Lavigne v. Canada (Human Resources Development), [2002] 2 FCR 165, 2001 FCT 1365 (CanLII)

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T-2152-99

2001 FCT 1365

Robert Lavigne (*Applicant*)

v.

Human Resources Development, Attorney General of Canada, Minister of State for Labour and Employment of Quebec, Attorney General for Quebec (*Respondents*)

Indexed as: Lavignev. Canada (Human Resources Development) (T.D.)

Trial Division, Lemieux J.--Montréal, May 17; Ottawa, December 12, 2001.

Official Languages -- Service to clients under Labour Market Agreement (LMA), Labour Market Implementation Agreement (LMIA) between Governments of Canada, Quebec -- Extent of applicability of Official Languages Act (OLA) under LMA -- Court without jurisdiction with respect to Quebec respondents as not federal institutions within meaning of OLA--No delegation of functions from federal to provincial authorities -- Use of spending power by federal government, through conditional grants or otherwise, not transforming provincial legislation into federal, or making provincial government recipient of federal funds federal institution for purposes of OLA -- LMA between Canada and Quebec not in violation of Charter rights.

Constitutional Law -- Distribution of Powers -- Service to clients under Labour Market Agreement (LMA), Labour Market Implementation Agreement (LMIA) between Governments of Canada, Quebec -- Extent of applicability of Official Languages Act (OLA) to LMA -- Canada and Quebec have concurrent constitutional jurisdiction to enact social, employment legislation provisions relied on herein and upon which LMA built -- No delegation of functions from federal to provincial authorities -- Use of spending power by federal government, through conditional grants or otherwise, not transforming provincial legislation into federal, or making provincial government recipient of federal funds federal institution for purposes of OLA -- Declaration of

unconstitutionality sought without sufficient factual foundation -- LMA between Canada and Quebec not in violation of Charter rights.

In 1997, Canada entered into two agreements with Quebec (the Labour Market Agreement (LMA) and the Labour Market Implementation Agreement (LMIA)) whereby the Government of Quebec would assume full responsibility for the active employment measures funded from the Employment Insurance Account and certain functions of the National Employment Service. The clause concerning the language of service for the English-speaking residents of Quebec referred to arrangements established in letters between the responsible ministers. In one letter, the Quebec Minister stated that "when Quebec, in making available those functions of the National Employment Service for which it will become responsible, is unable, due to the provisions of the *Charter of the French Language*, to provide service in both official languages in accordance with the *Official Languages Act* with respect to written communications with corporations established in Quebec, Canada and Quebec shall agree that, in order to ensure compliance with the *Official Languages Act*, Canada will exercise those functions instead."

In June 1999, the applicant made a complaint to the Commissioner of Official Languages for Canada (COL) in which he suggested that the *Official Languages Act* (OLA) should apply to the LMA. He submitted that the letters between the ministers were *ultra vires*, contravening the Act as a whole as well as certain provisions of the *Canadian Charter of Rights and Freedoms*. The COL informed the applicant that the office was discontinuing the investigation of his complaint because the relevant part of the OLA concerning the language of communications and services to the public did not apply to the Canada-Quebec Agreement once it was in place, save for the national employment service which remains a federal responsibility pursuant to the *Employment Insurance Act*.

The applicant is now seeking a remedy pursuant to section 77 of the OLA, namely a declaration that the OLA applies to the LMA, and a declaration of unconstitutionality of those parts of the LMA that indicate that the OLA does not apply to the Agreement.

The applicant's principal argument for saying the OLA applies to the LMA is because, through it, Canada has delegated or transferred to Emploi-Québec certain administrative functions vested in the Canada Employment Insurance Commission (Commission) under the *Employment Insurance Act* or has contracted out its spending power to Quebec. Therefore, in discharging those activities, Emploi-Québec is acting on behalf of the Commission pursuant to section 25 of the OLA, which provides that every federal institution has the duty to ensure that where services are provided or made available on its behalf, it must be done in either official language in any case where those services, if provided by the institution, would be required to be provided in either official language. He also argued that the federal minister was without power to declare the OLA inapplicable, and invoked section 7 and subsection 20(1) of the Charter to attack the LMA for taking away his remedy under section 77 of the OLA.

Held, the application should be dismissed.

Relief under subsection 77(4) of the OLA can be granted by this Court only where a federal institution has failed to comply with the OLA. The two Quebec respondents are not federal institutions. The Court is therefore without jurisdiction with respect to them.

The applicant has a statutory right to seek a remedy from this Court under subsection 77(1) of the OLA since he made a complaint to the COL for a determination that Part IV of the OLA applied to the LMA. The courts have determined that the OLA is quasi-constitutional in nature and must be interpreted in a purposive way.

Both Canada and Quebec have concurrent constitutional jurisdiction to enact the statutory provisions upon which they rely in this case and upon which the LMA is built. It is clear that Emploi-Québec is carrying out its functions in the area of labour market activities contemplated by the Labour Market Implementation Agreement; it does not carry out those functions pursuant to a mandate received either through the LMA, the Commission or the Minister of Human Resources Development Canada. What happened here is that the federal government withdrew from the field and in lieu of carrying out those activities funded Emploi-Québec through the Labour Market Implementation Agreement. There was therefore no delegation of functions from federal to provincial authorities.

The use of the spending power by the federal government, through conditional grants or otherwise, does not transform provincial legislation into a federal one or make a provincial government recipient of federal funds, a federal institution for the purpose of the OLA.

Finally, the applicant is not entitled to the declaration of unconstitutionality based on Charter grounds. First, the declaration sought is based on an erroneous assumption. The federal minister, in response to the Quebec Minister, did not decide that the OLA did not apply to the LMIA. What he did was describe the services to be provided by Quebec and concluded that such services satisfied Canada's legislative requirements. The federal minister was not concerned with the OLA. Second, the declaration of unconstitutionality was sought without a sufficient factual foundation. The applicant has not alleged any denial by Quebec or a breach of the language obligations undertaken under the LMIA nor has he sought a remedy from Quebec. And, to a substantial extent, the applicant, as an anchor to his Charter arguments, incorrectly assumed that the federal minister had delegated authority to Quebec.

statutes and regulations judicially

considered

An Act respecting income support, employment assistance and social solidarity, R.S.Q., c. S-32.001, ss. 1, 2, 3, 4.

An Act respecting the Ministère de l'Emploi et de la Solidarité and establishing the Commission des partenaires du marché du travail, R.S.Q., c. M-15.001, ss. 1, 2, 3, 4, 5(3), 18, 19.

Application of Provincial Laws Regulations, SOR/96-312.

Canada Health Act, R.S.C., 1985, c. C-6.

Canada-Québec Labour Market Agreement in Principle, between the Government of Canada and the Government of Québec, April 1997, cl. 4.1.4, Annex 1.

Canadian Charter of Rights and Freedoms, being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44], ss. 7, 15, 20(1).

Charter of the French Language, R.S.Q., c. C-11.

Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5], ss. 91(2A) (as am. by *Constitution Act, 1940*, 3 & 4 Geo. VI, c. 36 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 18) [R.S.C., 1985, Appendix II, No. 28], s. 1, 92(13),(16), 93.

Contraventions Act, S.C. 1992, c. 47.

Employment Insurance Act, S.C. 1996, c. 23, ss. 56, 57, 59, 60, 61 (as am. by S.C. 2001, c. 4, s. 75), 62, 63.

Executive Power Act, R.S.Q., c. E-18.

Federal Court Act, R.S.C., 1985, c. F-7 , ss. 2(1) "federal board, commission or other tribunal" (as

am. by S.C. 1990, c. 8, s. 1), 17 (as am. *idem*, s. 3), 18 (as am. *idem*, s. 4), 57 (as am. *idem*, s. 19).

Federal-Provincial Fiscal Arrangements Act, R.S.C., 1985, c. F-8 (as am. by S.C. 1995, c. 17, s. 1).

Official Languages Act, R.S.C., 1985 (4th Supp.), c. 31, ss. 2, 3 "federal institution" (as am. by S.C. 1993, c. 28, s. 78, Sch. III, item 116), 18, 21, 22, 25, 27, 28, 45, 58(3), 77, 82.

Charte de la langue française, L.R.Q., ch. C-11.

Entente de principe Canada-Québec relative au marché du travail, entre le gouvernement du Canada et le gouvernement du Québec, avril 1997, cl. 4.1.4, annexe 1.

Loi canadienne sur la santé, L.R.C. (1985), ch. C-6.

Loi constitutionnelle de 1867, 30 & 31 Vict., ch. 3 (R.-U.) (mod. par la *Loi de 1982 sur le Canada*, 1982, ch. 11 (R.-U.), annexe de la *Loi constitutionnelle de 1982*, n 1) [L.R.C. (1985), appendice II, n^{o} 5], art. 91(2A) (mod. par *Loi constitutionnelle de 1940*, 3 & 4 Geo. VI, ch. 36 (R.-U.) (mod. par la *Loi de 1982 sur le Canada*, 1982, ch. 11 (R.-U.), annexe de la *Loi constitutionnelle de 1982*, n^{o} 18) [L.R.C. (1985), appendice II, n^{o} 28], art. 1, 92(13),(16), 93.

Loi sur la Cour fédérale, L.R.C. (1985), ch. F-7 , art. 2(1) « office fédéral » (mod. par L.C. 1990, ch. 8, art. 1), 17 (mod., *idem*, art. 3), 18 (mod., *idem*, art. 4), 57 (mod., *idem*, art. 19).

Loi sur l'assurance-emploi, L.C. 1996, ch. 23, art. 56, 57, 59, 60, 61, 62, 63.

Loi sur le ministère de l'Emploi et de la Solidarité et instituant la Commission des partenaires du marché du travail, L.R.Q., ch. M-15.001, art. 1, 2, 3, 4, 5(3), 18, 19.

Loi sur le soutien du revenu et favorisant l'emploi et la solidarité sociale, L.R.Q., ch. S-32.001, art. 1, 2, 3, 4.

Loi sur les arrangements fiscaux entre le gouvernement fédéral et les provinces, L.R.C. (1985), ch. F-8 (mod. par L.C. 1995, ch. 17, art. 1).

Loi sur les contraventions, L.C. 1992, ch. 47.

Loi sur les langues officielles, L.R.C. (1985) (4^{e} suppl.), ch. 31, art. 2, 3 « institutions fédérales » (mod. par L.C. 1993, ch. 28, art. 78, ann. III, art. 116), 18, 21, 22, 25, 27, 28, 45, 58(3), 77, 82.

Loi sur l'exécutif, L.R.Q., ch. E-18.

Règlement sur l'application de certaines lois provinciales, DORS/96-312.

cases judicially considered

applied:

Jones v. A.G. of New Brunswick, 1974 CanLII 164 (SCC), [1975] 2 S.C.R. 182; (1974), 7 N.B.R. (2d) 526; 45 D.L.R. (3d) 583; 16 C.C.C. (2d) 297; 1 N.R. 582; *Fédération Franco-Ténoise v. Canada*, 2001 FCA 220 (CanLII), [2001] 3 F.C. 641; (2001), 203 D.L.R. (4th) 556; 274 N.R. 1 (C.A.); *Saugeen Band of Indians v. Canada (Minister of Fisheries and Oceans)*, [1992] 3 F.C. 576; (1992), 56 F.T.R. 253 (T.D.); *Martinoff v. Gossen*, [1978] 2 F.C. 537; (1978), 46 C.C.C. (2d) 368 (T.D.); *R. in Right of Canada v. Chief William Joe et al.*, [1984] 1 C.N.L.R. 96; (1983), 49 N.R. 198 (F.C.A.); *MacDonald v. Ontario et al.* (1999), 1999 CanLII 8480 (FC), 173 F.T.R. 310 (F.C.T.D.); affd (2000), 264 N.R. 387 (F.C.A.); *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768; (1999), 173 D.L.R. (4th) 193; 121 B.C.A.C. 227; 134 C.C.C. (3d) 481; 238 N.R. 131; *Canada (Attorney General) v. Viola*, [1991] 1 F.C. 373; (1990), 123 N.R. 83 (C.A.); *Lavigne v. Canada (Human Resources Development)*, 1996 CanLII 3854 (FC), [1997] 1 F.C. 305; 122 F.T.R. 131 (T.D.); affd (1998), 228 N.R. 124 (F.C.A.); *MacKay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357; [1989] 6 W.W.R. 351; (1989), 61 Man. R. (2d) 270; *Danson v. Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 S.C.R. 1086; (1990), 73 D.L.R. (4th) 686; 43 C.P.C. (2d) 165; 112 N.R. 362.

distinguished:

Commissioner of Official Languages (Can.) v. Canada (Minister of Justice) (2001), 2001 FCT 239

(CanLII), 194 F.T.R. 181 (F.C.T.D.).

referred to:

Devinat v. Canada (Immigration and Refugee Board), 1999 CanLII 9386 (FCA), [2000] 2 F.C. 212; (1999), 181 D.L.R. (4th) 441; 3 Imm. L.R. (3d) 1; 250 N.R. 326 (C.A.); *Attorney-General for Canada v. Attorney-General for Ontario*, 1937 CanLII 362 (UK JCPC), [1937] A.C. 326 (P.C.); *A.G. for Canada v. A.G. for Nova Scotia*, 1950 CanLII 26 (SCC), [1951] S.C.R. 31; [1950] 4 D.L.R. 369; (1950), 50 DTC 838; *Valin v. Langlois* (1879), 1879 CanLII 29 (SCC), 5 App. Cas. 115 (P.C.); *P.E.I. Potato Marketing Board v. Willis*, 1952 CanLII 26 (SCC), [1952] 2 S.C.R. 392; [1952] 4 D.L.R. 146; *Coughlin v. Ontario Highway Transport Board et al.*, 1968 CanLII 2 (SCC), [1968] S.C.R. 569; (1968), 68 D.L.R. (2d) 384; *Reference re The Farm Products Marketing Act, R.S.O. 1950, Chapter 131, as amended*, 1957 CanLII 1 (SCC), [1957] S.C.R. 198; (1957), 7 D.L.R. (2d) 257; *Reference respecting the Agricultural Products Marketing Act, R.S.C. 1970, c. A-7 et al.*, 1978 CanLII 10 (SCC), [1978] 2 S.C.R. 1198; (1978), 84 D.L.R. (3d) 257; 19 N.R. 361; *R. v. Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 S.C.R. 606; (1992), 114 N.S.R. (2d) 91; 93 D.L.R. (4th) 36; 313 A.P.R. 91; 74 C.C.C. (3d) 289; 43 C.P.R. (3d) 1; 15 C.R. (4th) 1; 10 C.R.R. (2d) 34; 139 N.R. 241; *Law Society of British Columbia v. Mangat*, 2001 SCC 67 (CanLII); [2001] S.C.J. No. 66 (QL); *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217; (1998), 161 D.L.R. (4th) 385; 228 N.R. 203.

APPLICATION under section 77 of the *Official Languages Act* for a declaration that the Act applies to the Labour Market Agreement entered into between the Government of Canada and the Government of Quebec, and a declaration of unconstitutionality of those parts of the Labour Market Agreement that say that the Act does not apply to the Agreement. Application dismissed.

appearances:

Robert Lavigne on his own behalf.

André Lespérance for respondent (Canada).

Louise Chayer for respondent (Quebec).

solicitors of record:

Deputy Attorney General of Canada for respondent (Canada).

Bernard, Roy et Associés, Montréal, for respondent (Quebec).

The following are the reasons for order rendered by

[1]Lemieux J.: Robert Lavigne, the applicant, seeks from this Court a remedy pursuant to section 77 of the *Official Languages Act* of Canada [R.S.C., 1985 (4th) Supp.), c. 31] (OLA), namely a declaration that the OLA applies to the Labour Market Agreement entered into between the Government of Canada (Canada) and the Government of Quebec (Quebec). He seeks a further declaration of unconstitutionality of those parts of the Labour Market Agreement that say the OLA does not apply to that Agreement. The parts of the Labour Market Agreement referenced are said to be in correspondence exchanged between the responsible ministers of Canada and Quebec

A. BACKGROUND

[2]On April 1, 1997, Canada entered into an agreement with Quebec known as the *Canada-Quebec Labour Market Agreement in Principle* (the Labour Market Agreement). Canada's signatories were the Prime Minister, the Minist er of Human Resources Development and the Chairperson of Canada Employment Insurance Commission (the Commis-sion). Quebec's signatories were its Prime

Minister, the Minister of State for Employment and Solidarity and its Minister for Canadian Intergovernme ntal Affairs.

[3]Clause 4.1.4 of the Labour Market Agreement deals with language of service and reads:

4.1.4 With respect to arrangements relating to the language of service in which Québec will deliver the active measures and the national employment service functions for which Québec shall become responsible under this Agreement, the agreement of the parties in that regard was established through their exchange of letters on March 25 and 28 and April 8, 1997, copies of which are attached as an Appendix, with which both parties state that they are satisfied, and which form an integral part of this Agreement. [Emphasis mine.]

[4]In her letter of March 25, 1997 [Annex 1 of the Labour Market Agreement], to the Minister of Human Resources Development of Canada, at the time Pierre Pettigrew, Louise Harel, Minister of State for Employment and Solidarity (Emploi-Québec) confirmed Quebec's position on the issue of language, in particular with regard to three facets: service to clients, the applicability of the *Official Languages Act* of Canada and of the applicability of the *Employment Insurance Act* [S.C. 1996, c. 23] (EIA). The most pertinent parts of her letter are:

(translation) First, let me inform you of the services which are available to English-speaking clients in Québec in the areas of employment, income security and related active measures. With regard to individuals, service is provided in English, both verbally and in writing, as soon as they so request. Computer information is available in English, on a different screen from the French version. Brochures, leaflets and the like are available in English, on separate displays. Voice mail messages provide for a number that can be dialled to continue the menu in English.

With regard to the language used in providing active employment measures (courses, training sessions, etc.) and employment services which may eventually be covered by an agreement between our two governments, the Government of Québec will make such services available to English-speaking clients according to the same parameters as currently apply to employment, income security and related active measures.

Likewise, subject to the signature of an agreement, the Government of Québec will use appropriate means to inform English-speaking clients of the arrangements regarding language of service, for example, through newspaper advertisements, pamphlets and press releases.

I would also like to state that, in the context of an agreement between our two governments, when Québec, in making available those functions of the National Employment Service for which it will become responsible, is unable, due to the provisions of the *Charter of the French Language*, to provide service in both official languages in accordance with the *Official Languages Act* with respect to written communications with corporations established in Québec, Canada and Québec shall agree that, in order to ensure compliance with the *Official Languages Act*, Canada will exercise those functions instead. As you know, this approach is similar to that adopted in the agreement on the administration within Québec of the GST by the Government of Québec. [Emphasis mine.]

[5]Louise Harel, in her letter of March 25, 1997, wanted Mr. Pettigrew to confirm the representations of his negotiators with respect to the following federal government interpretations:

- (translation) the *Official Languages Act* does not apply to Québec's active employment measures funded by a contribution from the Employment Insurance Account, since this does not involve a delegation of program management;
- paragraph 57(1)(d.1) of the *Employment Insurance Act* applies only to individuals and not to

corporations. [Emphasis mine.]

[6]The Quebec Minister concluded her letter by saying the facts clearly show the quality of the service currently being provided by Quebec throughout the province and which is satisfactory to English-speaking clients.

[7]Canada's Minister of Human Re sources Development replied by letter dated March 28, 1997 [Annex 2 of the Labour Market Agreement], which he said seeks to clarify and confirm the arrangements agreed upon by two governments on the issue of language of service. He wrote in part:

(translation) With respect to the language of service and delivery for the active employment measures covered by the agreement, your government will make these services and measures available in English in accordance with the same parameters as currently apply to employment, income security and related active measures. Thus, individuals will be served in English, both verbally and in writing, as soon as they so request. Computer information will be made available in English, on a different screen from the French version. Pamphlets, brochures and the like will be made available in English and readily accessible on separate displays. Voice mail messages will provide for a number that can be dialled to continue the menu in English.

This letter also confirms the understanding between our respective negotiators to the effect that individuals who so request shall have reasonable access to the active employment measures (courses, training sessions, etc.) in English.

Moreover, Québec will make available in both French and English those functions of the National Employment Service (NES) for which it assumes responsibility.

As required and at Quebec's request, Canada agrees to ensure written communications in English with corporations established in Quebec which want communications in that language in the context of the administration of the active employment measures covered by the agreement and the NES functions for which Quebec will be responsible.

I note that, once the agreement is signed, Québec will use appropriate means to inform clients of the arrangements made regarding service in English through pamphlets, periodic newspaper advertising, press releases or other means.

If my understanding of the way in which you will make these services available, as outlined above, concurs with yours, these arrangements are satisfactory to me and meet our legislative requirements. [Emphasis mine.]

[8]On April 8, 1997, Louise Harel wrote to Mr. Pettigrew to clarify a few points. This is what she wrote [Annex 3 of the Labour Market Agreement]:

(translation) First of all, I am pleased to confirm that I agree with your proposal that Canada provide, as required and at the request of Québec, written communications in English with corporations established in Québec that require that communications with them be in that language in connection with the administration of the National Employment Service functions for which Québec will be responsible, in conformity with what I stated in that regard in my letter of March 25, 1997.

Moreover, I should note that there is no need for me to avail myself of the similar offer you made to me with regard to administration of active employment measures, as the latter, which are aimed at enabling unemployed persons to enter the labour market more quickly, are intended for individuals.

I should also like to note that the description of services available to English-speaking clients in Québec with respect to employment, income security and related active measures as set out in my letter of March 25 satisfies Québec's legislative requirements. [Emphasis mine.]

[9]On November 28, 1997, Canada and Quebec entered into a second agreement known as the Canada-Québec Labour Market Implementation Agreement (LMIA). The language of service provisions in the LMIA reflect those set out in the Labour Market Agreement, clause 4.1.4 a nd the exchange of letters between the ministers.

[10]As a result of the Labour Market Agreement and the LMIA a total of approximately 1,000 federal public servants accepted offers of employment with the Quebec government.

[11]On June 22, 1999, Robert Lavigne made a complaint to the Commissioner of Official Languages for Canada (COL) in which he stated the OLA should apply to the Labour Market Agreement and in particular Part IV and the remedies under Part X of the OLA. He believed the letters between the ministers are *ultra vires*, contravening the Act as a whole as well as certain provisions of the *Canadian Charter of Rights and Freedoms* [being Part I of the *Constitution Act, 1982*, Schedule B, *Canada Act 1982*, 1982, c. 11 (U.K.) [R.S.C., 1985, Appendix II, No. 44]]. His complaint does not allege or complain of any active employment measure provided by Emploi-Québec and funded under the Labour Market Agreement not made available to him in English.

[12]On December 6, 1999, the COL, pursuant to subsection 58(3) of the OLA informed the applicant the office was discontinuing the investigation of his complaint. The COL stated:

Essentially, the Commissioner came to the conclusion that, in the context surrounding the Canada-Quebec Agreement, Part IV of the *OLA* concerning the language of communications and services to the public did not apply once the agreement was in place, save for the national employment service which remains a federal responsibility pursuant to the *Employment Insurance Act*. The federal government has the discretion, in compliance with the Canadian Constitution, to withdraw from the provision of services to the benefit of a province which, within its own jurisdiction, undertook to provide these services. [Emphasis mine.]

[13]The COL, in the letter to Mr. Lavigne, also stated:

However, as explained in the Government Transformations report, the Commissioner recommended to the federal government, pursuant to Part VII of the *OLA*, that such arrangements be subject to five general principles. . ., nota-bly, to preserve any rights which existed prior to an agreement, pursuant to the *OLA* and its regulations. The provisions of the Canada-Quebec Agreement regarding the language of service and communications which are now the responsibility of the province are similar to those which existed prior to the Agreement. Hence, the objective of the guiding principle recommended by the Commissioner has been respected here. [Emphasis mine.]

[14]The Commissioner also noted another guiding principle flowing out of the transformations report notably to consult the official language minority affected by the Agreement with regard to its needs and interests and to take appropriate measures. On this point, the COL concluded:

In the context of the provisions of the Canada-Quebec Agreement, the official language minority of Quebec, through its representatives at *Alliance Québec*, were indeed consulted and they approved the said provisions.

B. FURTHER BACKGROUND

[15]The agreements which Canada and Quebec entered into were part of a Canada-wide proposal the federal government made to all provinces and territories on May 30, 1996, proposals tailored with legislation being considered by Parliament, namely, the proposed *Employment Insurance Act* (Bill C-12).

[16]There were four aspects to Canada's proposal to the provinces and territories, all aimed at helping the unemployed back to work:

(1) Design and delivery by the provinces/territories of active employment measures, funded through the Employment Insurance Fund including wage subsidies, income supplements, support for the self-employed, job creation partnerships, skills loans and grants;

(2) Canada's withdrawal from labour market training. Under the proposal, Canada would cease; (a) to purchase training programs to help persons to acquire new occupational skills, academic upgrading or language training as well as the purchase of the classroom portion of training for apprenticeable trades from colleges and trade schools; (b) to provide assistance to schools, colleges and universities for programs linking learning to employment; (c) to provide assistance to employers to meet skill needs, to retrain workers, or to help members of designated groups by providing formal training based in the workplace with possible off-site classroom training;

(3) the provinces/territories would provide labour market services currently being delivered by Canada such as screening, employment counselling and local labour market placement. They would determine the level and type of assistance a person required from active measures. However, under the proposal, Canada would retain overall management of the labour exchange and national labour market information due to their pan-Canadian nature;

(4) Canada was also prepared to enter into arrangements with the provinces/territories on several functions of the National Employment System (NES) which provides the direct link between the active and passive parts of the national labour market system and had four functions: (a) labour market information, that is, providing information and analysis of the national labour market; (b) labour exchange, that is, matching workers with available jobs and employers with available workers across the country; (c) screening, that is, identifying individual service needs and making a preliminary referral to appropriate services; and (d) employment counselling, namely, evaluating the labour market needs of the unemployed, developing an action plan, referring/selecting participants for specific active measures.

[17]Annex II to the LMIA describes the nature of the measures and services to be provided by Quebec under the Labour Market Agreement. These measures and services fall into two broad categories: the operation of a placement service and the provision of active employment measures.

(1) The Quebec placement service

[18]The Quebec placement service is a public service comprising two functions. The first function is the identification and matching of employment offers and demands either electronically through the Internet or otherwise by Emploi-Québec. The second function is developing labour market information including employment and population trends, economic forecasting, skills training opportunities and socio-economic profiles.

[19]In essence, under the Labour Market Agreement, what is carved out of the National Employment Service and what becomes the responsibility of Emploi-Québec in terms of its placement service are all matters related to that placement service in Quebec such as offers of employment by Quebec employers and job searches by Quebec resi dents (except for

communications with Quebec corporations in English which remains in the hands of the National Employment Service).

[20]In terms of market information, Quebec agrees to produce information on the Quebec labour market and to participate in the National Pan-Canadian Information system related to the National Labour Market which remains the responsibility of Canada.

(2) The active employment measures provided by Quebec

[21]The active employment measures Quebec agrees to undertake under the Labour Market Agreement relate to:

(1) the preparation for employment, i.e education, training, apprenticeship and counselling in the context of an individual action plan;

(2) reinsertion of the unemployed into the labour market through financial means such as wage subsidies and moving allowances;

(3) maintenance of employment;

(4) the direct creation of employment; and

(5) stabilization of employment by taking such measures relating to seasonality and the overall economic situation.

C. THE LEGISLATION

(a) Federal legislation

(i) The *Official Languages Act* (OLA)

[22]The purpose of the OLA is set out in section 2 which reads:

2. The purpose of this Act is to

(*a*) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;

(*b*) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and

(*c*) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

[23]"Federal institution" is defined in subsection 3(1) [as am. by S.C. 1993, c. 28, s. 78] as follows:

3. (1) . . .

"federal institution" includes any of the following institutions of the Parliament or government of Canada:

(*a*) the Senate,

(*b*) the House of Commons,

(*c*) the Library of Parliament,

(*d*) any federal court,

(*e*) any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of Parliament or by or under the authority of the Governor in Council,

(*f*) a department of the Government of Canada,

(*g*) a Crown corporation established by or pursuant to an Act of Parliament, and

(*h*) any other body that is specified by an Act of Parliament to be an agent of Her Majesty in right of Canada or to be subject to the direction of the Governor in Council or a minister of the Crown,

but does not include

(*i*) any institution of the Council or government of the Northwest Territories or the Yukon Territory or of the Legislative Assembly or government of Nunavut, or

(*j*) any Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people;

[24]Sections 21, 22, 25, 27 and 28 found in Part IV of the OLA read:

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

. . .

25. Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language in any case where those services, if provided by the institution, would be required under this Part to be provided in either official 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 relate to those communications or services.

28. Every federal institution that is required under this Part to ensure that any member of the public can communicate with and obtain available services from an office or facility of that institution, or

of another person or organization on behalf of that institution, in either official language shall ensure that appropriate measures are taken, including the provision of signs, notices and other information on services and the initiation of communication with the public, to make it known to members of the public that those services are available in either official language at the choice of any member of the public.

[25]Subsections 77(1), 77(4) and 77(5) found in Part X of the OLA read:

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 or V, or in respect of section 91, may apply to the Court for a remedy under this Part.

. . .

(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.

(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. [Emphasis mine.]

(ii) The *Employment Insurance Act* (EIA)

[26]Part II of the *Employment Insurance Act* deals with employment benefits and the National Employment Service.

[27]The purpose of Part II is set out in section 56 which reads:

56. The purpose of this Part is to help maintain a sustainable employment insurance system through the establishment of employment benefits for insured participants and the maintenance of a national employment service.

[28]Subsection 57(1) of the EIA provides that the employment benefits and support measures under Part II are to be established in accordance with the guidelines set out below while subsection 57(2) enjoins the Commission to work in concert with the governments of each province with subsection 57(3) dealing with invitations to those governments to enter into agreements. Section 57 of the EIA reads:

57. (1) Employment benefits and support measures under this Part shall be established in accordance with the following guidelines:

(*a*) harmonization with provincial employment initiatives to ensure that there is no unnecessary overlap or duplication;

(*b*) reduction of dependency on unemployment benefits by helping individuals obtain or keep employment;

(*c*) co-operation and partnership with other governments, employers, community-based organizations and other interested organizations;

(*d*) flexibility to allow significant decisions about implementation to be made at a local level;

(*d*.1) availability of assistance under the benefits and measures in either official language where there is significant demand for that assistance in that language;

(*e*) commitment by persons receiving assistance under the benefits and measures to

(i) achieving the goals of the assistance,

(ii) taking primary responsibility for identifying their employment needs and locating services necessary to allow them to meet those needs, and

(iii) if appropriate, sharing the cost of the assistance; and

(*f*) implementation of the benefits and measures within a framework for evaluating their success in assisting persons to obtain or keep employment.

(2) To give effect to the purpose and guidelines of this Part, the Commission shall work in concert with the government of each province in which employment benefits and support measures are to be implemented in designing the benefits and measures, determining how they are to be implemented and establishing the framework for evaluating their success.

(3) The Commission shall invite the government of each province to enter into agreements for the purposes of subsection (2) or any other agreements authorized by this Part. [Emphasis mine.]

[29]Section 59 of Part II of the EIA speaks to the Commission establishing employment benefits. It reads:

59. The Commission may establish employment benefits to enable insured participants to obtain employment, including benefits to

(*a*) encourage employers to hire them;

(*b*) encourage them to accept employment by offering incentives such as temporary earnings supplements;

(*c*) help them start businesses or become self-employed;

(*d*) provide them with employment opportunities through which they can gain work experience to improve their long-term employment prospects; and

(*e*) help them obtain skills for employment, ranging from basic to advanced skills. [Emphasis mine.]

[30]Section 60 concerns the National Employment Service, the duties of the Commission in that respect and in support of the National Employment Service, the Commission establishing support measures. This section reads:

60. (1) The Commission shall maintain a national employment service to provide information on employment opportunities across Canada to help workers find suitable employment and help employers find suitable workers.

(2) The Commission shall

(*a*) collect information concerning employment for workers and workers seeking employment and, to the extent the Commission considers necessary, make the information available with a view to assisting workers to obtain employment for which they are suited and assisting employers to obtain workers most suitable to their needs; and

(*b*) ensure that in referring a worker seeking employment there will be no discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act* or because of political affiliation, but nothing in this paragraph prohibits the national employment service from giving effect to

(i) any limitation, specification or preference based on a *bona fide* occupational requirement, or

(ii) any special program, plan or arrangement mentioned in section 16 of the *Canadian Human Rights Act*.

(3) The Commission may, with the approval of the Governor in Council, make regulations for the purposes of subsections (1) and (2).

(4) In support of the national employment service, the Commission may establish support measures to support

(*a*) organizations that provide employment assistance services to unemployed persons;

(*b*) employers, employee or employer associations, community groups and communities in developing and implementing strategies for dealing with labour force adjustments and meeting human resource requirements; and

(*c*) research and innovative projects to identify better ways of helping persons prepare for, return to or keep employment and be productive participants in the labour force.

(5) Support measures established under paragraph (4)(*b*) shall not

(*a*) provide assistance for employed persons unless they are facing a loss of their employment; or

(*b*) provide direct federal government assistance for the provision of labour market training without the agreement of the government of the province in which the assistance is provided. [Emphasis mine.]

[31]Section 61 [as am. by S.C. 2001, c. 4, s. 75] of the EIA provides that the Commission may, in accordance with terms and conditions approved by Treasury Board, provide financial assistance for the purpose of implementing employment benefits and support measures.

[32]Sections 62 and 63 deal with agreements which the Commission may enter into. Those provisions read:

62. The Commission may, with the approval of the Minister, enter into an agreement or arrangement for the administration of employment benefits or support measures on its behalf by a department, board or agency of the Government of Canada, another government or government agency in Canada or any other public or private organization.

63. The Commission may, with the approval of the Minister, enter into an agreement with a government or government agency in Canada or any other public or private organization to provide for the payment of contributions for all or a portion of

(*a*) any costs of benefits or measures provided by the government, government agency or organization that are similar to employment benefits or support measures under this Part and are consistent with the purpose and guidelines of this Part; and

(*b*) any administration costs that the government, government agency or organization incurs in providing the benefits or measures. [Emphasis mine.]

(b) Quebec's legislation

[33]Two Quebec statutes are relevant:

(1) *An Act respecting the Ministère de l'Emploi et de la Solidarité and establishing the*

Commission des partenaires du marché du travail [R.S.Q., c. M-15.001]

[34]Section 1 of this statute provides that the department is to be under the direction of the Minister of Employment and Solidarity appointed under the *Executive Power Act* [R.S.Q., c. E-18].

[35]Sections 2 and 3 of that Act scope out the Minister's responsibilities. Those sections read:

2. The Minister shall instigate and coordinate state action in the areas of manpower, employment, income security and social benefits.

The actions taken by the Minister, after consulting with the other ministers concerned, in the areas of manpower and employment shall focus, in particular, on labour market information, placement, and all aspects of active labour market policy; such actions shall include the provision of public employment services.

3. The Minister shall draw up policies and measures in the areas under his authority and propose them to the Government, primarily in order to

(1) facilitate the employment of available manpower;

(2) promote the development of manpower;

(3) improve the supply of manpower and influence the demand for manpower, in order to facilitate a balance between manpower supply and demand in the labour market;

(4) ensure an acceptable standard of living for every person and every family.

The strategies and objectives in the area of manpower and employment shall be defined in collaboration with the Commission des partenaires du marché du travail.

The Minister shall see to the implementation of policies and measures and shall oversee and coordinate their application.

The Minister shall also be responsible for the administration of the Acts assigned to his responsibility, and shall exercise every other function assigned to him by the Government. [Emphasis mine.]

[36]Section 4 of that Act enjoins the Minister, in designing and implementing measures, to promote concerted action amongst, and the involvement of the government with employers, unions, community groups, the education and economic sectors taking into account provincial, regional and local levels and the various sectors to be co-ordinated and harmonized.

[37]Subsection 5(3) of that Act authorizes the Minister to enter into agreements with a government other than the Government of Quebec, a department of such government, or international organizations, including agreements with the Government of Canada concerning the implementation of manpower and employment measures.

[38]Chapter II of that Act establishes a commission of labour market partners [under the name "Commission des partenaires du marché du travail"] whose function is to tak e part in the development of government policies and measures in the area of manpower and employment and to participate in decisions concerning the implementation and management of manpower and

employment measures and programs under the authority of the Minister, in particular, as regards programming, plans of action and related operations.

[39]Section 18 of that Act spells out the priorities of the Commission of labour market partners in the exercise of its functions. Section 19 indicates the criteria governing the allocation of the overall funds made available for manpower and immigration and employment measures, programs and funds which are to be determined annually by the Commission.

[40]Chapter III of that Act establishes Emploi-Québec within the Department. Emploi-Québec is constituted, as an independent unit, to supervise the implementation and the management, at the provincial, regional and local levels, of the measures and programs under the responsibility of the Ministe r in the areas of manpower and employment. Its mandate is also to provide public employment services. The public employment services are to include labour market information, placement and services relating to active labour market policy.

[41]Chapter IV of that Act provides for regional councils of labour market partners.

(2) *An Act respecting income support, employment assistance and social solidarity* [R.S.Q., c. S-32.001].

[42]I set out below the main provisions of this statute.

TITLE I

EMPLOYMENT-ASSISTANCE MEASURES, PROGRAMS AND SERVICES

1. This Title provides for measures, programs and services in the areas of manpower and employment to foster the economic and social autonomy of individuals and to assist individuals in their efforts to enter, re-enter or remain on the labour market.

These employment-assistance measures, programs and services focus on the components of an active labour market policy: job preparation, entry and retention as well as job stabilization and job creation.

2. To that end, the Minister of Employment and Solidarity shall offer reception, assessment and referral services. The Minister may also

(1) offer coaching services;

(2) collect labour market information, primarily for the purpose of providing information on employment opportunities to help workers find employment and help employers find suitable workers;

(3) offer placement services and, to that end, at the request of a worker seeking employment or of an employer, compile information concerning workers, employers and available employment, and, in accordance with the request and to the extent the Minister considers necessary, make the information available to the persons concerned;

(4) provide funding for courses, training programs or professional services;

(5) issue job vouchers, apprenticeship vouchers and other vouchers to be exchanged for services.

3. Employment-assistance measures, programs and services may be established in particular to

(1) support organizations that provide employment-assistance services;

(2) assist employers, employee or employer associations, community organizations and regional or local communities in developing and implementing strategies for dealing with labour force adjustments and meeting manpower requirements;

(3) facilitate improved labour market efficiency and minimize the impact of labour market restructuring;

(4) promote the development of new labour market policy instruments and management tools;

(5) support research and innovation in order to identify better ways of helping persons obtain or keep employment.

4. Within the scope of employment-assistance measures, programs and services, the Minister may offer persons financial assistance in particular to

(1) help them obtain skills for employment, ranging from basic to specific skills;

(2) encourage them to accept employment through incentives such as earning supplements;

(3) assist them in their efforts to enter, re-enter or remain on the labour market;

(4) provide them with employment opportunities through which they can gain work experience to improve their employment prospects;

(5) encourage employers to hire them.

Financial assistance may be granted, for instance, in the form of an employment-assistance allowance, the reimbursement of expenses or wage subsidies. [Emphasis mine.]

D. THE APPLICANT'S CASE

[43]The applicant, who is self-represented, filed an extensive 135-paragraph memorandum of fact and law in support of the reliefs sought. He also made oral argument.

[44]I take it from his written memorandum and oral argument, the main relief sought by the applicant is a declaratory judgment that the OLA applies to the Labour Market Agreement focussing, in particular, on Part IV of the OLA which is entitled "Commu-nication s with and Services to the Public" and Part X providing for a court remedy in the event of breach.

[45]The applicant's principal argument for saying the OLA applies to the Labour Market Agreement is because he argues, through it, Canada has delegated or transferred to Emploi-Québec certain administrative functions (labour market activities) vested in the Commission under the EIA or has contracted out its spending power to Quebec. That being the case, Emploi-Québec, in discharging those activi ties is acting on behalf of the Commission pursuant to section 25 of the OLA, which, I repeat, provides:

25. Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language in any case where those services, if provided by the institution, would be required under this Part to be provided in either official language.

25. Il incombe aux institutions fédérales de veiller à ce que, tant au Canada qu'à l'étranger, les services offerts au public par des tiers pour leur compte le soient, et à ce qu'il puisse communiquer avec ceux-ci, dans l'une ou l'autre des langues officielles dans le cas où, offrant elles-mêmes les services, elles seraient tenues, au titre de la présente partie, à une telle obligation.

[46]I note in oral argument Mr. Lavigne said he was not challenging the validity of the EIA nor for that matter any Quebec legislation.

[47]Mr. Lavigne cites Justice Blais' recent decision in *Commissioner of Official Languages (Can.) v. Canada (Minister of Justice)* (2001), 2001 FCT 239 (CanLII), 194 F.T.R. 181 (FC.T.D.). In that case, Justice Blais, on a remedy application by the Commissioner of Official Languages, pursuant to the OLA, ruled that Her Majesty the Queen in right of Canada, and specifically the Department of Justice of Canada, had failed to comply with their duties and commitments in respect of language as set out in Part IV and Part VII of the OLA in the arrangements they made with Ontario on the administration of the federal *Contraventions Act* [S.C. 1992, c. 47] and its subsidiary regulation, the *Application of Provincial Laws Regulations* [SOR/96-312] made under the *Contraventions Act*.

[48]Robert Lavigne then made argument in support of the following orders or declarations formulated in the following words in his application for a remedy pursuant to section 77 of the OLA:

a) an order from the Court stating that the parts of the letters of intent [from Louise Harel dated March 25, 1997, April 8, 1997 and the letter from the Minister of HRD, Mr. Pettigrew dated March 28, 1997] that the *Official Languages Act* does not apply, to the Labour Market Agreement between Ottawa and Quebec are *ultra vires* or are unconstitutional.

b) . . . are unconstitutional. [Emphasis mine.]

[49]In terms of *ultra vires*, he argued the federal minister was without power and authority to declare the OLA inapplicable. He is not the minister responsible for the OLA because Treasury Board is. He further argued Human Resources Development Canada is subject to the OLA and the federal minister cannot repeal the law by saying it is not applicable. He points to section 45 of the OLA and says the federal minister breached it because by the terms of that section any agreement negotiated is subject to the OLA.

[50]Continuing in the same vein, he argues that by section 82 of the OLA, the federal language statute prevails over the EIA in the event of any inconsistency. He says that by the Labour Market Agreement, he has lost rights and one such right includes an appropriate redress mechanism in the event of breach. He also points to section 18 which would have obliged Quebec to argue before me in English, he says.

[51]He argues the Labour Market Agreement demeans the OLA because it contains no guarantee of service in English, there is no obligation for active offer and, as well, there is no appropriate redress mechanism.

[52]In terms of unconstitutionality, Mr. Lavigne pointed to his written representations invoking section 7 and subsection 20(1) of the Charter to attack the Labour Market Agreement for taking away his remedy under section 77 of the OLA. In particular, as I understood him, he says subsection 20(1) of the Charter is violated because Part IV of the OLA is not provided for in the Labour Market Agreement.

[53]In oral argument, he made a broad attack on the state of minority language rights in Quebec being subject to the *Charter of the French Language* [R.S.Q., c. C-11], invoking his equality rights under section 15 of the Canadian Charter.

E. THE ATTORNEY GENERAL OF CANADA'S CASE

[54]The Attorney General of Canada raised two preliminary issues before dealing with the principal one. The preliminary issues were:

(a) Does section 77 of the OLA have any application in this case. The Attorney General of Canada says no because Robert Lavigne is not complaining that Canada Employment Insurance Commission (CEIC) or any other federal institution has failed to comply with any right or duty under Part IV of the OLA or any other part of that statute. The Attorney General of Canada adds that should this Court decide to hear the applicant's claim, it should be as a motion for declaratory relief under section 18 of the *Federal Court Act* [R.S.C., 1985, c. F-7 (as am. by S.C. 1990, c. 8, s. 4)].

(b) While the Attorney General of Canada does not challenge the applicant's legal standing, the Attorney General of Canada submits this Court should exercise its discretion and refuse to hear the applicant's motion for declaratory relief if the Court transforms his section 77 OLA remedy application to one made under section 18 of the *Federal Court Act* because the applicant appears to be concerned solely with the alleged absence in the Labour Market Agreement of a redress mechanism similar to that provided in section 77 of the OLA and he has not established, or is not even interested in establishing that employment measures provided by Quebec are not available in English.

(c) The Attorney General of Canada argues that decisions such as this one must not be made in a factual vacuum and states, in absence of a factual foundation in support of linguistic rights violations, this Court should refuse to exercise a discretion to hear the applicant's motion under section 18 of the *Federal Court Act*. I consider this argument akin to a standing challenge in terms of the Charter challenge.

[55]The Attorney General of Canada frames the main issue as whether the *Official Languages Act* applies to the employment measures financed by the CEIC and provided by Emploi-Québec. Counsel argues that it does not for the following reasons:

(1) The Labour Market Agreement is the result of the valid exercise of section 63 of the EIA which stipulates that the CEIC may enter into an agreement with a provincial government to provide for the payments of contributions for all or a portion of any benefits or measures provided by a provincial government;

(2) The Labour Market Agreement provides for the payment of a contribution for all or a portion of active employment measures that are similar to those of the CEIC and are consistent with the purpose and guidelines of Part II of the *Employment Insurance Act*, sections 56 and 57;

(3) The Quebec Government has full constitutional authority to provide employment programs under the headings of education or in matters of a local or private nature pursuant to subsection 92(16) and section 93 of the *Constitution Act, 1867* [30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, appendix II, No. 5]];

(4) Emploi-Québec, pursuant to its own provincial statutory legislation, is fully responsible for the provision of active employment measures governed by the Labour Market Agreement;

(5) The OLA does not, and could not, apply to active employment measures provided by Emploi-Québec because the provincial government is not a federal institution nor a mandatory agent of a federal institution and furthermore Emploi-Québec has not delegated any of the powers or responsibilities of the CEIC, save for the National Employment Service;

(6) Although Mr. Lavigne has not alleged any violation of section 25 of the OLA, the Attorney General states that it is important to reiterate that Emploi-Québec does not act on behalf of the CEIC when it provides active employment measures. The Attorney General of Canada states that section 25 of the OLA only applies to the CEIC with respect to the national employment service, for which the federal government remains responsible.

(7) The Labour Market Agreement is fully respectful of paragraph 57(1)(*d*.1) of the EIA which provides as a guideline that all active employment measures must be available in either official languages whenever there is a significant demand for that assistance in that language. The Attorney General of Canada adds that the Labour Market Agreement imposed on the province obligations which are broader in scope than those flowing from this paragraph or section 20 of the Charter by providing in the Labour Market Agreement the availability of such services in both official languages, whether or not significant demand exists.

F. THE CASE FOR THE ATTORNEY GENERAL OF QUEBEC

[56]The Attorney General of Quebec also raised two preliminary issues before framing the principal one.

[57]First, Quebec argued this Court has no jurisdiction over the Government of Quebec.

[58]Second, Quebec argued the applicant lacked standing.

[59]The Attorney General of Quebec framed the main issue as whether the OLA applies to services provided by the Government of Quebec in matters of manpower and employment pursuant to the Canada-Quebec Labour Market Agreement.

[60]Quebec rejects the proposition that, through the Labour Market Agreement, Quebec has been delegated federal powers and, as a result, acts on its behalf. Counsel for the Province points to Quebec's own legislation, namely "*An Act respecting the Ministère de l'Emploi et de la Solidarité and establishing the Commission des partenaires du marché du travail*, R.S.Q. c. M-15.001 as the source of the programs it is administering. She also points to *An Act respecting income support, employment assistance and social solidarity*, R.S.Q., c. S-32.001. Counsel for Quebec argues both are laws grounded in Quebec's constitutional legislative jurisdiction in the *Constitution Act, 1867* , over property and civil rights, subsection 92(13), matters of a merely local and private nature in the province, subsection 92(16), and education section 93. According to counsel for Quebec, Emploi-Québec neither is fed nor has borrowed any of its powers thr ough the EIA or through the Labour Market Agreement.

[61]In connection with certain functions of the National Employment Service, Quebec notes that those functions essentially consist of data transmitted electronically and do not encompass any personalized service of assistance and counselling. To the extent that section 25 of the OLA is applicable, its requirements have been met.

G. ANALYSIS

(a) Quebec's preliminary objections

[62]The preliminary objections made as to jurisdiction by counsel for Quebec must, in my view, be sustained.

[63]The applicant seeks relief under Part X of the OLA. The Federal Court Trial Division is the tribunal designated to grant relief under the OLA but that relief can only be granted, pursuant to subsection 77(4), if the Court concludes that a federal institution has failed to comply with the OLA. The term "federal institution", is defined in section 3 of the OLA. The two Quebec respondents, the Quebec Minister of State for Labour a nd Employment and Quebec's Attorney General are not federal institutions. This is in recognition of Canada's limited constitutional jurisdiction (as well as Quebec's for that matter) in matters related to language as decided by the Supreme Court of Canada in *Jones v. A.G. of New Brunswick*, 1974 CanLII 164 (SCC), [1975] 2 S.C.R. 182.

[64]The applicant, in my view, does not overcome his jurisdictional difficulties by reference to subsection 77(5) of the OLA (see *Devinat v. Canada (Immigration and Refugee Board)*, 1999 CanLII 9386 (FCA), [2000] 2 F.C. 212 (C.A.)). That would put the applicant under section 18 of the *Federal Court Act* and he would encounter the same difficulties in terms of definition. By its definition [of "federal board, commission or other tribunal"] under subsection 2(1) [as am. by S.C. 1990, c. 8, s. 1] of the *Federal Court Act*, this provision does not apply to the Quebec Minister or to the Attorney General of Quebec (see *Fédération Franco-Ténoise v. Canada*, 2001 FCA 220 (CanLII), [2001] 3 F.C. 641 (C.A.); *Saugeen Band of Indians v. Canada (Minister of Fisheries and Oceans)*, [1992] 3 F.C. 576 (T.D.); and *Martinoff v. Gossen*, [1978] 2 F.C. 537 (T.D.).

[65]Section 17 [as am. *idem*, s. 3] of the *Federal Court Act* would be of no assistance to him as that section conferring jurisdiction does not apply to a provincial Crown or authorize relief against such Crown (see *R. in Right of Canada v. Chief William Joe et al.*, [1984] 1 C.N.L.R. 96 (F.C.A.); *Fédération Franco-Ténoise, supra*, and *MacDonald v. Ontario et al.* (1999), 1999 CanLII 8480 (FC), 173 F.T.R. 310 (F.C.T.D.), sustained by the F.C.A. (2000) 264 N.R. 387.

[66]In view of my ruling on jurisdiction, I need not deal with counsel for Quebec's argument as to standing or on the merits. I add, that in respect of the substantive argument, Queb ec's is similar to Canada's.

(b) Preliminary objections by the Attorney General of Canada

[67]The Attorney General of Canada argues the Court remedy provided for in section 77 of the OLA can only be exercised in respect of a right or duty under specified sections or parts of the OLA, the legislative intent being to exclude from the scope of a Part X remedy those language rights that arise from other provisions of the OLA or other provisions, including the Charter, the *Constitution Act, 1867* and federal legislation. The Attorney General of Canada adds that Part X of the OLA was intended to give easy court access to a person whose linguistic rights have been infringed under the OLA. Counsel adds the applicant is not claiming that the CEIC or any other federal institution has failed to comply with any right or duty under Part IV or any other part of the OLA. I cannot accept this argument in the context in which it is made.

[68]Mr. Lavigne has a statutory right to seek a remedy from this Court under subsection 77(1) of the OLA since he made a complaint to the COL for a determination that Part IV of the OLA applied to the Labour Market Agreement. The COL ruled that it did not, except in respect of the NES.

[69]The courts have determined the OLA is quasi-constitutional in nature and must be interpreted in a purposive way (see *R. v. Beaulac*, 1999 CanLII 684 (SCC), [1999] 1 S.C.R. 768 and *Canada (Attorney General) v. Viola*, [1991] 1 F.C. 373 (C.A.).

[70]Adopting this approach, Justice Pinard in *Lavigne v. Canada (Human Resources Development)*, 1996 CanLII 3854 (FC), [1997] 1 F.C. 305 (T.D.), appeal dismissed by the Federal Court of Appeal, (1998), 228 N.R. 124, interpreted the words in subsection 77(4) "may grant such remedy as the

Court considers appropriate and just in the circumstances" as giving the Court a broad discretion to fashion a remedy for the violation of the language rights protected under it. That would include, in my view, a declaration that Part IV and Part X of the OLA ap plied to the Labour Market Agreement.

H. DISCUSSION OF THE MAIN ISSUE AND CONCLUSIONS

(a) Delegation or not

[71]From a federal perspective, the key provisions of the EIA underpinning the Labour Market Agreement are sections 56, 57, 59, 60, 61, 62 and 63 of the EIA.

[72]In particular, I find that the Labour Market Agreement, from Canada's viewpoint for the most part was authorized by section 63 of the EIA and specifically paragraph (*a*). In respect of the NES, section 62 would come into play.

[73]The division of powers' constitutional underpinning for Parliament's enactment of these provisions in the EIA is subsection 91(2A) of the *Constitution Act, 1867* , providing for federal legislative authority in the area of "unemployment insurance". This legislative power came by way of a constitutional amendment in 1940 [*Constitution Act, 1940* , 3 & 4 Geo. VI, c. 36 (U.K.) (as am. by *Canada Act 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act. 1982*, Item 18 [R.S.C., 1985, Appendix II, No. 28]] after the Privy Council had struck down federal unemployment insurance legis-lation in *Attorney-General for Canada v. Attorney-General for Ontario*, 1937 CanLII 363 (UK JCPC), [1937] A.C. 355.

[74]From Quebec's perspective, the statutory provisions authorizing the performance of its functions spelled out under the Labour Agreement derive fr om two Quebec statutes enacted by Quebec's National Assembly namely:

(1) *An Act respecting income support, employment assistance and social solidarity*, introduced on December 18, 1997, and assented to on June 20, 1998; and

1) la *Loi sur le soutien du revenu favorisant l'emploi et la solidarité sociale,* présentée le 18 décembre 1997 et adoptée le 20 juin 1998; et

(2) *An Act respecting the Ministère de l'Emploi et de la Solidarité and establishing the Commission des partenaires du marché du travail.*

[75]The constitutional jurisdiction for the enactment of these two laws is, I find, and as argued by counsel for Quebec, based upon subsections 92(13) and 92(16) as well as section 93 of the *Constitution Act, 1867* dealing with education. Mr. Lavigne did not challenge these two Quebec laws as not being properly made pursuant to Quebec's constitutional jurisdiction.

[76]As a result, it is my view, both Canada and Quebec have concurrent constitutional jurisdiction to enact the statutory provisions upon which they rely in this case.

[77]If there be delegation in this case, it must be a delegation of administrative functions under the Labour Market Agreement because neither the federal Parliament nor the provincial Legislatures can delegate to one another legislative powers (see the *Nova-Scotia Interdelegation* case known as *A.G. for Canada v. A. G. for Nova Scotia*, 1950 CanLII 26 (SCC), [1951] S.C.R. 31.

[78]Delegation of administrative functions from one level of government to another level of government is a well-accepted technique in Canadian constitutional law as is the appointment of

federal or provincial functionaries to carry out the duties of another level of government. The object of such delegations is to overcome the difficulties of divided jurisdiction (such as in agriculture), to avoid duplication and to ensure co-ordination to achieve desired results. I need only cite, for this proposition, such cases as *Valin v. Langlois* (1879), 1879 CanLII 29 (SCC), 5 App. Cas. 115 (P.C.); *P.E.I. Potato Marketing Board v. Willis*, 1952 CanLII 26 (SCC), [1952] 2 S.C.R. 392; *Coughlin v. Ontario Highway Transport Board et al.*, 1968 CanLII 2 (SCC), [1968] S.C.R. 569 and *Reference re The Farm Products Marketing Act, R.S.O. 1950, Chapter 131, as amended*, 1957 CanLII 1 (SCC), [1957] S.C.R. 198 and *Reference respecting the Agricultural Products Marketing Act, R.S.C. 1970, c. A-7 et al.*, 1978 CanLII 10 (SCC), [1978] 2 S.C.R. 1198.

[79]These cases illustrate that the essence of delegation would be in this case, if it occurred, the conferring, vesting or transfer by the federal government including the CEIC of federal functions in the labour market area to Emploi-Québec to be performed by it on behalf of the Commission in accordance with the Labour Market Agreement. However, that is not what happened and as a result, I do not accept the argument put forward by Mr. Lavigne that this case is one of delegation.

[80]It is clear that Emploi-Québec is carrying out its functions in the area of labour market activities under the LMIA such as active employment measures pursuant to provincial legislative authority as its source; it doe s not carry out those functions pursuant to a mandate received either through the Labour Market Agreement, the Commission or the Minister of Human Resources Canada.

[81]In other words, Emploi-Québec is not dependent upon federal authorizatio n for its activities and owes nothing to it. Its only source of authority is the National Assembly of Quebec.

[82]What happened here is that the federal government withdrew from the field and in lieu of carrying out those activities funded Emploi-Québec through the LMIA.

[83]Mr. Lavigne relies heavily upon Justice Blais' decision in the *Contraventions Act* case, *supra*. In my opinion, his reliance is misplaced.

[84]The *Contraventions Act* case (and the Act was amended in 1996 [S.C. 1996, c. 7]) involved the enactment by the federal Parliament of that Act which authorized provincial authorities to prosecute federal ticket offences and authorized the federal Minister of Justice to enter into agreements in respect of the prosecution, discharge and enforcement of fines.

[85]Justice Blais found the authority over federal contraventions was federal and that the federal authorities decided to streamline the procedure by the enactment of the *Contraventions Act*. He then specifically looked at section 25 of the OLA which he said simply confirms the constitutional principle that a government may not divest itself of the constitutional obligations to which it is bound by the Charter by delegating certain of its responsibilities. He said the duty that is incumbent on the Attorney General of Canada to offer administrative services relating to prosecutions for federal contraventions in both official languages is imposed not only by Part IV of the OLA but also by the Charter. He was of the view that in administering the *Contraventions Act*, the Government of Ontario was applying a federal statute within the territory of the province and that, in implementing the *Contraventions Act*, the Government of Ontario and the municipalities were acting on behalf of the Government of Canada.

[86]It is apparent why the *Contraventions Act* case, and I entirely agree with Justice Blais' decision, is completely different than the issue before me. As I read Justice Blais' decision, the key to his thinking was the existence of a federal law dealing with federal non-criminal offences which was being administered by provincial authorities. In other words, the provincial authorities derived their right to act not from the provincial statute and regulations but federal ones. Rightfully so, in that

context, Justice Blais found a delegation of administrative authority from the federal government to provincial authorities.

[87]For the reasons already explained in these reasons, such is not the case here. There has been no delegation of functions from federal to provincial authorities.

(b) The spending power

[88]The applicant argues there is another nexus for finding a necessary linkage to bind the OLA on Quebec through the Labour Market Agreement and, that is, through the spending power which Mr. Lavigne somehow argues is being contracted out to Quebec.

[89]The notion of the spending power arises in Canadian constitutional law when one level of government (the federal government) funds activities which are within the legislative competence of the provinces. The techniques of conditional and unconditional grants are well known, are hotly debated from a provincial perspective and are widespread covering such areas as health and welfare (see the *Canada Health Act* [R.S.C., 1985, c. C-6] and the *Federal-Provincial Fiscal Arrangements Act* [R.S.C., 1985, c. F-8 (as am. by S.C. 1995, c. 17, s. 1)] in respect of education, social assistance and social services).

[90]As noted, the EIA, under section 63, authorizes the Commission, with the approval of the Minister, to enter into agreements with provincial governments to provide for the payment of contributions for all or a portion of any costs of benefits or measures provided by the provincial government that are similar to employment benefits or support measures under Part II of that Act and are consistent with the purpose and guidelines of Part II.

[91]The use of the spending power by the federal government, through conditional grants or otherwise, does not transform provincial legislation into a federal one or make a provincial government recipient of federal funds, a federal institution for the purpose of the OLA. To accept such propositions would subvert Canadian federalism as we know it. It would annihilate provincial jurisdiction.

[92]As a result, Robert Lavigne fails in the first declaration he seeks, that is, a declaration that the OLA applies to the Labour Market Agreement.

I. THE OTHER DECLARATIONS SOUGHT

[93]The applicant served and filed a notice of constitutional question pursuant to section 57 [as am. by S.C. 1990, c. 8, s. 19] of the *Federal Court Act*. The constitutional question was framed as follows:

The sections of the letters of intent from Ms. Louise Harel dated March 25th, 1997 and April 8th, 1997 and the letter from the Minister of HRD, Mr. Pettigrew, dated March 28th, 1997 that state that the *Official Languages Act* does not apply to the Labour Market Agreement between Canada and Quebec are unconstitutional.

[94]The applicant invoked section 7 of the Charter and the doctrine of vagueness as expressed by the Supreme Court of Canada in *R. v. Nova Scotia Pharmaceutical Society*, 1992 CanLII 72 (SCC), [1992] 2 S.C.R. 606 and he stated that the facts of this case that bring the doctrine of vagueness into issue can be summed up by the COL's 1997 report in which the following concerns were expressed at page 43:

According to HRDC's own response, it seems that the MCs of the LMDAs do not constitute a direct redress mechanism. In the Commissioner's view, in all cases the redress mechanisms should be effective, known by the public and easily accessible. He is therefore concerned about the multiplicity of possible redress mechanisms in certain jurisdictions (Quebec), which could lead to confusion a citizen who wishes to file a complaint, particularly if he or she has not been informed of the existence of these redress mechanisms and of their jurisdiction with regard to the language rights set out in the agreements.

[95]In the notice of constitutional question, the applicant also stated the LMIA between Canada and Quebec was contrary to subsection 20(1) of the Charter. He stated in the notice of constitutional question that Emploi-Québec is delegated its powers for labour market development under the LMIA by the federal government and is therefore subject to subsection 20(1) of the Charter. In the alternative, he stated the duty of the federal government under subsection 20(1) of the Charter includes the duty to ensure that these rights are guaranteed when it delegates powers to other bodies, and the federal government breached this duty in the LMIA with Quebec and thus violated subsection 20(1) of the Charter.

[96]Thirdly, the notice of constitutional question states the LMIA between Canada and Quebec violates the fundamental constitutional principle of protection of minority rights and is therefore unconstitutional relying upon *Reference re Secession of Quebec*, 1998 CanLII 793 (SCC), [1998] 2 S.C.R. 217.

[97]The applicant, in my view, is not entitled to the declaration of unconstitutionality based on Charter grounds and this for several reasons.

[98]First, as I see it, the declaration sought is based on an erroneous assumption. The federal Minister, in his response to the Quebec Minister, did not decide that the OLA did not apply to the LMIA. What he did was describe the services to be provided by Quebec and concluded that such services satisfied Canada's legislative requirements.

[99]In saying this, he was referring to paragraph 57(1)(*d*.1) of the EIA which provides that the employment benefits and support measures under Part II of the EIA must be provided in either official language where there is a significant demand for that assistance in that language. As I see it, the federal Minister was not concerned with the *Official Languages Act*.

[100]Second, the declaration of unconstitutionality is sought without a sufficient factual foundation. The applicant has not alleged any denial by Quebec or a breach of the language obligations it undertook under the LMIA nor has he sought a remedy from Quebec.

[101]The Supreme Court of Canada has warned against courts making Charter decisions in a factual vacuum. This warning was made by Justice Cory in *MacKay v. Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 S.C.R. 357 and reiterated by Justice Sopinka in *Danson v. Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 S.C.R. 1086.

[102]In *MacKay, supra*, Justice Cory wrote the following at pages 361-362:

Charter decisions should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Charter* and inevitably result in ill-considered opinions. The presentation of facts is not, as stated by the respondent, a mere technicality; rather, it is essential to a proper consideration of *Charter* issues. . . . *Charter* decisions cannot be based upon the unsupported hypotheses of enthusiastic counsel.

[103]The lack of evidence surrounding the applicant either in terms of a breach or in the seeking of a remedy, the two elements which he urged upon me the most, preclude me from giving due consideration to the Charter challenges which he has made.

[104] I do not consider sufficient in terms of evidence the reference that the applicant made to the COL 1997 report which, in any event, did not conclude to a Charter breach.

[105] Third, to a substantial extent, the applicant, as an anchor to his Charter arguments, assumed the federal Minister had delegated authority to Quebec. I have found otherwise.

[106] The declaration of *ultra vires* sought by the applicant concerning the federal Minister's statement the OLA does not apply, must also fail because (1) he did not make such statement; (2) the premise of delegation is non-existent; and (3) there is no breach of section 45 of the OLA which relates to federal education services and (4) the primacy of the OLA is only with respect to federal laws. There can be no question here of the doctrine of paramountcy, in Canadian constitutional law. (See *Law Society of British Columbia v. Mangat*, 2001 SCC 67 (CanLII).)

J. DISPOSITION

[107] For all of these reasons, this judicial review application is dismissed.