

Action No.: A35680131R  
E-File No.: RCP15COUTUREJ  
Appeal No.: \_\_\_\_\_

IN THE PROVINCIAL COURT OF ALBERTA  
JUDICIAL CENTRE OF RED DEER

HER MAJESTY THE QUEEN

v.

JOEY J C G COUTURE

Accused

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P R O C E E D I N G S

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Red Deer, Alberta  
November 17, 2015

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1 Proceedings taken in the Provincial Court of Alberta, Courthouse, Red Deer, Alberta

2 \_\_\_\_\_  
3 November 17, 2015 Afternoon Session

4  
5 Traffic Commissioner Gorsalitz Justice of the Peace in the Provincial Court of  
6 Alberta

7  
8 S. Funk For the Crown  
9 G. Levesque For the Accused  
10 R. Sceviour Court Clerk

11 \_\_\_\_\_  
12  
13 MR. FUNK: From the trial docket, surname Couture, first  
14 name Joey.

15  
16 **Discussion**

17  
18 MR. LEVESQUE: Good afternoon, Your Honour. My name is  
19 Gerard Levesque, L-E-V-E-S-Q-U-E. I am counsel for Joey Couture and today I am here  
20 to present a request under section 3 of regulation 158/2013, that's the languages of the  
21 court regulation under the *Languages Act*, that says if a litigant wants to use French or  
22 both language, both official languages, there is a -- a need to make a request now. Before  
23 that regulation we just need to go and ask for a bilingual judge at the counter but now we  
24 have to make a motion -- a -- a request and if it's consented by the Crown then it can  
25 be --

26  
27 THE COMMISSIONER: We --

28  
29 MR. LEVESQUE: -- dealt with.

30  
31 THE COMMISSIONER: We order interpreters all the time but we  
32 usually do it prior to the trial date.

33  
34 MR. LEVESQUE: Well, that is when it's not accepted that will be  
35 the procedure.

36  
37 I have a copy, if you want, of regulation, here, one fifty --

38  
39 THE COMMISSIONER: Can I see that here, please.

40  
41 MR. LEVESQUE: -- 158. It's the languages in court regulation.

1 And at paragraph 3, it says:

2

3 A judge may, at the request of a defendant and with the consent of  
4 a prosecutor, conduct a proceeding in French.

5

6 And this is only for traffic court.

7

8 So before that, the judge had the authority to decide but, unfortunately, now that authority  
9 has been taken out of the realm of the judge to be given --

10

11 THE COMMISSIONER: I believe there is a --

12

13 MR. LEVESQUE: -- to the prosecutor.

14

15 THE COMMISSIONER: You are wanting a French-speaking  
16 commissioner or do you just want an interpreter?

17

18 MR. LEVESQUE: No, we have -- we have now in Alberta  
19 bilingual commissioner and they can proceed -- they can conduct in English, in French or  
20 in both languages, but it's no longer their decision. Since this regulation there's a need  
21 for the Crown to consent and if the Crown doesn't consent then it will proceed by  
22 interpretation.

23

24 It's the same if my client would have -- would have want -- want to use both languages,  
25 section 4 says a judge --

26

27 THE COMMISSIONER: I believe there was a Queen's Bench decision  
28 on this particular point.

29

30 MR. LEVESQUE: The matter is in Queen's Bench, yes --

31

32 THE COMMISSIONER: No, no, I -- there was a Queen's Bench  
33 decision on whether a traffic court trial could be conducted in French.

34

35 MR. LEVESQUE: You're probably referencing to the decision --  
36 decision of *Caron* by Justice Eidsvik.

37

38 THE COMMISSIONER: That might be it.

39

40 MR. LEVESQUE: By coincidence, Justice Eidsvik is seize of a  
41 proceeding involving Mr. Joey and five -- Couture, this client of today, with five others

1 who are contesting the validity of this regulation that I just quote because --

2

3 THE COMMISSIONER: Well, if you are saying it is a *Charter* issue, I  
4 do not have jurisdiction to deal with that.

5

6 MR. LEVESQUE: Well, that's why I -- after deciding the first  
7 request on the language, my second request would be to adjourn a few months to let the  
8 Queen's Bench decision take place on the validity of regulation 158/2013. And I gave  
9 my friend a copy of the finding in Queen's Bench and Justice Eidsvik is seized of the  
10 matter. She has already conducted a hearing in May and a phone conference between  
11 counsel, also, in September. The filing of the affidavits would be finished this month and  
12 the constitutional law section of the ministry is reserving their right to proceed to  
13 interrogation.

14

15 THE COMMISSIONER: All right. Why are you making this application  
16 on the trial date when this matter was first in this court on August 12th?

17

18 MR. LEVESQUE: Well, when I came on August 12 it was agreed  
19 with the Crown that today will be the date where I will present the request to the Court to  
20 see if it will be decided that it will proceed in French, but like I mention, in -- the  
21 regulation now make it so that the -- the consent of -- of the prosecutor is needed. So  
22 there is a -- a need for the Crown to say yes or no and then we'll -- we can go to the next  
23 step and decide that the matter could go in a few months as a matter to be spoken to, and  
24 I will be at that time reporting on the status of the file in Queen's Bench.

25

26 MR. FUNK: Sir, I have no problems with consenting.

27

28 THE COMMISSIONER: Well, I have no idea who the French-speaking  
29 commissioner is.

30

31 MR. LEVESQUE: Are -- are you, over here, under the jurisdiction  
32 of Calgary or Edmonton?

33

34 THE COMMISSIONER: Red Deer.

35

36 MR. LEVESQUE: Yeah, but there's a regional service. When  
37 there is no bilingual capacity in an area, the judges or the traffic commissioners or justices  
38 of the peace --

39

40 THE COMMISSIONER: Well, you said there is a bilingual  
41 commissioner, where are they?

- 1
- 2 MR. LEVESQUE: Well, I know one.
- 3
- 4 THE COMMISSIONER: Where?
- 5
- 6 MR. LEVESQUE: Schwager, in -- in Calgary. And in Airdrie, I  
7 have been told by a traffic commissioner there is at least two -- two more justices of the  
8 peace. And when there is none, then it could be, like it was before, a justice of the  
9 criminal court can be assigned. I --
- 10
- 11 THE COMMISSIONER: So you are saying this regulation is subsequent  
12 to the decision of *Caron*?
- 13
- 14 MR. LEVESQUE: Yes, *Caron* is a while ago and, in fact, the final  
15 step is this Friday in the Supreme Court of Canada. And *Caron* was not deciding section  
16 4 of the *Languages Act*, which is the use of languages in front of the court, it's only  
17 whether the Alberta law could be in French. That's a right that has been taken out in  
18 1988 and the Supreme Court will just have to answer whether Alberta had the unilateral  
19 right to take this right to --
- 20
- 21 THE COMMISSIONER: And when is the Supreme Court of Canada  
22 hearing that?
- 23
- 24 MR. LEVESQUE: It is deciding on *Caron*, constitutional section 3  
25 of the --
- 26
- 27 THE COMMISSIONER: When?
- 28
- 29 MR. LEVESQUE: -- *Language Act* -- this Friday --
- 30
- 31 THE COMMISSIONER: This Friday.
- 32
- 33 MR. LEVESQUE: -- at 10 -- 10:00.
- 34
- 35 THE COMMISSIONER: And they probably will not render their decision  
36 for how long?
- 37
- 38 MR. LEVESQUE: No, no, the decision is now -- that's the  
39 decision on Friday.
- 40
- 41 THE COMMISSIONER: Oh, so that -- they are not presenting then, that

1 is when the decision --

2

3 MR. LEVESQUE: No, it has --

4

5 THE COMMISSIONER: -- will come down.

6

7 MR. LEVESQUE: -- been argued last February. But that's only  
8 the law, where it has to be in both languages. This matter is under another section of the  
9 *Languages Act* of Alberta, section 4, which says that everybody in Alberta can use French  
10 or English orally.

11

12 THE COMMISSIONER: Do you have the *Caron* decision with you?

13

14 MR. LEVESQUE: If I have what?

15

16 THE COMMISSIONER: Do you have the *Caron* decision with you?

17

18 MR. LEVESQUE: Not the decision. I can e-mail to -- to you and  
19 to Crown, if you want. The decision of -- there is many decision. The one pertinent to  
20 this case, the Crown has not appeal it. It's Justice -- it's Judge Anne Brown, March,  
21 2011. After four days of hearing where the Crown took the position that there's no right  
22 to be understood in French in court -- in traffic court, that it's a right to interpretation,  
23 Justice -- Judge Anne Brown wrote in both languages. And I can e-mail to the Crown the  
24 text of her decision that it would be hollow indeed if the right to use one of the two  
25 languages specifically authorized --

26

27 THE COMMISSIONER: You do not need to make that argument here,  
28 sir.

29

30 MR. LEVESQUE: Okay.

31

32 THE COMMISSIONER: I cannot --

33

34 MR. LEVESQUE: But I -- I can --

35

36 THE COMMISSIONER: I cannot make that decision.

37

38 MR. LEVESQUE: -- I can e-mail that decision. And I can e-mail  
39 also the decision of -- of the court --

40

41 THE COMMISSIONER: Well, just -- you come before the traffic

1 commissioner today and I have --

2

3 MR. LEVESQUE: Yeah.

4

5 THE COMMISSIONER: -- no notice from you in terms of this  
6 application. There is no pleadings filed with the court that I have seen, other than the  
7 ticket, sir.

8

9 MR. LEVESQUE: Well, it was filed when we came --

10

11 THE COMMISSIONER: Did you file it with the Provincial Court so that  
12 I would have a copy of it?

13

14 MR. LEVESQUE: Well, it was given to the Crown --

15

16 THE COMMISSIONER: Can you answer my question, please, did you  
17 file it with the court?

18

19 MR. LEVESQUE: No.

20

21 THE COMMISSIONER: Do you have any other materials on it?

22

23 MR. LEVESQUE: Well, it -- it -- it was file with the Crown.

24

25 THE COMMISSIONER: Did you file it with the court, sir?

26

27 MR. LEVESQUE: Well, I thought that the Crown would have  
28 mentioned it to -- to -- to the court.

29

30 THE COMMISSIONER: Well, it is your application, it is not for them to  
31 submit your documents to the court.

32

33 MR. LEVESQUE: No, no, but it's for them to say yay or no  
34 because they have the full power. It's no longer in the hands of the -- unfortunately, of  
35 the court.

36

37 THE COMMISSIONER: But you cannot come before a commissioner  
38 with no notice asking for this type of a ruling.

39

40 MR. LEVESQUE: Well, the rul --

41



- 1 THE COMMISSIONER: In what court would that be allowed, sir?  
2
- 3 MR. LEVESQUE: -- the ruling will just decide whether it --  
4
- 5 THE COMMISSIONER: In what court would --  
6
- 7 MR. LEVESQUE: -- will be in French.  
8
- 9 THE COMMISSIONER: -- that be allowed, where you can just walk in  
10 and make an application without any notice to the court?  
11
- 12 MR. LEVESQUE: Well, that's how it -- it's been set. Before that  
13 we used to go to the counter and ask for it, now we have to go and -- and seek a date to  
14 present the -- the request and the Crown has to say what -- what they think about it.  
15
- 16 THE COMMISSIONER: Okay. I am going to adjourn this matter and  
17 we will see what happens, but -- we will adjourn it until February 22nd, at 9:30.  
18
- 19 MR. LEVESQUE: Pardon me?  
20
- 21 THE COMMISSIONER: And if you have any materials that you want to  
22 submit to this hearing or to the -- to this court, then you need to submit them prior to that  
23 date --  
24
- 25 MR. LEVESQUE: Can you --  
26
- 27 THE COMMISSIONER: -- so that the commissioner --  
28
- 29 MR. LEVESQUE: -- repeat the --  
30
- 31 THE COMMISSIONER: -- will have an opportunity to review whatever  
32 it is you want to submit in terms of making that application. If it is resolved by then  
33 without recourse to an application to this court, that is fine.  
34
- 35 MR. LEVESQUE: Resolved by whom?  
36
- 37 THE COMMISSIONER: Well, if it is resolved between the two of you  
38 and --  
39
- 40 MR. LEVESQUE: Okay.  
41

1 THE COMMISSIONER: -- the decision from the Supreme Court of  
2 Canada, it may be --  
3  
4 MR. LEVESQUE: Okay.  
5  
6 THE COMMISSIONER: -- a moot point to make an application to me.  
7  
8 MR. LEVESQUE: Well -- well, no, the -- the Supreme Court  
9 decision --  
10  
11 THE COMMISSIONER: Do not -- I have no idea what they are going to  
12 say, sir, because --  
13  
14 MR. LEVESQUE: Okay.  
15  
16 THE COMMISSIONER: -- it has not been rendered yet.  
17  
18 MR. LEVESQUE: Okay. Which date are you suggesting? I -- I  
19 want to be --  
20  
21 THE COMMISSIONER: February 22nd.  
22  
23 MR. LEVESQUE: The 22nd of February. Can I have a second  
24 here to see if I am in Alberta?  
25  
26 That's -- yes. That's a Monday?  
27  
28 THE COMMISSIONER: Yes.  
29  
30 MR. LEVESQUE: At what time?  
31  
32 THE COMMISSIONER: Nine thirty in the morning.  
33  
34 Now, if it is a situation, sir, where you are making some kind of a *Charter* argument, you  
35 cannot go before this court.  
36  
37 MR. LEVESQUE: Not here, no. The *Charter* argument, I gave  
38 you a copy, that's for Queen's Bench. No, it's just to say -- to -- to present a -- what is  
39 asked by the regulation.  
40  
41 THE COMMISSIONER: All right. So if you have any materials you

1 want to submit to the court, you have to do it I would say at least by the 15th of  
2 February --

3

4 MR. LEVESQUE: Okay.

5

6 THE COMMISSIONER: -- with similar service on the Crown.

7

8 MR. LEVESQUE: Yeah. Well, they have it since --

9

10 THE COMMISSIONER: I do not know.

11

12 MR. LEVESQUE: -- August and now I gave an extra copy --  
13 another document today.

14

15 And I'll just ask the name of my colleague so that I'll know which colleague to send a  
16 copy of what I'll be filing.

17

18 (NO AUDIBLE RESPONSE)

19

20 MR. LEVESQUE: Okay. Thank you very much.

21

22 THE COURT CLERK: So that will just be to speak to on that date?

23

24 THE COMMISSIONER: Yes.

25

26

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27 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, FEBRUARY 22, 2016

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2

3 I, Roxanne Sceviour, certify that this recording is the record made of the evidence in  
4 proceedings in Provincial Court, held in courtroom 001, at the Red Deer Lodge, Red  
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