

**IMPEDIMENTS TO THE EFFECTIVE  
IMPLEMENTATION OF *CRIMINAL CODE* SECTION 530  
IN BRITISH COLUMBIA**

A study and report prepared by  
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## **EXECUTIVE SUMMARY**

This study, commissioned by the Association des juristes d'expression française de la Colombie-Britannique, examines the experiences and perceptions of certain actors in the criminal justice system relating to the implementation of language rights guaranteed to criminally accused persons in the province. The Supreme Court of Canada's seminal decision in *R v Beaulac* clarified that *Criminal Code* section 530 guarantees an individual accused the right to a trial in the official language of his or her choice and that this right does not serve to ensure procedural fairness, but to assist official language minorities in preserving their cultural identity. Despite the importance of this right, there are disproportionately very few criminal trials conducted in French relative to the size of the French-speaking population of the Province.

Data was collected by way of a survey and interviews with various actors in the provincial criminal justice system. Study participants identified a number of barriers to accessing French or bilingual criminal trials in British Columbia: (i) a lack of available information and resources for accused persons; (ii) a lack of awareness of the obligations imposed by section 530, sometimes resulting in a denial of section 530 rights, (iii) a tendency to overlook the status conferred by the *Criminal Code* to the French language, (iv) the number of actors in the criminal justice system and the training available to those actors; and (v) a logistical burden that arises in the context of French or bilingual trials.

Based on the obstacles identified, recommendations intended to lessen the barriers highlighted by this study are directed at various actors in the provincial criminal justice system in British Columbia.

## **RESUME**

Cette étude commandée par l'Association des juristes d'expression française de la Colombie-Britannique porte sur les expériences et perceptions de certains acteurs du système de justice pénale dans le contexte de la mise en oeuvre des droits linguistiques garantis aux accusés dans la province. Suite à l'arrêt *R c Beaulac*, il est clair qu'en vertu de l'article 530, un justiciable accusé d'une infraction découlant du *Code criminel* a le droit à un procès criminel dans la langue officielle de son choix, non pas pour des raisons d'équité procédurale, mais bien pour préserver l'identité culturelle des communautés de langue officielle en situation minoritaire. Malgré l'importance de ce droit, peu de procès criminels se déroulent en français dans la province, relativement à la population de langue française qui y réside.

Des données ont été recueillies à l'aide d'un sondage distribué et d'entrevues réalisés avec certains acteurs du système juridique pénal de la province. Les participants ont ciblé certains obstacles à l'obtention d'un procès en français ou bilingue en Colombie-Britannique : (i) un manque d'information et de ressources destinées aux justiciables ; (ii) un défi de prise de conscience des obligations imposées aux acteurs amenant parfois à un manque de respect des droits en vertu de l'article 530 ; (iii) une tendance à négliger le statut conféré au français par le *Code criminel* ; (iv) les effectifs des acteurs du système de justice pénale et les formations offertes à ces derniers; et (v) le fardeau logistique survenant dans le cadre des procès en français ou bilingues.

L'identification de ces obstacles nous a permis de formuler des recommandations destinées à divers acteurs du système juridique de la Colombie-Britannique afin de tenter de contrecarrer les problèmes décelés par cette étude.

## **FOREWORD**

*Criminal Code* section 530 guarantees individuals charged with an offence the right to be tried in the official language of their choice. It is founded on the principle of "assist[ing] the accused in gaining equal access to a public service that is responsive to his linguistic and cultural identity."<sup>1</sup> This is the key provision of Part XVII of the *Criminal Code*, which was added in 1985 and came into force in British Columbia in 1990. The first studies examining the implementation of this right nationally in Canada appeared in 1995. That year, the Office of the Commissioner of Official Languages conducted a Canada-wide study on the use of English and French in the Canadian courts. That study proved useful in circumscribing the main issues affecting language rights and their application in the provinces and territories, and made specific recommendations.<sup>2</sup> That same year, the British Columbia Francophone Federation ("FFCB") published a report on the delivery of French language services in the administration of criminal justice in the province.<sup>3</sup>

Since 1995, dozens of studies and reports dealing with the country as a whole or specific provinces have examined the issues related to the availability of services in French in the justice sector and the use of the official languages in the Canadian courts. In British Columbia, despite the coming into force of section 530 more than 25 years ago, the use of French in criminal trials remains limited.<sup>4</sup> The Association des juristes d'expression française de la Colombie-Britannique ("AJEFCB") commissioned this study to gain a better understanding of why French is used so little.

This study seeks to shed light on the application of *Criminal Code* section 530 in British Columbia through an analysis of the constitutional and jurisprudential underpinnings of section 530, a review of relevant studies and reports, a survey of the opinions and experiences of some 30 criminal justice system actors in the province, and eight semi-structured interviews with professionals working in British Columbia's justice system.

This study was carried out with funding from the AJEFCB, whose mandate is to promote access to justice in French throughout the province. The AJEFCB wishes to acknowledge the support of Justice Canada. We wish to thank all those who agreed to participate in the study, whether as survey respondents, interviewees or research collaborators, thereby contributing to its success.

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<sup>1</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 45.

<sup>2</sup> Commissioner of Official Languages of Canada, *The Equitable Use of English and French before the Courts in Canada*, Ottawa, 1995 <<http://documentationcapitale.ca/documents/CLO1995fr.pdf>> (link to French report).

<sup>3</sup> Commissioner of Official Languages, *Twenty-Fifth Annual Report of the Commissioner of Official Languages*, Ottawa, 1996 at p. 70 <<http://publications.gc.ca/collections/Collection/SF1-1995E.pdf>> quoting Christine Aubin, *L'accès à la justice en français en Colombie-Britannique: les obstacles institutionnels et systémiques* [Access to Justice in French in British Columbia: Institutional and Systemic Barriers], Fédération des Francophones de la Colombie-Britannique (FFCB), Policy Analysis Department, 1995. (Unfortunately, we were unable to locate a copy of this report).

<sup>4</sup> British Columbia, Intergovernmental Relations Secretariat, *B.C. Francophone Affairs Program - 2016-2017 Annual Report*, 2018 at p. 14 <<https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/office-of-the-premier/intergovernmental-relations-secretariat/francophone-affairs-program/bc-francophone-affairs-program-annual-report-fr.pdf>>. (The report states "bilingual" prosecutions, but it is unclear whether all proceedings were bilingual or if some were purely in French). *Please note this report is no longer available.*

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## 1. INTRODUCTION

[1] *Criminal Code* section 530 guarantees all accused persons the right to be tried in the official language of their choice. It allows them to achieve "equal access to a public service that is responsive to [their] linguistic and cultural identity."<sup>5</sup> Despite the existence of this right, French is seldom used in criminal trials in British Columbia. In 2016-2017, out of 67,069 new criminal cases,<sup>6</sup> only 11 were "bilingual"<sup>7</sup> (less than 0.02% of concluded cases), while 1.58% of British Columbians report that French is a language they speak regularly, at least at home.<sup>8</sup> While there are likely several factors that would explain the very low numbers of French and bilingual criminal trials in British Columbia,<sup>9</sup> this study focuses on identifying systemic barriers to accessing justice in French.

[2] More specifically, the study elicits the observations and opinions of different actors in British Columbia's criminal justice system on access to legal services in French and obstacles that may be contributing to the apparent discrepancy. Our study consists of four parts: (A) a presentation of the applicable law; (B) a description of British Columbia's French-speaking population; (C) a presentation and analysis of the results of the surveys, interviews and research; and (D) a list of recommendations addressed to different participants in the justice system.

[3] The study's findings are largely drawn from the experiences of a number of actors in the justice system. Several barriers were identified from the observations of the study participants: a lack of information and resources available to accused persons; a lack of understanding of the obligations imposed on actors by the *Criminal Code*, at times resulting in a denial of section 530

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<sup>5</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 45.

<sup>6</sup> B.C. Ministry of Attorney General, *Concluded Provincial Court Criminal Cases by Fiscal Year, Adult, 2016/2017*, Legal Services Branch, 2018 <<https://app.powerbi.com/view?r=eyJrjoiOWRmM2U5OTgtYmE4Yy00OTIiLTIOTitMjc2ZGFIMTQ4MzZiIiwidCI6IjZmZGI1MjAwLTKMGQitNGE4YS1iMDM2LWQzNjg1ZTM1OWFkYyJ9>>

<sup>7</sup> British Columbia, Intergovernmental Relations Secretariat, B.C. Francophone Affairs Program - *2016-2017 Annual Report*, 2018 at p. 14. *Please note this report is no longer available.* (The report indicates that the proceedings were bilingual, but it is unclear whether all proceedings were bilingual or if some were solely in French; the report states that the Bilingual Prosecution Group "is composed of 9 prosecutors and 3 support staff who can respond to French inquiries and conduct French criminal trials in accordance with s. 530 of the Criminal Code." We also learned that between 2010 and 2018, the British Columbia Supreme Court only held four trials and eight hearings in French in four cities (Kelowna, New Westminster, Vancouver and Vernon) (information obtained from the BC Supreme Court Communications Officer).

<sup>8</sup> Statistics Canada, "Focus on Geography Series", *2016 Census, Ontario, 2017* (Statistics Canada Catalogue Product no 98-404-X2016001) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?LANG=Eng&GK=PR&GC=59&TOPIC=5>>.

<sup>9</sup> See particularly: National Crime Prevention Centre, *Supporting the Successful Implementation of the National Crime Prevention Strategy*, Public Safety Canada, 2009 at p. 2 <<https://www.securitepublique.gc.ca/cnt/rsracs/pblctns/spprtng-mplmtn/spprtng-mplmtn-eng.pdf>> (The main characteristics of individuals at greatest risk of coming into contact with the criminal justice system in Canada are, to name but a few: family factors such as a criminalized parent or sibling, peer-related factors such as gang membership, school-related factors such as absenteeism or dropping out, and social factors such as the availability of firearms or drugs; this study does not address whether these factors are more or less common among Francophones in British Columbia, nor has it determined the number of accused in contact with the criminal justice system who identify as Francophones).

rights; a tendency to overlook the status accorded to the French language under the *Criminal Code*; the number of actors in the criminal justice system and the training available to them; and the logistical burden associated with conducting French or bilingual trials in British Columbia.

[4] To respond to the barriers identified, we have formulated a series of specific recommendations to promote the implementation of best practices when trials are conducted for French-speaking accused persons in British Columbia.

## **2. METHODOLOGY AND LIMITATIONS**

### ***2.1 Methodology***

[5] The first stage of our study consisted of a review of reports, studies and policies from which 26 relevant documents were identified, including seven studies on the use of the official languages in the courts, one of which, a 2014 study, deals specifically with section 530.<sup>10</sup>

[6] At a second stage, a survey was prepared for distribution to criminal justice system participants. The questions were derived from the issues and best practices identified in the literature, as well as from the wording of section 530 and the rights it confers to accused persons, as interpreted by the case law. The overall objective of the survey was to collect stakeholder perceptions of the issues at play when it comes to the use of French in the courts of the province. The full survey and its results can be found in Appendix B of this report.

[7] In February 2018, our study was endorsed by Simon Fraser University's Office of Research Ethics (file no. 2018s0025), which validated our methodology, survey and draft interview guide in terms of research integrity and ethics.

[8] At a third stage, we deployed and administered the online survey to different stakeholders in the criminal justice system in British Columbia. Relevant individuals were identified by different means. We prepared a list of defense and Crown counsel emails by visiting defense counsel's websites, the FFCB's and AJEFCB's French-language service directories, and the CBA lawyers' directory. We contacted court staff and attempted to contact provincial and supreme court judges by phoning court registries and then writing to court management. Agencies that provide services to accused persons in British Columbia were identified through online searches. We contacted these organizations by phone and email to request they distribute the survey to their staff. More than 30 respondents agreed to complete the survey, which gave us a snapshot of experiences and perceptions relating to the implementation of section 530 in the province. More than half of the survey respondents were defense counsel, while the remainder consisted of court administrative staff, Crown counsel and one legal aid staff member. For purposes of the survey, stakeholders were contacted without regard to the official language in which they work. Respondents had the choice of responding to the survey in either French or English.

[9] At the same time, we finalized the questions to be asked of interview participants. The sample questions generally matched those asked in the survey, but were adjusted to take into

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<sup>10</sup> See Appendix A.

account the survey results. The main purpose of the sample questions was to initiate a discussion with interviewees and they were not strictly adhered to during the interviews. A selection of sample interview questions is available in Appendix C of the report.

[10] In the fourth stage, we contacted various authorities, organizations and individuals that work with French-speaking accused throughout the province and invited them to participate in interviews. Some participants volunteered to participate in the interviews after completing the online survey, which informed them we were seeking candidates for one-on-one interviews. We also contacted the Provincial Court and Supreme Court of British Columbia, through their respective registries, to find court staff and judges interested in participating in the interviews. The B.C. Criminal Prosecution Branch was also contacted in an effort to reach Crown counsel. We also contacted the staff of organizations that provide assistance to accused persons, by email and telephone, inviting them to take part in the interviews. Some participants were identified by the interviewees themselves and then contacted by us. Finally, we contacted the New Westminster courthouse, the designated location for holding French or bilingual jury trials in the province. We conducted a total of eight semi-structured interviews with eight participants involved in a variety of roles and functions in British Columbia's criminal justice system. In order to encourage frankness, the interviews were conducted on the basis that the identity of participants would not be disclosed in the final report.

## **2.2 Limitations**

[11] This study focusses strictly on the practices followed when French or bilingual criminal trials are requested in British Columbia and on how such trials are conducted. It does not deal with other language rights.

[12] We chose to survey a number of individuals who participate in and oversee the criminal justice system in the province. Given their status before the courts and potential vulnerability, no accused persons were sought to participate in the study. As a general rule, the other studies consulted that include the experiences and accounts of different participants in the criminal justice system actors also do not solicit the opinions of accused persons.

[13] We attempted to contact Provincial and Supreme Court judges, but were unable to distribute the survey to any judges or hold interviews with them.

[14] The sample is limited and non-randomized (30 survey respondents and eight interviews) and is therefore not necessarily representative of all stakeholders in the British Columbia criminal justice system. The analysis is based primarily on subjective perceptions – impressions, opinions, experiences and comments – of those who agreed to respond to the survey or be interviewed. Following repeated invitations to participate in the survey sent by e-mail and fax over a period exceeding four weeks, and numerous phone calls to justice system stakeholders, we concluded that those who wished to share their opinions had been given ample opportunity to do so. For a study of this scale, these limitations are generally consistent with those noted in our review of the literature.

[15] Despite these limitations, this study paints a meaningful picture of the use and application of *Criminal Code* section 530 in British Columbia. It also makes a number of recommendations

that it is hoped will prove useful in establishing and improving practices vis-à-vis the respect of minority language rights in the context of British Columbia's criminal justice system.

### **3. APPLICABLE LAW**

[16] Section 530 establishes the right of an accused person to stand trial in the official language of his or her choice. Before presenting the survey and interview findings, the obligations arising from *Criminal Code* section 530 in British Columbia will be reviewed. To do this, this part of the study will discuss the general structure of the justice system in the province, the constitutional basis for section 530, its legislative history and the obligations that flow from it.

[17] Section 530 applies to *Criminal Code* offences and those created under other federal statutes, such as the *Controlled Drugs and Substances Act*<sup>11</sup> and the *Canada Wildlife Act*,<sup>12</sup> which are prosecuted in the province's courts of criminal jurisdiction.<sup>13</sup> This study does not address language rights as they apply in the federal courts, such as in prosecutions under the *Income Tax Act*.<sup>14</sup> The question of whether *Criminal Code* section 530 applies to persons charged with a provincial offence in British Columbia has yet to be decided by the Supreme Court of Canada.<sup>15</sup>

[18] This report does not address the language obligations imposed on other federal institutions, including those prescribed in the *Official Languages Act* that give members of the public the right to receive services from federal institutions (such as the Royal Canadian Mounted Police<sup>16</sup>) in the official language of their choice, in places where there is significant demand for the use of that language.<sup>17</sup> This part of the report only considers the application of *Criminal Code* section 530 in the context of criminal trials in the province.

#### **3.1 General structure of the criminal justice system in British Columbia**

[19] The general structure of the criminal justice system in the province meets the requirements of the *Criminal Code*.<sup>18</sup> Both the Provincial Court and the Supreme Court have jurisdiction to hear criminal matters.<sup>19</sup> Provincial Court judges hear most criminal cases with just a few exceptions, including charges for murder and treason.<sup>20</sup> The Provincial Court hears more than

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<sup>11</sup> *Controlled Drugs and Substances Act*, SC 1996, c 19.

<sup>12</sup> *Wildlife Act of Canada*, RSC 1985, c W-9.

<sup>13</sup> *Contraventions Act*, SC 1992, c 47, s. 2, 30.

<sup>14</sup> *Income Tax Act*, RSC 1985, c. 1.

<sup>15</sup> *Bessette v Attorney General of British Columbia*, Supreme Court of Canada file No. 37790 (appeal heard on November 15, 2018, judgment reserved).

<sup>16</sup> The Royal Canadian Mounted Police is subject to the *Official Languages Act*, RSC 1985, c 31 (4th supp) and the *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48.

<sup>17</sup> *Official Languages Act*, RSC 1985, c 31 (4th supp) and the *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48, s. 5.

<sup>18</sup> *Criminal Code*, RSC 1985, c C-46, s. 468-469.

<sup>19</sup> *Constitutional Act, 1867* (UK), 30 & 31 Vict, c 3, s. 91(27), 92(14), reproduced in RSC 1985, yr II, no. 5. See also *Criminal Code*, RSC 1985, c C-46, s. 2, which defines a provincial court as a court of criminal jurisdiction.

<sup>20</sup> *Criminal Code*, RSC 1985, c C-46, s. 469.

95% of all criminal cases in the province.<sup>21</sup>

[20] The *Criminal Code* provides for summary conviction offences that can be characterized as less serious in nature and that fall under the absolute jurisdiction of the Provincial Court.<sup>22</sup> It also provides for offences for which accused persons have the choice of being tried by a Provincial Court judge, a judge and jury before the Supreme Court or a Supreme Court judge sitting alone.<sup>23</sup> The *Criminal Code* also provides for certain offences that can only be heard in the Supreme Court, where the accused may choose to proceed with or without a jury.<sup>24</sup>

[21] The *Criminal Code* sets out three categories of offences: summary conviction offences, indictable offences and hybrid offences.<sup>25</sup> For indictable and hybrid offences, an accused may request that their trial be preceded by a preliminary inquiry, at which the evidence is assessed by a judge.<sup>26</sup> Based on the evidence, if the judge is of the opinion that "no sufficient case is made out" for the accused to stand trial, the judge will grant a discharge.<sup>27</sup>

### **3.2 Constitutional context**

[22] Before describing the history of *Criminal Code* section 530 and the law as it applies to the provision, we will review its constitutional basis. This contextualization will shed light on the courts' interpretation of the right to a French or bilingual trial in British Columbia.

#### ***The Constitution Act, 1867***

[23] The *Constitution Act, 1867* gives the Parliament of Canada legislative jurisdiction over criminal law, including procedure.<sup>28</sup> It is thus the responsibility of the Parliament of Canada to create, review and amend the *Criminal Code*, both in terms of the offences themselves and the procedures to be followed in criminal trials. On the other hand, jurisdiction for the administration of justice (including the "Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts")<sup>29</sup> falls on the provincial legislatures.

[24] In addition, section 133 of the *Constitution Act, 1867* states that "... either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec." This clause has been interpreted as guaranteeing the right to use the official language of one's choice before the courts, but it "does not guarantee that the speaker, writer or issuer of proceedings or processes will be understood in the language of his choice by those he is

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<sup>21</sup> Provincial Court of British Columbia, *Criminal Cases*, Office of the Chief Judge, 2014 <<http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth>>.

<sup>22</sup> *Criminal Code*, RSC 1985, c C-46, s. 553.

<sup>23</sup> *Criminal Code*, RSC 1985, c C-46, s. 536(2), 554(1).

<sup>24</sup> *Criminal Code*, RSC 1985, c C-46, s. 468-469, 473.

<sup>25</sup> British Columbia, *Types of Offences*, 2018 <<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-accused-of-a-crime/understanding-charges/types-of-offences>>.

<sup>26</sup> *Criminal Code*, RSC 1985, c C-46, s. 536(4), 555(1).

<sup>27</sup> *Criminal Code*, RSC 1985, c C-46, s. 548.

<sup>28</sup> *Constitutional Act, 1867* (UK), 30 & 31 Vict, c 3, s. 91(27), reproduced in RSC 1985, yr II, no. 5.

<sup>29</sup> *Constitutional Act, 1867* (UK), 30 & 31 Vict, c 3, s. 92(14), reproduced in RSC 1985, yr II, no. 5.

addressing."<sup>30</sup> It should be noted that the right to use the official language of one's choice in court proceedings also applies to Crown counsel. However, when an accused chooses the official language for his or her trial, a prosecutor capable of working in that language must be appointed. A judge cannot require a prosecutor to use an official language that is not his or hers, but must adjourn the hearing until an appropriate replacement can be appointed.<sup>31</sup>

### **Canadian Charter of Rights and Freedoms**

[25] Section 19(1) of the *Canadian Charter of Rights and Freedoms*<sup>32</sup> ("the *Charter*") provides that "Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament." However, in the decision in *Société des Acadiens v Association of Parents*, the Supreme Court of Canada interpreted this provision restrictively: although it guarantees the right to speak and write before a court in the language of one's choice, it does not comprise the right to be understood.<sup>33</sup>

[26] Section 16(1) of the *Charter* affirms and recognizes that English and French are the two official languages of Canada, and that they have "equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada." In addition, subsection 16(3) states that "Nothing in this *Charter* limits the authority of Parliament or a legislature to advance the equality of status or use of English and French." Section 530 of the *Criminal Code* is an example of such a measure.<sup>34</sup>

[27] This constitutional context serves as the foundation for the rights conferred on accused persons under *Criminal Code* section 530. The next section will discuss the history of these rights.

### **3.3 History of Criminal Code section 530**

[28] Prior to the 1985 revision of the *Criminal Code* and the addition of Part XVII, which created the current provisions governing the language of criminal trials, it was Part XIV.1 that included these provisions with the addition of section 462.1 in 1978, the structure of which is very similar to today's Part XVII.<sup>35</sup> The wording of the previous provisions required that the judge, at the request of an accused, order a trial before a judge or jury that spoke his or her official language

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<sup>30</sup> *MacDonald v City of Montreal*, [1986] 1 SCR 460 at p. 496 [Emphasis added] (at p. 486 of the same judgment, where Beetz J. stated that the State's obligations under section 133 were negative in nature ("not to do"), that is, an obligation to not prevent a person from exercising their language rights, without any positive obligation to facilitate the exercising of those rights).

<sup>31</sup> *Cross v Teasdale*, 1998 CanLII 13063 (QC CA) at pp. 21, 22, 25, 26 (this interpretation of the interaction between section 530 of the *Criminal Code* and section 133 of the *Constitution Act, 1867* was restated by the Ontario Court of Appeal in *R v Potvin* (2004), 69 O.R. (3d) 654, paras. 28-30 (CA).

<sup>32</sup> *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, comprising schedule B to the *Canada Act 1982* (UK) 1982, c 11.

<sup>33</sup> *Société des Acadiens v Association of Parents*, [1986] 1 SCR 549 at para. 53.

<sup>34</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 22.

<sup>35</sup> *1977 Act to amend the Criminal Code*, SC 1977-1978, c 36, s. 1; Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at p. 370.

or, if applicable, both official languages.<sup>36</sup> The main criticism of the former legislation is that it allowed each province, at its discretion, to defer the date of coming into force of Part XIV.1, which some provinces used to evade their language obligations.<sup>37</sup>

[29] Assented to in 1985, Part XVII of the *Criminal Code* "Language of Accused" transposed the provisions of former Part XIV.1 while eliminating the discretion of the provinces to choose the date of its coming into force.<sup>38</sup> This change laid the foundation for a much more comprehensive code, one capable of overseeing judicial bilingualism through its sections 530 to 532. These sections have undergone significant amendments since 1985, notably with the addition of section 530.1 (which clarifies the rights and obligations under section 530) in 1988, following the consolidation of the *Official Languages Act*.<sup>39</sup> Section 530 came into force in British Columbia in 1990, after which accused persons in the province could request a trial in the official language of their choice pursuant to the *Criminal Code*.<sup>40</sup> The next part will describe the law in greater detail, as it applies to sections 530, 530.01, 530.1, 531.2 and 531.

### **3.4 Applicable law**

#### **Section 530**

[30] As mentioned above, *Criminal Code* section 530 guarantees the right of every person charged with an offence under the *Criminal Code* to choose to be tried in the official language of his or her choice. In its landmark decision in *R. v Beaulac* ("*Beaulac*"), the Supreme Court of Canada asserted that the positive obligations imposed by section 530 are not intended to ensure a fair trial or full answer and defense, but "to assist official language minorities in preserving their cultural identity."<sup>41</sup> Therefore, to assure the right conferred under section 530 can be effectively exercised, the courts are required to be institutionally bilingual.<sup>42</sup> It should be noted, however, that the scope of obligations under section 530 is limited to preliminary inquiries and trials (as specified in paragraphs (a), (b) and (c) of section 530.1),<sup>43</sup> which excludes pre-trial or incidental proceedings.<sup>44</sup>

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<sup>36</sup> Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at p. 370.

<sup>37</sup> *1977 Act to amend the Criminal Code*, SC 1977-1978, c 36, s. 1; Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at p. 370.

<sup>38</sup> *Criminal Code*, RSC 1985, c C-46.

<sup>39</sup> *An Act respecting the status and use of the official languages in Canada*, RSC 1988, c. 31 (4th Supp.), s. 94 (the other amendments to section 530 were made in 1985 (*Criminal Law Amendment Act, 1985*, RSC 1985, c 27 (1st Supp.), s. 94 and 203), 1999 (*An Act to amend the Nunavut Act with respect to the Nunavut Court of Justice and to amend other Acts in consequence*, RSC 1999, c 3, s. 34) and 2008 (*An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, RSC 2008, c 18, s. 18-21)).

<sup>40</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 23.

<sup>41</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 34; principle reaffirmed in *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at para. 20.

<sup>42</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 28.

<sup>43</sup> Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at p. 374.

<sup>44</sup> *R v Schneider*, 2004 NSCA 151 at para. 28; Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais,

### **Subsections 530(1) and (2)**

[31] Subsection 530(1) guarantees an accused whose language is one of Canada's official languages an absolute right to a trial in the official language of his or her choice, provided the application is timely.<sup>45</sup> It is a substantive right and not a procedural right that can be interfered with.<sup>46</sup> For accused persons whose language is not one of the official languages of Canada, subsection 530(2) guarantees the same right to a trial in the official language of their choice.

[32] There are three elements to consider: (a) determining the language of the accused, (b) time limits to be respected, and (c) implications of the language abilities of the judge or jury.

*(a) What is the official language of the accused and how can it be determined?*

[33] Given that "[t]he language of the accused is very personal in nature [...] the accused must therefore be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself."<sup>47</sup> The accused has the onus of applying for a trial in the official language of his or her choice, and the judge has no discretion to deny the application if it is made within the prescribed time limits. The right exists regardless of the ability of the accused to speak the other official language.<sup>48</sup> The Crown may challenge the application, but the Court will only entertain this challenge if it is satisfied that the accused is unable to instruct counsel or adequately follow the proceedings in the chosen language.<sup>49</sup>

*(b) What are the applicable time limits?*

[34] The structure of subsection 530(1) also puts the onus on the accused to apply for a trial in the official language of his or her choice at any of three times, as indicated in paragraphs (a), (b) and (c). If an accused "fails to apply for an order under subsection (1) or (2)" of section 530, the Court nevertheless has the discretion to order a French or bilingual trial in the manner prescribed in subsection 530(4), as discussed below.<sup>50</sup>

*(c) What implications arise from the right to a trial in the official language of one's choice?*

[35] The right of an accused to stand trial in the official language of his or her choice requires that judges have the ability to understand and use the chosen official language.<sup>51</sup> Judges cannot

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2013, 301 at pp. 374-75.

<sup>45</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 31.

<sup>46</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 28, principle reaffirmed in *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at para. 1, 20.

<sup>47</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 34, principle reaffirmed in *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at paras. 40, 42.

<sup>48</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 34.

<sup>49</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 34. See also: *Denver-Lambert v R*, 2007 QCCA 1301 at para. 24.

<sup>50</sup> *Beaulac* confirms that subsection 530(4) can be used by an accused to make a late application for a trial in the official language of their choice. See in particular para. 28 of this decision: "...that subsection simply provides for the application of the same right in situations where a delay has prevented the application of the absolute right in subsection (1). See also paragraph 37 of this decision, which explains the operation of the judge's discretionary power.

<sup>51</sup> Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at p. 376.

rely on the services of an interpreter to understand submissions and they must speak in the language of the accused at all times.<sup>52</sup> All accused persons also have the right to request a trial "before a judge or jury that speaks both official languages,"<sup>53</sup> that is, a bilingual trial. However, the Court may only order a bilingual trial if the circumstances warrant one.<sup>54</sup> Subsection 530(6) states that one of the circumstances warranting an order for a bilingual trial is "[t]he fact that two or more accused who are to be tried together are each entitled to be tried [in] the official language of Canada [of their choice] and those official languages are different [...]"<sup>55</sup>

[36] If the judge has the obligation to understand and use the official language chosen by the accused, the same applies to the jury. The language skills required to qualify as a bilingual juror are as follows:

A bilingual juror is a juror who can easily assess the probative value of the evidence without the assistance of an interpreter, while remaining sensitive to the nuances surrounding its presentation, regardless of the official language used. This level of understanding allows the juror to grasp the true meaning of the judge's instructions to the jury, which are often technical in nature. In addition, when the time comes, the bilingual juror will be able to participate effectively in the jury's deliberations, in either official language, without being overwhelmed by the ability of others to express their opinions on the evidence heard.<sup>56</sup>

[37] *A fortiori*, a juror must be able to speak and understand the official language chosen by the accused.<sup>57</sup>

### **Subsection 530(3)**

[38] The original version of subsection 530(3) only required that judges inform accused persons of their right to choose the official language of their trial when they were self-represented.<sup>58</sup> The law on this point was criticized in *Beaulac*<sup>59</sup> and the *Criminal Code* was subsequently amended in 2008.<sup>60</sup> Since then, subsection 530(3) imposes an obligation on the judge or justice of the

<sup>52</sup> *R v Potvin*, [2004] 69 O.R. (3d) 654 at para. 33 (CA).

<sup>53</sup> *R v Beaulac*, [1999] 1 SCR 768 (Mr. Beaulac had requested a bilingual trial, see para. 48).

<sup>54</sup> *Criminal Code*, RSC 1985, c C-46, s. 530(1). See *R v Charron*, 2018 QCCS 968 at paras. 25-35, which quotes *Gagnon v R*, 2013 QCCA 1744 at paras. 32-46.

<sup>55</sup> Subsection 530(5) states that an order for a trial in one of the official languages may be amended to become an order for a bilingual trial, and vice versa.

<sup>56</sup> *Gagnon v R*, 2013 QCCA 1744 at para. 63.

<sup>57</sup> See *R v Potvin*, [2004] 69 O.R. (3d) 641 at paras. 29-30 (CA), which confirms that a jury must speak the official language of the accused to meet the statutory objectives of section 530.

<sup>58</sup> *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, S.C., 2008, c 18, s. 18); *R v MacKenzie*, 2004 NSCA 10 at para. 10.

<sup>59</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 37.

<sup>60</sup> See the testimony of the Honourable Rob Nicholson (then Minister of Justice), who confirmed that the amendment to Criminal Code subsection 530(3) was a direct result of the recommendation of the Supreme Court of Canada: Standing Committee on Justice and Human Rights, *Evidence*, 39th Leg., 1st Sess., No. 65 (May 2, 2007) at p. 1535 (excerpt from committee evidence for Bill C-23, *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, 5th Session, 39th Leg., 2007, s. 18(1) is relevant because even though this bill never came into force due to prorogation of Parliament, it was subsequently re-enacted and renamed Bill C-13, an *Act to Amend the Criminal Code (Criminal Procedure, Language of the Accused, Sentencing and Other*

peace to inform all accused persons, whether represented or not, of their right to a trial in the official language of their choice.<sup>61</sup> It should be noted that the provisions of the *Criminal Code* do not impose a similar obligation on defense or Crown counsel. However, the Code of Ethics of the British Columbia Law Society does impose an obligation on defense counsel to advise their clients of all language rights, including the right to be tried in the official language of their choice.<sup>62</sup> In addition, Crown prosecutors have a duty to assist the court to administer justice and do not act for any person or party.<sup>63</sup> As such, even though *Criminal Code* section 530 does not directly require that Crown counsel inform accused persons of their rights, they nevertheless have the duty "to promote the integral application of sections 530 and 530.1 [of the *Criminal Code*]" .<sup>64</sup>

#### **Subsection 530(4)**

[39] If the application is not made within the time limits set out in subsection 530(1), or no application is made, subsection 530(4) gives the court discretion to allow a late application by the accused if it is in the "best interests of justice." According to *Beaulac*, the burden rests on

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*Amendments*), 2nd Sess, 39th Leg, 2007, s. 18(1), which received Royal Assent in 2008 and amended Criminal Code subsection 530(3).)

<sup>61</sup> *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at para. 33 (the same approach is taken by the *Official Languages Act*). See also para. 32 (in the context of the federal courts, where lawyers are also required under their code of ethics to inform accused of their language rights, the Supreme Court has recently ruled that it is prudent to not take for granted that lawyers will systematically inform parties of their language rights) and paras. 28, 37.

<sup>62</sup> The Law Society of British Columbia, *Code of Professional Conduct for British Columbia*, Vancouver, updated December 2018, r 3.2-2.1. The commentary for this rule states that (i) The lawyer should advise the client of the client's language rights as soon as possible; (ii) there may be other federal or provincial provisions that add rights over and above those that exist under the Charter and the Criminal Code; (iii) the lawyer should consider whether he or she is sufficiently competent in the official language chosen by the accused when agreeing to provide legal services in that language, within the meaning of competence as indicated in Rule 3.1-2; (iv) civil trials in British Columbia must be held in English, and criminal trials may be held in both official languages. Moreover, there is a general duty of competence provided in Rule 3.1-2 which, based on the commentary, implies that counsel must remain abreast of legal developments in their areas of practice in order to understand and properly apply the relevant law. The majority of provinces and territories have similar rules of conduct: The Law Society of Ontario, *Rules of Professional Conduct*, Toronto, amendments current as of April 26, 2018, r 3.2-2A; The Law Society of New Brunswick, *Code of Professional Conduct*, Fredericton, as amended on June 29, 2018 r 3.2-2A-B; The Law Society of Alberta, *Code of Conduct*, Calgary, as amended on April 26, 2018, r 3.2-7, 3.2-8; The Law Society of Saskatchewan, *Code of Professional Conduct*, Regina, March 2018 Consolidation, r 3.2-2A-B; The Law Society of Manitoba, *Code of Professional Conduct*, Winnipeg, as amended on June 15, 2017, r 3.2-2A-B; The Nova Scotia Barristers' Society, *Code of Professional Conduct*, Halifax, as amended on July 20, 2018, r 3.2-2A-B; The Law Society of Newfoundland and Labrador, *Code of Professional Conduct*, St. John's, as amended on October 23, 2017, r 3.2-2A-B; The Law Society of Nunavut, *Model Code of Professional Conduct*, adopted November 7, 2016, Iqaluit, r 3.2-2A-B; The Law Society of the Northwest Territories, *Code of Professional Conduct*, Yellowknife, as amended on March 31, 2017, r 3.2-2A-B; The Law Society of Yukon, *Code of Professional Conduct*, Whitehorse, as amended on March 14, 2017, r 3.2-2A-B. See also the *Model Code of Professional Conduct* published by the Federation of Law Societies of Canada, as amended on March 14, 2017 in Ottawa, r 3.2-2A-B. See also *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at para. 37.

<sup>63</sup> *Boucher v The Queen*, [1955] SCR 16 at pp. 23-27.

<sup>64</sup> *Parsons v R*, 2014 QCCA 2206 at paras. 34-35. See also Public Prosecution Service of Canada, *Public Prosecution Service of Canada Deskbook: 2.11 Official Languages in Prosecutions*, 2017 <<https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpq/fps-sfp/tpd/p2/ch11.html>>

the Crown to establish that the interests of justice would not be served by granting the application.<sup>65</sup> Three factors should be considered when deciding this question: (i) the accused's knowledge of the right to a trial in the official language of his or her choice; (ii) the proper conduct of the trial; (iii) the reasons and extent of the delay.<sup>66</sup> However, administrative inconvenience associated with allowing the application is not a relevant factor,<sup>67</sup> nor is trial fairness, even if the application is denied,<sup>68</sup> nor is the fact that a previous trial has been held in the other official language.<sup>69</sup>

### **Subsection 530(6)**

[40] As mentioned above, subsection 530(6) states that where two co-accused who are to be tried together have chosen two different official languages for their trial, this may be a circumstance justifying a trial in both official languages.<sup>70</sup> This is an exception to the right established in subsection 530(1), and it creates a tension between the right of all accused to a trial in the official language of their choice and their right to equitable access to the courts and to justice.<sup>71</sup> It has been recognized by the courts that when two or more individuals are charged with the same offence and they share the same set of facts, it is desirable that these accused be tried jointly "where it serves the interests of justice."<sup>72</sup> How can this principle be reconciled when the accused do not share the same official language? Two principles must be upheld in such circumstances:

1. An accused retains his or her right to equal access to proceedings in his or her language, notwithstanding the imposition of bilingual proceedings; and
2. The court and the Crown prosecutor must be bilingual and must not favour one official language over the other.<sup>73</sup>

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<sup>65</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 42.

<sup>66</sup> *R v Beaulac*, [1999] 1 SCR 768 at paras. 37, 42-43.

<sup>67</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 39 ("The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling are not to be considered because the existence of language rights requires that the government comply with the provisions of the Act by maintaining a proper institutional infrastructure and providing services in both official languages on an equal basis.").

<sup>68</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 41.

<sup>69</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 40.

<sup>70</sup> *Clohosy v R*, 2013 QCCA 1742 at paras. 42-44 ; *R v Bellefroid*, 2009 QCCS 3193 at para. 6. See also *Agostini v R*, 2009 QCCQ 17353.

<sup>71</sup> *R v Munkonda*, 2015 ONCA 309 at para. 44, 46.

<sup>72</sup> Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at p. 382. See for example *R v Schneider*, 2004 NSCA 99 at para. 21, where the Court granted a joint trial because separate trials would have doubled the work: the evidence in both trials was similar (if not identical) most of the time. See also *R v Crawford*, [1995] 1 SCR 858 at para. 30 (the "interests of justice" can take several forms depending on the case, but the case law cited describes a desire, notably, to render uniform judgments for the same events, to increase the efficiency of the court system, to assure that accused suffer no prejudice from the holding of a joint trial, and to increase the likelihood of obtaining the truth from the facts).

<sup>73</sup> *R v Munkonda*, 2015 ONCA 309 at para. 46; Bilingualism requires that Crown prosecutors be able to understand and express themselves in both official languages without the need for an interpreter.

[41] The administration of justice<sup>74</sup> and trial fairness<sup>75</sup> are two factors that can militate against an order for a bilingual trial and justify severance of the proceedings (in very long and complex trials, for example) into two (or more) trials in the official language chosen by each accused.

### **Section 530.01**

[42] Section 530.01 confirms the right of an accused to request that an indictment be translated into the official language of his or her choice. It was added to remedy the unclear case law that existed with regard to the translation of documents.<sup>76</sup>

### **Section 530.1**

[43] Section 530.1 specifies the rights and obligations that flow from an order made under section 530:

**530.1** If an order is granted under section 530:

(a) the accused and his counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused;

(b) the accused and his counsel 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;

(c) any witness may give evidence in either official language during the preliminary inquiry or trial;

(c.1) 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;

(d) the accused has a right to have a justice presiding over the preliminary inquiry who speaks the official language of the accused or both official languages, as the case may be;

(e) the accused has a right to have a prosecutor – other than a private prosecutor – who speaks the official language of the accused or both official languages, as the case may be;

(f) the court shall make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial;

(g) the record of proceedings during the preliminary inquiry or trial shall include

(i) a transcript of everything that was said during those proceedings in the official language in which it was said,

(ii) a transcript of any interpretation into the other official language of what was said, and

(iii) any documentary evidence that was tendered during those proceedings in the

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<sup>74</sup> *R v Stockford*, 2001 CanLii 18126 (QCCS) at para. 9. See also *Gagnon v R*, 2013 QCCA 1744 at para. 38.

<sup>75</sup> *R v Forsey* (1994), 95 CCC (3<sup>rd</sup>) 354 at p. 364 (QCCS). See also *R v Sarrazin*, 196 OAC 224 at paras. 56, 65, 69.

<sup>76</sup> *R v Munkonda*, 2015 ONCA 309 at para. 75.

official language in which it was tendered; and

(h) any trial judgment, including any reasons given therefor, 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.

[44] This section confirms that institutional bilingualism, alluded to above, is mandatory: without requiring that all members of the justice system be bilingual, accused persons must be able to enjoy their language rights in all circumstances. Section 530.1 also applies to bilingual proceedings.<sup>77</sup> The paragraphs requiring a more detailed interpretation will now be addressed.

[45] Paragraph (b) has been interpreted as requiring that Crown prepare the pleadings and any other documents related to the preliminary inquiry in the language of the accused.<sup>78</sup>

[46] Paragraph (e) must be interpreted the same way as section 530(1): both the trial judge and the prosecutor must be able to understand and use the official language chosen by the accused.<sup>79</sup>

[47] The addition of paragraph (c.1), which deals with the language of witnesses, is an exception to paragraph (e) which provides that accused persons have the right to a prosecutor that speaks the same official language as them (except in the case of a private prosecutor).<sup>80</sup>

[48] Paragraph (f) requires that the court "make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial." A 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." In these circumstances, in order to uphold the accused's right to a trial in their chosen official language, an interpreter must be present to simultaneously interpret the exchanges that take place in the official language that is not that of the accused.

[49] Paragraph (g) requires that "the record of proceedings during the preliminary inquiry or trial shall include

- (i) a transcript of everything that was said during those proceedings in the official language in which it was said,
- (ii) a transcript of any interpretation into the other official language of what was said, and
- (iii) any documentary evidence that was tendered during those proceedings in the official language in which it was tendered." These documents must be included in the record of proceedings in a timely manner.<sup>81</sup>

<sup>77</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 49.

<sup>78</sup> *R v Munkonda*, 2015 ONCA 309 at para. 77.

<sup>79</sup> Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at p. 388; *R v Munkonda*, 2015 ONCA 309 at paras. 66-70 ; *Dow v R*, 2009 QCCA 478 at para. 93.

<sup>80</sup> Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3<sup>e</sup> éd, Cowansville (Qc), Yvon Blais, 2013, 301 at p. 387.

<sup>81</sup> *Clohosy v R*, 2013 QCCA 1742 at paras. 75-76.

[50] In some cases, where accused persons have attempted to use paragraph (g) to require that Crown translate all of the documentary evidence into the official language they have chosen, it was determined that paragraph (g) does not impose such an obligation.<sup>82</sup> However, section 530.01 provides that "portions of an information or indictment against the accused that are in an official language that is not that of the accused" must be translated into the official language chosen by the accused.

[51] The right to disclosure is the right to disclosure of the evidence as it existed at any point before the trial, and the courts have adopted the approach of translating only what is necessary to ensure a fair trial.<sup>83</sup>

[52] Paragraph (f) guarantees the presence of an interpreter at the preliminary inquiry and trial to translate documents tendered in court into the official language of the accused.<sup>84</sup>

### **Section 530.2**

[53] Section 530.2 provides that in a bilingual trial, the court may make an order "setting out the circumstances in which, and the extent to which, the prosecutor and the justice or judge may use each official language." This section also states that the order must, "to the extent possible, respect the right of the accused to be tried in his or her official language." The purpose of this section is to ensure that the accused's individual language rights are considered and respected

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<sup>82</sup> *Stockford v R*, 2009 QCCA 1573 at paras. 9-21 ; *R v Rodrigue*, [1994] YJ n° 113 at paras. 11-12 (CS) which was subsequently applied in *R v Simard*, [1995] OJ No. 3989 at para. 16 (CA) in the context of the Court of Appeal's refusal to grant an accused the right to have the information written or translated in the official language of his choice. The issue of the translation of informations and indictments was remedied by the addition of section 530.01 to the Criminal Code, but the same reasoning applies to the translation of documentary evidence following *Stockford*. The Ontario Court of Appeal, without explicitly referring to paragraph (g), identified an exception to this in *R v Munkonda*, 2015 ONCA 309 at paras. 80-81: The accused can require that Crown provide a summary of the disclosure in his or her official language. The Nova Scotia Court of Appeal also reiterated, incidentally, this interpretation of paragraph (g) in paragraph 33 of *R. v Schneider*, 2004 NSCA 99.

<sup>83</sup> *Stockford v R*, 2009 QCCA 1573 at paras. 16-17, quoting *R v Rodrigue*, [1994] YJ n° 113 at p. 28 (CS); *Deschambault v R*, 2010 QCCS 6851 at para. 12 (where applicable, the accused must demonstrate, on a balance of probabilities, that the translation will protect trial fairness). Two constitutional provisions were raised in requesting translation of the documentary evidence, but with little success: section 7 of the *Charter*, which provides that the liberty of an individual can only be infringed in accordance with the principles of fundamental justice and section 11(d) of the *Charter*, which provides that all accused persons have the right to a fair and public hearing by an impartial and independent tribunal. See for example: *R v Rodrigue*, [1994] YJ n° 113 (CS) at paras. 52-55; *R v Schneider*, 2004 NSCA 99 at para. 35; *Frenette*, 2007 NBCP 33 at paras. 15 and 32-33. In *R v Butler*, 2002 NBQB 325 at paras. 35 and 52, the Court of Queen's Bench of New Brunswick recognized there are instances where an accused would have the right to a full translation of the evidence disclosed to ensure a fair trial under sections 7 and 11 of the *Charter* because the ability to understand the disclosure in question is central to the accused's right to make full answer and defense. However, the accused must show that a refusal to translate would result in a prejudice significant enough to constitute a *Charter* violation. In *R. v Butler*, the lack of evidence as to the prejudice resulting from the refusal to translate was fatal to the accused's motion. In particular, the Court took into account the lack of evidence on the lawyer's language abilities, the fact that the preliminary inquiry was conducted in English, and the lack of evidence on the accused's financial ability to obtain their own translation (see paras. 44 to 52).

<sup>84</sup> *Stockford v R*, 2009 QCCA 1573 at para. 13. See also *Roy Martin v R*, [2011] QJ n° 22426 (CA) at para. 74, which specifies that an interpreter must be present in accordance with paragraph 530.1(f) for "everything that is not in the chosen official language." Moreover, in *R v Schneider*, 2004 NSCA 99, the court specified that an interpreter that was present pursuant to paragraph *f*) assisted "as needed including any translation of exhibits."

in a bilingual trial.<sup>85</sup>

### **Section 531**

[54] Section 531 allows, where necessary, that "the trial of the accused be held in another territorial division in the same province [...] if an order made under section 530 cannot be conveniently complied with in the territorial division in which the offence would otherwise be tried." In criminal jury trials where the official language chosen by the accused is French, the courts in British Columbia use this provision to systematically refer such trials to the New Westminster Law Courts.<sup>86</sup>

### **Forms**

[55] It also should be noted that section 849(3) provides that all *Criminal Code* forms must be printed in both official languages.

### **3.5 Summary**

[56] In summary, *Criminal Code* section 530 was added in the spirit of preserving official language minority communities in Canada and encouraging their development; it was not added to protect an accused's right to a fair trial. Its purpose is to "assist the accused in gaining equal access to a public service that is responsive to his linguistic and cultural identity".<sup>87</sup> This is also the perspective from which we analyzed the data collected for purposes of this study.

## **4. PORTRAIT OF THE FRENCH-SPEAKING COMMUNITY IN BRITISH COLUMBIA**

[57] The Statistics Canada 2016 Census gives us a snapshot of the Canadian population, including income, age, ethnicity, and language ability. This last category allows us to quantify and situate the French-speaking population in the province and thereby approximate the number and location of French-speaking British Columbians who would be able to avail themselves of the rights arising from *Criminal Code* section 530.

[58] British Columbia is home to the fourth largest Francophone community in Canada.<sup>88</sup> According to the 2016 Census and the Office of the Commissioner of Official Languages, the number of British Columbians whose mother tongue is French has increased by 9% since the 2006 census;<sup>89</sup> the population that reported French as a mother tongue now accounts for 1.56%

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<sup>85</sup> *R v Bellefroid*, 2009 QCCS 3193 at paras. 22-23. See also *R v Munkonda*, 2015 ONCA 309 at paras. 53-57, where the Court of Appeal for Ontario held that in a bilingual trial, the individual language rights of each accused must be respected "to the extent possible" and "provided that it is reasonable", in accordance with section 530.2.

<sup>86</sup> Supreme Court of British Columbia, *Notice, Re: Criminal Jury Trials in French*, 2000 <[https://www.courts.gov.bc.ca/supreme\\_court/practice\\_and\\_procedure/practice\\_directions\\_and\\_notices/Criminal/Notice%20-%20French%20Trials%20\(ACJ\)%20-%20December%201,%202000.pdf](https://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions_and_notices/Criminal/Notice%20-%20French%20Trials%20(ACJ)%20-%20December%201,%202000.pdf)> (According to the directive, as of December 1, 2000, all criminal jury trials in the French language are to be heard in New Westminster).

<sup>87</sup> *R v Beaulac*, [1999] 1 SCR 768 at paras. 25, 45.

<sup>88</sup> British Columbia, Intergovernmental Relations Secretariat, B.C. Francophone Affairs Program - 2016-2017 *Annual Report*, 2018. (Please note this report is no longer available).

<sup>89</sup> Commissioner of Official Languages of Canada, *Infographic: The French presence in British Columbia*, 2018 <<https://www.clo-ocol.gc.ca/en/statistics/infographics/french-presence-british-columbia>>. Also, the number of people

of the total population of the province, or 71,705 people.<sup>90</sup> However, these figures should be viewed from the perspective that they underestimate the true number of French speakers in the province. This is due to the formulation of the census questions themselves, which suggest it is not possible to report two mother tongues,<sup>91</sup> while this is the reality of the province's French-speaking citizens, who often learn both languages simultaneously.<sup>92</sup> The population that reported speaking French at least regularly at home accounted for 1.58% of the population, or 72,750 people.<sup>93</sup> Due to the high rate of exogamy in the province,<sup>94</sup> this figure must also be approached with caution; a person whose mother tongue is French, but lives with a unilingual English-speaking spouse, may not speak French regularly at home because they communicate in English with their family. However, if such a person were to find themselves facing charges, they would still potentially choose a trial in French. Also of note, according to the 2016 Census, is that 6.89% of British Columbia's population has a knowledge of English and French.<sup>95</sup> As a result, the proportion of British Columbians that could potentially avail themselves of a criminal trial in French falls within a range of between 1.56% and 6.89% of the total population.

[59] Although British Columbians whose mother tongue is French are distributed throughout the province, they are concentrated in three main geographic areas: the southwest Lower Mainland (58%), Vancouver Island and the Coast (20%) and the Thompson-Okanagan region (12%)<sup>96</sup>

[60] From these data, it is clear that the community with French as a mother tongue in British Columbia is growing and is not concentrated in one region.

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who speak French most often at home increased by 21%.

<sup>90</sup> Statistics Canada, "Focus on Geography Series", 2016 Census, Ontario, 2017 (Statistics Canada Catalogue Product no 98-404-X2016001) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?LANG=Eng&GK=PR&GC=59&TOPIC=5>>.

<sup>91</sup> *Conseil-scolaire francophone de la Colombie-Britannique, Fédération des parents francophones de Colombie-Britannique et al v British Columbia (Education)*, 2016 BCSC 1764 at paras. 515-517; Rodrigue Landry et al, *Required changes to the Canadian census, as of 2021, so that it will allow (1) full implementation of minority language education guaranteed by section 23 of the Canadian Charter of Rights and Freedoms, and (2) full implementation of sections 16, 16.1, 19 and 20 of the Charter and parts III, IV and VII of the Official Languages Act*, prepared by the Fédération des conseils scolaires francophones de l'Alberta and the Association canadienne-française de l'Alberta, 2017 at pp. 29-33 <<https://acfa.ab.ca/index-main/wp-content/uploads/2016/05/ACFA-FCSFA-mémoire-recensement-8-mars-2017-EN.pdf>>.

<sup>92</sup> *Conseil-scolaire francophone de la Colombie-Britannique, Fédération des parents francophones de Colombie-Britannique et al v British Columbia (Education)*, 2016 BCSC 1764 at para. 517.

<sup>93</sup> Statistics Canada, "Focus on Geography Series", 2016 Census, Ontario, 2017 (Statistics Canada Catalogue Product no 98-404-X2016001) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?LANG=Eng&GK=PR&GC=59&TOPIC=5>>.

<sup>94</sup> 78%, according to the decision in *Conseil-scolaire francophone de la Colombie-Britannique, Fédération des parents francophones de Colombie-Britannique et al v British Columbia (Education)*, 2016 BCSC 1764 at para. 548. See also paras. 274, 371, 517, 605 and 697.

<sup>95</sup> Statistics Canada, "Focus on Geography Series", 2016 Census, Ontario, 2017 (Statistics Canada Catalogue Product no 98-404-X2016001) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?LANG=Eng&GK=PR&GC=59&TOPIC=5>>.

<sup>96</sup> Commissioner of Official Languages of Canada, *Infographic: The French presence in British Columbia*, 2018 <<https://www.clo-ocol.gc.ca/en/statistics/infographics/french-presence-british-columbia>>. A more detailed description of the French-speaking population in British Columbia is available on the Statistics Canada website, including a breakdown by region.

[61] In socio-political terms, as Daniel Boivin, president of the Fédération des associations des juristes d'expression française told the Official Languages Committee, "it makes sense to focus on access to justice in French in the context of criminal law. After all, it is an important point of contact between citizens and the legal system."<sup>97</sup> Also of note is the fact that the justice sector was one of five priority areas of British Columbia's 2016-2017 Francophone Affairs Program.<sup>98</sup>

## **5. STUDY FINDINGS: IMPLEMENTATION OF CRIMINAL CODE SECTION 530**

[62] Based on our research, the survey and interviews, it can be concluded that once an order has been granted, the right to a French or bilingual trial is generally respected. We also found no reports of accused persons being required to prove their language skills, which suggests that the findings of the Supreme Court of Canada with respect to determination of the accused's language by the accused are being upheld. In addition, it was reported to us there are numerous bilingual professionals in the criminal justice system able to perform their duties in both English and French without the need for an interpreter. These include prosecutors, defense counsel, judges, court staff and, of course, interpreters.

[63] However, a number of real or potential impediments to the full implementation of *Criminal Code* section 530 in British Columbia were also identified, namely: (i) a lack of information and resources available for accused persons, including information on Section 530; (ii) a lack of understanding of the obligations imposed on actors by the *Criminal Code*, at times resulting in a denial of section 530 rights; (iii) a tendency to overlook the status accorded to the French language under the *Criminal Code*; (iv) the number of actors in the criminal justice system and the training available to them; and (v) the logistical burden associated with conducting French or bilingual trials. Again, readers should bear in mind that these impediments were identified through the experiences and subjective perceptions reported by stakeholders who agreed to complete our survey and be interviewed.

[64] We will now describe and analyze some of the systemic characteristics and gaps identified by the participants. The sixth part of the report presents recommendations to address some of these gaps.

### **5.1 Availability of information and resources for accused persons**

[65] Based on the observations of study participants and our research, while there are good practices and tools in place to ensure the effectiveness of current services, a lack of resources is apparent when it comes to the language rights of accused persons. Also, according to some respondents, existing legal aid services in French are underutilized. While the accounts we received show some positive actions have already been undertaken, they also point to a number of shortcomings.

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<sup>97</sup> Quote from: House of Commons, Standing Committee on the Official Languages, *Ensuring Justice is Done in Both Official Languages* (December 2017) at pp. 32-33

<<https://www.ourcommons.ca/Content/Committee/421/LANG/Reports/RP9287844/langrp08/langrp08-e.pdf>>.

<sup>98</sup> British Columbia, Intergovernmental Relations Secretariat, *British Columbia Francophone Affairs Program - 2016-2017 Annual Report*, 2018). Please note this report is no longer available.

**Documentary resources and tools (online or hardcopy) dealing with section 530 language rights**

[66] During the interviews, several respondents pointed to a lack of resources on section 530 and expressed the view that existing resources are not being communicated to the target audience in a timely manner. Some respondents mentioned that pamphlets exist, but are not always located in appropriate places in the courthouses.<sup>99</sup> In this regard, one respondent told us "you have to look for the pamphlets, they are not in plain view." Based on the testimonies, in many cases it would be necessary to consult court staff to find these pamphlets. One respondent also reported that contrary to what they observed in the Ontario provincial courts, there is no permanent sign on the walls indicating that accused have the right to a French or bilingual trial.

[67] Following up on respondents' comments, we searched online and were able to locate a certain amount of information on the rights of accused persons under section 530.

[68] We found that the province's website includes a single page of information, with just a brief description of the availability of services in French. The web page then refers accused persons to their local court registry. It fails to mention there is in fact a right to a trial in the official language of their choice.<sup>100</sup>

[69] The only mention of the right to a French or bilingual trial on the page for accused persons of the British Columbia Provincial Court's website is in the FAQ section. This section indicates that accused may request their trial be conducted in their "dominant" language, whether that language is French or English. This wording does not reflect the fact that "the accused [has] the right to make a choice between the two official languages based on his or her subjective ties with the language itself."<sup>101</sup> It also states that the accused may wish to discuss this right with their lawyer or ask the judge questions about it, suggesting the onus is on the accused to raise the right. It does not mention counsel's or the judge's duty to inform accused persons of this right. Nor does it state that the right to choose a French or bilingual trial is also available to those whose mother tongue is other than French or English.<sup>102</sup> The opposite is suggested. We also found an "eNews" article on the court's website with a detailed description of the right to request a trial in French.<sup>103</sup> While this article provides a fair summary of the law and is written in both French and English, it is not easy to find in the overview section of the web page for

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<sup>99</sup> For example, respondents suggested appropriate places would be at the entrance to the registry, on each counter in the registry, or displayed on the walls outside courtrooms.

<sup>100</sup> British Columbia, *Votre procès en française* [sic], 2018: <<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-accused-of-a-crime/going-to-court/your-triour-trial-in-frenchal-in-french/votre-proces-en-francaise?keyword=french&keyword=language&keyword=trial>>

*Your Trial in French*: <<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-accused-of-a-crime/going-to-court/your-triour-trial-in-frenchal-in-french>>.

<sup>101</sup> *R v Beaulac*, [1999] 1 SCR 768 at para 34, reaffirmed in *Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at para 40.

<sup>102</sup> Provincial Court of British Columbia, *FAQ*, Office of the Chief Judge, 2014 <<http://provincialcourt.bc.ca/about-the-court/fag>>.

<sup>103</sup> Provincial Court of British Columbia, *Are you entitled to a trial in French? Avez-vous le droit de demander un procès en français?*, Office of the Chief Judge, 2017 <<http://provincialcourt.bc.ca/enews/enews-30-05-2017>>.

accused persons.

[70] We also searched the Supreme Court of British Columbia website, but could find no information for accused persons regarding French or bilingual trials. Nothing is specifically included on this subject on the web page for self-represented litigants.<sup>104</sup>

[71] Based on a review of the publications available on the website of the Legal Services Society (the organization that provides assistance to low-income litigants and accused persons in British Columbia), there are two references to language rights. The first is on page 4 of the document entitled "Si vous êtes accusé d'un crime" (If You're Charged with a Crime), where it is written in parentheses: "(You can also ask that your trial be held in French.)"<sup>105</sup> However, no mention of this right is made in the English version of the publication.<sup>106</sup> As a result, the existence of the right would not be communicated to those who may wish a French or bilingual trial but are unaware of this option and assume they must navigate the system in English. The second publication is "Representing Yourself in a Criminal Trial." This document briefly outlines the steps to follow to request a French or bilingual trial.<sup>107</sup>

### **Legal Aid**

[72] It should be noted that several respondents expressed the view that legal aid in French is under-publicized and/or underutilized in British Columbia. Nevertheless, it was confirmed to us that a number of organizations do offer legal aid in French. Whether for an initial contact by telephone or face-to-face appointment, legal aid services are available in French throughout the province. Several respondents emphasized the importance for accused persons of being understood and able to communicate in the language in which they feel most comfortable before the hearing or trial date is fixed. Legal aid is an early step at which accused persons have an opportunity to receive reliable information and advice on the charges they are facing and coming proceedings.

[73] The following organizations were identified as providing legal advice and legal aid in French in British Columbia: la Boussole, the AJEFCB and Access Pro Bono. According to the information we gathered, the three organizations try to meet the needs of the French-speaking community by working in collaboration and offering free legal clinics in French.<sup>108</sup> They have bilingual volunteers and employees available to respond to requests from accused persons in French. When phoning the Access Pro Bono number, for example, by selecting French (the

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<sup>104</sup> Supreme Court of British Columbia, *Self-Represented Litigants*, 2018 <[https://www.courts.gov.bc.ca/supreme\\_court/self-represented\\_litigants/](https://www.courts.gov.bc.ca/supreme_court/self-represented_litigants/)> (We also did a search for "French" in the search toolbar).

<sup>105</sup> Legal Services Society, *Si vous êtes accusé d'un crime*, British Columbia, 2015 <<https://lss.bc.ca/resources/pdfs/pubs/If-Youre-Charged-with-a-Crime-fra.pdf>>.

<sup>106</sup> Legal Services Society, *If You're Charged with a Crime*, British Columbia, 2018 <<https://lss.bc.ca/resources/pdfs/pubs/If-Youre-Charged-with-a-Crime-eng.pdf>>.

<sup>107</sup> Legal Services Society, *Vous représenter vous-même lors d'un procès criminel*, British Columbia, 2016 <<https://lss.bc.ca/resources/pdfs/pubs/Representing-Yourself-in-a-Criminal-Trial-fra.pdf>>.

Legal Services Society, *Representing Yourself in a Criminal Trial*, British Columbia, 2016 <<https://lss.bc.ca/resources/pdfs/pubs/Representing-Yourself-in-a-Criminal-Trial-eng.pdf>>

<sup>108</sup> AJEFCB, *Legal Clinics* <<https://ajefcb.ca/>>. (Each organization publishes information, offers training activities, organizes events, etc).

second option among several languages on the recording), a French-speaking volunteer will be assigned to the call. However, it was reported that despite the active offer of such a service, demand remains low.

[74] The Legal Services Society ("LSS"), which regulates and coordinates legal aid throughout the province, also provides services in French. The LSS has a list of lawyers who self-identify as French-speaking and allocates additional funds where accused persons wish to retain a lawyer capable of representing them in French but the lawyer has to travel to do so.<sup>109</sup> In 2013/2014, thirteen French-speaking clients charged with criminal offences received legal aid; this represented 0.1% of all eligible LSS clients. In 2017/2018, French-speaking clients accounted for 0.2% of eligible clients, or 27 accused persons.<sup>110</sup> As can be seen, the demand doubled in less than five years.

### **5.2 Understanding and respecting Criminal Code section 530 rights and obligations**

[75] Based on the survey results, 35% of respondents generally disagreed ("strongly disagree" or "disagree") with the statement "The accused are aware of their linguistic rights."<sup>111</sup> According to the survey participants, most players in the legal system in British Columbia are aware of the existence of accused persons' language rights. However, there appears to be a gap when it comes to communicating information to accused persons on their right to a French or bilingual trial. This perception illustrates the importance of clarifying the responsibilities of court staff, Crown prosecutors, defense counsel and judges in informing the accused of their rights under section 530.

#### **Court staff**

[76] Based on the impressions collected from the survey and interviews, it appears that court administrative staff are not always knowledgeable of the language rights of accused persons. Only 25% of respondents "agree" or "strongly agree" with the statement that administrative personnel are aware of the language rights of the accused.<sup>112</sup>

[77] Although *Criminal Code* section 530 does not require that court staff inform accused persons of their rights, the former are often the first point of contact for the latter. It follows that if court administrative staff are not vigilant vis-à-vis language rights, the likelihood of accused persons being informed of these rights and invoking them is reduced.

#### **Defense counsel**

[78] According to a majority of survey respondents (65%), defense counsel are generally aware

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<sup>109</sup> During the interviews, we were told the usual procedure is for applicants to choose a local lawyer, but an exception can be made for those wishing to retain a lawyer to represent them in a bilingual or French trial.

<sup>110</sup> Statistics obtained from the Strategic Planning and Policy Department of the Legal Services Society of British Columbia (August 24, 2018).

<sup>111</sup> 5% of respondents indicated they "strongly agree" while 20% "agree". 25% of respondents said they had no point of view ("neutral"), 30% "disagree" and 5% "strongly disagree". 15% did not know (see Appendix B).

<sup>112</sup> In response to the statement "Administrative personnel are aware of the linguistic rights of the accused", 5% of respondents indicated "strongly agree" and 20% "agree". 45% of respondents said they had no point of view ("neutral"), 10% "disagree" and no respondents "strongly disagree". 20% did not know (see Appendix B).

of accused persons' language rights, although some (20%) had a contrary view. In contrast, 35% of survey respondents said they "disagree" or "strongly disagree" with the statement "Defence counsel are aware of their professional obligation to inform their clients of their linguistic rights",<sup>113</sup> despite the addition of an express obligation to this effect in the British Columbia Law Society's Code of Professional Conduct<sup>114</sup> in 2016. In addition, 55% of survey respondents said they "disagree" or "strongly disagree" with the statement that non-francophone defence counsel are aware of available resources in order to refer accused persons to counsel able to represent them in French.<sup>115</sup>

[79] During the interviews, when commenting on the knowledge and attitudes of defense counsel, some study participants noted that non French-speaking lawyers with no connection to the official-language minority community tended to be less aware of the rights guaranteed in *Criminal Code* section 530. In addition, some respondents reported they had observed a lack of appreciation for language rights and the provisions of section 530 from some lawyers who are not members of the French-speaking community. Finally, it was suggested that even where non French-speaking lawyers are aware of their clients' language rights, in some cases they may overlook their professional obligation to advise them of these rights, given their inability to represent them in French. Some participants told us in fact that they had had difficulty conveying the importance of language rights to unilingual lawyers who had never experienced the challenge of expressing themselves in another language.

[80] One respondent told us that "some anglophone lawyers will roll their eyes at the idea of having to accommodate a trial in French." This attitude is directly at odds with the court directive that language rights must not be perceived as a response to a request for accommodation.<sup>116</sup>

### **The Court**

[81] With respect to the statement that judges are aware of the language rights of accused, 80% of the survey respondents "strongly agree" or "agree".<sup>117</sup> However, according to respondents who have had involvement with criminal proceedings in French in British Columbia,

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<sup>113</sup> 5% of respondents indicated "strongly agree" and 20% "agree". 25% said they did not have a point of view ("neutral"), while 30% "disagree" and 5% "strongly disagree". 15% marked "don't know". (see Appendix B). However, in response to the statement "Defense counsel are aware of the linguistic rights of the accused," 10% of respondents indicated they "strongly agree" and 55% "agree". 5% of respondents said they have no point of view ("neutral"), while 15% disagreed and 5% strongly disagreed. 10% did not know (see Appendix B). It appears that defense lawyers are aware of the right to a bilingual or French trial, but not of their obligation to inform accused of this right.

<sup>114</sup> British Columbia Law Society, *Code of Professional Conduct of British Columbia*, Vancouver, updated December 2018, Introduction at para. 5, r 3.2-2.1.

<sup>115</sup> 5% of respondents indicated they "agree", 30% of respondents said they had no point of view ("neutral"), while 35% "disagree" and 20% "strongly disagree". 10% said "don't know". No respondent marked "strongly agree" (see Appendix B).

<sup>116</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 24; *Industrial Alliance Insurance and Financial Services Inc. v Mazraani*, 2017 FCA 80 at paras. 21-23, 26, upheld on appeal by the Supreme Court of Canada, 2018 SCS 50 (See paras. 17, 80).

<sup>117</sup> In response to the statement "Judges are aware of the linguistic rights of the accused", 25% of respondents indicated "strongly agree" and 55% "agree". 10% of respondents said they did not have a point of view ("neutral"), while 5% indicated "disagree". 5% did not know. No respondent marked "strongly disagree" (see Appendix B).

only 28.6% report that judges always inform accused of their right to a trial in French.<sup>118</sup> More specifically, 42.9% of the responses were from participants who had "never or almost never seen a judge inform the accused of this right."<sup>119</sup> This was subsequently confirmed by the participants we interviewed, based on their courtroom observations.

[82] It should be stressed that the practices observed and reported in the interviews reflect a small sample. That said, from the data collected, it is possible to advance the hypothesis that while knowledge of the right to a trial in the official language of one's choice is fairly widespread within the judiciary, knowledge of the obligation to systematically inform accused persons of this right is more limited. As a reminder, subsection 530(3) of the *Criminal Code*, added in 2008, requires that the court inform the accused of their rights, whether they are represented by counsel or not.<sup>120</sup>

[83] Notwithstanding the above, once a trial in French had been triggered, respondents were generally of the view that the status of French was respected. To the question asked of those with involvement in French trials, "Did you feel French was given full status in these proceedings?", 40% said the proceedings were conducted entirely in French, while 60% responded "for the most part," indicating that most of the legal issues were dealt with in French.<sup>121</sup> This was confirmed by the interview participants.

[84] As for the use of French in "bilingual" trials, we were unable to draw clear conclusions. The following part offers a possible explanation for this confusion.

***Potential area of research: distinction between French and bilingual trials***

[85] Through the surveys, interviews and research carried out for this study, an unexpected problem was identified meriting further research.

[86] From one of the interviews, it came to light that French trials are rarely ordered as there will almost always be at least one non French-speaking witness called to testify. Moreover, the survey data show that 77.8% of respondents felt that "French was the dominant language"<sup>122</sup> in

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<sup>118</sup> In response to the statement "Judges always inform the accused of their right to a trial in French", 5% of respondents indicated "strongly agree" and 10% "agree". 20% of respondents said they did not have a point of view ("neutral"), while 40% indicated "disagree" and 20% "strongly disagree". 5% did not know (see Appendix B).

<sup>119</sup> In the context of French criminal proceedings, to the question "Did the judge inform the accused of their right to a trial in French?", 28.6% of the responses recorded were "yes, always or almost always", 14.3% were "yes, when the accused appeared to have an accent or difficulty speaking English", 14.3% were "yes, when the accused had a French-sounding name" and 42.9% of responses were "no, I have never or almost never seen a judge inform the accused of this right" (see Appendix B). For respondents who had been involved in bilingual criminal proceedings, to the same question, "Did the judge inform the accused of his right to a trial in French?", 55.6% of respondents replied "yes, always or almost always" while 44.4% replied "no, I have never or almost never seen a judge inform the accused of this right" (See Appendix B).

<sup>120</sup> *An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)*, SC 2008, c. 18, s. 18.

<sup>121</sup> See Appendix B.

<sup>122</sup> To the question "What did you feel was the status of French in these proceedings?", 77.8% of respondents replied "French was the dominant language; more matters were dealt with in French than in English", 11.1% replied "Proceedings alternated between English and French in about equal proportion" and 11.1% replied "For the most part, any bilingual aspects of the proceedings were done through French interpretation" (see Appendix B).

bilingual trials. These results suggest that several actors consider a bilingual trial to be justified for the sole purpose of allowing witnesses to be examined in English. This problem seems all the more plausible following a review of documentary resources describing the procedures followed by a team of "bilingual" Crown counsel, known as the Bilingual Prosecution Group ("BPG") of the Ministry of the Attorney General of British Columbia.

[87] Firstly, the Annual Report of the British Columbia Francophone Affairs Program indicates that only bilingual trials were held in 2017-2018:

The BPG conducted 17 bilingual prosecutions in the last year (compared to 14 in 2016-2017) including 7 ongoing prosecutions.<sup>123</sup>

[88] Among other possibilities, this may indicate that no accused requested a French trial, that the BPG does not distinguish between bilingual and French trials or that requests for French trials by accused persons were not honoured. The Crown Counsel Policy Manual, published by the British Columbia Ministry of Attorney General, unfortunately suggests that the last possibility is conceivable:

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.

[...]

Local Crown Counsel should:

[...] request a bilingual trial where the Crown intends to call English-speaking witnesses; and, if this application is contested, request that the application be heard by the trial judge (when the assigned bilingual Crown Counsel is available)<sup>124</sup>

[89] It should be remembered that the right to a trial in the official language of one's choice is an absolute right<sup>125</sup> and that a bilingual trial can only be ordered "if the circumstances warrant,"<sup>126</sup> this right belongs to the accused and not to Crown. It also merits repeating that the 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."<sup>127</sup> Contrary to the description given in the Crown Counsel Policy Manual quoted above, this means that conducting an examination in English is

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<sup>123</sup> British Columbia, Intergovernmental Relations Secretariat, B.C. Francophone Affairs Program - 2017-2018 Annual Report 2018 at p. 11 <<https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/office-of-the-premier/intergovernmental-relations-secretariat/francophone-affairs-program/bc-francophone-affairs-program-annual-report-fr.pdf>>.

<sup>124</sup> B.C. Ministry of Attorney General, *Crown Counsel Policy Manual, French Trials and Bilingual Trials*, Criminal Justice Branch, 2018, FRE 1 at p. 2 <<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/fre-1.pdf>>.

<sup>125</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 31.

<sup>126</sup> *Criminal Code*, RSC 1985, c C-46, s. 530(1).

<sup>127</sup> *Criminal Code*, RSC 1985, c C-46, s. 530.1 (c.1).

allowable, even during a French trial. As a result, we can advance the theory that there may be confusion in British Columbia as to the difference between a bilingual trial and a French trial. This hypothesis deserves further investigation, not only in British Columbia but elsewhere in Canada.

### **5.3 Challenges given the status of English as the dominant language in B.C.**

[90] Based on the survey results and information gathered during the interviews, it can be posited that a number of social factors interfere with the language rights guaranteed under *Criminal Code* section 530. The main ones include the fact that arrests and most pre-trial proceedings are conducted exclusively in English; the general tendency to equate French with other foreign languages; and, finally, the considerable challenges around translation and interpretation and how they weigh in the decision of accused persons to assert their language rights or not.

#### ***Arrest and pre-trial proceedings***

[91] Given the judicial realities of the province, when accused persons first interact with the justice system, they have no right to communicate in French. These interactions almost always proceed in English. During the interviews, we were told that all original documents are written in English, regardless of the language of the accused. In addition, there is no right to choose the official language of the bail hearing, which is always conducted in English.<sup>128</sup> According to the participants interviewed, pre-trial proceedings, which all take place in English, set the stage for subsequent obstacles and challenges, such as the translation of documents or police and victim testimony given in English (often, even if the victim is French-speaking). The interviewees confirmed that since section 530 does not apply at the preliminary stages of proceedings, those planning to invoke *Criminal Code* section 530 rights must nevertheless deal with their initial proceedings in English.

#### ***Tendency to equate French with non-official languages***

[92] French is the sixth largest mother tongue within British Columbia's population.<sup>129</sup> However, the mother tongue of almost one-third of the province's population is a language other than one of the two official languages.<sup>130</sup> As a result, as we were told during the interviews, the criminal justice system handles a significant number of cases involving individuals whose mother tongue is not English. The study participants are of the view that the courts and system actors know

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<sup>128</sup> See part 3.4 above, *Applicable Law - Section 530*, which clarifies that "incidental proceedings" and "pre-trial motions" are excluded from the scope of section 530 (see Vanessa Gruben, "Le bilinguisme judiciaire" in Michel Bastarache and Michel Doucet, dir, *Les droits linguistiques au Canada*, 3rd Ed., Cowansville, Que, Yvon Blais, 2013, 301 at pp. 374-75).

<sup>129</sup> British Columbia, Intergovernmental Relations Secretariat, B.C. Francophone Affairs Program - 2017-2018 *Annual Report*, 2018 at p. 1 <<https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/office-of-the-premier/intergovernmental-relations-secretariat/francophone-affairs-program/bc-francophone-affairs-program-annual-report-fr.pdf>>.

<sup>130</sup> Statistics Canada, "Focus on Geography Series", 2016 Census, Ontario, 2017 (Statistics Canada Catalogue Product no 98-404-X2016001) <<https://www12.statcan.gc.ca/census-recensement/2016/as-sa/fogs-spg/Facts-pr-eng.cfm?LANG=Eng&GK=PR&GC=59&TOPIC=5>> (28.2% of the population has a third mother tongue – the most common third languages being Punjabi, Cantonese, Mandarin, Tagalog (Filipino) and German, in that order).

that interpreters are available to assist in proceedings, and there does not seem to be any obstacle in this respect. According to them, the daily multilingual reality of British Columbia's courts means that for many actors, French is perceived as one foreign language among others. This perception has proved to be an impediment to the full implementation of *Criminal Code* section 530.

[93] Moreover, the Office of the Commissioner of Official Languages of Canada has acknowledged that bilingualism among French speakers in the province is a factor that may lead to "the use of English as a lingua franca and hence diminish the possibility of the equitable use of French in the administration of justice".<sup>131</sup> It is important to recall, as noted by the Supreme Court of Canada in *Beaulac*, that the fact that a person is bilingual or multilingual does not restrict the rights guaranteed by section 530:

It would indeed be surprising if Parliament intended that the right of bilingual Canadians should be restricted when in fact official language minorities, who have the highest incidence of bilingualism [...], are the first persons that the section was designed to assist.<sup>132</sup>

[94] The purpose of implementing section 530 is not to ensure a fair trial or a more reliable verdict.<sup>133</sup> As explained above in the section on law, the intention of parliament was to promote the cultural identity of official language minority communities to reflect the linguistic duality of the country.<sup>134</sup> The fact that an interpreter is available to provide language services does not respect this legislative intention, especially seeing that the right to an interpreter is already guaranteed by section 14 of the *Charter*. The right to a fair trial involves a lower level of protection, and the use of an interpreter is entirely acceptable in meeting the threshold of a fair trial.

### ***Challenges when using translation and interpretation in court proceedings***

[95] The accounts we heard and collected indicate that most legal counsel view translation and interpretation as fundamental tools they must work with, but can at times be tricky and problematic. Some respondents emphasized the imperfect nature of interpretation, which can result in omission of detail when presenting evidence, or loss of nuance during argument, for example.<sup>135</sup>

[96] These issues were identified by both defense and Crown lawyers. Interviewees also mentioned the challenges that arise when evidence in English is used to make submissions in

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<sup>131</sup> Commissioner of Official Languages of Canada, *Study of the Official Language Obligations of Federal Crown Agents in the Province of New Brunswick*, Ottawa, 2000 at p.17 <[https://www.clo-ocol.gc.ca/sites/default/files/Justice\\_e.pdf](https://www.clo-ocol.gc.ca/sites/default/files/Justice_e.pdf)>.

<sup>132</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 45.

<sup>133</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 53

<sup>134</sup> *R v Beaulac*, [1999] 1 SCR 768 at paras. 34, 41.

<sup>135</sup> The obstacles were studied in a general context in the report: Gilles Bergeron, "L'interprétation en milieu judiciaire" (2002) 47: 2 *Meta* 225 at pp. 229-232 <<https://www.erudit.org/fr/revues/meta/2002-v47-n2-meta692/008011ar.pdf>>; Sébastien Grammond and Mark Power, "Should Supreme Court Judges be Required to be Bilingual" (2011) Kingston, Ont.: Institute of Intergovernmental Relations, Queen's University.

French; the parties involved must always remain vigilant to assure that nuances are not lost.

[97] According to the stakeholders interviewed, translating documents and interpreting witness testimony are factors that may have an influence on the choice to proceed or not with an application for a French or bilingual trial.

#### **5.4 Participant numbers in the criminal justice system and available training**

[98] Study respondents identified two factors that have a significant impact on respect for section 530 rights, namely, the number of qualified people and the availability of training. It goes without saying that to offer a service, there must be personnel with the requisite knowledge and skills to deliver it. Thus, to effectively implement the rights guaranteed by section 530, both French language training and training on language rights are required.

##### **Participant numbers**

[99] According to the survey conducted as part of this study, 60% of respondents believe that French-speaking lawyers are somewhat difficult to find.<sup>136</sup> A general perception that also emerged from the interviews is that there are few private sector lawyers who practice criminal law in French in British Columbia. Interviewees reported that for different economic and social reasons, potential and qualified candidates tend to be drawn to the public sector. Another possible explanation advanced is that some French-speaking defense counsel, who originally migrated from another province or territory to practice in British Columbia, may decide to leave the province after a number of years. That said, 12% of the defense lawyers listed in the Canadian Bar Association B.C. Legal Directory (the list is not exhaustive) self-identify as being capable of communicating in French.<sup>137</sup>

[100] Based on the information obtained from court registries, in the Provincial Court, four judges are able to hear cases in French (three in the Lower Mainland region and one who travels to the north of the province); in the Supreme Court of British Columbia, three judges are able to hear cases in French; in the British Columbia Court of Appeal, staff were not able to provide figures, but mentioned there were "enough" judges to hear cases in French.<sup>138</sup>

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<sup>136</sup> In response to the statement "Francophone lawyers are easy to locate (references, directories, etc.)," 5% of respondents indicated "strongly agree" and 10% "agree". 20% said they did not have a point of view ("neutral"), while 50% "disagree" and 10% "strongly disagree". 5% did not know (see Appendix B).

<sup>137</sup> We established this figure by consulting the B.C. Legal Directory of the B.C. Branch of the Canadian Bar Association (CBA), <<https://www.cbabc.org/Directory/Find-a-Lawyer>>, using the search criteria: "French" and "criminal law". In total, the CBA database lists 189 defense lawyers, 12% (24) of whom include French as a language in which they can communicate. The AJEFCB database, by contrast, lists 15 lawyers who practice in French, 10 of whom were not included in the CBA database. This figure was determined by consulting the AJEFCB directory <[https://ajefcb.ca/frm\\_display/repertoire/](https://ajefcb.ca/frm_display/repertoire/)>, which also lists lawyers who identify as being able to communicate in French, and comparing the results with those of the CBA. It should be noted, however, that these databases do not offer an exhaustive listing of lawyers who work in the province, nor is their level of French specified. It cannot be determined if the lawyers identified would be able to successfully conduct a trial in French. Further research would be needed to determine the scale of the potential problem identified by the study participants.

<sup>138</sup> We called the Supreme Court Scheduling department and the Vancouver Provincial Court Registry, through which we were able to obtain a figure for the entire province. The answer we received from the British Columbia Court of Appeal was obtained by calling the registry of that court.

[101] Currently, in order to determine the number of bilingual judges deemed necessary for the proper functioning of the superior and appellate courts, the Minister of Justice of Canada consults the chief justices.<sup>139</sup> As for the process for appointing superior and appellate court judges, a formal procedure has been in place since 1988. In 2013, a study by the Office of the Commissioner of Official Languages of Canada concluded that it was impossible to "objectively verify the language skills of candidates who claim to be able to hear proceedings in their second language."<sup>140</sup> Since 2016, in order to gather information about potential judges' language abilities, four questions have been added to the application form.<sup>141</sup> In 2017, two more questions were added to identify candidates who claim they are able to hear trials and write decisions in both official languages. The language skills of these candidates are then formally assessed by the Office of the Commissioner for Federal Judicial Affairs Canada.<sup>142</sup> Based on our research, candidates for the position of Provincial Court Judge are not subject to a similar process.<sup>143</sup> The Office of the Commissioner for Federal Judicial Affairs Canada has begun to publish statistics on the number of candidates and on appointed judges who report they are effectively bilingual.<sup>144</sup>

[102] It was reported to us in the interviews that some ten Crown prosecutors are officially able to conduct French or bilingual trials. The British Columbia Francophone Affairs Program annual report (2017-2018) indicates there are nine prosecutors and three support staff capable of working in French.<sup>145</sup>

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<sup>139</sup> Standing Senate Committee on Official Languages, *Evidence*, 42nd Leg, 1st Sess (October 29, 2018) (Marc A. Giroux) <<https://sencanada.ca/en/Content/Sen/Committee/421/OLLO/54340-e>>. See also: Canada, Department of Justice, *Annex B: Government Response to the Standing Senate Committee on Legal and Constitutional Affairs Report "Delaying Justice is Denying Justice"*, 2018 at p. 3 <<https://justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p5.html>>.

<sup>141</sup> Standing Senate Committee on Official Languages, *Evidence*, 42nd Leg, 1st Sess (October 29, 2018) (Marc A. Giroux) <<https://sencanada.ca/en/Content/Sen/Committee/421/OLLO/54340-e>>.

<sup>142</sup> Canada, Department of Justice, *Changes to the Appointments Process for Federal Judges*, 2017 <<https://www.justice.gc.ca/eng/csj-sjc/scapq-pncsq.html>>. The Questionnaire for Appointments to the Federal Judiciary, including the Supreme Court of British Columbia (also found on the website of the Office of the Commissioner for Federal Judicial Affairs Canada <<http://www.fja.gc.ca/appointments-nominations/forms-formulaires/cq-qc/index-eng.html>>) includes a section, added in November 2017, for candidates to provide a detailed self-assessment of their language abilities in both official languages. Office of the Commissioner for Federal Judicial Affairs Canada, *Candidates: How to Apply - Questionnaire*, 2017 <<http://www.fja.gc.ca/appointments-nominations/forms-formulaires/cq-qc/index-eng.html>>. See also: Standing Senate Committee on Official Languages, *Evidence*, 42nd Leg, 1st Sess (October 29, 2018) (Marc A. Giroux) <<https://sencanada.ca/en/Content/Sen/Committee/421/OLLO/54340-e>> and Commissioner of Official Languages of Canada, *Final Investigation Report on the Institutional Bilingual Capacity of the Judiciary for the Superior Courts in Nova Scotia and Ontario*, 2011 at pp. 12-13 <<http://www.documentationcapitale.ca/documents/Rapportfinal.pdf>>. (Link is to French version of report).

<sup>143</sup> Provincial Court of British Columbia, *Criteria and Competencies for Appointment* <[http://www.provincialcourt.bc.ca/downloads/applications/Criteria\\_for\\_appt\\_judge.pdf](http://www.provincialcourt.bc.ca/downloads/applications/Criteria_for_appt_judge.pdf)>.

<sup>144</sup> Standing Senate Committee on Official Languages, *Evidence*, 42nd Leg, 1st Sess (October 29, 2018) (Marc A. Giroux) <<https://sencanada.ca/en/Content/Sen/Committee/421/OLLO/54340-e>>. See also: Canada, Department of Justice, *Annex B: Government Response to the Standing Senate Committee on Legal and Constitutional Affairs Report "Delaying Justice is Denying Justice"*, 2018 <<https://justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p5.html>>.

<sup>145</sup> British Columbia, Intergovernmental Relations Secretariat, *B.C. Francophone Affairs Program - 2017-2018*

[103] As for the number of interpreters, although we were not able to do a province-wide count, interviewees reported there are not many and they must travel around the province to meet the demand. This was confirmed by a practicing interpreter living in the Vancouver area.

[104] Once again, the participants interviewed for this study are of the view that current levels of personnel are sufficient to meet the demand for French and bilingual trials, despite some systemic delays. Some participants expressed the fear that the situation may worsen if more trials are held, especially if they run simultaneously.

### ***Training for defense counsel***

[105] Based on interviewee comments, accused persons will presumably consider several factors when deciding on a lawyer to represent them.<sup>146</sup> We were reminded that when an accused is facing criminal charges, he or she does not necessarily have the time or luxury to "shop around" for legal counsel. Whether accused are aware or not of the existence of section 530 language rights, they may be prepared to renounce those rights if it means quicker action and lower cost.<sup>147</sup> Insufficient numbers of defense counsel capable of representing clients in French could discourage an accused from seeking a French or bilingual trial.

[106] When asked about training and resources specifically available for defense counsel in the province who wish to improve or develop their ability to work in French, none of the study participants were able to name any platforms, resources or tools other than those offered by the AJEFCB.<sup>148</sup> It was also reported that defense counsel who represent French-speaking clients sometimes find it difficult to recall criminal law terminology in French when they use it but rarely. Nevertheless, no respondents reported that this issue was an obstacle to the quality of representation. It was also reported that the use of a word in English from time to time is acceptable to the courts if this will allow the lawyer to carry on in French.<sup>149</sup>

### ***Training for court staff and judges***

[107] In the context of French trials, 50% of survey respondents felt that the judge's interactions with the accused were effective and 50% "somewhat" effective.<sup>150</sup> In bilingual trials, the range was wider: 66.7% felt the judge's interactions with the accused were effective, 22.2%

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*Annual Report*, 2018 at p. 10 <<https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/organizational-structure/office-of-the-premier/intergovernmental-relations-secretariat/francophone-affairs-program/bc-francophone-affairs-program-annual-report-fr.pdf>>.

<sup>146</sup> For example: costs, schedules, availability of the lawyer, time to search for a lawyer, recommendations by family or friends, searches online or in directories.

<sup>147</sup> Under the Legal Aid application process, applicants may qualify for a lawyer based on income (monthly income table) and assets. Legal Services Society, *Do I qualify for legal representation?*, British Columbia, 2018 <[https://lss.bc.ca/legal\\_aid/dolQualifyRepresentation](https://lss.bc.ca/legal_aid/dolQualifyRepresentation)>.

<sup>148</sup> AJEFCB, *Services et activités* <<https://aje ECB.ca/>> (the AJEFCB offers various services to help lawyers improve their ability to practice law in French, including terminology training (in the form of mock trials and workshops), theme-based networking sessions in French, and other special projects).

<sup>149</sup> This was recognized by the Supreme Court of Canada in *Mazraani v. Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50 at para. 53.

<sup>150</sup> To the question "Did the judge interact effectively in French with the accused?," 50% of respondents answered "yes" and 50% answered "somewhat" (see Appendix B).

"somewhat" effective, and 11.1% believe the interactions were not effective.<sup>151</sup> Overall, in this study, we have not identified language ability of judges presiding in French or bilingual trials as being a significant issue in British Columbia.

[108] One respondent, however, recounted the experience of witnessing a judge who did not seem to fully comprehend everything stated in French during a trial. It should be recalled that some of the stakeholders consulted in a 2013 study by the Office of the Commissioner of Official Languages of Canada were of the view that some judges did not have a sufficient level of bilingualism.<sup>152</sup> Recent improvements to the application form for judicial appointments to the Supreme Court and the Court of Appeal of British Columbia, as well as language skill assessments administered to assess candidates who self-identify as being effectively bilingual, should ensure that the language capacity of those candidates has been properly evaluated, but of course the same does not apply to practicing judges or candidates to the provincial judiciary.<sup>153</sup>

[109] Given the small number of judges capable of sitting at French or bilingual trials in British Columbia and the fact that study participants reported that judges do not routinely inform accused persons of their language rights, it may be relevant to question the availability and effective use of language training programs and substantive training on language rights. Based on the interview comments, it appears that sufficient funding to attend such training programs is not always available to judges.

[110] An inventory and analysis of available training programs is beyond the scope of this study. However, an initial search identified a range of organizations that offer language training and training in substantive law for judges, including: the National Judicial Institute ("NJI"),<sup>154</sup> the Canadian Institute for the Administration of Justice ("CIAJ"),<sup>155</sup> the Canadian Association of

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<sup>151</sup> To the question "Did the judge interact effectively in French with the accused?," 66.7% of respondents answered "yes", 22.2% answered "somewhat" and 11.1% answered "no" (see Appendix B).

<sup>152</sup> Standing Senate Committee on Official Languages, *Evidence*, 42nd Leg, 1st Sess (October 29, 2018) (Marc A. Giroux) <<https://sencanada.ca/en/Content/Sen/Committee/421/OLLO/54340-e>>.

<sup>153</sup> Standing Senate Committee on Official Languages, *Evidence*, 42nd Leg, 1st Sess (October 29, 2018) (Marc A. Giroux) <<https://sencanada.ca/en/Content/Sen/Committee/421/OLLO/54340-e>>. Provincial Court of British Columbia, *Criteria and Competencies for Appointment* <[http://www.provincialcourt.bc.ca/downloads/applications/Criteria\\_for\\_appt\\_judge.pdf](http://www.provincialcourt.bc.ca/downloads/applications/Criteria_for_appt_judge.pdf)> ; Provincial Court of British Columbia, *Judicial Candidate Application Worksheet - Not for Final Submission*, Vancouver, 2017 <<https://apply.provincialcourt.bc.ca/documents/Judicial%20Candidate%20Worksheet.pdf>>.

<sup>154</sup> The NJI offers a variety of training and social awareness programs for judges across Canada. The NJI has established a judicial library containing a large collection of educational resources for judges. Electronic Bench Books (EBBs) that "generally consist of short summaries of the law, checklists, access to relevant legislation and cases, as well as access to papers and other electronic resources" are available, including one on "Language Rights of the Accused." Canada, NJI, *The NJI's Judicial Education Portfolio (NJI Course Calendar)*, 2014 at p. 14 <<https://www.nji-inm.ca/index.cfm/judicial-education/the-nji-s-judicial-education-portfolio/>>.

<sup>155</sup> The objectives of the CIAJ, *inter alia*, are to "acquire and assist in the acquisition and dissemination of knowledge regarding the administration of justice in Canada," to "advance education" and to "provide for the development and management of programs to assist in training members of the judiciary and administrative agencies, as well as all those who are involved in any way in the administration of justice." The CIAJ offers year-round training programs in various formats, including conferences, seminars, round tables, webinars and forums. Canadian Institute for the Administration of Justice. Canada, CIAJ, *Listening, Learning, Leading* <<https://ciaj-icaj.ca/en/activities/upcoming-programs/>>.

Provincial Court Judges ("CAPCJ"),<sup>156</sup> the Office of the Commissioner for Federal Judicial Affairs Canada<sup>157</sup> and the Centre canadien de français juridique inc. ("CCFJ").<sup>158</sup> A study on the availability and accessibility of these programs, as well as on the profile of registrants, could identify possible gaps that may explain some of the impediments identified in this study.

### ***Training for Crown counsel***

[111] According to the experiences reported in the interviews, most Crown prosecutors who plead in French or bilingual trials are seasoned professionals. For example, defense lawyers who participated in the study reported that senior Crown prosecutors who would normally have conduct of more complex matters or those involving more serious charges tend to be assigned to French or bilingual trials where the sentences involved are often less severe.

[112] According to a majority of respondents, Crown counsel were perceived to be generally qualified and cooperative in their conduct of French and bilingual trials. However, one experience from the point of view of defense counsel differed markedly. They reported that the Crown prosecutor displayed a mediocre level of French, which made the proceedings difficult.

[113] Based on the responses received and experiences reported in the interviews, it is possible to conclude that overall, Crown counsel are very competent, including their ability in French language and mastery of French legal terminology, and there are sufficient numbers at present to ensure the effective application of section 530, taking into account the number of individuals

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<sup>156</sup> The CAPCJ is the federation of provincial and territorial judges' associations that includes almost all of the country's provincial and territorial judges. Its focus is on the "welfare" of its membership and the "soundness of the provincial and territorial courts of Canada." One of its aims and purposes is "to play a leading role in determining and implementing policy with respect to the continuing education of Judges and the work of the National Judicial Institute." It also aims to liaise "with judges' associations in other countries and with international organizations engaged in judicial education and improvements to the administration of justice." Among its initiatives, "CAPCJ, with the assistance of the Court of Quebec and the Ontario Court of Justice, provides an intensive educational program on substantive and procedural law that is available to all recently appointed provincial and territorial court judges." Canada, CAPCJ Home, Education <<http://www.judges-juges.ca/>>

<sup>157</sup> In 1978, the Office of the Commissioner for Federal Judicial Affairs Canada created a "language training program tailored to the needs of judges." The main purpose of this program is to increase judges' language skills in their second official language (comprehension and expression) to enable them to communicate effectively in that language. Specific courses in legal French are also offered. According to the official website of the Office of the Commissioner for Federal Judicial Affairs Canada, through this program, "numerous judges have gained sufficient knowledge to master a second language. Thus many of them are able to preside in court, understand testimony, read legal texts, write judgments and participate in legal conferences in their second language." Judges are "strongly" encouraged to attend the various language training programs, organized by level. The underlying objective of this program is to contribute "to the advancement of bilingualism at the very heart of the Canadian judicial system." Office of the Commissioner for Federal Judicial Affairs Canada, Judges' Language Training, 2008 <<https://www.fja-cmf.gc.ca/training-formation/index-eng.html>>. The Office of the Commissioner for Federal Judicial Affairs Canada provided us some specific statistics for British Columbia: eleven judges are currently enrolled in the Judges' Language Training program and 27 provincially-appointed judges have been registered for immersion sessions in the past five years.

<sup>158</sup> The CCFJ is a training centre targeting public and private parties with a connection to Canada's legal systems. Its mission is to facilitate access to justice in French across the country. To achieve this objective, the CCFJ offers various training programs in legal French, mainly in criminal law, to all participants in the legal system. The offerings include training in legal French for provincially-appointed judges in Canada and a Canada-wide legal terminology training program. CCFJ, *About the CCFJ* <<http://www.ccfjinc.ca/english/>>.

invoking their language rights. There does not seem to be any obstacle to the Crown's ability to respond to the demand for French or bilingual trials.

[114] From the point of view of Crown and based on the interviews, when an accused requests a French or bilingual trial, staff who have self-reported as being capable of practicing law in French are assigned to the trial. A four-page manual for Crown counsel is available online<sup>159</sup> and it was learned from the interviews that additional resources are available to Crown counsel in the province who express an interest in joining the team of prosecutors known as the Bilingual Prosecution Group ("BPG").

### ***Training for interpreters***

[115] With respect to interpretation, over 70% of survey respondents agree that interpreting services in court are of good quality.<sup>160</sup> Interviews respondents indicated they had to intervene on occasion when an interpretation did not reflect the nuances of what had been said. Nevertheless, all seemed satisfied with the interpreting services provided. In our non-random sample of individuals, only one participant mentioned they had made a complaint about a court interpreter. Some interviewees also mentioned they will systematically make a special request to ensure a specific interpreter whose work they appreciate is retained.

[116] From discussions with those interviewed in this study, some of the issues with interpretation can likely be explained by the fact that the interpreters in question, who have a high level in French, do not necessarily have a similar level in legal French. This can affect the reliability of their interpretation in a criminal law context. A 2011 study by the Department of Justice Canada showed that many stakeholders in the legal system had a basic knowledge of both languages, but did not always have sufficient knowledge of specific legal terminology and that the training provided was inadequate.<sup>161</sup> The reliability of interpretation was also challenged by the Fédération des associations de juristes d'expression française de common law ("FAJEF"), which found that in practice, interpretation is unreliable not because interpreters are not able to speak French, but because they do not receive specialized training in legal French. Moreover, according to the FAJEF, problems with court interpreting are more prevalent in the western provinces.<sup>162</sup> The challenges related to interpretation and translation are clearly not limited to British Columbia, or to the French language or even to interpreter competency, but they lead to a perception in practice, especially by the defense, that interpretation and

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<sup>159</sup> B.C. Ministry of Attorney General, *Crown Counsel Policy Manual, French Trials and Bilingual Trials*, Criminal Justice Branch, 2018, FRE 1 at p. 2 <<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/fre-1.pdf>>.

<sup>160</sup> In response to the statement "Court interpreter services are of good quality" 10% of respondents indicated "strongly agree" and 60% "agree". 15% of respondents said they did not have a point of view ("neutral"), while 15% disagreed and 5% strongly disagreed. 5% did not know (see Appendix B).

<sup>161</sup> Department of Justice Canada, *Inventory of Research in the Area of Justice in Official Languages: Document prepared for the Workshop on Justice in official languages, symposium on official languages Research*, Ottawa, 2011 at p. 8

<[http://icrml.ca/images/stories/documents/en/Symposium/Symposium\\_2011/Justice/inventory\\_of\\_research.pdf](http://icrml.ca/images/stories/documents/en/Symposium/Symposium_2011/Justice/inventory_of_research.pdf)>.

<sup>162</sup> House of Commons, Standing Committee on Justice and Human Rights, *Statutory Review of Part XVII of the Criminal Code (April 2014)* at pp. 10 and 11 <[http://publications.gc.ca/collections/collection\\_2014/parl/x66-1/XC66-1-1-412-4-eng.pdf](http://publications.gc.ca/collections/collection_2014/parl/x66-1/XC66-1-1-412-4-eng.pdf)>.

translation are not very reliable.

[117] According to the Provincial Court website, the Court Services Branch has taken steps recently to address this deficiency by making significant changes to the process of selecting court interpreters. Interpreters are now ranked according to a skill level grid and the two highest levels are usually assigned to trials, with a preference given to Level 1 (Certified Court Interpreter, the highest level). If no Level 1 or Level 2 interpreters are available, the court will then actively search for a suitably qualified interpreter elsewhere in the province.<sup>163</sup> In the worst case scenario where only a Level 4 interpreter (a bilingual individual with no interpreting experience) is available, the court will inform the parties and be open to suggestions to satisfy all those involved in the trial.<sup>164</sup>

### **5.5 Logistical burden**

[118] Based on the information gathered from the survey and interviews, while a number of good practices are followed in British Columbia's courts, an additional logistical burden seems to arise that works to the detriment of French-speaking accused. Factors that contribute to this burden include additional delays when running a French or bilingual trial, the attitude of court staff and some lawyers, and the difficulty in finding French-speaking or bilingual jurors in the case of jury trials. According to the study participants, these practical considerations are a reality that French-speaking accused persons and their lawyers must contend with when deciding to invoke *Criminal Code* section 530 or not.

### **The Court**

[119] In terms of procedure, respondents stated that judgments were rendered in French orally and in writing almost all of the time (100% of respondents in French criminal proceedings and almost all respondents in bilingual criminal proceedings).<sup>165</sup> However, one survey respondent shared with us an experience in a bilingual proceeding where the court's official judgment was rendered in English, with only a French summary provided to the parties.

[120] The interviews revealed that no one was required to demonstrate their level of proficiency in French or English following a request for a French or bilingual trial. This is consistent with the law as it currently exists (see "Applicable Law" above), whereby the burden rests on Crown to show that an accused is unable to follow the proceedings and to instruct his or her lawyer in the chosen official language.<sup>166</sup>

[121] According to the study informants, judges qualified to hear French or bilingual trials are

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<sup>163</sup> Provincial Court of British Columbia, *Changes to the BC Court Interpreter Program*, 2018 <<http://www.provincialcourt.bc.ca/enews/enews-24-07-2018>>.

<sup>164</sup> The Provincial Court of British Columbia website notes that this is generally the case only in the "rare" languages, which would not include French. <<http://www.provincialcourt.bc.ca/enews/enews-24-07-2018>>.

<sup>165</sup> To the question referring to French criminal proceedings, "Did the judge render his or her decision in French?", 100% of respondents answered "Yes, the judgment was rendered, orally or in writing, in French". To the same question in bilingual criminal proceedings, 88.9% of respondents answered "Yes, the judgment was rendered, orally or in writing, in French" and 11.1% answered "No, the judgment was rendered in English, but a French summary was provided to the parties involved" (see Appendix B).

<sup>166</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 34. See also: *Denver-Lambert v R*, 2007 QCCA 1301 at para. 24.

not necessarily assigned permanently to the courts where they hear their trials, as is the case for judges sitting on English trials. They must therefore travel throughout the province, and the same holds true for bilingual court staff. As discussed earlier, the number of judges who report they are capable of hearing French or bilingual trials, across all levels of the courts in British Columbia,<sup>167</sup> can be counted on the fingers of both hands. Therefore, there are a limited number of judges available to satisfy the demand.

[122] The cumulative effect of these limitations will inevitably lead to procedural delays when French or bilingual trials are ordered. These are additional delays that would not exist if an accused decided to proceed in English. Opinions vary as to their duration, but all respondents agreed that delays exist, at least early in the proceedings, when the formal request for a French or bilingual trial is made. One respondent told us: "Of course, from the outset, you are told it will take at least a month and a half."<sup>168</sup>

[123] While this may not be a problem at this time, most informants we questioned were concerned about the challenges that would arise if multiple French or bilingual trials had to be conducted simultaneously.<sup>169</sup>

[124] As for the required administrative procedures, we received several accounts from defense counsel who related noteworthy experiences. They told us they had encountered discouraging remarks from court administrative staff when scheduling hearings, the message being that organizing a French or bilingual trial involved an additional heavy workload. Some defense counsel stated that when dealing with court staff regarding an application for a French or bilingual trial, at times they were made to feel the application is inconvenient and that it interferes with the usual operation of the court. However, no respondents felt that this behaviour was disturbing enough to be the subject matter of a complaint.

[125] However, we might ask ourselves whether a self-represented accused would not be dissuaded from requesting a French or bilingual trial in the face of such a seemingly hostile attitude. Defense counsel are mandated to represent the best interests of their clients and are accustomed to interacting with the criminal justice system. Accused persons, on the other hand, naturally seek to minimize such interactions and may be more easily deterred from asserting their rights if they feel their request will be poorly received by the justice system administration.

### ***Jurors***

[126] According to information obtained from court staff, there is no comprehensive database of potential French-speaking or bilingual jurors in the province.

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<sup>167</sup> Information obtained from court registries: four judges travel around the province to hear provincial court matters, three Supreme Court judges, and "enough" judges for Court of Appeal matters (the respondent from the Court of Appeal registry was unable to provide a precise number.)

<sup>168</sup> It should be recalled that a delay of more than 18 months between the laying of charges and the conclusion of a trial is presumed unreasonable, absent exceptional circumstances: *R v Jordan*, 2016 SCC 27 at paras. 46-47. In these circumstances, a systematic delay of almost 10% would be significant.

<sup>169</sup> Some informants have noted an increase in the number of applications for French or bilingual trials in British Columbia in recent years.

[127] However, to facilitate the empanelling of a French-speaking jury for a criminal trial in French, the province has set up a system of "self-declared" French-language jurors. This means that British Columbians who wish to be on a list to be called as potential jurors in a French or bilingual criminal trial can complete a form for this purpose.<sup>170</sup> Members of the French-speaking population of the province thus have an opportunity to identify themselves and register on their own behalf as potential French-speaking jurors, through a form available on a government website. However, they must be aware of the existence of such a form, know where to find it and complete it online.<sup>171</sup> It is explicitly stated that by submitting this form, British Columbians will be transferred from the list of potential jurors for English trials to the list for French or bilingual trials<sup>172</sup> and they will not appear on both lists simultaneously .

[128] Thus, when a panel of jurors must be selected for a French or bilingual trial, it was confirmed to us that the sheriffs first draw on this list of potential French-speaking jurors, followed, if necessary, by the Elections BC database, which does not identify language ability. Sheriffs must then rely on this database when sending summonses, without being able to determine beforehand if recipients will be capable of assuming the role of jurors in a French or bilingual trial.<sup>173</sup> This can create major administrative challenges for personnel responsible for scheduling hearings and ensuring that enough jurors are available to be selected that are capable of hearing a French or bilingual trial.

[129] Although a Supreme Court of British Columbia notice states that application may be made for a jury trial to be held in a jurisdiction other than New Westminster, it was confirmed to us in interviews (and from information from the Legal Services Branch) that all French and bilingual jury trials are generally held in New Westminster.<sup>174</sup> This way, jurors are selected within the same one-hour radius of the New Westminster courthouse (based on travel by car). Again, according to the actors who took part in this study, limited numbers have taken the initiative to identify themselves as potential French-speaking jurors and the choice is often too limited.

[130] In addition, one respondent expressed concerns that the New Westminster area is experiencing socio-economic problems in terms of gentrification and sophistication. Following up on this comment, our research shows that New Westminster's economic status is not superior, on average terms, to the rest of the province. However, according to Statistics Canada data, in the Lower Mainland region which includes New Westminster, 28.7% of the population

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<sup>170</sup> British Columbia, *French-Speaking Jury Trials*, 2018 <<https://www2.gov.bc.ca/gov/content/justice/courthouse-services/jury-duty/french-speaking-jury-trials>> and online form, 2018 <<https://forms.gov.bc.ca/justice/french-trials/>>.

<sup>171</sup> British Columbia, *Procès avec jury francophone*, Formulaire d'inscription à la base de données pour jurés francophones [registration form for French-speaking jurors, in French only], 2018 <<https://forms.gov.bc.ca/justice/french-trials/>>.

<sup>172</sup> British Columbia, *Procès avec jury francophone*, 2018 [registration form for French-speaking jurors, in French only] <<https://forms.gov.bc.ca/justice/french-trials/>>.

<sup>173</sup> Information obtained from Senior Policy Analyst, Legal Services Branch, Headquarters, Ministry of Attorney General of British Columbia.

<sup>174</sup> Information collected from the office of the Attorney General of British Columbia. See also Supreme Court of British Columbia, *Notice of Practice: Criminal Jury Trials in French*. <[https://www.courts.gov.bc.ca/supreme\\_court/practice\\_and\\_procedure/practice\\_directions\\_and\\_notices/Criminal/Notice-French-Trials-\(ACJ\)-December-1,-2000.pdf](https://www.courts.gov.bc.ca/supreme_court/practice_and_procedure/practice_directions_and_notices/Criminal/Notice-French-Trials-(ACJ)-December-1,-2000.pdf)>(since December 1, 2000, all criminal jury trials in French are heard in New Westminster, unless otherwise ordered by the Court).

holds a university certificate, diploma or degree at the bachelor level or higher, compared to 24.6% for the rest of the province.<sup>175</sup> This average falls to 11.38% in B.C.'s North Coast region<sup>176</sup> and 9.99% in the Northeast region.<sup>177</sup> Since a jury is meant to be a group of one's peers,<sup>178</sup> the question arises as to whether a jury composed of individuals from the suburbs of New Westminster would be sufficiently representative<sup>179</sup> to judge a francophone from the north of the province.

***Finding: Delays may result in accused waiving their right to a French or bilingual trial***

[131] All interviewees stated that additional time was needed to plan and schedule a French or bilingual hearing or trial compared with an English hearing or trial. This statement is also corroborated by the Crown Counsel Policy Manual of the Legal Services Branch, Ministry of the Attorney General of British Columbia, which advises Crown counsel to request an adjournment of approximately three weeks once a request for a French or bilingual trial has been made:

Local Crown counsel should:

[...] request that the presiding Provincial Court judge adjourn the matter for approximately three weeks to fix a date for trial (to allow for the assignment of a bilingual Crown Counsel).<sup>180</sup>

[132] Some interviewees reported they had observed that court staff would generally try to shorten this delay by making collaborative efforts. It would appear that any systemic logistical difficulties to the full implementation of *Criminal Code* section 530 in the province are primarily institutional barriers, not a lack of willingness on the part justice system staff and actors.

[133] As the interviews conducted in our study revealed, these delays are not perceived as being used by accused persons to postpone a finding of guilt or take advantage of additional

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<sup>175</sup> Statistics Canada, "Focus on Geography Series", *Lower Mainland-Southwest [Economic region], British Columbia and British Columbia [Province] (table), Census Profile, 2016 Census* (Statistics Canada Catalogue Product n° 98-316-X2016001), Ottawa, 2017 <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=ER&Code1=5920&Geo2=PR&Code2=59&Data=Count&SearchText=Lower%20Mainland--Sud-ouest&SearchType=Begins&SearchPR=01&B1=All&GeoLevel=PR&GeoCode=5920&TABID=1>>.

<sup>176</sup> Statistics Canada, "Focus on Geography Series", *North Coast [Economic region], British Columbia and British Columbia [Province] (table), Census Profile, 2016 Census* (Statistics Canada Catalogue Product n° 98-316-X2016001), Ottawa, 2017 <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=ER&Code1=5960&Geo2=PR&Code2=59&Data=Count&SearchText=Cote-nord&SearchType=Begins&SearchPR=01&B1=Education&TABID=1>>.

<sup>177</sup> Statistics Canada, "Focus on Geography Series", *Vancouver Island and Coast [Economic region], British Columbia and British Columbia [Province] (table), Census Profile, 2016 Census* (Statistics Canada Catalogue Product n° 98-316-X2016001), Ottawa, 2017 <<https://www12.statcan.gc.ca/census-recensement/2016/dp-pd/prof/details/page.cfm?Lang=E&Geo1=ER&Code1=5910&Geo2=PR&Code2=59&Data=Count&SearchText=Ile%20de%20Vancouver%20et%20la%20cote&SearchType=Begins&SearchPR=01&B1=Education&TABID=1>>.

<sup>178</sup> *R v Krieger*, 2006 SCC 47 at para. 1.

<sup>179</sup> *R v Davey*, 2012 SCC 75 at para. 30.

<sup>180</sup> B.C. Ministry of Attorney General, *Crown Counsel Policy Manual, French Trials and Bilingual Trials*, Criminal Justice Branch, 2018, FRE 1 at p. 2 <<https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/crown-counsel-policy-manual/fre-1.pdf>>.

preparation time, for example, before a hearing or trial.<sup>181</sup> Defense counsel told us their clients are often pleasantly surprised to learn they have the right to a trial in the official language of their choice. If their clients choose to proceed with a French or bilingual trial, it is usually to better understand the proceedings, to facilitate communications with their lawyer, to more easily give evidence, or for some or all of these reasons.

[134] The case law recognizes that accused persons will make strategic choices when preparing and presenting their defense.<sup>182</sup> However, when it comes to the right to a trial in the official language of their choice, accused should not feel obliged to renounce their language rights for strategic reasons: "Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada."<sup>183</sup>

[135] During the interviews, it was acknowledged that lawyers may advise their clients to not opt for a French or bilingual trial, given the delays caused by the logistical challenges. This issue had already been highlighted and criticized: the Office of the Commissioner of Official Languages of Canada recalled in 2013 that "the decision by members of official language minority communities to proceed in their own language is not without consequences. They must, in practice, be prepared to face certain delays and perhaps even additional costs."<sup>184</sup> It has also been previously acknowledged elsewhere in Canada that many French-speaking defense counsel "feel compelled to inform their French-speaking clients that proceeding in French could have detrimental effects, including delay, and additional costs."<sup>185</sup> It comes as no surprise that this same sentiment will be felt in British Columbia as well.

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<sup>181</sup> Yet such abuses are not unheard of. For example, the accused in *Belende v. Patel*, 2008 ONCA 148 attempted to manipulate the courts' language obligations to delay the proceedings in his case.

<sup>182</sup> *LD v R*, 2009 QCCA 1445 at para. 62 ; *R v TW*, 2014 ONSC 4531 at paras. 21, 24 ; *R v DE*, 2010 ONSC 5320 at para. 67 ; *R v Hobbs*, 2018 BCCA 250 at paras. 18-24.

<sup>183</sup> *R v Beaulac*, [1999] 1 SCR 768 at para. 22.

<sup>184</sup> Commissioner of Official Languages of Canada, *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*, Minister of Public Works and Government Services Canada, 2013 <[https://www.clo-ocol.gc.ca/html/stu\\_etu\\_082013\\_e.php](https://www.clo-ocol.gc.ca/html/stu_etu_082013_e.php)>.

<sup>185</sup> French Language Services Bench and Bar Advisory Committee to the Attorney General of Ontario, *Access to justice in French*, Toronto, Ministry of the Attorney General of Ontario, 2012 <[https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench\\_bar\\_advisory\\_committee/](https://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/bench_bar_advisory_committee/)>.

## 6. RECOMMENDATIONS

[136] The results of the survey, the interviews and research conducted for this study identified several distinct impediments, namely:

- a. A lack of information and resources. Based on the stakeholder interviews and online research, there is a lack of French-language resources in general, a lack of documentary resources on the rights guaranteed by section 530 (written in either French or English), and existing resources do not always reach the target audience in a timely manner;
- b. A lack of awareness of the obligations imposed by section 530. According to the participants and our research, there seems to be confusion as to who has the duty of informing accused of their right to be tried in the official language of their choice;
- c. A tendency to overlook the status conferred on French by the *Criminal Code*. According to participants, French is often treated the same as other foreign languages;
- d. Insufficient training for the different participants in the criminal justice system and, in some cases, the numbers needed for the proper functioning of the courts are underestimated. Although the numbers seem adequate to meet the current demand for French and bilingual trials, study participants attribute additional delays to the scarcity of judges, Crown counsel, court staff and interpreters capable of performing their roles in French or in both official languages; and
- e. A logistical burden arises in the context of French or bilingual trials. According to the study participants and our research, when delays occur in scheduling French or bilingual trials due to a lack of resources, accused persons may waive their right to a French or bilingual trial.

[137] The following recommendations directed at different stakeholders in B.C.'s justice system are meant to address these impediments. In some cases, the same recommendation will apply to several stakeholders. It goes without saying that collaboration among the different players is necessary to ensure that *Criminal Code* section 530 rights are fully implemented.

### ***The Ministry of the Attorney General of British Columbia***

- 1) To address the gaps identified as to the availability and dissemination of documentary resources for accused regarding section 530 rights and French-language resources, we recommend that the Ministry of the Attorney General of British Columbia:
  - a. ensure that pamphlets on *Criminal Code* section 530 rights are prominently displayed in the province's courthouses [see paragraph 66 above];
  - b. install signs in the province's courthouses notifying the public of the right to a criminal trial in the official language of one's choice [see paragraph 66 above];
  - c. review the resources relating to section 530 that are available on the Ministry's website to ensure they mention the right to a trial in the official language of one's choice [see paragraph 68 above];

- 2) To promote use of the services offered, we recommend that the Ministry of the Attorney General of British Columbia ensure that non-profit and government agencies that provide services to accused persons are aware of available resources and effectively communicate this information to the public; for example, by including a list of resources, including links, on the web page for accused persons [see paragraph 73 above].
- 3) To raise awareness among government employees who interact with accused persons, we recommend that the Ministry of the Attorney General of British Columbia:
  - a. make an inventory of the language abilities of courthouse staff and ensure that staffing levels are sufficient to ensure quality services can be delivered in both official languages [see paragraph 122 above];
  - b. provide mandatory training to court administrative staff on *Criminal Code* section 530 to ensure they have adequate knowledge of language rights [see paragraphs 77 and 124-125 above] ; and
  - c. make French legal terminology training available to bilingual court interpreters, with an emphasis on criminal law [see paragraph 116 above].
- 4) In order to minimize delays associated with requests for a French or bilingual trial, we recommend that the Ministry of the Attorney General of British Columbia continue to ensure there are sufficient Crown prosecutors available to conduct French or bilingual trials [see paragraphs 102, 104 and 135 above].
- 5) To ensure the rights of accused persons are respected, we recommend that the Ministry of the Attorney General of British Columbia amend its policy recommending that Crown prosecutors request a bilingual trial upon learning there will be one or more English-speaking witnesses [see paragraphs 85-89 above].
- 6) We recommend that the Ministry of the Attorney General of British Columbia ascertain whether there is any confusion as to the difference between a French trial and a bilingual trial and, if this is the case, develop a strategy to raise awareness among the participants involved [see paragraphs 85-89 above].
- 7) In an attempt to resolve the administrative challenges that arise with the current system for identifying French-speaking jurors, we recommend that the Ministry of the Attorney General of British Columbia draw attention to the self-identification form for potential French-speaking jurors by distributing information to organizations that provide services to French-speaking British Columbians [see paragraphs 126-128 above].
- 8) To better understand why French is used so little in criminal trials in British Columbia, we recommend that the Ministry of the Attorney General of British Columbia begin collecting data on the language profile of accused persons, and that this data be made publicly available [see paragraph 1 above].
- 9) In order to shorten the time required for French and bilingual trials, we recommend that the Ministry of the Attorney General of British Columbia continue to ensure adequate funding is available for language training for judges [see paragraphs 108-110 above].

**Elections BC**

- 10) To resolve the administrative challenges created by the current system of identifying French-speaking jurors and to improve the list of available French-speaking jurors,<sup>186</sup> we recommend that Elections BC revise the voter registration form to identify potential jurors who are fluent in French [see paragraphs 126-128 above].

**The Judicial Council of British Columbia**

- 11) To reduce the current waiting period for persons requesting a French or bilingual trial, we recommend that the Judicial Council of British Columbia revise its appointment process for Provincial Court Judges by taking into account candidates' language abilities,<sup>187</sup> along the lines of the application process used by the Office of the Commissioner for Federal Judicial Affairs Canada [see paragraph 101 above].

**Department of Justice Canada**

- 12) To shorten the delays associated with the conduct of French and bilingual trials, we recommend that the Department of Justice Canada continue to ensure adequate funding is available for judges' language training [see paragraph 108 above].

**Office of the Chief Judge of the Provincial Court**

- 13) To ensure that judges are aware of their obligations and remain alive to the *raison d'être* and importance of language rights, we recommend that the office of the Chief Judge of the Provincial Court:
- a. exercise its authority under paragraph 11(1)(d) of the *Provincial Court Act*, RSBC 1996, c 379 to establish a simple, standardized procedure for judges to follow to inform accused persons of their right to a trial in the official language of their choice, even when they are represented by counsel [see paragraphs 81-82 above]; and
  - b. recommend that all judges hearing criminal cases receive training on the language rights of accused persons and witnesses [see paragraphs 81-82 above].
- 14) We recommend that the Office of the Chief Judge of the Provincial Court revise the court's website to improve the dissemination of resources dealing with section 530 that are currently difficult to access. In addition, it is recommended that the court's FAQ web page be updated to correctly reflect the rights and obligations that apply to section 530 [see paragraph 69 above].

**Office of the Chief Justice of the Supreme Court of British Columbia**

- 15) To ensure that judges are aware of their obligations and remain alive to the *raison d'être* and importance of language rights, we recommend that the Office of the Chief

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<sup>186</sup> Paragraph 275(1)(d) of the *Elections Act*, RSBC 1996 c 106 allows for use of the information collected to identify jurors. The registration form is available on the Elections BC website: *Application to Register or Update a Provincial Voter Registration* <[https://elections.bc.ca/docs/forms/200A\\_Application\\_to\\_Register\\_or\\_Update\\_a\\_Provincial\\_Voter\\_Registration.pdf](https://elections.bc.ca/docs/forms/200A_Application_to_Register_or_Update_a_Provincial_Voter_Registration.pdf)>.

<sup>187</sup> Provincial Court of British Columbia, *Criteria and Competencies for Appointment* <[http://www.provincialcourt.bc.ca/downloads/applications/Criteria\\_for\\_appt\\_judge.pdf](http://www.provincialcourt.bc.ca/downloads/applications/Criteria_for_appt_judge.pdf)>.

Justice of the Supreme Court:

- a. exercise its authority under paragraph 2.1(1)(a) of the *Supreme Court Act*, RSBC 1996, c 443 to establish a simple, standardized procedure for judges to follow to inform accused persons of their right to a trial in the official language of their choice, even when they are represented by counsel [see paragraphs 81-82 above]; and
  - b. exercise its authority under subsection 2.1(9) of the *Supreme Court Act*, RSBC 1996, c 443 to require that all judges hearing criminal cases receive training on the language rights of accused persons and witnesses [see paragraphs 81-82 above].
- 16) We recommend that the Office of the Chief Justice of the Supreme Court revise the court's website to ensure it explains that accused have the right to a trial in the official language of their choice [see paragraph 70 above].

***The NJI, CIAJ, CAPCJ, Federal Judicial Affairs Canada and the CCFJ***

- 17) We recommend that the NJI, CIAJ and CAPCJ remind all judges hearing criminal cases of their obligation to inform accused of the right to a French or bilingual trial, and that this be done at regular intervals, for example, as part of, or at the same time of general training received by judges [see paragraph 82 above].
- 18) We recommend that the Office of the Commissioner for Federal Judicial Affairs Canada and the CCFJ work jointly to ensure that language training and upgrading programs are offered to judges at regular intervals [see paragraphs 108-110 above].

***The Law Society of British Columbia***

- 19) To make it easier to find lawyers capable of representing accused persons in French, we recommend that the Law Society of British Columbia collect information on the language abilities of its members (for example, through an annual reporting form, as is done by the Ontario Bar Association<sup>188</sup>) and revise the online Lawyer Directory to allow searches to include official language<sup>189</sup> [see paragraph 99 above].
- 20) To ensure that defense counsel are aware of their obligation to inform accused of their right to a French or bilingual trial and appreciate the rationale for these rights, we recommend that the Law Society of British Columbia:
- a. include language rights in its process of admission to the Bar (Professional Legal Training Course), as is done by the Law Society of Ontario [see paragraphs 78-80, 92-93 above]; and
  - b. identify and implement a better way to raise awareness of language rights among its members (Code of Professional Conduct) [see paragraphs 78-80, 92-93 above].

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<sup>188</sup> In its Lawyer Annual Report, the Law Society of Ontario asks its members to report (on a voluntary basis) whether they are able to provide legal services in French.

<[https://portal.iso.ca/wps/PA\\_AnnualReport/resources/pdf/en/mar\\_draftform.pdf](https://portal.iso.ca/wps/PA_AnnualReport/resources/pdf/en/mar_draftform.pdf)>.

<sup>189</sup> The Lawyer Directory is limited to searches by family name and region of the province.

<<https://www.lawsociety.bc.ca/lbca/apps/lkup/mbr-search.cfm>>.

***Organizations that offer training to lawyers (including the Canadian Bar Association and the Continuing Legal Education Society of British Columbia)***

- 21) We recommend that organizations that offer training to defense and Crown counsel a) provide or continue to provide training on section 530 rights, in both English and French, and b) provide or continue to provide an explanation or reminder of the rights and obligations arising from section 530, even if only in summary form, during general criminal law training sessions [see paragraphs 105-106 above].

***Legal Aid***

- 22) To help inform accused persons of their right to a trial in the official language of their choice or to a bilingual trial, we recommend that in its communications directed at accused persons, the Legal Services Society of British Columbia explain or remind them of this right (in both online and documentary communications, in both English and French and in other languages as well) [see paragraph 71 above].

## **7. CONCLUSION**

[138] This study explored the implementation of the right to a French or bilingual trial under *Criminal Code* section 530 in British Columbia because access to justice in French is a crucial factor in the development of French-speaking minority communities. The full implementation of section 530 is essential for this access.

[139] We identified possible explanations for the disproportionately low use of *Criminal Code* section 530 relative to the size of the French-speaking population in the province. A review of the literature, a survey and interviews targeting certain actors in British Columbia's criminal justice system were conducted to gather experiences, perceptions and impressions. Some additional research was conducted based on input from the study participants.

[140] The survey data and interview comments show that good practices are in place regarding the implementation of *Criminal Code* section 530. According to the study participants, the quality of services and availability of personnel and tools are sufficient to organize trials and appear to be in line with the rights guaranteed under *Criminal Code* section 530.

[141] However, the study also revealed an apparent lack of awareness of section 530 language rights and related obligations, both on the part of accused persons and front-line actors. It is important that stakeholders and actors in the criminal justice system be better informed and communicate with each other. This would allow the courts to more fully respond to the needs of the French-language minority community throughout the province. The members of this community would then be in a better position to make an informed choice whether to exercise the right to a French or bilingual trial or not. The province's language context coupled with the logistical burden for the courts appear to be a major factor in delays that would not normally exist with an English-language trial. According to the study participants, given the minority context in which French-speakers find themselves in British Columbia, more French-language and translated resources need to be made available to accused persons to encourage the use of *Criminal Code* section 530. According to the participants, these impediments taken together may at times cause accused persons and their lawyers to renounce the rights guaranteed by *Criminal Code* section 530 for the wrong reasons.

[142] The vitality of official-language minority communities depends, *inter alia*, on French and English enjoying truly equal status before the criminal courts. In British Columbia, this means the court system must have the institutional capacity to function bilingually. Although this study does not purport to give a full picture of current practices province-wide, it does give perspective on the needs of the French-speaking community, as perceived by a variety of players and stakeholders in the criminal justice system. Avenues for further reflection, research and action are also proposed and all interested parties are invited to consider them. The full implementation of section 530 will only be possible through increased collaboration among all involved.

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## APPENDIX B: Survey results

**Table 1: Responses to general statements**<sup>190</sup>

Pour les questions suivantes, veuillez indiquer à quel point vous êtes en accord ou en désaccord avec les énoncés suivants / *For the following questions, please indicate the extent to which you agree or disagree with the statements*<sup>191</sup>

	Fortement en accord / <i>Strongly agree</i>	En accord / <i>Agree</i>	Neutre / <i>Neutral</i>	En désaccord / <i>Disagree</i>	Fortement en désaccord / <i>Strongly Disagree</i>	Ne sais pas / <i>Don't know</i>
Les juges sont conscients des droits linguistiques de l'accusé. / <i>Judges are aware of the linguistic rights of the accused.</i>	25 %	55 %	10 %	5 %	0 %	5 %
Les juges informent toujours les accusés de leur droit à un procès en français. / <i>Judges always inform the accused of their right to a trial in French.</i>	5 %	10 %	20 %	40 %	20 %	5 %
Les avocats de la défense sont conscients des droits linguistiques de l'accusé. / <i>Defence counsel are aware of the linguistic rights of the accused.</i>	10 %	55 %	5 %	15 %	5 %	10 %
Les avocats de la défense sont conscients de leur obligation professionnelle d'informer leurs clients de leurs droits linguistiques. / <i>Defence counsel are aware of their professional obligation to inform their clients of their linguistic rights.</i>	5 %	20 %	25 %	30 %	5 %	15 %
Les avocats de la défense non-francophones connaissent les ressources disponibles afin de recommander leurs clients potentiels à des avocats de la défense francophones. / <i>Non-francophone defence counsel are aware of the resources available in order to refer potential clients to a francophone defence counsel.</i>	0 %	5 %	30 %	35 %	20 %	10 %
Les avocats francophones sont faciles à trouver (références, répertoire, etc.). / <i>Francophone lawyers are easy to locate (references, directories, etc.).</i>	5 %	10 %	20 %	50 %	10 %	5 %
Les procureurs de la Couronne sont conscients des droits linguistiques de l'accusé. / <i>Crown counsel are aware of the linguistic rights of the accused.</i>	5 %	60 %	10 %	15 %	0 %	10 %

<sup>190</sup> The first survey question gave respondents the choice of responding in French or English. The results presented in this table include results in both languages.

<sup>191</sup> These percentages are calculated based on 20 respondents but the number of responses could vary (choice to not respond or to skip a question) which influenced the percentage calculations. The number of responses taken into account is indicated where appropriate.

	Fortement en accord / <i>Strongly agree</i>	En accord / <i>Agree</i>	Neutre / <i>Neutral</i>	En désaccord / <i>Disagree</i>	Fortement en désaccord / <i>Strongly Disagree</i>	Ne sais pas / <i>Don't know</i>
Les procureurs de la Couronne sont conscients de leurs obligations linguistiques. / <i>Crown counsel are aware of the their linguistic obligations.</i>	5 %	30 %	20 %	25 %	0 %	20 %
Le personnel administratif de la cour est conscient des droits linguistiques de l'accusé. / <i>The administrative personnel of the courts are aware of the linguistic rights of the accused.</i>	5 %	20 %	45 %	10 %	0 %	20 %
Il y a suffisamment de personnel administratif bilingue pour satisfaire à la demande de procès en français. / <i>There are sufficient bilingual administrative personnel to meet the needs for trials in French.</i>	0 %	30 %	10 %	35 %	5 %	20 %
Les services d'interprète à la cour sont de bonne qualité. / <i>The interpretation services available in the courts are of good quality.</i>	10 %	60 %	15 %	15 %	0 %	0 %
Les accusés connaissent leurs droits linguistiques. / <i>The accused are aware of their linguistic rights.</i>	5 %	20 %	25 %	30 %	5 %	15 %
Même lorsqu'ils sont mis au courant de leurs droits linguistiques, les accusés se sentent obligés de renoncer à leur droit de procès en français. / <i>Even when they are informed of their rights, the accused feel obligated to renounce their right to a trial in French.</i> (19 réponses)	0 %	15,8 %	31,6 %	21 %	0 %	31,6 %
Les accusés peuvent voir leur droit à un procès en français révoquer si le juge estime leurs aptitudes en anglais suffisantes. / <i>Accused persons may be denied their right to a trial in French if the judge deems their English competency is sufficient.</i>	0 %	0 %	5 %	45 %	20 %	30 %
Les témoins sont conscients/informés de leurs droits linguistiques. / <i>Witnesses are aware and/or informed about their linguistic rights.</i>	0 %	5 %	25 %	25 %	5 %	40 %
Les témoins francophones se sentent obligés de témoigner en anglais. / <i>Francophone witnesses feel obligated to testify in English.</i>	0 %	15 %	15 %	25 %	5 %	40 %

**Table 2: Responses of participants with previous involvement in a French trial<sup>192</sup>**

Avez-vous déjà (de quelque façon que ce soit) participé à des procédures pénales en français en C.-B. ? / <i>Have you ever been involved (in any capacity) in criminal proceeding in French in BC?</i> <sup>193</sup>	
Oui / Yes (45 %)	Non / No (55 %)

Si oui, les questions suivantes sont relatives à n'importe quelles procédures pénales en français auxquelles vous avez participé. / *If yes, the following questions relate to any French criminal proceedings in which you participated.*

Avez-vous eu l'impression que le statut du français dans ces procédures était respecté à part entière ? / <i>Did you feel French was given full status in these proceedings?</i>				
Oui, tout a été fait en français / <i>Yes, everything was done in French</i> (40 %)	En grande partie, la majorité des questions juridiques ont été traitées en français / <i>For the most part, most matters were dealt with in French</i> (60 %)	En grande partie, un interprète français était généralement disponible en tout temps / <i>For the most part, French interpretation was generally available at all times</i> (0 %)	Quelque peu, le français fut accommodé, mais la majorité des questions juridiques ont été traitées en anglais / <i>Somewhat, French was accommodated, but several matters were dealt with in English</i> (0 %)	Non, toutes ou presque toutes les questions juridiques ont été traitées en anglais / <i>No, all or most matters were dealt with in English</i> (0 %)
Est-ce que le juge a informé l'accusé de son droit d'avoir un procès en français ? (Cocher tout ce qui s'applique) / <i>Did the judge inform the accused of their right to a trial in French? (check all that apply)</i> (14 réponses enregistrées)				
Oui, toujours ou presque toujours / <i>Yes, always or almost always</i> (28,6 %)	Oui, quand l'accusé semblait avoir un accent ou avait de la difficulté à s'exprimer en anglais / <i>Yes, when the accused appeared to have an accent or difficulty speaking in English</i> (14,3 %)	Oui, quand l'accusé avait un nom ayant une intonation francophone / <i>Yes, when the accused had a French-sounding name</i> (14,3 %)	Non, je n'ai jamais ou presque jamais vu un juge informer l'accusé de ce droit / <i>No, I have never or almost never seen a judge inform the accused of this right</i> (42,9 %)	
Est-ce que le juge avait des échanges efficaces avec l'accusé ? / <i>Did the judge interact effectively in French with the accused?</i>				
Oui / Yes (50 %)	Quelque peu / <i>Somewhat</i> (50 %)	Non / No (0 %)	Je ne sais pas/Aucune opinion / <i>Don't know/No opinion</i> (0 %)	

<sup>192</sup> 9 of the 20 respondents had previously had involvement in a French trial in British Columbia. In the multiple choice questions, some of these respondents may have selected more than one response and some may have chosen to not answer all questions. The number of responses included in the percentage calculations can therefore vary..

Est-ce que le juge a donné sa décision en français ? / <i>Did the judge render his or her decision in French?</i>			
Oui, le jugement a été rendu, oralement et à l'écrit, en français / <i>Yes, the judgment was rendered, orally or in writing, in French (100 %)</i>	Oui, le jugement a été rendu en anglais, mais a été traduit en français / <i>Yes, the judgment was rendered in English, but translated into French (0 %)</i>	Non, le jugement a été rendu en anglais, mais une version française sommaire a été rendue aux parties impliquées / <i>No, the judgment was rendered in English, but a French summary was provided to the parties involved (0 %)</i>	Non, le jugement a été rendu en anglais et n'a pas été traduit / <i>No, the judgment was rendered in English, and not translated at all (0 %)</i>
Avez-vous eu l'impression que le juge était proactif dans sa défense des droits linguistiques de l'accusé ? / <i>Did you feel the judge was proactive in protecting the linguistic rights of the accused ?</i>			
Oui, toujours ou presque toujours / <i>Yes, always or almost always (50 %)</i>	Oui, fréquemment / <i>Yes, frequently (0 %)</i>	Quelque peu, occasionnellement / <i>Somewhat, occasionally (50 %)</i>	Non, jamais ou presque jamais / <i>No, never or almost never (0 %)</i>
Est-ce que l'avocat de la défense a parlé la langue de l'accusé pendant les procédures? / <i>Did defence counsel speak the language of the accused during the proceedings?</i>			
Oui, toujours ou presque toujours / <i>Yes, always or almost always (90 %)</i>	Oui, fréquemment / <i>Yes, frequently (0 %)</i>	Quelque peu, occasionnellement / <i>Somewhat, occasionally (10 %)</i>	Non, jamais ou presque jamais / <i>No, never or almost never (0 %)</i>
Est-ce que les procureurs de la Couronne ont parlé dans la langue de l'accusé pendant les procédures ? / <i>Did Crown counsel speak the language of the accused during the proceedings?</i>			
Oui, toujours ou presque toujours / <i>Yes, always or almost always (90 %)</i>	Oui, fréquemment / <i>Yes, frequently (0 %)</i>	Quelque peu, occasionnellement / <i>Somewhat, occasionally (10 %)</i>	Non, jamais ou presque jamais / <i>No, never or almost never (0 %)</i>

**Table 3: Responses of participants with previous involvement in a bilingual trial<sup>193</sup>**

Avez-vous déjà (de quelque façon que ce soit) participé à des procédures pénales bilingues en C.-B. ? / <i>Have you ever been involved (in any capacity) in a bilingual (French/English) criminal proceeding in BC?</i> <sup>194</sup>	
Oui / Yes (55 %)	Non / No (45 %)

Si oui, les questions suivantes sont relatives à n'importe quelles procédures pénales bilingues (français/anglais) auxquelles vous avez participé. / *If yes, the following questions relate to any bilingual criminal proceedings (French / English) in which you participated.*

Quel statut avait le français lors de ces procédures selon vous ? / <i>What did you feel was the status of French in these proceedings?</i>				
Le français était la langue dominante; plus de questions juridiques ont été traitées en français qu'en anglais / <i>French was the dominant language; more matters were dealt with in French than in English (77,8 %)</i>	Les procédures ont été alternés entre le français et l'anglais en proportions égales / <i>Proceedings alternated between English and French in about equal proportion (11,1 %)</i>	L'anglais était la langue dominante; plus de questions juridiques ont été traitées en anglais qu'en français / <i>English was the dominant language; more matters were dealt with in English than in French (0 %)</i>	En grande partie, tous les aspects bilingues des procédures ont été faits à travers des interprètes français / <i>For the most part, any bilingual aspects of the proceedings were done through French interpretation (11,1 %)</i>	Toutes les questions juridiques ont été traitées en anglais / <i>All or most matters were dealt with in English (0 %)</i>
Est-ce que le juge a informé l'accusé de son droit d'avoir un procès en français ? (Cocher ceux qui s'appliquent) / <i>Did the judge inform the accused of their right to a trial in French? (check all that apply)</i>				
Oui, toujours ou presque toujours / <i>Yes, always or almost always (55,6%)</i>	Oui, quand l'accusée semblait avoir un accent ou avait de la difficulté à s'exprimer en anglais / <i>Yes, when the accused appeared to have an accent or difficulty speaking in English (0 %)</i>	Oui, quand l'accusée avait un nom ayant une intonation francophone / <i>Yes, when the accused had a French-sounding name (0 %)</i>	Non, je n'ai jamais ou presque jamais vu un juge informer l'accusé de ce droit / <i>No, I have never or almost never seen a judge inform the accused of this right (44,4 %)</i>	
Est-ce que le juge avait des échanges efficaces avec l'accusé ? / <i>Did the judge interact effectively in French with the accused?</i>				
Oui / Yes (66,7 %)	Quelque peu / <i>Somewhat (22,2 %)</i>	Non / No (11,1 %)		Je ne sais pas / Aucune opinion / <i>Don't know/No opinion (0 %)</i>

<sup>193</sup> 11 of the 20 respondents had previous involvement in a bilingual trial in British Columbia. In the multiple choice questions, some of these respondents may have selected more than one response and some may have chosen to not answer all questions. The number of responses included in the percentage calculations can therefore vary.

Est-ce que le juge a donné sa décision en français ? / <i>Did the judge render his or her decision in French?</i>				
Oui, le jugement a été rendu, oralement et à l'écrit, en français / <i>Yes, the judgment was rendered, orally or in writing, in French (88,9 %)</i>	Oui, le jugement a été rendu en anglais, mais a été traduit en français / <i>Yes, the judgment was rendered in English, but translated into French (0 %)</i>	Non, le jugement a été rendu en anglais, mais une version française sommaire a été rendu aux parties impliquées / <i>No, the judgment was rendered in English, but a French summary was provided to the parties involved (11,1 %)</i>	Non, le jugement a été rendu en anglais et n'a pas été traduit / <i>No, the judgment was rendered in English, and not translated at all (0 %)</i>	
Avez-vous eu l'impression que le juge était proactif dans sa défense des droits linguistiques de l'accusé ? / <i>Did you feel the judge was proactive in protecting the linguistic rights of the accused?</i>				
Oui, toujours ou presque toujours / <i>Yes, always or almost always (55,6 %)</i>	Oui, fréquemment / <i>Yes, frequently (22,2 %)</i>	Quelque peu, occasionnellement / <i>Somewhat, occasionally (11,1 %)</i>	Seulement lorsque les droits étaient invoqués par les avocats de la défense / <i>Only when the rights were invoked by defence counsel (11,1 %)</i>	Non, jamais ou presque jamais / <i>No, never or almost never (0 %)</i>
Est-ce que l'avocat de la défense a parlé la langue de l'accusé pendant les procédures ? / <i>Did defence counsel speak the language of the accused during the proceedings?</i>				
Oui, toujours ou presque toujours / <i>Yes, always or almost always (88,9 %)</i>	Oui, fréquemment / <i>Yes, frequently (0 %)</i>	Quelque peu, occasionnellement / <i>Somewhat, occasionally (0 %)</i>	Non, jamais ou presque jamais / <i>No, never or almost never (11,1 %)</i>	
Est-ce que les procureurs de la Couronne ont parlé la langue de l'accusé pendant les procédures ? / <i>Did Crown counsel speak the language of the accused during the proceedings?</i>				
Oui, toujours ou presque toujours / <i>Yes, always or almost always (88,9 %)</i>	Oui, fréquemment / <i>Yes, frequently (0 %)</i>	Quelque peu, occasionnellement / <i>Somewhat, occasionally (0 %)</i>	Non, jamais ou presque jamais / <i>No, never or almost never (11,1 %)</i>	

**APPENDIX C: Sample questions for B.C. justice system participants who agreed to a semi-structured interview**

To Administrative staff of the courts and key informants

How many accused have invoked their right to a trial in French in BC?

How many defence lawyers are able to practice law in French in BC?

How are juror candidates identified for a French or bilingual trial?

Is it hard to identify jurors who are able to understand French?

Do the courts evaluate their needs in terms of bilingual administrative personnel?

Is language proficiency taken into consideration in staffing decisions?

What kinds of interpretation services are offered? (prompt: simultaneous or consecutive)

Is it hard to find interpreters to hire?

Are bilingual staff actively sought out?

In the hiring process, is bilingualism sought out or put forward?

Are hearings frequently transferred to another territorial division in order to have access to the staff needed for a trial in French? (prompt: Certain reports indicate that only one territorial division currently has this capacity in BC, i.e. New Westminster.)

Is there bilingual personnel available in several territorial divisions?

To Crown counsel and defense counsel

How many French-speaking clients have you had?

Tell me about your experiences in those cases.

How many Crown counsel in BC are able to practice in French?

What are the needs for Crowns who are able to practice in French in BC?

Does the Public Prosecution Service of Canada and its provincial counterpart evaluate its needs for Crowns who are able to practice in French?

Is linguistic proficiency taken into consideration in staffing decisions?

At which stage of the process is language proficiency taken into consideration when assigning a Crown to a case?

What does bilingual institutional capacity mean to you?

Do you believe the courts in BC currently have bilingual institutional capacity? Why or why not? If you do not believe BC courts currently have bilingual institutional capacity, what do you think would be needed in order to achieve it?

Do you have any further thoughts to share about access to trials in French in BC?

À l'attention des divers personnels des cours et répondants clés

Quelle est la procédure lorsqu'une demande pour un procès en français est faite ?

Combien de procès en français ont eu lieu cette année ?

Combien de juges sont-ils capables d'entendre un procès en français ? Bilingue ?

Comment sont sélectionnés les candidats de jury pour les procès bilingues et en français ?

Est-il difficile d'identifier des jurés capables de comprendre le français ?

Quel genre de formation juridique et criminelle existe-t-il pour les interprètes ?

Les cours évaluent-elles les besoins en termes de personnel administratif bilingue ?

La maîtrise du bilinguisme est-elle prise en compte dans les décisions de recrutement ?

À l'attention des avocats (de la Couronne et/ou de la défense)

Combien d'avocats de la Couronne sont capables d'exercer en français en Colombie-Britannique ?

La maîtrise du français est-elle prise en compte dans le processus de recrutement ?

Étiez-vous assigné au dossier parce que vous parliez français ?

Comment le ou les accusé(s) a/ont-ils(s) pris connaissance de ses/leurs droits sous l'article 530 ?

Y a-t-il des programmes de sensibilisation disponibles sur les droits linguistiques dans les procès criminels ?

Les procédures étaient-elles entièrement en français ou bilingues? Comment cela a-t-il fonctionné ? Croyez-vous que les témoins francophones se sentent obligés de témoigner en anglais ?

Y a-t-il des obstacles supplémentaires pour les jurés siégeant sur un jury bilingue ?

En pratique, le procureur de la Couronne fournit-il des traductions de la preuve documentaire et, si oui, dans quelles circonstances ?

Croyez-vous que les tribunaux de la Colombie-Britannique possèdent actuellement une capacité institutionnelle bilingue ? Pourquoi ou pourquoi pas ? Si vous ne croyez pas que les tribunaux de la Colombie-Britannique ont actuellement une capacité institutionnelle bilingue, selon vous, qu'est-ce qui serait nécessaire pour l'atteindre ?

Combien de clients francophones avez-vous eu ? Quelles sont vos expériences dans ces cas ?

Y a-t-il des raisons pour lesquelles un accusé devrait ou ne devrait pas invoquer ses droits en vertu de l'art. 530 ? Existe-t-il des avantages ou des inconvénients de l'invocation de ces droits ?

À titre d'avocat de la défense, à quels types de ressources pouvez-vous accéder pour développer votre pratique en français ? (formation, documentation juridique en français, etc.)

Avez-vous d'autres idées à partager sur l'accès aux procès en français en Colombie-Britannique ?