



Case in Brief: ***Mazraani v. Industrial Alliance Insurance and Financial Services Inc.***

Judgment of November 16, 2018 | On appeal from the Federal Court of Appeal
Neutral citation: 2018 SCC 50

The choice to speak either English or French in certain courts is a protected right, the Supreme Court has confirmed. When this right is not respected, there might have to be a new hearing.

Mr. Mazraani worked as a personal insurance representative for Industrial Alliance for six months in 2012. His contract said he was self-employed. When he lost his job, he wanted to apply for Employment Insurance benefits, but self-employed people aren't eligible. His case ended up before the Tax Court of Canada.

Canada has two official languages, English and French. The Constitution says that people have the right to use either language in certain courts (such as a court created by Parliament, like the Tax Court). It doesn't matter how well a person can speak either language. It's their choice, and they can change their mind in the middle of a hearing (that is, a trial, an appeal, or another legal proceeding) if they want. Language rights are different from the *Charter* right to understand (and be understood) during a trial. They are meant to protect official language communities.

Every court has rules of procedure that apply to it. The Tax Court's rules said that the parties could say which language they wanted to use in court and ask for an interpreter if they needed one. But some cases are dealt with in a less formal way, to save time (and money) for everyone. In these cases, the usual rules don't apply. The simplified rules that applied in Mr. Mazraani's case didn't say how someone could tell the court which language s/he wanted to use. They also didn't set out how someone could ask for an interpreter.

When the hearing started, Mr. Mazraani wanted to use English. Industrial Alliance's first witness wanted to speak in French. But the judge said they would have to come back another day when an interpreter was available for Mr. Mazraani. Industrial Alliance decided not to wait, so the witness spoke in English. The hearing lasted a few more days and other witnesses who wanted to speak in French were asked to speak in English. The judge also asked Industrial Alliance's lawyer to make his arguments in English, even though he was more comfortable in French. Even so, many parts of the hearing happened only in French, and Mr. Mazraani couldn't understand them.

The Tax Court judge ruled Mr. Mazraani was an employee. He criticized Industrial Alliance's witnesses as "misleading" and said they played with words to avoid telling the truth. He said the company acted so badly that it had to pay Mr. Mazraani's legal costs. This was to discourage "abuse of process" (misuse of the courts).

Industrial Alliance appealed, saying the judge had violated the language rights of its witnesses and lawyer. The Federal Court of Appeal agreed. It also said Mr. Mazraani's rights were violated because large parts of the hearing were never translated for him. It ordered a new hearing before a different judge.

The Supreme Court unanimously agreed the witnesses' and lawyer's language rights were violated, and that Mr. Mazraani's were, too. It didn't matter that there were no rules about language rights in the simplified Tax Court procedures. The judge still had to make sure people's language rights were protected (especially people coming to court without lawyers, like Mr. Mazraani). It was wrong for the judge to ask anyone to use a different language. Every party, witness, and lawyer had to know s/he had a real choice about what language to use. The Court said that language rights were so important that there would usually have to be a new hearing when they were violated, even if the violation didn't affect the result. In this case, the violations had a clear effect on the proceedings and the decision, so the Court ordered a new hearing.

This decision noted that breaching someone's language rights can be seen as a sign of bias against a language group. This lowers public trust in our courts, which is one reason it is so important for judges to protect these rights.

Breakdown of the Decision: ***Unanimous:*** Justice Clément [Gascon](#) and Justice Suzanne [Côté](#) (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Brown](#), [Rowe](#), and [Martin](#) in agreement)

More information (case # 37642): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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