

Federal Court



Cour fédérale

Date: 20260602

Docket: T-2936-24

Citation: 2026 FC 706

[ENGLISH TRANSLATION]

Ottawa, Ontario, June 2, 2026

PRESENT: Deputy Judge Denise A. LeBlanc

BETWEEN:

**DROITS COLLECTIFS QUÉBEC AND
ETIENNE-ALEXIS BOUCHER**

Applicants

and

**OFFICE OF THE REGISTRAR OF THE
SUPREME COURT OF CANADA**

Respondent

REASONS AND JUDGMENT

I. Overview

[1] The applicants, Droits collectifs Québec [DCQ] and Etienne-Alexis Boucher [Mr. Boucher], have applied for a remedy against the respondent, the Office of the Registrar of the Supreme Court of Canada [ORSCC], under section 77 of the *Official Languages Act*, RSC 1985,

c 31 (4th Supp) [OLA]. Their application raises the issue of whether the ORSCC could make available on the website of the Supreme Court of Canada [SCC] historical decisions rendered by the SCC between 1877 and 1970 [historical decisions]—that is, before the OLA came into force—in their original language only.

[2] The applicants argue that their application concerns an administrative act by the ORSCC, which is a federal institution, namely, transcribing the English-only texts of decisions without a French version, decades after they were rendered, and posting them on its website. In their view, this act, which occurred after the OLA came into force, is separate from and independent of the judicial process associated with hearing cases and drafting judgments. They submit that a judicial decision is original subject matter separate from its subsequent [TRANSLATION] “retranscription” and distribution online by a federal entity to communicate its content to the Canadian public.

[3] According to the applicants, the subsequent transcription and posting of SCC decisions by the ORSCC on its website constitute communication with or services to the public within the meaning of Part IV of the OLA (“Communications with and Services to the Public”).

[4] The ORSCC submits that decisions of the federal courts fall exclusively within the scope of Part III of the OLA (“Administration of Justice”), and in particular section 20, and that the primary rules of statutory interpretation support its position. Alternatively, it argues that, even if posting decisions online constituted “communication with” or “services to” the public within the meaning of Part IV, any translation obligation would apply only to the bilingual interface of the SCC’s website, not to the text of the historical decisions as such.

[5] The applicants initially sought the following orders: (1) a declaratory order that the ORSCC is in breach of its obligations under the OLA; (2) a letter of apology posted on the SCC's website for a period of five years; (3) the translation of the pre-1970 decisions within three years; and (4) damages in the amount of \$1 million. Before they began their oral submissions, the applicants informed the Court of amendments to the orders sought. First, they confirmed that they were abandoning their request for a letter of apology. They further specified that the time frame for the translation of the pre-1970 decisions was increased from three years to ten. Finally, they indicated that the parties were waiving costs, as confirmed by the ORSCC.

[6] For the reasons provided, I conclude that the SCC's historical decisions constitute neither "services to" nor "communications with" the public subject to the translation obligation under the general provisions of Part IV of the OLA. I also conclude that judicial decisions fall exclusively within the scope of Part III of the OLA, which relates to the administration of justice. The applicants' application for a remedy is therefore dismissed and, in accordance with the parties' agreement, no costs are awarded.

II. Background

A. *The parties*

[7] DCQ is a non-profit organization duly constituted under the *Companies Act*, CQLR c C-38, with the mission to help defend collective rights in Quebec, including the language and constitutional rights of its residents.

[8] Mr. Boucher is a Canadian citizen and a Francophone Quebecer. He is a member and Executive Director of DCQ. He has a degree in political science and worked as a political attaché before being elected to the National Assembly of Quebec. He currently manages non-profit organizations. His duties include reviewing court decisions to comment on them and assess their impact. He writes and publishes open letters, takes part in interviews, and organizes events and information campaigns on political and legal issues affecting civil society and having an impact on collective, language, and constitutional rights.

[9] In his affidavit, Mr. Boucher stated that he needs to consult older decisions to analyze the development of the law, identify trends, and criticize certain policies. He noted that landmark decisions can be determinative in explaining the evolution of the law and contextualizing prior law to better understand its current state. He contends that pre-1970 decisions can influence the interpretation and evolution of the law, as every decision contributes to the development of the legal framework.

[10] The ORSCC is an integral component of the SCC. It provides all of the services and support the Court needs to process, hear and resolve matters and acts as intermediary between litigants and the SCC.

[11] Under sections 12 to 21 of the *Supreme Court Act*, RSC 1985, c S-26 [SCA], the Registrar—under whom the ORSCC operates—superintends the officers, clerks and employees appointed to the SCC, manages and controls the SCC's library, publishes the Supreme Court

Reports [SCR], and makes available the decisions of the Court, all subject to the direction of the Chief Justice.

[12] Under sections 74 and 75 of the *Judges Act*, RSC 1985, c J-1 [JA], the Registrar is deemed to be the deputy head of the portion of the federal public administration for the SCC. In this capacity, he or she is responsible for managing and administering the ORSCC's financial resources and is accountable to the Minister of Justice, in accordance with the *Financial Administration Act*, RSC 1985, c F-11 [FAA].

[13] According to the applicants, the ORSCC is a federal institution separate from the judiciary. They submit that it is an administrative entity established under the SCA, acting under the direction of the Chief Justice but constituting an administrative arm of the federal public service, since it serves as intermediary between the SCC, the parties, the public, and the government.

B. The SCC, its decisions and its website

[14] The SCC was created in 1875 under *An Act to establish a Supreme Court, and a Court of Exchequer, for the Dominion of Canada*, SC 1875, c 11. It has been Canada's highest appellate court since criminal appeals to the Judicial Committee of the Privy Council were abolished in 1933, followed by civil appeals in 1949, and is the only bilingual and bijural apex court in the world. The SCC is a "federal institution" within the meaning of subsection 3(1) of the OLA, which expressly refers to "any federal court".

[15] Since 1877, the SCC's decisions have been published in the SCR. From 1877 to 1969, some 6,000 decisions were rendered in one official language or the other, usually corresponding to the language of the hearing or the language of choice of the judge or judges writing the reasons. At the time those decisions were issued, the SCC was not required to make them available in both official languages; this obligation has only existed since the OLA came into force on September 7, 1969.

[16] Since that date, the SCC has made all its decisions available simultaneously in both official languages and, since 1983, decisions have been published on the day they are issued, absent an exception provided for by law. Because translations are approved by the judges writing the reasons, both the English and French versions of reasons are official and they have equal legal force.

[17] In 1994, the Court began collaborating with Lexum, a research laboratory at the University of Montréal, to make its decisions available to the public free of charge on the Internet and to improve their distribution and reach.

[18] From 1994 to 2019, SCC decisions were hosted on Lexum's website. Post-1970 judgments were made available online first, gradually followed by pre-1970 judgments.

[19] In September 2019, the SCC began publishing its decisions, including historical decisions, on its own website. This is the context for the complaint the applicants filed with the Office of the Commissioner of Official Languages [OCOL] against the ORSCC, relating to the posting online

of some 6,000 decisions rendered by the SCC between 1877 and 1970, as will be clarified further on in these reasons.

C. The complaints to the OCOL

[20] Although the applicants' complaint to the OCOL was filed in 2024, an initial complaint on the same subject matter had been filed in 2019. Both investigations led by the OCOL are relevant to the context of these reasons.

(1) The September 2019 complaint – investigation No. 2019-0706-EI

[21] In September 2019, the OCOL informed the ORSCC that it had received a complaint under the OLA regarding the posting online of historical decisions of the SCC.

[22] In October 2019, the OCOL's Director of Investigations sent a notice of intention to investigate to the Registrar of the Court. On the same day, the investigator sent an email to the ORSCC with six questions, asking for feedback. The Registrar's affidavit details the answers provided by the ORSCC on January 31, 2020. The ORSCC cooperated with the investigation and maintained that the complaint was unfounded and that it had breached no obligations under the OLA.

[23] In its preliminary report of June 2020, the OCOL concluded that the complaint was founded. In September 2020, the ORSCC made additional submissions, relying in particular on the principle that specific provisions of an act take precedence over general provisions dealing

with the same subject matter. The ORSCC also noted that the report contained little in the way of legal interpretation or analysis, barely relied on settled law and case law, and provided only limited explanations in support of several key legal conclusions.

[24] Despite these submissions, the OCOL maintained that the complaint was founded in its final report of October 20, 2021:

[TRANSLATION]

I conclude that all the decisions that the Court publishes on its website should be made available in both official languages, because this online offering constitutes communication with the public by a federal institution. In light of the preceding, the complaint is founded under Part IV of the Act. (page 5)

[25] As a result of this conclusion, the OCOL recommended as follows:

[TRANSLATION]

... ensure that, within 18 months following the date of the final investigation report, decisions published on the SCC's website are made available in both official languages. (page 6)

[26] Therefore, according to the OCOL, when the SCC chooses to post its historical decisions online, it is required to make them available in both official languages, even if that obligation did not exist before the OLA came into force.

[27] Following the final report, the ORSCC contacted the OCOL on April 14, 2023. While it reiterated that the complaint was unfounded and disagreed with the view that posting historical decisions online constituted a “service to” or “communication with” the public within the meaning of Part IV of the OLA, the ORSCC presented an in-depth review of the various options considered for implementing the recommendation in the final report.

[28] The first option analyzed was fully human translation. The 6,000 decisions would amount to about 30 million words, which would require 100 translators working full-time for one year at an estimated initial cost of \$10 million, not including management, preparation for publication, and quality control. Moreover, those translations could not be considered “official”, since the original authors are deceased. In her additional affidavit of September 5, 2025, the Registrar stated that the costs of this option, initially valued at \$10 million in 2023, had to be revised upwards, and now ranged between \$62.6 million and \$68.9 million.

[29] The second option examined was translation using automated tools. Although machine translation is quick and inexpensive, it is fraught with major quality issues, inconsistencies, and grammatical and terminological errors. Also, like the first option, it would not provide “official” versions. Its implementation would significantly undermine the reputation of the SCC and the public’s confidence in the institution, negatively impacting the administration of justice in general.

[30] The third option consisted in having translators translate only decisions with major precedential value. However, that would still require considerable resources and would result in the translation of only a portion of the historical decisions and no “official” versions. It was therefore unlikely to meet the OCOL’s recommendation.

[31] In relation to the latter option, on July 29, 2025, the ORSCC announced that, on the occasion of the SCC’s 150th anniversary, it had begun translating some of the most significant decisions rendered prior to the coming into force of the OLA. To this end, an independent

committee composed of seven experts from various legal backgrounds—including two former Justices of the SCC—selected 24 significant decisions.

[32] The estimated costs of translation and research associated with this initiative range between \$240,156 and \$264,180.

[33] The final option was to simply remove the historical decisions from the SCC's website. Technically, this solution was consistent with the recommendation of the OCOL, and the evidence shows that it had even been suggested by its representatives. However, the SCC did not consider it desirable.

[34] In its preliminary follow-up report on the recommendations, issued on October 24, 2023, the OCOL noted the following:

[TRANSLATION]

However, it bears repeating to the SCC that Part IV of the Act makes no exceptions for historical information posted. The Commissioner wishes to reiterate the importance of ensuring that all content accessible on the SCC's website is available in both official languages and invites the SCC to take steps with regard to the pre-1970 decisions. (pages 2–3)

[35] In its final follow-up report dated December 21, 2023, the OCOL repeated the conclusions of the preliminary report, observing that, although it had considered various solutions, the Court had taken no concrete steps to make the historical decisions available in both English and French. However, it highlighted the Court's efforts in trying to implement the recommendation. It should be noted that, at the time, the OCOL was not yet aware of the announcement of July 29, 2025, regarding the translation of the 24 significant decisions.

(2) The October 2024 complaint – investigation No. 2024-0029-EI

[36] On October 29, 2024, the applicant Mr. Boucher, with the support of DCQ, filed a complaint with the OCOL against the ORSCC, alleging that not all the historical decisions posted on the SCC's website were translated into French.

[37] Despite the ORSCC's arguments, the OCOL issued a preliminary report on June 4, 2024, reaffirming that the posting of historical decisions on the SCC's website falls under Part IV of the OLA. The OCOL recommended that all said decisions be translated into English or French within 18 months.

[38] The ORSCC provided no additional written submissions and informed the OCOL by phone that it did not intend to respond on the merits, maintaining that the OLA did not apply to historical decisions.

[39] On September 16, 2024, the OCOL concluded its investigation with a final report, upholding its recommendation of June 4, 2024, to translate all decisions posted on the SCC's website into English or French within 18 months.

[40] I note that in its preliminary report (page 3, section 5.2) and final report (page 3, section 5.2), the OCOL indicated that the historical decisions were posted online in 1994, when in reality, they only began to be posted on the SCC's website in 2019.

(3) Filing of the applicants' application and removal of the decisions from the website

[41] Following the 2024 complaint and the OCOL's report, the applicants applied for a remedy under section 77 of the OLA.

[42] On November 8, 2024, a few days after the application was filed, the ORSCC decided to remove all historical decisions from the SCC's website and issued a news release to that effect.

[43] In her additional affidavit of September 5, 2025, the Registrar of the SCC clarified that removing the historical decisions did not mean that they had been destroyed; they were simply de-indexed, or removed, from the website. She stated that this step had been taken as a precaution, without any admission as to the merits of the OCOL's or the applicants' position, to prevent the ORSCC from being criticized for tolerating a potential breach of its obligations under the OLA.

[44] To put the facts in chronological context, it should be recalled that the SCC had announced the translation of 24 significant decisions selected by the independent committee on July 29, 2025.

III. The parties' positions

[45] The applicants' application is based on Part IV of the OLA, primarily sections 21 and 22, which relate to communications and services in both official languages. They argue that posting the SCC's decisions online constitutes communication or service that must be provided in both languages.

[46] They acknowledge that the interface of the SCC's website is fully bilingual, including menus, information pages, and search tools and functions. They do not challenge the text of the decisions as they appear in the Court's archives or in the SCR.

[47] Rather, their application relates to the administrative act, occurring decades after the decisions were rendered, of reproducing the text on a different medium—specifically in digital format—in order to communicate it to the public. The applicants contend that the online text constitutes different subject matter from the paper version: the medium has been transformed, amounting to a republication resulting in a subsequent and altered version. They argue that posting the decisions online involved the addition of hyperlinks and references to other files and other technological works. In the applicants' view, even if the content of the decisions remains the same, the medium is different and the texts were made available at a different time.

[48] The applicants concede that, if the historical decisions had remained solely in the Court's archives, their complaint and application for a remedy would be without merit.

[49] The ORSCC submits that the applicants' position is fundamentally flawed, as it equates SCC decisions with "services to" or "communications with" the public subject to a translation obligation under the general provisions of Part IV of the OLA. In its view, judicial decisions fall exclusively within the scope of Part III of the OLA, which relates to the administration of justice, and more specifically section 20.

[50] The ORSCC asserts that its position is consistent with the accepted rules of statutory interpretation: (1) specific provisions take precedence over general provisions; (2) a law must be interpreted coherently and holistically; and (3) a law is presumed not to have retroactive effect, absent a clear indication of a contrary intention from Parliament.

[51] Alternatively, the ORSCC maintains that, even if posting historical decisions online constituted “communication with” or “services to” the public within the meaning of Part IV of the OLA, the translation obligation should apply only to the interface of the SCC’s website, which is already fully bilingual, and not to the text of the historical decisions themselves.

IV. Issues

[52] The issues before the Court are the following:

1. The scope and application of the obligations under Parts III and IV of the OLA relating to the ORSCC’s making available the pre-1970 decisions on the SCC’s website.
2. The impact on this application of removing the historical decisions from the SCC’s website.
3. The appropriate remedy for the applicants if the ORSCC breached its obligations under the OLA.

V. Analysis

[53] The statutory provisions cited in these reasons are set out in Appendix A.

D. Section 77 of the OLA – nature of the application

[54] As the applicants' complaint to the OCOL is based on an obligation under Part IV of the OLA, they are entitled to apply for a remedy under Part X, and more specifically under section 77, to argue the subject matter of the complaint. It should be noted that section 77 does not apply to all provisions of the OLA; Parliament has expressly excluded from the scope of that section certain instruments, subject matters and provisions of the OLA, including all of Part III.

[55] The nature of the remedy provided for in section 77 has been clarified by uncontroverted case law. Although this application is governed procedurally by the rules applicable to applications for judicial review, namely, Rule 300(b) of the *Federal Courts Rules*, SOR/98-106 [Rules], the Federal Court of Appeal stated in *Canadian Food Inspection Agency v Forum des Maires de la Péninsule Acadienne*, [2004] 4 FCR 276 [*Forum des Maires*] that it is "instead similar to an action" (at para 15). In that case, the Federal Court of Appeal held that:

[19] There are some important implications to the fact that the remedy under Part X is basically similar to an action.

[20] For example, the judge hears the matter *de novo* and is not limited to the evidence provided during the Commissioner's investigation. The remedy is constantly shifting in the sense that even if the merit of the complaint is determined as it existed at the time of the alleged breach, the remedy, if there is one that is appropriate and just, must be adapted to the circumstances that prevail at the time when the matter is adjudicated. The remedy will vary according to whether or not the breach continues.

[21] Moreover, the Commissioner's reports are admissible in evidence, but they are not binding on the judge and may be contradicted like any other evidence. The explanation is obvious. The Commissioner conducts her inquiry in secret and her conclusions may be based on facts that the parties concerned by

the complaint will not necessarily have been able to verify. Furthermore, for reasons that I will soon give, the purpose of the court remedy is more limited than the purpose of the Commissioner's inquiry and it may be that the Commissioner takes into account some considerations that the judge may not consider. ...

[Emphasis added.]

[56] Thus, the matter is heard *de novo* and this Court is not limited to the evidence gathered as part of the OCOL's investigation. The goal of an application under Part X of the OLA is to verify the merits of a complaint filed with the OCOL, not those of the final report, and, where applicable, to determine the appropriate and just remedy based on the circumstances that prevail at the time when the matter is adjudicated.

[57] Contrary to the standard applicable on judicial review, this Court gives no particular deference to the OCOL's findings, either in fact or in law. OCOL investigation reports are evidence, but they are not binding on the Court and may be contradicted like any other evidence.

[58] Ultimately, in any application brought under Part X of the OLA, the judge decides whether the federal institution has complied with the OLA after hearing and weighing the evidence and, where applicable, determines the remedy he or she considers appropriate and just in the circumstances.

E. *Statutory interpretation*

(1) Broad, liberal and purposive interpretation

[59] In their written and oral arguments, the applicants submitted that, since the matter involved language rights, a broad and liberal approach to interpreting the OLA should be adopted. They also maintained that there was no ambiguity regarding Part IV's application to the litigation, and that, even if there were any, their interpretation should prevail.

[60] The ORSCC replied that, contrary to the applicants' claims, there is ambiguity regarding the interpretation of Part IV of the OLA and its application to court decisions. In support of its argument, the ORSCC relied on a November 2016 report by a former Commissioner of Official Languages, Graham Fraser, in which he himself acknowledged this ambiguity. The report also made several recommendations:

In light of the foregoing, the issue of federal court obligations pursuant to Part IV of the *Official Languages Act* with respect to the language in which their decisions are posted on-line cannot be definitively resolved using the approach proposed by the Minister of Justice.

It is clear that the government decided not to opt for the judicial approach (i.e., the application for a reference to the Supreme Court of Canada) or the legislative approach (i.e., the tabling of a bill) to clarify the language obligations of federal courts.

Therefore, I recommend that Parliament send this report to one of the two standing committees on official languages to:

- thoroughly examine the issues raised regarding equal access to justice in both official languages; and
- recommend the legislative amendments that should be made to the *Official Languages Act* to clarify the language

obligations applicable to the language in which federal court decisions are posted on-line.

(Canada, Office of the Commissioner of Official Languages, *Report to Parliament of the Commissioner of Official Languages on the investigation into the Courts Administration Service under subsection 65(3) of the Official Languages Act*, SF31-129/2016E-PDF, November 2016 at p 7)

[61] The applicants relied on *R v Beaulac*, [1999] 1 SCR 768, and *Canada (Attorney General) v Viola (CA)*, [1991] 1 FC 373, to reiterate to the Court that the OLA must be given a broad and liberal interpretation consistent with its purpose, namely maintaining and enhancing the vitality of official language communities, and that it falls within the category of quasi-constitutional legislation, which must be interpreted so as to advance the policy objectives it pursues.

[62] The Court must interpret the OLA, on which there is not a great deal of case law. The issues are questions of law that go beyond the mere consideration of the OLA's purpose and the principle of a broad and liberal interpretation of language rights, with which all the parties agree.

[63] The principles of broad and liberal interpretation do not preclude the application of recognized methods of statutory interpretation. It is only where applying such a method does not help clearly discern the meaning of a statute, or where it leads to two potential interpretations, that a broader and more liberal interpretation—one that is consistent with the general purpose of the statute—will be the appropriate choice.

[64] In *Thibodeau v Greater Toronto Airports Authority*, 2024 FC 274, this Court noted that:

[30] ... Finally, the principle of a liberal and purposive interpretation of the OLA “translates into a residual presumption: if the application of the usual methods does not allow one to decide

between two possible interpretations of the Act, one must choose the interpretation that maximizes the scope of language rights. A similar presumption applies to the Charter. . . . Since the Act is intended to give effect to certain Charter rights, it is logical that the same presumption should apply” [citation omitted] (*Thibodeau v St. John’s International Airport Authority*, 2022 FC 563 [under appeal] [*St. John’s Airport*] at para 23).

[31] That said, and although the interpretation of the OLA, like that of the Charter, is liberal and generous, the purposive approach should not be confused with liberal interpretation; as the Supreme Court stated in *R v Grant*, 2009 SCC 32, [2009] 2 SCR 353 [*Grant*]:

While the twin principles of purposive and generous interpretation are related and sometimes conflated, they are not the same. The purpose of a right must always be the dominant concern in its interpretation; generosity of interpretation is subordinate to and constrained by that purpose. While a narrow approach risks impoverishing a *Charter* right, an overly generous approach risks expanding its protection beyond its intended purposes. In brief, we must construe the language [of the sections of the statute] in a generous way that furthers, without overshooting, its purpose. [References and citations omitted.] ...

[Emphasis added.]

[65] It is therefore appropriate to examine the provisions of Parts III and IV of the OLA in light of the commonly accepted methods of statutory interpretation: (1) specific provisions take precedence over general provisions; (2) a law must be interpreted coherently and holistically; and (3) a law is presumed not to have retroactive effect, absent a clear indication of a contrary intention from Parliament.

F. *Methods of statutory interpretation*

- (2) The specific provisions of a statute take precedence over its general provisions

[66] In *National Bank Life Insurance v Canada*, 2006 FCA 161, the Federal Court of Appeal reiterated that where a statute contains both specific and general provisions, the specific provisions take precedence and must prevail in statutory interpretation:

[9] One of the fundamental principles of legislative construction is that a statute or provision of a statute which deals specifically with a subject-matter must take priority over, and override, any general legislation or provision dealing with the same subject-matter. The rule is derived from the Latin maxim *generalia specialibus non derogant*. In her work entitled *Sullivan and Driedger on the Construction of Statutes*, 4th ed., Toronto, Butterworths, 2002, at p. 273, Prof. Sullivan states the following regarding this rule of construction:

When two provisions are in conflict and one of them deals specifically with the matter in question while the other is of more general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one. The specific prevails over the general; it does not matter which was enacted first.

[10] In *Vidéotron Ltée v. Industries Microlec*, [1992] 2 S.C.R. 1065, at page 1080, Gonthier J. observed that “[i]t is well settled that specific rules prevail over general rules”. In the case at bar, section 2 prevails over section 1 and the tax treatment of financial services relating to an insurance policy is governed by section 2.

[Emphasis added.] (See also Pierre-André Côté and Mathieu Devinat, *Interprétation des lois*, 5th ed, Éditions Thémis, 2021, para 1260 et seq.)

[67] The language of judicial decisions is governed by specific provisions in Part III of the OLA, entitled “Administration of Justice”. Section 20 establishes a specific regime for the language of any decision, order or judgment of a federal court and for their being “made available” (subsection 20(1)). Except as provided in subsection 20(2), SCC decisions are to be made available simultaneously in both official languages on the day they are issued. It should be noted that section 77 of the OLA does not provide for any remedy for a breach of Part III.

[68] Since 1970, the obligation to translate SCC decisions has arisen from Part III and not from Part IV, as Part IV does not directly address the language of judicial decisions. Under subsection 20(1) of Part III, any decision, order or judgment issued by any federal court is to be “made available simultaneously in both official languages”.

[69] It is therefore logical, coherent and consistent with the principle that the specific provisions of a statute take precedence over its more general provisions that the posting online of the SCC’s historical decisions, rendered between 1877 and 1970, falls within the scope of Part III of the OLA rather than within that of the general provisions of sections 21, 22 and 27 of Part IV, on which the applicants’ application is based.

[70] In my view, SCC decisions being “made available” constitutes neither a “service to” nor “communication with” the public within the meaning of sections 21, 22 and 27 of the OLA, as this issue is already specifically governed by section 20. However, I will address later on in these reasons the applicants’ arguments and the distinction they seek to establish between the act of

posting decisions online and the original text of those decisions as it appears in the Court’s archives or in the SCR.

(3) A law must be interpreted coherently and holistically

[71] In accordance with the principle of internal coherence, a statute’s provisions are presumed to be logically arranged to form a rational, internally consistent framework. Justice Martin, writing for the majority, noted the following in *Pepa v Canada (Citizenship and Immigration)*, 2025 SCC 21:

[107] Words take their colour from their surroundings (J. Willis, “Statute Interpretation in a Nutshell” (1938), 16 *Can. Bar Rev.* 1, at p. 6). In the world of statutory interpretation, there is a presumption “that the provisions of [a statute] are meant to work together . . . as parts of a functioning whole” (R. Sullivan, *The Construction of Statutes* (7th ed. 2022), at p. 323), which form together into a rational, internally consistent framework (*Heritage Capital Corp. v. Equitable Trust Co.*, 2016 SCC 19, [2016] 1 S.C.R. 306, at para. 28).

[Emphasis added.]

[72] In his reference work on statutory interpretation, Pierre-André Côté stated that:

[TRANSLATION]

... the interpreter of a statutory provision must read the entire statute and refrain from assigning meaning to words that conflicts with the rest of the text. In *Grey v. Pearson*, Lord Wensleydale stated what eventually became known as the “Golden Rule” of interpretation. It allows a departure from the ordinary meaning of words in order to reconcile the different parts of a statute...

[Emphasis added.] (Pierre-André Côté and Mathieu Devinat, *Interprétation des lois*, 5th ed, Éditions Thémis, 2021, para 1066.)

[73] According to the applicants, there is no ambiguity or inconsistency between Part III and Part IV of the OLA. They argue that there is nothing in the OLA to justify severing them or concluding that they cannot coexist harmoniously.

[74] To treat judgments as “services” or “communications” within the meaning of Part IV would conflict with subsection 20(2) of the Act, which allows certain decisions to be published first in one language and then in the other “at the earliest possible time”. By contrast, sections 21 and 22 provide no time frame for “communications” and “services”.

[75] Similarly, if the applicants’ interpretation were adopted, subsection 20(3) of the OLA—which provides that certain decisions may be rendered orally in only one language—would be inconsistent with section 27, which states that:

Wherever in this Part there is a duty in respect of communications and services in both official languages, the duty applies <u>in respect of oral and written communications and in respect of any documents or activities that relate to those communications or services.</u>	L’obligation que la présente partie impose en matière de communications et services dans les deux langues officielles à cet égard <u>vaut également, tant sur le plan de l’écrit que de l’oral, pour tout ce qui s’y rattache.</u>
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[Emphasis added.]

[76] The applicants’ application does not concern judgments rendered after 1970. However, adopting their interpretation would have the effect of subjecting judgments rendered before 1970 and made available to the public to an obligation more onerous than that applicable to judgments that came after. In the absence of a clear indication to that effect, such an intention cannot be ascribed to Parliament.

[77] In my view, the principle of internal statutory coherence reinforces the interpretation that section 20 of the OLA creates a comprehensive, coherent and exclusive regime for federal court judgments.

(4) The presumption against the retroactive application of legislation

[78] The applicants' argument that the ORSCC is required to translate historical decisions under the general provisions of Part IV of the OLA also runs counter to the presumption against the retroactive application of legislation. Although the applicants deny seeking such a result, adopting their position would retroactively impose a new statutory requirement on decisions rendered before the OLA came into force.

[79] In *Dell Computer Corp v Union des consommateurs*, 2007 SCC 34, Justice Deschamps, writing for the majority, explained that:

[117] Since there is nothing in Bill 48 that might lead to the conclusion that it applies retroactively, there is no reason to give it such a scope.

[118] Moreover, to interpret Bill 48 as having retroactive effect would be problematic. First, retroactive operation is exceptional: Côté, at pp. 114–15; R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002), at pp. 553–54. Where a law is ambiguous and admits of two possible interpretations, an interpretation according to which it does not have retroactive effect will be preferred: *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712, at pp. 742–45.

[Emphasis added.] (See also *Moreau v Air Canada*, 2025 FC 675 at paras 38–41.)

[80] It is a well-established rule that laws enacted by Parliament or a provincial legislature do not apply retroactively unless expressly stated otherwise. In the present case, neither the specific

provisions of Part III of the OLA nor the general provisions of Part IV rebut this presumption. There is nothing in the OLA to suggest that the obligation to translate SCC decisions under section 20 applies retroactively to historical decisions.

[81] On the contrary, the use of the words “simultaneously” and “at the earliest possible time” in subsections 20(1) and (2) makes it clear that those obligations cannot apply to decisions rendered between 1877 and 1970, when clearly they could not be made available “simultaneously” or “at the earliest possible time”. When the OLA came into force in 1970, some of those decisions had been rendered nearly a century earlier.

[82] The wording of the OLA imposes no obligation to translate previous or historical judgments, and no inference to the contrary can be drawn from it. Since the presumption against retroactive application has not been rebutted, I conclude that the language obligations set out in Part III apply only to decisions rendered after the OLA came into force in 1970.

G. Other aspects of the applicants’ position

- (5) “Reproductions”, “republications”, “retranscriptions”, and subsequently amended versions

[83] The applicants concede that, if the historical decisions had remained solely in the archives of the Court, their complaint and application for a remedy would have no merit. Their application is largely based on the posting of these decisions on the SCC’s website. The applicants characterize this as the [TRANSLATION] “reproduction”, “republishing” or “retranscription” of the texts

resulting in subsequent and amended versions, which, in their view, constitutes an act of “communication” and a “service” within the meaning of the OLA.

[84] I note that the applicants used these terms interchangeably in their oral submissions. Beyond those allegations, no evidence has been presented allowing for a conclusion that the texts posted on the website constitute an amended [TRANSLATION] “reproduction”, “republishing” or “retranscription” of the original texts.

[85] The applicants acknowledge that those decisions were rendered before the OLA came into force, and they do not challenge the presumption against the retroactive application of legislation. However, they contend that the text posted online—although identical to the paper version—constitutes a different medium and a new version made available.

[86] According to them, this is the point that poses the problem discussed in the OCOL reports: the fact that this [TRANSLATION] “retranscription” was done in one official language only while excluding the other breaches the obligation to communicate and provide services in both official languages. The applicants argue that no exception, exemption or statutory justification applies to those decisions under the OLA.

[87] The *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 [PIPEDA], and particularly Part II of that act, which relates to electronic documents, applies not only to personal information but also to the electronic documents themselves. Section 37 provides that, where a law requires that a document be retained for a specified period, the obligation may

be satisfied by the retention of the document in electronic format, provided that the electronic document is retained for the required period in the format in which it was made, sent or received, or in a format that does not change the information contained in the electronic document that was originally made, sent or received. With respect, I do not consider that the addition of hyperlinks for tracking purposes constitutes a change to the content of the document.

[88] Thus, as long as its contents are not changed, a document may be retained in electronic format. That means that the SCC's judgments can exist in that format. It therefore appears that transferring a document to a technological medium to make it available does not constitute an altered [TRANSLATION] "reproduction", "republishing" or "retranscription"; the electronic document remains identical to the original document before it was scanned. This conclusion is supported by comparable legislation in other provinces and territories, including the following: *Act to establish a legal framework for information technology*, CQLR, c C-1.1, sections 12, 17 and 20 (Quebec); *The Electronic Information and Documents Act, 2000*, SS 2000, c E-7.22, section 12 (Saskatchewan); *Electronic Transactions Act*, RSNB 2011, c 145, section 12 (New Brunswick); *Electronic Transactions Act*, SA 2001, c E-5.5, sections 17 and 21 (Alberta); *Electronic Transactions Act*, SBC 2001, c 10, section 9 (British Columbia); *Electronic Transactions Act*, SNWT 2011, c 13, section 11 (Northwest Territories); *Electronic Commerce Act*, SNS 2000, c 26, section 14 (Nova Scotia); *Electronic Commerce Act, 2000*, SO 2000, c 17, section 12 (Ontario); *Electronic Commerce Act*, RSPEI 1988, c E-4.1, section 12 (Prince Edward Island); *Electronic Commerce Act*, SNL 2001, c E-5.2, section 14 (Newfoundland and Labrador); *The Electronic Commerce and Information Act*, CCSM c E55, section 15 (Manitoba); *Electronic*

Commerce Act, SNu 2004, c 7, section 11 (Nunavut); and *Electronic Commerce Act*, RSY 2002, c 66, section 13 (Yukon).

- (6) Posting online: Extension of the judicial function or distinct administrative act subject to the OLA?

[89] Although the applicants refer to the ORSCC's website, the Registrar clarified in her affidavit that it is in fact the SCC's website, managed by the ORSCC. The website provides access to a database of the Court's decisions and distinguishes between [TRANSLATION] "posting" and "publishing" decisions.

[90] The Registrar indicated that the official versions of the Court's decisions are those published in printed format in the SCR, in accordance with section 17 of the SCA, which assigns the responsibility for reporting and publishing the judgments of the Court to the Registrar, "as the Chief Justice directs". Since the historical decisions have already been published in the SCR, posting scans of those historical decisions online does not constitute [TRANSLATION] "publication" and is intended solely to provide electronic access free of charge.

[91] The applicants argue that transcribing the historical decisions and posting them online are administrative acts distinct from the judicial function of [TRANSLATION] "delivering a judgment", which ends when the judge deposits his or her opinion with the Registrar (para 26(1)(b) of the SCA). The related but distinct administrative function of communication with the public then begins, justifying the concepts of "communication" and "service".

[92] According to the applicants, the ORSCC is an administrative body, not a judicial one, separate from the SCC. Even if it exercises some judicial powers or can be characterized as a hybrid entity, it inherently remains an administrative, non-judicial entity. Posting historical decisions online is not part of the function of delivering a judgment, as the judges who wrote the judgments have passed away and the cases have long since been closed. The [TRANSLATION] “transcription” and posting online of the decisions are therefore merely administrative acts by the ORSCC.

[93] Insofar as judgments are concerned, the ORSCC acts as directed by the SCC. Section 17 of the SCA provides that the Registrar is responsible for reporting and publishing the decisions of the Court, “as the Chief Justice directs”. Section 15 of the same act provides that the Registrar superintends the officers, clerks and employees appointed to the Court, “[s]ubject to the direction of the Chief Justice”, and section 16 provides that the Registrar manages and controls the library of the Court, “under the supervision of the Chief Justice”.

[94] Subsection 20(1) of the OLA provides that any decision issued by any federal court, including the SCC, that meets the criteria in paragraphs (a), (a.1) and (b) must be “made available” simultaneously in both official languages. According to the ORSCC, posting the historical decisions online is indeed making them available on the SCC’s website, not communicating or providing a service, thus reflecting judicial transparency and independence.

[95] Since the Registrar reports and publishes the SCC’s decisions “as the Chief Justice directs”, it is doubtful that the Registrar could independently decide which decisions are made available and which are not. Only the judiciary has the authority to make these decisions.

[96] Subsection 20(1) of the OLA uses the term “made available” in relation to any final decision of any federal court, indicating an obligation rather than a service. This provision applies to decisions issued after the OLA came into force and does not prevent historical decisions from being made available. However, the SCC’s language obligations with respect to a given decision depend on the date on which it was issued.

[97] Making decisions available does not mean [TRANSLATION] “delivering a judgment” but, in my view, reflects the public nature of the judicial function. Unless otherwise ordered, trials must be open to the public (see *Dagenais v Canadian Broadcasting Corp*, [1994] 3 SCR 835; *R v Mentuck*, [2001] 3 SCR 442; *R v Sheppard*, [2002] 1 SCR 869 at para 15; *Grenier c Procureure générale du Québec*, 2018 QCCA 266 at paras 48–49; *Sherman Estate v Donovan*, 2021 SCC 25).

[98] Judgments—which constitute the culmination of the judicial function—must also be “public”. Any attempt by the government to make judgments confidential, for example because of disagreement with their content or conflict with its policy objectives, would undermine both the transparency of the proceedings and the independence of the judiciary.

[99] Making decisions available is also in line with the court-of-record principle, which allows for judicial decisions to be retained and made accessible over time for reference purposes, the study of law, and maintenance of the guarantee of transparency in the judicial system.

[100] This common-law concept imposes on the SCC (see section 3 of the SCA) a requirement to retain in perpetuity its decisions and any related significant elements, such as transcripts of proceedings and exhibits, to ensure transparency and preserve precedential value. Archives must remain open and accessible.

[101] In *Brar v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 729, the Federal Court considered, in appeals under the *Secure Air Travel Act*, SC 2015, c 20 [SATA], whether to retain information that had been withdrawn. In that matter, the Court reiterated the fundamental role of the courts as courts of record and their obligation to ensure the availability of documents essential to the transparency and continuity of precedent:

[256] As stated in section 4 of the *Federal Courts Act*, RSC 1985, c F-7, the Federal Court is a “superior court of record.” Although undefined in the *Federal Courts Act*, this entails that the Court has an obligation to preserve records of proceedings, which act as its judicial memory, to ensure a historical record and to ensure that precedent is followed. For instance, the term “court of record” is defined by the Oxford Dictionary of Law as “a court whose acts and judicial proceedings are permanently maintained and recorded” and by Osborn’s Concise Law Dictionary as “a court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony”

[257] This Court must therefore seek to preserve an accurate historical record of these appeals, notably given that they are the first appeals under the *SATA*. ...

[Emphasis added.]

[102] I have already referred to the PIPEDA, and more specifically to section 37 of that Act. For a court of record, the “specified period” is retention in perpetuity. Provided that their contents are not changed, documents—in this case, judgments—may be retained in electronic format. The SCC may therefore choose to retain its judgments in electronic format and make them available in that format.

[103] Making these documents available respects the transparency of proceedings and the court-of-record principle. It is an extension of the judicial function, not a purely administrative act by the ORSCC. Making the SCC’s judgments available is not an initiative of the ORSCC; it is a constitutional obligation of the SCC under section 20 of the OLA. Section 20 falls under Part III of the OLA, which Parliament dedicated to the administration of justice.

[104] I find no merit in the applicants’ suggestion that the ORSCC is an administrative body separate from the SCC. The ORSCC is not a legal entity separate from the SCC.

[105] For these reasons, I am of the view that the posting of pre-1970 decisions constitutes making them available within the meaning of section 20 of Part III of the OLA, not a “service” or “communication” under sections 21, 22 and 27 of Part IV of the OLA.

(7) “Communication” within the meaning of the OLA

[106] In *Knopf v Canada (Speaker of the House of Commons)*, 2007 FCA 308 [*Knopf*], the Federal Court of Appeal held that:

[39] However, in some other language rights provisions, such as subsection 20(1) of the Charter and section 25 of the Act, the

legislator chose the term “to communicate” (*communiquer*). In my opinion, this is not accidental.

[40] To “communicate” presupposes interactions, bilateral actions between the parties. The verb “to use” does not encompass such interaction. The right is unilateral: one has the right to address the House of Commons in the official language of his choice. In the case at bar, Mr. Knopf made his opinion known on particular topics of interest to the Committee and filed his documents. There stops his right under subsection 4(1) of the Act.

[Emphasis added.]

[107] The ORSCC submits that the notion of “communication” presupposes a bilateral act, or at least the opportunity for exchange. However, simply posting the decisions on the SCC’s website does not open the door to any kind of interaction; there is no space for exchange, no return address, and no mechanism for providing feedback or obtaining additional information. Documents are simply made available, with no opportunity to react, even indirectly. In the ORSCC’s view, even if Part IV applied—a conclusion it disputes—the lack of bilaterality makes it impossible to characterize this activity as “communication”.

[108] The applicants distinguish *Knopf*, which addressed the notion of communication in the parliamentary context. The issue was whether the appellant, Mr. Knopf, appearing before a committee of the House of Commons, could present relevant documents in either official language, rather than in both, for immediate distribution to the committee’s members. The applicants argue that “communication” does not have to be bilateral. They rely on section 27 of the OLA, which provides that the duties in respect of communications and services in both official languages apply in respect of oral and written communications and in respect of any documents or activities that relate to those communications or services. In their view, the website is “communication”, and documents related to the website are, by extension, part of that communication.

[109] They also rely on the Treasury Board's *Directive on Official Languages for Communications and Services* (2012-10-15). Section 6.2.2 of that directive imposes an obligation to communicate in both official languages, regardless of the method of communication used, and section 6.6.4.1 requires that all web content be posted in both official languages and be of equal quality.

[110] Even if section 27 of the OLA makes reference to the documents or activities that relate to "communications", there must first be "communication" within the meaning of the OLA. As for the directive cited by the applicants, it does not have the force of law. It expresses the Treasury Board's interpretation of sections 21 and 22 as part of its mandate to implement the OLA. It is therefore not a normative text, but rather an administrative position. As the ORSCC points out, those directives apply to Part IV of the OLA but not to Part III, as the Treasury Board has no jurisdiction over the latter.

[111] I agree with the ORSCC. In my view, the notion of communication presupposes a bilateral act, or at least the opportunity for exchange. Thus, the act of making historical decisions available on the SCC's website is not "communication" within the meaning of Part IV of the OLA.

H. Other issues arising from the applicants' arguments

[112] While I ultimately dismiss the applicants' application for a remedy, I nevertheless consider it important to address the following issues raised in their submissions.

(8) Official nature of the SCC's decisions

[113] In the orders they seek, the applicants are asking for translations with [TRANSLATION] “official status”. Among other things, they are asking the Court to:

[TRANSLATION]

Order the respondent to proceed with the official translation into French of all pre-1970 decisions of the Supreme Court of Canada, and to re-post and make available all of these official translations on its website, ensuring that all are as easy to search, access and consult as the French and English versions of post-1970 decisions.

...

[Emphasis added.]

[114] The applicants did not cite any provision of the OLA or of any other statute that would allow the Court to [TRANSLATION] “order” that a translation be [TRANSLATION] “official”. I note again that they are referring to the ORSCC’s website, when the website in question is actually the SCC’s.

[115] The Registrar’s affidavit indicates that in the process of preparing and publishing the Court’s decisions, writing judges and panels are not limited to just writing the reasons; they also approve the translation of those reasons. Approving the translation is part of the decision-making process and confers on the translated version (English or French) the status of [TRANSLATION] “official translation”. The Registrar notes, however, that in the case of historical decisions, the writing judges are deceased. Therefore, the Court could not verify or certify that a translation done today is “official” in the sense that it was “approved” by the author of the original text as accurately reflecting his or her intention.

[116] The ORSCC submits that the official nature of any translation of the Court's decisions depends on it being validated by the judge or panel of judges who wrote the original text.

[117] The applicants criticize the ORSCC's position, arguing that it is illogical. They maintain that the official nature of any translation ultimately depends only on the competence of the translator, who is bound by his or her professional oath, and a simple willingness to recognize the translation as such. In their view, the idea of requiring the approval of the judges implies that all SCC judges are perfectly fluent in both official languages and capable of ensuring the validity of a translation, whereas judges tend to be stronger in one language or the other, and some even encounter linguistic challenges when they first take office.

[118] The applicants filed an affidavit from a certified translator, the president of the Ordre des traducteurs, terminologues et interprètes agréés du Québec [OTTIAQ], in which she indicated the following, in particular: (i) according to OTTIAQ standards, translators generally take full responsibility for the texts they translate or certify, without being validated by the party requesting the translation; (ii) in most cases, the party requesting the translation is not sufficiently proficient in the target language to be able to confirm that the translation is accurate or idiomatic and has to trust the translator; (iii) the accuracy and validity of the translation depend solely on the translator and not on the author of the original text; and (iv) validation by the author of the original document is not required for a translation to be "official".

[119] The affiant refers to a [TRANSLATION] "document" without distinguishing between the types of documents involved. The affidavit did not establish that the affiant is a lawyer or that she

is familiar with the nature of court judgments. I recognize that certified translators are highly competent, but they do not all have the same grasp of legal terminology, in French or in English, nor do they all have knowledge of legal principles and concepts.

[120] The translator's affidavit expresses an opinion. The filing of an expert's report or affidavit must comply with certain provisions of the Rules, in particular as regards the expert's mandate, the scope of his or her expertise, and his or her availability for examination or cross-examination, and this affidavit does not meet those requirements. Even if the applicants' application were to succeed, I could not give it any weight.

[121] According to the applicants, the process would involve obtaining translations from competent translators and making them official through sheer institutional will, without validation by the original author. In this way, the SCC could acknowledge that the translation was done by a trusted translator and give it official status by sheer institutional will.

[122] With respect, these are decisions of the highest court in the land, and I do not accept that a translator should have the power to make his or her translation of an original judgment official. The words used by judges in their versions of reasons are scrutinized by legal experts across Canada and establish the state of the law in this country.

[123] Since it began issuing its judgments simultaneously in both languages, conferring the same status on both versions, the SCC has chosen to make translations official by having the translated

text approved by the judge who wrote the judgment. The process described by the Registrar in her affidavit is the exclusive prerogative of the SCC.

[124] The applicants' suggestion that the official status of a judgment depends on [TRANSLATION] "institutional will" confirms that translators could not grant official status to their translations themselves. The order sought is against the SCC, not the ORSCC. This Court has neither the power to order that a translation be made official, nor the power to require the SCC to modify its approval process for translations or to unilaterally make those translations official.

(9) The applicants' claim for damages

[125] In the orders they seek, the applicants are asking the Court to award them a total of \$1 million in damages, consisting of \$1 in nominal compensatory damages, \$99,999 in moral damages, and \$900,000 in punitive damages.

[126] For a trial court, the provisional assessment of damages consists in assessing damages even if the action is dismissed on a finding of no liability to avoid a second trial in the event that an appellate court overturns the no liability finding. This is a matter of judicial discretion that involves the consideration of factors related to the nature of the dismissal and the complexity of the damages assessment (Canadian Encyclopedic Digest, 4th ed. (online), *Damages* (ON), "General Principles: Assessment Principles" (II. B.) at s 15).

[127] In language rights matters, when there is a breach, courts generally assess damages directly, without resorting to a provisional assessment. The case law establishes a consistent practice to this effect (*Thibodeau v Air Canada*, 2019 FC 1102 at para 62).

[128] Since I have found that there was no breach and the application was dismissed primarily on the basis of questions of law, I consider it inappropriate to make a provisional assessment of damages.

(10) The removal of historical decisions from the website and the allegation of spoliation of evidence

[129] Although I have already concluded that the ORSCC did not breach its obligations under the OLA, the allegations of spoliation of evidence and bad faith against it cannot be ignored.

[130] In their written submissions, the applicants argue that the ORSCC sought to frustrate the exercise of the Court's remedial powers by unilaterally removing the historical decisions after their application for a remedy was filed. In their view, the ORSCC unilaterally and intentionally attempted to change the impugned factual situation after being formally seized of the matter so as to present the Court with a *fait accompli* and thus fetter its remedial powers. They maintain that the ORSCC's actions could trigger the application of the doctrine of spoliation.

[131] I note that the ORSCC never submitted that the applicants' application or record was moot. It has always acknowledged the existence of the dispute regarding the period starting when the historical decisions were posted online. Furthermore, the Registrar stated in her uncontested affidavit that it was the Commissioner who had suggested that the SCC remove the non-bilingual

historical decisions from its website. Although the applicants qualified their position in their oral submissions by acknowledging that this action could have had an unintentional effect on the applicants, the OCOL and French Canadians, they maintained their allegation of spoliation of the evidence and invited the Court to take it into account in assessing damages.

[132] The notion of “spoliation” does not arise merely because evidence has been destroyed (which is not the case here), but rather where a party has intentionally destroyed evidence relevant to ongoing or contemplated litigation in circumstances where a reasonable inference can be drawn that the evidence was destroyed to affect the litigation.

[133] In *Canada (Ship-source Oil Pollution Fund) v Beasse*, 2018 FC 39 [*Beasse*], the Federal Court, citing case law from the SCC and the Alberta Court of Appeal, stated the following:

[36] The Defendant’s counsel quoted extensively from the case of *Wire Rope Industries of Canada (1966) Ltd v British Columbia Marine Shipbuilders Ltd*, [1981] 1 SCR 363, at pages 392 and following, and *McDougall v Black & Decker Canada Inc*, 2008 ABCA 353 [*Black & Decker*], to argue that spoliation has occurred, given the loss of the Tug cause [*sic*] by the CCG’s reckless actions, and therefore any remedy available to the Plaintiff must be determined after a full trial, where the trial judge can consider all of the facts and fashion the most appropriate response.

[37] However, as stated by the Alberta Court of Appeal in *Black & Decker* at paragraph 18:

St. Louis, therefore, stands for the following proposition. Spoliation in law does not occur merely because evidence has been destroyed. Rather, it occurs where a party has intentionally destroyed evidence relevant to ongoing or contemplated litigation in circumstances where a reasonable inference can be drawn that the evidence was destroyed to affect the litigation. Once this is demonstrated, a presumption arises that the

evidence would have been unfavourable to the party destroying it. This presumption is rebuttable by other evidence through which the alleged spoliator proves that his actions, although intentional, were not aimed at affecting the litigation, or through which the party either proves his case or repels the case against him.

There is no evidence that the Plaintiff intentionally destroyed or was reckless in respect of the Second Sinking of the Tug such that it is no longer available as evidence, or that it was aimed at affecting this litigation.

[Emphasis added.]

[134] The evidence in this case, which has not been challenged, demonstrates that the ORSCC decided to remove, or de-index, historical decisions from the SCC's website following the filing of the applicants' application for a remedy as a pre-emptive measure, with no admission as to the merits of the OCOL's and the applicants' position, to avoid being criticized for tolerating a potential breach of its obligations under the OLA. In her additional affidavit, the Registrar clarified that the historical decisions had been removed but none had been destroyed.

[135] As in *Beasse*, there is no evidence in this case to suggest that the ORSCC intentionally destroyed documents or that it was reckless in respect of the de-indexing of historical decisions from the SCC's website.

[136] Finally, I note that the ORSCC raised the costs associated with translation in the context of the potential assessment of the damages claimed by the applicants, and not as justification in support of its position in this matter.

VI. Conclusion

[137] For all these reasons, the applicants' application for a remedy is dismissed. I conclude that the SCC's historical decisions constitute neither "services" nor "communications" to the public subject to the translation obligation set out in the general provisions of Part IV of the OLA. I also conclude that judicial decisions fall exclusively within the scope of Part III of the OLA, which deals with the administration of justice.

[138] In accordance with the parties' agreement, I will not award costs.

JUDGMENT in T-2936-24

THE COURT’S JUDGMENT is as follows:

1. The applicants’ application for a remedy is dismissed.
2. The SCC’s historical decisions constitute neither “services” nor “communications” to the public subject to the translation obligation set out in the general provisions of Part IV of the OLA.
3. Judicial decisions fall exclusively within the scope of Part III of the OLA, which deals with the administration of justice.
4. No costs are awarded.

“Denise A. LeBlanc”
Deputy Judge

Certified true translation
Margarita Gorbounova, Senior Jurilinguist

APPENDIX A

Official Languages Act, RSC 1985, c 31 (4th Supp)

PART III

Administration of Justice

Official languages of federal courts

...

20 (1) Any final decision, order or judgment, including any reasons given therefor, issued by any federal court shall be made available simultaneously in both official languages where

(a) the decision, order or judgment determines a question of law of general public interest or importance;

(a.1) the decision, order or judgment has precedential value; or

(b) the proceedings leading to its issuance were conducted in whole or in part in both official languages.

(2) A decision, order or judgment issued by a federal court, including any reasons given for it, shall be issued first in one of the official languages and then, at the earliest possible time, in the other official language, with each version to be effective

PARTIE III

Administration de la justice

Langues officielles des tribunaux fédéraux

...

20 (1) Les décisions définitives – exposé des motifs compris – des tribunaux fédéraux sont simultanément mises à la disposition du public dans les deux langues officielles :

a) si le point de droit en litige présente de l'intérêt ou de l'importance pour celui-ci;

a.1) si elles ont valeur de précédent;

b) lorsque les débats se sont déroulés, en tout ou en partie, dans les deux langues officielles, ou que les actes de procédure ont été, en tout ou en partie, rédigés dans les deux langues officielles.

(2) Dans les cas non visés par le paragraphe (1) ou si le tribunal estime que l'établissement au titre des alinéas (1)a) ou a.1) d'une version bilingue entraînerait un retard qui serait préjudiciable à l'intérêt public ou qui causerait une injustice ou un inconvénient grave à

from the time the first version is effective, if

(a) it is a final decision, order or judgment that is not required under subsection (1) to be made available simultaneously in both official languages; or

(b) the decision, order or judgment is required to be made available simultaneously in both official languages under paragraph (1)(a) or (a.1) but the court is of the opinion that to make the decision, order or judgment, including any reasons given for it, available simultaneously in both official languages would occasion a delay prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings leading to its issuance.

(3) Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in only one of the official languages, of any decision, order or judgment or any reasons given therefor.

(4) No decision, order or judgment issued by a federal court is invalid by reason only that it was not made or issued in both official languages.

une des parties au litige, la décision – exposé des motifs compris – est rendue d’abord dans l’une des langues officielles, puis dans les meilleurs délais dans l’autre langue officielle. Elle est exécutoire à la date de prise d’effet de la première version.

(3) Les paragraphes (1) et (2) n’ont pas pour effet d’interdire le prononcé, dans une seule langue officielle, d’une décision de justice ou de l’exposé des motifs.

(4) Les décisions de justice rendues dans une seule des langues officielles ne sont pas invalides pour autant.

PART IV

Communications with and Services to the Public

Communications and Services

21 Any member of the public in Canada has the right to communicate with and to receive available services from federal institutions in accordance with this Part.

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.

...

27 Wherever in this Part there is a duty in respect of communications and services in both official languages, the duty applies in respect of oral and written communications and in respect of any documents or activities that

PARTIE IV

Communications avec le public et prestation des services

Communications et services

21 Le public a, au Canada, le droit de communiquer avec les institutions fédérales et d'en recevoir les services conformément à la présente partie.

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.

...

27 L'obligation que la présente partie impose en matière de communications et services dans les deux langues officielles à cet égard vaut également, tant sur le plan de

relate to those
communications or services.

l'écrit que de l'oral, pour tout
ce qui s'y rattache.

...

...

77 (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV, V or VII, or in respect of section 91, may apply to the Court for a remedy under this Part.

77 (1) Quiconque a saisi le commissaire d'une plainte visant une obligation ou un droit prévus aux articles 4 à 7 et 10 à 13 ou aux parties IV, V, ou VII, ou fondée sur l'article 91, peut former un recours devant le tribunal sous le régime de la présente partie.

(2) An application may be made under subsection (1) within 60 days – or within any further time that the Court may allow, on request made either before or after the expiry of those 60 days – after

(2) Sauf délai supérieur accordé par le tribunal sur demande présentée ou non avant l'expiration du délai normal, le recours est formé dans les soixante jours qui suivent la communication au plaignant des conclusions de l'enquête, des mesures prises pour mettre en œuvre les recommandations faites aux termes du paragraphe 63(3), des recommandations visées au paragraphe 64(2) ou de l'avis de refus d'ouverture ou de poursuite d'une enquête donné au titre du paragraphe 58(5).

(a) the results of an investigation of the complaint by the Commissioner are reported to the complainant under subsection 64(1),

(a.1) the complainant is informed of the actions taken to implement the recommendations that the Commissioner made under subsection 63(3),

(b) the complainant is informed of the recommendations of the Commissioner under subsection 64(2), or

(c) the complainant is informed of the Commissioner's decision to refuse or cease to investigate

the complaint under subsection 58(5).

(3) Where a complaint is made to the Commissioner under this Act but the complainant is not informed of the results of the investigation of the complaint under subsection 64(1), of the actions taken to implement the recommendations that the Commissioner made under subsection 63(3), of the recommendations of the Commissioner under subsection 64(2) or of a decision under subsection 58(5) within six months after the complaint is made, the complainant may make an application under subsection (1) at any time thereafter.

(4) Where, in proceedings under subsection (1), the Court concludes that a federal institution has failed to comply with this Act, the Court may grant such remedy as it considers appropriate and just in the circumstances.

(4.1) If there is a conflict between a provision of an order made under paragraph 64.4(1)(a) and a provision of an order made under subsection (4), the order made under subsection (4) prevails to the extent of the conflict.

(4.2) If there is a conflict between a provision of an order filed under

(3) Si, dans les six mois suivant le dépôt d'une plainte, il n'est pas avisé des conclusions de l'enquête, des mesures prises pour mettre en œuvre les recommandations faites aux termes du paragraphe 63(3), des recommandations visées au paragraphe 64(2) ou du refus opposé au titre du paragraphe 58(5), le plaignant peut former le recours à l'expiration de ces six mois.

(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.

(4.1) Les dispositions de l'ordonnance rendue au titre du paragraphe (4) l'emportent sur les dispositions incompatibles de l'ordonnance visée à l'alinéa 64.4(1)a).

(4.2) Les dispositions de l'ordonnance rendue au titre du paragraphe (4) l'emportent

subsection 64.6(1) and a provision of an order made under subsection (4), the order made under subsection (4) prevails to the extent of the conflict.

(5) Nothing in this section abrogates or derogates from any right of action a person might have other than the right of action set out in this section.

sur les dispositions incompatibles d'une ordonnance déposée aux termes du paragraphe 64.6(1).

(5) Le présent article ne porte atteinte à aucun autre droit d'action.

Supreme Court Act, RSC 1985, c S-26

3 The court of law and equity in and for Canada now existing under the name of the Supreme Court of Canada is hereby continued under that name, as a general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a court of record.

...

12 (1) The Governor in Council may by instruments under the Great Seal appoint fit and proper persons, being barristers or advocates of at least five years standing, to be Registrar of the Supreme Court and Deputy Registrar of the Supreme Court respectively.

(2) Such other officers, clerks and employees as are required for the purposes of the Court shall be appointed under the

3 Tribunal de droit et d'équité du Canada, la Cour suprême du Canada est maintenue sous ce nom à titre de cour générale d'appel pour l'ensemble du pays et de tribunal additionnel propre à améliorer l'application du droit canadien. Elle continue d'être une cour d'archives.

...

12 (1) Le gouverneur en conseil peut, par acte revêtu du grand sceau, nommer registraire et registraire adjoint de la Cour suprême des personnes qualifiées inscrites depuis au moins cinq ans au barreau.

(2) La nomination des autres membres du personnel de la Cour se fait conformément à la Loi sur l'emploi dans la fonction publique.

Public Service Employment
Act.

13 (1) The Registrar and Deputy Registrar shall be appointed to hold office during pleasure and shall each be paid a salary to be fixed by the Governor in Council.

(2) The Registrar and Deputy Registrar shall devote their full time to their respective positions and shall not receive any pay, fee or allowances in any form in excess of the amount provided under subsection (1).

14 The Registrar shall keep an office in the city of Ottawa and the Registrar and Deputy Registrar shall reside in the National Capital Region described in the schedule to the National Capital Act or within forty kilometres thereof.

15 Subject to the direction of the Chief Justice, the Registrar shall superintend the officers, clerks and employees appointed to the Court.

16 The Registrar shall, under the supervision of the Chief Justice, manage and control the library of the Court and the purchase of all books therefor.

17 The Registrar or the Deputy Registrar, as the Chief Justice directs, shall report

13 (1) Le registraire et le registraire adjoint occupent leur poste à titre amovible et touchent le traitement fixé par le gouverneur en conseil.

(2) Le registraire et le registraire adjoint exercent leur charge à temps plein; ils ne reçoivent aucune autre rémunération que le montant prévu par le paragraphe (1).

14 Le registraire a son bureau dans la ville d'Ottawa; lui-même et le registraire adjoint doivent résider dans la région de la capitale nationale définie à l'annexe de la Loi sur la capitale nationale ou dans une zone périphérique de quarante kilomètres.

15 Sous l'autorité directe du juge en chef, le registraire dirige le personnel de la Cour.

16 Sous l'autorité générale du juge en chef, le registraire est responsable de la gestion de la bibliothèque de la Cour, notamment de l'achat des livres.

17 Le registraire, ou le registraire adjoint, selon les instructions du juge en chef, est chargé du rapport et de la

and publish the judgments of the Court.

publication des arrêts de la Cour.

18 The Registrar has such authority to exercise the jurisdiction of a judge sitting in chambers as may be conferred on the Registrar by general rules or orders made under this Act.

18 Le registraire exerce la juridiction d'un juge en chambre selon les pouvoirs qui lui sont conférés par les ordonnances ou règles générales édictées en vertu de la présente loi.

19 The Deputy Registrar shall exercise and perform such of the powers and duties of the Registrar as are assigned to the Deputy Registrar by the Registrar, and may exercise and perform all the powers and duties of the Registrar in the event that the Registrar is absent or unable to act or the office of Registrar is vacant.

19 Le registraire adjoint exerce les attributions que le registraire lui assigne; il en est le suppléant, avec pleins pouvoirs, en cas d'absence ou d'empêchement de celui-ci, ou de vacance de son poste.

20 The Public Service Employment Act and the Public Service Superannuation Act, in so far as applicable, extend and apply to the Registrar and Deputy Registrar.

20 Dans la mesure où elles leur sont applicables, le registraire et le registraire adjoint sont assujettis aux dispositions de la Loi sur l'emploi dans la fonction publique et de la Loi sur la pension de la fonction publique.

...

...

26 (1) A judgment of the Supreme Court may be delivered

26 (1) La Cour peut rendre son jugement :

[...]

[...]

(b) by depositing with the Registrar, for each judge who has heard the case, a written opinion, a copy, signed by the judge, of the written opinion with which the judge concurs

b) soit de la façon suivante : chaque juge ayant instruit l'affaire dépose auprès du registraire le texte de l'exposé de ses motifs, une copie, signée par lui, de l'exposé des

or a statement certifying the judge's concurrence.

motifs d'un autre juge auquel il souscrit ou une attestation écrite de son accord avec ces motifs.

Judges Act (R.S.C., 1985, c. J-1)

74 (1) It shall be the duty and function of the Commissioner, under the Minister, to

74 (1) Le commissaire, sous l'autorité du ministre :

(a) act as the deputy of the Minister in performing all such duties and functions in relation to the administration of Part I as fall, by law, within the responsibility of the Minister;

a) exerce, à titre de délégué du ministre, les attributions dévolues de droit à celui-ci pour l'application de la partie I;

(b) prepare budgetary submissions for the requirements of the Council;

b) établit le budget du Conseil;

(c) be responsible for any other administrative arrangements that are necessary to ensure that all reasonable requirements, including those for premises, equipment and other supplies and services and for officers, clerks and employees of the Council for the carrying out of its operations, are provided for in accordance with law; and

c) prend les mesures d'ordre administratif qui s'imposent pour doter le Conseil en personnel, services, locaux et matériel, conformément à la loi;

(d) do such other things as the Minister may require in connection with any matter or matters falling, by law, within the Minister's responsibilities for the proper functioning of the judicial system in Canada.

d) accomplit les missions que le ministre lui confie, dans le cadre de sa compétence, pour la bonne administration de la justice au Canada.

(2) It is hereby declared for greater certainty that such of the duties and functions of the

(2) Il est entendu que les attributions que le ministre peut déléguer au commissaire

Minister as are, by paragraphs (1)(a) to (d), subject to be performed by the Commissioner do not form part of the duties and functions assigned to the Minister by the Department of Justice Act.	en vertu des alinéas (1)a) à d) ne font pas partie des attributions que lui confère la Loi sur le ministère de la Justice.
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75 (1) The duties and functions described in paragraphs 74(1)(a) to (c) shall, in relation to the Supreme Court of Canada and the judges thereof, be carried out by the Registrar of the Court, who may, for that purpose, utilize the services of other persons on the staff of the Court.	75 (1) Dans le cas de la Cour suprême du Canada, les attributions visées aux alinéas 74(1) a) à c) sont exercées par son registraire; celui-ci peut, à cet effet, se faire assister des autres membres du personnel de ce tribunal.
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(2) The Registrar of the Supreme Court of Canada shall, for the purposes of the Public Service Employment Act and other Acts of Parliament and for purposes relating to the duties and functions of the Registrar under this section, be deemed to be the deputy head of the portion of the federal public administration appointed under subsection 12(2) of the Supreme Court Act.	(2) Pour l'application de la Loi sur l'emploi dans la fonction publique et des autres lois fédérales, le registraire de la Cour suprême du Canada est, pour l'exercice des attributions que lui confère le présent article, réputé être l'administrateur général du secteur de l'administration publique fédérale nommé en vertu du paragraphe 12(2) de la Loi sur la Cour suprême.
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Personal Information Protection and Electronic Documents Act, SC 2000, c 5

37 A requirement under a provision of a federal law to retain a document for a specified period is satisfied, with respect to an electronic document, by the retention of the electronic document if	37 Dans le cas où une disposition d'un texte législatif exige la conservation d'un document pour une période déterminée, à l'égard d'un document électronique, la conservation du document électronique satisfait à
--	---

l'obligation si les conditions suivantes sont réunies :

- | | |
|---|---|
| <p>(a) the electronic document is retained for the specified period in the format in which it was made, sent or received, or in a format that does not change the information contained in the electronic document that was originally made, sent or received;</p> | <p>a) le document électronique est conservé pour la période déterminée sous la forme dans laquelle il a été fait, envoyé ou reçu, ou sous une forme qui ne modifie en rien l'information qu'il contient;</p> |
| <p>(b) the information in the electronic document will be readable or perceivable by any person who is entitled to have access to the electronic document or who is authorized to require the production of the electronic document; and</p> | <p>b) cette information sera lisible ou perceptible par quiconque a accès au document électronique et est autorisé à exiger la production de celui-ci;</p> |
| <p>(c) if the electronic document was sent or received, any information that identifies the origin and destination of the electronic document and the date and time when it was sent or received is also retained.</p> | <p>c) si le document électronique est envoyé ou reçu, l'information qui permet de déterminer son origine et sa destination, ainsi que la date et l'heure d'envoi ou de réception, doit être conservée.</p> |

Directive on Official Languages for Communications and Services (2012-10-15)

6.2 Communications with and Services to the Public

6.2 Communications avec le public et prestation des services

...

...

6.2.2 (*Communications with and services to the public*) Ensuring that communications with and services to the public from a designated office are in both official languages, regardless of the method of communication used. If the

6.2.2 (*Communications avec le public et prestation des services*) S'assurer que les communications avec le public et la prestation des services se font dans les deux langues officielles lorsque celles-ci émanent d'un bureau

language preference of the recipient is known, that language is used.

désigné, sans égard au mode de communication utilisé. Si la langue de préférence du destinataire est connue, celle-ci est utilisée avec ce dernier.

...

...

6.6 Official Languages Use on Websites (including Web applications)

6.6 Utilisation des langues officielles sur les sites Web (y compris les applications Web)

...

...

6.6.4.1 (*Simultaneity and equal quality*) Web content in both official languages is available simultaneously and is of equal quality. This also applies when additional languages are used.

6.6.4.1 (*Simultanéité et qualité égale*) Le contenu Web est de qualité égale dans les deux langues officielles et affiché simultanément. Ceci s'applique également lorsque d'autres langues sont utilisées.

Règles des Cours fédérales (DORS/98-106)

300 This Part applies to

300 La présente partie s'applique :

...

...

(b) proceedings required or permitted by or under an Act of Parliament to be brought by application, motion, originating notice of motion, originating summons or petition or to be determined in a summary way, other than applications under subsection 33(1) of the Marine Liability Act;

b) aux instances engagées sous le régime d'une loi fédérale ou d'un texte d'application de celle-ci qui en prévoit ou en autorise l'introduction par voie de demande, de requête, d'avis de requête introductif d'instance, d'assignation introductive d'instance ou de pétition, ou le règlement par procédure sommaire, à l'exception des demandes faites en vertu du paragraphe 33(1) de la Loi sur la

responsabilité en matière
maritime;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2936-24

STYLE OF CAUSE: DROITS COLLECTIFS QUÉBEC AND
ETIENNE-ALEXIS BOUCHER v OFFICE OF
THE REGISTRAR OF THE SUPREME COURT
OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATES OF HEARING: JANUARY 21 AND 22, 2026

**REASONS AND JUDGMENT
BY:** DEPUTY JUDGE LEBLANC

DATED: JUNE 2, 2026

APPEARANCES:

François Côté	FOR THE APPLICANTS
Raymond Doré and Guillaume Laberge	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Droits collectifs Québec Sherbrooke, Quebec	FOR THE APPLICANTS
Lavery Montréal, Quebec	FOR THE RESPONDENT