Federal Court Cour fédérale

**Date: 20220421**

**Docket: T-1023-19**

**Citation: 2022 FC 563**

**Ottawa, Ontario, April 21, 2022**

**PRESENT: Mr. Justice Sébastien Grammond**

**BETWEEN:**

**MICHEL THIBODEAU**

**Applicant**

**and**

**ST. JOHN'S INTERNATIONAL AIRPORT AUTHORITY**

**Respondent**

**and**

**THE COMMISSIONER OF OFFICIAL LANGUAGES**

**Intervener**

## JUDGMENT AND REASONS

[1] Mr. Thibodeau has made an application for a remedy under section 77 of the *Official Languages Act*, RSC 1985, c 31 (4th Supp.) [the Act], against St. John's International Airport

Authority [SJIAA]. He is seeking declaratory relief, damages and a letter of apology, because he believes that SJIAA has not complied with its duties under the Act.

[2] I find that SJIAA has failed to comply with the Act by communicating in English only on social media and by failing to ensure that its website is fully bilingual. In this regard, SJIAA's obligations are not limited to information that is "traveller-relevant". Communications from SJIAA's head office to the general public must also be bilingual.

[3] I find that an award of damages is an appropriate and just remedy to ensure deterrence and vindication of the rights flowing from the Act. Neither the circumstances in which Mr. Thibodeau discovered the breaches of the Act nor SJIAA's alleged efforts to comply with the Act are a bar to an award of damages.

## I. Background

[4] For a clear understanding of these reasons, it is necessary to begin with a brief description of the statutory scheme at issue. We will then turn to the complaints that gave rise to the case and the handling of those complaints by the Commissioner of Official Languages [the Commissioner].

### A. *Statutory Context*

[5] Section 16 of the *Canadian Charter of Rights and Freedoms* provides that English and French are the official languages of Canada. It enshrines in the Constitution a fundamental

characteristic of Canada. Sections 17 to 23 of the Charter provide for an array of rights relating to the use of the official languages in various institutions. In particular, section 20 provides as follows:

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

[6] The Act was enacted, among other reasons, to implement the rights guaranteed in sections 17 to 20 of the Charter. Part IV of the Act, which includes sections 21 to 33, is entitled "Communications with and Services to the Public". The provisions at issue in this case are sections 22 and 23. Section 22 reads as follows:

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| **22** Every federal institution has the duty to ensure that any member of the public can communicate with and obtain available services from its head or central office in either | **22** Il incombe aux institutions fédérales de veiller à ce que le public puisse communiquer avec leur siège ou leur administration centrale, et en recevoir les services, dans |

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| official language, and has the same duty with respect to any of its other offices or facilities<br><br>**(a)** within the National Capital Region; or<br><br>**(b)** in Canada or elsewhere, where there is significant demand for communications with and services from that office or facility in that language. | l'une ou l'autre des langues officielles. Cette obligation vaut également pour leurs bureaux — auxquels sont assimilés, pour l'application de la présente partie, tous autres lieux où ces institutions offrent des services — situés soit dans la région de la capitale nationale, soit là où, au Canada comme à l'étranger, l'emploi de cette langue fait l'objet d'une demande importante. |

[7] It should be noted at this point that, like section 20 of the Charter, section 22 of the Act distinguishes between two main types of circumstances in which a federal institution has a duty to use either official language in its interactions with the public. On the one hand, this duty applies to communications or services provided by the head or central office of the institution. On the other hand, for offices located elsewhere in the country or abroad, the duty to communicate or provide services in an official language applies only where there is significant demand. As will be seen below, the distinction between head office and other offices is crucial in this case. Section 22 of the Act also provides that services offered by offices located in the National Capital Region must be bilingual, but this aspect of section 22 is irrelevant here.

[8] Section 23 clarifies the scope of section 22 in respect of services for the travelling public, again based on the concept of significant demand:

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| **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 | **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 |

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| 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. | 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. |
| **(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. |

[9] The definition of significant demand is found in the *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48 [the Regulations]. Separate criteria apply to the situations covered by sections 22 and 23 of the Act. While the provisions of the Regulations are quite detailed, the relevant aspects can be summarized as follows.

[10] Section 5 of the Regulations provides that, for the purposes of section 22 of the Act, there is significant demand for services provided by an office of a federal institution in the minority official language where, among other things, the minority language population in the relevant

census metropolitan area is at least 5,000 or where at least 5% of the demand for service is in that language. It is not disputed that these conditions are not met in St. John's.

[11] Section 7 of the Regulations provides that, for the purposes of section 23 of the Act, there is significant demand for services provided by an airport in the minority official language when at least 5% of the demand for service is in that language. There is also significant demand for these services in both languages when the total number of passengers per year exceeds one million. It is not disputed that the total number of travellers at St. John's Airport has exceeded this threshold for several years. Furthermore, in 2019, after Mr. Thibodeau's complaints were filed, section 7 was amended by the addition of subsection 7(5), which provides that there is significant demand for both official languages if the services are offered at an airport located in a provincial or territorial capital, such as St. John's.

[12] Until the 1990s, many Canadian airports were operated by the Department of Transport, a federal institution subject to the Act. However, the government wished to transfer the operation of these airports to local organizations. Parliament therefore enacted the *Airport Transfer (Miscellaneous Matters) Act*, SC 1992, c 5, which allows the government to transfer an airport to a "designated airport authority" and sets out the terms and conditions for the application of certain statutes to that authority. In particular, with respect to official languages, subsection 4(1) of the Act provides as follows:

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| **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* | **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* |

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| *Act* apply, with such modifications as the circumstances require, to the authority in relation to the airport as if<br>**(a)** the authority were a federal institution; and<br>**(b)** the airport were an office or facility of that institution, other than its head or central office. | 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. |

[13] The St. John's Airport was leased to SJIAA in accordance with this Act in 1998.

B. *Facts*

[14] This case arises from six complaints that Mr. Thibodeau filed with the Commissioner pursuant to section 58 of the Act. In these complaints, Mr. Thibodeau criticized SJIAA for

- having an exclusively English presence on social media such as Facebook, YouTube and Instagram;
- having a website with an English-only URL and of which the French version was not of equal quality to the English;
- publishing its press releases in English only;
- making certain documents on its website, including its annual reports and master plan, available in English only;

- posting content on Twitter almost exclusively in English; and

- having certain signs on ATMs in the airport only in English.

[15] When he filed these six complaints, Mr. Thibodeau had not visited the St. John's Airport himself. He ascertained the facts through research on the Internet.

[16] Mr. Thibodeau's complaints were the subject of two separate reports by the Commissioner. The first report deals with complaints about various forms of content posted on the Internet. Having analyzed the provisions cited above, the Commissioner concluded that section 22 applied to SJIAA as a head office, but not as an "other office". He also concluded that section 23 applied since the St. John's Airport saw more than one million passengers a year. As the facts underlying the complaint were not in dispute, the Commissioner found that the Act had been breached and recommended that SJIAA ensure, within six months, that all content posted on its website (including annual reports and press releases) and on social media be of equal quality in both official languages.

[17] Regarding the ATM complaint, the Commissioner noted that section 12 of the Regulations explicitly provides that ATMs are a service under subsection 23(2) of the Act. Since the sign on the ATM in question was in English only, the Commissioner concluded that the Act had been breached. However, since SJIAA provided evidence that the sign had been replaced with universal pictograms, the Commissioner refrained from making a recommendation and closed the file.

[18] Mr. Thibodeau then brought an application under section 77 of the Act. He asked this Court to find that the Act had been breached and to order SJIAA to issue a letter of apology and to pay him $9,000 in damages.

[19] Since filing this application, Mr. Thibodeau has filed several other complaints against SJIAA. The Commissioner has not yet issued his report on these complaints.

[20] The Commissioner was granted leave to intervene before this Court to make submissions on the interpretation of section 4 of the *Airport Transfer (Miscellaneous Matters) Act* and the term "travelling public" in section 23 of the Act.

[21] Mr. Thibodeau's application against the Edmonton Regional Airports Authority was also assigned to me. I am rendering judgment simultaneously in that case: *Thibodeau v Edmonton Regional Airports Authority*, 2022 FC 565. That application raises several issues similar to those raised in the present case.

## II. Analysis

[22] In *Forum des maires de la Péninsule acadienne v Canada (Food Inspection Agency)*, 2004 FCA 263, [2004] 4 FCR 276 [*Forum des maires*], Justice Robert Décary of the Federal Court of Appeal outlined the main features of the remedy under section 77 of the Act; see also *DesRochers v Canada (Industry)*, 2009 SCC 8 at paragraphs 32 to 37, [2009] 1 SCR 194 [*DesRochers*]. This remedy is intended to ensure the effectiveness of the Act by giving it "teeth". It is not an application for judicial review of the Commissioner's report, but a separate remedy.

This Court must make its own assessment of the facts, although it may rely on the Commissioner's report. The applicant must establish a breach of the Act at the time of the applicant's complaint, but the Court may, in determining the appropriate remedy, consider subsequent facts, including the respondent's efforts to comply with the Act.

[23] In deciding such an application, the Court may be called on to resolve issues regarding the interpretation of the Act. It is often said that because of its quasi-constitutional status, the Act must be given a "liberal and purposive" interpretation: *DesRochers* at paragraph 31, citing *R v Beaulac*, [1999] 1 SCR 768 at paragraph 25 [*Beaulac*]. Interpretation must still follow the usual approach, which requires consideration of the text, the entire context, the scheme of the Act, and Parliament's purpose: *Thibodeau v Air Canada*, 2014 SCC 67 at paragraph 112, [2014] 3 SCR 340 [*Thibodeau (SCC)*]. Nevertheless, this purpose, which is to foster the development of official language communities, must be given the weight it deserves: *DesRochers* at paragraph 31. Moreover, the principle of a liberal and purposive interpretation of the Act 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: see, for example, *R v Rodgers*, 2006 SCC 15 at paragraphs 18-19, [2006] 1 SCR 554. Since the Act is intended to give effect to certain Charter rights, it is logical that the same presumption should apply.

[24] Taking these principles into account, I find that Mr. Thibodeau has demonstrated that SJIAA has breached the Act. SJIAA is subject to both section 22 of the Act, in relation to its

head office, and section 23, in relation to the airport. I also conclude that an award of damages is an appropriate and just remedy, as it will ensure vindication of rights and deterrence. SJIAA's claim to have complied with the Act does not bar an award of damages.

A. *Section 4 of the Airport Transfer (Miscellaneous Matters) Act*

[25] I must begin by resolving an issue relating to the interpretation of section 4 of the *Airport Transfer (Miscellaneous Matters) Act*. The Commissioner has argued that this provision makes all of Part IV of the Act applicable to SJIAA. From this perspective, section 22 of the Act requires SJIAA's head or central office to communicate with the public in both languages; and section 23 requires the airport to provide services to the travelling public in both languages because of its volume of passenger traffic. In contrast, SJIAA claims that section 4 subjects it only to the duties related to offices and not to those applicable to head offices. If this interpretation were correct, SJIAA would only have duties under section 23 since the criteria for significant demand under section 22 are not met in St. John's.

[26] In my view, the Commissioner is right. The interpretation he puts forward is consistent with the wording of section 4 and with the scheme and purpose of the *Airport Transfer (Miscellaneous Matters) Act*. In contrast, the interpretation suggested by SJIAA misapprehends the text and structure of section 4.

[27] For the sake of convenience, I reproduce the text of section 4 again:

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| **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<br><br>**(a)** the authority were a federal institution; and<br><br>**(b)** the airport were an office or facility of that institution, other than its head or central office. | **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. |

[28] Like any other statutory provision, section 4 must be read in light of its text, the scheme of the statute and the intention of Parliament. Since the purpose of section 4 is to extend the scope of the Act, the principles governing the interpretation of the latter must be kept in mind. Moreover, it must be presumed that in enacting section 4, Parliament had in mind the definitions and concepts of the statute to which the provision refers.

[29] Let us begin with Parliament's intention, which is clearly to facilitate the transfer of airports operated by the Department of Transport to local private organizations. One of the concerns expressed by parliamentarians in the debates that led to the enactment of this legislation was the preservation of bilingualism. It is not difficult to understand the importance of bilingual transportation infrastructures in order to enhance the vitality of official language communities across the country. However, the analysis of the parliamentary debates sheds little light on the specific modalities of the application of Part IV of the Act to airport authorities.

[30] Let us now turn to the scheme of the Act. Section 4 does not make the entire Act applicable to airport authorities. Parliament felt that it was necessary to tailor the Act to the reality of local authorities and that only certain parts of the Act would apply to them. However, there is no indication that Parliament intended to make a more precise breakdown. In principle, an airport authority must comply with all the provisions of the parts of the Act made applicable to it.

[31] Finally, let us turn to the text of section 4. Importantly, Parliament has deliberately used the terms “authority” and “airport”. They do not mean the same thing. The authority is a corporation, the organization entrusted with managing an airport. The airport, on the other hand, is a physical facility. This distinction should be kept in mind when reading section 4.

[32] Section 4 first provides that various parts of the Act, including Part IV, “apply . . . to the authority in relation to the airport” (“s’appliquent . . . à cette administration, pour ce qui est de l’aéroport”). This is the basic principle that ensures the achievement of Parliament’s objective of maintaining the operation of the Act, notwithstanding the transfer. Section 4 goes on to provide that the Act applies “as if . . . the authority were a federal institution” (“au même titre que s’il s’agissait d’une institution fédérale”). This clarification is necessary because the Act does not apply to private bodies such as airport authorities. Thus, airport authorities will be treated like any other federal institution subject to the Act.

[33] Section 4 ends with the following clarification: “as if . . . the airport were an office or facility of that institution, other than its head or central office” (“l’aéroport est assimilé aux

bureaux de cette institution, à l'exclusion de son siège ou de son administration centrale"). It is this phrase that is at the heart of SJIAA's argument.

[34] In my view, according to the ordinary meaning of the words used, this phrase sets out a presumption that the airport is considered to be an office and not the head office, regardless of where the head office is located in relation to the airport. To anyone familiar with the structure and language of the Act, the purpose of this phrase is obvious: to subject airports to the scheme governing offices in sections 22 and 23 of the Act rather than the scheme in section 22 governing head or central offices. The application of the Act therefore does not depend on whether the head office of an airport authority is located on airport premises or elsewhere. Where an authority is entrusted with the management of more than one airport, each airport may be subject to different language obligations, depending on the criteria for determining significant demand.

[35] SJIAA goes one step further and argues that the last segment of section 4 exhaustively defines the Act's scope of application to airport authorities. In other words, for the purposes of the Act, these authorities would have no head office, but merely an "other office", the airport. I cannot accept such an interpretation, for several reasons.

[36] First, the interpretation proposed by SJIAA ignores the part of section 4 that equates the airport authority with a federal institution subject to the Act. Apart from the last segment of section 4, there is nothing to limit the scope of this equation, and nothing to suggest that airport authorities lack a head office for the purposes of section 22 of the Act. If Parliament had

intended to exempt airport authorities from head office requirements, it would have explicitly stated so.

[37] Second, the phrase relied on by SJIAA merely sets out a presumption that the airport, as a physical facility, is considered as an "other office". This is clear from the English version of the provision, which uses the words "an office or facility of that institution, other than its head or central office". Even if it could be argued that the French phrase "à l'exclusion de son siège ou de son administration centrale" restricts subsection 4(1) as a whole, the English version uses the words "other than its head or central office" which, because of the way the provision is structured, can only refer to "office or facility". It is therefore not possible to argue that by using these words Parliament intended to exempt airport authorities from an entire aspect of Part IV.

[38] Third, Parliament made careful use of the terms authority and airport in section 4. As I pointed out above, the authority, a corporation, should not be confused with the airport, a physical facility. It is this physical facility that, according to the last portion of the provision, is equated with an office. There is no reason to extend the scope of this equation to the authority itself; on the contrary, the authority is explicitly equated with a federal institution. Even if Parliament intended to make airport-related language duties conditional on the significant demand test, there is nothing to suggest that it eliminated all head office-related language duties at the same time.

[39] SJIAA also submits that the wording of section 4 should be contrasted with the much simpler wording of provisions in other statutes that make the Act applicable to various bodies:

see, for example, the *CN Commercialization Act*, SC 1995, c 24, s 15; the *Canada Marine Act*, SC 1998, c 10, s 54. I agree that the wording of section 4 reflects Parliament's desire to circumscribe, in some respects, the Act's scope of application to airport authorities. However, I see no reason to read into this provision what it does not say, namely, that airport authorities are exempt from head office requirements.

[40] Finally, SJIAA suggests that the purpose of section 4 is to reduce the scope of the duties imposed on local authorities, some of which are small and lack the resources required to comply with the Act. However, it has not drawn my attention to any excerpts from parliamentary debates that would support this view. Nevertheless, it can be assumed that Parliament took such concerns into account when it chose which parts of the Act should apply to airport authorities. It is not for the courts to interfere with the balance struck by Parliament.

[41] Finally, if any doubt remains as to which interpretation to adopt, the principles set out in *Beaulac* point towards the interpretation that gives language rights a broader scope.

[42] It may be useful to summarize the above. In accordance with section 22 of the Act, the head office of an airport authority must always communicate with the public in both official languages. If it provides services directly to the public, these services must also be available in both official languages. Services provided at the airport or communications with the public that take place at the airport may be subject to either section 22 or section 23, depending on whether the criteria for significant demand applicable to each of these sections are met. For example, if an airport is located in a census metropolitan area that has more than 5,000 members of the

linguistic minority in the province, section 22 applies. If an airport has more than one million passengers per year, section 23 applies. To give full effect to the last segment of section 4 of the *Airport Transfer (Miscellaneous Matters) Act*, services provided at the airport should not be considered to be services provided by the head office of the institution.

[43] In this case, St. John's Airport meets the criteria for significant demand only in respect of section 23 of the Act. It is therefore necessary to clarify the concept of "travelling public" ("voyageurs"), which defines to whom the duties set out in this provision are owed.

B. *Travelling Public and Section 23 of the Act*

[44] Section 23 is intended to clarify the scope of section 22 in respect of government institutions that provide services to the travelling public. There is no doubt that SJIAA is such an institution. The question is what services and communications are covered by this provision.

[45] SJIAA puts forward a definition that is based on a narrow interpretation of the phrase travelling public, which includes only holders of a travel document, and on the concept of traveller-relevant information. It invites the Court to provide guidelines to help airport authorities better understand the scope of their duties under the Act. It also submits that Mr. Thibodeau was not a member of the travelling public when he filed his complaints, as he did not have a travel document.

[46] The scope of the duties flowing from section 23 must be determined in accordance with the approach I have outlined above. It begins with a review of Parliament's purposes, in the particular context of the travelling public.

[47] The purpose of the Act is to enhance the vitality of official language communities and to advance the equality of use of English and French throughout the country. To achieve these objectives, Canadians should be able to travel across the country while receiving services in the language of their choice. For this reason, the significant demand criteria for section 23 take into account not only the local population, but also the airport's volume of passenger traffic and the fact that at least one airport in each province or territory should offer services in both languages. A generous interpretation of section 23 should therefore be preferred so as to ensure, as much as possible, that members of the travelling public can travel in the official language of their choice.

[48] Let us now turn to the wording of section 23. Section 23 imposes duties on "every federal institution that provides services or makes them available to the travelling public". It does not specify what those services are, but states that they must be offered in an official language for which there is significant demand and that the travelling public must be able to communicate with the federal institution in that language. The focus is on the recipient of the service or communication, i.e. the travelling public, and not on the nature of the service or the content of the communication. There is nothing in this wording to suggest that it refers only to services or communications that are necessary or useful for travel or that are related to transportation.

[49] In my view, therefore, in determining whether a service or communication falls within the scope of section 23, the question is not whether it is "traveller-relevant" in the sense that the service or communication is related to travel itself. Rather, the question is whether the service or communication is offered or intended for the travelling public, in the sense that the recipients or beneficiaries of the service or communication are all or mainly members of the travelling public.

[50] By definition, the mission of an airport authority is to provide services to the travelling public. In principle, the services an airport authority provides to the public are services to the travelling public. The same is true of communications. Therefore, all signage and all services provided in the public areas of an airport terminal, in areas reserved for the travelling public and in other parts of the airport accessible to the public, such as parking lots, are, in principle, covered by section 23, since they are primarily intended for the travelling public. Signs that provide tourist, historical or geographical information for the travelling public are also covered by section 23. Finally, to the extent that it is directed at an audience that includes the travelling public, information that an airport authority makes available online, be it on a website or through social media, is covered by section 23.

[51] In most circumstances, applying the guidelines discussed above should not require distinguishing between those who qualify as members of the travelling public and those who do not. This is because the Act imposes duties on federal institutions in respect of the public. Such duties are usually discharged simultaneously in respect of everyone. However, if it is necessary to define the concept of the travelling public more precisely, it cannot be limited to those who hold a travel document. People who wish to travel may want to plan their trip before booking a

flight. Members of the travelling public also take advantage of certain services after travelling, for example, to retrieve lost baggage. People go to airports to pick up family members. When they check the airport website to see if the flight is on time or take a coffee at the airport restaurant, they should not be denied the benefit of the Act simply because they do not have a travel document.

[52] Section 23, however, does not cover communications that can reasonably be expected not to be seen or accessed by the travelling public. For example, communications relating to the internal affairs of an airport authority or to relations with its suppliers or airlines are not intended for the travelling public. Some of these communications may nevertheless be covered by section 22.

## C. *Breach of the Act*

[53] Having established the parameters of the application of Part IV of the Act to airport authorities, we can now analyze the six complaints filed by Mr. Thibodeau against SJIAA. Like the Commissioner, I prefer to deal with the issue thematically rather than complaint by complaint.

### (1) Website

[54] SJIAA has a bilingual website. However, it does not dispute that when the complaints were filed, many pages were not available in French or did not have content of equal quality in

both languages. Even in terms of what it considers to be “traveller-relevant”, SJIAA concedes that there is still room for improvement.

[55] The Commissioner analyzed the SJIAA website. In his report, he found that “a number of tabs on the French version of the website were in English only, and some tabs on the French version of the site included content that was not of equal quality to that of the English version of the website”. The evidence before me, albeit minimal, supports this finding, and SJIAA is not really challenging it.

[56] Moreover, when the complaints were filed, the website’s URL was only in English.

[57] The maintenance of a website is a function usually associated with an institution’s head office. In principle, the entire website of an institution governed by the Act must be available and of equal quality in both official languages. For these reasons, SJIAA was not complying with section 22 of the Act when the complaints were filed.

[58] Even if the website were to be considered a service of the airport and not of the head office, it contains information for the travelling public, such as airport maps and information on parking, the routes served and flight arrivals and departures. This information is governed by section 23 of the Act. Even though the evidence before me is flimsy, SJIAA admits that when the complaints were filed, some sections of the website with information for the travelling public were only in English (see the affidavit of Marie Manning, August 22, 2019, paragraphs 57 and 58). Section 23 was therefore breached.

(2) Social Media

[59] A significant portion of the complaints deals with SJIAA's presence on social media, be it Facebook, Twitter, YouTube or Instagram. Just like the website, SJIAA's presence on social media is a function that is connected to SJIAA's head office and not the airport as a physical facility. It involves various forms of communications directed at members of the public. There is no evidence to suggest that this presence is directed at a different audience. This presence is therefore covered by section 22 of the Act, and SJIAA has to communicate in both official languages.

[60] Even if social media presence were not a function connected to the institution's head office, but rather to the airport as "another office", it would nonetheless be covered by section 23 because it contains information directed at the travelling public. In that regard, SJIAA admits that when the complaints were filed, this content was only offered in English and that it contained "traveller-relevant information", such as information on the weather and flight cancellations. SJIAA recognizes that this information should have been published in both languages.

[61] The duties arising from section 23 are much broader, however, than SJIAA is willing to recognize. The scope of the duty is defined by the recipient of the communication, not its contents. As soon a communication is directed at the travelling public, it is contemplated by section 23.

[62] A few examples illustrate this. SJIAA has published on social media messages reminding readers to drive safely, wishing a happy St. Patrick's Day or warning of the switch to daylight saving time. It submits that these messages were not directed at the travelling public but at the public in general. I disagree. Unless otherwise stated, one must presume that SJIAA's social media presence is mainly targeted at the people to whom SJIAA provides services, that is, members of the travelling public. There is little doubt that if such messages were physically on display in the airport, they would be covered by section 23. It may well be that people other than members of the travelling public are following SJIAA on social media, but that does not exempt messages of this kind from section 23.

[63] Various events were organized to celebrate the airport's 75th anniversary. One of them was an invitation to the public to share personal stories related to the airport. SJIAA submits that this campaign was targeted at the public but it is clear that it was also, if not principally, targeted at the travelling public. Even if this communication were not contemplated by section 22, it would fall within the scope of section 23.

(3) Annual Reports

[64] SJIAA publishes its annual reports and its master plans solely in English. It seems to justify this state of affairs by the travelling public's presumed lack of interest in such publications. However, even if these publications are not contemplated by section 23 of the Act, they are nonetheless communicated to the public, through SJIAA's website. The preparation of such documents is a function that is closely connected to SJIAA's head office. SJIAA has therefore breached section 22 of the Act by publishing these documents only in English.

### (4) Press Releases

[65] Similarly, the publication of press releases is a function connected to SJIAA's head office. When the complaints were filed, SJIAA was publishing releases only in English. In doing so, it breached section 22 of the Act.

### (5) ATM

[66] One of Mr. Thibodeau's complaints concerns the sign "foreign cash" on a CIBC ATM at the airport. It is undisputed that when the complaints were filed, the presence of this unilingual English sign contravened subsection 23(2) of the Act, read in conjunction with section 12 of the Regulations.

## D. *Damages*

[67] Having found a breach of the Act, I now have to determine the appropriate remedy. The first remedy sought by Mr. Thibodeau is an award of damages in the amount of $9,000, or $1,500 for each of the six complaints. SJIAA objects to the award essentially because Mr. Thibodeau did not suffer any personal loss as a result of the alleged breaches and because the breaches have since been rectified. Before addressing these issues, it is necessary to outline the general framework applicable to the remedies for breaches of the Act and to clarify the purpose of an award of damages.

(1) Basic Principles

[68] The purpose of the section 77 remedy is to strengthen the implementation of the Act or, as Justice Décary wrote in *Forum des maires*, to give the Act “teeth” beyond the recommendations the Commissioner may make. To ensure the achievement of this purpose, subsection 77(4) of the Act gives the Court broad discretion in respect of the remedies for breaching the Act:

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| **(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. | **(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. |

[69] In *Thibodeau (SCC)*, at paragraph 112, the Supreme Court of Canada stated that subsection 77(4) “confers a wide remedial authority and should be interpreted generously to achieve its purpose”. The fact that the purpose of the Act is to implement rights guaranteed by the Charter and the obvious similarity between subsection 77(4) of the Act and subsection 24(1) of the Charter have led the courts to draw inspiration from the principles informing the awarding of remedies for breaches of fundamental rights: *Forum des maires* at paragraph 56; *Lavigne v Canada (Human Resources Development)*, [1997] 1 FC 305 (TD) at paragraph 20 [*Lavigne*].

[70] It has been recognized since *Lavigne* that subsection 77(4) allows the awarding of damages. In *Vancouver (City) v Ward*, 2010 SCC 27, [2010] 2 SCR 28 [*Ward*], the Supreme Court of Canada proposed a framework for establishing whether a Charter breach warrants an

award of damages. This Court has applied this framework to breaches of the Act: see, for example. *Thibodeau v Air Canada*, 2019 FC 1102 at paragraphs 58 to 64; *Thibodeau v Canada (Senate)*, 2019 FC 1474 at paragraphs 66 and 67.

[71] Contrary to SJIAA's submissions, nothing in *Thibodeau (SCC)* is incompatible with the application of this framework to the section 77 remedy. On the contrary, at paragraph 112 of *Thibodeau (SCC)*, the Supreme Court expressly compared subsection 77(4) of the Act to subsection 24(1) of the Charter.

[72] At paragraph 4 of *Ward*, the Supreme Court summarized this framework in the following manner:

> 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.

(2) The Functions of Damages

[73] In order to properly understand how this framework operates, it is helpful to look at the functions an award of damages can have. These functions can look as much to the past as to the future: see Kent Roach, *Remedies for Human Rights Violations: A Two-Track Approach to Supra-national and National Law* (Cambridge: Cambridge University Press, 2021).

(a) *Compensation*

[74] The first possible function of an award of damages under subsection 24(1) of the Charter or subsection 77(4) of the Act is to compensate the harm suffered by the applicant. The breach of a provision of the Act may result in a personal loss that should be compensated in accordance with the usual private law principles. One possible example is where a unilingual person who has missed their flight because an announcement was only made in the other language.

[75] In many cases, however, the personal loss caused by a breach of the Act is harder to pinpoint. As the Supreme Court noted in *Beaulac*, the Canadian official languages regime is less about ensuring effective communication as it is about safeguarding individual choice with respect to the use of English or French, which encourages the flourishing of official language communities. Breaches of the Act often have collective or systemic repercussions, even if they affect the person whose language choice is not respected.

[76] An 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.

(b) *Vindication of the Right*

[77] According to *Ward* at paragraph 28, vindication means “affirming constitutional values” and “focuses on the harm the infringement causes society”. By issuing a usually modest award,

the Court can publicly denounce the infringement of the right, and in addition to compensating specific individuals, reassure society as a whole that the right at issue deserves to be respected.

[78] This function of damages is particularly appropriate where the Act has been breached. The duties imposed on federal institutions by the Act benefit members of the public generally and the travelling public. The respect of these duties affects official language communities as a whole. In *Mazraani v Industrial Alliance Insurance and Financial Services Inc*, 2018 SCC 50 at paragraph 51, [2018] 3 SCR 261 [*Mazraani*], the Supreme Court held as follows:

> . . . language rights have a systemic aspect and . . . the individual right also exists in favour of the community. A violation that seems minor at a personal level will nonetheless have some weight simply because it contributes to putting a brake on the full and equal participation of members of official language communities in the country's institutions and undermines the equality of status of the official languages.

[79] It may be necessary to award damages to emphasize the importance of complying with these duties. In this regard, my colleague Justice Luc Martineau had the following to say in *Thibodeau v Canada (Senate)*, 2019 FC 1474 at paragraph 69:

> . . . any violation that is tolerated, not reported or not corrected ultimately erodes the relevance of protected rights, normalizing their perpetration. 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.

(c) *Deterrence*

[80] There is little doubt that the awarding of damages deters institutions from ignoring the duties prescribed by the Act. It is true that the Act tasks the Commissioner with investigating complaints from the public. Such a mechanism undoubtedly prompts federal institutions to comply with the Act voluntarily. Nevertheless, the Commissioner's recommendations are not binding. In that context, the prospect of an award of damages, even in a modest amount, can deter federal institutions from disregarding the Act and the Commissioner's recommendations.

(3) Application to the Case at Bar

[81] I will thus use the framework developed in *Ward* to determine whether it is appropriate and just to condemn SJIAA to pay damages. The first step of the inquiry is to determine whether a right has been breached. I analyzed this earlier and concluded that SJIAA did not comply with sections 22 and 23 of the Act. The next step is to determine whether an award of damages would fulfill one of the functions recognized in *Ward*.

(a) *Appropriateness of Damages*

[82] Let us start with compensation. In this regard, SJIAA submits that, for various reasons, Mr. Thibodeau did not suffer any personal loss that would justify granting him compensation. I agree with SJIAA. Mr. Thibodeau has not established that the breach of the Act he complained about caused him compensable injury. In my opinion, the legitimate indignation he felt when he noticed these breaches is more relevant to the other objectives of an award of damages.

[83] SJIAA goes one step further and submits that the lack of personal injury precludes Mr. Thibodeau from claiming damages on any grounds whatsoever. It relies on the general principle of private law that damages can be awarded only to compensate the plaintiff's personal losses. In other words, SJIAA argues that only someone who has experienced an actual injury has standing to seek damages under section 77 of the Act. I find, however, that this position is incompatible with the structure of the Act and the functions of deterrence and vindication underlying an award of damages under the Act. This is precisely what the Supreme Court wrote in paragraph 30 of *Ward*:

> . . . the fact that the claimant has not suffered personal loss does not preclude damages where the objectives of vindication or deterrence clearly call for an award.

[84] Indeed, sections 22 and 23 of the Act do not affirm a right, but rather a duty for federal institutions to ensure that members of the public or the travelling public, respectively, can communicate with and obtain available services from federal institutions in either official language. This duty is owed to the general public or all members of the travelling public. In other words, in most situations, the measures federal institutions must take to comply with the Act benefit all members of the public or all members of the travelling public. In light of this, and given that it is recognized that most breaches of the Act do not cause compensable injury, the narrow view of standing put forward by SJIAA would make it practically impossible to award damages and discourage parties from resorting to section 77. To use Justice Décary's analogy again, it would take away the Act's bite.

[85] Moreover, SJIAA's position is incompatible with the way the courts have interpreted the concept of standing pursuant to section 77 of the Act. In *DesRochers* at paragraph 34, the

Supreme Court cited with approval the words of Justice Décary in *Forum des maires* according to whom anyone who filed a complaint with the Commissioner can apply for a remedy under section 77. In that decision, Justice Décary further wrote at paragraph 18 that an application for a remedy under section 77 may be "undertaken by a person or a group, which may not be 'directly affected by the matter in respect of which relief is sought'".

[86] In the present case, an award of damages would serve deterrence. As will be seen below, SJIAA chose to ignore some of the Commissioner's recommendations. More stringent measures are therefore required, not only to discourage SJIAA from minimizing the scope of its duties under the Act, but also to send a message to all federal institutions to which the Act applies.

[87] An award of damages would also vindicate of the rights guaranteed by the Act. SJIAA's conduct gives the impression that respecting bilingualism is not an important value. Indeed, SJIAA has complained about the cost of its efforts to enter into partial compliance with the Act. The public needs to be reassured about the importance this Court places on compliance with the Act.

[88] In my view, merely granting declaratory relief would be insufficient to achieve these objectives. The Commissioner's report is a type of declaration. Yet SJIAA did not see fit to fully respect it. More concrete consequences to its breach of the Act are required. Moral opprobrium and the inconveniences associated with a monetary award underscore the Court's determination to ensure compliance.

(b) *Countervailing Factors*

[89] *Ward* indicates that once the objectives of the award of damages have been identified, the Court must inquire into whether there are valid reasons not to grant them.

[90] SJIAA essentially argues that it has rectified the breaches of the Act that were the subject of Mr. Thibodeau's complaints. In this regard, *Forum des maires*, at paragraphs 20 and 62, suggests that damages are generally not an appropriate and just remedy where the federal institution has rectified the situation described in the application before the case is heard. SJIAA also mentions the more general steps it has taken since the filing of Mr. Thibodeau's complaint in order to comply with the Act.

[91] SJIAA's position is not borne out by an analysis of the evidence. I recognize that SJIAA has made an effort to identify and rectify various breaches of the Act that were not mentioned in Mr. Thibodeau's complaints. Since these breaches are not the subject of this application, it would be inappropriate for me to comment on them. However, with respect to the complaints that gave rise to this application, SJIAA has not fully complied with the Act. In a follow-up report prepared in June 2021, the Commissioner found that SJIAA had not implemented the recommendations made in May 2019. The Commissioner noted specifically that even though SJIAA had made some efforts to add French content on some of its social media accounts, there was a marked disparity between English and French content. The Commissioner also noted that SJIAA's Instagram account was still exclusively in English, that the videos on the YouTube

channel were only in English and that some sections of the website were only available in French.

[92] In response to the Commissioner's follow-up report, SJIAA filed the affidavit of a member of its management team, Lisa Bragg. Ms. Bragg does not actually challenge the Commissioner's findings. She tries to blame exceptional circumstances, such as an unprecedented blizzard, for some of the breaches of the Act. In substance, however, Ms. Bragg attempts to minimize the scope of SJIAA's language duties by claiming that only the "traveller-relevant" content has to be translated into French. I rejected this argument above. Ms. Bragg goes as far as stating that SJIAA has always believed that only traveller-relevant communications have to be provided in both languages and that, in his initial report, the Commissioner had adopted this interpretation. That is simply incorrect. The Commissioner explicitly stated that "As a head office, SJIAA is subject to the general provisions of Part IV of the Act, including the provisions of section 22". SJIAA cannot claim to have been taken by surprise or misled.

[93] Ms. Bragg also criticizes the follow-up report for failing to mention the acquisition of a French domain name for the website. She also claims that the initial report did not contain any recommendations for the YouTube channel, which explains SJIAA's inaction in this regard. These criticisms have no basis whatsoever. The follow-up report explicitly states that "the URL of the SJIAA website is available in French", but describes other shortcomings. The first recommendation in the initial report concerns "necessary measures to ensure that [SJIAA]

produces content of equal quality in both official languages and posts English and French content simultaneously on [its] social media accounts . . ., including YouTube”.

[94] In short, SJIAA did not rectify all the breaches of the Act mentioned in Mr. Thibodeau’s complaints. Even though it has made some effort to do so, it has consciously adopted a narrow interpretation of the scope of its duties and has ignored the Commissioner’s recommendations. SJIAA’s conduct does not serve as a counterweight to the need to award damages in order to ensure deterrence and vindication.

(c) *Amount of Damages*

[95] Assessing damages is not an exact science, especially when the objectives of their award are deterrence and vindication. This assessment relies on the judge’s discretion and the fundamental rule set out in subsection 77(4) of the Act, namely that the amount be “appropriate and just”. The principle of proportionality between the remedy and the seriousness of the breach guides the exercise of this discretion: *Mazraani* at paragraph 52.

[96] Mr. Thibodeau is seeking $9,000, that is, $1,500 for each of the complaints he filed. He bases this calculation on other decisions of this Court that purportedly applied this method: see, for example, *Thibodeau v Air Canada*, 2019 FC 1102 at paragraph 65.

[97] I do not believe that my colleagues intended to impose a flat rate for breaches of the Act. The amount of damages should not depend on the manner in which the applicant chose to divide his complaints. 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.

[98] To determine this amount, I consider the following factors establishing the seriousness of the breach at issue:

- The importance of websites and social media in communications between a federal institution and the general public or the travelling public;
- The fact that SJIAA's social media communications when the complaints were filed were exclusively in English;
- The fact that only part of the SJIAA's website is available in French; and
- SJIAA's refusal to fully comply with the Commissioner's recommendations.

[99] As a mitigating factor, I will also take into account the fact that SJIAA has partially implemented some of the Commissioner's recommendations and that this is apparently the first time SJIAA has been the subject of an application under section 77 of the Act.

[100] In light of all the circumstances, I find that it is appropriate and just to order SJIAA to pay Mr. Thibodeau $5,000 in damages.

### E. *Other Appropriate Remedies*

[101] Mr. Thibodeau is also seeking declaratory relief and a letter of apology from SJIAA. SJIAA does not object to declaratory relief, but it refuses to write a letter of apology.

[102] I find that these remedies would add nothing useful to the award of damages. These reasons provide sufficient guidance on the scope of SJIAA's duties under the Act. As for a letter of apology, SJIAA's statements I analyzed above lead me to believe that it would not be sincere.

## III. Conclusion

[103] For these reasons, Mr. Thibodeau's application is allowed, and SJIAA is ordered to pay him the sum of $5,000 in damages.

[104] Mr. Thibodeau is also seeking costs. Under section 81 of the Act, costs usually follow the event. I see no reason to depart from this rule. I am of the view that it would be appropriate and just to award Mr. Thibodeau an amount of $6,000 that includes disbursements and a modest fee.

**JUDGMENT in T-1023-19**

**THIS COURT ORDERS as follows:**

1. The application is allowed.
2. St. John's International Airport Authority shall pay damages to the applicant in the amount of $5,000.
3. St. John's International Airport Authority shall pay costs to the applicant in the amount of $6,000, including taxes and disbursements.

"Sébastien Grammond"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1023-19 |
| **STYLE OF CAUSE:** | MICHEL THIBODEAU v ST. JOHN’S INTERNATIONAL AIRPORT AUTHORITY and THE COMMISSIONER OF OFFICIAL LANGUAGES |
| **PLACE OF HEARING:** | BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | FEBRUARY 21, 2022 |
| **JUDGMENT AND REASONS:** | GRAMMOND J. |
| **DATED:** | APRIL 21, 2022 |

**APPEARANCES:**

| | |
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| Michel Thibodeau (in person) | FOR THE APPLICANT (ON HIS OWN BEHALF) |
| Michael Shortt<br>Camille Duguay | FOR THE RESPONDENT |
| Geneviève Tremblay-Tardif<br>Isabelle Hardy | FOR THE INTERVENER |

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