Flota Cubana de Pesca (Cuban Fishing Fleet) v. Canada (Minister of Citizenship and Immigration), [1998] 2 FC 303

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A-569-95

Flota Cubana de Pesca (Cuban Fishing Fleet) and **Pickford & Black** and **Pesqueria Latino Americana S.A.** and **Pesqueria Atlantica S.A.** and**Pesqueria Altamar S.A.** and **Pesquera La Palma S.A.** and **Transportes Oceanicos S.A.** and **Pezmares S.A.** (*Applicants*)

v.

The Minister of Citizenship and Immigration *(Respondent*)

A-570-95

Flota Cubana de Pesca (Cuban Fishing Fleet) and **Pickford & Black** and **Pesqueria Latino Americana S.A.** and **Pesqueria Atlantica S.A.** and**Pesqueria Altamar S.A.** and **Pesquera La Palma S.A.** and **Transportes Oceanicos S.A.** and **Pezmares S.A.** (*Applicants*)

v.

The Minister of Citizenship and Immigration *(Respondent*)

Indexed as: Flota Cubana de Pesca (Cuban Fishing Fleet)v. Canada (Minister of Citizen ship and Immigration) (C.A.)

Court of Appeal, Pratte, Stone and McDonald JJ.A." Halifax, October 16; Ottawa, December 11, 1997.

Citizenship and Immigration " Exclusion and removal " Removal of visitors " Owners, operators of vessels engaged in fishing operations legally obliged, under Immigration Act, ss. 91.1(1)(b) and 92(1), to pay administration fees and make security deposits with respect to deserting crew members as "transportation companies" within meaning of Immigration Act, ss. 2, 91.1(1)(b), 92(1).

Construction of statutes " Whether owners, operators of vessels engaged in fishing operations "transportation companies" within meaning ofImmigration Act, ss. 2, 91.1(1)(b), 92(1) for purposes of legal obligation to pay administration fees and make security deposits with respect to deserting crew members " Discrepancy between English, French versions of definition of "transportation company" in Act, s. 2 " Examination of legislative context in which term used and purpose, object of Act " Principles applicable when construing changes made in course of consolidating public statutes " English text best reflecting Act's objectives of controlling illegal entry of persons to Canada, recouping removal expenses.

For a number of years, the applicant companies have conducted fishing, provisioning and fishing support operations in Canada's two-hundred-mile exclusive fishingzone. Pursuant to an agreement between Canada and Cuba, Cuban vessels were authorized to enter Canadian ports for supplies, repairs and other purposes. In 1993, a number of crew members of vessels belonging to or operated by the applicant companies deserted their ships while in Canadian ports. Consequently, theMinister required the applicants to pay administration fees and to post security deposits pursuant to paragraph 91.1(1)*b*) and subsection 92(1) of the *ImmigrationAct* respectively.

These were appeals from Trial Division orders dismissing an application for judicial review of the assessment of administration fees and the direction requiring security deposits. The issues raised were whether the applicants were legally obliged to pay those fees and to make those deposits. This depended upon the proper interpretation of the term "transportation company" as it appeared in these provisions and as defined in subsection 2(1) of the Act. The issues arose from a question certified by the Trial Judge as to whether the owner or operator of a vessel engaged in fishing operations, when it transports persons or goods intoCanada, is a "transportation company" as defined in subsection 2(1) of the *Immigration Act* .

Held, the appeals should be dismissed and the question answered in the affirmative.

While the English version of the definition speaks of "a person . . . transporting or providing for the transportation of persons or goods by vehicle or otherwise", the corresponding French text reads "*Personne . . . qui assurent un service de transport de voyageurs ou de marchandises par véhicule ou tout autre*

moyen". The English version, broader in scope, favours the respondent's interpretation. The French version, narrower in scope with the use of "*service de transport*" (transportation service) and "*voyageurs*" (travellers), favours the applicants' interpretation. This raises the question of the interpretation of bilingual legislation in cases of apparent inconsistency between the two versions of the same provision.

It is well established that the English and French versions of a statute are equally authentic and authoritative. The traditional approach to construing bilingual legislation is to find and give a meaning to the provision that is shared by both versions of the statute. This "shared meaning rule", however, is not absolute. It will be discarded if an alternative interpretation leads to a preferable or more acceptable result, that accords with the true spirit and intent of an enactment and that best ensures the attainment of its objects. In addition, the courts often examine the legislative history and origin of a statutory provision in order to reconcile conflicting language versions.

Applying these principles, it was endeavoured to reconcile the English and French versions of the definition of "transportation company" by examining the legislative context in which the term was used and the purpose and object of the Act. Part V of the Act reveals that its overarching purpose is to transfer the costs associated with the entry of persons without status into Canada, and their subsequent removal, from the federal government to the transportation companies which brought these persons into the country. The provisions of Part V also assist in furthering the overall object of the Act by discouraging transportation companies from conveying persons to Canada who are not legally entitled to be or remain here. The more expansive definition of "transportation company" reflected in the English version of the Act best accords with this purpose, and expresses the true meaning of the provision.

The legislative history also indicates that the broad language employed in the English text best reflects the meaning of this provision, and furthers the object of the Act. The successive amendments to the definition of "transportation company" reveal a clear trend toward broadening its scope. The English and French texts began to diverge in 1985, and specifically as a result of the consolidation of the Revised Statutes of Canada in that year. That is when the French version reintroduced the word "*voyageur*" and incorporated for the first time the phrase "*service de transport*". The 1992 amendment removed the word "carrying", andwith it the entire concept of carriage of persons, and added the word "goods", thus expanding the application of the Act to companies transporting goods into the country. Furthermore, according to section 4 of the *Revised Statutes of Canada, 1985 Act* , the grammatical and syntactical changes made to the French definition of "transportation company" do not "operate as new law", but are to be construed as a consolidation of the law as it existed prior to 1985.

Thus, the legislative history of the definition reveals a clear intention on the part of Parliament to broaden the scope of the provision. Moreover, this broad interpretation best reflects the Act's objective of controlling the illegal entry of persons to Canada, and of recouping expenses associated with their removal. Therefore, the term "transportation company" is meant to apply to all companies which transport or provide for the transportation of persons or goods, by vehicle or otherwise. It is not restricted to companies whose primary business activities involve the transportation of persons or goods for hire.

The certified question is thus answered as follows: Where the owner or operator of a vehicle not used primarily for the purpose of tranporting persons or goods, such as a vessel engaged in fishing operations, transports persons or goods into Canada aboard that vehicle, the owner, operator or agent thereof is a "transportation company" as defined in subsection 2(1) of the Act.

statutes and regulations judicially considered

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], s. 24(2).

Immigration Act, R.S.C. 1927, c. 93 , s. 2(*d*),(*v*).

Immigration Act, R.S.C. 1952, c. 325 , s. 2(*aa*).

Immigration Act, R.S.C., 1985, c. I-2 , ss. 2(1) "master", "transportation company" (as am. by S.C. 1992, c. 49, s. 1), "vehicle" (as am. *idem*), 26(1)(*c*.1) (as am. *idem*, s. 15), 83(1) (as am. *idem*, s. 73), 85 (as am. *idem*, s. 74), 86 (as am. *idem*, s. 75), 87 (as am. *idem*, s. 76), 88, 89 (as am. *idem*, s. 77), 89.1 (as enacted by R.S.C., 1985 (4th Supp.), c. 28, s. 22; S.C. 1992, c. 49, s. 78), 90 (as am. by S.C. 1992, c. 49, s. 79), 91, 91.1(1)(*b*) (as enacted by S.C. 1992, c. 49, s. 80), 92 (as am. *idem*, s. 81), 114(1) (as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 29; c. 29, s. 14; S.C. 1990, c. 38, s. 1; 1992, c. 49, s. 102).

Immigration Act, 1976, S.C. 1976-77, c. 52.

Immigration Regulations, 1978, SOR/78-172 , ss. 42.2(1)(*e*) (as am. by SOR/93-44 , s. 20), 53(1) (as am. *idem*, s. 23).

Official Languages Act, R.S.C. 1970, c. O-2 , s. 8 (rep. by S.C. 1988, c. 38, s. 110).

Revised Statutes of Canada, 1985 Act, R.S.C., 1985 (3rd Supp.), c. 40, s. 4.

cases judicially considered

applied:

Doré v. Verdun (City), 1997 CanLII 315 (SCC), [1997] 2 S.C.R. 862; *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038; (1989), 59 D.L.R. (4th) 416; 26 C.C.E.L. 85; 89 CLLC 14,031; 40 C.R.R. 100; 93 N.R. 183; *R. v. Compagnie Immobilière BCN Ltée*,1979 CanLII 12 (SCC), [1979] 1 S.C.R. 865; [1979] C.T.C. 71; (1979), 79 DTC 5068; 25 N.R. 361; *Canada (Attorney General) v. Mossop*,1993 CanLII 164 (SCC), [1993] 1 S.C.R. 554; (1993), 100 D.L.R. (4th) 658; 13 Admin. L.R. (2d) 1; 46 C.C.E.L. 1; 17 C.H.R.R. D/349; 93 CLLC 17,006; 149 N.R. 1 (*per* L'Heureux-Dubé J., dissenting); *R. v. Collins*, 1987 CanLII 84 (SCC), [1987] 1 S.C.R. 265; (1987), 38 D.L.R. (4th) 508; [1987] 3 W.W.R. 699; 13 B.C.L.R. (2d) 1; 33 C.C.C. (3d) 1; 56 C.R. (3d) 193; 28 C.R.R. 122; 74 N.R. 276; *Canada (Information Commissioner) v. Canada (Secretary ofState for External Affairs)*, reflex, [1990] 1 F.C. 395; (1989), 64 D.L.R. (4th) 413; 28 C.P.R. (3d) 301; 32 F.T.R. 161 (T.D.); *Goodswimmer v. Canada(Attorney General)*, 1995 CanLII 3580 (FCA), [1995] 2 F.C. 389; (1995), 123 D.L.R. (4th) 93; [1995] 3 C.N.L.R. 72; 180 N.R. 184 (C.A.); appeal to S.C.C. quashed 1997 CanLII 371 (SCC), [1997] 1 S.C.R. 309.

referred to:

Chiarelli v. Canada (Minister of Employment and Immigration), 1992 CanLII 87 (SCC), [1992] 1 S.C.R. 711; (1992), 90 D.L.R. (4th) 289; 2 Admin. L.R. (2d) 125; 72 C.C.C. (3d) 214; 8 C.R.R. (2d) 234; 16 Imm. L.R. (2d) 1; 135 N.R. 161.

authors cited

Sullivan, Ruth. *Driedger on the Construction of Statutes*, 3rd ed. Toronto: Butterworths, 1994.

APPEALS from Trial Division orders (1995 CanLII 3532 (FC), [1995] 3 F.C. 383; (1995), 100 F.T.R. 211; 30 Imm. L.R. (2d) 185 (T.D.)) dismissing applications for judicial review of an assessment of administration fees against the applicants pursuant to paragraph 91.1(1)(*b*) of the *Immigration Act* and of a direction requiring the applicants to post a security deposit pursuant to subsection 92(1) of the Act. Appeals dismissed.

counsel:

Roderick H. Rogers for applicants.

Gregory A. MacIntosh for respondent.

solicitors:

Stewart McKelvey Stirling Scales, Halifax, for applicants.

Deputy Attorney General of Canada for respondent.

The following are the reasons for judgment rendered in English by

Stone J.A.: The first appeal is from an order of MacKay J. of September 1, 1995 [1995 CanLII 3532 (FC), [1995] 3 F.C. 383 (T.D.)], dismissing an application to review and set aside the assessment of the respondent Minister (the Minister) against the applicants of administration fees pursuant to paragraph 91.1(1)(*b*) ofthe *Immigration Act*, R.S.C., 1985, c. I-2 [as enacted by S.C. 1992, c. 49, s. 80] (the Act). The second is from his order of the same date dismissing an application to review and set aside a direction of the Minister made pursuant to subsection 92(2) [as am. *idem*, s. 81] of the Act, which required the applicants to post a security deposit. It was heard together with the present appeal.

The issues raised by these appeals are twofold: whether the applicants are legally obliged to pay the administration fees pursuant to paragraph 91.1(1)(*b*) of the Act and to make the security deposits pursuant to subsection 92(1). The resolution of those issues depends upon the proper interpretation of the term "transportation company" as it appears in these provisions and as it is defined in subsection 2(1) [as am. *idem* , s. 1] of the Act. MacKay J. concluded that each ofthe applicants falls within the statutory definition and, accordingly, that the Minister's decisions were authorized by the Act.

The issues arise from the following question as certified by MacKay J. [at page 394] pursuant to subsection 83(1) [as am. *idem*, s. 73] of the Act:

Where the owner or operator of a vehicle not used primarily for the purpose of transporting persons or goods, such as a vessel engaged in fishing operations, transports persons or goods into Canada aboard that vehicle, is the owner, operator, or any agent thereof a "transportation company" as defined under section2(1) of the *Immigration Act* ?

The applicant Flota Cubana de Pesca (Cuban Fishing Fleet) (Flota) is the manager and operator of vessels owned by the applicants Pesqueria Latino Americana S.A., Pesqueria Atlantica S.A., Pesqueria Altamar S.A., Pesquera La Palma S.A., Transportes Oceanicos S.A. and Pezmares S.A. (the applicants companies). The remaining applicant, Pickford & Black, is the registered legal agent of the vessels in Canada.

For a number of years the applicant companies have conducted fishing, provisioning and fishing support operations in the waters of the Atlantic Ocean in Canada's two-hundred-mile exclusive fishing zone, under an "Agreement Between the Government of the Republic of Canada and the Government of the Republic of Cuba on Mutual Fisheries Relations" dated May 12, 1977 (the Agreement). Pursuant to the Agreement Cuban fishing operators are required to

have a Canadian partner for the purpose of receiving and processing a percentage of their fishing catches in Canada. The Canadian partner is D'Eon Fisheries Limited of Shelburne, Nova Scotia. That company is entitled to receive and process 15% of each catch.

Article IV of the Agreement reads as follows:

1. Subject to the availability of facilities and the needs of Canadian vessels, the Government of Canada undertakes to authorize Cuban vessels to enter Canadian ports, in accordance with Canadian laws, regulations and administrative requirements, for the purpose of purchasing bait, supplies or outfits or effecting repairs, or for such other purposes as may be determined by the Government of Canada, where such vessels are:

(a) licensed to fish or to support fishing operations pursuant to Article II,

(b) fishing in the area referred to in Article III, or

(c) in transit between areas outside Canadian fisheries waters.

2. Such authorization shall become null and void in respect of any vessel licensed to fish pursuant to Article II upon the cancellation or termination of its licence tofish or to support fishing operations, except for the purpose of entering port to purchase supplies or effect repairs necessary for its outward voyage.

3. The provisions of this Article shall not affect the question of access to Canadian ports in cases of distress, medical emergency or force majeure.

Cuban fishing vessels may thus be authorized to enter into Canadian ports for a variety of reasons, among which are to deliver a percentage of catch to a Canadian partner, to pick up and drop off Canadian observers, to obtain fishing licences and in situations of emergency.

During 1993 a number of crew members of vessels belonging to or operated by the applicant companies deserted their ships while they were at Canadian ports for purposes authorized pursuant to Article IV of the Agreement. These purposes are summarized in the applicants' written argument as follows: Pick up/deliveryof licence and observers; landing of a dead body; discharge of by catch from fisheries; and discharge of by catch from fisheries and cargo transportation. The "by catch" refers to the delivery of the required percentage of catch to the Canadian partner at Shelburne, Nova Scotia.

Paragraph 91.1(1)(*b*) and subsection 92(1) of the Act under which the Minister made the assessments of administration fees and required the security deposits, respectively, read as follows:

91.1 (1) The Minister may, in accordance with the regulations, make a preliminary assessment of an administration fee against a transportation company in respectof any member of a class of persons prescribed for the purposes of this section

. . .

(*b*) who enters Canada as or to become a member of the crew of a vehicle operated by the company and who is the subject of a report pursuant to paragraph 27(2)(*e*) as a member of a crew who has ceased to be a visitor pursuant to paragraph 26(1)(*c*.1).

. . .

92. (1) The Deputy Minister may issue a direction to any transportation company requiring it to deposit with Her Majesty in right of Canada such sum of money, in Canadian currency, or such other prescribed security as the Deputy Minister deems necessary as a guarantee that the company will pay all amounts for which it may become liable under this Act after the direction is issued.

By paragraph 26(1)(*c*.1) [as am. *idem*, s. 15] of the Act, a person ceases to be a visitor when "that person enters Canada as or to become a member of a crew ofa vehicle and ceases to be a member of the crew". It follows, therefore, that a crew member who deserts his or her vessel in Canada has no right to remain in this country after the happening of such event. Paragraph 42.2(1)(*e*) of the *Immigration Regulations, 1978* [SOR/78-172 (as am. by SOR/93-44 , s. 20)], provides for the making of a preliminary assessment of administration fees against a transportation company in respect of "persons who remain in Canada after they have ceased to be visitors by reason of paragraph 26(1)(*c* .1) of the Act".

By letter of June 17, 1993, the applicants' solicitors forwarded written submissions to Immigration authorities, arguing that the administration fees demanded were not authorized by the Act. The Immigration authorities responded to these submissions by letter of October 21, 1993, which had the effect of making the assessment final. In rejecting the applicants' submissions, the authorities stated in that letter:[1]

Given the scheme of the Immigration Act, it is inconceivable that the Parliament of Canada intended to impose financial obligations on the owners or agents of only some of the maritime vessels which call at Canadian ports. Were the Act to discriminate in this way, Canada's immigration program would be exposed to the possibility of abuse of considerable magnitude by companies which could convey illegal migrants to Canada with impunity.

If a court were to accept the argument that fishing companies are not transportation companies and, consequently, exempt from all obligations and liabilities under the Immigration Act, legislative amendments would be required to rectify this anomaly. One such amendment could be the removal of the visa and passport exemptions which currently apply to all persons conveyed to Canada as or to become members of a crew of fishing vessels.

As you are probably aware, your clients enjoy the privilege of entering Canadian ports under the terms of memoranda of understanding between Canada and their respective governments on mutual fisheries relations. These agreements stipulate that they may do so only in accordance with Canadian laws, regulations andadministrative requirements.

In summary, I wish to repeat that the operators of commercial vehicles which transport persons to Canadian ports are subject to all of the obligations and liabilitiesof transportation companies under the Immigration Act, regardless of the nature of their business. It is my duty, therefore, to ensure that your clients comply with these obligations.

The term "transportation company"/"*transporteur*" is defined in subsection 2(1) of the Act as follows:

2. (1) In this Act,

. . .

"transportation company"

(*a*) means a person or group of persons, including any agent thereof and the government of Canada, a province or a municipality in Canada, transporting or providing for the transportation of persons or goods by vehicle or otherwise, and

(*b*) for the purposes of subsections 89(2) to (7), sections 92 and 93 and paragraph 114(1)(*cc*), includes any such person or group that operates a bridge or tunnel or is a designated airport authority within the meaning of the *Airport Transfer (Miscellaneous Matters) Act*;

Subsection 2(1) also defines the term "vehicle" [as am. by S.C. 1992, c. 49, s. 1] to mean "any conveyance that may be used for transportation by water, land or air".

Before MacKay J. and in this Court, the applicants contended that they are not obliged to make the payments at issue because none of the crew members in question deserted a vessel of a "transportation company" as that term is defined in the Act. They submit that the vessels were not at any time primarily engaged in the transportation of goods or persons for hire or otherwise, that these craft were

either fishing vessels or fishing support vessels, and that they were operated in this capacity pursuant to the provisions of the Agreement. Further, the language of subsection 53(1) [as am. by SOR/93-44 , s. 23] of the *ImmigrationRegulations, 1978* requiring the master of "a ship of foreign registry" to provide an immigration officer with a complete list of the members of the crew upon arrivalof the ship in Canada indicates that the applicant companies are bound by that particular obligation, even though none is a "transportation company" as defined by the Act.

MacKay J. determined, however, that each of the applicants fell within that defined term because, in his view, "they do transport the crew on board their vessels" even though the vessels were primarily engaged in fishing operations or in work incidental to such operations. The purpose for which a vessel is operated is, in his opinion, irrelevant. As he put it in greater detail, at pages 392-393 of his reasons:

The definition does not specify that the vessel be used primarily for transportation of goods or persons or that it be used for transportation for hire. There is no basis in the Act for suggesting the narrower definition of transportation company proposed by the applicants. Indeed, paragraph (*b*) of the definition of"transportation company", applicable for purposes of certain sections of the Act, including section 92 which is here the basis for security to be paid, includes persons or groups of persons operating a bridge or tunnel, or a designated airport authority. In my view, Parliament did not intend a narrow definition as the applicants contend. Rather, the general purposes of the Act, the specific arrangements for crew members of foreign vessels and for the obligations of operators ofvessels, as well as the practical aspects of administering the Act, all support the broader definition of the term "transportation company" here urged by the respondent. So does the broad scope of obligations of transportation companies set out in Part V of the *Act* , now including more than a dozen sections, including section 86, imposing liability on transportation companies for removal of members of the crew of their vehicles, or vessels. There is no reason consistent with the purposes of the Act to restrict that section to operators of vessels carrying people or goods for hire.

The respondent contends that the applicants' position is neither consistent with the words of the definition nor with a purposive reading of the statute as a whole"which reveals that its overall object is to control the entry of non-citizens to Canada. (See *Chiarelli v. Canada (Minister of Employment andImmigration)* , 1992 CanLII 87 (SCC), [1992] 1 S.C.R. 711, at pages 733-734). The ability of Immigration authorities to deal with a person who has been transported to Canada on board a vehicle cannot rationally be determined on an analysis of the motivating reasons for a vehicle carrying a non-citizen to Canada. The intention of Parliament was to include in the definition of "transportation company" any person or group of persons whose vehicle, regardless of its nature, is

used in carrying persons or goods to Canada. The operative words of the definition, in the respondent's submission, are "transporting or providing for the transportation of persons or goods by vehicle or otherwise". Accordingly, the sole criterion in determining whether the applicants constitute a transportation company is whether they did, in fact, transport or provide for the transportation to Canada of the deserting crew members. There is no requirement that the applicants' business be that of transporting persons or goods, and no indication in the definition that the transportation of persons or goods be for hire.

I do not doubt that sound policy reasons may well exist for ensuring that Canada not have to bear the type of costs which paragraph 91.1(1)(*b*) and subsection 92(1) of the Act seek to recover. The passage quoted above from the letter of October 21, 1993, certainly illustrates this need. Nevertheless, the answer to the certified question must, in light of relevant principles of statutory construction, turn on the intent of the language employed in the definition of the term "transportation company". The administration fees referred to in paragraph 91.1(1)(*b*) must be in respect of a member of the crew of a vehicle operated by a "transportation company", and a direction to make a security deposit under subsection 92(1) must to be given to a "transportation company". Clearly, then, the applicants will be obliged to pay the fees and to post the security only if they fall within the statutory definition of "transportation company" and not otherwise.

It is noteworthy, in my view, that the two versions of the definition of "transportation company"/"*transporteur*" are not the same. While the English version speaksof "a person . . . transporting or providing for the transportation of persons or goods by vehicle or otherwise", the corresponding French text contains the phrase, "*Personne . . . qui assurent un service de transport de voyageurs ou de marchandises par véhicule ou tout autre moyen*". The English version, taken alone, favours the respondent's contention by embracing a person transporting or providing for the transportation of persons or goods by vehicle or otherwise. The French version seems to lend support to the applicants through use of the phrase "*un service de transport*" (transportation service) and the word "*voyageurs*" (travellers). It suggests that Parliament intended the definition to apply only to persons or groups of persons offering a transportation service to travellers, and not to companies like the applicants whose vessels are engaged exclusively in fishing and fishing support operations, and whose crew members serve under a contractual relationship and are not transported as travellers.

At this point, it is important to bear in mind the principles of statutory construction which apply when construing a bilingual statute in cases of apparent inconsistency between the two versions of the same provision or provisions.

Notwithstanding the repeal of section 8 of the *Official Languages Act*, R.S.C. 1970, c. O-2, in 1988 [S.C. 1988, c. 38, s. 110], Canadian courts have consistently affirmed that the English and French versions of a statute are equally authentic and authoritative. This principle implies that neither version of a bilingual statute is paramount, and one language is not to be given priority over the other. As Ruth Sullivan states in *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994), at page 218, "[i]t is inconsistent with the equal authenticity rule to resolve discrepancies between two language versions by giving automatic preference to one."

The traditional approach to construing bilingual legislation is to find and give a meaning to the provision that is shared by both versions of the statute. If the Englishand French versions seem to conflict, the court must attempt to reconcile them by identifying and adopting a meaning that they share. Lamer J. (as he then was) summarized this approach in *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038, at page 1071, where he remarked:

First of all, therefore, these two versions have to be reconciled if possible. To do this, an attempt must be made to get from the two versions of the provision the meaning common to them both and ascertain whether this appears to be consistent with the purpose and general scheme of the Code.

As the recent decision in *Doré v. Verdun (City)*, 1997 CanLII 315 (SCC), [1997] 2 S.C.R. 862 indicates, however, the shared meaning rule is not absolute. Gonthier J. maintained, at paragraph 25 [at page 879], that a court is free to reject a shared meaning if it appears contrary to the intention of the legislature. To illustrate this point, Gonthier J. quoted the following key passage from *R. v. Compagnie Immobilière BCN Ltée*, 1979 CanLII 12 (SCC), [1979] 1 S.C.R. 865, at pages 871-872:

. . . [the shared meaning rule] is a guide; it is one of several aids to be used in the construction of a statute so as to arrive at the meaning which, "according to the true spirit, intent and meaning of an enactment, best ensures the attainment of its objects". . . . The rule . . . should not be given such an absolute effect that it would necessarily override all other canons of construction.

Thus, the shared meaning principle is not always determinative of the interpretive exercise, and will be discarded if an alternative interpretation leads to a preferable or more acceptable result (*Driedger*, *supra*, at page 228) or, as stated in *Compagnie Immobilière*, *supra*, an interpretation that accords with "the true spirit, intent and meaning of an enactment" and that "best ensures the attainment of its objects".

Indeed, the jurisprudence suggests that the courts must continue to employ ordinary principles of statutory interpretation when construing bilingual legislation.

The object of the inquiry, therefore, is to search out and give expression to the legislature's intention in light of the statute's purpose, the context in which it was enactedand other interpretive strategies. As L'Heureux-Dubé J. stated in dissent in *Canada (Attorney General) v. Mossop*, 1993 CanLII 164 (SCC), [1993] 1 S.C.R. 554, at page 618, where a discrepancy exists between the two texts, "it is the meaning which furthers the purpose of the legislation which must prevail."

This approach was further endorsed in *R. v. Collins*, 1987 CanLII 84 (SCC), [1987] 1 S.C.R. 265, at page 287, where a purposive interpretation of subsection 24(2) of the Charter [*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]] led the Court to conclude that the French text should take precedence in construing the provision, because it best expressed the Charter's object of protecting individual rights and the right of an accused to a fair trial. Dubé J. in *Canada (Information Commissioner) v.Canada (Secretary of State for External Affairs)*, reflex, [1990] 1 F.C. 395 (T.D.), at page 401, also subscribed to this approach. He stated that when confronted with two versions of a bilingual provision which are inconsistent with one another, a court should adopt the interpretation which "best reflects the purpose of the relevant section, read in the context of the Act and in light of the scheme of the legislation." In addition, as Sullivan contends in *Driedger , supra*, at pages 233-234, the courts often examine the legislative history and origin of a statutory provision in order to reconcile conflicting language versions.

Applying these principles to the case at hand, I must endeavour to reconcile the English and French versions of the definition of "transportation company" by examining the legislative context in which the term is used and the purpose and object of the Act.

I turn first to an analysis of the statutory scheme. Sections 91.1 and 92 appear in Part V of the Act, which is entitled "Obligations of Transportation Companies". Section 85 [as am. by S.C. 1992, c. 49, s. 74; 1995, c. 15, s. 16] of the Act imposes a general liability on all transportation companies for removal costs associated with persons whom they bring into Canada and who are not permitted to remain here. For example, subsection 85(1) empowers the Minister to require a transportation company which brings a person to Canada "to convey that person, or cause that person to be conveyed" out of the country, while subsection 85(3) imposes liability to "pay all removal costs of any person whom it is required to convey or cause to be conveyed" pursuant to the section.

Section 86 [as am. by S.C. 1992, c. 49, s. 75] relates specifically to liability for removal costs pertaining to a crew member who has ceased to be a visitor inCanada. It reads as follows:

86. Where a person enters Canada as or to become a member of a crew of a vehicle and ceases to be a visitor pursuant to subsection 26(1), the transportation company that operates that vehicle may be required by the Minister to convey that person, or cause that person to be conveyed, to the country from which that person came to Canada, or to such other country as the Minister may approve at the request of the company, and the company is liable to pay all removal costs in respect of that person.

Section 87 [as am. *idem*, s. 76] gives transportation companies an opportunity to arrange for the person's removal from Canada on one of its own vehicles or otherwise. Subsection 88(1) requires a transportation company to detain and guard safely any person whom the company is required to convey, and subsection 88(2) states that, subject to a prior agreement between the parties regarding return fares, a transportation company shall not charge the person in respect of the conveyance.

Subsection 89(1) of the Act makes reference to the word "passenger", and appears to be targeted specifically to companies which are in the business oftransporting travellers into Canada, such as airlines, passenger ships or railways. This provision imposes a duty on transportation companies to present passengers to an immigration officer for examination upon their arrival in Canada. By subsection 89(2) [as am. *idem* , s. 77], the Minister is authorized to require a transportation company to "provide, equip and maintain free of charge" facilities for "interviewing, examination and detention" of persons brought to Canada by the company. Furthermore, subsection 89.1(1) [as enacted by R.S.C., 1985 (4th Supp.), c. 28, s. 22; S.C. 1992, c. 49, s. 78] obliges all transportation companies to ensure that the persons they bring to Canada possess the required travel documents.

Subsection 90(1) [as am. by S.C. 1992, c. 49, s. 79] outlines the rights of immigration officers to board vehicles which bring persons to Canada, to examine persons carried by the vehicle, and to examine any records or documents respecting such persons. Immigration officers are also empowered by subsection 90(2) [as am. *idem*; 1995, c. 15, s. 17] to order the master of a vehicle, who is defined in subsection 2(1) as the person "in immediate charge or control" of it, to detainand guard safely certain persons who were brought to Canada on that vehicle. Subsection 91(1) of the Act provides that a medical officer may direct that a person seeking entry to Canada be afforded medical treatment, and subsection 91(2) stipulates that the costs of such treatment may be recovered from the transportation company responsible for bringing the person to Canada. Subsection 91(4) deals specifically with the costs of medical treatment or hospitalization received by crew members while in Canada. It requires that the transportation company of whose vehicle the person is a member of the crew pay all of the medical costs incurred.

Subsection 114(1) [as am. by R.S.C., 1985 (4th Supp.), c. 28, s. 29; c. 29, s. 14; S.C. 1990, c. 38, s. 1; 1992, c. 49, s. 102] of the Act contains a

number ofregulation-making powers in relation to transportation companies. I would note that some of the provisions listed in this section are designed to place obligations on transportation companies, while others empower the Governor in Council to impose certain duties on the master of a vehicle, and in one instance the "owner" ofa vehicle. Reference is here made to paragraphs 114(1) (*q*), (*q*.1), (*q*.4), (*f*), (*cc*), (*ff*), (*gg*) and (*hh*). Paragraph 114(1)(*q*.1),[2] for example, provides that the Governor in Council may make regulations requiring transportation companies to hold the travel documents of persons they bring into Canada, in order to ensure that the documents are available to immigration officers for examination. Regulations may also be enacted pursuant to paragraph 114(1)(*gg*),[3] requiring the masterof a vehicle to make a report to an immigration officer regarding persons who have secreted themselves on a vehicle coming to Canada, and to hold the person in custody. Paragraph 114(1)(*hh*)[4] authorizes the Governor in Council to formulate regulations requiring the owner or master of a vehicle to furnish an immigrationofficer with crew lists and other information concerning crew members, such as their "discharge, transfer, desertion or hospitalization in Canada".

The applicants argued before this Court that these distinctions between the various actors demonstrate that the definition of "transportation company" is intended to be construed in a more restrictive fashion. Otherwise, the applicants suggested, why would different obligations be imposed upon transportation companies, masters and owners of a vehicle? I fail to perceive, however, how these provisions are inconsistent with the broad interpretation of "transportation company" adopted by MacKay J. and advocated by the respondent. To my mind, these distinctions reflect that certain actors may have more direct control than others over matters concerning the day-to-day operations of a vehicle coming to Canada. For example, the master of a vehicle, as the person in immediate charge and controlof it, is more likely to be aware of the presence of a stowaway on board the vehicle. Similarly, the master of a vehicle will, practically speaking, be in a better position than a transportation company to provide immigration officers with prompt information regarding the whereabouts and employment status of crew members brought to Canada on that vehicle.

As for the reference in paragraph 114(1)(*hh*) to the "owner" of a vehicle, in my view this is merely a recognition that a "transportation company" and the "owner"of a vehicle may not always be the same person. It is important to keep in mind that there is no requirement in subsection 2(1) that a transportation company must own the vehicle by which it transports or provides for the transportation of persons to Canada.

I would note that the majority of these provisions in Part V and of those in subsection 114(1) which pertain to transportation companies, are broad in their language and scope. Apart from sections 89 and 89.1 and paragraphs 114(1)(*q*) and (*q*.1), none of the other sections is aimed directly at or restricted in

its application to companies which provide a transportation service to travellers. Indeed, a number of provisions are directed specifically at recouping the expenses associated with removing crew members who have no legal right to remain in Canada. Crew members may be employed and conveyed into Canada on all mannerof vehicles, whether the vehicle is used primarily for the transportation of persons or goods for hire, or otherwise. According to the applicants' interpretation of"transportation company", only those companies whose primary business is the transportation of persons or goods for hire may be held liable for the costs ofremoving crew members. However, I can see no reason why Part V of the Act should receive so limited an interpretation.

What, in my view, Part V of the Act reveals is that its overarching purpose is to transfer the costs associated with the entry of persons without status into Canada,and their subsequent removal, from the federal government to the transportation companies which brought these persons into the country. The provisions in Part Valso assist in furthering the overall object of the Act, by discouraging transportation companies from conveying persons to Canada who are not legally entitled to be or remain here. To my mind, the more expansive definition of "transportation company" reflected in the English version of the Act best accords with this purpose, and expresses the true meaning of the provision. The effect of sections 91.1 and 92 is to make removal expenses a potential cost of doing business for all companies which transport or provide for the transportation of persons or goods to Canada.

The legislative history of the definition of "transportation company" also leads me to conclude that the broad language employed in the English text best reflects the meaning of this provision, and furthers the object of the Act.

The definition of "transportation company" has changed progressively since the early 1900s. Before 1952, there was an unmistakable focus in both the English andFrench versions of the definition on companies whose business was the carriage of passengers to Canada. For instance, the definition of "transportation company" which appeared in paragraph 2(*v*) of the *Immigration Act*, R.S.C. 1927, c. 93, reads as follows:

2. . . .

(*v*) "transportation company" means and includes the Dominion Government, any Provincial Government, any municipality, any corporate body or organized firm or person carrying or providing for the transit of passengers, whether by ship, railway, bridge, highway, or otherwise, and any two or more such transportation companies co-operating in the business of carrying passengers.

The French version of the definition in paragraph 2(*d*), is extremely similar, and provides:

2. . . .

d) *"compagnie de transport" signifie et comprend le gouvernement fédéral, un gouvernement provincial, une municipalité, une corporation ou société organisée ou personne qui exerce ou procure le transit de passagers ou de voyageurs sur bateaux ou navires, ou par chemin de fer, pont, voie publique ou autrement, et deux ou plus de deux de ces compagnies qui coopèrent dans les opérations du transport des passagers ou voyageurs.*

From the 1927 revision to the enactment of the *Immigration Act, 1976*, S.C. 1976-77, c. 52 in 1977, the definition of "transportation company" underwent several modifications which in my view are significant. Most notably, the word "passengers" in the English text and the phrase "*passagers ou voyageurs*" in the French text, did not appear in the *Immigration Act* , R.S.C. 1952, c. 325. The definition referred instead to companies which carry or provide for the "transit ofpersons". Likewise, the French text spoke of companies "*transportant des personnes ou pourvoyant à leur transport*".

In the amendments which culminated in the passage of the *Immigration Act, 1976*, the phrase "co-operating in the business of carrying passengers" which appeared in the 1927 definition was removed entirely from the English text, and the corresponding phrase in the French version was also deleted. The definition of"transportation company" as it appeared in subsection 2(1) of the *Immigration Act, 1976* , read as follows:

2. (1) . . .

"transportation company" means a person or group of persons carrying or providing for the transportation of persons,

(*a*) where the expression appears in subsection 90(2), sections 93 and 94 and paragraph 115(1)(*bb*), by vehicle, bridge, tunnel or otherwise, and

(*b*) in any other case, by vehicle or otherwise, but not by bridge or tunnel,

and includes any agent thereof and the Government of Canada or the government of any province of or municipality in Canada so carrying or providing for the transportation of persons.

In my view, the successive amendments to the definition of "transportation company" reveal a clear trend toward broadening its scope. It is also important to note that in the legislation that was consolidated in 1985, the English and French versions of the definition were harmonious in meaning. In particular, both referred to the transportation of persons rather than passengers or travellers.

The English and French texts began to diverge in 1985, and specifically as a result of the consolidation of the Revised Statutes of Canada in that year. While the 1985 consolidation left the English version largely the same as it was in 1977, the French text experienced significant changes. Rather than referring to the transportation of persons, the French version reintroduced the word "*voyageurs*" (travellers), and incorporated for the first time the phrase "*service de transport*" (transportation service). The 1985 version of the French definition is almost identical to that which is in force today.

The 1985 changes to the French text must be examined in the context of the overall history of the definition of "transportation company". While the changes to the French text in 1985 seem to represent a restriction of the scope of the definition, the English version continued to expand after the 1985 consolidation. That definition was amended in 1992, such that the word "carrying" was removed and with it the entire concept of the carriage of persons. The 1992 amendments brought about another significant change, which was the addition of the word "goods" to the English text and "*marchandises*" to the French. This amendment served to expand the application of the Act to companies engaged in transporting goods into the country. The 1992 version of the English definition is the same as that which I have cited earlier in these reasons.

In addition, it is necessary to consider the legal status of the 1985 changes to the French text more closely. As I mentioned above, the changes to the French text were occasioned by the consolidation of the federal statutes into the Revised Statutes of Canada, 1985, and were not prompted by an independent statutory amendment passed by Parliament. In *Goodswimmer v. Canada (Attorney General)*, 1995 CanLII 3580 (FCA), [1995] 2 F.C. 389 (C.A.),[5] this Court enunciated the principles which apply when construing changes which are made in the course of consolidating the public statutes of Canada. The following views, at pages 409-410, are particularly germane to the present discussion:

The Revised Statutes of Canada, 1985 have their legal foundation in the *Statute Revision Act*, S.C. 1974-75-76, c. 20. By that statute, a Statute Revision Commission was established with power, under section 5, to "arrange, revise and consolidate the public general statutes of Canada." In preparing the revision, the Commission was mandated by section 6 of the statute, *inter alia* , to:

6. . . .

(*h*) correct editing, grammatical or typographical errors in the statutes.

Section 7 of the statute envisioned the enactment of a further statute, a model of which was set out in the Schedule. That statute was adopted as the *Revised Statutes of Canada, 1985 Act*, R.S.C., 1985 (3rd Supp.), c. 40 . . . . The

legal effect of the revision and repeal brought about by the adoption of the Revised Statutes of Canada, 1985 is made plain in section 4 of this statute:

4. The Revised Statutes shall not be held to operate as new law, but shall be construed and have effect as a consolidation of the law as contained in the Acts andportions of Acts repealed by section 3 and for which the Revised Statutes are substituted.

Thus, according to section 4 of the *Revised Statutes of Canada, 1985 Act* [R.S.C., 1985 (3rd Supp.), c. 40], the grammatical and syntactical changes made to the French definition of "transportation company" do not "operate as new law". Rather, the modifications to the French text may only be construed as a consolidation of the law as it existed prior to 1985. In other words, the French version of the definition must be given the meaning that it had in the *ImmigrationAct, 1976* . I would emphasize that this version of the definition did not include the terms "*voyageurs*" or "*un service de transport*", but referred to companies which "*transportent ou font transporter des personnes*", words that are akin to those appearing in the English definition as it exists today.

When the 1985 changes to the French text are considered in this light, the meaning of "transportation company" in the French version approaches more closely that which is expressed by the English text. In my view, the legislative history of the definition reveals a clear intention on the part of Parliament to broaden the scope ofthe provision. While the definition may in the past have been restricted to carriers, or companies engaged primarily in providing a transportation service to passengers, the amendments to the definition manifest an intention to expand the application of the section to encompass a greater number of companies. Moreover, I am satisfied that this broad interpretation best reflects the Act's objective of controlling the illegal entry of persons to Canada, and of recouping expenses associated with their removal. In my view, therefore, the term "transportation company" is meant to apply to all companies which transport or provide for the transportation of persons or goods, by vehicle or otherwise. It is not, as the applicants contend, restricted to companies whose primary business activities involve the transportation of persons or goods for hire.

I would dismiss both appeals with one set of costs, and would answer the certified question in each appeal as follows:

Where the owner or operator of a vehicle not used primarily for the purpose of transporting persons or goods, such as a vessel engaged in fishing operations, transports persons or goods into Canada aboard that vehicle, the owner, operator or agent thereof is a "transportation company" as defined in subsection 2(1) ofthe Act.

Pratte J.A.: I agree.

McDonald J.A.: I agree.

[1] Appeal Book, at pp. 29-30.

[2] **114.** (1) . . .

(*q*.1) with respect to transportation companies bringing persons into Canada,

(i) requiring or authorizing those companies to hold the visas, passports or travel documents of those persons in order to ensure that the visas, passports or travel documents are available for examination by an immigration officer at the port of entry,

(ii) providing for the disposition by those companies, on the arrival of those persons in Canada, of any visas, passports or travel documents held by those companies, and

(iii) requiring those companies to furnish such documentary evidence for examination by an immigration officer at the port of entry as is necessary to establish the identity and itinerary for travel to Canada of those persons;

[3] **114.** (1) . . .

(*gg*) requiring the master of a vehicle to make a written report to an immigration officer in respect of any person who has secreted himself in or on a vehicle coming to Canada and to hold that person in custody on the vehicle;

[4] S. 114(1)(*hh*) reads in part:

114. (1) . . .

(*hh*) requiring the owner or master of a vehicle to maintain and provide an immigration officer with lists and other information concerning the members of the crewof the vehicle and their discharge, transfer, desertion or hospitalization in Canada and to notify an immigration officer of any such discharge, transfer, desertion or hospitalization in Canada;

[5] Appeal to the Supreme Court of Canada quashed, 1997 CanLII 371 (SCC), [1997] 1 S.C.R. 309.