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Canada

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BY FAX and BY COURIER

August 24, 2017

The Registrar
Supreme Court of Canada
301 Wellington Street
Ottawa, Ontario K1A 0J1

RE: *Minister of National Revenue's response to the application for leave to appeal Kassem Mazraani v. Industrielle Alliance, Assurance et Services Financiers inc. and the Minister of National Revenue*
S.C.C. No. 37642

Madam, Sir:

We are writing to provide the Minister of National Revenue's (**Minister**) response to the application for leave to appeal in this matter in accordance with subrule 27(2) of the Rules¹ as well as the Minister's response to the applicant's motion to stay the Federal Court of Appeal decision in accordance with subrules 49(2) and (4) of the Rules. The Minister respectfully submits that both applications should be dismissed.

The application for leave to appeal is brought from a Federal Court of Appeal decision which determined that the Tax Court of Canada (**Tax Court**) had violated the official language rights of counsel for *Industrielle Alliance*, of several witnesses and of the applicant.

In deciding to quash the Tax Court judgment and order a new hearing, the Federal Court of Appeal correctly recognized that parties and witnesses benefit from a constitutional and quasi-constitutional right to address a federal court, such as the Tax Court, in the official language of their choice.² These rights are enshrined at

¹ *Rules of the Supreme Court of Canada*, SOR/2002-156

² FCA Reasons, Application for Leave to Appeal (ALA), pp. 11-14, paras. 8-14.

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section 133 of the *Constitution Act, 1867*³ as well as subsection 19(1) of the *Canadian Charter of Rights and Freedoms*⁴ and are affirmed at sections 14 and 15 of the *Official Languages Act*.⁵

The Federal Court of Appeal evaluated the Tax Court hearing transcripts against this framework and properly recognized that official language right violations had occurred.⁶ In so doing, the Federal Court of Appeal adopted an approach similar to *Beaulac*⁷ where this Court ordered a new trial because of breaches of official language rights. This decision affirmed that official language rights do not entail a mere duty to accommodate but rather that the Courts must take positive steps to promote these rights. This Court has consistently reaffirmed these principles.⁸

The fact that the applicant disagrees with the Federal Court of Appeal's application of well-settled official language right principles does not raise a matter of public importance or an important issue of law which would warrant review by this Court. For these reasons, the Minister submits that the application for leave to appeal should be dismissed.

With respect to the applicant's motion to stay the Federal Court of Appeal decision, the Minister submits that it should be dismissed regardless of the result on the application for leave to appeal since the applicant has not satisfied the three-part test identified by this Court in *RJR - MacDonald*.⁹ The applicant has not established that there exists a serious question to be tried, he has not demonstrated any irreparable harm, nor has he attempted to assess the balance of inconvenience to the parties.

Finally, please note that the Minister is not requesting costs in this matter.

Yours truly,



Simon Petit
Emmanuel Jilwan
Counsel

c. c.: Kassem Mazraani
Yves Turgeon & Paul Côté-Lépine, counsel for *Industrielle Alliance*
Christopher Rugar, Agent for the respondent - Minister of National Revenue

³ *The Constitution Act, 1867* (UK), 30 & 31 Victoria, c. 3.

⁴ *The Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11.

⁵ *Official Languages Act*, R.S.C., 1985, c. 31 (4th Supp.)

⁶ FCA Reasons, ALA, pp. 15-18, paras. 17-22.

⁷ *R. v. Beaulac*, [1999] 1 S.C.R. 768, p. 788 at para. 20, p. 791 at para. 24, p. 806, para. 57.

⁸ *Lavigne v. Canada*, 2002 SCC 53; *Caron v. Alberta*, 2015 SCC 56.

⁹ *RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 SCR 311.