join that person as a defendant in the litigation: *ibid.* at para. 7.

[12] That is precisely what Justice Lafrenière and Justice Gascon found in the two decisions that are the subject of these appeals. In both cases, the Federal Court concluded that His Majesty the King and the Speaker of the Senate were [TRANSLATION] "in no way involved in the application" and that [TRANSLATION] "neither the alleged shortcomings and facts nor the remedies sought" concerned His Majesty the King, the Senate or the Speaker.

[13] In my view, this finding is unassailable and contains no error of law, of fact or of application of the law to the facts. Indeed, the application relates only to allegations of non-compliance with the OLA stemming from the interruption of simultaneous translation services on June 10, 2024, during a House of Commons debate. Yet, neither His Majesty the King nor the Speaker of the Senate plays a role in the conduct of House of Commons proceedings, nor in the way in which the simultaneous interpretation of those proceedings is provided. The House of Commons was present in this matter and clearly has better knowledge of the facts in dispute. Furthermore, none of the remedies sought involves His Majesty the King or the Speaker of the Senate. The fact that the appellant, in his originating document, claimed that

there had been violations of the Charter does not in any way change the scope of the dispute or the nature of the remedies sought.

[14] The appellant contended that the Federal Court should have considered his motion for a mandatory interlocutory injunction. In that motion, the appellant asked the Federal Court to compel the Crown to exercise its prerogative to prorogue Parliament until the respondents took reasonable steps to protect interpreters from the violation of their rights. In his opinion, such an injunction would affect the Senate. However, it is accepted that the need for a party to be present for a proceeding must be assessed only on the basis of the contents of the originating document for that proceeding.

[15] Moreover, the Federal Court has already ruled that a third party may be joined as a party solely for the purposes of a motion, if it is established that their presence is necessary to dispose of the motion: see *Canadian National Railway Company v. BNSF Railway Company*, 2019 FC 142 at para. 14. More recently, the Speaker of the Senate was granted intervener status as part of a motion on the admissibility of documents relating to Senate proceedings. However, she was granted intervener status solely for the purposes of the motion; she was not considered a party to the underlying dispute, which was a class proceeding on a completely different issue: *Thompson v. Canada*, 2024 FC 1414; *Thompson v. Canada*, 2024 FC 1752; *Thompson v. Canada*, 2025 FC 476.

[16] Both Federal Court judges also correctly found that no Act of Parliament provides for naming the Speaker as a respondent in this proceeding. Even assuming that the OLA or the Rules allow the Speaker to be named as a party, doing so would not be appropriate insofar as this application involves only the House of Commons.

[17] In any event, subsection 58(1) of the OLA provides that the Commissioner may investigate any complaint arising from any act or omission "in the administration of the affairs of any federal institution." Subsection 77(1) also allows any person who has made a complaint to the Commissioner based on a justiciable provision to apply to the Federal Court for a remedy under Part X. However, the respondent in such an application can only be a federal institution, as a remedy can be granted only in respect of a federal institution: *Lavigne v. Canada (Human Resources Development) (T.D.)*, 2001 FCT 1365 at para. 63.

[18] From a reading of section 3 of the OLA, it is perfectly clear that remedies cannot be granted in respect of "One Parliament of Canada". The OLA defines "federal institution" as referring to the institutions of the Parliament or government of Canada, including "the Senate, the House of Commons" and several other federal bodies. Neither His Majesty the King nor the Speaker of the Senate is included as a federal institution for the purposes of the OLA. And although the Upper House is a federal institution, it is not (and could not be, for the reasons outlined above) named as a respondent.

[19] As regards the Parliament of Canada, it can obviously not be an "institution of Parliament". It is clear that it is the institutions of Parliament that are included in the definition of "federal institution", and not Parliament itself. And there is good reason for that. The Parliament of Canada was constituted under the 1867 CA; it cannot originate from an Act of Parliament because it is Parliament that enacts these Acts. In other words, Parliament cannot create the organizations captured by this portion of the OLA definition of "federal institution" while also being one of those organizations itself.

[20] Lastly, the appellant argues that the trial judges erred in finding that no issue estoppel precluded His Majesty the King and the Speaker of the Senate from being removed as parties. The doctrine of issue estoppel is a discretionary remedy allowing the courts to dismiss a proceeding when the issue has already been definitively decided in an earlier judicial proceeding between the same parties or between parties standing in their place: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 at para. 25. As the Supreme Court reiterated in *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 29, this doctrine "balances judicial finality and economy and other considerations of fairness to the parties."

[21] The parties agree on the principles governing issue estoppel. Therefore, the only issue is whether all the requirements for the application of this doctrine have been met. Justice Lafrenière did not rule on this issue, whereas Justice Gascon concluded that no issue estoppel precluded His Majesty the King from applying to be removed as a party without providing reasons in support of his decision.

[22] Regarding His Majesty the King, the appellant asserts that the Attorney General of Canada has already been named as a respondent, along with the House of Commons, in two prior cases: *Quigley v. Canada (House of Commons) (T.D.)*, [2003] 1 F.C. 132 and *Knopf v. Canada (House of Commons)*, 2006 FC 808. In my opinion, the fact that the Attorney General of Canada chose to participate as a respondent in a particular proceeding is insufficient to conclude that, in so doing, they agreed to being joined as a party in any subsequent dispute. The doctrine of issue estoppel does not extend that far.

[23] First, the issue of whether the interruption of simultaneous interpretation services was a violation of the appellant's language rights was never determined, which means that there is no

issue estoppel. Second, only the House of Commons was a party to the two cases the appellant cited. Neither Mr. Moreau nor the Crown was named as a respondent. As a result, the Federal Court did not err in finding that His Majesty the King was not barred by issue estoppel from applying to be removed as a party in this matter.

[24] As for the Senate, the appellant argues that in file number T-1934-24, the Speaker was named as a respondent in the same way as in the present application but brought no motion asking to be removed as a party. In his opinion, this is sufficient for issue estoppel to apply in this case. Again, the appellant has not persuaded me that all the required conditions for the application of this doctrine have been met.

[25] There is currently no jurisprudence addressing whether it is appropriate to name the Speaker as a respondent in an application under section 77 of the OLA when neither the allegations nor the remedies sought concern the Speaker. The fact that no motion was filed in file number T-1934-24 to have the Speaker of the Senate removed as a party clearly does not constitute a Federal Court decision on this issue. For there to be issue estoppel, the question must not only have arisen in earlier proceedings, but must also have been fundamental to the substantive decision: *Angle v. Minister of National Revenue*, [1975] 2 S.C.R. 248 at 254–55. This is obviously not the case here.

[26] Furthermore, the issue has not been definitively determined in file number T-1934-24. That matter stems from a complaint filed by Mr. Moreau against his Member of Parliament on the ground that she had responded only in French to a letter in both official languages that Mr. Moreau had sent her. After the Commissioner refused that complaint, Mr. Moreau filed another application for remedy under section 77 of the OLA against the [TRANSLATION]

"Parliament of Canada, as represented by the Speaker of the House of Commons and the Speaker of the Senate". The dispute is currently being case managed by the Federal Court and no final decision has been rendered yet, such that the Speaker of the Senate could still apply to be removed as a party. As long as the issue of whether the Speaker of the Senate can be named as a respondent has not been raised and disposed of by the Court in that matter, the second condition for issue estoppel to apply has not been met.

IV. Conclusion

[27] For all the above-mentioned reasons, I am therefore of the view that the two appeals should be dismissed, with costs.

[28] At the hearing, as in his memorandum, the appellant challenged the decisions of the Federal Court to award costs to the Speaker of the Senate and His Majesty the King, and he also sought costs in this Court. These two requests must be rejected.

[29] It is well established that costs are awarded at the discretion of the judge in accordance with Rule 400(1). Consequently, appellate courts rarely intervene in the exercise of this discretion: see, as examples, *Bossé v. Canada (Public Health Agency)*, 2023 FCA 199 at para. 34; *Bell Helicopter Textron Canada Limitée v. Eurocopter, société par actions simplifiée*, 2013 FCA 220 at paras. 7–8. Although the appellant disagrees with the trial judges' cost orders, he has not provided us with any grounds for finding that a palpable and overriding error was made warranting this Court's intervention.

[30] With respect to the appeals before us, the appellant is relying on subsection 81(2) of the OLA in support of his request for costs. That provision allows the Court to award costs to a

person who was unsuccessful if the application raises an important new principle in relation to the OLA. However, the appellant has not persuaded me that these appeals raise such principles. Despite the appellant's obvious good faith, the issues he is asking the Court to decide are neither new nor of general interest, and they are based on a legal argument that is tenuous, to say the least.

[31] Therefore, I would award costs to the Speaker of the Senate and His Majesty the King, in the amount of $1,000 each.

"Yves de Montigny"
C.J.

"I agree.
George R. Locke J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-405-24 A-420-24
STYLE OF CAUSE:	MICHAEL MOREAU v. ONE PARLIAMENT FOR CANADA (AS REPRESENTED BY THE SPEAKER OF THE HOUSE OF COMMONS AND THE SPEAKER OF THE SENATE AND HIS MAJESTY THE KING)
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	SEPTEMBER 29, 2025
REASONS FOR JUDGMENT BY:	DE MONTIGNY C.J.
CONCURRED IN BY:	LOCKE J.A. GOYETTE J.A.
DATED:	OCTOBER 7, 2025

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