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DATE: March 24, 2010

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**FROM: PAT SMITH
TRIAL CO-ORDINATOR/JUDGE'S SECRETARY**

Re: File 2-10 – Richard Tremblay v. Laurence Picquet
Endorsement of Justice Parayeski released March 24, 2010.
Copy mailed to Richard Tremblay by ordinary mail March 24, 2010.

**SENDER TEL NO.: (519)426-4406
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CITATION: Tremblay v. Picquet, 2010 ONSC 1776

COURT FILE NO.: 2-10

DATE: March 24, 2010

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Richard Tremblay, Applicant

A N D:

Laurence Picquet, Defendant

BEFORE: Mr. Justice M. D. Parayeski

COUNSEL: Applicant self represented

Gary Shortliffe, for the Respondent

HEARD: March 19, 2010

ENDORSEMENT

1. In this case, the applicant seeks to change a divorce judgment that incorporated the terms of a 1997 separation agreement. The judgment was granted in Quebec, and both it and the separation agreement are in the French language.
2. The respondent has exercised her right to require that the proceeding be bilingual, in accordance with section 126 (1) of the *Courts of Justice Act*, R.S.O. 1990, Chapter C.43.
3. In this motion, the respondent seeks an order permitting her to file pleadings and other documents written in French. In the alternative, she asks that this matter be transferred to the Family Court of the Superior Court of Justice at Hamilton for reasons explained below.

4. It is settled law that the right of a party who speaks French to require that a proceeding be bilingual is a substantive, and not merely procedural, right. Such a party need not prove that he or she cannot also communicate in English. The rules governing the conduct of a bilingual proceeding are found in subsection 2 of section 126 of the *Courts of Justice Act*. They allow a party to file documents in French in any court with the consent of the other party. Without that consent, which is not present in this case, the right to file documents in French is permitted in all Family Courts, the Ontario Court of Justice, Small Claims Courts, and in those Superior Court locations listed under Schedule 2. Simcoe is not one of those listed locations. Even when adjudicating upon a family law matter, the Superior Court of Justice is not a "Family Court" unless it meets the definition to be found at section 21.1 of the *Courts of Justice Act*. The Superior Court of Justice at Simcoe does not fit within those defining terms. Accordingly, under all of these circumstances, the respondent cannot file her documents in French at Simcoe unless some relief is granted.

5. There does not appear to be any express jurisdiction to grant such relief directly, i.e. to grant an order that documents may be filed in French at Simcoe when the other party does not consent to that being done. I do not accept the argument of the respondent's counsel that such jurisdiction arises implicitly from the permissive language in section 126 of the *Courts of Justice Act* relative to such filings. I say this notwithstanding Mr. Justice Rivard's statement in *Wittenberg v. Fred Geisweiller/Locomotive Investments Inc.*, reported at 1999 CanLII 14805, that section 126 should be given a broad interpretation to protect the underlying substantive right to a bilingual proceeding. There is a difference between making a broad interpretation and finding jurisdiction where none apparently exists.

6. I turn now to consideration of the alternative relief sought, that being transfer of the matter to the Family Court at Hamilton where the filing of documents in French is permitted without consent. Rule 5 of the *Family Law Rules* grants jurisdiction to effect the transfer being requested "if it is substantially more convenient to deal with a case or any step in the case in another municipality...".

7. Here there is no connection to Hamilton in evidence. The self-represented applicant resides in Lynedoch near Simcoe. The respondent resides in Belgium. Her counsel practices in Toronto. On the other hand, no substantive inconvenience would be triggered by moving the action to Hamilton, which is approximately one hour's travel time from Simcoe. There is no evidence that the calling of any witnesses beyond the parties themselves is anticipated or necessary. Transfer would overcome the anomaly of the Superior Court of Justice at Simcoe being one of the few courts in the province at which the filing of documents in French without consent is not permitted, thus allowing for the meaningful and complete exercise of the respondent's substantive right to a bilingual proceeding.

8. The ^{Applicant}~~respondent~~ disputes either type of relief being sought, arguing that the respondent can communicate in English, that his wife, who is assisting him with his case, cannot read French, and that it would be inconvenient to travel to Hamilton. The respondent's alleged ability to communicate in English does not disentitle her to a bilingual proceeding as is mentioned above. The applicant can speak and read French. Translation for the non-party wife can be provided by him or by the court itself under the provisions of subsection (7) of section 126 of the *Courts of Justice Act*. The minor inconvenience of travel to Hamilton is offset by the importance of the right being protected.

9. This action shall be transferred to the Family Court at Hamilton.

10. Under the circumstances, there shall be no costs of this motion, even though the applicant could have easily avoided it by providing his consent to the filing of documents in French at Simcoe in the first place.


Mr. Justice M. B. Parayeski