Federal Court  Cour fédérale

Ottawa, July 3, 2019 – A decision was issued today by the Honourable Peter Annis of the Federal Court in file T-759-15:

IN THE MATTER OF André Dionne v. Office of the Superintendent of Financial Institutions et al

Summary: The Federal Court was called upon to resolve two issues regarding language of work rights in federal institutions under the *Official Languages Act* [OLA] where bilingual employees work with unilingual employees.

The first relates to the definition of service providers under section 36(1)(a)(i). The second question concerns the interpretation of sections 91 and 36(2) as to the rights of bilingual employees in prescribed [bilingual] regions to use their language of choice in carrying out their duties with co-workers, including those located in non-prescribed [unilingual] regions, and the linguistic staffing consequences that result from the exercise of those rights.

The Federal Court rejected the argument that the Applicant and his specialist co-workers were in a service relationship pursuant to section 36(1)(a)(i), including that the specialists provided professional development and training services to the Applicant. Otherwise, the specialists would be required to communicate with the Applicant in the language of his choice, thereby requiring the bilingual re-designation of the specialist positions in Toronto. The Court found that the Applicant and his specialist co-workers were in a "team" relationship, the characteristics of which do not describe a service provider. The Court also concluded that their relationship was not a centrally provided service as this term is used in section 36(1)(a)(i). A centrally provided service requires a formal decision of the senior management team of the federal institution, or its delegate to establish the service.

The Applicant alternatively claimed that the Office of the Superintendent of Financial Institutions [OSFI] was required to staff the positions of his specialist co-workers with bilingual employees located in Toronto, a unilingual region, to enable him to use the language of his choice pursuant to section 36(2). The Court rejected the Applicant's submission. It concluded that the merit principle under section 91 with respect to the objective functional requirements of a position has priority over bilingual employees' rights under section 36(2) for the staffing of positions of co-workers of bilingual employees. Furthermore, the Court interpreted section 36(2) as requiring some degree of linguistic accommodation of unilingual co-workers by bilingual employees.

The Court declared that the overarching object of section 36(2) is to ensure that linguistic work environments in federal institutions are workable, in a pragmatic manner such that employees of both language groups are comfortable in the use of their language of choice. Inasmuch as the Applicant did not provide evidence regarding his linguistic work environment in Montréal, there was an absence of evidence upon which the Court could rule whether the OSFI had provided a work environment that complied with section 36(2).

Finally, the Court concluded that in the absence of any collateral bilingual staffing requirement of positions of co-workers arising from section 36(2), bilingual employees in bilingual regions are required to communicate in the language of unilingual co-workers situated in unilingual regions. Communications emanating from a bilingual region not in the language of work of a unilingual region would require translation in order to be shared and utilized in unilingual workplaces. It would therefore be unreasonable and impracticable not to require bilingual co-workers to communicate in the language of unilingual co-workers to avoid this unnecessary step.

The Application was therefore dismissed.

A copy of the decision can be obtained via the Web site of the Federal Court: https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/417735/index.do