

Policy:

French and Bilingual Trials

Policy Code:

FRE 1

Effective Date:

May 20, 2022

Cross-references:

Right to a French or Bilingual Trial

An accused person has a right to a French or bilingual trial (including a preliminary inquiry or a sentencing hearing) as set out in section 530 of the *Criminal Code*.

A decision to oppose an application for a French or bilingual trial under the *Criminal Code* should only be made by a Regional Crown Counsel, Director, or their respective deputy in consultation with the Director of Criminal Appeals and Special Prosecutions.

In *R v Beaulac*,¹ the Supreme Court of Canada held as follows:

The “language of the accused” is very personal in nature; it is an important part of his cultural identity. Under section 530 of the Code, an accused must be afforded the right to make a choice between the two official languages based on his subjective ties with the language itself and to freely assert which official language is his own language. An accused’s own language, for the purposes of section 530(1) and (4), is either official language to which that person has a sufficient connection. It does not have to be the dominant language. If the accused has sufficient knowledge of an official language to instruct counsel, he will be able to assert that that language is his language, regardless of his ability to speak the other official language. The Crown may challenge the assertion made, but it will have the onus of showing that the assertion is unfounded.

Statutory Provisions

Timing of the application

Section 530(1) provides that an accused may make an application to have their proceedings in one of the two official languages of Canada at any stage prior to the trial date being set. Notwithstanding the statutory time limits, if an accused fails to make an

¹ *R v Beaulac*, [1999] 1 SCR 768

application pursuant to section 530(1) or (2) the court may order a French or bilingual trial if satisfied it would be in the best interests of justice (section 530(4)).

Mandatory Orders under section 530(1)

Where the official language of an accused is French, and the accused makes an application for a trial in French within the time limit provided, the granting of the order is mandatory (section 530(1)).

Discretionary Orders under sections 530(2) and 530(4)

Where the language of the accused is not one of the official languages of Canada, the accused may make an application to have their trial before a trier of fact who speaks the official language of Canada in which the accused can best give testimony, or if the circumstances warrant, before a trier of fact who speaks both official languages of Canada (section 530(2)).

Accused to be advised of right under section 530(3)

The judge or justice of the peace before whom the accused first appears is responsible for advising them of their right to apply for an order to have their trial in one of the official languages of Canada. That said, if Crown Counsel observe a failure to comply with section 530(3), they should bring this to the court's attention so it can be remedied, failing which it should be noted on the file to ensure compliance at the next appearance.

Order for a Bilingual Trial under section 530.1(c.1)

Following an order for a French trial or preliminary inquiry, the court has the discretion to order that the proceedings be bilingual under section 530.1(c.1) of the *Criminal Code*. An order for a bilingual trial will permit English-speaking witnesses to be examined in their own language, rather than through an interpreter. By contrast, in a purely French trial, all questions and responses of an English-speaking witness are posed in French and translated out loud into French by an interpreter.

In the case of multiple accused, where only one co-accused seeks a French trial, the trial will be presumptively bilingual (section 530(6)).

The Role of Local Crown Counsel

Local Crown Counsel should:

- advise the Administrative Crown Counsel for Bilingual Prosecutions (ACCBP) as soon as possible of an intended election by an accused for a French or bilingual trial

- take conduct of any application for a French or bilingual trial, except an application described below under the section “The Role of ACCBP and the Bilingual Prosecutor”
- advise the court that the assigned Crown Counsel might request a bilingual trial after a review of the file
- if the accused has been granted a French or bilingual trial immediately advise the ACCBP, who will coordinate the assignment of a bilingual prosecutor and the fixing of a trial date (the assigned bilingual Crown Counsel will be responsible for contacting the local judicial case manager to arrange for the scheduling of a trial date)
- request that the presiding provincial court judge or a judicial justice adjourn the matter (for approximately three weeks) to fix a date for trial after an accused is granted a French or bilingual trial to allow for the assignment of a bilingual Crown Counsel
- attend the next appearance date to confirm the scheduled trial date
- once an order under section 530 is made, send a copy of the file to the ACCBP
- where the local bilingual prosecutor has been previously assigned a matter of significant complexity or that cannot otherwise be re-assigned or the region does not have a bilingual prosecutor, the Regional Crown Counsel, Director, or their respective deputy should contact the ACCBP
- continue to make any interim appearances on behalf of the bilingual prosecutor if requested

The Role of the ACCBP and the Bilingual Prosecutor

The ACCBP will give advice to local Crown Counsel on any ordinary applications and, once an order has been made for a French or bilingual trial, the ACCBP will assign a bilingual prosecutor to take conduct of the prosecution.

The ACCBP should take conduct of the following applications:

- a Crown application for a bilingual trial, under section 530(5) after a court has designated a trial as a French trial, that is opposed by an accused
- an application for a discretionary order under section 530(2) and (4) of the *Criminal Code*
- an application for a French or bilingual trial under any federal statute prosecuted by the provincial Crown Counsel (as certain federal statutes which are prosecuted by the provincial Crown Counsel may be subject to special considerations)

- an application to have any other *Criminal Code* proceedings, which are not a preliminary inquiry, trial, or sentencing conducted in French
- an application for translation of documents as part of the disclosure process, other than the Information or Indictment which is required to be translated under section 530.01 of the *Criminal Code*

Application for a French or bilingual trial under a provincial statute

In *Bessette v British Columbia*,² the Supreme Court of Canada confirmed that section 133 of the British Columbia's *Offence Act* incorporates section 530 of the *Criminal Code*. Therefore, an accused charged under a provincial statute, like the *Motor Vehicle Act*, can apply to have a French trial or a bilingual one as permitted under sections 530(5) to (6).

When dealing with a provincial charge on a long form Information, the procedures and rules for criminal matters also apply. Provincial offences charged by way of a violation ticket are generally prosecuted by the police in judicial justice court. If police have questions about such French or bilingual trials, they should be directed to contact the ACCBP.

Preliminary Inquiries, Sentencing Hearings and Non-Jury Trials

French and bilingual hearings should be held in the community where the charges arise unless a change of venue is ordered.

Jury Trial

By order of the Associate Chief Justice of the Supreme Court of British Columbia, all trials in the province requiring a French speaking or bilingual jury are to be held in New Westminster. Applications for a French speaking or bilingual jury trial to be held in a location other than New Westminster may be made to the Associate Chief Justice.

Change of Venue

Section 531 of the *Criminal Code* allows for an automatic change of venue where it is established that a French or bilingual trial or preliminary inquiry cannot be conveniently held in the territorial division where the offence would otherwise be tried.

The ACCBP is responsible for addressing any issues relating to venue of a French or a bilingual prosecution.

² *Bessette v British Columbia (Attorney General)*, 2019 SCC 31

The assigned bilingual prosecutor will be responsible for the conduct of the prosecution and will request the witness notifier in the originating jurisdiction to notify witnesses. Notification of witnesses for a French or bilingual trial or preliminary inquiry, as well as all administrative assistance on the file, and all expenses relating to the conduct of the bilingual prosecution (including all travel expenses for witnesses and the bilingual prosecutor) are the responsibility of the Crown Counsel office at the originating location.

Where Crown Counsel and court staff will be travelling from other parts of the province to attend on the trial date, the bilingual prosecutor should request an interim appearance date in the originating jurisdiction, approximately two weeks before the trial date to confirm the matter is proceeding.