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STATUTORY REVIEW OF PART XVII OF THE CRIMINAL CODE

Report of the Standing Committee on Justice and Human Rights

Mike Wallace
Chair

APRIL 2014

41st PARLIAMENT, SECOND SESSION

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THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS

has the honour to present its

FOURTH REPORT

Pursuant to the Order of Reference of Monday, October 21, 2013, the Committee proceeded with the statutory review of Part XVII of the Criminal Code and has agreed to report the following:

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STATUTORY REVIEW OF PART XVII OF THE *CRIMINAL CODE*

1. INTRODUCTION

The 8 November 2012 order of reference from the House of Commons provided "[t]hat the Standing Committee on Justice and Human Rights be the committee for the purposes of section 533.1 of the *Criminal Code*." During the subsequent parliamentary session, an identical order of reference was adopted by the House of Commons on 16 October 2013.

Section 533.1, added to the *Criminal Code* ("the Code") upon passage of Bill C-13, *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)* in 2008,[1] reads as follows:

> (1) Within three years after this section comes into force, a comprehensive review of the provisions and operation of this Part shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established by the Senate or the House of Commons, or by both Houses of Parliament, as the case may be, for that purpose.
>
> (2) The committee referred to in subsection (1) shall, within a year after a review is undertaken under that subsection or within any further time that may be authorized by the Senate, the House of Commons or both Houses of Parliament, as the case may be, submit a report on the review to Parliament, including a statement of any changes that the committee recommends.

The House of Commons Standing Committee on Justice and Human Rights ("the Committee") began its study of Part XVII of the Code (Language of Accused) on 27 May 2013. It held five meetings and heard witnesses from the Department of Justice, the Office of the Director of Public Prosecutions, the Fédération des associations de juristes d'expression française de common law (FAJEF), the Language Rights Support Program, lawyers Gérard Lévesque and Steven Slimovitch, law student Geneviève Lévesque and the Commissioner of Official Languages.

On 5 November 2013, the Committee wrote to all the provincial and territorial ministers of Justice asking for information on their experience administering Part XVII, including best practices and problems identified. They were also invited to give evidence. The Committee received seven replies, which, according to the ministers, is to serve as their evidence. These letters are appended to this report.

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1 S.C. 2008, c. 18.

Despite a few regional issues and differences, these letters state that Part XVII of the Code is generally being administered without any major difficulty. However, there is still room for improvement.

This report outlines the main issues raised by the witnesses. It is not a comprehensive review of all issues pertaining to language rights in criminal law. That is why the Committee recommends that the Department of Justice continue working with the key actors and that a parliamentary committee follow up in five years with a review of Part XVII of the Code and its administration.

1.1 DIVISION OF POWERS

The federal government has a limited role in administering the Code's language provisions. While the federal government does have exclusive jurisdiction over *Criminal Code* amendments, criminal prosecutions and the administration of justice are primarily provincial responsibilities.

The power to legislate in the area of official languages is an ancillary power related to the legislative authority of Parliament and the provincial legislatures over the fields assigned to them.[2] Having jurisdiction in criminal law, Parliament passed Part XVII (Language of Accused) of the Code. However, the provinces and territories play a leading role in protecting linguistic minorities in areas under their jurisdiction.

Michel Francoeur, Director and General Counsel, Official Languages Directorate, Department of Justice Canada, provided the Committee with further clarification regarding the role of the provinces and territories:

> The provinces and territories are responsible for the composition and organization of their criminal courts. This means that under the provisions currently being studied, the provinces must ensure that they have the institutional and human resources necessary within their justice system to allow defendants to face trial in the official language of their choice.[3]

The Department of Justice Canada provides forums for discussion and partnerships within the Advisory Committee on Access to Justice in Both Official Languages of the Federal-Provincial-Territorial Working Group. It also provides direct support to the provinces and territories through two initiatives: the Access to Justice in Both Official Languages Support and the Contraventions Act Fund.

These initiatives help support such measures as the hiring of bilingual judicial and extra-judicial staff, language training, bilingual signage and document translation. Concrete examples of programs are presented in section 2.2.

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2 *Devine v. Quebec (Attorney General)*, [1988] 2 S.C.R. 790.

3 House of Commons Standing Committee on Justice and Human Rights (JUST), 2nd Session, 41st Parliament, *Evidence*, 25 February 2014.

1.2 BACKGROUND ON PART XVII

Part XVII, enacted in 1978, gradually came into force, province by province, and finally throughout Canada in January 1990.[4] In *Beaulac*, the Supreme Court of Canada found that equal access to designated courts in the official language of the accused is "a substantive right and not a procedural one that can be interfered with."[5] It is Parliament's responsibility to determine the extent and scope of language rights under Part XVII. These rights are distinct from the right to make full answer and defence under section 7 of the *Canadian Charter of Rights and Freedoms* (the Charter).

Under Part XVII, on application by the accused, a judge will order that the accused be tried before a judge, or judge and jury, as the case may be, who speak the official language of Canada that is the language of the accused. If the accused speaks neither English nor French, a judge will order that he or she be tried before a judge, or judge and jury, who speak the official language of Canada in which the accused can best give testimony. Courts are also required to make interpreters available to assist the accused, counsel and witnesses.[6]

Before Bill C-13 was introduced, studies by the Office of the Commissioner of Official Languages[7] and an inquiry conducted by the Department of Justice[8] identified barriers to full and equal access to the criminal justice system in the official language of the accused's choice. The amendments proposed by Bill C-13 were designed to help reduce these barriers and the problems of interpretation that had been identified.

Bill C-13 made various amendments to the Code, some of them related to provisions concerning the language of the accused. In particular, it stated that a bilingual trial might be warranted in the case of co-accused understanding different official languages. On 29 January 2008, the Senate passed Bill C-13, with, among other things, an amendment requiring a comprehensive review within three years of the provisions of Part XVII of the Code coming into force. It is this review that the Committee undertook.

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4 *Act to amend the* Criminal Code, S.C. 1977-78, c. 36. However, as pointed out by Renée Soublière, Senior Counsel and Litigation Coordinator, Official Languages Law Section, Department of Justice: "it must be noted that the right of any accused to be tried in the official language of their choice is nothing new. Indeed, this right was first recognized in the 1969 *Official Languages Act*." (JUST, 1st Session, 41st Parliament, *Evidence*, 27 May 2013). Furthermore, subsection 849(3) of the Code states that certain forms, such as search warrants, must be printed in both official languages.

5 [1999] 1 S.C.R. 768, para. 28.

6 This right is also protected by section 14 of the Charter.

7 Office of the Commissioner of Official Languages, *Study of the Official Language Obligations of Federal Crown Agents in the Province of New Brunswick*, December 2000; *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers*, May 1999, *The Equitable Use of English and French Before the Courts in Canada*, November 1995.

8 Department of Justice, *Environmental Scan: Access to Justice in Both Official Languages*, 2002.

The Senate also sought to amend the bill so that the presiding judge would remain responsible for personally informing the accused of his or her right to a trial in the official language of their choice. However, this amendment was not adopted. Bill C-13 received Royal Assent on 29 May 2008. Part XVII came into force on 1 October 2008.

2. ISSUES RAISED

2.1 OBLIGATION TO ADVISE THE ACCUSED OF HIS OR HER RIGHT (SUBS. 530(3) OF THE CODE)

Before the adoption of Bill C-13, the presiding judge was required to inform the accused of his or her right to a trial in the official language of their choice only where they were not represented by counsel. Bill C-13 removed this condition, meaning that the judge must now ensure that the accused is informed of this right in all cases. However, the judge is not obliged to inform the accused personally, but must *ensure* that the accused is informed of his or her right — by counsel, for example.

As a best practice, Yukon has judges follow a prepared script during all first appearances that sets out this right. Ontario, however, states that flexibility is needed in the way the accused is advised. Therefore, the application of subsection 530(3) varies by region of the province. Sometimes the justice or defence counsel will advise the accused, while in other cases a pre-printed notice is handed out in advance.

2.1.1 FAILURE TO ADVISE

The Committee heard that in practice, it is desirable to have some flexibility in how the accused is advised. It is the failure to advise the accused that is troubling. In some cases, subsection 530(3) seems to "fall between the cracks" and simply no notice is given.[9] As noted by the Assistant Deputy Attorney General of Ontario, James Cornish, in his letter to the Committee, "[i]t appears, however, that this level of compliance with s. 530(3) has not been accomplished across the board in Ontario (…) [F]urther effort is still required (…)"[10] According to criminal lawyer Steven Slimovitch,

> I've seen one courthouse in which they have preprinted forms that they give to a person who's being arraigned—two courthouses, I should say. But besides those, I've never heard a judge tell a person who's appearing, either represented or not represented, that he has a right under section 530 for a trial in English.[11]

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9 JUST, 1st Session, 41st Parliament, *Evidence*, 27 May 2013 (Robert Doyle, Senior Counsel and Chief, Executive Secretariat, Public Prosecution Service of Canada).

10 James Cornish, Assistant Deputy Attorney General of Ontario, letter to the Committee, 7 February 2014.

11 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 March 2014.

The lack of "active offer" was also identified in 2012 by the French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario[12] and was reiterated by the witnesses who appeared before the Committee. The witnesses suggested several reasons behind this failure to advise, such as the fact that certain judges are not informed or trained in that regard.[13]

According to Allan Damer, President of the FAJEF, "[g]enerally, the judges base their decision on the [accused's] name. … We cannot assume that because someone's name is Boivin they are necessarily francophone. Why would the judge not make an active offer of service to a Mr. Johnson, for example? Everyone should be able to exercise their rights,"[14] regardless of the accused's last name or knowledge of the other official language.

The expression "the official language of Canada that is the language of the accused," used in section 530 of the Code, was interpreted broadly by the Supreme Court in *Beaulac*. In order to determine the official language of the accused, the Court ruled that judges must avoid inquiring about the personal language preferences or dominant cultural identity of the accused.[15] For example, the accused will be able to assert that French is their language, regardless of their ability to speak in English, if they have sufficient knowledge of French to instruct counsel in that language:[16] "The accused may therefore choose the official language in which they prefer to be tried, regardless of their 'maternal language'."[17]

Furthermore, in the same decision, the Court clearly ruled that an accused's proficiency in the other official language is entirely irrelevant when determining his or her rights under Part XVII of the Code.[18]

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12 French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, Access to Justice in French, June 2012, pp. 14 and 15.

13 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Allan Damer, President, Fédération des associations de juristes d'expression française de common law inc.). See also: JUST, 1st Session, 41st Parliament, *Evidence*, 27 May 2013 (Robert Doyle, Senior Counsel and Chief, Executive Secretariat, Public Prosecution Service of Canada).

14 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Allan Damer, President, Fédération des associations de juristes d'expression française de common law inc.).

15 *R. v. Beaulac*, [1999] 1 S.C.R. 768, para. 34.

16 Ibid.

17 Renée Soublière, "Les perpétuels tiraillements des tribunaux dans l'interprétation des droits linguistiques," *Revue de la common law en français*, Vol. 4:1, 2001, p. 79.

18 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Renée Soublière, Senior Counsel and Litigation Coordinator, Official Languages Law Section, Department of Justice Canada).

2.1.2 CONSEQUENCES OF A BREACH

Failing to advise the accused of his or her right to a trial in the official language of their choice is not new.[19] However, decisions rendered before the 2008 amendments are unclear as to the legal consequences of such a breach.[20] In 1999, the Supreme Court of Nova Scotia ruled that a failure to advise in accordance with subsection 530(3) constitutes a breach of the accused's rights under sections 15, 16 and 19 of the Charter and consequently resulted in the conviction being set aside.[21] A little less than a month following that decision, the Ontario Superior Court reached a contrary conclusion.[22]

In 2004, the Supreme Court of Nova Scotia, in *R. v. MacKenzie*, found that the failure to advise the accused in that case did not constitute a breach of a constitutional right and that the appropriate remedy was an order for a new trial, not a stay of proceedings.[23] According to Johane Tremblay, Director and General Counsel with the Office of the Commissioner of Official Languages, the order for a new trial is indeed the usual remedy in these cases.[24]

2.1.3 POSSIBLE SOLUTIONS

Several witnesses mentioned initiatives that facilitate compliance with subsection 530(3). For example, the Provincial Court of Manitoba developed a checklist for judges to ensure that the accused is advised of his or her rights. The policy guidelines of certain public prosecution services, such as those in Ontario and New Brunswick, as well as the federal service, require prosecutors to ensure that the accused is advised of his or her language rights.[25]

Changes have also been made to the codes of conduct for Ontario and New Brunswick lawyers, according to Rénald Rémillard, Director General of the FAJEF: "it is just as important that attorneys inform their clients as to whether or not they have the

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19 See Office of the Commissioner of Official Languages, *The Equitable Use of English and French Before the Courts in Canada*, November 1995, p. 105.

20 See Renée Soublière, "Language Rights in the Field of Criminal Law: Where Do We Stand Following the *Beaulac* Decision? or The End of an Ephemeral Era of Judicial Torment," *The Supreme Court Law Review*, Second Series, Volume 32, 2006.

21 *R. v. Deveaux*, 1999 CarswellNS 447 (N.S.S.C.).

22 *Her Majesty the Queen v. Che Mong Le*, (31 January 2000), Ottawa 5024F (Ont. S.C.) Judge Killeen.

23 [2004] N.S.J. No. 23 (N.S.C.A.).

24 JUST, 2nd Session, 41st Parliament, *Evidence*, 27 March 2014.

25 Several court rulings state that Crown prosecutors do indeed have this obligation (*R. v. MacKenzie,* [2004] N.S.J. No. 23 (N.S.S.C.); *Ville de Saint-Jean* v. *Charlebois and 042504 NB INC.* (25 February 2004), Saint John, No. 04939902 (N.B. Prov. Ct.), a decision of Judge Vautour delivered from the Bench).

necessary linguistic skills to represent them during the trial that might take place in French or in English."[26]

Given the judge's position of authority and the accused's vulnerability when appearing in a criminal court, and despite all other commendable approaches, some witnesses were of the view that the judge should have the legal obligation to personally advise the accused of his or her right to a trial in the official language of their choice.[27] However, the Committee believes that flexibility is still needed in the way the accused is advised, as stated by the Assistant Deputy Attorney General of Ontario.

Some members of the Committee suggested that there may be a difference between the French and English versions of subsection 530(3). Whereas the English version conveys a sense of obligation ("*shall ensure* that they are advised of their right"), the French version simply uses the verb "veiller" ("*veille* à ce que l'accusé soit avisé").

2.2 COURT OFFICIALS ABLE TO SPEAK THE LANGUAGE OF THE ACCUSED (S. 530.1 OF THE CODE)

To ensure that Part XVII of the Code is administered properly, the provinces must have bilingual human resources so that the legal system can allow an accused to be heard in either official language as chosen by the accused.

2.2.1 JUDGES

Under Part XVII of the Code, the judge must ensure that the accused is informed of his or her right to a trial in the official language of their choice. This part also requires the presiding judge to be able to hear the case in the official language requested.

During his appearance before the Committee on the study of the *Supplementary Estimates (C) 2013–14*, the Minister of Justice, the Honourable Peter MacKay, said that "[o]ne of the big challenges … is the lack of francophone judges able to conduct sometimes very sophisticated, complex trials, both civil and criminal, in French."[28] The Minister of Justice added that a language training program is available to federal and provincial court judges:

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26 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014; see also JUST, 2nd Session, 41st Parliament, *Evidence*, 25 March 2014 (Gérard Lévesque).

27 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Allan Damer and Rénald Rémillard, President and Director General, respectively, FAJEF); JUST, 2nd Session, 41st Parliament, *Evidence*, 27 March 2014 (Graham Fraser, Commissioner of Official Languages). In his study entitled *The Use of English and French Before the Courts in Canada* (Commissioner of Official Languages, November 1995), the Commissioner of Official Languages recommended "that a new mandatory form be added to the criminal process, that would advise the accused of their language rights under the Code and enable them to specify the official language that they prefer." (Renée Soublière, "Les perpétuels tiraillements des tribunaux dans l'interprétation des droits linguistiques", *Revue de la common law en français*, Vol. 4:1, 2001, p. 37, note 109).

28 JUST, 2nd Session, 41st Parliament, *Evidence*, 6 March 2014.

> I can speak only for the federal judges, for whom we are making efforts and providing training, and not only for our own judges, those federally appointed, about whom I suggest I agree with my department, particularly among Federal Court judges, we have ample numbers of bilingual judges. I'm speaking to the provincial court level, from which the majority of criminal jurisprudence emanates. There is a challenge there. We have undertaken a program to provide language training to provincial court judges, particularly those outside Quebec and New Brunswick.[29]

Robert Doyle, Senior Counsel and Chief, Executive Secretariat, Public Prosecution Service of Canada, is of the view that there are enough bilingual judges in Canada in each province and in the appeal courts.[30] However, resources are not always available and it becomes a problem of matching. Unfortunately, there has yet to be a solution found to remedy this.[31]

> [A]ll the provinces have judges who speak the minority language at all levels of the courts. That is the case for all provinces with the exception of one, which made arrangements. Legally, the availability of a francophone crown prosecutor can be guaranteed anywhere in the country. All of the provinces have this ability except Prince Edward Island, who has made arrangements with New Brunswick and our service to provide them with bilingual crown prosecutors if such a request is made.[32]

Other witnesses spoke about the problem of a shortage of bilingual judges. Allan Damer, President of the FAJEF, told the Committee that this may stem from the fact that certain accused will choose to proceed in the language that allows them to obtain an earlier trial date.[33] Under these circumstances, the language in which the accused wishes to proceed is no longer a personal choice. Instead, this choice depends on the capacity of the legal system to set a trial date earlier in the majority official language. The Committee heard that videoconferences may provide a solution to remedy the shortage of francophone judicial staff, but this is not always effective, since technical problems occasionally occur.[34]

Rénald Rémillard, Director General of the FAJEF, told the Committee that, in his opinion, the shortage of judicial staff will become less of a problem in the future:

> The bilingualism of prosecutors and people working in legal aid is increasing, thanks to immersion. A growing number of anglophone members of law associations have French as a second language. It's certainly the case in the western provinces, as well as in Ontario and Nova Scotia. I believe bilingual capacity is increasing. The shortage of bilingual people is likely to be less of a problem in the future, particularly thanks to the

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29 JUST, 2nd Session, 41st Parliament, *Evidence*, 6 March 2014.

30 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014.

31 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014.

32 JUST, 1st Session, 41st Parliament, *Evidence*, 27 May 2013.

33 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014.

34 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014.

> training offered across the country. That's one way of increasing the bilingual capacity of the system. There are a lot fewer constraints in that sense than there were 5, 10 or 15 years ago.[35]

In 2013, the Office of the Commissioner of Official Languages published a study on the exercise by Canadians of their language rights before the country's courts.[36] Conducted in partnership with the Commissioner of Official Languages for New Brunswick and the French Language Services Commissioner of Ontario, this study focused on the bilingual capacity of the superior and appeal court judiciary in six provinces: Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario and Québec.

The study examined the process for appointing superior court judges and the language training given to them. According to the Commissioner, access to a justice system in which Canadians may be heard in the official language of their choice is the result of a more overarching principle than the mere availability of resources. Institutional capacity is central to this issue, and that is why, in his report, the Commissioner of Official Languages asked "the federal Minister of Justice to appoint an appropriate number of bilingual judges with the language skills necessary to preside over cases in the minority official language."[37]

The Commissioner recommended that there be a sufficient number of bilingual judges in each province; he also recommended that steps be taken to ensure sufficient French language proficiency to allow cases to be heard in both official languages. The courts should have the capacity to operate in both official languages without any hurdles.

The Committee was told that training for judges in either official language is essential because it will help increase the number of bilingual judges in Canada. In fact, the Committee heard that bilingualism, especially among provincial court judges, is one of the most crucial factors for the effective implementation of Part XVII of the Code.[38] The Access to Justice in Both Official Languages Support Fund[39] is intended to increase the capacity of the justice system to provide services in both official languages by offering legal and linguistic tools, workshops and training to bilingual lawyers and other justice system officials, and by providing legal education and information to the public. The Fund has a five-year budget envelope of approximately $40 million, which was renewed under

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35 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014.

36 Office of the Commissioner of Official Languages, *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*, 2013, p. 2.

37 Ibid., p. 1.

38 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Rénald Rémillard, Director General, FAJEF).

39 Department of Justice, *Access to Justice in Both Official Languages Support Fund*.

the Roadmap for Canada's Official Languages 2013–2018.[40] A language training program specifically for judges is also supported by the Fund:

> One example of the training component of projects supported by this fund can be found in the applied language training program for provincially appointed judges sponsored by the Canadian Council of Chief Judges under the leadership of the chief justice of the Provincial Court of New Brunswick. In addition to its financial contribution from the support fund, [the Department of] Justice has also played a role in the development of this program. Since 2010, for the four past years, [the Department of] Justice has worked with the Provincial Court of New Brunswick in the development of this program, including the development of teaching tools and the approach centred on real cases, moot courts, if you wish. Since the rollout of this initiative in 2011, approximately 120 judges have attended the applied language training program.[41]

Another project resulting from the Fund is the establishment, in 2010, of the Centre canadien de français juridique, based in Winnipeg. The Centre offers specialized language training in legal terminology. Legal professionals are able to acquire and maintain knowledge in the two official languages.[42]

2.2.2 INTERPRETERS

The Committee was repeatedly told that the interpretation of court proceedings is an ongoing problem. In fact, the Federal-Provincial-Territorial Heads of Prosecutions Committee discussed this problem at its 2012 meeting and noted that interpretation quality and accuracy vary from province to province. Robert Doyle, Senior Counsel and Chief of the Executive Secretariat of the Public Prosecution Service of Canada, and Rénald Rémillard, Director General of the FAJEF, made similar comments:

> It varies from one province to another. In some cases, the employees or the court interpreters are well trained. They are provincial employees, be it at the Department of Justice or in another department. These employees have a rather high level of bilingualism in the legal field. In other provinces, however, that is not the case. They call upon interpreters who do not have training in the legal field to interpret testimony or things of that nature.[43]

The Committee also heard that it is difficult to find minority-language interpreters outside major centres. Because criminal trials are more complex and can last several

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40 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Michel Francoeur, Director and General Counsel, Official Languages Directorate, Department of Justice).

41 Ibid.

42 Ibid.

43 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Rénald Rémillard). See also JUST, 1st Session, 41st Parliament, *Evidence*, 27 May 2013 (Robert Doyle).

weeks, interpreters are reluctant to travel outside major centres. Some travel costs may be covered for judges and Crown attorneys, but not for interpreters.[44]

The Committee also heard that, in some instances, the interpretation does not accurately reflect the trial proceedings.[45] Other times, the quality of the court reporting is poor. This, too, varies from one province to another. The Committee heard that problems with court interpreting were more prevalent in the western provinces, especially Saskatchewan and Alberta, than in the rest of Canada.[46] Allan Damer, President of the FAJEF, said:

> We find that in practice, the interpretation is not reliable. It is not because the interpreters are unable to speak French, but because they do not have specialized legal training in French.[47]

To address these problems, the FAJEF created the Centre canadien de français juridique, which provides training to public and private officials in the Canadian legal system. Its mandate is to facilitate access to justice in French across Canada. The Committee heard that the Centre also offers training to interpreters.[48]

There is also the jurilinguistic centre at the University of Moncton, which offers training in New Brunswick and in Eastern Canada. Nonetheless, the witnesses told the Committee that the lack of training continues to be a problem in some parts of the country:

> Two years ago, when we consulted court interpreters across Canada, most of them told us that there was a need for training and that it was a general deficiency. That is what we heard in many regions.[49]

2.2.3 JURIES

Several provinces mentioned that they had difficulties finding francophone or bilingual candidates to make up juries. The Committee heard that the means used to make up juries vary from one province to the next; there is no uniform procedure across Canada. Manitoba, for example, uses health insurance card numbers to make up a list that is representative of the general population. British Columbia uses the list of parents whose

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44 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Robert Doyle, Senior Counsel and Chief. Executive Secretariat, Public Prosecution Service of Canada).

45 See in the Appendix a letter dated 11 December 2013 from the Hon. Troy Lifford, Minister of Justice for New Brunswick: "Based on our survey, there is one recurrent issue, and that is the availability of official language interpreters in New Brunswick. Court interpreters are engaged by the Department of Government Services but there has been an on-going issue with the recruitment and retention of qualified interpreters."

46 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Rénald Rémillard, Director General, FAJEF).

47 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014.

48 Centre canadien de français juridique inc. (CCFJ), *À propos du CCFJ* [FRENCH ONLY].

49 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Rénald Rémillard, Director General, FAJEF).

children attend francophone schools.[50] British Columbia has also adopted a policy of centralizing jury trials in one jurisdiction:

> There are very few areas in the country where it would happen, because B.C. has adopted the policy of centralizing jury trials in one jurisdiction. … In any event, all bilingual jury trials will go there and the province will pay the cost of moving people there so they don't have to find local citizens in northern B.C., where there just aren't any.[51]

According to Rénald Rémillard, Director General of the FAJEF, the make-up of bilingual juries is an issue that has been discussed on only a few occasions by FAJEF members. "They are more worried that judges in some regions or provinces are not ensuring that the accused is advised of his or her rights."[52]

2.2.4 TRANSCRIBERS

The quality of transcripts in the two official languages was briefly discussed before the Committee. In certain cases, it was said that they contain errors that could prejudice the rights of the parties when a decision is appealed. Gérald Lévesque, a lawyer who appeared before the Committee as an individual, said that some trial transcripts in French are written with no French accents. Moreover, when French is spoken in court, the notation "other language spoken" or "foreign language spoken" sometimes appears in the transcripts.[53]

In his 27 November 2013 letter to the Committee, the Minister of Justice for Alberta said that it was difficult to find transcribers who are proficient enough in French to prepare a transcript of court proceedings.[54]

2.3 PROCEEDINGS NOT SPECIFICALLY COVERED BY PART XVII (S. 530 AND S. 530.1 OF THE CODE)

Under sections 530 and 530.1 of the Code, the accused has a right to a trial and a preliminary inquiry in his or her official language of choice. At first glance, Part XVII is somewhat restrictive in scope: "As the law now stands, only proceedings at the preliminary inquiry and trial are subject to the language of trial provisions of the *Criminal Code*."[55]

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50 JUST, 2nd Session, 41st Parliament, *Evidence*, 27 March 2014 (Graham Fraser, Commissioner of Official Languages).

51 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Robert Doyle, Senior Counsel and Chief. Executive Secretariat, Public Prosecution Service of Canada).

52 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Rénald Rémillard, Director General, FAJEF).

53 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 March 2014 (Gérald Lévesque, Lawyer).

54 See in the Appendix a letter dated 27 November 2013 from the Hon. Jonathan Denis, Minister of Justice for Alberta.

55 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Renée Soublière, Senior Counsel, Litigation Coordinator and Supervisor, Official Languages Directorate, Department of Justice).

One may wonder which proceedings are considered to be part of a "trial" under the terms of the Code. For example, Guylaine Loranger, Legal Advisor of the Language Rights Support Program, questioned the application of Part XVII regarding sentencing hearings.[56] However, the Quebec Court of Appeal decided in 2008 that these hearings are subjected to sections 530 and 530.1 of the Code.[57]

In other instances, it is clear that certain proceedings, such as arrests and appeals, are not covered by sections 530 and 530.1.[58] However, case law has broadened the scope of Part XVII to include adjournment requests[59] and peace bond proceedings.[60]

What follows is not intended to be an exhaustive examination of all criminal proceedings, but an overview of the main issues raised by the witnesses who appeared before the Committee. We must not lose sight of the difference between the rights guaranteed by Part XVII and those guaranteed by the principles of fundamental justice enshrined in constitutional law. As was so aptly stated by the Supreme Court, in trying to clarify confusion between language rights and principles of fundamental justice:

> The right to full answer and defence is linked with linguistic abilities only in the sense that the accused must be able to understand and must be understood at his trial. But this is already guaranteed by s. 14 of the *Charter*, a section providing for the right to an interpreter. The right to a fair trial is universal and cannot be greater for members of official language communities than for persons speaking other languages. 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.[61] [emphasis added]

2.3.1 DISCLOSURE

The 1991 Supreme Court of Canada decision *R.* v. *Stinchcombe*[62] and subsequent case law require prosecutors to disclose relevant information to the accused. In his January 2014 letter to the Committee, Gordon Wyant, Minister of Justice and Attorney General for Saskatchewan, expressed his concern about the lack of resources to provide fully translated disclosure under the relevant provisions. He requested clarification on the application of Part XVII to these documents.

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56 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 March 2014.

57 *LSJPA – 0856*, 2008 CarswellQue 11503, 2008 QCCA 2232.

58 JUST, 1st Session, 41st Parliament, *Evidence*, 27 May 2013 (Robert Doyle, Senior Counsel and Chief. Executive Secretariat, Public Prosecution Service of Canada); JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Renée Soublière, Senior Counsel, Litigation Coordinator and Supervisor, Official Languages Directorate, Department of Justice).

59 *R. v. Bujold*, 2011 NBCA 24.

60 *R. v. Bauer*, 2005 ONCJ.

61 *R. v. Beaulac*, [1999] 1 R.C.S. 768, para. 41.

62 [1991] 3 R.C.S. 326.

So far, case law has established that the right of the accused to receive disclosure of evidence is not a language right. The Quebec Court of Appeal has clearly held that section 530.1 does not create a duty for the prosecution to provide a translation of disclosure evidence.[63]

That being said, according to Michel Francoeur, "there can be cases where principles of natural justice or fundamental justice may require translation, in whole or in part, of the disclosed evidence."[64] Some courts have ordered a translated summary of the evidence on the basis of fairness.[65] Given the protection provided by the principles of fundamental justice and the fact that section 530.1 guarantees the right of the accused to the assistance of an interpreter to translate the documents tendered to the court, the Committee decided that it would not be appropriate to recommend the application of Part XVII to documents disclosed by the prosecution.

2.3.2 BAIL HEARINGS

When an accused is detained by peace officers following arrest, a judicial interim release hearing (also called a "bail hearing") must usually be held before a justice of the peace within five days following the arrest.[66] In addition to seeking clarification from the Committee on disclosure, Saskatchewan's Minister of Justice also sought clarification regarding the application of Part XVII to bail hearings, stating that bail hearings conducted in French are occasionally delayed.[67]

The Committee heard conflicting testimony on this matter. According to some case law, bail hearings could be included in the term "trial" used in Part XVII;[68] however, a witness from the federal Department of Justice said that:

> Bail hearings per se are not covered by sections 530 and 530.1 … That issue came up when we were consulting the provinces prior to Bill C-13 [in 2007]. We decided that to extend at that point was not a good idea basically because provinces were telling us that

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63 *R. v. Stockford*, 2009 QCCA 1573.

64 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014.

65 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Renée Soublière, Senior Counsel, Litigation Coordinator and Supervisor, Official Languages Directorate, Department of Justice).

66 S. 503 and s. 516 of the *Criminal Code*. A review of the order for interim release or detention may also be reviewed at a later date (s. 520 to s. 523).

67 See in the Appendix, a letter dated 9 January 2014 from Gordon S. Wyant, Minister of Justice and Attorney General for Saskatchewan.

68 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Michel Francoeur, Director and General Counsel, Official Languages Directorate, Department of Justice). See Renée Soublière, "Language Rights in the Field of Criminal Law: Where Do We Stand Following the *Beaulac* Decision? or The End of an Ephemeral Era of Judicial Torment", in *The Supreme Court Law Review*, Second series, Volume 32, 2006, p. 31, note 59:, This article concerns the decision of Justice of the Peace L. Sclisizzi, Ontario Court of Justice, August 7, 2002, in R*. v. Larocque*, in which the judge seems to indicate that an accused, with the Crown's consent, is entitled to a bail hearing in the official language of his choice ….".

> they still had problems ensuring a full implementation of the current language regime, so they didn't want us to extend at that point in time. The plan was to help the provinces and help the different stakeholders, for example, with … the support fund.[69]

Almost seven years have passed since the introduction of Bill C-13. In their correspondence to the Committee, the provinces and territories have said that, generally speaking, there have been no major problems with the application of Part XVII.

The Committee acknowledges that the provinces are already making efforts to conduct bail hearings in the minority language, but is also aware that the situation is not perfect and that staff shortages often lead to delays, as pointed out by the Minister of Justice for Saskatchewan: "We have many courts in a number of different locations across the province and a relatively small number of bilingual prosecutors, judges and court officials. French bail hearings may be delayed on occasion as a result."[70]

To deal with the shortage of staff and with delays caused by adjournments of proceedings, courts could conduct bail hearings by videoconference, as is sometimes done in Alberta.[71] It is important to remember that an accused is often in a vulnerable state, especially during a bail hearing, when their freedom is at stake. As the Commissioner of Official Languages so aptly put it: "If the point is to ensure equal access to a court process in the language of the accused's choice, that right shouldn't be limited to the trial, but should apply to the entire process."[72]

3. RECOMMENDATIONS

RECOMMENDATION 1

The Committee recommends that Parliament amend the French version of subsection 530(3) of the *Criminal Code* to read as follows: "Le juge de paix ou le juge de la cour provinciale devant qui l'accusé comparaît pour la première fois doit veiller à ce que l'accusé soit avisé de son droit de demander une ordonnance au titre des paragraphes (1) ou (2) et des détails dans lesquels il doit faire une telle demande."

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69 JUST, 2nd Session, 41st Parliament, *Evidence*, 25 February 2014 (Renée Soublière, Senior Counsel, Litigation Coordinator and Supervisor, Official Languages Directorate, Department of Justice).

70 Gordon S. Wyant, Minister of Justice and Attorney General for Saskatchewan, Letter sent to the Committee, 9 January 2014. See also French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, Access to Justice in French, June 2012, p. 23.

71 JUST, 2nd Session, 41st Parliament, *Evidence*, 4 March 2014 (Allan Damer, President, Fédération des associations de juristes d'expression française de common law inc.).

72 JUST, 2nd Session, 41st Parliament, *Evidence*, 27 March 2014 (Graham Fraser, Commissioner of Official Languages).

RECOMMENDATION 2

The Committee recommends that the Federal–Provincial–Territorial Heads of Prosecutions Committee meet with the Department of Justice Canada to discuss issues related to the composition of bilingual juries and court interpretation in both official languages, and to propose possible solutions.

RECOMMENDATION 3

The Committee recommends that the federal government continue to work with the provinces and territories to ensure Part XVII of the *Criminal Code* is enforced, since the provinces and territories that responded to the Committee were generally satisfied with the administration of justice in both official languages.

RECOMMENDATION 4

The Committee recommends that front-line police officers be educated and knowledgeable of an accused's language rights and that the federal government reiterate this fact to the provinces, territories and policing institutions.

RECOMMENDATION 5

The Committee recommends that the federal government look at possible ways, in collaboration with the provinces and territories, to address the shortage of transcribers and interpreters in both official languages. It also recommends that the federal government, in collaboration with the provinces and territories, consider developing national jurilinguistic standards, if needed.

RECOMMENDATION 6

The Committee recommends that a parliamentary committee review Part XVII of the *Criminal Code* again in 5 years' time.

RECOMMENDATION 7

The Committee recommends that the Federal–Provincial–Territorial Working Group on Access to Justice in Both Official Languages put on the agenda, at its next meeting, a discussion of the operation of the provisions in Part XVII of the *Criminal Code*, the availability of bilingual judicial resources at the national level, the consideration of a common definition of the level of language skills required of bilingual judges, and to report its findings to the Committee within a reasonable period of time.

RECOMMENDATION 8

The Committee recommends that the Department of Justice Canada consult with the provinces and territories, at the next meeting of the Federal–Provincial–Territorial Working Group on Access to Justice in Both Official Languages, in order to determine whether broadening Part XVII of the *Criminal Code* to include bail hearings would be advisable and to explore solutions, such as conducting these hearings by videoconference.

APPENDIX A: LETTERS FROM THE PROVINCES AND TERRITORIES ON THE APPLICATION OF THE PROVISIONS OF PART XVII (LANGUAGE OF ACCUSED) OF THE *CRIMINAL CODE*

ALBERTA
JUSTICE AND SOLICITOR GENERAL

Office of the Minister
MLA, Calgary-Acadia

AR 5570

November 27, 2013

Jean-Francois Page
Committee Clerk
Standing Committee on Justice and Human Rights
House of Commons
Room 6-21, 131 Queen Street
Ottawa, ON K1A 0A6

Dear Sir:

This is in response to MP Mike Wallace's letter dated November 5, 2013 enquiring into Alberta's experience with Part XVII (language of the accused) of the *Criminal Code*, especially after the 2008 amendments to that Part. Generally speaking, we are not having any difficulty meeting these requirements.

What have been particularly important to us are the notice provisions in s. 530 of the *Criminal Code* which require the accused to apply for a trial to be heard in French early on in the proceedings so we can take the necessary steps to accommodate their request. The ability of the presiding judge to conduct the trial in either official language has also been important as a lot of our witnesses speak only English and are more comfortable being asked questions without the question being translated.

Any problems we have had have been more practical ones, such as the ability to get transcribers who are proficient enough in French to prepare a transcript of court proceedings.

Sincerely,

Jonathan Denis, QC
Minister

403 Legislature Building, Edmonton, Alberta T5K 2B6 Canada Telephone 780-427-2339 Fax 780-422-6621
10, 8318 Fairmount Drive SE, Calgary, Alberta T2H 0Y8 Canada Telephone 403-640-1363 Fax 403-640-2970

BRITISH
COLUMBIA

FEB 1 8 2014

Jean-François Pagé
Committee Clerk
Standing Committee on Justice and Human Rights
Room 6-21 - 131 Queen Street
House of Commons
Ottawa ON K1A 0A6

Dear Jean-François Pagé:

I am responding to Committee Chair Mike Wallace's letter of November 5, 2013. Thank you for the opportunity to address the provisions of Part XVII (language of accused) of the *Criminal Code* and, more specifically, the provisions made under the *Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*(S.C. 2008, c. 18).

I have canvassed our Criminal Justice Branch concerning the impact of the legislation you referenced and can advise you that, in the view of those counsel dealing with the legislation on behalf of the Prosecution Service, the amendments have been effective.

I trust this will assist you in your deliberations.

Yours very truly,

Suzanne Anton QC
Attorney General
Minister of Justice

pc: Mr. Mike Wallace, MP

Ministry of Justice
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New Nouveau Brunswick
CANADA

December 11, 2013

Mr. Mike Wallace, MP
Chair, Standing Committee on Justice and Human Rights
House of Commons
Room 6-21
131 Queen Street
Ottawa, Ontario
KIA OA6

Dear Mr. Wallace:

Re: Review of Criminal Code Section 533.1

This is to acknowledge receipt of your letter dated November 5th, 2013 regarding the above-noted. The contents of your letter were shared with officials in both the Department of Justice and the Office of the Attorney General in order to determine if there are any current issues.

Based upon our survey, there is one recurrent issue, and that is the availability of official language interpreters in New Brunswick. Court interpreters are engaged by the Department of Government Services but there has been an on-going issue with recruitment and retention of qualified interpreters. In recent years, Court Services Division has received a number of calls from the interpretation section, asking the Division (or the Public Prosecutions) to determine which proceedings can advance because the demand for interpreters in a given timeframe sometimes exceeds the interpreter complement. The availability of interpreters is also impacted by late cancellation of requests for service. In early 2014, the Department will initiate a lean six sigma analysis of existing booking and cancellation practices to improve existing processes to assist the interpretation section in more effectively scheduling its resources. The review is also expected to reduce court interpretation expenditures since late cancellation (less than 48 hours) does not relieve Court Services Division of the obligation to pay for the service.

A recent issue (one that has since been resolved) is the resource implications associated with proceedings where simultaneous interpretation takes place. Regions with a smaller court support complement must assign two stenographers to monitor the two audio recordings (one of the original evidence, the other related to the interpretation). There is also the question of securing additional recording equipment for the recording of the simultaneous interpretation (portable digital recording equipment needs to be placed in the courtroom since our standard installed equipment makes one recording only).

In past years, New Brunswick courts did note that law enforcement officers did not always verify the accused's language of preference and this resulted in accused being assigned to a courtroom where the presiding judge did not speak the accused's preferred language. This issue appears to have been resolved and law enforcement personnel were consistently reminded of the importance of determining the accused's language preference.

In summary, our primary concern is the availability of qualified interpreters. As you are aware, New Brunswick is an officially bilingual province and provincial legislation, the *Official Languages Act*, also contains provisions regarding the administration of justice and ensures that both English and French-speaking New Brunswickers have equality of status and access in this regard.

I trust that this is useful to you.

Yours truly,

Hon. Troy Lifford
Minister of Justice

/8317

Newfoundland Labrador

Government of Newfoundland and Labrador
Department of Justice
Office of the Minister of Justice

January 17, 2014

Ms. Jean-Francois Page
Committee Clerk
Standing Committee on Justice and Human Rights
House of Commons
Room 6-21
131 Queen Street
Ottawa, ON K1A 0A6

Dear Sir:

Re: Review pursuant to section 533.1 of the *Criminal Code*

Further to the correspondence of the Honourable Mike Wallace, dated November 5, 2013, in our jurisdiction applications for trials in French are rare, with only a few each year and the majority of those occurring in our Provincial Court. Our Public Prosecutions Division attempts to always have at least one bilingual prosecutor on staff. The Provincial Court has bilingual judges currently sitting, as does our Supreme Court.

As such, the few applications that we do have for trials in French are usually consented to and proceed without significant difficulty.

I trust this information will be of assistance to the Standing Committee on Justice and Human Rights in undertaking the review pursuant to section 533.1 of the *Criminal Code*.

Sincerely,

Darin T. King, PhD
M.H.A., District of Grand Bank
Minister of Justice

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Ministry of the Attorney General

Office of the
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Ministère du Procureur général

Cabinet du
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Division du droit criminal

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Ontario

Our Reference #: MC-2013-7006

FEB 07 2014

Mr. Jean-François Pagé
Committee Clerk
House of Commons Standing Committee on Justice and Human Rights
Room 6-21, 131 Queen Street
Ottawa, ON
K1A 0A6

Dear Mr. Pagé:

I am responding to the request for information sent by Mr. Mike Wallace, Chair of the House of Commons Standing Committee on Justice and Human Rights, about its review of Part XVII of the *Criminal Code*, the Part dealing with the official language rights of the accused, and the amendments made to it by S.C. 2008, c. 18.

The Ontario government is committed to ensuring that all Ontarians have fair and seamless access to the Ontario justice system in the official language of their choice. To that end, in 2010, the former Attorney General, the Honourable Chris Bentley, established a committee called the French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, comprised of a broad range of key representatives from Ontario's judiciary, this ministry, and the bar. On June 25, 2012, that committee submitted its report, Access to Justice in French. The Ministry of the Attorney General has established a multi-sectoral steering committee, the French Language Services Bench and Bar Steering Committee, to develop an implementation plan that responds to the Advisory Committee's recommendations.

The 2008 amendments to Part XVII brought some important changes to the Language of the Accused provisions of the *Criminal Code*. Most significant was the amendment to s. 530(3) requiring that *all* accused, regardless of whether they are unrepresented or not, be advised at their first appearance of their right to apply for a trial in their official language. Importantly, however, the amendment allowed for flexibility in how that is done. This is critical for a province like Ontario, where the official languages (and other languages) profile is so varied. As a consequence, the manner of implementation of s. 530(3) varies considerably in Ontario. In some courts, the justice will advise each accused of their

language rights. In others, a pre-printed notice is handed out to each accused, and sometimes defence counsel or duty counsel anticipate the issue by addressing it at the outset, indicating that they have advised the accused of their s. 530 rights.

It appears, however, that this level of compliance with s. 530(3) has not been accomplished across the board in Ontario. The French Language Services Bench and Bar Advisory Committee notes that although the ministry and the Chief Justices at each level of court have done a great deal to advance the statutory rights of the French-speaking population in the justice system, further effort is still required with respect to French language rights. This is something that the implementation plan for the Access to Justice in French report is expected to address.

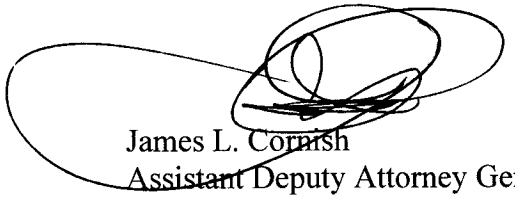
The other notable change in 2008 was the addition of s. 530.01, requiring the prosecutor, on application, to cause the information or indictment to be translated into the other official language. We are not experiencing any significant challenges with this provision. The need to translate these documents does not arise very often in most court locations in Ontario, and the provision allows for flexibility in how the prosecutor fulfills this obligation. Often one of our designated bilingual Crown attorneys will do the translation. Occasionally a French language interpreter will be asked to do this.

There is one aspect of s. 530.1 that was not part of the 2008 amendments but which we think is potentially problematic and which I therefore want to point out to the committee. As you know, s. 530.1 sets out the rights that flow from an order under s. 530(1) for a trial in the accused's official language or a bilingual trial. Yet paragraphs (a) and (b) of s. 530.1 authorize the use of "either" official language in the circumstances indicated. Notwithstanding that an order for a trial in French is made under s. 530(1), this wording, taken literally, could entitle the accused or his or her counsel to use English in a case where a unilingual French-speaking judge and prosecutor might have been assigned. Clearly, the reverse could happen as well. I am not aware of this actually having arisen, and I do not imagine it is a situation that was intended by the provision, but it is something that occurred to us could arise and be problematic, and that therefore may warrant amendment.

While legislative requirements form the framework of language rights in the justice system, our experience in Ontario shows that we must be ever vigilant when it comes to protecting and giving effect to these rights. Ensuring effective language rights is the collective responsibility of numerous players in the justice system and beyond. That is why the Ontario's French Language Services Bench and Bar Steering Committee has such broad representation, including representation from the Law Society of Upper Canada, the Association of Francophone Municipalities of Ontario, the County & District Law Presidents' Association, and the chairs of our Judicial Appointments Advisory Committees. We are confident that the dialogue that has been occurring, in a spirit of goodwill, with the French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, and now the Steering Committee, will yield positive and practical recommendations with broad support that will help give effect to the Ontario government's commitment to fair and seamless access to the Ontario justice system in the official language of one's choice.

Thank you for the opportunity to share with the House of Commons Standing Committee on Justice and Human Rights Ontario's recent experience not only with the 2008 amendments to Part XVII of the *Criminal Code*, but our other efforts to improve access to justice in French in Ontario. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,



James L. Cornish
Assistant Deputy Attorney General
Criminal Law Division

Minister of Justice
and Attorney General

SASKATCHEWAN

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Regina, Saskatchewan S4S 0B3

JAN 09 2014

Jean-François Pagé
Committee Clerk
Standing Committee on Justice
and Human Rights
House of Commons Canada
Room 6-21, 131 Queen Street
OTTAWA ON K1A 0A6

Dear Monsieur Pagé:

Re: s. 533.1 *Criminal Code* Review

Thank you for your request of November 5, 2013 respecting your Committee's review of the changes made to the *Criminal Code* regarding language of the accused in Part XVII. I have canvassed my Ministry officials in this respect and observe the following:

- The vast majority of court proceedings in Saskatchewan are conducted in the English language and very few matters involve Francophones.

- The recent changes have resulted in a much clearer situation respecting language rights in the courts, although further clarification about their application to judicial interim release situations would be appreciated. At present, the provisions relate to "trials" and although we do our best to ensure that language rights are respected at the bail stage of proceedings, knowing that "trial" encompasses the entire process would be of assistance.

- We make every effort to enable the use of French at all stages of the court process. However, this can be difficult to accomplish in every instance from a scheduling perspective, as we have many courts in a number of different locations across the province and a relatively small number of bilingual prosecutors, judges and court officials. French bail hearings may be delayed on occasion as a result.

- We have developed French versions of release documents and probation orders, although the translation of court ordered reports can sometimes be problematic. Moreover, while the issue of the translation of disclosure items that has arisen elsewhere has not yet been an issue here, we are concerned that we do not have the resources to provide fully translated disclosure in every instance. We would appreciate clarification that the language of accused provisions does not extend to disclosure – that there is no *Charter* or legislative right to disclosure in both languages.

...2

- In terms of best practice, my Ministry does what it can to ensure that the accused's language rights are well respected and consent situations may take place where part of the process is conducted in one language and other parts in the other.

Thank you for permitting me to provide my views on this important issue.

Yours very truly,

Gordon S. Wyant, QC
Minister of Justice
and Attorney General

cc: Mike Wallace, MP – Chair, Standing Committee on Justice and Human Rights

Yukon
Office of the Minister
Box 2703, Whitehorse, Yukon Y1A 2C6

December 19, 2013

Jean François Pagé
Committee Clerk
House of Commons Standing Committee on Justice and Human Rights
Room 6-21, 131 Queen Street
Ottawa, ON K1A 0A6

Dear Mr. Pagé:

RE: EXPERIENCE WITH *CRIMINAL CODE* LANGUAGE OF THE ACCUSED PROVISIONS

I write in response to the correspondence of the Committee Chair, Honourable Mike Wallace, of November 5, 2013 regarding Yukon's experience with the provisions of Part XVII (language of the accused) of the *Criminal Code* and specifically the provisions made under the *Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*.

Yukon is predominantly English speaking and consequently most criminal proceedings are conducted in English. However, French is the first official language spoken for 4% of Yukon's population and there are typically one or two applications per year for criminal proceedings to be conducted in French.

Both the Supreme Court of Yukon and the Territorial Court of Yukon offer all services in both official languages. For the Supreme Court, French proceedings are conducted by one of its ten bilingual deputy judges. These judges reside outside Yukon and are brought to Whitehorse as required. For the Territorial Court, two of the three permanent judges are bilingual and conduct matters in French when they arise.

Yukon's shared court registry employs two bilingual clerks, one of whom is always available to offer service in French. All court documents are available in both official languages. Some have an English version and a French version whereas others integrate both languages into the same document.

To ensure all criminal matters comply with section 530(3), advising the accused of their language rights, Yukon follows the best practice of having Judges and Justices of the Peace follow a prepared script during all first appearances that states these rights.

I trust this provides you with the requested information on Yukon's experiences and best practices.

Best Regards,

The Honourable Mike Nixon
Attorney General
Minister of Justice

c. Lesley McCullough, Assistant Deputy Minister, Court Services, Department of Justice

APPENDIX B
LIST OF WITNESSES

Organizations and Individuals	Date	Meeting
Department of Justice	2014/02/25	13
Michel Francoeur, Director and General Counsel, Official Languages Directorate		
Renée Soublière, Senior Counsel, Litigation Coordinator and Supervisor, Official Languages Directorate		
Public Prosecution Service of Canada		
Robert Doyle, Senior Counsel and Chief, Executive Secretariat		
Fédération des associations de juristes d'expression française de common law inc.	2014/03/04	14
Allan Damer, President		
Rénald Rémillard, Director General		
As an individual	2014/03/25	16
Geneviève Lévesque		
Gérard Lévesque		
Steven Slimovitch, Attorney		
Language Rights Support Program (PADL)		
Geneviève Boudreau, Director		
Guylaine Loranger, Legal Advisor		
Office of the Commissioner of Official Languages	2014/03/27	17
Graham Fraser, Commissioner of Official Languages		
Johane Tremblay, Director and General Counsel, Legal Affairs Branch		

APPENDIX C
LIST OF BRIEFS

Organizations and Individuals

Lévesque, **Gérard**

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. 13, 14, 16, 17, 18, 19 and 20) is tabled.

Respectfully submitted,

Mike Wallace

Chair