



# CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL CROWN COUNSEL POLICY MANUAL

ARCS/ORCS FILE NUMBER: <b>56320-00</b>	EFFECTIVE DATE: <b>November 18, 2005</b>	POLICY CODE: <b>FRE 1</b>
SUBJECT: <b>French Trials and Bilingual Trials</b>		CROSS-REFERENCE:

## POLICY

The Criminal Justice Branch recognizes the right to a French language trial or a bilingual trial under sections 530 to 533 of the *Criminal Code*. It is nearly always in the best interests of justice for an accused to be tried under the *Criminal Code* in the official language of Canada that is the language of the accused.

A denial of an application for a French language trial or a bilingual trial will be the exception, and any decision to oppose an application for such a trial should be made by Regional or Deputy Regional Crown Counsel in consultation with the Director, Legal Operations.

## DISCUSSION

In R. v. Beaulac 1999 1 S.C.R. 768, the Supreme Court of Canada held as follows:

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

## PROCEDURE

### 1. Under section 530 the Court can order either a French trial or a bilingual trial

In a bilingual trial, the questions are posed and answered in the official language of the witness. By contrast, in a French trial, all questions of an Anglophone witness are posed in French and translated out loud to the witness, with the response translated into French.

Therefore, where the majority of Crown witnesses are Anglophones, Crown Counsel should request a bilingual trial. Such an order will permit witnesses to be examined in English rather than through an interpreter.

### 2. Mandatory order under section 530(1)

Where the accused makes an application for a French trial or a bilingual trial within the time limits provided by section 530(1), the granting of the order is mandatory.

Section 530(2) provides that where the language of the accused is not one of the official languages of Canada, the accused may apply for a trial before a trier of fact who speaks the official language of Canada in which the accused can best give testimony, or if the circumstances warrant, before trier of fact who speaks both official languages of Canada.

### 3. Discretionary order under section 530(4)

Section 530(4) provides that where an accused fails to apply within the time required under (1) for a mandatory order, the trial judge may, if satisfied that it is in the best interests of justice, make an order for either a French trial or a bilingual trial.

### 4. Where the court has made an order – first appearance/election

When an accused person is granted a French or bilingual trial, Crown Counsel should request that the presiding Provincial Court judge adjourn the matter for approximately three weeks in order to fix a date for trial.

Crown Counsel should contact the Director, Legal Operations in order to coordinate the assignment of a bilingual prosecutor and the fixing of a hearing date.

The assigned bilingual Crown Counsel will contact the local Crown Counsel office and arrange to have the appropriate CCFM documents filed.

The assigned bilingual Crown Counsel will then contact the local Judicial Case Manager to arrange for the scheduling of a trial date.

5. Fix Date

At the accused's next appearance, local Crown Counsel will attend for the setting of a trial date.

6. Interim Appearance

An interim appearance date in the originating jurisdiction should be set one week before the trial date to confirm the matter is proceeding, as Crown Counsel and court staff may be traveling from other parts of the province to attend on the trial date.

7. File Transfer

As soon as an order is made under section 530, the local Crown Counsel office should send the file to the Director, Legal Operations and keep a copy of the file.

8. Translation

In the interest of ensuring a fair trial, there may be a need to have certain key documents translated (e.g. complainants' or witnesses' statements) as part of the disclosure process. The Director, Legal Operations should be consulted prior to any decision on this point.

Location of Hearings

Jury Trial

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

Preliminary Inquiries and Non-Jury Trials (both Provincial and Supreme Court

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

Notification of Witnesses

Notification of witnesses is the responsibility of the Crown Counsel office at the originating location.

### Change of Venue

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

### Other Proceedings Under the *Criminal Code* and Trials Involving Provincial Statute Offences

Crown Counsel take a practical approach to the availability of French and bilingual hearings in proceedings which are not trials under the *Criminal Code*. Where the court indicates that such a hearing is in the best interests of justice, a bilingual prosecutor will be assigned. Examples of such situations may include Informations charging both *Criminal Code* and provincial statute offences (e.g. *Motor Vehicle Act*) and applications under section 745.6 of the *Criminal Code* for a reduction in the period of parole ineligibility on a life sentence. The Director, Legal Operations should be consulted prior to any decision on this point.