



Ottawa, January 28, 2022 – Today, the Federal Court of Appeal published the judgment and reasons for judgment in dockets A-182-18 and A-186-18: *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, 2022 FCA 14. The judgment disposes of two appeals from the decision rendered by the Federal Court on May 23, 2018 (2018 FC 530). Chief Justice Noël and Justices de Montigny and Rivoalen are the authors of the Court's unanimous reasons. This is an unofficial summary of the Court's reasons for judgment.

Background

The case involves the application of Part IV and Part VII of the *Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.) (OLA) in the context of the signing and implementation of an agreement pertaining to the devolution of employment assistance services by the federal government to British Columbia (B.C.) in 2008 (the Agreement). Four complaints underlie the application for a remedy filed by the Fédération des francophones de la Colombie-Britannique (FFCB). In its application, the FFCB alleges that B.C. failed to comply with Part IV in the context of the employment assistance services that it provides under the Agreement and that the federal institutions (Employment and Social Development Canada and the Canada Employment Insurance Commission) failed to fulfill their duty to enhance the vitality of B.C.'s French linguistic minority community under Part VII. The Federal Court dismissed the application on the basis of both Part IV and Part VII.

Decision

The Federal Court of Appeal allows in part the appeal filed by the FFCB and the Commissioner of Official Languages. The Court, relying on well-established caselaw, found that Part IV of the OLA (Communications with and Services to the Public in both official languages) does not apply to B.C., but that the federal institutions did not fulfil their duty under Part VII of the OLA (duty to take positive measures to enhance the vitality of official language minority communities). Specifically, the federal institutions signed the Agreement without taking into account the negative impact it was likely to have on B.C.'s French linguistic minority community and without providing for a right to intervene in the event that the Agreement was implemented to the detriment of this community.

According to the evidence, the Agreement allowed B.C. to dismantle the employment assistance network that had been set up by the federal institutions with the participation of Francophone organizations. The Court found that this network established for the benefit of B.C.'s French linguistic minority community was, for this community, an important socialization tool that created amongst its members links that are essential to its survival.

Remedy

Turning to the remedy, the Court, after noting that the Agreement in its current form does not allow the federal institutions to fulfill their ongoing obligation towards B.C.'s French linguistic minority community, orders as a first step that the Agreement be either renegotiated or rescinded. As a second step, the federal institutions are ordered to restore, to the extent possible, the employment assistance network that they had set up with the participation of the Francophone organizations as soon as they are able to do so, within the framework of a modified Agreement or following its termination.

Next steps

The Federal Court will remain seized of the application in order to deal with any issue surrounding the execution of the remedy granted by the Federal Court of Appeal.

An application for leave to appeal can be filed with the Supreme Court of Canada within 60 days.

Relevant documents

Reasons for judgment rendered by the Court that allowed the appeal:

<https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/520317/index.do> (ENG)

<https://decisions.fca-caf.gc.ca/fca-caf/decisions/fr/item/520317/index.do> (FR)

The Federal Court's reasons for judgment:

<https://www.canlii.org/en/ca/fct/doc/2018/2018fc530/2018fc530.pdf> (ENG)

<https://www.canlii.org/fr/ca/cfpi/doc/2018/2018cf530/2018cf530.pdf> (FR)