

Action No.: A17330493R  
E-File No.: CCP15MORINS  
Appeal No.: \_\_\_\_\_

IN THE PROVINCIAL COURT OF ALBERTA  
JUDICIAL CENTRE OF CALGARY

HER MAJESTY THE QUEEN

v.

SIMON MORIN

Accused

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P R O C E E D I N G S

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Calgary, Alberta  
June 8, 2015

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1 Proceedings taken in the Provincial Court of Alberta, Calgary Courts Centre, Calgary, Alberta

2

3 June 8, 2015

Morning Session

4

5 Commissioner Elliott

Provincial Court of Alberta

6

7 T. Melendy

For the Crown

8 G. Levesque

For the Accused

9 K. Bang

Court Clerk

10

11

12 THE COURT CLERK:

Simon Morin. Counsel. To speak to a French

13 trial application.

14

15 MR. LEVESQUE:

Good morning, Your Honour. I'm Gerard

16 Levesque, L-E-V-E-S-Q-U-E.

17

18 THE COMMISSIONER:

Good morning, sir.

19

20 MR. LEVESQUE:

Member of the Law Society of Alberta. I'm

21 here for this matter that has been classified as being spoken to to allow the presentation to

22 the court of a request to have the proceeding in French pursuant to Regulation 158 of

23 2013. That regulation make it so that the presiding judge has no longer the discretion.

24 It's up to the Crown to decide whether they consent or not, so that we'll know in which

25 language prepare the proceeding.

26

27 THE COMMISSIONER:

All right, Crown, do you have anything to say

28 about that?

29

30 MR. MELENDY:

No, sir. That's -- that's fine.

31

32 THE COMMISSIONER:

One moment, please.

33

34 MR. LEVESQUE:

If you want, I have a copy of the regulation.

35

36 THE COMMISSIONER:

No, thank you. So I -- I'm just looking to see

37 if there's a trial date yet. So there's no trial date set to date.

38

39 MR. LEVESQUE:

No, we have to know in which language they --

40 it will proceed, and --

41

1 THE COMMISSIONER: Well, as far as I'm concerned, you have a right  
2 or your client has a right to have his trial in French, if he wants.

3  
4 MR. LEVESQUE: Yes, but the Crown has to decide whether they  
5 consent or not, according to the regulation, because --

6  
7 THE COMMISSIONER: Right. Crown, what do you say about that?

8  
9 MR. MELENDY: That's fine, sir. If he wants to move it into  
10 criminal court, we can -- we can accommodate the -- the -- the trial at that level, and --

11  
12 THE COMMISSIONER: Well, Mr. Levesque, your client, is his first  
13 language French?

14  
15 MR. LEVESQUE: Yes.

16  
17 THE COMMISSIONER: Okay. He lives in Alberta?

18  
19 MR. LEVESQUE: Yes. Today he is in Fort McMurray. He  
20 cannot attend.

21  
22 THE COMMISSIONER: All right.

23  
24 MR. LEVESQUE: But he is a resident.

25  
26 THE COMMISSIONER: And would it create some difficulty to have his  
27 trial in English? I mean, as I understand, in Fort McMurray they work in English.

28  
29 MR. LEVESQUE: Mmm hmm.

30  
31 THE COMMISSIONER: So he's probably doing okay there.

32  
33 MR. LEVESQUE: Yes, Your Honour, but it's not because a -- a  
34 defendant is bilingual that he or she lose their language rights. In fact, I can inform the  
35 court that whether the court decide today with the consent of the -- or not of the Crown to  
36 proceed in French and English, Mr. Morin is a party with four others to a constitutional  
37 challenge of this regulation in Queen's Bench. Last May, this last month, Justice Eidsvik  
38 has been -- has declare herself seized of the matter and has ordered a conference between  
39 herself, the Provincial Crown, which is represented in that file by the constitutional law  
40 office in Edmonton, and should the Federal Crown want to intervene because it's a  
41 constitutional challenge, they will have to participate to that conference on September the

1 22nd.

2

3 So in my other files it has been adjourned to a matter to be spoken to in October to allow  
4 me to inform the court of the outcome of that conference of September the 22nd in Court  
5 of Queen's Bench of Alberta.

6

7 I can inform the court that --

8

9 THE COMMISSIONER:

Well, maybe we should just do that --

10

11 MR. LEVESQUE:

-- today would be first time --

12

13 THE COMMISSIONER:

-- if the whole thing is already before the courts

14 at a higher level.

15

16 MR. LEVESQUE:

Mmm. I can inform the court that since the  
17 promulgation of this regulation -- before the promulgation we didn't have any problem. I  
18 just had to go to the counter, asking the proceeding in French, and automatically I was  
19 provided with a bilingual judge. There's three of them that have been appearing with no  
20 problems. Since the regulation's in, all request has been refused by the Crown, even in  
21 one instance in Airdrie where the judge says yes, so we had to adjourn because there was  
22 a problem. The regulation doesn't give anymore the discretion to the court to accept  
23 when the Crown says no. So in that instance I had to appear five times before the Crown  
24 decide to -- in that case, they -- they drop the charges, because they realize that it was  
25 quite something to appear five times just to present a request to the court.

26

27 THE COMMISSIONER:

And I take it that's the subject of your

28 proceeding in Queen's Bench, is --

29

30 MR. LEVESQUE:

That's part of it.

31

32 THE COMMISSIONER:

-- why should the Crown be the one to decide.

33

34 MR. LEVESQUE:

That's one -- one matter. The other matter is  
35 that the *Act* of Alberta says all Albertans have the right to use French or English in oral  
36 communication before the courts. There has never been a regulation for that, and when I  
37 succeeded in gaining in 2011 a -- an outstanding, in my view, decision by Justice (sic)  
38 Anne Brown that both languages are the language of the court, that it's not because the  
39 Province neglected or omitted to have regulation pursuant to that section 4 of the  
40 *Languages Act*, that litigants have lost their rights, and she was deciding that the Crown  
41 has to speak the language of the accused, and the -- in those case -- in those -- in that

1 instance we argue four days. The Crown was taking a position that myself and my clients  
2 can -- have the right to use French, but we don't have the right to be understood in  
3 French. So the decision the judge was that this position by Justice Alberta was similar to  
4 one hands clapping for the right -- language rights, hear -- hoping to hear sound.

5

6 I was hoping to have an appeal of that decision. There was none. And two years later  
7 there was this regulation taking part of that decision, and that's why the matter now is in  
8 Queen's Bench.

9

10 THE COMMISSIONER: Oh, I see. Well, Mr. Levesque, first of all, I'd  
11 be the first to admit that I'm not at the forefront of what's going on with this particular  
12 issue. I mean, you walked in here today right out of the blue, and it's -- you're the first  
13 one up, and it's the first application. From what I do know about it, I'm inclined to agree  
14 with Judge Brown, but if the regulation says the Crown has to --

15

16 MR. LEVESQUE: Mmm.

17

18 THE COMMISSIONER: -- consent now, I can see why you challenged  
19 that.

20

21 MR. LEVESQUE: Mmm.

22

23 THE COMMISSIONER: Mr. Melendy, what are you suggesting we do  
24 here?

25

26 MR. MELENDY: Well, sir, the other side of the coin is that I  
27 suppose we can have a French interpreter present where the -- the defendant would be in  
28 no way, I suppose, given nothing but his full right to understand a trial with the use of an  
29 interpreter, which normally happens --

30

31 THE COMMISSIONER: Yeah.

32

33 MR. MELENDY: -- in a -- in a traffic court setting, sir, and --

34

35 THE COMMISSIONER: That's right.

36

37 MR. MELENDY: -- I mean, that's the -- the option as well. I  
38 mean, it's -- it happens every day in these courts.

39

40 THE COMMISSIONER: Well, Mr. Levesque tells me that it's his  
41 understanding of the regulation that if you consent, we can direct the whole trial be

1 conducted in French --

2

3 MR. MELENDY: Yes.

4

5 THE COMMISSIONER: -- with a --

6

7 MR. MELENDY: And it's -- it's happened in the past, sir, on  
8 occasion, and as Mr. Levesque says, you know, this going back four and five times  
9 between the courts and -- and -- and different arguments being made on a particular case  
10 before it actually gets into a -- a French trial in a -- in a courtroom, I mean, I'm going to  
11 suggest that we do this right now versus have that back and forth, as he indicates in  
12 previous cases, five times before the --

13

14 THE COMMISSIONER: Well, I think --

15

16 MR. MELENDY: -- charge was ultimately --

17

18 THE COMMISSIONER: -- we should deal with the law as it is now  
19 rather than in the hopes that it might change later.

20

21 MR. MELENDY: Yes.

22

23 THE COMMISSIONER: But apparently I need your consent, so --

24

25 MR. MELENDY: Well, that's -- that's fine, sir, I have no --

26

27 THE COMMISSIONER: You consent? Okay.

28

29 MR. LEVESQUE: Okay.

30

31 MR. MELENDY: -- no objection to that.

32

33 THE COMMISSIONER: For this one, at any rate, and I hope you're  
34 not --

35

36 MR. LEVESQUE: Can I suggest --

37

38 THE COMMISSIONER: -- too enthusiastic about using it as precedent,  
39 but we're following the rules as I understand them to be now. The Crown consents, so  
40 we'll have a French trial.

41

- 1 MR. LEVESQUE: Okay. Can I --
- 2
- 3 THE COMMISSIONER: Go down and set yourself one, and -- and --
- 4
- 5 MR. LEVESQUE: Okay.
- 6
- 7 THE COMMISSIONER: -- make sure you tell the clerks down there  
8 what's happened so they can make the arrangements to have the entire court convened in  
9 French.
- 10
- 11 MR. LEVESQUE: Okay. To consolidate this with the other  
12 litigants who are in this constitutional challenge, is it possible to adjourn to October, to  
13 the date of 14 of October? I'm already in 905 for the other litigants, and it's classified as  
14 matter to be spoken to, and that's where I will inform the court and the Crown of the --  
15 what would come from the conference with Justice Eidsvik on September the 22nd.
- 16
- 17 THE COMMISSIONER: Sorry, sir, I didn't fully understand that. Are  
18 you saying you now want to put it over to October to speak to?
- 19
- 20 MR. LEVESQUE: To be spoken to, and it will be on that date for  
21 all the others as well, because there's five of them, and we'll be able to inform the Crown  
22 and -- and the court where the matter -- how long it might be in superior court.
- 23
- 24 THE COMMISSIONER: And are these all traffic court matters?
- 25
- 26 MR. LEVESQUE: Yes, they're all traffic.
- 27
- 28 THE COMMISSIONER: In 905?
- 29
- 30 MR. LEVESQUE: In 905.
- 31
- 32 THE COMMISSIONER: To speak to?
- 33
- 34 MR. LEVESQUE: On -- yes.
- 35
- 36 MR. MELENDY: Who --
- 37
- 38 MR. LEVESQUE: They are under -- under the name of the first  
39 defendant, Francois Pacquet (phonetic), in 905 on October --
- 40
- 41 THE COMMISSIONER: Well, Mr. Melendy, got any problem with that?

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MR. LEVESQUE:  
adjourn for a few months.

I know that it's unusual because usually we

THE COMMISSIONER:

Exactly.

MR. LEVESQUE:  
judge recognize that it's take more judicial resources just to come back in a few months  
and then have it to adjourn to October.

But the last time I appear for one of them, the

judge recognize that it's take more judicial resources just to come back in a few months  
and then have it to adjourn to October.

MR. MELENDY:  
happen if we set a trial date, I suppose --

Well, ultimately that's probably what would

MR. LEVESQUE:

Yeah.

MR. MELENDY:  
arguments here, but I -- I -- I don't understand. Are you saying in October in 905, a  
traffic courtroom --

-- based on -- based on Mr. Levesque's

arguments here, but I -- I -- I don't understand. Are you saying in October in 905, a  
traffic courtroom --

MR. LEVESQUE:

Yeah.

MR. MELENDY:

-- there's going to be a -- a hearing?

MR. LEVESQUE:

A matter to be spoken to --

THE COMMISSIONER:

Right.

MR. LEVESQUE:

-- so that I will inform --

MR. MELENDY:

Spoken to?

MR. LEVESQUE:  
the decision of Justice Eidsvik on September the 22nd. She has already ordered a  
conference between Mr. Padget, who represent the Alberta Crown, and since it's a  
constitutional challenge, the Federal Government has to decide whether they appear or  
not. They didn't appear in front of Justice Eidsvik on the 15th of May because it was just  
the decision whether we could file in French or not. Because the Crown was saying no,  
there's no -- before the regulation I could have filed in French with no problem, but it  
seems that now the new position, even in Federal file like a divorce, I have to file also in  
English, if I want to proceed with a French language divorce.

1 THE COMMISSIONER: Well, Mr. Levesque, as I understand it, you  
2 expect some direction from the Queen's Bench --  
3  
4 MR. LEVESQUE: Yeah.  
5  
6 THE COMMISSIONER: -- Court in September but not a final decision.  
7  
8 MR. LEVESQUE: No.  
9  
10 THE COMMISSIONER: All right.  
11  
12 MR. LEVESQUE: It's -- it's the --  
13  
14 THE COMMISSIONER: And it --  
15  
16 MR. LEVESQUE: -- the streamlining of the hearings.  
17  
18 THE COMMISSIONER: It seems to me if you're piling all your traffic  
19 court cases up to October to keep them all in the same boat, as it were --  
20  
21 MR. LEVESQUE: Yeah.  
22  
23 THE COMMISSIONER: -- relative to this Queen's Bench --  
24  
25 MR. LEVESQUE: Yeah.  
26  
27 THE COMMISSIONER: -- decision, that would be a good idea to do  
28 with this one as well.  
29  
30 MR. LEVESQUE: Yes. That's what I'm --  
31  
32 THE COMMISSIONER: As long as we're not --  
33  
34 MR. LEVESQUE: -- suggesting to the Crown.  
35  
36 THE COMMISSIONER: -- getting into an *Askov* situation, but it's your  
37 application, so I'm --  
38  
39 MR. LEVESQUE: Yeah.  
40  
41 THE COMMISSIONER: -- not too worried about that.

1  
2 MR. LEVESQUE: No.  
3  
4 THE COMMISSIONER: All right. Okay, what's your day in October?  
5  
6 MR. LEVESQUE: It's classified for Wednesday, 14, at 9:30, in  
7 905.  
8  
9 THE COMMISSIONER: October 14th, 9:30.  
10  
11 MR. LEVESQUE: Yeah.  
12  
13 THE COMMISSIONER: 905, to speak to.  
14  
15 MR. LEVESQUE: Yeah.  
16  
17 THE COMMISSIONER: Okay.  
18  
19 MR. LEVESQUE: Thank you.  
20  
21 THE COMMISSIONER: Good. Thank you for your help.  
22  
23 MR. LEVESQUE: Thank you very much, Your Honour.  
24  
25 MR. MELENDY: Sir, where is the 22nd of September being  
26 heard, the challenge?  
27  
28 MR. LEVESQUE: It's a phone conference because the Crown --  
29 both Crowns are in Edmonton. The Constitutional Law Office is on -- at the head office  
30 of the Ministry. Mr. Padgett drove here for -- and he was present in court, but for that day  
31 he will be on the phone, and the head of Justice Canada's region, including Alberta, is  
32 also in Edmonton, and it's going to be by phone.  
33  
34 THE COMMISSIONER: All right. Thank you for your help, sir.  
35  
36 MR. LEVESQUE: Thank you very much.  
37

38  
39 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, OCTOBER 14TH, 2015  
40

41

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2

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