



[2022] 2 F.C.R. D-2

CONSTITUTIONAL LAW

CHARTER OF RIGHTS

Legal Rights

Right to Interpreter

Related subjects: Citizenship and Immigration, Practice

Motion seeking to compel plaintiffs to provide, at public expense, services of interpreter fluent in English, Serbo-Croatian to assist defendant throughout trial of matter — Issue in underlying action whether defendant obtained Canadian citizenship by false representations or fraud, or by knowingly concealing material circumstances with respect to his involvement in war crimes or in crimes against humanity — Evidence showing that defendant not sufficiently fluent in English or French to fully, effectively participate in his defense at trial — Plaintiffs arguing *Canadian Charter of Rights and Freedoms*, s. 14 not guaranteeing general, derivative right to have cost of interpretation paid by government — Defendant positing that right to interpreter protected under s. 14 absolute, unrestricted, that in any event, establishing that unable to pay for services — Whether Charter, s. 14 imposing substantive constitutional obligation on government to provide free interpretation services in proceeding such as present one — If not, whether defendant establishing he is unable to pay interpretation services so as to trigger obligation on government to provide assistance — Right to assistance of interpreter guaranteed by Charter, s. 14 in citizenship revocation matters not including right to have those services paid by state regardless of financial need — Seminal decision on s. 14 *R. v. Tran*, [1994] 2 S.C.R. 951 (*Tran*) — Supreme Court in *Tran* defined purpose of s. 14 through specific lens of the legal rights comprised in Charter, ss. 8–14, as components of general right expressed in Charter, s. 7 — Federal Court in *Canada (Minister of Citizenship and Immigration) v. Phan*, 2003 FC 1194 (*Phan*) recognizing that although s. 14 “primarily directed” to rights in criminal proceedings, it nevertheless applied to judicial proceedings in civil cases, in quasi-judicial proceedings — Holding that, in civil or quasi-judicial proceedings, leaving primary responsibility of paying interpreters fees to litigant requiring service not violating litigant’s right to fair trial, so long as it has not been established that litigant unable to pay those costs — Conclusion that s. 14 not protecting right to state-funded interpretation services in non-penal cases absent evidence of impecuniosity not offending teachings of *Tran* — Not all legal rights protected by Charter include right to be provided with means to exercise them at state’s expense, regardless of financial need — No support in case law for proposition that s. 14 recognized as conferring broad positive right in all circumstances — No established principles for defining protected rights as “positive” or “negative”, or scope of state’s obligations even in respect of so-called positive rights — Defendant conflating notion of ensuring procedural fairness by ensuring access to interpretation services with provision of state funding to retain these services — Question of whether Charter, s. 7 implying unconditional right to state-funded interpretation services not at issue herein — Proceedings could result in revocation of defendant’s Canadian citizenship, stigma of being declared war criminal, but they do not result in imprisonment, automatic expulsion from Canada or deportation so as to engage s. 7 rights — Accordingly, no reasons to depart from principle that rights protected by s. 14 in context of this action not absolute — Evidence here showing defendant able to pay interpretation services —

Defendant's testimony revealing contradictions, inconsistencies with statements made in his affidavit to effect cannot afford services — Motion dismissed.

CANADA (CITIZENSHIP AND IMMIGRATION) V. JOZEPOVIC (T-1862-17, 2023 FC 289, Tabib A.J., reasons for order dated March 1, 2023, 12 pp.)