

Action No.: A97321140Z  
E-File No.: CCP14MCGUIREX  
Appeal No.: \_\_\_\_\_

IN THE PROVINCIAL COURT OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.

XAVIER MCGUIRE

Accused

---

P R O C E E D I N G S

---

Airdrie, Alberta  
January 14, 2014

Transcript Management Services, Calgary  
Suite 1901-N, 601-5th Street SW  
Calgary, Alberta T2P 5P7  
Phone: (403) 297-7392 Fax: (403) 297-7034

TABLE OF CONTENTS

Description	Page
January 14, 2014 Morning Session	1
Reasons for Judgment	2
Certificate of Record	9
Certificate of Transcript	10

1 Proceedings taken in the Provincial Court of Alberta, Courthouse, Airdrie, Alberta

2 \_\_\_\_\_  
3 January 14, 2014 Morning Session

4  
5 Commissioner Taylor A Justice of the Peace in the Province of  
6 Alberta

7  
8 D. Burroughs For the Crown  
9 G. Levesque For the Accused  
10 T. Squires Court Clerk

11 \_\_\_\_\_  
12  
13 THE COURT CLERK: Page 23, McGuire, Xavier McGuire. The matter  
14 is here to speak to a decision regarding French trial, Ma'am.

15  
16 THE COMMISSIONER: Good morning, Mr. Levesque.

17  
18 MR. LEVESQUE: Good morning, Your Honour.

19  
20 THE COMMISSIONER: If you don't mind, we'll proceed with this  
21 process in English, if that's okay with you.

22  
23 MR. LEVESQUE: No problem.

24  
25 THE COMMISSIONER: Thank you very much.

26  
27 THE COURT CLERK: There's a French interpreter present, Ma'am.

28  
29 THE COMMISSIONER: Thank you. And I don't think we'll be requiring  
30 the French interpreter today, but thank you very much for your assistance. Unless  
31 Mr. Levesque requires anything.

32  
33 MR. LEVESQUE: No, but there might be --

34  
35 THE COMMISSIONER: Is Mr. McGuire here?

36  
37 MR. LEVESQUE: There might be -- he cannot be. He's in Red  
38 Deer and cannot be here today, but --

39  
40 THE COMMISSIONER: Okay.

41

1 MR. LEVESQUE: -- there might be two friends, and if they come  
2 maybe the translator could whisper --

3  
4 THE COMMISSIONER: Sure.

5  
6 MR. LEVESQUE: -- the translation to them.

7  
8 THE COMMISSIONER: And where would they be? Are they not in the  
9 courtroom or . . .

10  
11 MR. LEVESQUE: I'll just check.

12  
13 THE COMMISSIONER: It's not a lengthy decision, just so you know.

14  
15 Madam Interpreter, perhaps if you could just go over there by the door --

16  
17 THE INTERPRETER: Yeah.

18  
19 THE COMMISSIONER: And then -- with the two individuals to  
20 interpret. And then it won't be an interruption. Are you okay with simultaneous  
21 interpretation? Thank you. I'll try to speak slowly. It's not my forte.

22  
23 **Reasons for Judgment**

24  
25 THE COMMISSIONER: All right. This is my decision in an application  
26 which came before me on October 22nd, 2013. The application for dismissal -- was for  
27 dismissal of this charge on the basis that Mr. McGuire's language rights had been  
28 infringed.

29  
30 So, my understanding of the history is that first of all this came to Airdrie Provincial  
31 Court on September 10th, 2013 before Commissioner McKay. At that time Mr. Melendy  
32 was acting on behalf of the Crown and Mr. Levesque represented Mr. McGuire. I have a  
33 transcript of that proceeding and in my view it's clear that Mr. Levesque made an  
34 application for the trial of this matter to be held in French.

35  
36 The result, unfortunately, was very confusing. The matter was transferred to Calgary and  
37 the purpose for it being transferred was unclear to Judge Brown, who was receiving the  
38 matter.

39  
40 Now, in regard to the translation of the transcript, Mr. Levesque, I advised you on last  
41 date that I would do my best to have it translated. However, that proved to be cost -- cost

1 prohibitive. So, I spoke with the Deputy Chief Judge for advice and then contacted Judge  
2 Brown. Her advice to me was that she was in a position to speak on this matter because  
3 of the nature of the application before her, so I met with her and she was able to  
4 summarize what occurred.

5  
6 My understanding of what occurred is that she had already been assigned to conduct a  
7 French trial on a matter where you were counsel and that's why it went to Calgary on that  
8 date. But she determined that in order to order a French trial to be conducted, she required  
9 the transcript from September 10th, which she didn't have at that time. That's why it was  
10 returned here for me. Now -- it wasn't for an actual trial on that date.

11  
12 In short, Judge Brown -- Judge Brown could do nothing because she didn't have that  
13 transcript and the process was sent back.

14  
15 So, in Ann Brown's opinion, or Judge Brown's opinion, there is no reason why a French  
16 trial cannot occur in Airdrie. So, for those of us who have been accustomed to sending  
17 things back to Calgary for a French trial, she holds the view - and I'm not sure about the  
18 rest of the court, but certainly Judge Brown, who is one of our French judges - believes  
19 that there's no reason why they can't occur in Airdrie as long as the other arrangements  
20 are made for Crown and/or clerk in French.

21  
22 So, it seems to me that the language availability is opening up, and I say that as an aside,  
23 Mr. Levesque, because I know that you're concerned that language rights aren't being  
24 respected in this province.

25  
26 Now, in my view the entire matter was confused as a result of the lack of clarity in  
27 process. Now, this was remedied on September 6th, so just four days prior to this matter  
28 coming before Commission McKay is when the regulation was enacted, being regulation  
29 158/2013 by Order in Council.

30  
31 So, the key issue before me is whether or not the Crown consented. Now, I know,  
32 Mr. Burroughs, your position was that there was no consent, and I do note that there was  
33 confusion in this application. It's clear from reading the transcript. But nonetheless, in  
34 response to the specific application by Mr. Levesque that this matter be transferred to  
35 Calgary for a French trial, it was in fact transferred to Calgary, which implies, if nothing  
36 else, that there was a decision - although I don't think it was really conscious - there was  
37 a decision that the matter proceed in French.

38  
39 So, in my view, reading the transcript on -- of September 10th, I think that there was  
40 implied consent, although not the precise consent that's required by the regulation. That  
41 being said, I think that this ought to be remedied in the same way that -- that we do with

1 any process matter and that's in favour of the defence.

2

3 So, I am ordering that a French trial is going to occur in this case. I'm not granting the  
4 application for dismissal.

5

6 So, I understand we have two at least bilingual commissioners that are available, three  
7 probably but two for sure. I know that there is a French Provincial Crown available and  
8 there are clerks available. So, I'm directing that this matter be returned to Airdrie for trial  
9 at the next available trial date, which is going to be some difficulty probably for the clerk.

10 So, in absence of having an actual trial date assigned today, my suggestion is that, if you  
11 can't secure a trial date today, you set a date to come back to speak to or the Crown can  
12 send a letter, or the Court can send a letter as they do in cases where there's a not guilty  
13 plea entered by mail. But essentially it's going to be up to the clerks to determine how  
14 this goes.

15

16 So, it will, in my preference, be before a traffic commissioner, but if that's not available  
17 in a timely and efficient manner, there's no reason why it can't be transferred to  
18 Provincial Court before a Provincial Court judge in Criminal Division in Airdrie on  
19 another date.

20

21 All right. Now, are there any questions or concerns in regard to this other than the  
22 scheduling issues? Mr. Burroughs?

23

24 MR. BURROUGHS: Ma'am, I have no concerns. I --

25

26 THE COMMISSIONER: Okay.

27

28 MR. BURROUGHS: I would rather it remain in Airdrie Provincial  
29 Traffic Court.

30

31 THE COMMISSIONER: Yes. So, you'll have to arrange --

32

33 MR. BURROUGHS: Certainly --

34

35 THE COMMISSIONER: -- a translator for your English speaking --

36

37 MR. BURROUGHS: The officer, I know.

38

39 THE COMMISSIONER: -- witnesses.

40

41 MR. BURROUGHS: If this matter -- I think if we all get our ducks

1 in a row we should be able to have this matter return here on January the -- I would hope  
2 the 28th we should be able to at least come to a decision that day as to --

3

4 THE COMMISSIONER: A date or . . .

5

6 MR. BURROUGHS: -- availability.

7

8 THE COMMISSIONER: Can you come back on the 28th?

9

10 MR. LEVESQUE: I am flying to Toronto on that -- on that day,

11 Your Honour.

12

13 THE COMMISSIONER: You definitely go back and forth a lot.

14

15 MR. LEVESQUE: Yes.

16

17 THE COMMISSIONER: You must have a lot of air miles.

18

19 MR. LEVESQUE: I was about to ask the Court for -- that the date

20 will be further down and just to be --

21

22 THE COMMISSIONER: Certainly. And then you can --

23

24 MR. LEVESQUE: -- spoken to, because the -- my client has

25 mandate me to test the validity of the regulation --

26

27 THE COMMISSIONER: Sure.

28

29 MR. LEVESQUE: -- and of the process of non-consent by the

30 Crown.

31

32 THE COMMISSIONER: Okay.

33

34 MR. LEVESQUE: Because in this instance it has been explained

35 that their reason was because of lack of bilingual resources, and that is precisely what the

36 Supreme Court --

37

38 THE COMMISSIONER: Actually -- okay.

39

40 MR. LEVESQUE: -- has decided.

41

1 THE COMMISSIONER: So, Mr. Levesque, I'm going to give you back  
2 the documents you gave me, but I disagree with you there.

3

4 MR. LEVESQUE: Yes.

5

6 THE COMMISSIONER: I think that the -- the reason I'm going to say  
7 this is the time that that arose was subsequent to your application on the date that you  
8 came before me, and Mr. Burroughs was saying that he didn't believe that there was  
9 French commissioners and a French Crown. We've learned subsequent to that that there  
10 are. So, you -- you may -- I'm not stopping you from doing that. You certainly have the  
11 right to do that, but I'm dealing with the application that was made September 10th in my  
12 interpretation of whether or not there was consent.

13

14 MR. LEVESQUE: Yeah.

15

16 THE COMMISSIONER: Just -- just to clarify that for the record.

17

18 MR. LEVESQUE: There will be also another thing in Court of  
19 Queen -- Court of Queen's Bench --

20

21 THE COMMISSIONER: Sure.

22

23 MR. LEVESQUE: -- that stems from the October 22nd hearing.

24

25 THE COMMISSIONER: Okay. So, how long is that going to be before  
26 you have a date for the Queen's Bench matter?

27

28 MR. LEVESQUE: I expect -- I have the first draft. I expect that in  
29 the next few weeks I --

30

31 THE COMMISSIONER: Okay.

32

33 MR. LEVESQUE: -- it should be filed, but I still have to talk to  
34 the Crown because there's constitutional arguments.

35

36 THE COMMISSIONER: Okay.

37

38 MR. LEVESQUE: One of the problems is that when judges like  
39 Ann Brown, when lawyers like me and (INDISCERNIBLE) speak French, it's not always  
40 in the transcript. It's replaced by a sentence saying that we have been using, for instance,  
41 a foreign language. And this is allowed under the provincial manual for judicial transcript



1 and I've been raising that in front of Judge Brown --

2

3 THE COMMISSIONER: Okay. I wasn't aware of that.

4

5 MR. LEVESQUE: -- before and she told me that unfortunately she  
6 doesn't have the power to correct that, I have to go higher. And all will be in the same  
7 application then. So --

8

9 THE COMMISSIONER: So, is it possible for you to speak to this as far  
10 as setting a date for trial? Which could be some time down the road, say sometime in  
11 February or March? It's not -- I expect --

12

13 MR. LEVESQUE: Can it be --

14

15 THE COMMISSIONER: -- the trial date's going to be probably another  
16 year.

17

18 MR. LEVESQUE: Yeah.

19

20 THE COMMISSIONER: Or could be.

21

22 MR. LEVESQUE: So, just to be spoken to, yes, I can --

23

24 THE COMMISSIONER: Yeah, just to set a date for trial.

25

26 MR. LEVESQUE: -- provide that. Yeah. I have my dates here  
27 when I'm in --

28

29 THE COMMISSIONER: When are you available on a Tuesday? And  
30 perhaps you and the Crown can work it out without coming.

31

32 MR. LEVESQUE: March 11.

33

34 THE COMMISSIONER: All right. March 11th then to speak to,  
35 Airdrie --

36

37 MR. LEVESQUE: If the Crown --

38

39 THE COMMISSIONER: -- Provincial Court. And that's specifically  
40 endorsed on the file to set trial date.

41

1 MR. BURROUGHS: It'll be to set a date.

2  
3 THE COMMISSIONER: Right. Thank you.

4  
5 THE COURT CLERK: So, I'm sorry, Ma'am, your order is that a  
6 French trial be held in Airdrie Traffic Court or Airdrie Provincial Court if Airdrie Traffic  
7 Court is not available.

8  
9 THE COMMISSIONER: That's correct.

10  
11 THE COURT CLERK: Okay.

12  
13 THE COMMISSIONER: And to return to set a trial date March 11th,  
14 2014, 9:30, Airdrie. And I'm sure if you can work out an agreement as to trial dates, you  
15 won't have to appear, Mr. Levesque. The Crown can certainly enter that trial date. All  
16 right?

17  
18 MR. LEVESQUE: Thank you.

19  
20 THE COMMISSIONER: Thank you very much. Now, you gave me some  
21 cases. Do you want them back or am I free to keep them?

22  
23 MR. LEVESQUE: Oh, you're free to keep them.

24  
25 THE COMMISSIONER: They're helpful. Thank you.

26  
27 MR. LEVESQUE: No, no problem. I have some  
28 (INDISCERNIBLE). Thank you.

29  
30 THE COMMISSIONER: Thank you, Mr. Levesque.

31  
32 \_\_\_\_\_  
33 PROCEEDINGS ADJOURNED UNTIL 9:30 A.M., MARCH 11, 2014

34 \_\_\_\_\_  
35  
36  
37  
38  
39  
40  
41

**1 Certificate of Record**

2

3 I, Tanny Squires, certify that this recording is the record made of the evidence in  
4 proceedings in the Provincial Court held in courtroom 001 at Airdrie, Alberta on the 14th  
5 day of January, 2014, and that I was the court official in charge of the sound-recording  
6 machine during the proceedings.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

1 **Certificate of Transcript**

2

3 I, Carolyn Cruickshank, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best  
6 of my skill and ability and the foregoing pages are a complete and accurate transcript of  
7 the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was included orally on the record and  
10 is transcribed in this transcript.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

Digitally Certified: 2014-01-24 12:24:10  
Carolyn Cruickshank, Transcriber  
Order No. 1314-14-1

---

35 Pages: 12  
36 Lines: 453  
37 Characters: 11728

---

39 File Locator: 3810d770852811e392af0017a4770810  
40 Digital Fingerprint: 1f818a2d2374472b2a8e826214a522d7da015ff6c7357d186dd91bac8bcf7cb1

---

41

Detailed Transcript Statistics	
Order No. 1314-14-1	
Page Statistics	
Title Pages:	1
ToC Pages:	1
Transcript Pages:	10
Total Pages:	12
Line Statistics	
Title Page Lines:	50
ToC Lines:	4
Transcript Lines:	399
Total Lines:	453
Visible Character Count Statistics	
Title Page Characters:	487
ToC Characters:	88
Transcript Characters:	11153
Total Billable Characters:	11728
Multi-Take Adjustment: (-) <a href="#">Duplicated Title Page Characters</a>	11241