HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Justice and Human Rights

JUST • NUMBER 074 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Monday, May 27, 2013

Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): Ladies and gentlemen, I call the meeting to order. We'll use our BlackBerry time here for the accurate time.

Welcome to the Standing Committee on Justice and Human Rights, meeting 74, on Monday, May 27. The order of the day is for a review of part XVII of the Criminal Code.

Thank you for joining us again. We were interrupted by bells last time and were unable to meet, so I want to really thank you for joining us again. You never know what will happen, but we will get as far as we can today.

To our witnesses from the Department of Justice—Renée Soublière, Michel Francoeur, and Robert Doyle—thank you for joining us.

Renée, I'll turn it over to you for the first presentation. When you're finished, the next one can begin.

Thank you very much. You have approximately 10 minutes.

[*Translation*]

Ms. Renée Soublière (Senior Counsel and Litigation Coordinator, Official Languages Law Section, Department of Justice): Hello. It is a pleasure for us to appear before you today in order to help you begin your review of the Criminal Code's language provisions.

Please allow me first of all to introduce myself. I am Renée Soublière, Senior Counsel and Litigation Coordinator of the Official Languages Law Section, which is part of the Department of Justice's Public Law Sector.

With me this afternoon is Mr. Michel Francoeur, Director and General Counsel of the Office of Francophonie, which is part of the Department of Justice's Justice in Official Languages and Legal Dualism Section. Mr. Francoeur will report on the concrete measures the department has taken with an eye to supporting the respect of language rights set out in the Criminal Code.

I am also accompanied by Mr. Robert Doyle, from the Public Prosecution Service of Canada. Among other things, Mr. Doyle acts as National Secretary of the Federal/Provincial/Territorial Heads of Prosecutions Committee. He will be able to talk to you about the concrete implementation of the Criminal Code's language provisions, and can answer any questions you may have about this.

First of all, I will explain my role as part of the Official Languages Law Section, the OLLS. The OLLS is a team of specialized legal experts mandated with providing legal advice to the government on issues of language rights that flow from, among other things, the Canadian Charter of Rights and Freedoms, the Official Languages Act and the Criminal Code. The OLLS is also responsible for developing and coordinating the Attorney General's and Government of Canada's positions in linguistic matters that are brought before the courts. Finally, the OLLS is responsible for drawing up any proposed legislative amendment affecting language rights.

As such, the OLLS developed legislative proposals that led to passing the 1988 Official Languages Act, which included amendments to the Criminal Code's language provisions.

It is also in this role that the OLLS participated, with its colleagues from the Criminal Law Policy Section, in drawing up legislative amendments contained in Bill C-13, An Act to Amend the Criminal Code (Criminal procedure, language of the accused, sentencing and other amendments), passed in 2008.

I also had the opportunity and the privilege to act as project leader and to be involved in every step, from the creation of guidelines to consultations, as well as the writing of the bill and the study of it in committee. Moreover, I appeared before the Standing Senate Committee on Legal and Constitutional Affairs on November 28, 2007, as it began its study of Bill C-13.

It seems important to me to call your attention to the exact wording of the review clause in part XVII of the 2008 Criminal Code. When reading this clause, one can see that it refers to a twofold review. Subsection 533.1(1) does in fact mention a comprehensive review of the provisions and the application of part XVII, entitled “Language of the accused”.

If I considered it important to explain the role and the mandate of the section for which I work, and to call your attention to the wording of the review clause, it is so that you can immediately understand the limits of my comments today. It would be my pleasure to discuss the provisions of part XVII of the Criminal Code, to provide you the context behind the 2008 amendments, and to answer any question you might have in this matter. However, my presentation this afternoon does not deal with the application or the implementation of these provisions, since my team has no role to play in this regard.

With the committee's permission, I'll start by giving a general presentation on the content of sections 530 and 530.1. I believe you have a copy of these provisions, with the English and French versions side by side. I'll then explain the context behind the 2008 amendments.

Before I proceed, it seems important to me to emphasize four points.

● (1535)

First of all, former justice Bastarache, as he was then, said in the Supreme Court ruling R. v. Beaulac, on behalf of the majority, sections 530 and 530.1 of the Criminal Code constitute a perfect example of the advancement of language rights through legislative means provided for in subsection 16(3) of the charter. Indeed, the federal legislator, when exercising its power over criminal law and criminal procedure, passed a great number of legislative measures with the intent of extending language rights to the accused before the courts, namely sections 530 and 530.1.

Secondly, one must keep in mind the intent of section 530. Again, according to former justice Bastarache, as he was then, section 530 aims above and beyond all else to provide the accused with equal access to criminal courts, if they speak one of the two official languages of Canada, in order to help official language minorities to preserve their cultural identity.

Thirdly, it must be noted that the right of any accused to be tried in the official language of their choice is nothing new. Indeed, this right was first recognized in the 1969 Official Languages Act. In 1978, and again in 1988, Parliament decided that it would be useful to extend the scope of the language rights of an accused and specify the exact modalities of a criminal trial held in a minority language.

On January 1, 1990, the provisions being discussed, namely sections 530 and 530.1, which you have before you, came into force throughout the country. Any person facing criminal charges could, as of that date, choose to undergo their trial in the official language of their choice, regardless of where in the country they happened to be.

In reality, it means that the various jurisdictions of the country must be able to meet the request for a trial in the minority language and to have available the necessary institutional infrastructure to provide services equally in both official languages.

Fourthly, the amendments passed in 2008 were not intended to substantially change sections 530 and 530.1. The primary goal of the 2008 amendments—and I will come back to them shortly—was to clarify certain provisions, to codify the current state of case law and to fill certain gaps I identified in case law and studies of these provisions.

Let us now move on to the exact content of sections 530 and 530.1. What other rights and correlative obligations are included in these provisions?

Let us start with section 530. It has six subsections.

The first subsection of section 530 indicates that on application by an accused whose language is one of the official languages of Canada, the judge must grant an order directing that the accused be tried before a judge or a judge and jury who speak the official language of the accused, or, if the circumstances warrant, who speak both official languages. The deadlines by which the accused can make such a request are indicated in the first subsection, and the deadlines vary according to the nature of the procedure used to prosecute the offence.

The second subsection of section 530 applies to cases in which the language of the accused is not one of the official languages of Canada. In such a case, the judge may grant an order directing that the accused be tried before a judge or a judge and jury who, in the opinion of the judge, will allow the accused to best give testimony or who, once again, if the circumstances warrant, speak both official languages.

The third paragraph, as amended in 2008, requires that a judge before whom an accused first appears advise them of their right to face trial in the official language of their choice. Before Bill C-13 was passed, only those accused who were not represented by counsel had the right to be advised of this right. The 2008 amendment therefore requires that the judge ensure that all of the accused, whether they are represented or not, be advised of their right to request a trial in the official language of their choice.

● (1540)

The fourth subsection of section 530 concerns the situation of an accused who fails to make a request for a trial in their language before the prescribed deadlines.

The fifth subsection allows for an order indicating that an accused who must undergo their trial before a court that speaks one of the official languages be varied to require them to be judged by a court that speaks both official languages, and vice versa. Therefore, it is possible to vary the initial order.

Finally, the sixth subsection of section 530, added in 2008, indicates that when the co-accused do not speak the same official language and they respectively exercise their right to be judged by a judge who speaks their official language, but that otherwise these co-accused would be tried together, these may constitute circumstances that warrant that an order be granted directing that they be tried before a judge who speaks both official languages.

Before moving on to section 530.1, allow me to mention the addition, in 2008, of section 530.01(1).

This new provision indicates that the prosecutor shall cause the portions of an information or indictment to be translated into the official language of the accused, and to provide it at the earliest possible time on application by the accused.

Before the passage of the new subsection 530.01(1), only the preprinted parts of the forms indicated in part XXVIII of the Criminal Code were given to the accused in both official languages. The sections filled out by the accuser were written and provided to the accused in the language of the person who had filled out the form. Certain courts considered it unfathomable that an accused would not have the same right to obtain the translation, given the importance of these documents. Therefore, they required that they be translated upon request. Some jurisdictions implemented practices to comply with these decisions. The addition of a provision in this matter, through Bill C-13, both standardized these practices and better reflected the status of case law.

Let us now move on to section 530.1.

Section 530.1 outlines the specific rights that may be exercised when an order is granted under section 530. It prescribes the following.

First of all, it indicates that the accused, his counsel, and witnesses have the right to use either official language during the preliminary inquiry and trial.

Second, it indicates that the accused and his counsel may use either official language in any proceedings relating to the preliminary inquiry or trial.

Third, it indicates that any witness may give evidence in either official language during the preliminary inquiry or trial.

Fourthly, it indicates that the accused has the right to have a justice who speaks the official language of the accused or both official languages.

Fifth, it indicates that the accused has the right to have a prosecutor—other than a private prosecutor—who speaks the official language of the accused or both official languages.

Sixth, it indicates that the court shall make interpreters available to assist the accused, his counsel or any witness.

Seventh, it indicates that the record of proceedings during the preliminary inquiry or trial shall include a transcript of everything that was said during those proceedings in the official language in which it was said, as well as a transcript of any interpretation into the other official language of what was said, and any documentary evidence that was tendered during those proceedings in the official language in which it was tendered.

Finally, the eighth item indicates that the court shall make available any trial judgment in the official language of the accused.

● (1545)

[*English*]

Allow me now to briefly explain the context behind the 2008 amendments.

The implementation of the language rights provisions in the Criminal Code had, from time to time, created some legal and practical difficulties, as demonstrated by the case law that had developed over the years. A number of reports and studies by different stakeholders had also confirmed the need to improve and clarify some of the language of trial provisions of the code.

In particular, in November 1995, the Commissioner of Official Languages published a study entitled “The Equitable Use of English and French Before the Courts in Canada”. This study concluded with 13 recommendations for strengthening and advancing language rights in the courts, particularly before criminal courts.

The department's response to that study was to prepare a working paper, and in November 1996, a document prepared by the official languages law section entitled “Towards a Consolidation of Language Rights in the Administration of Justice in Canada” was published and widely distributed. The document responded to the commissioner's recommendations with a number of proposals to be used as a starting point for public consultations. It served as the basis for public consultations, which were held from November 1996 to April 1998.

In May 1999, the Supreme Court of Canada issued its decision in Regina v. Beaulac, which related specifically to the language of trial provisions of the Criminal Code. The Supreme Court in Beaulac confirmed that there were indeed difficulties inherent in applying and interpreting these provisions. As a result of the court's decision the recommendations were re-examined and substantially modified to reflect the new state of the law. Consultations were held once again on the content of the proposed changes and eventually the legislative proposals made their way into a bill, along with other criminal law-related amendments. The amendments to the language of trial provisions of 2008 were therefore the fruit of a lengthy process involving many different players. Their main goal was to propose workable and balanced solutions to a number of problems that had been identified and to help ensure the effective implementation of the language rights provisions of the Criminal Code.

[*Translation*]

I will end my speech by inviting you to communicate with the provinces and territories, the heads of court services, provincial heads of criminal prosecutions and any other entity directly involved in implementing these provisions. They will no doubt provide you with important and useful information relating to the study you are currently undertaking.

I will now give the floor to Mr. Robert Doyle.

[*English*]

The Chair: Mr. Doyle, if you could do it within 10 minutes that would be great.

Mr. Robert Doyle (Senior Counsel, Public Prosecution Service of Canada, Office of the Director of Public Prosecutions, Department of Justice): Yes, I can.

[*Translation*]

I'm here today to describe to you how the provisions under study were implemented on the ground.

Currently, I am the Head of the Executive Secretariat Directorate of the Office of the Director of Public Prosecutions. This position includes the duties of both a federal prosecutor and national secretary of the Federal/Provincial/Territorial Heads of Prosecutions Committee.

Prior to December 2006, which is to say when our service was separated from the Department of Justice and established as an independent organization, I was a special advisor and I held a position that was roughly the equivalent of this one. During the 10 years before that, from 1987 to 1998, I was a defence counsel in Ontario, and my client base was almost entirely made up of francophones. That means that for those 10 years, I was in court almost every day, both before and after the Criminal Code provisions under study came into force. I worked in almost every region in the province, almost always in French, which is the language of the minority in that province.

After being crown prosecutor, I became the national secretary for the Federal/Provincial/Territorial Heads of Prosecutions Committee. This committee includes the heads of Canadian prosecution services. It must be specified that criminal proceedings are under shared jurisdiction. Offences under the Criminal Code, such as murder, offences committed under the influence, theft, rape and sexual assaults, are prosecuted by the provinces, whereas the federal offences are prosecuted by the Public Prosecution Service of Canada.

This committee includes 12 people: the heads of prosecution for each province, the Director of Criminal Prosecution in Canada and the Director of Military Prosecutions. The committee meets twice a year for two or three days. During these meetings, certain provisions are studied, in light of the problems that come up during practice. Obviously, some of the committee's observations were reflected in the 2008 amendments.

I have a few comments to share with you based on this experience.

I'll start by talking about the hesitation that people feel when they are accused.

● (1550)

[*English*]

A person charged with a criminal offence is understandably very anxious. That person wants the most favourable result, which for that person means an acquittal, or at least a withdrawal or a stay of the charge. That person wants that result to occur quickly and that person wants the best legal help possible to get out of the mess.

Therein lies the first hurdle faced in implementing these provisions. Whether or not an accused from a minority language community is aware of his or her linguistic rights under section 530, these rights are often subsumed to the emergency of avoiding a conviction. If exercising these rights means not availing oneself of the assistance of top counsel because the best do not speak the official language of the accused, then these rights will not be invoked. If exercising these rights means obtaining a later trial or hearing date, then they also may not be invoked, particularly and understandably with respect to obtaining bail. Likewise, if the accused perceives—wrongly, generally—that invoking these rights will somehow annoy or anger the judicial officials, he or she will not strive to assert them.

There's also the arrest process itself, where rights are read to the suspect and a list of counsel is shown, which is a situation that is not technically covered by these provisions. Thus, an accused person might retain unilingual counsel even before subsection 530(3) is applied and the accused is informed by the court of his or her right to trial in his or her language.

[*Translation*]

The second problem is that of informing the accused of the provisions.

Subsection 530(3) indicates that the accused must be advised of their right to undergo a trial in their language and it is the justice of the peace or the judge of the provincial court who must inform the accused of this right. The 2008 amendments attempted to better define this requirement, but difficulties persist. Ontario serves as an example of this, because in light of what I heard at the table of the heads of prosecution, and in light of the discussions held by the Subcommittee on Official Languages, one can conclude that Ontario is a microcosm of Canada. I will therefore use my experience in Ontario to better illustrate the situation.

Some of Ontario's regions, just like other regions in Canada, are mostly francophone. The court must advise the accused that he has the right to undergo his trial in his official language, but in fact, this notice is not given. In any case, the accused comes before the court, and there is a constant back and forth between both languages. In Moncton, in L'Orignal, in Hawkesbury and in other locations in northern Ontario, judges and prosecutors are all bilingual, as well as most of the members of the defence counsel, to varying degrees. The trial date is then set, and the accused is guaranteed to have their trial in either English or French.

Other regions are mostly anglophone, but there is a significant francophone presence. That's the case in Ottawa and in Sudbury, for example. Justices of the peace are therefore sensitive to their local reality and will usually issue the advisory.

However, some regions are almost exclusively anglophone. That means that the judges don't usually see a lot of francophones come before their court. It happens once or twice a year, or even less. In these circumstances, judges may forget to issue the advisory to a francophone who stands accused, particularly if the accused initially speaks English with relative ease.

It will nonetheless be difficult to predict the consequences of the growing use of video links, which is starting to become quite widespread. Indeed, Alberta is deploying a complete system which will allow the initial appearances to be conducted at the accused's location, particularly if they are detained. Because the system will be centralized, it will be easier to implement a system where a justice of the peace and a prosecutor can speak the language of the defendant.

Finally, the third problem involves informing the judiciary and the bar.

● (1555)

[*English*]

All judges are aware of the provisions relating to language rights in the code. In provinces like Ontario and New Brunswick there's also provincial legislation that buttresses these rights by reinforcing the knowledge in the provisions in the Provincial Offences Act or in the Courts of Justice Act. Nevertheless, when minority language accused appearing before a court are few and far between, or where they're represented by counsel who speak only the majority language, or where, increasingly, accused are unrepresented but speak the majority language fluently, thus not making the judge aware of their minority status, then the judge may not be reminded of the need to inform the accused of his or her rights pursuant to subsection 530(3).

The Public Prosecution Service of Canada, in its policy manual, has a provision that requires our prosecutors—and Ontario and New Brunswick have similar provisions as well—to, if the court forgets, remind the court that the accused should be advised of his or her right to have the trial in the minority language.

The issue of not remembering to give the notice under 530(3) was flagged by the Ontario FLS Bench and Bar Advisory Committee report in 2012, a very extensive report that was written by Ontario Court of Appeal Justice Paul Rouleau and defence counsel Paul Le Vay. They had hearings and they researched the subject for almost two years. It mentioned that problem as well. So despite the 2008 amendments, there still remain situations in those areas where the minority language is virtually absent, both because of the census data and the fact there are just a few people from the minority community who are charged with offences. Because of that, section 530(3) seems to fall between the cracks and there's no notice given.

That, of course, is not entirely the courts' fault because sometimes an accused person—as does Ms. Soublière or myself, and as you'll notice, Mr. Francoeur shortly—doesn't speak English with a French accent or has a very slight French accent, and as a result, it's not obvious that we may require a trial in the French language.

[*Translation*]

In the end, the wait period for a trial requested under part XVII depends on the local reality. In regions where there is a francophone majority, there is no wait time for a request to have the proceedings held in French. In regions where there is an anglophone majority with a strong francophone presence, such as Ottawa and Sudbury, there are no additional waiting times either. In regions with an anglophone majority and very few francophones, there may be a delay because often they have to bring in people from a bilingual region, including the judge, the crown prosecutor and the clerk in order to hold the proceedings in French. This problem may be exacerbated if the defendant requests a trial by jury, because there are obviously some regions in Canada where there are very few francophone residents who can sit on a jury.

Moreover, the Association des juristes d'expression française de la Colombie-Britannique carried out a fairly exhaustive study in 2006 on how things work in the other provinces as well. This study revealed to what extent requesting a trial by jury in French can cause problems in certain regions of this province. This situation was also mentioned by the heads of prosecution. Two years ago, the Assistant Deputy Attorney General of British Columbia mentioned to the heads of prosecution that people were starting to deliberately request trials by jury in French, knowing that the system might not be able to honour the request.

The adoption of part XVII encouraged judicial administrations to pursue litigants' rights. Therefore, all the provinces have judges who speak the minority language at all levels of the courts. That is the case for all provinces with the exception of one, which made arrangements. Legally, the availability of a francophone crown prosecutor can be guaranteed anywhere in the country. All of the provinces have this ability except Prince Edward Island, who has made arrangements with New Brunswick and our service to provide them with bilingual crown prosecutors if such a request is made.

I will conclude by saying that the Public Prosecution Service of Canada will continue to work with the provinces to ensure that these rights in the context of a trial are respected in the full sense of the word.

Thank you for your attention.

● (1600)

[*English*]

The Chair: That was 12 minutes—close to 10.

Mr. Francoeur, you have 10 minutes. There will be a bell at 4:25 p.m.

[*Translation*]

Mr. Michel Francoeur (Director and General Counsel, Office of Francophonie, Justice in Official Languages and Legal Dualism, Department of Justice): Thank you, Mr. Doyle.

Good afternoon Mr. Chair, ladies and gentlemen and members of the committee. My name is Michel Francoeur and I am the Director and General Counsel of the Office of Francophonie, Justice and Official Languages and Legal Dualism. I also supervise the lawyers from the Department of Justice who are responsible for the Contraventions Act implementation.

Before going any further, Mr. Chair, I would like to introduce my two colleagues who are here: lawyers Mathieu Langlois and Marie-Claude Gervais. If I do not have the answer to a question that is asked, with your permission, I would consult them. Otherwise, we could provide you with a written response, depending on the circumstances.

That being said, I am here today to give you a general overview of the administrative and financial measures taken by the Department of Justice to support the enforcement of Sections 530 and 530.1.

From the outset, I should point out that due to the sharing of constitutional jurisdictions between the federal government and the provinces, the federal government's role in implementing linguistic provisions in the Criminal Code is limited. While the federal government has exclusive jurisdiction over changes made to the Criminal Code and related procedure, legal proceedings under the Criminal Code fall primarily within provincial jurisdiction. In addition, the provinces are responsible for the composition and organization of criminal courts.

This means that in the case of the provisions that you are studying, the provinces must ensure that they have the necessary institutional and human resources within their justice system in order to allow the defendant to stand trial in the language of his or her choice.

That being said, while complying with its responsibilities and within its means, the Department of Justice is working with its provincial and territorial partners in order to support them in enforcing the Criminal Code's language obligations.

The Department of Justice supports the provinces and territories through two initiatives: first, the Access to Justice in Both Official Languages Support Initiative, and second, the Contraventions Act Implementation Fund. The Access to Justice in Both Official Languages Support Initiative has two components: the financial component which is the Access to Justice in Both Official Languages Support Fund, and the non-financial component which is collaborative and consultation activities with certain governmental and non-governmental partners.

I would like to say a few words about the Access to Justice in Both Official Languages Support Fund.

This fund was created to first and foremost meet the objective of improving access to justice services in the minority language and enhancing awareness and understanding of language rights among Canadian citizens and the legal community. It is for this purpose that the Department of Justice developed a training component in order to support people in the justice system who provide services to Canadians in the official language of their choice, particularly in the area of criminal law.

● (1605)

[*English*]

The training component of the fund is there to help people who already work in the justice system to develop and improve their language skills. To date, the support fund has financed professional development for various stakeholders in the justice system, such as provincial crown prosecutors, provincial court clerks, probation officers, and members of the judiciary, amongst others.

[*Translation*]

Allow me to illustrate with a specific example. In 2010, the creation of the Centre canadien de français juridique, located in Winnipeg, was funded directly by the Access to Justice in Both Official Languages Support Fund in the area of training. Creating this centre allowed the institutions to consolidate their expertise to offer a broader range of training activities to different players in the judicial systems.

This way, each province and territory can find within their own court system francophones or francophiles who are willing to take specialized language training on legal terminology. These are professionals who are already familiar with the French language. Through the Centre canadien de français juridique, these individuals acquire and maintain their knowledge and skills, and build the necessary confidence to carry out their work in the defendant's official language when a request is made under section 530 and the ones that follow of the Criminal Code.

Moreover, this type of training activity can also be offered to anglophones and anglophiles in the court system of Quebec.

I would like to speak briefly on the second component of the Access to Justice in Both Official Languages Support Initiative. The initiative also includes collaborative and consultation activities that allow the department to work closely with its partners. Within its Federal-Provincial-Territorial Working Group and its Advisory Committee on Access to Justice in Both Official Languages, the department offers room for dialogue and cooperation in order to bring up any questions, good practices, issues or challenges that affect access to justice in both official languages, including those related to language provisions in the Criminal Code.

I will now say a word or two about the Contraventions Act Implementation Fund. The federal Contraventions Act also falls within the scope of the objective of access to justice in both official languages. It is in this context that the department must also ensure compliance with the Criminal Code's language provisions.

The contraventions scheme is an alternative to the summary proceedings laid out in part XXVII of the Criminal Code for proceedings of federal offences referred to as regulatory. The federal contraventions scheme is implemented through the provincial criminal processes, which are incorporated by reference in federal law, as well as through agreements signed with the provinces or certain municipalities.

[*English*]

While the federal government uses existing provincial offences schemes to prosecute federal contraventions, it must ensure that all judicial and extrajudicial activities or services relating to federal contraventions are in accordance with the language rights of Canadians contained in section 20 of the charter, in section 530 and 530.1 of the Criminal Code, and part 4 of the Official Languages Act.

The Contraventions Act fund, which is a transfer payment, has been precisely designed to provide funding to provinces that have signed agreements with the Department of Justice, ensuring that necessary measures are taken to guarantee those language rights for persons who are prosecuted for contraventions of federal statutes or regulations. The fund supports a range of measures that typically include the hiring of bilingual judicial and extrajudicial court personnel, language training, bilingual signage and documentation, as well as costs incurred by provinces to manage and report on these measures to the Department of Justice.

● (1610)

[*Translation*]

Ladies and gentlemen, that is the end of my presentation.

Thank you Mr. Chair. I will be pleased to answer any questions from the members of your committee, subject to the limits laid out by Ms. Soublière regarding our respective mandates.

Thank you.

[*English*]

The Chair: Thank you for those excellent presentations.

We have three or four questioners. Our first questioner is Mr. Mai from the New Democratic Party.

[*Translation*]

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you Mr. Chair.

[*English*]

The Chair: I'm going to hold you to five minutes on this one.

Mr. Hoang Mai: Sure, Mr. Chair.

[*Translation*]

I would like to thank the witnesses for being here today and for having informed us so well about the enforcement and interpretation of the law.

Mr. Francoeur, if I am not mistaken, you look after verifying enforcement. Do you have statistics or other information on recent practices in the provinces regarding accessibility in both languages?

Mr. Michel Francoeur: We do not have such statistics. As far as we know, very few provinces gather such statistics. However, since the implementation is carried out by the provinces, both by the crown prosecutors and by the organization and administration of the courts, if such statistics exist, you will be able to find them with our colleagues in the provinces.

Mr. Hoang Mai: All right.

Sometimes in the field we hear that criminal lawyers often have a hard time. You spoke about court interpreters among others.

What concrete measures have been put in place to ensure that court interpreters meet expectations?

Mr. Michel Francoeur: To my knowledge, that does not fall under our program.

Mr. Doyle could perhaps provide you with information on that subject.

Mr. Robert Doyle: Yes, this problem was raised recently in 2012 before the Federal/Provincial/Territorial Heads of Prosecutions Committee. The acuity of the problem depends on what region of Canada you live in. Indeed, in certain provinces such as the Prairies, British Columbia, Ontario and the Maritimes, the accreditation systems for interpreters in both official languages meet the demand quite well. A problem arises when it comes to other languages, however, we are not here to discuss that.

Unfortunately, accreditation of interpreters is not governed centrally according to national standards. As a general rule, we try to follow the program put into place by the Ontario Ministry of the Attorney General at the end of 1970s, which intended to train and accredit interpreters and ensure they maintained their accreditation in provinces where French was the minority language. Furthermore, very few complaints were made about this program.

Mr. Hoang Mai: Were complaints or questions raised concerning the transcription of the defendant's words said in French in particular?

Mr. Robert Doyle: Complaints about transcription began when we started using computer systems. There were no longer any stenographers in the room. The clerk was simply pressing the buttons to record, pause and stop, which meant that we sometimes lost parts of the proceedings.

However, these problems seem to be disappearing as technology evolves.

Mr. Hoang Mai: When did this change take place?

Mr. Robert Doyle: Each province introduced an automatic recording system as they built new courthouses. This took place mostly during the 1980s and the 1990s. I sometimes participate in meetings of the Association of Canadian Court Administrators, and from what I have seen, this doesn't seem to be a problem today.

Mr. Hoang Mai: I'd like to come back to Mr. Francoeur.

You spoke about the Access to Justice in Both Official Languages Support Fund. Does the money dedicated to this fund come from the federal government?

Mr. Michel Francoeur: Yes.

Mr. Hoang Mai: Can you tell us how this fund has evolved over the last years? Has it increased or decreased? Is it sufficient?

Mr. Michel Francoeur: Are you asking if the amounts allocated to the fund have increased?

Mr. Hoang Mai: Yes. My question is about the Access to Justice in Both Official Languages Support Fund, which is funded by the federal government.

● (1615)

Mr. Michel Francoeur: Am I understanding that you are talking about the funds for the Access to Justice in Both Official Languages Support Fund?

Mr. Hoang Mai: That's right.

Mr. Michel Francoeur: From 2008 to 2013, $40 million was allocated. From 2013 to 2018, I believe that $39 million has been allocated.

Mr. Hoang Mai: It was approximately the same, but it was hundreds of thousands of dollars less.

Mr. Michel Francoeur: Over the next five years, $40 million more will be allocated. This amount will be spread out over five years. Of course it is not for each year.

Does that answer your question?

Mr. Hoang Mai: So you said that $48 million was allocated between 2008 and 2013.

Mr. Michel Francoeur: No, $40 million has been allocated since 2008.

Is it the same amount from 2003 to 2008?

Mr. Mathieu Langlois (Department of Justice): Precisely $21.2 million was allocated from 2003 to 2008.

Then in 2008, this amount was increased by injecting more money into the training component.

Mr. Michel Francoeur: The amount allocated in 2003 of the Official Languages Action Plan, now called the Roadmap for Canada's Linguistic Duality, was $21 million.

A few years later, this amount was increased and $19 million more was granted in order to include legal terminology training for the various players in the legal systems. Since that $19 million was added in 2008, the total amount is approximately $40 million.

[*English*]

The Chair: Thank you for those questions and answers.

Now we have Monsieur Goguen, from the Conservative Party.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

[*Translation*]

Under section 533.1 of the Criminal Code we must undertake an in-depth review of this part.

Ms. Soublière, you suggested that we communicate with the provinces. I don't think it's possible to know whether or not this is working well unless we speak to the provinces.

Do you agree?

Ms. Renée Soublière: I absolutely agree.

Mr. Robert Goguen: Given that the provinces are responsible for court services, do you have any suggestions to make in terms of the best methodology to use in order to do this work with the provinces?

Ms. Renée Soublière: Perhaps I can allow my colleague, Robert Doyle, to answer that question.

Mr. Robert Doyle: I am the secretary of the Federal/Provincial/Territorial Heads of Prosecutions Committee. That committee, as well as the Association of Canadian Court Administrators, would be in the best position to direct you to individuals who could answer your questions. Those two organizations are actually responsible for applying those provisions.

Mr. Robert Goguen: Are they willing to cooperate with us?

Mr. Robert Doyle: Yes.

I can provide you with the list of the heads of prosecutions as well as that of the court administrators.

Mr. Robert Goguen: We would appreciate that.

Thank you.

The Chair: Thank you very much.

[*English*]

Our next questioner is Ms. Murray, from the Liberal Party.

Welcome. You have five minutes.

Ms. Joyce Murray (Vancouver Quadra, Lib.): Thank you.

Thank you very much for the fascinating presentation.

Has the provision of services in the accused's primary language for anglophones in Quebec been an issue similar to francophones in other provinces, or is the problem that was identified and is being addressed primarily for francophone Canadians?

Ms. Renée Soublière: The right that's granted in section 530 is a right to trial in the official language of choice by the accused. In Quebec, if an anglophone wishes to proceed with a trial in English, he or she has a right to ask for a trial in the English language.

Are the challenges and the obstacles the same? I'm not sure. I think it's probably less of a problem in the province of Quebec to proceed to a trial in English, but I'll let my colleague Robert Doyle answer fully.

Mr. Robert Doyle: It has traditionally not been a problem. However, at the heads of prosecutions table, we are now hearing that it's becoming a bit of an issue in remote areas. It's not a problem in Quebec City, Montreal, and obviously in the Outaouais—the larger centres—but as soon as you go into the Saguenay and places like that, it may be an issue. There again, it's nothing to the extent found in Beaulac, or some of the other case law we have seen for francophones elsewhere in Canada.

Ms. Joyce Murray: What are the measures for ensuring there are enough judges to be able to provide services in both languages? Do you need to attract...especially in the west? I'm from British Columbia. Is there a heavier caseload for francophone judges if there are fewer of them, and how does one ensure an adequate availability of expertise in both languages?

● (1620)

Mr. Robert Doyle: So far it's been based on census data. There is a bit of an oversupply of bilingual judges or bilingual crown prosecutors right now. That is because of the issues I mentioned in my presentation with the accused persons not necessarily opting for a trial in their language.

It's never been an issue, including in B.C., actually. It's been an issue for juries, but certainly not for judges, and definitely not for crown prosecutors. I must admit that the crown prosecutors strike helped a lot because Alberta and B.C., in particular, raided Quebec for prosecutors and stocked their own complement.

Ms. Joyce Murray: Do I have time for another question?

[*Translation*]

The Chair: Ms. Murray, you have two minutes.

[*English*]

That was in French, by the way.

An hon. member: I'm glad you told everybody or they wouldn't have been able to tell.

[*Translation*]

Ms. Joyce Murray: What criteria are used in order to determine if the training of a judge or an expert is sufficient for them to be able to provide services to francophones? What is the current framework for that? Do they have to pass a test? What level is required? Can the accused say

[*English*]

that he wasn't understood?

[*Translation*]

Mr. Robert Doyle: I can answer that.

In terms of the Public Prosecutions Service of Canada, our procedural manuals have very clear guidelines that specify that prosecutors must be capable of understanding the language in which the trial is taking place when it is a minority language.

Ms. Joyce Murray: Is that not a leading statement?

Mr. Robert Doyle: It can be to an extent but each prosecutor must declare themselves incapable if that is the case.

When we are hiring, and this is the case elsewhere in provincial services, obviously we make sure, through competitions and interviews, that the candidates are able to oversee a trial in French.

The problem isn't with the hiring but with what comes afterwards. Often, 18 months can go by without these judges overseeing a trial in French and then all of a sudden they have to do that. That was the case in British Columbia, for example. That is when the Access to Justice in Both Official Languages Support Fund becomes very useful, through the programs that Mr. Francoeur referred, to that are offered in Winnipeg and Toronto. We call upon these two schools to provide more training to those prosecutors that require a refresher course in French because they have not overseen a trial in that language in a very long time.

Furthermore, there are exchange services between provinces as well as between provinces and the federal government that provide these individuals with the opportunity to do internships in Quebec, for example, and to have the opportunity to oversee trials in French for a month. When they get back to their own province, they are able to work in that language comfortably.

[*English*]

The Chair: Thank you very much for those questions and answers.

Our next questioner, from the Conservative Party, is Mr. Wilks.

Mr. David Wilks (Kootenay—Columbia, CPC): Thank you, Mr. Chair.

I'm just curious with regard to section 20 of the charter. To lead a little bit further on what Monsieur Goguen had to say, section 20 says:

> Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French....

The provincial courts within the provinces of British Columbia and Alberta are not under the head of Parliament, so there's no mandate for them. Would section 20 supercede subsection 530(1)?

Ms. Renée Soublière: Actually, we're talking about two different spheres of activity. Section 20 of the charter, you're absolutely right, covers federal institutions. We have case law. Some accused have attempted that argument. I think it was in Nova Scotia where the accused was saying, I have a right under section 20 to a judge. The case law is very clear. Section 20 does not apply. Section 20 will apply first to federal institutions and will not cover what's in the judicial sphere. Section 20 is the extrajudicial, administrative sphere, if you like.

The case law in Nova Scotia, to come back to it, has concluded that provincial courts are not federal institutions covered by section 20 of the charter.

● (1625)

Mr. David Wilks: I have one more question.

The Chair: You have time.

Mr. David Wilks: Thank you.

With regard to interpretation, the criminal code says interpretation will be provided in a preliminary hearing and trial on manuscript. Does it also require interpretation at present so that each of the accused and the witnesses will hear interpretation in real time? It doesn't seem to say that. It seems to say that it will be done by providing documents to legal counsel and/or the witness and/or the accused, but not heard in real time.

Ms. Renée Soublière: If we look at the provisions, it's paragraph 530.1(f), "the court shall make interpreters available", etc. My understanding is that, say, we're conducting a trial in the French language, the accused has asked for a trial in French, and there's a witness, an anglophone, who has a right under paragraph 530.1(c) to testify in his official language, he will do so. The accused can then ask for, and the court will have to provide, interpreters for the accused so that he can hear the live translation of what that witness is saying.

Mr. David Wilks: Okay.

There just seems to be a little conflict between (f) and (g).

Ms. Renée Soublière: Well, (g) deals with the record of proceedings. So, when there is translation it will have to be part of the record of proceedings.

Mr. David Wilks: Okay, thank you.

The Chair: Thank you for those answers.

Mr. Marston from the NDP, you're next.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Thank you, Mr. Chair.

I'm going to go a little further on one point that Mr. Mai started on.

The demographics of our country are starting to change. I was struck by the irony that in Canada's first couple of centuries we had exploration by francophones that took them to the Saskatchewan-Manitoba area. The oil sands are now taking francophones further west, which brings the series of problems we're talking about to areas that have not traditionally had to deal with them.

I'll go back to Mr. Mai's questions about the statistics. Mr. Doyle, you spoke about some of the barriers to prosecution, to expediency, and a number of quite legitimate reasons I suspect, on the part of the accused—

The Chair: Mr. Marston, I'm going to have to interrupt you. I'm sorry.

The bells are now ringing. It's a half-hour bell. The rules are that we need the unanimous consent of the committee to proceed through the bells. I only have Mr. Marston left as a speaker, just so people know.

We can finish with Mr. Marston's five minutes, and then call it a day, or whatever you'd like to do.

Mr. Blaine Calkins (Wetaskiwin, CPC): Mr. Chair, may I be added to the speakers list, please?

The Chair: Now we have two speakers, Mr. Calkins is on there.

I have to adjourn the meeting unless somebody moves to extend past the bells.

Mr. Mai has so moved. Do I have unanimous consent for another fifteen minutes?

Some hon. members: Agreed.

The Chair: That's very good.

Mr. Marston.

Mr. Wayne Marston: Everybody is so nice.

My concern is that when you were asked about the statistics, and that we'd have to go to the provinces to garner them, are we pulling up short on this by not keeping our own statistics, or is that such an onerous task that maybe it.... It strikes me that if we're going to address the changes that may still potentially be out there, we'd need statistics to prove it.

Mr. Robert Doyle: The problem is that in this federation nobody counts a case the same way.

Prosecutors will say that a case is against one individual, no matter how many charges. The police, for their own reasons, are going to say there is a case for each charge. Court administrators are going to go somewhere in between, or one or the other. Prosecutors are pretty much united on that, but we regularly meet at the federal and provincial levels and we get along.

The police—municipal, provincial, or RCMP as municipal in contract provinces—have different perspectives on things and count things differently. Often it's just a matter of getting resources. It's better for them if they put it one way, rather than the other. The court administrators work the same way as well.

It's something that has bedevilled the federal organization that compiles court statistics. They use the numbers that are provided, but they are very unreliable because of that. The police can say there are 9,000 cases in Ottawa, but provincial and federal crown are going to say there are only 60 or 600 or whatever.

● (1630)

Ms. Renée Soublière: They may be unreliable because of another point, which my colleague mentioned in his speaking notes. In New Brunswick, and maybe in some regions of Ontario, the trials will happen in the minority language without a formal order under section 530.

Mr. Wayne Marston: That's exactly where I was going to go next.

I was born and raised in New Brunswick. I see there is an exception in here, and there is section 531 for the change of venue.

Ms. Renée Soublière: Yes.

Mr. Wayne Marston: The question becomes pretty obvious. Why would there be an exception for New Brunswick?

That anglophone-francophone relationship has existed in New Brunswick for a long time, longer than in some of the other provinces. Why not make use of a travelling court instead? Particularly in a province as small as New Brunswick. Maybe this already has a natural life of its own. They do that in the northern regions, and it strikes me as something worth considering.

Ms. Renée Soublière: I think they're doing it in Manitoba as well. But the exclusion of New Brunswick in that provision was actually added by the Senate when it studied Bill C-13 in 2008. It doesn't change the substance of the provision. It simply recognizes, as you correctly point out, that New Brunswick courts are institutionally bilingual, and so they're—

Mr. Wayne Marston: More at home with it already, possibly.

Ms. Renée Soublière: Exactly.

Mr. Robert Doyle: Every judicial district in New Brunswick has bilingual judges and prosecutors, both federal and provincial, so it's not an issue.

Ms. Renée Soublière: A change of venue is never necessary.

Mr. Robert Doyle: There should not be a need for it.

Mr. Wayne Marston: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Marston.

Our next questioner is Mr. Calkins, from the Conservative party.

Mr. Blaine Calkins: Thank you, Chair.

Thank you to our witnesses.

I'm an Alberta member of Parliament. Back in about 2007 or 2008, a chap by the name of Mr. Caron got a traffic ticket in the province of Alberta. While this was neither federal jurisdiction or a federal court, it did end up in the Supreme Court of Canada, I believe.

I'm seeking some clarification here. Things don't seem to be adding up between what's actually happening on the ground and what is being said here, unless I'm misunderstanding what I've heard. The news reports I've seen indicate that his right to have his trial, or whatever it was, in French...even though Alberta has declared itself an anglophone province. That goes back, I believe, to decisions that were made in 1988 or something like that.

I'm seeking some clarification here because I'm a little confused. The cost to Alberta taxpayers, and all taxpayers, for that matter, to try to duplicate two complete judicial systems, would require basically all front-line law enforcement officers to be bilingual in a province where the overwhelming majority would not be bilingual. I'm wondering what some of the long-term ramifications would be of what appears to be a pathway the judicial system is going down, even at the provincial level.

Is there something I'm misunderstanding about the federal bilingual rights as outlined in the charter being confused with the provincial application of justice?

Ms. Renée Soublière: I can start with Caron. The Caron case did make its way to the Supreme Court on the issue of interim costs that Mr. Caron was seeking.

His trial was—

● (1635)

Mr. Blaine Calkins: I think he got $120,000 for his costs.

Ms. Renée Soublière: Okay.

But I think Monsieur Caron's appeal was heard before the Court of Appeal of Alberta just a few weeks ago. The court reserved judgment, so we're waiting for the decision.

Mr. Blaine Calkins: We're waiting to find out.

Ms. Renée Soublière: Yes, exactly.

We're waiting to find out whether all Alberta laws will be declared invalid, because that's what Mr. Caron is arguing.

Mr. Blaine Calkins: Oh, that would be interesting.

Ms. Renée Soublière: The Attorney General of Canada is not a party to those proceedings.

Mr. Blaine Calkins: The ramifications would be wide-sweeping. If it held up in Alberta, it would set a precedent that would be national in scope.

Ms. Renée Soublière: I agree.

Mr. Blaine Calkins: I guess we'll just have to wait and see. It's an interesting case, to be sure. When this issue came up, I thought I would at least ask about it.

If you can't provide this committee with any further insights, I would welcome hearing from any of the others who might want to comment on what those ramifications might be, should Mr. Caron be successful.

Mr. Robert Doyle: In terms of court resources, I don't think there would be much difference. Alberta already has more bilingual judges and prosecutors than it needs, both federal and provincial prosecutors, and it's the same with judges. That's why they have to keep going back for training in French. There are not enough trials in that language and their French language skills sort of get lost because they work in English—

Mr. Blaine Calkins: Almost exclusively.

Mr. Robert Doyle: Yes, almost exclusively.

So it would all depend if the request is to have legislation...or stuff like that. Obviously I'd be speculating, so I can't really say. But in terms of the resources on the ground, I don't think it would make much of a difference.

The Chair: Anybody else?

Ms. Renée Soublière: The impact would clearly be on the provincial legislator.

If Monsieur Caron is successful in his legal challenge, then you're absolutely right. We would be faced with a situation similar to the one we faced following the Supreme Court of Canada decision in R. v. Mercure in 1988, and all of Alberta's laws would be declared invalid. The Supreme Court, in 1998, provided the province with a timeframe and invoked rule of law to keep the laws that were in force and to allow for their translation.

Mr. Blaine Calkins: What if there would be retroactivity applied to that decision, and the whole of Alberta's law since 1905 would be invalid? That would be quite the conundrum.

Ms. Renée Soublière: One thing I want to point out is that Monsieur Caron's trial was not a trial under the Criminal Code provisions. So we weren't under—

Mr. Blaine Calkins: No. I understand. It was a traffic ticket.

Ms. Renée Soublière: Exactly. It was a traffic ticket.

Mr. Blaine Calkins: Thanks.

The Chair: That is five minutes now. Thank you very much.

Just so committee knows, the Wednesday meeting will be a subcommittee on agenda, in the same timeframe it normally is. It's not a full committee, it will be a subcommittee.

Mr. Blaine Calkins: Why a subcommittee, Mr. Chair?

This is wonderful news, Mr. Chair.

The Chair: Okay, there you go.

Mr. Wayne Marston: I agree with you on this news.

The Chair: That's what's happening.

Mr. Mai, you have a couple of minutes, and then we have to adjourn.

[*Translation*]

Mr. Hoang Mai: Ms. Soublière, you mentioned the Beaulac case heard by the Supreme Court. It established certain criteria. Could you tell us about them and tell us whether they have been applied properly since then?

Ms. Renée Soublière: The ruling in the Beaulac case was specifically on section 530(4) of the Criminal Code. Mr. Beaulac had not made his application within the timeframe set out by the Criminal Code. The judge was required to determine whether the best interests of justice would be served by ordering that a trial be held for Mr. Beaulac in French. All of Mr. Beaulac's applications were dismissed, in large part because the court deemed his English skills to be quite good.

In this case, the Supreme Court ruled that an accused's knowledge of the other official language was completely irrelevant because sections 530 and 530.1 of the Criminal Code are not aimed at the principles of fundamental justice, but rather at language rights, which have a very different purpose and origin. They are two different things. One deals with language rights while the other deals with the principles of fundamental justice.

You are therefore correct. The Supreme Court established criteria that apply when the application is not made in a timely manner. In particular, the court stated that an accused's ability to speak the other official language and administrative inconveniences are irrelevant. In other words, the availability of a judge or court stenographers should not be considered.

● (1640)

Mr. Hoang Mai: My question is for Mr. Francoeur and Mr. Doyle.

In practice, do the provinces really meet these criteria?

Ms. Renée Soublière: Robert can add to what I will say, but I believe that since the Supreme Court's ruling in the Beaulac case, the provinces and territories have taken the measures required to meet the needs of applications for trials in the minority language.

Mr. Robert Doyle: I have nothing to add.

Mr. Hoang Mai: You will recall that there was a huge controversy surrounding the appointment of a unilingual justice to the Supreme Court.

You said that, in practice, there is no problem with justices being bilingual and being able to hear cases in one language or the other. You do not believe that we are missing justices who can hear cases in both languages.

Mr. Robert Doyle: No. In fact, available judges are under-employed. The same goes for prosecution services and crown attorneys.

Mr. Hoang Mai: And these judges are competent enough to be appointed justices at the Supreme Court.

Mr. Robert Doyle: Yes. The Canadian Association of Provincial Court Judges and the National Judicial Institute provide training. In addition, provincial selection committees and the federal judicial selection committee must respect very specific and rigorous criteria. When a position of judge is announced, it is announced as being either bilingual or not. If so, candidates must meet very rigorous and specific criteria.

Mr. Hoang Mai: Do you have any comments?

[*English*]

The Chair: Thank you very much. Thank you to our guests for coming back again.

We will be doing this study likely further in the fall, so you may get called back again.

I'm going to adjourn the meeting. We won't be coming back after the votes, because by the time votes are done there will be less than 15 minutes left.

With that, we'll adjourn for today. Thank you very much.