Federal Court of Appeal | Cour d'appel fédérale

Date: 20241125

Docket: A-114-22

Citation: 2024 FCA 197

[ENGLISH TRANSLATION]

CORAM: **BOIVIN J.A.**
LEBLANC J.A.
GOYETTE J.A.

BETWEEN:

ST. JOHN'S INTERNATIONAL AIRPORT AUTHORITY

Appellant

and

MICHEL THIBODEAU

Respondent

and

COMMISSIONER OF OFFICIAL LANGUAGES OF CANADA and CANADIAN AIRPORTS COUNCIL

Interveners

Heard at Ottawa, Ontario, on April 11, 2024.

Judgment delivered at Ottawa, Ontario, on November 25, 2024.

REASONS FOR JUDGMENT BY: BOIVIN J.A.

CONCURRED IN BY: LEBLANC J.A.
DISSENTING REASONS BY: GOYETTE J.A.

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REASONS FOR JUDGMENT

BOIVIN J.A.

I. INTRODUCTION

[1] The conclusions reached in this appeal illustrate the broad and generous interpretation that must be given to the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.) (OLA) and related legislation to protect the official languages of Canada. Any unduly restrictive interpretation of language obligations that a federal institution might put forward is outdated and cannot be accepted.

[2] This case concerns an application by Mr. Michel Thibodeau (the respondent) before the Federal Court seeking remedies under section 77 of the OLA on the grounds that St. John's International Airport Authority (SJIAA) breached its language obligations under that Act. Mr. Thibodeau's application follows the complaints he filed against SJIAA with the Commissioner of Official Languages (COL), who concluded there had been a violation of sections 22 and 23 of the OLA with respect to the language of communications and services. Mr. Thibodeau, representing himself before the Federal Court, submitted that SJIAA had failed to comply with its language obligations under Part IV of the OLA by communicating in English only on social media and failing to ensure that its website is fully bilingual. Mr. Thibodeau sought various remedies before the Federal Court, including a declaratory judgment, damages, and a letter of apology.

[3] On April 21, 2022, the Federal Court, *per* Grammond J., ruled in Mr. Thibodeau's favour, finding that SJIAA had violated its language obligations and consequently awarding him $5,000 in damages (2022 FC 563) (Decision). SJIAA, dissatisfied with the Federal Court's judgment, has appealed to this Court.

[4] By Orders rendered on November 28, 2022, and June 15, 2022, this Court granted the COL and the Canadian Airports Council (CAC), an association of airport authorities, leave to intervene in this appeal on questions of law limited to the interpretation of subsection 4(1) of the *Airport Transfer (Miscellaneous Matter) Act*, S.C. 1992, c. 5 (ATA) and sections 22 and 23 of the OLA.

II. BACKGROUND

A. Airport Authorities

[5] This case relates to the particular situation of airport authorities. In the early 1990s, Canadian airports, including the airport in St. John's, were operated by the Department of Transport, a federal institution subject to the OLA.

[6] In 1992, the federal government wanted to transfer the operation of some of its airports to local bodies so that they could more easily compete with American airports and contribute to regional economic development. To this end, Parliament enacted the ATA to allow [TRANSLATION] "the transfer of the administration of airports" to certain designated [TRANSLATION] "local businesses". For the purposes of this case, it is useful to note that the ATA, in subsection 4(1) in particular, sets out obligations relating to official languages.

[7] In 1998, after the enactment of the ATA, St. John's International Airport was transferred to SJIAA, one of these airport authorities. To date, 21 designated airport authorities are subject to

the ATA. The designated airport authorities are private not-for-profit entities responsible for operating the 22 airports that have been transferred to them under the ATA.

A. Mr. Thibodeau's complaints under the OLA

[8] The origin of these proceedings are six complaints filed with the COL by Mr. Thibodeau in January 2018 under section 58 of the OLA. They concern (i) SJIAA's social media accounts, (ii) SJIAA's website, (iii) SJIAA's press releases, (iv) documents SJIAA published on its website, (v) SJIAA's Twitter account, and (vi) the automated teller machines (ATMs) located at St. John's International Airport.

[9] It is admitted that Mr. Thibodeau observed the violations he alleges against SJIAA while doing online research, specifically on SJIAA's website, on its social media accounts, and in photos that travellers had posted online. In paragraph 14 of the Decision, the Federal Court cites Mr. Thibodeau's criticisms of SJIAA in order to outline the violations:

- 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.

[10] Subsequently, Mr. Thibodeau's complaints were the subject of two reports by the COL, one on the complaint relating to the ATMs at the airport, the other on the complaints relating to SJIAA's communications. As these complaints invoke sections 22 and 23 of the OLA, it is appropriate to reproduce these provisions here:

PART IV	**PARTIE IV**
Communications with and Services to the Public	**Communications avec le public et prestation des services**
Communications and Services	**Communications et services**
…	[…]
Where communications and services must be in both official languages	**Langues des communications et services**
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 official language, and has the same duty with respect to any of its other offices or facilities	**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 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.
(a) within the National Capital Region; or	
(b) in Canada or elsewhere, where there is significant demand for communications with and services from that office or facility in that language	

Travelling public	**Voyageurs**
23(1) For greater certainty, in addition to the duty set out in section 22, every federal institution that provides services or makes them available to the travelling public has the duty to ensure that any member of the travelling public can communicate with and obtain those services in either official language from any office or facility of the institution in Canada or elsewhere where there is significant demand for those services in that language.	**23(1)** Il est entendu qu'en plus de l'obligation prévue à l'article 22, il incombe aux institutions fédérales offrant des services aux voyageurs de veiller à ce que ceux-ci puissent, dans l'une ou l'autre des langues officielles, communiquer avec leurs bureaux et en recevoir les services, là où, au Canada comme à l'étranger, l'emploi de cette langue fait l'objet d'une demande importante.
Services provided pursuant to a contract	**Services conventionnés**
(2) Every federal institution has the duty to ensure that such services to the travelling public as may be prescribed by regulation of the Governor in Council that are provided or made available by another person or organization pursuant to a contract with the federal institution for the provision of those services at an office or facility referred to in subsection (1) are provided or made available, in both official languages, in the manner prescribed by regulation of the Governor in Council.	**(2)** Il incombe aux institutions fédérales de veiller à ce que, dans les bureaux visés au paragraphe (1), les services réglementaires offerts aux voyageurs par des tiers conventionnés par elles à cette fin le soient, dans les deux langues officielles, selon les modalités réglementaires.

[11] The first report from the COL, issued in April 2019, concluded that subsection 23(2) of the OLA had been violated because paragraph 12(1)(b) of the *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48 (Official Languages Regulations) identifies the automated banking machine as a service to the travelling public. The Commissioner made no specific recommendation in respect of this violation because information provided by SJIAA established that it had taken corrective measures by replacing the unilingual

English text with universal pictograms of the currency available. The Commissioner therefore closed the file.

[12] The second COL report, issued in May 2019, concluded that section 22 of the OLA applied to SJIAA as a “head office” but not as an “other office”, and that section 23 of the OLA applied to the airport as an “office” of SJIAA because St. John’s airport saw more than one million passengers a year, thereby meeting the criteria for significant demand under subsection 7(3) of the Official Languages Regulations. Since these facts were not disputed, the Commissioner found that SJIAA had not complied with its language obligations under these provisions of the OLA and the Official Languages Regulations. On that basis, the COL recommended that SJIAA take the necessary actions to rectify the violations of the OLA within six months.

[13] After these two reports were rendered by the COL, Mr. Thibodeau brought an application for a remedy to the Federal Court against SJIAA under section 77 of the OLA. It should be noted that Mr. Thibodeau continued to file complaints with the COL against SJIAA after his application to the Federal Court. In one complaint, he alleged that the ATMs in St. John’s airport still displayed some text in English only. None of the COL’s reports about these additional complaints had been published at the time of the hearing before this Court and as a result, these complaints are not before this Court.

[14] However, in June 2021, after the Federal Court issued its judgment which is under appeal before this Court, the COL issued a follow-up report to evaluate SJIAA’s implementation of its

recommendations. In it, the COL concluded that SJIAA had failed to take sufficient action to comply with the recommendations regarding its website and social media accounts. The COL also reminded SJIAA of the principle of substantive equality between the two official languages in such matters.

[15] This was the context in which the Federal Court considered Mr. Thibodeau's application for remedy for the language violations alleged against SJIAA.

III. FEDERAL COURT DECISION

[16] After hearing Mr. Thibodeau's application under the OLA, the Federal Court firstly set out the legislative background in issue by identifying the applicable principles of statutory interpretation in the language rights context. After referring to the relevant provisions 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), the OLA, the Official Languages Regulations, and the ATA, it provided an overview of the facts.

[17] In its analysis, the Federal Court noted that the objective of the remedy under section 77 of the OLA is to ensure the effectiveness of the Act by giving it "teeth" (Decision at para. 22). It stated that although the interpretation of the OLA must follow the usual approach, which requires consideration of the text, the context, the scheme of the Act, and Parliament's purpose, the Act must also, because of its quasi-constitutional status, be given a "liberal and purposive" interpretation. Consequently, if the application of the usual method of interpretation does not

allow one to decide between two possible interpretations of the Act, it is necessary to "choose the interpretation that maximizes the scope of language rights" (Decision at para. 23).

[18] The Federal Court then applied the principles of statutory interpretation to subsection 4(1) of the ATA. Based on a detailed analysis of the text, the context, the scheme of the Act, and Parliament's purpose, it found that the airport authority should be treated like a federal institution for the purposes of transfer and that, consequently, it must comply with the language obligations that were formerly incumbent on the Department of Transport, including the head office rule under section 22 of the OLA. Accordingly, the Federal Court found that the head office of an airport authority like SJIAA must communicate with the public in both official languages and that, if it provides services directly to the public, these services must also be available in both official languages. Thus, the Federal Court rejected the interpretation put forward by SJIAA whereby airport authorities are deemed to have no head office under the OLA (Decision at paras. 28–40).

[19] The Federal Court also addressed the notion of "services … to the travelling public" / "services [offerts] aux voyageurs" referred to in section 23 of the OLA. Again, it rejected the interpretation put forward by SJIAA that services to the travelling public are limited to those who hold a travel document (Decision at para. 51). Instead, it found that, to determine whether a service or communication is intended for the travelling public, it establish whether the service or communication is offered to 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" (Decision at para. 49).

[20] Accordingly, the Federal Court found that Mr. Thibodeau's six complaints were well founded, particularly since some of SJIAA's communications were not available in French or were not of equal quality in the two languages (Decision at paras. 55, 60, 64–65). It also found that one of the services at the airport, namely the ATM, was not offered in French (Decision at para. 66).

[21] Having found that SJIAA had committed several breaches of the OLA, the Federal Court went on to note that, under section 77 of the OLA, the Federal Court could award damages according to the analytical framework set out by the Supreme Court in *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 S.C.R. 28 (*Ward*). Although it acknowledged that Mr. Thibodeau had suffered no personal injury, the Federal Court was of the view that, based on *Ward*, in this case a damage award was necessary to ensure vindication of the language rights at issue and deterrence. The Federal Court noted in passing that, although SJIAA had made some effort to implement the recommendations of the COL, its conduct "gives the impression that respecting bilingualism is not an important value" and that it "consciously adopted a narrow interpretation of the scope of its duties and … ignored the Commissioner's recommendations" (Decision at paras. 87 and 94).

[22] According to the Federal Court, SJIAA's efforts were insufficient to serve as a counterweight to the objectives of vindication of rights and deterrence that underlie an award of damages. Accordingly, the Federal Court granted a remedy of $5,000 in damages to Mr. Thibodeau and opined that the declaratory judgment he sought would add nothing useful and that a letter of apology from SJIAA "would not be sincere" (Decision at paras. 89–94 and 102).

[23] In addition to damages, the Federal Court also awarded Mr. Thibodeau $6,000 in costs.

[24] This Court has also heard a related appeal brought by the Edmonton Regional Airports Authority against Mr. Thibodeau and renders judgment simultaneously with the judgment in this case: *Edmonton Regional Airports Authority v. Thibodeau*, 2024 FCA 196.

IV. STANDARDS OF REVIEW

[25] As this is an appeal from a decision of the Federal Court, the applicable standards of review are those set out by the Supreme Court in *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235. Questions of law must be assessed on a standard of correctness, and questions of fact or of mixed fact and law are subject to a standard of palpable and overriding error, unless the judge made an extricable error of law, in which case it is reviewable on a standard of correctness.

V. ISSUES

[26] SJIAA's appeal raises the following issues:

A. Did the Federal Court err in deciding that airport authorities are subject to the "head office" rule set out in subsection 4(1) of the ATA?

B. Did the Federal Court err in its interpretation of section 23 of the OLA?

C. Did the Federal Court err in the award of damages?

D. Did the Federal Court grant an "appropriate and just" remedy?

E. Did the Federal Court err in the award of costs?

VI. PRELIMINARY REMARKS ON LANGUAGE RIGHTS IN CANADA

[27] The process leading to the recognition of the official languages of Canada began in the 1960s with the Royal Commission on Bilingualism and Biculturalism, which set out the following vision of Canada's two official languages, French and English (Canada, *Report of the Royal Commission on Bilingualism and Biculturalism. General Introduction, Book I: The Official Languages* (Ottawa: Privy Council Office,1967) at 93):

> The administration in Ottawa must be able to communicate adequately with the public in both languages. All government publications, as well as forms and notices, must be simultaneously available in either language. Federal government offices and Crown corporations across the country must be able to deal with people in either French or English. For example, in the immigration and customs offices at all ports of entry, in important transportation terminals, on Canadian National's trains, and on Air Canada's airplanes—everywhere, even in the completely unilingual sections of the country, where there is contact with the travelling public—services should be available in both languages as a matter of course.

[28] The work of the Commission subsequently led to the enactment of the OLA in 1969. Thus, it was 55 years ago when French and English were enshrined as the official languages of Canada by the OLA. The statute also conferred on the Office of the Commissioner of Official Languages the task of overseeing compliance by federal institutions with their language obligations set out in the OLA.

[29] Upon the patriation of the Constitution of Canada in 1982, language rights were constitutionally enshrined through sections 16 to 20 and 23 of the Charter, which contain various language guarantees for Canadians that are binding on the federal government.

[30] The OLA was overhauled in 1988, nearly 20 years after its first version, to modernize it in light of the new language rights under the Charter. That same year, the Supreme Court of Canada affirmed that language rights are fundamental rights (*R. v. Mercure*, [1988] 1 S.C.R. 234 at 268). It is important to note that the OLA was recently amended in 2023, but after the decision of the Federal Court. That version is therefore not at issue in this appeal.

[31] In any event, in the 1991 decision of this Court in *Canada (Attorney General) v. Viola*, [1991] 1 F.C. 373 (*Viola*), quasi-constitutional status was conferred on the OLA because of the nature of the rights it protects. *Viola* was later cited with approval by a unanimous Supreme Court in *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, [2002] 2 S.C.R. 773 (*Lavigne*); see also *Thibodeau v. Air Canada*, 2014 SCC 67, [2014] 3 S.C.R. 340 (*Thibodeau 2014*).

[32] Nevertheless, it should be noted that, in its first post-Charter decisions involving the interpretation of language rights, the Supreme Court of Canada took a narrow approach, emphasizing that language rights were born of “political compromise”. Based on this approach, language rights had to be addressed “with more restraint” than other Charter rights such as those under section 7, for example (*Société des Acadiens v. Association of Parents*, [1986] 1 S.C.R. 549 at paras. 63, 64 and 65). The Supreme Court continued to apply the narrow approach for more than a decade, but it has since abandoned it in favour of a more generous interpretation of language rights in Canada.

[33] In 1999, the Supreme Court changed course, advocating a broad and generous approach, so that language rights may be interpreted "purposively, in a manner consistent with the preservation and development of official language communities in Canada" (*R. v. Beaulac*, [1999] 1 S.C.R. 768 at para. 25 (*Beaulac*)). *Beaulac* marked a turning point in the interpretation of language rights by the courts in subsequent years (Michel Doucet, Michel Bastarache & Martin Rioux, "Les droits linguistiques : fondements et interprétation" in Michel Bastarache & Michel Doucet, eds., *Les Droits linguistiques au Canada*, 3rd ed. (Cowansville, Que.: Yvon Blais, 2013) at 62).

[34] Since then, the case law of the Supreme Court has resolutely followed the legal reasoning developed in *Beaulac* and reaffirmed the principle of the broad and generous interpretation of language rights that courts must adopt. Accordingly, it has been established that language rights are not frozen in a historical context and, to the extent that a restrictive interpretation is sought, it is to be rejected (*Beaulac* at para. 25; see also *Arsenault-Cameron v. Prince Edward Island*, 2000 SCC 1, [2000] S.C.R. 3; *Charlebois v. Mowat*, 2001 NBCA 117; *Solski (Tutor of) v. Quebec (Attorney General)*, 2005 SCC 14, [2005] 1 S.C.R. 201; *DesRochers v. Canada (Industry)*, 2009 SCC 8, [2009] 1 S.C.R. 194 (*DesRochers*); *Caron v. Alberta*, 2015 SCC 56, [2015] 3 S.C.R. 511; *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50, [2018] 3 S.C.R. 261 (*Mazraani*); *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2020 SCC 13, [2020] 1 S.C.R. 678; *R. v. Tayo Tompouba*, 2024 SCC 16, 491 D.L.R. (4th) 195).

[35] The interpretation of the relevant legislative provisions in this case will therefore follow the teachings of the Supreme Court in language rights cases since the seminal decision in *Beaulac*.

VII. LEGISLATIVE PROVISIONS

[36] The relevant provisions of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c. 5, are reproduced here:

Application of *Official Languages Act*	***Loi sur les langues officielles***
4(1) Where the Minister has leased an airport to a designated airport authority, on and after the transfer date Parts IV, V, VI, VIII, IX and X of the Official Languages Act apply, with such modifications as the circumstances require, to the authority in relation to the airport as if **(a)** the authority were a federal institution; and **(b)** the airport were an office or facility of that institution, other than its head or central office.	**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.
Idem	**Idem**
(1.1) Where the Minister has sold or otherwise transferred an airport to a designated airport authority, on and after the transfer date Parts IV, 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	**(1.1)** À la date de cession autrement que par bail d'un aéroport à une administration aéroportuaire désignée, les parties IV, 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

(a) the authority were a federal institution; and

(b) the airport were an office or facility of that institution, other than its head or central office.

l'aéroport est assimilé aux bureaux de cette institution, à l'exclusion de son siège ou de son administration centrale.

[37] The relevant provisions of the OLA are reproduced here again:

PART IV

Communications with and Services to the Public

Communications and Services

…

Where communications and services must be in both official languages

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 official language, and has the same duty with respect to any of its other offices or facilities

(a) within the National Capital Region; or

(b) in Canada or elsewhere, where there is significant demand for communications with and services from that office or facility in that language.

Travelling public

23(1) For greater certainty, in addition to the duty set out in section 22, every

PARTIE IV

Communications avec le public et prestation des services

Communications et services

[…]

Langues des communications et services

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 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.

Voyageurs

23(1) Il est entendu qu'en plus de l'obligation prévue à l'article 22, il

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

[38] Finally, the relevant provisions of the Official Languages Regulations are in sections 5 and 7 defining the notion of significant demand referred to in sections 22 and 23 of the OLA. These provisions of the Official Languages Regulations are extremely detailed and it is neither necessary nor useful to reproduce them here in full. The Federal Court accurately summarizes each of the provisions 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.

[39] This is the legislative framework for this case, where the issues concern primarily the interpretation to give to language obligations under the various legislative provisions at issue.

VIII. ANALYSIS

A. Observations on the interpretive exercise in this case

[40] The issue of the interpretation of subsection 4(1) of the ATA must be assessed on the standard of correctness. This exercise must comply with the modern method of statutory interpretation, as it must for any other statutory provision, in that the "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament" (see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21 (*Rizzo*), citing Elmer Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87).

[41] The interpretation of the OLA is also subject to the standard of correctness. However, as mentioned above, because of its quasi-constitutional status, the OLA must be given a "liberal and purposive" interpretation so that it is assigned the weight it deserves, as its purpose is to preserve and develop official language communities (*Beaulac* at para. 25; *DesRochers* at para. 31). The interpretation of the OLA must also comply with the method of interpretation set out in *Canada (Commissioner of Official Languages) v. Canada (Employment and Social Development),* 2022 FCA 14, [2022] 3 F.C.R. 220 at para. 111; *Thibodeau 2014* at para. 112; *Lavigne* at para. 25).

B. Did the Federal Court err in deciding that airport authorities are subject to the "head office" rule in subsection 4(1) of the ATA?

[42] For the following reasons, the interpretation given by the Federal Court to subsection 4(1) of the ATA should be upheld. Consequently, all of Part IV of the OLA applies to SJIAA because it is subject to the "head office" rule. This conclusion is confirmed by the interpretive exercise, which includes consideration of (i) the object of the ATA, (ii) the scheme of the ATA, (iii) the intention of Parliament, and (iv) the grammatical and ordinary sense to give to the words used in the ATA.

(i) The object of the ATA

[43] As the Federal Court notes at the outset, the objective sought by Parliament in enacting the ATA was to "facilitate the transfer of airports operated by the Department of Transport to local private organizations" (Decision at para. 29). To achieve this objective, the ATA transferred a limited number of obligations that had been incumbent on the Department of

Transport. These included the federal government's language obligations, which were continued at the time of an airport transfer to a local airport authority. The transfer was necessary because airport authorities, as private entities, are not automatically subject to the OLA.

[44] At the hearing before this Court, SJIAA and the CAC argued that the object of the ATA was to promote economic development and that the transfer of language obligations must be qualified, since there are no absolute rights in this area. Arguing that subsection 4(1) of the ATA imposes the language obligations of airport authority head offices, SJIAA and the CAC submit that the Federal Court erred because the language obligations it imposes are in conflict with economic development and reduce the organizational flexibility of airport authorities.

[45] The arguments of SJIAA and the CAC have no merit. They confuse the economic motivations behind transferring airports with the very specific object of subsection 4(1) of the ATA, which is to ensure the continuity of language obligations, in other words, the preservation of bilingualism. The preservation of bilingualism does not vary depending on the location of the airport the government has transferred under the ATA. Most importantly, there is no basis in the record to conclude that the continuity of the language obligations now incumbent on the head offices of airport authorities hampers the achievement of their economic goals, including regional economic development. In any event, these economic goals cannot be used as pretexts to deviate from the clear and specific objective of subsection 4(1) of the ATA.

(ii) The scheme of the Act

[46] Under the scheme of the Act, the provisions of the OLA apply to airport authorities only to the extent that section 4 of the ATA makes them applicable. In this respect, it is sufficient to rely on the Federal Court's finding in paragraph 30:

> Section 4 does not make the entire [OLA] applicable to airport authorities. Parliament felt that it was necessary to tailor the [OLA] to the reality of local authorities and that only certain parts of the [OLA] 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 [OLA].

(iii) The parliamentary debates

[47] It is important to include a word on Parliament's intent with respect to the ATA. The parties and interveners in this case have each referred to several excerpts from the parliamentary debates to support their respective arguments. While it may be evident that these debates were fuelled by the concerns of parliamentarians about the weakening of language protections and the preservation of bilingualism, an attentive reading of the discussions surrounding the enactment of the ATA does not lead to an unequivocal conclusion on how Part IV of the OLA must apply to airport authorities.

(iv) The ordinary and grammatical sense of the words used in the ATA

[48] The wording of subsection 4(1) of the ATA is reproduced here for ease of reference:

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

[49] First, as the Federal Court correctly pointed out, it is important to note that Parliament explicitly used the terms "designated airport authority" and "airport" in subsection 4(1) of the ATA. These are two distinct terms that are based on the following premise: the airport authority is a corporation, and the airport is a physical facility (Decision at para. 31).

[50] The wording of subsection 4(1) of the ATA relies on this distinction to provide that several parts of the OLA, including Part IV, "apply … to the authority in relation to the airport as if …" / "*s'appliquent … à cette administration, pour ce qui est de l'aéroport, au même titre que s'il s'agissait d'une institution fédérale*". This wording reflects Parliament's intent to maintain the application of the OLA despite the transfer of a given airport. This explicit wording is in fact necessary because, as mentioned above, the OLA does not immediately apply to airport authorities, since they are private corporations.

[51] Similarly, the wording of subsection 4(1) of the ATA provides that Part IV of the OLA applies to the airport authority as a federal institution in respect of its airport operations

activities. The English wording is even clearer and confirms the meaning of the provision: “Parts IV [of the OLA] apply to the authority in relation to the airport as if … the authority were a federal institution”. As the Federal Court rightly points out, Parliament thus ensures that airport authorities like SJIAA are deemed federal authorities and are therefore subject to the OLA (Decision at para. 32).

[52] Subsection 4(1) continues: “as if … the airport were an office or facility of that institution [SJIAA], 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*”. Despite the wording of the provision setting out the presumption that the airport is deemed an “office” (*“bureau”* in the French version) and not the “head or central office” of the institution at issue (in this case, SJIAA), SJIAA submits that the wording expresses Parliament’s intention not to create head offices. Further, SJIAA submits that Parliament intended that airport authorities like itself would not have a head office and simply be deemed to have an “other office”, i.e., an airport. According to SJIAA, Parliament’s intention was not to subject privatized airports to greater bilingual communication obligations than the duties that were incumbent on airports operated by the government, i.e., the federal Department of Transport (SJIAA’s memorandum of fact and law at paras. 13–14, 35, 47, 53 and 54).

[53] SJIAA also submits that section 22 of the OLA does not apply to the airport and SJIAA therefore has no duty to communicate with or offer services to the public in both official languages (SJIAA’s memorandum of fact and law at paras. 54 and 59). In other words, SJIAA disputes the distinction drawn by the Federal Court between “airport” and “head office” and

submits that, accordingly, airport authorities do not have a "head office" to operate an airport within the meaning of subsection 4(1) of the ATA.

[54] With respect, the interpretation of subsection 4(1) of the ATA proposed by SJIAA is erroneous and must be rejected, for the following reasons.

[55] First, the existence of a head office is mandatory for not-for-profit corporations such as airport authorities. This is a basic principle of corporate law. For example, subsection 20(1) of the *Canada Not-for-profit Corporations Act*, S.C. 2009, c. 23, states, "A corporation shall at all times have a registered office in the province in Canada". Provincial statutes contain similar provisions (see for example *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15, s. 14(1) (Ontario); *Corporations Act*, R.S.N.L. 1990, c. C-36, ss. 33, 35, 438(k) and (l) (Newfoundland and Labrador)).

[56] More specifically, for the purposes of this case, the meaning to be given to the wording of subsection 4(1) of the ATA is very clearly that the airport must be considered an office of the airport authority for the purposes of the OLA. This wording includes the words "other than its head or central office" / "*à l'exclusion de son siège ou de son administration centrale*", thus indicating that the airport, in other words the physical facility, will still be subject to the significant demand criterion—as defined in the Official Languages Regulations—and not the head office rule. The Federal Court explains, in paragraph 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 [OLA], the purpose of this phrase is obvious: to subject airports to the scheme governing offices in sections 22 and 23 of the [OLA] rather than the scheme in section 22 governing head or central offices. The application of the [OLA] 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.

[57] In short, if St. John's Airport is considered to be an office of SJIAA, its head office, SJIAA, is not. Consequently, SJIAA as "head office" is subject to greater language obligations under section 22 of the OLA—which are not limited to cases of significant demand—as if it were a federal institution.

[58] The weakness of the appellant's argument is all the more apparent where the airport authority is not necessarily located on the premises of the airport it manages. As Mr. Thibodeau and the COL rightly point out, the following distinct entities—(i) the head office of Aéroports de Montréal; (ii) Montreal–Trudeau International Airport; and (iii) International Aerocity of Mirabel—need only be cited to illustrate the fact that there are multiple airports serving Montreal, which demonstrates that an airport authority can manage more than one airport. The Federal Court noted this issue in paragraph 34:

> 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.

[59] SJIAA nevertheless concedes that, when the ATA was enacted, the government's intention was to preserve the status quo in terms of bilingual services (SJIAA's memorandum of

fact and law at para. 50). If the head office of Transport Canada, a federal institution, had language obligations at the time the ATA was enacted, it follows that the head office of airport authorities, which are considered federal institutions under subsection 4(1) of the ATA, must have the same language obligations with respect to bilingual services and communication after the transfer under the ATA. Moreover, I agree with the respondent and the COL that, if Parliament had wanted to limit airport authorities' head office language obligations, it would have explicitly stated in subsection 4(1) of the ATA that the authority—and not the airport—was considered an office instead of a federal institution.

[60] In short, there is no basis to conclude that Parliament's intention in enacting the ATA was to take a step backwards in language matters by removing head office language obligations from airport authorities and thus limiting their obligations under Part IV of the OLA.

[61] It should be noted that SJIAA also criticizes the Federal Court for failing to refer in its reasons to the PowerPoint documents from the Treasury Board of Canada Secretariat intended for airport authorities in general, which it alleges support its arguments. These documents do not bear the characteristics of a legal direction, however, and are not as important as SJIAA says they are. Moreover, the transcripts show that the Federal Court considered the documents in question (Transcript of the Federal Court proceeding, Appeal Book at 1810, 1811 and 1876) in interpreting sections 22 and 23 of the OLA but simply did not give them the weight SJIAA would have hoped. No palpable and overriding error can be identified here.

[62] Finally, at the hearing before this Court, the CAC emphasized that the wording of subsection 4(1) of the ATA differs from the wording Parliament used to subject private corporations to the OLA. Accordingly, it argued that Parliament's intention was not to subject airport authorities to the OLA in its entirety. For example, the CAC refers to a few statutes, including the *Canada Marine Act*, S.C. 1998, c. 10, section 54 of which reads: "The *Official Languages Act* applies to a port authority as a federal institution within the meaning of that Act", and the *CN Commercialization Act*, S.C. 1995, c. 24, section 15 of which reads: "The *Official Languages Act* continues to apply to CN as if it continued to be a federal institution within the meaning of that Act".

[63] On their face, the provisions of the *Canada Marine Act* and the *CN Commercialization Act* on the one hand, and subsection 4(1) on the other, are worded differently. However, the CAC's claim must be set aside, because (i) it does not consider the context leading to the enactment of each of these provisions, and (ii) it ultimately seeks to read subsection 4(1) as saying something it does not, by circumventing the exercise of statutory interpretation.

[64] I have read my colleague's dissenting reasons. With respect, the narrow interpretation of subsection 4(1) of the ATA that she puts forward focuses on the issue of the profitability of airport authorities, thus obscuring the central issue in dispute, which directly concerns the rights of official language minority communities. In so doing, my colleague unduly limits the scope of the language obligations of airport authorities, and her approach is difficult to reconcile with the teachings of the Supreme Court that a broad and generous interpretation of the OLA must be

preferred. It is not sufficient to set out the principles governing the interpretation of language rights, as my colleague does in paragraph 110; they must be put into application.

[65] Ultimately, the wording of subsection 4(1) of the ATA indicates that the head office of the airport authority, in this case SJIAA, which took over from Transport Canada, is subject to section 22 of the OLA, no matter its location. The Federal Court was therefore correct to find that SJIAA is under the same language obligations as a federal institution and that it must therefore communicate with the public in both official languages.

[66] Airports like the one in St. John's are subject to sections 22 and 23 of the OLA in accordance with the principle of "significant demand". It is admitted that yearly traffic through St. John's airport in particular is in excess of 1 million passengers and therefore, under subsection 7(3) of the Official Languages Regulation, the "significant demand" criterion is met and section 23 of the OLA applies. It is therefore appropriate at this stage to address section 23 of the OLA and more particularly to assign a meaning to the term "services … to the travelling public" used in this provision.

C. Did the Federal Court err in its interpretation of section 23 of the OLA?

[67] Before the Federal Court, SJIAA advanced an interpretation of the term "travelling public" in section 23 of the OLA that included only individuals holding travel documents (e.g., airplane tickets). It also proposed a limited notion of the information and communications that are traveller-relevant.

[68] The Federal Court rejected the interpretation of section 23 of the OLA proposed by SJIAA, finding that the meaning of the term “travelling public” should not be limited to individuals who hold a travel document, and that the services and communications contemplated by section 23 of the OLA are not those that are “traveller-relevant” but those that are offered or intended for the travelling public, “in the sense that the recipients or beneficiaries of the services or communication are all or mainly members of the travelling public” (Decision at para. 49).

[69] Before this Court, SJIAA submits that the Federal Court erred in its interpretation of section 23 of the OLA. SJIAA now asserts that the interpretation of the term “travelling public” should be limited to travellers using airports to fly from one point to another (SJIAA’s memorandum of fact and law at paras. 67 and 68). This interpretation proposed by SJIAA is without merit. For the reasons below, the interpretation adopted by the Federal Court should be upheld because the one advanced by SJIAA is unduly narrow and inconsistent with the principles set out by the Supreme Court in language rights cases since *Beaulac*.

[70] Whether the provision being interpreted is subsection 4(1) of the ATA or section 23 of the OLA, the approach remains the same (*Rizzo*). It is important to remember, however, that the meaning of “travelling public” and the range of services and communications intended for that group under section 23 of the OLA must be interpreted consistently with the purpose of the OLA, which is to promote the preservation and development of official language communities (*Beaulac* at para. 25; *DesRochers* at para. 31).

[71] This is in fact the interpretive approach favoured by the Federal Court in this case. It properly set out the objectives of the OLA sought by Parliament in the specific context of the travelling public, as follows:

> [47] The purpose of the [OLA] 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.

[72] In light of the wording of section 23 of the OLA, it is clear that federal institutions have language obligations in respect of the services they offer—in this case, to the travelling public. Although the term "services" in section 23 of the OLA is not defined, if the significant demand criterion is met under section 7 of the Official Languages Regulations, as it is in the case of St. John's airport, the travelling public as service recipients are entitled to receive communications in either of the two official languages. The Federal Court makes the following relevant point at paragraph 48 of the Decision:

> … 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.

[73] Along the same lines, this Court recently noted in *Canada (Commissioner of Official Languages) v. Office of the Superintendent of Financial Institutions*, 2021 FCA 159, [2022] 1 F.C.R. 105, that an unduly narrow interpretation of the OLA "is contrary to the objectives of language rights" (para. 46). That case concerned the interpretation of a provision in Part V of the OLA that confers the right to work in one's official language of choice. This Court stated that it is important to avoid imposing "ambiguous and arbitrary" criteria on the exercise of a right under the OLA because such criteria "arbitrarily restricts the scope of [the OLA] in a manner contrary to the necessary broad, liberal and purposive interpretation" (para. 79).

[74] The narrow interpretation SJIAA proposes offends not only the principles in the case law on official languages since the seminal decision in *Beaulac*, but also the Official Languages Regulations, which apply section 23 of the OLA. Specifically, section 7 of the Regulations takes several factors into consideration to establish "significant demand", and Parliament specifically chose the term "passenger" to this end. It is self-evident that passengers have travel documents because, by definition, they have "emplaned and deplaned … at that airport" / *"embarqué et débarqué à l'aéroport"*. It follows that the word "passenger" in the Official Languages Regulations is narrower than the term "travelling public" in section 23 of the OLA. In this respect, access by members of the travelling public to communications and services in the official language of their choice cannot be limited to those who possess a travel document or those travelling from one airport to another. If Parliament had wanted to limit access to communications and services in the official language of choice under section 23 of the OLA this way, it would have used the more restrictive "passenger"—as it did in the Official Languages Regulations—and not "travelling public", which has a broader definition and scope.

[75] This conclusion is all the more inevitable because the experience of travelling begins before emplaning and ends after deplaning. If access by the travelling public to communications or services in the minority language had to depend on a travel document or on travel from one airport to another, there would be a marked inequality between the services and communications offered to members of the travelling public from the majority community and those from the minority community (Mr. Thibodeau's memorandum of fact and law at para. 52). Requiring a member of the travelling public to present a travel document or to be flying from one airport to another in order to obtain communication or service in the official language of their choice imposes an additional burden that would limit the ability of members of linguistic minorities to plan and go on trips.

[76] SJIAA takes particular issue with paragraph 51 of the Federal Court Decision and with its reasoning behind its statement that a person who does not have travel documents can still receive communications and services in the minority language, for example when they go to the airport to "pick up family members" (SJIAA's memorandum of fact and law at para. 63). SJIAA submits that, in making such a statement, the Federal Court unduly expanded the definition of "travelling public". Without providing an opinion on the merits of the example chosen by the Federal Court, I find that, upon reading the decision as a whole, the remarks of the Federal Court merely illustrate that the notion of the travelling public cannot be defined only by those who hold a travel document, in that a member of the travelling public should not be required to present a travel document to obtain services or communications in their language of choice.

[77] In short, the interpretation adopted by the Federal Court is supported by the object of the OLA and the wording of section 23 of that Act: access to communications and services in the minority official language is not limited to those holding a travel document or to those travelling from one airport to another. These individuals are a segment of the intended public targeted by the communications or services at issue. The travelling public need not constitute the entire target public. As long as they are targeted, which is the case with most communications and services provided by an airport authority and its offices, they fall under section 23 of the OLA. My colleague's comment on this issue at paragraph 139 of her dissenting opinion imposes non-exhaustive criteria on a right under the OLA that limits its scope, whereas the Federal Court took pains to define the scope of section 23, emphasizing that, in principle, communications not intended for or not seen 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 covered by section 23 (Decision at para. 52). In fact, it may be added that, all things being equal, the communications not covered by section 23 will be limited, given the mission and the very nature of an airport authority's activities.

[78] Having concluded that SJIAA breached the OLA, the Federal Court went on to find that the appropriate remedy was an award of damages.

D. Did the Federal Court err in the award of damages?

[79] Courts have consistently held that subsection 77(4) of the OLA confers broad discretion on the judge to grant a remedy when a federal institution breaches one of its obligations under the OLA.

[80] Subsection 77(4) of the OLA reads as follows:

Order of Court	**Ordonnance**
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 eu égard aux circonstances.

[81] The Supreme Court has recognized that subsection 77(4) of the OLA is similar to subsection 24(1) of the Charter in that it "confers a wide remedial authority and should be interpreted generously to achieve its purpose" (*Thibodeau 2014* at para. 112).

[82] An award of damages in the event of the breach of a protected Charter right is governed by the framework developed by the Supreme Court in *Ward*. In that case, the Supreme Court established that a claimant need not establish personal harm to be entitled to damages "where the objectives of vindication or deterrence clearly call for an award" (*Ward* at para. 30).

[83] SJIAA does not question the application of the analytical framework developed in *Ward* to subsection 77(4) of the OLA. However, SJIAA submits that the Federal Court did not have the discretion to award damages to Mr. Thibodeau because he was not a member of the travelling public and therefore suffered no personal violation of his rights. SJIAA nevertheless makes a qualification: in paragraph 81 of its memorandum of fact and law, it concedes that its argument does not cover confirmed "head office" violations under section 22 of the OLA and that such violations could open the door to an award of damages.

[84] Whatever the case may be, SJIAA cites several decisions in support of its argument that the Federal Court erred in awarding damages to Mr. Thibodeau when he had not personally suffered a violation of his rights or any harm. These decisions, however, do not support its argument in this case.

[85] First, in *Brunette v. Legault Joly Thiffault, s.e.n.c.r.l.*, 2018 SCC 55, [2018] 3 S.C.R. 481 (*Brunette*), a judgment relating to the fundamental principles of procedural and corporate law, the Supreme Court states that a shareholder must establish a breach of a distinct obligation and direct injury to obtain a distinct right of action separate from that of the corporation against which the faults were committed (*Brunette* at paras. 28 and 29). Relying on this statement, SJIAA affirms that it is impossible for Mr. Thibodeau to obtain damages because he has personally suffered no violation and no prejudice of his rights (SJIAA's memorandum of fact and law at para. 74). SJIAA's argument misses the mark. Unlike in *Brunette*, subsection 77(1) of the OLA specifically confers a right of action on Mr. Thibodeau. Mr. Thibodeau therefore has the standing to act, which opens the door to a claim for damages.

[86] The other decisions cited by SJIAA, namely, *Bou Malhab v. Diffusion Métromédia CMR inc.*, 2011 SCC 9, [2011] 1 S.C.R. 214, *Canson Enterprises Ltd. v. Boughton & Co.*, [1991] 3 S.C.R. 534 and *Ratych v. Bloomer*, [1990] 1 S.C.R. 940, do not deal with the principles specific to awards of damages as a remedy under the Charter or the OLA. They are therefore of no assistance in challenging the award of damages in this case.

[87] In actual fact, SJIAA seeks to advance an unduly narrow concept of standing to act under section 77 of the OLA. Not only is this concept irreconcilable with the case law of the Supreme Court and of this Court (*DesRochers*; *Forum des maires de la Péninsule acadienne v. Canada (Food Inspection Agency)*, 2004 FCA 263, [2004] 4 F.C.R. 276 (*Forum des Maires*), it also goes against the very spirit of the primary purpose of the OLA in terms of the protection of language rights. It would render illusory the remedy that Parliament contemplates under the OLA, in particular the award of damages, as the Federal Court rightly observes in paragraph 84:

> Indeed, sections 22 and 23 of the [OLA] do not affirm a right, but rather a duty for federal institutions to ensure that members of the public or the travelling public … 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. … [I]n most situations, the measures federal institutions must take to comply with the [OLA] 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 [OLA] 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. … [I]t would take away the [OLA]'s bite.

[88] In short, the Federal Court did not err in recognizing that Mr. Thibodeau could be awarded damages for OLA breaches by SJIAA. In this case, the issue that must now be

addressed is whether the Federal Court's exercise of its discretion to award $5,000 in damages to Mr. Thibodeau was an appropriate and just remedy in the circumstances.

A. Did the Federal Court grant an "appropriate and just" remedy?

[89] As both this Court and the Supreme Court have noted, the remedy in subsection 77(4) of the OLA was included to give the OLA some "teeth" (*Forum des Maires* at para. 17) and "to enforce, through remedies, certain parts of the new OLA, in contrast to its predecessor that was merely declaratory" (*Thibodeau 2014* at para. 115). Because the remedy in subsection 77(4) of the OLA can now be considered akin to the remedy under subsection 24(1) of the Charter, the analytical framework developed in *Ward* must be applied to establish an "appropriate and just" remedy. This is also the approach the Federal Court adopted in this case, modelling it on other Federal Court decisions where damages were awarded as a remedy for breaches of the OLA (see *Thibodeau v. Air Canada*, 2019 FC 1102; *Thibodeau v. Canada (Senate)*, 2019 FC 1474; *Thibodeau v. Greater Toronto Airports Authority*, 2024 FC 274).

[90] The analytical framework developed by the Supreme Court in *Ward* can be broken down to four steps, which can be summarized as follows:

1. Proof of a breach of a provision of the OLA;
2. Demonstration that an award of damages serves a useful function or goal, based on the following functions:
    (i) compensation of injury suffered by the claimant;
    (ii) vindication of language rights;

(iii)deterrence of any future breach.

3. The consideration of countervailing factors rendering an award of damages neither appropriate nor just;
4. The determination of the appropriate quantum of damages, if awarded.

[91] Although the Federal Court established in this case that SJIAA breached sections 22 and 23 of the OLA, the breach of the OLA is not in itself a determining factor in the official languages context, since the personal loss caused by the breach is harder to pinpoint (Decision at para. 75). A breach of the OLA has collective and systemic repercussions that go far beyond an individual breach, as it thwarts and limits the development of official language communities (*Beaulac* at para. 25).

[92] In the context of this type of violation of language rights, the objectives of vindication and deterrence play an even greater role. As the Federal Court notes, "[a]n award that focuses only on personal loss may well neglect the real impacts of a breach of the [OLA]. In most cases therefore, the award of damages will focus on vindication of the right and deterrence" (Decision at para. 76).

[93] As for the vindication of rights, damages may be appropriate to the extent that a federal institution's breach of the OLA undermines the status of official language communities. As the Supreme Court affirms in *Mazraani* at paragraph 51:

> … 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.

[94] Therefore, the award of damages by the Federal Court not only ensures respect for the language rights at issue, but it also serves as a reminder of the significance of the obligations towards the official language communities that are incumbent on federal institutions under the OLA.

[95] Regarding the objective of deterrence, the Federal Court reiterated that SJIAA had breached a right by failing to comply with its obligations under sections 22 and 23 of the OLA. Before this Court, SJIAA argues that Mr. Thibodeau did not suffer personal loss and therefore could not claim damages. It submits this argument despite the Supreme Court's statement in paragraph 30 of *Ward* that an award of damages is not necessarily related to personal loss:

> … 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.

[96] In this respect, it should be recalled that, in 2004, this Court, in the same spirit hat informed the principles in *Ward*, recognized that 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'" (*Forum des Maires* at para. 18). Basing itself on the principles in *Ward*, the Federal Court rightly noted that the vast majority of OLA breaches do not cause inherently compensable injury (Decision at para. 88).

[97] Moreover, given that the COL's recommendations are not binding, any narrow interpretation of subsection 77(4) of the OLA like the one put forward by SJIAA would thwart the application of the provision, rendering it for all intents and purposes futile. As the Federal Court pointed out, the interpretation put forward by SJIAA is "incompatible with the structure of the [OLA]" (Decision at para. 83). Furthermore, Parliament certainly did not enact subsection 77(4) of the OLA with the intention that it have no practical effect.

[98] In this case, the Federal Court concluded, on the basis of the evidence adduced before it, that SJIAA's conduct appeared to minimize its efforts to comply with the OLA in a way that respects the value of bilingualism. The Federal Court noted that "SJIAA chose to ignore some of the Commissioner's recommendations" and that "SJIAA has complained about the cost of its efforts to enter into partial compliance with the Act" (Decision at paras. 86 and 87). When faced with an institution's resistance to meeting its language obligations under the OLA, the courts have a duty to reassure not only official language minorities but also the public about the importance of ensuring compliance with the OLA. In this case, a declaratory judgment would have been insufficient. A more appropriate remedy, namely, an award of damages, was needed to respond to SJIAA's clear lack of interest in complying with its obligations under the OLA.

[99] As for the countervailing factors against an award of damages, the Federal Court acknowledged at the outset that SJIAA took some corrective measures and remedied certain OLA violations, but observed that these efforts were ultimately insufficient to act as a counterweight to persistent breaches. For example, drawing on the 2021 COL report, the Federal Court highlighted the marked disparity between the English and French content on the Instagram

and YouTube accounts. Similarly, certain sections of SJIAA's website were exclusively in English (Decision at paras. 86, 91–92). The Federal Court also relied on the affidavit of one of SJIAA's managers, who essentially minimized the scope of SJIAA's language duties and presented criticism of the COL report that had "no basis whatsoever" (Decision at paras. 92 and 93). Ultimately, SJIAA ignored most of the COL's recommendations and incorrectly dealt with language rights as an accommodation measure as opposed to a legal obligation that it owed, which must be given true meaning (*DesRochers* at para. 31).

[100] Since SJIAA did not take necessary corrective measures, it cannot assert that the situation changed between the time the complaint was filed and the time the Federal Court rendered its decision, and that "relief that might have been appropriate at the outset may no longer be so at the end of the exercise" (*Forum des Maires* at para. 62). Quite the contrary, hence the relevance of the award of damages in this case.

[101] Ultimately, SJIAA submits that the Federal Court erred in determining the same amount of damages, i.e. $5,000, as that awarded in the related decision in *Thibodeau v. Edmonton Regional Airports Authority*, 2022 FC 565 (*Edmonton*). According to SJIAA, the facts in this case can be distinguished from those in *Edmonton* and the Federal Court therefore erred in awarding identical damages of $5,000 in both cases (SJIAA's memorandum of fact and law at paras. 98 and 99).

[102] However, it is clear from a reading of the reasons of the Federal Court that it assessed the seriousness of the breaches on a case-by-case basis, in accordance with the facts specific to each

matter. More specifically, in the case before us, contrary to SJIAA's argument, the Federal Court considered mitigating factors such as SJIAA's implementation of some of the COL's recommendations, while at the same time recognizing that SJIAA had partially—albeit insufficiently—corrected some of the problems by addressing some of Mr. Thibodeau's complaints.

[103] It is important to note that the Federal Court also correctly rejected any method that would award a fixed amount of damages for each complaint based on how the claimant had chosen to divide them. Rather, it considered the circumstances as a whole to determine an amount for all the complaints. The Federal Court's approach was entirely well founded. I would add that any approach that awards a fixed amount for each complaint a claimant may file is unacceptable. Thus, in light of the circumstances as a whole, the Federal Court took into account the modicum of effort SJIAA had made but decided that it was insufficient to serve as a counterweight to the need to award Mr. Thibodeau $5,000 in damages "in order to ensure deterrence and vindication" (Decision at paras. 91 and 94). No error was committed in this respect, and there is therefore no reason to intervene.

[104] It remains to be determined whether the Federal Court erred in its award of costs.

A. Did the Federal Court err in the award of costs?

[105] The Federal Court ordered payment of $6,000 in costs to Mr. Thibodeau, including "disbursements and a modest fee" (Decision at para. 104). SJIAA asks this Court to reduce costs

by $1,864.77, which corresponds to the price of a return airplane ticket to St. John's and two nights in a hotel. These costs were incurred because Mr. Thibodeau served the notice of application on SJIAA himself.

[106] An award of costs falls within the discretion of the trial judge. It may be set aside only if the judge "has made an error in principle or if the costs award is plainly wrong" (*Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2004] 1 S.C.R. 303 at para. 27; see also *Canada v. Martin*, 2015 FCA 95 at para. 13; *Tazehkand v. Bank of Canada*, 2023 FCA 208 at para. 92).

[107] Although Mr. Thibodeau could have hired a bailiff to serve the notice of application in St. John's, in light of all the circumstances of this case, particularly the fact that Mr. Thibodeau requested the address for service from SJIAA several times but received no response (Appeal Book at 1276), and considering the hundred or so hours he has invested in this file (Appeal Book at 1252 and 1253), the Federal Court did not err in exercising its discretion to grant him costs of $6,000. There is no reason for the Court to intervene in this respect either.

IX. CONCLUSION

[108] For all these reasons, I would dismiss the appeal with costs in favour of Mr. Thibodeau.

"Richard Boivin"

J.A.

"I agree.
LeBlanc J.A."

GOYETTE J.A. (dissenting in part)

[109] I agree with my colleague, save in two respects. In my opinion, airport authorities are not subject to the "head office rule". Moreover, I find that a clarification must be made regarding the analysis of section 23 of the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.) (OLA).

[110] There is no doubt that the OLA must be given a generous interpretation to promote the preservation and development of official language communities: *R. v. Beaulac*, [1999] 1 SCR 768 at para. 25; *Thibodeau v. Air Canada*, 2014 SCC 67 (*Thibodeau 2014*) at para. 112. However, airport authorities are governed by the OLA only to the extent that subsection 4(1) of the *Airport Transfer (Miscellaneous Matters) Act*, S.C. 1992, c. 5 (*Airport Transfer Act*) subjects them to it. In this case, the question to be asked is which OLA obligations this provision imposes on airport authorities. More specifically, does it impose the obligations of the head office? To answer this question, it is necessary to apply the "correct approach to statutory interpretation" and consider the text, context, and purpose of subsection 4(1) of the *Airport Transfer Act*: *Thibodeau 2014* at para. 112; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para. 21.

I. The text

[111] For ease of reference, I will reproduce the text of subsection 4(1) again:

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

[112] Subsection 4(1) consists of a single sentence with three clauses. The first clause (in yellow) provides that, once an airport has been leased to an airport authority, Part IV of the OLA applies to that authority. Crucially, the second clause (in green) specifies that Part IV applies only "in relation to the airport". The final clause (in blue) states that Part IV applies to the authority as if it were a federal institution and that the airport is considered an office or facility of that institution, other than its head office.

[113] Thus, the text of subsection 4(1) reveals that airport authorities are not considered federal institutions fully, but only "in relation to the airport". Moreover, an airport is considered to be an office or facility. In other words, according to the text of subsection 4(1), an airport authority is considered to be a federal institution only in relation to the *airport*, not in relation to its *head office*. Subsection 4(1) refers to the notion of head office only to exclude it. This does not mean

that the airport authority is deprived of a head office. Rather, it means that the airport authority is not considered to be a federal institution in relation to its head office.

[114] It follows that Part IV applies to the airport authority when it renders services or issues communications in relation to the airport. If the airport authority is responsible for more than one airport, for example Airport A and Airport B, the services the authority renders or the communications it issues in relation to Airport A must be bilingual if so determined by the significant demand criteria under section 22 or section 23. The same test must be applied to the services the airport authority renders or communications it issues in relation to Airport B. Therefore, the scope of the obligations may vary, depending on the airport.

[115] In paragraphs 49 and 57 of his reasons, my colleague recognizes that Parliament distinguishes an airport authority from an airport, and that only the airport is considered an office or facility for the purpose of the obligations under the OLA. He deduces from this finding that the airport authority is subject to the obligations of the head office.

[116] With respect, this interpretation overlooks the clause "in relation to the airport" [*"pour ce qui est de l'aéroport"*]. If Parliament had wanted the obligations of the head office to apply to airport authorities, it would not have needed the "in relation to the airport" clause. Without this clause, subsection 4(1) would read "Where the Minister has leased an airport to a designated airport authority, … the *Official Languages Act* [applies] … to the authority … as if (a) the authority were a federal institution; and (b) as if the airport were an office or facility of that institution, other than its head or central office". If this were the wording, subsection 4(1) would

clearly indicate that the obligations of both the office/facility and the head office apply to the airport authority and that the airport is considered an office or facility. Yet that is not how subsection 4(1) is worded.

[117] The clause "in relation to the airport" was not meant to be tautological; it expresses that an airport authority's head office is not to be considered a federal institution. To find otherwise by ignoring the "in relation to the airport" clause would offend the presumption that Parliament does not speak in vain (also known as the principle of the useful purpose of the law): *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 37; *Municipalité de Saint-Joseph-du-Lac c. Séguin*, 2023 QCCA 950 at para. 35. I am of the view that the interpretation my colleague gives to subsection 4(1) of the *Airport Transfer Act* leads precisely to that result.

II. The context

[118] The context reinforces the conclusion that head office obligations do not apply to airport authorities.

[119] An analysis of the legislative context requires a consideration of any statutes dealing with the same subject matter as the statute to be interpreted: Ruth Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis Canada, 2022) at §13.04 [1]. As the Supreme Court explains, "the principle that statutes dealing with similar subjects must be presumed to be coherent means that interpretations favouring harmony among those statutes should prevail over discordant ones": *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 SCR 1015 at para. 61.

[120] Several legislative provisions concern subjects similar to the one dealt with in subsection 4(1) of the *Airport Transfer Act*, i.e., the imposition of obligations under the OLA on institutions that are not federal institutions. I will reproduce these provisions here:

> **10 (1)** The *Official Languages Act* applies to the Corporation.
>
> *Air Canada Public Participation Act*, R.S.C. 1985, c. 35 (4th Supp.), s. 10(1).
>
> **96** The *Official Languages Act* applies to the Corporation as if it were a federal institution.
>
> *Civil Air Navigation Services Commercialization Act, S.C. 1996, c. 20, s. 96*.
>
> **15** The *Official Languages Act* continues to apply to CN as if it continued to be a federal institution within the meaning of that Act.
>
> *CN Commercialization Act*, S.C. 1995, c. 24, s. 15.
>
> **54** The *Official Languages Act* applies to a port authority as a federal institution within the meaning of that Act.
>
> *Canada Marine Act*, S.C. 1998, c. 10, s. 54.
>
> **9 (1)** The articles of amendment for Petro-Canada shall contain
>
> …
>
> **(e)** provisions requiring Petro-Canada to ensure that any member of the public can, in either official language, communicate with and obtain available services from
>
> (i) **its head office**, and
>
> (ii) any of its other offices or facilities, and the head office and any other office or facility of any of its wholly-owned subsidiaries, where Petro-Canada determines that there is significant demand for communications with and services from that office or facility in that language having regard to the public served and the location of the office or facility;
>
> [Emphasis added.]
>
> *Petro-Canada Public Participation Act, S.C. 1991, c. 10, s. 9(1)(e)*.

[121] The wording of these provisions demonstrates that if Parliament's intent was to impose all the obligations of the OLA, including those of the head office, on airport authorities, it would have used different language from what is used in subsection 4(1). At the very least, a reading of these provisions makes it clear that the "in relation to the airport" clause in subsection 4(1) of the *Airport Transfer Act* limits the scope of airport authorities' language obligations.

III. The purpose

[122] The purpose of subsection 4(1) reinforces the conclusions based on the text and the context.

[123] The *Airport Transfer Act* was enacted in the context of the transfer of airports to private institutions. The purpose of the transfer was "to allow the airports to serve the local community interests better, and to permit the national airport system to operate in a more cost-effective and commercial manner": *Edmonton Regional Airports Authority v. Alta Flights (Charters) Inc.*, 2003 ABQB 791 at para. 38, citing *House of Commons,* Legislative Committee on Bill C-85 *(Airport Transfer (Miscellaneous Matters) Act), Minutes of Proceedings and Evidence,* 34-2, No. 1 (4 March 1991) at 11 (Hon. Doug Lewis, Minister of Transport); *Greater Toronto Airports Authority v. International Lease Finance Corp.*, 2004 CanLII 32169 (ON CA) at para. 40, rev'd for other reasons 2006 SCC 24 [*Canada 3000*], citing *House of Commons Debates,* 34-3, No. 1 (3 June 1991) at 942 (M. Richardson, Parliamentary Secretary to the Minister of Transport); see also *House of Commons Debates*, 34-2, No. 11 (7 November 1990) at 15262 (Hon. Doug Lewis, Minister of Transport); *Senate Debates,* 34-3, No. 1 (13 June 1991) at 188 (Hon. Normand Grimard).

[124] As for the purpose of the *Airport Transfer Act*, its preamble states that it "provide[s] for certain matters in connection with the transfer of certain airports". To this end, the eleven provisions of that Act ensure that certain rules applicable to airports operated by the federal government—such as some of the rules concerning official languages, pension benefits, tax exemptions, and aircraft seizures—apply to airport authorities.

[125] This description of the purpose of the *Airport Transfer Act*, while informative, is not sufficient to determine whether subsection 4(1) imposes the obligations of head offices under section 22 of the OLA on airport authorities. This determination requires a more thorough analysis of Parliament's intention.

A. Incongruous results

[126] A consideration of the consequences of an interpretation helps courts determine the actual meaning intended by Parliament. Accordingly, "[s]ince it may be presumed that the legislature does not intend unjust or inequitable results to flow from its enactments, judicial interpretations should be adopted which avoid [absurd] results": *Ontario v. Canadian Pacific Ltd.*, [1995] 2 SCR 1031 at para. 65.

[127] In this case, the interpretation that subsection 4(1) imposes head office obligations creates incongruous results if it is applied to the airport authorities of small airports that do not meet the significant demand criterion. For example, consider a regional airport that does not meet this test under either section 22 (e.g., a metropolitan area with fewer than 5,000 persons of the linguistic

minority population) or section 23 (e.g., fewer than 1,000,000 passengers at the airport per year): see paragraph 38 above summarizing the rules regarding the significant demand criterion.

[128] According to the interpretation of the Federal Court, with which my colleague agrees, the authority for such an airport would, as an authority subject to head office obligations, be required to publish all information on its site or social media feeds in both languages, regardless of the demand from the public or from the travelling public, whereas communications on the premises of the airport would not be subject to the same obligation of bilingualism: *Thibodeau v. St. John's Airport Authority*, 2022 FC 563 [FC Decision] at para. 42. Thus, an authority's online communications such as job offers, tender notices, and messages congratulating a local hockey team for a recent tournament win would have to be posted in both official languages, even in the absence of significant demand for one of them: FC Decision at paras. 52, 57, 59. However, the absence of significant demand would mean that the authority has no obligation to post bilingual signage on the premises of the airport.

[129] In my opinion, Parliament cannot have intended such an incongruous result. Subsection 4(1) of the *Airport Transfer Act* must therefore be interpreted in a way that avoids it.

B. Parliament's objectives

[130] There is no doubt that Parliament's intention in enacting subsection 4(1) of the *Airport Transfer Act* was to ensure that airport authorities continue to provide bilingual services to the public in airports: *Senate Debates*, 34-3, No. 1 (5 December 1991) at 711 (Hon. Jean-Maurice

Simard); *House of Commons Debates*, 34-2, No. 11 (7 November 1990) at 15263 (Hon. Doug Lewis, Minister of Transport); Senate, Standing Committee on Transport and Communications, Bill C-15 (*Airport Transfer (Miscellaneous Matters) Act*), *Proceedings*, 34-3, No. 4 (27 November 1991) at 20–23 (Hon. Shirley Martin, Minister of State (Transport)); House of Commons, Legislative Committee on Bill C-85, *Minutes of Proceedings and Evidence*, 34-2, No. 1 (4 March 1991) at 12 (Hon. Doug Lewis, minister of Transport). Interpreting subsection 4(1) as not imposing head office obligations on airport authorities in no way affects the right of the public to bilingual communications and services in airports inasmuch as there is a significant demand for these services and communications.

[131] Moreover, in interpreting a statute, one must avoid focusing on only one objective while overlooking others: *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67 at para. 60. This is so because "the primary goals of legislation are almost never pursued single-mindedly or whole-heartedly; various secondary principles and policies are inevitably included in a way that qualifies or modifies the pursuit of the primary goals": Ruth Sullivan, *The Construction of Statutes*, 6th ed (LexisNexis Canada, 2014) at 271 cited in *R. v. Rafilovich*, 2019 SCC 51 at para. 30. In this case, the consideration of all of Parliament's goals or objectives in enacting the *Airport Transfer Act*, and subsection 4(1) of that statute, leads to the conclusion that Parliament did not intend to impose head office obligations on airport authorities. Rather, Parliament wished to promote the financial viability of airport authorities and impose language obligations on them that were adapted to their realities.

(1) To promote financial viability

[132] One of the objectives sought by the *Airport Transfer Act* was for airport authorities to be financially viable and independent: *Canada 3000* at para. 38. The government pursued this objective so that:

A. airport authorities could pay rent to the government, thus reducing the public debt and subsidizing non-privatized non-profit airports : Senate, Standing Committee on Transport and Communications, Bill C-15, *Proceedings*, 34-3, No. 3 (21 November 1991) at 8–9 (Mr. Farquhar, Deputy Executive Director, Airport Transfer Task Force, Transport Canada), No. 4 (27 November 1991) at 12 (Mr. Farquhar), and 15 (Mr. Farquhar); House of Commons, *Legislative Committee on Bill C-85, Minutes of Proceedings and Evidence*, 34-2, No. 1 (4 March 1991) at 35 (Mr. Barbeau, Department of Transport, Assistant Deputy Minister, Airport Group); *House of Commons Debates*, 34-2, No. 11 (19 November 1990) at 15426 (Mr. Comuzzi, M.P for Thunder Bay-Nipigon);

B. airport authorities could make capital investments: Senate, Standing Committee on Transport and Communications, Bill C-15, *Proceedings*,34-3, No. 3 (21 November 1991) at 12 (Mr. Auger, President and Chief Executive Officer, Aéroports de Montréal); House of Commons, Legislative Committee on Bill C-85, *Minutes of Proceedings and Evidence*, 34-2, No. 2 (5 March 1991) at 39 (Mr. Johnson, Chairman, Vancouver International Airport Authority); and so that

C. the financial viability of transferred airports would be profitable to their community: *House of Commons Debates*, 34-2, No. 11 (7 November 1990) at 15262–15263 (Hon. Doug Lewis, Minister of Transport), (19 November 1990) at 15412 (Mr. Reid, M.P. for St. John’s-East), 15424 (Mr. Comuzzi, M.P. for Thunder

Bay-Nipigon); Senate, Standing Committee on Transport and Communications, Bill C-15, *Proceedings*, 34-3, No. 3 (21 November 1991) at 18 (Hon. Finlay MacDonald, Chair), No. 4 (27 November 1991) at 13 (Hon. Shirley Martin, Minister of State (Transport)); *Senate Debates*, 34-3, No. 1 (13 June 1991) at 188, 190 (Hon. Normand Grimard).

(2) To limit the administrative burden

[133] At the same time, the government wanted to limit the administrative burden on airport authorities, knowing that such a burden is costly and that these authorities are private non-profit corporations that have to compete with private airport authorities not subject to the OLA: House of Commons, Legislative Committee on Bill C-85, *Minutes of Proceedings and Evidence*, 34-2, No. 2 (5 March 1991) at 41 (Messrs. Earle, Chairman of the Board, Aéroports de Montréal; Sobeski, M.P. for Cambridge; Auger; President and Chief Executive Officer, Aéroports de Montréal; and Johnson, Chairman, Vancouver International Airport Authority), No. 3 (7 March 1991) at 24 (Mr. Belsher, M.P. for Fraser Valley-East), No. 5 (13 March 1991) at 16 (Mr. Langlois, M.P. for Manicouagan); *Senate Debates*, 34-3, No. 1 (13 June 1991) at 190–191 (Hon. Normand Grimard), (4 December 1991) at 682–683 (Hon. Normand Grimard), No. 2 (18 March 1992) at 1088 (Hon. Normand Grimard); Senate, Standing Committee on Transport and Communications, Bill C-15, *Proceedings*, 34-3, No. 3 (21 November 1991) at 11–12, 38 (Mr. Auger), No. 4 (27 November 1991) at 9–10 (Hon. Shirley Martin, Minister of State (Transport)).

(3) To not impose the OLA in its entirety

[134] To achieve the objectives set out above, Parliament chose not to impose all the OLA obligations on airport authorities, despite criticisms made at the time: *Senate Debates*, 34-3, No. 1 (13 June 1991) at 190–191 (Hon. Normand Grimard), (4 December 1991) at 683 (Hon. Normand Grimard), No. 2 (18 mars 1992) at 1088–1089 (Hon. Normand Grimard); Senate, Standing Committee on Transport and Communications, Bill C-15, *Proceedings*, 34-3, No. 4 (27 November 1991) at 9 (Hon. Shirley Martin, Minister of State (Transport)); see the following criticisms: Senate, Standing Committee on Transport and Communications, Bill C-15, *Proceedings*, 34-3, No. 4 (27 November 1991) at 19–22, 26 (Hon. Gildas Molgat), 22–23 (Hon. Keith Davey), 23 (Hon. Peter Stollery), 28 (Hon. Eymard Corbin); *House of Commons Debates*, 34-2, No. 11 (7 November 1990) at 15270–71 (Mr. Marchi, M.P. for York-West), (19 November 1990) at 15430 (Ms. Catterall, M.P. for Ottawa-West); *House of Commons Debates*, 34-3, No. 1 (3 June 1991) at 951 (Mr. Angus, M.P. for Thunder Bay-Atikokan), 953 (Mr. Allmand, M.P. for Notre-Dame-de-Grâce), 959 (Mr. Keyes, M.P. for Hamilton West), 993 (Mr. Kilger, M.P. for Stormont-Dundas); *Senate Debates*, 34-3, No. 1 (9 December 1991) at 724 (Hon. Eymard Corbin).

[135] Parliament also refused to acquiesce to the demand of the Commissioner of Official Languages to apply the OLA in its entirety to airport authorities, as had been done for Air Canada, because "[Air Canada] is a unique national entity, while airport authorities are multiple local entities": *Senate Debates*, 34-3, No. 1 (4 December 1991) at 682, 684 (Hon. Normand Grimard); House of Commons, Legislative Committee on Bill C-85, *Minutes of Proceedings and Evidence* 34-2, No. 3 (7 March 1991) at 6 (Mr. D'Iberville Fortier, Commissioner of Official Languages); see also Senate, Standing Committee on Transport and Communications, Bill C-15,

Proceedings, 34-3, No. 4 (27 November 1991) at 19–20 (Hon. Shirley Martin, Minister of State (Transport)), No. 3 (21 November 1991) at 50–51 (Hon. Normand Grimard). This reasoning, applied in the head office context, sheds some light in this case. Like Air Canada, Transport Canada, which used to operate the airports that have been transferred and is subject to head office obligations, is a unique national entity. In contrast, airport authorities are not unique and do not have national range. It would therefore be contrary to Parliament's intention to find that subsection 4(1) imposes head office obligations on them.

(4) To not impose head office obligations

[136] Furthermore, even if the imposition of the head office obligations on airport authorities was not explicitly discussed, the debates surrounding the enactment of the *Airport Transfer Act* suggest that the Members of Parliament and airport authority representatives understood that subsection 4(1) did not impose these obligations. For example, when asked about how airport authorities would ensure they were financially viable, the Director of the Edmonton Regional Airports Authority answered that viability would result from the fact that the authority would not have to funnel "an awful lot of money … back to support the head office": House of Commons, Legislative Committee on Bill C-85, *Minutes of Proceedings and Evidence*, 34-2, No. 2 (5 March 1991) at 20 (Mr. Hansen). Similarly, during the debates, the Opposition House Leader stated that "the central administrative office will be operating in one language because it is excluded by the act. … [I]t is not subjected in the same manner to the Official Languages Act": *House of Commons Debates*, 34-2, No. 11 (7 November 1990) at 15281 (Mr. Gauthier, M.P. for Ottawa-Vanier).

(5) Conclusion on the purpose of the Act

[137] Adopting an interpretation that avoids incongruous results, and considering Parliament's objectives in enacting the *Airport Transfer Act* and subsection 4(1) of that Act, only one conclusion is possible: this provision does not impose head office obligations on airport authorities.

IV. Comment on the interpretation of section 23 of the OLA

[138] Before concluding, I would like to add a comment on the interpretation of section 23 of the OLA. This comment does not change the conclusion that section 23 was breached in this case, but it responds to a concern raised by one of the interveners, the Canadian Airports Council.

[139] Like my colleague, I accept the interpretation adopted by the Federal Court that a service or communication to the travelling public within the meaning of section 23 is one where the "recipients or beneficiaries of the service or communication are all or mainly members of the travelling public": FC Decision at paras. 49, 52 and paragraphs 68-69 above. That does not mean, however, that online communications on a website or on social media feeds meet this criterion by merely being "directed at an audience that includes the travelling public", as the Federal Court suggests: FC Decision at para. 50. This passage confuses the interpretation of section 23 in that it contradicts the "all or mainly" criterion, and eliminates the distinction between the travelling public and the general public. Indeed, practically all the content an airport authority posts online will be seen by an audience that includes the travelling public. For

example, job offers, advertising, and messages to the local community – such as congratulations to the winning hockey team – that an airport authority might post online are visible to all. Although this audience includes the travelling public, that does not make these posts communications intended for or benefiting all or mainly members of the travelling public.

V. Conclusions and proposed disposition

[140] For these reasons, I would find that St. John's International Airport Authority did not breach section 22 of the OLA because it does not bear head office obligations and because the significant demand criterion is not met for the purposes of section 22. Given my agreement with my colleague on the other issues, I would allow this appeal in part. Thus, I would overturn the Federal Court decision in respect of the breach of section 22 and uphold the rest of the judgment. And finally, I would not order costs, given the mixed outcome.

"Nathalie Goyette"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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DISSENTING REASONS BY:	GOYETTE J.A.
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