***Summary Sheet*: Sections 530 and 530.1, Language Rights of an Accused**

Written by Caroline Thibault, revised on March 1, 2021

Provisions of the *Criminal Code* – Language of the Accused

- A Francophone accused may exercise the right granted to him or her under section 530 of the *Criminal Code* (*CC*) to request that his or her preliminary inquiry and trial to be held before a French-speaking (or bilingual) judge; **see the precedents in** *R. v. Beaulac*, (1999) 1 SCR 768 and *R. v. Munkonda*, (2015) ONCA 309.
- An accused may apply to have his or her trial to be held in French during his or her first appearance or any other appearance, but no later than:
    - the time at which the date of the trial is set (para. 530(1)(a) of the *CC*);
    - the time of electing the mode of trial (judge alone/jury) (para. 530(1)(b) of the *CC*);
    - the time of being ordered to stand trial (after the preliminary inquiry) (para. 530(1)(c);
  - If the application is made within the timelines (see above), the order becomes mandatory (subsection 530(1) of the *CC*);
  - If the application is made **late**, the *Criminal Code* provides that the court may make a discretionary order requiring the accused to be tried in French or in both official languages (subsection 530(4) of the *CC*).

The Accused Must be Advised of This Language Right – First Appearance

- The judge or justice of the peace before whom an accused first appears shall ensure that the accused is advised of his or her language rights and of the timelines for making a request for a trial before a French-speaking or bilingual court (subsection 530(3) of the *CC*).

If an Order is Made Under Section 530:

- The accused and his counsel **have the right to use either official language** for all purposes during the preliminary inquiry and trial may use **either official language in written pleadings** or other documents used in any proceedings relating to the preliminary inquiry or trial of the accused (para. 530.1(a) of the *CC*);
- Any witness may **give evidence in either official language** during the preliminary inquiry or trial (para. 530.1(c) of the *CC*);
- The presiding justice or judge may, if the circumstances warrant, authorize the prosecutor to **examine or cross-examine a witness in the official language of the witness** even though it is not that of the accused or that in which the accused can best give testimony (para. 530.1(c)(1) of the *CC*);
- The accused has a right to have a **justice presiding over the preliminary inquiry or the trial** who speaks the official language of the accused or both official languages, as the case may be, and for the **prosecutor** to be bilingual (para. 530.1(d) of the *CC*);
- **Any trial judgment**, including any reasons given therefore, issued in writing in either official language, shall be made available by the court **in the official language that is the language of the accused** (para. 530.1(h) of the *CC*);
- At the request of the accused, the Crown may have the information or indictment translated into the official language of the accused, and provide the accused with a written copy of the document, as soon as possible.

Bilingual Trials – Subsection 530(6)

- When ***two or more accused*** are tried together **and** if one of the co-accused speaks one of the official languages of Canada, but that language is not the same for all the co-accused, that ***may*** *constitute circumstances that warrant that an order be granted directing that they be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak both official languages of Canada.*

Record of Proceedings

- The record of proceedings during the preliminary inquiry or trial shall include any documentary evidence that was tendered during those proceedings in the official language in which it was tendered (para. 530.1(g) of the *CC*);
- The transcript must include everything that was said during those proceedings in the official language in which it was said, as well as any interpretation into the other official language of what was said (para. 530.1(g) of the *CC*).

Considerations and Best Practices:

- If the Crown disputes the contention of an accused that French is his or her official language and that the application under section 530 was made after the specified deadline, the onus is on the Crown to show that there is no basis for the contention of the accused (see *R. v. Deutsch* (2005) 204 CCC (3d) 361);
- Everything that the Crown says officially must be spoken in the language of the accused (objections, voir dire, comments) unless the accused has waived that requirement (see *R. c. Dow* (2009) QCCA 478, *R. v. Potvin* (2004) 186 CCC (3d) 257) and *R. v. Munkonda* (2015) ONCA 309);
- The witnesses (including the police officers) can testify in the official language of their choice (see para. 530.1(c), *R. v. M.(T.D.)*, (2008), 236 CCC (3d) 458) and *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 (2018) 3 SCR 261);
- To be included in the case record, the interpretation must be recorded. In certain hearing rooms it is possible to record simultaneous interpretation;
- If the accused waives his or her right to an interpreter or agrees to allow part of the proceedings to be conducted in English, that waiver must be made by the accused and not by his or her counsel, and must be unambiguous.

Disclosure Obligations:

- The only explicit requirement in the *Criminal Code* relating to the translation of any document is in s. 530.01 – **Translation of documents (information and indictment) upon request**;
- The right to disclosure includes the right to receive the documents in that language in which they exist;
- There is no obligation, **subject to the court ordering otherwise**, on the Crown to have any disclosure translated (see *R. v. Rodrigue* [1994] Y.J. No. 113; *R. v. Stadnick* [2001] Q.J. No. 5226; *R. v. Stockford* [2009] Q.J. No. 8369);
- The accused can apply to the court for an order that some or all of the disclosure be translated on the grounds that doing so is necessary to enable the accused to make full answer and defence or to ensure that the accused will receive a fair trial. The onus is on the accused.
- **Best Practice:** try to reach an agreement with the defence concerning the portions of the documents to be disclosed that will be translated.

Examples of considerations arising from *R. v. Munkonda*, 2015 ONCA 309

- In bilingual proceedings, accused who choose different official languages maintain their language rights;
- The court, the prosecution and all the necessary members of court staff must be bilingual;
- To the extent possible, the court and the prosecution should not favour one language over the other. There is no “primary language” and “accommodated” language;
- If one of the accused addresses the court or prosecutor in French, the response should be in French;
- The fact that a French-speaking accused understands English and does not need an interpreter **has no bearing on his or her language rights**;
- Notices and other communications initiated by the Crown must be written in the chosen language of each accused (or must be bilingual);
- Translation of evidence such as wiretaps from other than French or English can be in either official language and defence counsel can then make a request to the judge for a transcript or index to be prepared in the accused’s language, as necessary;
- The court must ensure that the complete judgment, including any interlocutory decisions, are made available in the chosen language of each of the accused.