Citation: R. v. Rémillard (R.) et al., 2009 MBCA 112 Date: 20091123
Dockets: AR05-30-06181, AR05-30-06182,
AR05-30-06183, AR05-30-06184,
AR05-30-06185, AR05-30-06186

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Richard J. Chartier
Madam Justice Léa A. Duval (*ad hoc*)
Madam Justice Brenda L. Keyser (*ad hoc*)

B E T W E E N :

HER MAJESTY THE QUEEN	)	***D. L. Carlson***
	)	***N. Carnegie***
Appellant	)	*for the Appellant*
	)	
- and -	)	***R. L. Rémillard***
	)	*on his own behalf*
MARC-YVAN HÉBERT, RAYMOND	)	
HÉBERT, RÉNALD RÉMILLARD,	)	***A. E. Craft***
JOANNE BOILY, ANGÈLE SAAGHY	)	*for the Respondents Marc-Yvan*
and MARC BOILY	)	*Hébert, Raymond Hébert,*
	)	*Joanne Boily, Angèle Saaghy*
(Accused) Respondents	)	*and Marc Boily*
	)	
- and -	)	***C. L. Monnin*** *and*
	)	***M. C. Power***
LA SOCIÉTÉ FRANCO-MANITOBAINE	)	*for the Intervener*
	)	
Intervener	)	*Appeal heard:*
	)	***May 1, 2009***
	)	
	)	*Judgment delivered:*
	)	***November 23, 2009***

Appeal from (2005), 199 Man.R. (2d) 6
See 2006 MBCA 2, 208 Man.R. (2d) 1

OFFICIAL ENGLISH TRANSLATION

CHARTIER J.A.

Introduction and Issues

1 This is an appeal by the Crown from the trial judge's decision to quash certain offence notices issued under *The Highway Traffic Act*, C.C.S.M., c. H60, in the context of the image-capturing enforcement system (the Offence Notices). The trial judge ruled that the Offence Notices were nullities because they did not comply with Part 9 of *The City of Winnipeg Charter*, S.M., 2002, c. 39 (the *Charter*) and City of Winnipeg By-law No. 8154/2002, *Official Languages of Municipal Services By-law* (11 December 2002) (the by-law) in that the specific (as opposed to generic) information relating to the offences was in English only. The trial judge consequently dismissed the proceedings against the respondents.

2 At issue in this appeal is the nature and scope of the principle of linguistic equality in respect of the delivery of services by the City of Winnipeg (the City) in the designated bilingual area of Riel. This area encompasses the wards of St. Boniface, St. Vital and St. Norbert. More specifically, the appeal raises the question of whether Part 9 of the *Charter* and the by-law impose on the City an obligation to provide services in French substantively equal to the services provided in English in the designated bilingual area of Riel.

3 In launching an appeal to this court, the Crown has availed itself of the procedure set out at s. 830 of the *Criminal Code*, which has been incorporated

into *The Summary Convictions Act*, C.C.S.M., c. S230, by s. 3(1) of the latter. Section 830 provides that the Crown may appeal from a decision, but only on grounds of error in point of law, excess of jurisdiction, or refusal or failure to exercise jurisdiction. In the case at bar, the Crown alleges three errors in point of law and raises the following questions:

1. Did the trial judge err in point of law when he interpreted Part 9 of the *Charter* and the by-law, in respect of the delivery of municipal services in both official languages, as including the Offence Notices issued by members of the Winnipeg Police Service under s. 13(1.1) of *The Summary Convictions Act*?

2. Did the trial judge err in point of law when he found that the Offence Notices were invalid and dismissed them on the grounds that a prosecution cannot proceed on the basis of nullities?

3. Did the trial judge act in excess of his jurisdiction when he quashed the Offence Notices?

Statutory Framework

4 It is helpful to set out the relevant provisions of Part 9 of the *Charter* and the "whereas" clauses of By-law 8154/2002, which set out the purposes of the by-law and the framers' intent. They are as follows:

PART 9

OFFICIAL LANGUAGES OF MUNICIPAL SERVICES

Definitions

451(1) In this Part,

"**designated area**" means the area of the Riel Community as set out in the *City of Winnipeg Wards and Communities Regulation*, Manitoba Regulation 154/92;

"**historic St. Boniface**" means the area described as Taché Ward in Order in Council 656/71;

"**municipal services**" means services that are provided to the public by the city;

"**Saint-Boniface Ward**" means St. Boniface Ward as described in the *City of Winnipeg Wards and Communities Regulation*, Manitoba Regulation 154/92.

Official Languages
451(2) For the purposes of this Part, English and French are the official languages.

General obligation of the city
452(1) Except where a later date or series of dates is fixed by by-law under subsection 460(1) (by-law for implementation) for compliance with a provision of this Part, the city shall ensure that all things necessary are provided or done to satisfy the requirements of this Part and to permit a person to do anything he or she is entitled to do under this Part.

Interpretation
452(2) Nothing in this Part shall be interpreted to prevent the city from providing more municipal services in French than are required in this Part or from providing municipal services to persons in any language other than English or French.

Limitation of obligation
452(3) The obligations of the city under this Part are subject to such limitations as circumstances make reasonable and necessary, if the city has taken all reasonable measures to comply with this Part.

BILINGUAL DOCUMENTS

Notices, statements etc.

456(1) All notices, statements of account, certificates, demands in writing and other documents sent or given by the city to persons resident in the designated area shall be in both official languages.

Forms and brochures

456(2) All application forms provided by the city to the general public and all brochures, pamphlets and similar printed documents distributed by the city to the general public shall be available to the general public in the designated area in both official languages.

Publication of notices and advertisements

457(1) Any public notice respecting a matter that affects the designated area generally, whether or not it also affects the rest of the city, and any advertisement for the employment of a person with competence in both official languages shall be published by the city in both official languages.

Public notices may be published separately

457(2) The English and French versions of a public notice or advertisement referred to in subsection (1) may be published in separate publications.

Cost of publication

457(3) Where a public notice referred to in subsection (1) is given under Part 6 (Planning and Development) in respect of land in the designated area, the person on whose behalf it is published shall pay the cost of publication in the official language of the person's choice and the city shall pay the cost of publication in the other official language.

COMPLAINTS

Complaint to ombudsman

463 Any person who feels that the city has failed to meet its obligations under this Part may make a complaint to the ombudsman.

THE CITY OF WINNIPEG
BY-LAW NO. 8154/2002

A By-law of The City of Winnipeg, being a by-law for the provision of municipal services in both official languages.

WHEREAS Part 9 of *The City of Winnipeg Charter* mandates the provision of municipal services as set out therein in both official languages and requires that a by-law be enacted establishing a plan to implement said Part 9;

AND WHEREAS the City of Winnipeg is committed to normalizing the use of the French language in the delivery of municipal services within the designated areas pursuant to Part 9 of *The City of Winnipeg Charter*;

AND WHEREAS the City of Winnipeg is committed to providing French language services in accordance with the active offer principle;

AND WHEREAS the City of Winnipeg is committed to providing French language services that are equally accessible and of comparable quality to those available in the English language;

AND WHEREAS the City of Winnipeg recognizes that providing French language services is an important means of stimulating investment from local, national and international businesses which view the use of the two official languages as a significant asset to the city as a whole;

[emphasis added]

The Facts

5 The facts are not in dispute. The respondents are all motor vehicle owners. At different times and under different circumstances, images of their vehicles were captured as they passed before an image-capturing camera while travelling at a rate of speed greater than the posted speed limit. As a result, the respondents each received offence notices for speeding.

6 Although the evidence at trial showed that the Offence Notices were in bilingual form, a peace officer still had to complete the blank spaces with the particulars of the specific offence. These particulars include the time and date of the offence, the municipality where the offence occurred, the license plate number of the vehicle, the nature of the offence, the date of issuance of the offence notice, the deadline for payment of the ticket, information identifying the peace officer, the description of the vehicle and information identifying its owner.

7 In the case at bar, all of the information inserted in the blank spaces by the peace officers is in English. To give but one example, the offence notice (number 70124598) received in the mail by Raymond Hébert indicates, among other things, that the date of the offence was on or about "May 7, 2004"; that the colour of the vehicle is "GREEN"; and that the offender, contrary to s. 95(1) of *The Highway Traffic Act*, committed the following offence: "SPEED – SCHOOL W/B Boul Provencher West of Rue St. Jean Baptiste."

8 The respondents challenged the validity of the Offence Notices, relying on s. 456(1) of Part 9 of the *Charter*, which section states the following:

> **Notices, statements etc.**
> **456(1)** All notices, statements of account, certificates, demands in writing and other documents sent or given by the city to persons resident in the designated area shall be in both official languages.
>
> [emphasis added]

9 The "designated area" is defined in s. 451(1) as the Riel Community;

and s. 451(2) stipulates that, for the purposes of Part 9 of the *Charter*, the official languages are French and English.

10 The respondents are all residents of the Riel Community. This district constitutes the City's designated bilingual area. As previously mentioned, the facts that give rise to the offences were not challenged at trial. Furthermore, the documents supporting the Crown's case were filed with the consent of the respondents.

11 The only witness at trial was police officer Jacqueline Chaput. Cst. Chaput was responsible for reviewing notices issued under the City's photo enforcement program. She acknowledged that the information to be inserted in the blank spaces is relatively repetitive and could be recorded and generated in bilingual form by a computer.

Decision of the Trial Judge

12 The trial judge made findings of law and findings of fact. Firstly, he decided that the matter before him involved a question of the interpretation of language rights and that his interpretation needed not only to be mindful of the concept of substantive equality (as described in *R. v. Beaulac*, [1999] 1 S.C.R. 768 at para. 22), but also to be "consistent with the preservation and development of official language communities in Canada" (*Beaulac* at para. 25).

13 Secondly, having determined that the Offence Notices are subject to the obligations set out at s. 456 of the *Charter*, the trial judge ruled that the City had failed in the obligations imposed on it by Part 9 of the *Charter*. The trial

judge found that the City had permitted a difference in the level of linguistic services relating to offence notices, thereby conferring on the French language a secondary and reduced status compared to that of the English language, and that (at para. 68):

> …. Such a status in my view is inconsistent with the City's linguistic obligation to provide to residents of Riel, the identified documents and notices in a fully bilingual form.

14 Having found that the City had an obligation under s. 456 to provide fully bilingual offence notices and informations to the residents of Riel, and that the notices issued to the respondents in this matter did not comply with that obligation, the trial judge considered the question of whether s. 452(3) of the *Charter* allows the City to circumvent its obligations. This subsection is worded as follows:

> **Limitation of obligation**
> **452(3)** The obligations of the city under this Part are subject to such limitations as circumstances make reasonable and necessary, if the city has taken all reasonable measures to comply with this Part.

15 In the context of his analysis of this question, the trial judge made the following findings of fact based on the adduced evidence:

1) the City did not take all reasonable measures in the circumstances to comply with its linguistic obligations; and

2) the measures that the City needs to take in order to comply with them are not unreasonable.

16 The trial judge thus declared that, in the circumstances, s. 452(3) did not release the City from its obligation to provide fully bilingual offence notices to the residents of Riel. It is important to note that he limited this latter finding to offence notices issued under the image-capturing enforcement system.

17 As a consequence, the trial judge quashed all of the Offence Notices. According to the trial judge, these notices were invalid originating documents. In this regard, he put forth the following explanations (at paras. 108-9):

> In ruling as I have that the non-compliance by the City constitutes a deficiency in the "form" of offence notices, those originating and foundational documents for these prosecutions need be seen as nullities. A prosecution cannot properly proceed on the basis of a nullity and accordingly, the proceedings against all accused need be dismissed.
>
> It will suffice to say that given the absence of any response from the accused that would have challenged the technical Crown proof (the various certificates and documents marked as exhibits 1 to 7), such Crown proof would have satisfied me beyond a reasonable doubt concerning the alleged offences charged on each and every offence notice. However, having quashed all of the offence notices as nullities, neither those nor any other further formal determinations are now required.

18 Furthermore, in the trial judge's view, the City's obligation to issue fully bilingual offence notices does not encroach on a peace officer's right to draft originating processes in the official language of his or her choice.

Analysis

a) Standard of Review

19 As the *Criminal Code*'s s. 830 right of appeal is limited to errors concerning points of law, or excesses of jurisdiction, the applicable standard of review is correctness. It is important to note that, in the case at bar, this court does not have jurisdiction to consider grounds of appeal involving questions of fact or questions of mixed fact and law.

20 As the first question necessitates the interpretation of a statute, the standard of review is one of correctness.

21 However, it is not as certain that the second question raised by the Crown is one of a point of law. The Crown maintains that the trial judge erred in ruling the Offence Notices invalid and dismissing them on the ground that a prosecution cannot proceed on the basis of a nullity. Before ruling on the validity of the Offence Notices, the trial judge reviewed the evidence to determine whether the City had taken all reasonable measures to comply with its obligations. He concluded his analysis by stating the following (at para. 97):

> In the circumstances of the case at bar, to conclude that Constable Chaput's explanation is one which reasonably justifies the City's failure to have done all that it ought to have done, risks trivializing the City's own expansive and clearly enunciated objectives. Accordingly, based on the explanation contained in the evidence of Constable Chaput, I can make the following findings of fact:
>
> > 1. Notwithstanding the impediments described, an examination of the City's efforts (including its non efforts to respond to those obstacles and impediments) do not reveal that it took all reasonable measures in the circumstances to comply with its obligations to make fully bilingual the offence notices in question.

> 2. The alternative available measures that would need to be taken (and should have been taken) to place the City in a position of compliance with its linguistic obligation, are in the circumstances, measures which are not unreasonable.
>
> [emphasis added]

22 The trial judge's reasons clearly show that, in reaching his decision to declare the Offence Notices invalid, he made certain findings of fact. In my opinion, it is obvious that the first part of the second question raised by the Crown is one of mixed fact and law. As this question is not a question in point of law alone, this court does not have jurisdiction to decide it in the context of a s. 830 appeal, and there is no reason to consider it further.

23 Let me now examine the second part of the question. In effect, the Crown is suggesting that the trial judge did not have the requisite authority to dismiss the proceedings as nullities; in other words, it is claiming that the trial judge lacked the jurisdiction to quash the Offence Notices. In my opinion, this question can be considered at the same time as Question 3 which raises the ground of excess of jurisdiction. Questions of jurisdiction confer a right of appeal under s. 830. The standard of review applicable is that of correctness.

b) Question 1

24 It is useful to recall Question 1: Did the trial judge err in point of law when he interpreted Part 9 of the *Charter* and the by-law, in respect of the delivery of municipal services in both official languages, as including the Offence Notices issued by members of the Winnipeg Police Service under

s. 13(1.1) of *The Summary Convictions Act*?

25 The Crown submits that the trial judge erred in determining that the issuance of an offence notice is a "service" of the City and is consequently subject to s. 456(1) of the *Charter*. According to the Crown, the preparation and issuance of such a notice is not a "service," but rather constitutes a charging document alleging an offence against a law. Furthermore, according to the Crown, police officers are not employees of the City in the same sense as other persons hired to provide different municipal services.

26 The trial judge did not dwell at all on the question of whether offence notices are subject to the *Charter* and the by-law. He simply noted, at para. 45 of his reasons, that offence notices are subject to the obligations set out at s. 456(1) of the *Charter* (please note a clarification in this regard at para. 29 of these reasons). This conclusion is not in any way surprising in light of the fact that the argument (that offence notices are not subject to the *Charter*) was never raised by the Crown in its written submissions or in its oral arguments before the trial judge. Indeed, the Crown attorney at trial summarized the substance of her argument as follows:

> But can the constable swear to French words if he does not understand French? I think that that is, in essence, the position of the Crown.

27 In its trial brief, the Crown had submitted that the following legal issues are clearly settled: an accused is not entitled to an information sworn in the language of his choice, and an information in bilingual form in which the charge is written in only one of the two official languages does not justify its dismissal. In support of its assertions, the Crown cited *R. v. Simard*

(1996), 105 C.C.C. (3d) 461 (Ont. C.A.); *R. v. Boutin*, [2002] O.J. No. 2245 (S.C.J.) (QL); and *R. v. St-Amand (Y.)*, 2002 NBQB 228, 252 N.B.R. (2d) 359. The trial judge summarized the Crown's position as follows:

> 1) to accept the accused's argument that offence notices need be fully translated would impose upon the City an obligation that has been otherwise found not to exist in any *Criminal Code* prosecution;
>
> 2) any determination that would oblige the City to provide a more fully bilingual offence notice could infringe upon a peace officer's recognized right to swear an information in the official language of his or her choosing.

28 It is only before this court that the Crown first argued that offence notices were not subject to the *Charter*. Thus, the trial judge had no opportunity to make findings of fact in this respect, nor to rule on the law. As the issue was raised for the first time before this court, it need not be considered further and it would, in my view, be inopportune to do so.

29 Before considering the second question, I would point out that, in his reasons, the trial judge refers to s. 456(2) rather than to s. 456(1). This is clearly a typographical error which he attempted to correct when he rendered his decision. The transcript indicates that the trial judge asked that references to s. 456(2) be replaced by s. 456(1) and specified three places in the judgment where the error had occured. Unfortunately, he omitted the one in para. 45.

c) Question 2

30 As I mentioned previously, the first part of the question constitutes a question of mixed fact and law and this court does not have the requisite jurisdiction to decide it. As for the second part of the question, it will be considered at the same time as Question 3.

d) Question 3

31 The Crown asserts that the trial judge exceeded his jurisdiction in quashing the Offence Notices. It is important to make a distinction between the standard of review that applies to a decision in which the judge grants one of several available remedies (a decision of a discretionary nature) and that which applies to a decision granting a remedy that is not available under the law (excess of jurisdiction). As the right of appeal is limited under s. 830 of the *Criminal Code* to errors concerning points of law, a court of appeal must show deference when a judge exercises his or her discretion and may only intervene if the decision is erroneous in law (see *R. v. Regan*, 2002 SCC 12, [2002] 1 S.C.R. 297, at paras. 117-18). It is of course recognized that if the judge acted in excess of jurisdiction, this court will intervene.

32 It is also important to recall that, at this stage of my analysis, and, again, within the context of its s. 830 appeal, the Crown has not succeeded in convincing me that the trial judge erred in point of law alone, nor that he exceeded his jurisdiction. The final question in issue must be examined in light of the following conclusions of the trial judge:

1) the offence notices, issued under the image-capturing enforcement system, are subject to Part 9 of the *Charter* and must be fully bilingual;

2) the City failed in its obligations under Part 9 of the *Charter* by permitting a discrepancy in the level of language service that gives French a secondary and reduced status as regards offence notices;

3) the City did not take all of the reasonable measures in the circumstances to comply with its linguistic obligations;

4) the measures that the City needs to take in order to comply with its linguistic obligations as regards offence notices issued under the image-capturing enforcement system are not unreasonable; and

5) s. 452(3) does not release the City from its obligation to deliver fully bilingual offence notices to the residents of Riel.

33 At trial, the Crown argued that the judge did not have the authority to grant a remedy for non-compliance with the *Charter*. For their part, the respondents requested an acquittal based on the invalidity of the originating documents.

34 The trial judge stated that, given the absence of any response from the accused to the Crown's technical proof, he would, under other circumstances, have been satisfied beyond a reasonable doubt that the offences alleged in the Offence Notices had been committed. However, having found that the City had not complied with the obligations imposed on it by Part 9, the trial judge held that this non-compliance constituted a deficiency in the form of the Offence Notices and that this deficiency resulted in their nullity. In his view (at para. 108):

> …. A prosecution cannot properly proceed on the basis of a nullity and accordingly, the proceedings against all accused need be dismissed.

35 The Crown argues that it was not open to the trial judge to quash the Offence Notices. In its factum, the Crown submits that the only available remedy is the one specified in s. 463 of the *Charter*. Section 463 provides as follows:

> **Complaint to ombudsman**
> **463** Any person who feels that the city has failed to meet its obligations under this Part may make a complaint to the ombudsman.

36 However, I would note that, at the hearing held before this court, the Crown attorneys acknowledged that the remedy provided in s. 463 was not an exclusive one. Nevertheless, the Crown maintains that this remedy is in no way trivial.

37 In response, the respondents submit that the trial judge had the discretion to choose from several remedies and that his ultimate decision was a discretionary one. In the wake of this assertion, they claim that this court does not have the jurisdiction to interfere with his decision respecting remedy unless it constitutes an error in law (see s. 830).

38 I reject the Crown's submission that the only available remedy was the complaint process set out at s. 463 for three reasons. Firstly, s. 463 confers on any person who considers that the City has failed to meet its obligations the right to make a complaint to the ombudsman. The respondents could have made a complaint under this section, but they instead chose to challenge the

validity of the Offence Notices in court. Section 463 does not limit the remedies available to a judge who hears a quasi-criminal matter such as the case at bar.

39 Secondly, s. 7(1) of *The Summary Convictions Act* provides for several remedies. The judge may acquit the respondents or reprimand them, "where a minimum fine is prescribed, impose a fine that is less than the minimum," "suspend the sentence" or "grant a conditional or absolute discharge." Moreover, the judge may quash "the proceedings under an offence notice" where there is an irregularity (see s. 17(9) of *The Summary Convictions Act*). There are obviously a number of remedies available to a judge.

40 Finally, a Provincial Court judge—like judges in other courts—is master of the proceedings and holds the powers necessarily incidental to the carrying out of his functions (see *Hudson Bay Mining and Smelting Co. v. Cummings P.C.J.*, 2004 MBCA 182, 190 Man.R. (2d) 231, at paras. 23-24). In the criminal or quasi-criminal domain, these powers include the authority to quash an information or an offence notice where warranted.

41 In the case at bar, the trial judge chose a remedy from among several. The decision to quash the Offence Notices is a remedy that was available to him in law. The choice of remedy is a discretionary power conferred on the trial judge. Again, when a judge exercises a discretionary power (in the context of an appeal governed by s. 830), this court may not intervene unless the decision is wrong in law.

42 I would conclude that the trial judge did not err in law. His reasons show that he correctly stated the principles of law applicable to the analysis of

questions relating to language rights. His decision is not wrong in law. I am not persuaded that there is cause for intervention with respect to this discretionary decision. Therefore, I would not accede to this ground of appeal.

43 The Crown also submitted an alternative argument. If the court should dismiss its exclusive remedy argument, the Crown submits that, under the *Criminal Code*, and para. 601(3)(*c*) in particular, the trial judge was required to amend the Offence Notices in the event they were deficient in form. The Crown relies on *R. v. Moore*, [1988] 1 S.C.R. 1097, to assert that, absent absolute nullity, the deficiency must be corrected by means of an amendment unless such remedy causes prejudice to the respondents' defence.

44 In the case at bar, the trial judge found that each Offence Notice was deficient in form. Although the trial judge chose not to do so, it was in my opinion also open to him to find that the Offence Notices were deficient in substance as several essential elements of the offence were written in English only. As the respondents did not call any evidence, there was no evidentiary basis for a finding that an amendment to the Offence Notices would cause prejudice to the respondents. The trial judge could have amended the Offence Notices by requiring the addition of the pertinent information in French and thereafter granting an adjournment to the respondents. As the trial judge did not amend the Offence Notices, the Crown claims that he erred in point of law.

45 This argument poses two problems. Firstly, the Crown never asked the trial judge to amend the Offence Notices. Secondly, even if such a request

had been made, it was certainly open to the trial judge, in these circumstances, to refuse to amend the Offence Notices. I will explain.

46 It is important to remember the context in which the trial judge had to decide the question: the appropriate remedy for non-compliance with a language obligation. The trial judge chose the nullification remedy because "the City [had] failed in its obligation to provide in an equal manner the presence of French and English on offence notices" (at para. 103) as required by Part 9 of the *Charter*. It was imperative that the principles applicable to language matters be considered by the trial judge in determining the appropriate remedy.

47 The law in this area has greatly evolved in the last decade. The Supreme Court of Canada has repeatedly restated the principles applicable to the interpretation of legislation on language rights: in *Beaulac* in 1999; *Arsenault-Cameron v. Prince Edward Island*, 2000 SCC 1, [2000] 1 S.C.R. 3; *Solski (Tutor of) v. Quebec (Attorney General)*, 2005 SCC 14, [2005] 1 S.C.R. 201; *Charlebois v. Saint John (City)*, 2005 SCC 74, [2005] 3 S.C.R. 563; and recently in *DesRochers v. Canada (Industry)*, 2009 SCC 8, [2009] 1 S.C.R. 194. In *DesRochers*, Charron J. summarized these principles as follows (at para. 31):

> Before considering the provisions at issue in the case at bar, it will be helpful to review the principles that govern the interpretation of language rights provisions. Courts are required to give language rights a liberal and purposive interpretation. This means that the relevant provisions must be construed in a manner that is consistent with the preservation and development of official language communities in Canada (*R. v. Beaulac*, [1999] 1 S.C.R. 768, at para. 25). Indeed, on several occasions this Court has reaffirmed that the

> concept of equality in language rights matters must be given true meaning (see, for example, *Beaulac*, at paras. 22, 24 and 25; *Arsenault-Cameron v. Prince Edward Island*, 2000 SCC 1, [2000] 1 S.C.R. 3, at para. 31). Substantive equality, as opposed to formal equality, is to be the norm, and the exercise of language rights is not to be considered a request for accommodation. ….

48 In the case at bar, the trial judge's reasons reflect his awareness of the applicable principles (at para. 42):

> …. However, as a case involving the interpretation of language rights, my interpretation must not only remain mindful of the concept of substantive equality, but it must also be compatible "with the preservation and development of official language communities in Canada."

49 In 2002, the City elected to provide French-language services to certain areas of the City. Drawing its inspiration from the concept of territorial bilingualism, it specified that its linguistic commitments were limited to the residents of the "designated area" of Riel (the St. Boniface, St. Vital and St. Norbert wards). Indeed, the area that the City designated as bilingual is identical to the area designated by the Province of Manitoba in its own policy on French-language services, adopted in 1999. The Province's designation of bilingual areas is based on a demographic and linguistic reality or, as the statement of policy puts it, "where the French-speaking population is concentrated."

50 In addition, it is clearly established, in relation to the designated bilingual areas, that English and French are the official languages (see s. 451(2)), and that, through its by-law, the City is committed to:

1) normalizing the use of the French language in the delivery of municipal services within the designated area; and

2) providing French language services that are equally accessible and of comparable quality to those available in the English language.

51 In my view, the above statement reflects the framers' intent to implement a form of bilingualism that respects the principle of substantive equality in the designated bilingual area. It appears to me to be equally clear that this commitment by the City is confined to the designated area and that the City is not bound by it in other Winnipeg wards.

52 It is in this specific context that the trial judge was required to adjudicate. In my opinion, he applied the rules of interpretation set forth by the Supreme Court of Canada in language matters, he interpreted the *Charter* in a manner consistent with its underlying objects, and he correctly decided to quash the Offence Notices.

53 As I mentioned earlier, it would have been easy for the trial judge to confine himself to amending the Offence Notices by adding the missing information and granting an adjournment to the respondents had a request to that effect been made. Such a remedy would have satisfied the right to a fair trial for the respondents, and the principles of fundamental justice. However, as the Supreme Court of Canada made clear in *Beaulac*, language rights have an origin and role which are distinct from the right to a fair trial (at para. 41):

> …. Language rights have a totally distinct origin and role. They are meant to protect official language minorities in this country and to insure the equality of status of French and English. This Court has

> already tried to dissipate this confusion on several occasions. Thus, in *MacDonald v. City of Montreal*, [[1986] 1 S.C.R. 460], Beetz J., at pp. 500-501, states that:
>
> > It would constitute an error either to import the requirements of natural justice into … language rights … or vice versa, or to relate one type of right to the other.… Both types of rights are conceptually different.… To link these two types of rights is to risk distorting both rather than reenforcing either. ….

54 Furthermore, as Charron J. stated earlier this year in *DesRochers* "the exercise of language rights is not to be considered a request for accommodation" (at para. 31). Here, the trial judge took the same approach as Charron J. He was aware of this concern, and he did not accept that the respondents should have been content with the service received (even in the absence of substantive equality between this service and that received by the other official language community) because the City had made some efforts to provide services in French. The trial judge stated the following (at para. 69):

> When a court is interpreting the scope of a language right where some efforts have already been made by a government to provide a linguistic service, care must be taken to not unconsciously diminish the scope of the government's obligation by minimizing the practical effect of an allegedly insufficient service or inadequately translated document. This sort of minimization could occur where (like in the case at bar) a government's identifiable but inadequate efforts are used as a reference point by the Crown to emphasize how little of the document was not translated. Implicit in such an argument, is the suggestion that that which has not yet been translated, will not cause any practical harm or inconvenience to the citizen seeking the service. For such an argument to have any relevance in a case involving language rights, a court would have to accept that it is appropriate to determine the scope of a government's linguistic obligation with reference to whether members of a linguistic minority (Anglophone or

> Francophone) already have the capacity to cope using the official language of the majority. In my view, such a utilitarian argument (and its subtle but insidious implications) represents a threat to the required broad and liberal interpretation of language rights. Such an argument has no place in my legal determination as to scope (what is the City's linguistic obligation?) nor my factual determination concerning compliance (has the City provided the service required by its obligation?).

55 As already noted, the trial judge rejected the Crown's argument to the effect that he lacked jurisdiction to prescribe remedies for the City's non-compliance, and he decided to quash the Offence Notices. In *Belende v. Patel*, 2008 ONCA 148, 290 D.L.R. (4th) 490 (leave to appeal to the S.C.C. denied, [2008] S.C.C.A. No. 125 (QL)), the Ontario Court of Appeal recently had occasion to consider an application for a similar remedy in a language rights case. There, the Court of Appeal quashed the order of the trial judge who had refused to postpone the hearing to a date when a bilingual judge would be available. After declaring that the right to a bilingual hearing was a particular kind of right and not a procedural right put in place to ensure respect of the principles of fundamental justice or the right to a fair trial, the Court of Appeal granted the following relief (at para. 24):

> Therefore, in my view, the appropriate disposition is to set aside the order and to refer the matter back to the court below. English and French are the official languages of the courts in Ontario, and the court has a responsibility to ensure compliance with language rights under s. 126 of the *Courts of Justice Act*. A proper interpretation of this provision is one that is consistent with the preservation and development of official language communities in Canada and with the respect and preservation of their cultures: see *Beaulac*, at paras. 25, 34 and 45. Violation of these rights, which are quasi-constitutional in nature, constitutes material prejudice to the linguistic minority. A court would be undermining the importance of these rights if, in circumstances where the decision rendered on the merits was correct,

> the breach of the right to a bilingual proceeding was tolerated and the breach was not remedied.
>
> [emphasis added]

Like the trial judge in the case at bar, the Ontario Court of Appeal found that, in the circumstances of the case, it should grant relief.

56 In this case, I am of the opinion that had the trial judge simply amended the Offence Notices, he would have been acknowledging that the City's linguistic obligations towards the residents of Riel constituted nothing more than an accommodation and that deficiencies would be tolerated. Such a decision would undermine the language rights of the residents of Riel and diminish the importance of the City's language obligations.

57 That said, in light of the "limitation of obligation" provision found at s. 452(3), I conclude that the scope of this decision must be limited to the fact situation supported by the evidence. As a consequence, this decision must, in my view, be limited to offence notices issued within the framework of the image-capturing enforcement system to the residents of the designated area of Riel pursuant to *The Summary Convictions Act* and *The Highway Traffic Act*.

58 For the above reasons, I would dismiss the appeal.

_____ J.A.

I agree: _____

J. (*ad hoc*)

I agree: _____

J. (*ad hoc*)