

In the Provincial Court of Alberta

Citation: R. v. Pooran; R. v. Vaillant, 2011 ABPC 77

Date: 20110304
Docket: A61090746C
Registry: Calgary

Between:

Her Majesty the Queen

Crown Respondent

- and -

Sonia Pooran

Applicant

-and-

Between:

Her Majesty the Queen

Crown Respondent

-and-

Guy Vaillant

Applicant

Reasons for Decision of the Honourable Judge A. J. Brown

Decision

[1] Ms. Pooran and Mr. Vaillant are entitled to have their *Traffic Safety Act* trials in French, that is, they are entitled to communicate in French and have the trials prosecuted by a French-speaking prosecutor and heard by a French-speaking judge.

Introduction

[2] The application made by Ms. Pooran and joined in by Mr. Vaillant for *Traffic Safety Act* trials in French called for an interpretation of section 4 of the Alberta *Languages Act*:

(1) Any person may use English or French in oral communication in proceedings before the following courts:

...

(d) The Provincial Court of Alberta.

(2) The Lieutenant Governor in Council may make regulations for the purpose of carrying this section into effect, or for any matters not fully or sufficiently provided for in this section or in the rules of those courts already in force.

[3] The Applicants argued that necessary implications of the wording of the *Languages Act* are:

French and English are the official languages of Provincial Court proceedings;

when French or English is spoken in court, the transcription of the recorded proceedings is to be in the language spoken;

the French-speaking litigant is entitled, in a quasi-criminal trial, to have a French-speaking prosecutor;

and, the French-speaking litigant has a right to be understood, without the services of an interpreter, by the judge hearing the case, that is, to have the case heard by a French-speaking judge.

[4] The Crown Respondent argued that the French-speaking litigant's language rights according to the *Languages Act* entitle him or her to provision of an interpreter but not to a French trial.

[5] In reaching my decision, I have considered the following authorities, texts and transcripts of government proceedings: *R. v. Caron* (2009), 476 A.R. 198 (Q.B.), revg. (2008), 450 A.R. 204 (P.C.); *DesRochers v. Canada (Industry)*, [2009] 1 S.C.R. 194; *Fédération Franco-Ténoise v. Canada (Attorney General)* (2008), 440 A.R. 56 (NWTCA), revg in part [2006] NWTJ No. 32 (SC); *Caron v. Alberta (Human Rights and Citizenship Commission)* (2007), 426 A.R. 378 (QB); *Solski (Tutor of) v. Québec (Attorney General)*, [2005] 1 S.C.R. 201; *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 O.R. (3d) 577 (CA); *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3; *R. v. Beaulac*, [1999] 1 S.C.R. 768; *R. v. Mercure*, [1988] 1 S.C.R. 234; *Société des Acadiens du Nouveau-Brunswick Inc. V. Assn of Parents for Fairness in Education, Grand Falls District 50 Branch*, [1986] 1 S.C.R. 549; *MacDonald v. Montreal (City)*, [1986] 1 S.C.R. 460; 2007, Hogg, *Constitutional Law of Canada*, 5th ed., v. 2, Carswell; 2004, Bastarache, ed., *Language Rights in Canada*, 2nd ed. Éditions Yvon-Blais; and, Alberta Legislative Assembly, *Alberta Hansard*, June 22, 23, 28, 29 and 30, 1988.

Historical Background to Alberta Languages Act

[6] From 1867, when Canada came into being by virtue of the *British North America Act* - later, the *Constitution Act, 1867* - until 1905, when the provinces of Saskatchewan and Alberta were carved out of the Northwest Territories to become part of Canada, the governing statute for the area was the *North-West Territories Act*, which made provision for the official languages of the Territories in section 110, as follows:

Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those languages shall be used in the records and journals of such Assembly; and all ordinances made under this Act shall be printed in both those languages: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law and thereafter shall have full force and effect.

[7] Canada's official languages of English and French were established in section 133 of the *Constitution Act, 1867*:

Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada.

[8] In 1905, the *Alberta Act* and the *Saskatchewan Act* were the enabling statutes as the two newly formed provinces joined Confederation. Section 110 of the *North-West Territories Act* was not replaced in either act; nor was any mention made in the new statutes of official languages.

[9] The *Canadian Charter of Rights and Freedoms* includes as a legal right the assistance of an interpreter:

- s. 14 A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter.

[10] Section 16 of the *Charter* confirms English and French as the official languages of Canada; sections 16 through 23 deal with the status of English and French in federal government institutions and federal courts, the continuation of Constitutional provisions respecting language rights and minority language educational rights.

[11] In 1988, the Supreme Court ruled in *Mercure* that:

section 110 of the *North-West Territories Act* had been continued by virtue of the *Saskatchewan Act* and Saskatchewan's failure to enact repealing and replacement legislation;

the province was therefore required to publish all its laws in both English and French;

but, Saskatchewan was entitled to amend section 110 unilaterally.

[12] The *Mercure* ruling resulted in a quashing of the defendant Father Mercure's conviction for speeding, since he had not been allowed to: enter a plea in French; conduct his defence in French; or, be enabled to access and use French language versions of relevant Saskatchewan statutes (which had only been published in English).

[13] Because of its common heritage with Saskatchewan, Alberta had followed the *Mercure* case closely and intervened in the Supreme Court hearing; after the decision, the province moved speedily to enact the *Languages Act* to clarify the status of French in the province.

Language Rights; Legal Rights

[14] *Mercure* and two 1986 Supreme Court cases, *MacDonald* and *Société des Acadiens*, appear to affirm a restrictive interpretation of language rights, in these terms:

language rights, based as they are on a political compromise, lack the constitutional weight of rules of natural justice;

the right to use English or French in the courts does not amount to a right to be heard or understood in the language of choice;

lest this restrictive approach to language rights create a Kafkaesque treatment of litigants before the courts, the legal rights that guarantee a fair trial ensure that an interpreter will be provided so that an accused person understands the court proceedings and the court understands the accused, whatever language is used.

[15] In 1999, in *Beaulac*, the Supreme Court was called on to analyze sections 530 and 530.1 of the *Criminal Code*, the language rights amendments:

530. (1) On application by an accused whose language is one of the official languages of Canada, . . .

a justice of the peace or provincial court judge shall grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the official language of Canada that is the language of the accused or, if the circumstances warrant, who speak both official languages of Canada.

. . .

(4) Where an accused fails to apply for an order under subsection (1) or (2) and the justice of the peace, provincial court judge or judge before whom the accused is to be tried, in this Part referred to as "the court", is satisfied that it is in the best interests of justice that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the official language of Canada that is the language of the accused or, if the language of the accused is not one of the official languages of Canada, the official language of Canada in which the accused, in the opinion of the court, can best give testimony, the court may, if it does not speak that language, by order remand the accused to be tried by a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak that language or, if the circumstances warrant, who speak both official languages of Canada.

530.1 Where an order is granted under section 530 directing that an accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the official language that is the language of the accused or in which the accused can best give testimony,

- (a) the accused and his counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused;
- (b) the accused and his counsel may use either official language in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial of the accused;
- (c) any witness may give evidence in either official language during the preliminary inquiry or trial;
- (d) the accused has a right to have a justice presiding over the preliminary inquiry who speaks the official language that is the language of the accused;
- (e) except where the prosecutor is a private prosecutor, the accused has a right to have a prosecutor who speaks the official language that is the language of the accused;
- (f) the court shall make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial;

- (g) the record of proceedings during the preliminary inquiry or trial shall include
 - (i) a transcript of everything that was said during those proceedings in the official language in which it was said,
 - (ii) a transcript of any interpretation into the other official language of what was said, and
 - (iii) any documentary evidence that was tendered during those proceedings in the official language in which it was tendered; and
- (h) any trial judgment, including any reasons given therefor, issued in writing in either official language, shall be made available by the court, in the official language that is the language of the accused.

[16] In drawing a clear distinction between language rights and legal rights, Justice Bastarache, for the majority of the Court, at paragraph 25, dealt also with the earlier jurisprudence in these terms:

Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada; see *Reference re Public Schools Act (Man.)*, *supra*, at p. 850. To the extent that *Société des Acadiens du Nouveau-Brunswick*, *supra*, at pp. 579-80, stands for a restrictive interpretation of language rights, it is to be rejected. The fear that a liberal interpretation of language rights will make provinces less willing to become involved in the geographical extension of those rights is inconsistent with the requirement that language rights be interpreted as a fundamental tool for the preservation and protection of official language communities where they do apply. It is also useful to re-affirm here that language rights are a particular kind of right, distinct from the principles of fundamental justice. They have a different purpose and a different origin. [Emphasis added.]

[17] The *Beaulac* liberal and purposive treatment of language rights has been confirmed repeatedly in later Supreme Court and appellate decisions (see, for example, *Solski*, *Fédération Franco-Ténoise*, *Lalonde*, *Arsenault-Cameron* and *DesRochers*).

Law Applied to section 4, Languages Act

[18] The Applicants argue for the broad, purposive *Beaulac* interpretation of section 4.

[19] The Crown Respondent argues for a *Mercure/Société des Acadiens* interpretation of section 4 of the *Languages Act*, contrasting the detailed wording of the *Criminal Code* language rights provisions as a clear example of legislation that evokes a broader ambit of language rights.

[20] On June 22, 1988, the Attorney General of Alberta made a ministerial statement in the Legislative Assembly to introduce the *Languages Act* Bill; as well as the legislative history behind the Bill and a summary of the *Mercure* decision, the statement included these remarks:

Following the passage of the Languages Act a new standing order will be recommended which will provide that English and French may be used in the Assembly. The official publications of the Assembly will record matters in either English or French. Hansard will record in either English or French without translation. Members may use languages other than English and French in the Assembly subject to the approval of the Speaker. Prior written notice and an English translation of the remarks will be given to the Speaker, and the translation will be shown in the records. Mr. Speaker, the federal government has introduced an amendment to the Criminal Code of Canada which makes it mandatory for all provinces, including Alberta, to conduct criminal trials in either English or French by 1990. Alberta must, therefore, undertake further measures to comply with the federal requirements. Individuals will have the right, if they so choose, to a judge, jury, and prosecutor who speak either English or French, depending on the language of the accused. In addition, the accused and legal counsel may use either English or French, depending on the language of the accused. In addition, the accused and legal counsel may use either English or French in any proceedings relating to the preliminary inquiry or trial of the accused.

...

With regard to civil courts every participant in court proceedings will be entitled to speak either English or French. If necessary, an interpreter will be provided. The court proceedings will be recorded in the language spoken. In the area of provincial offences, individuals will also be entitled to speak either English or French. Similarly, the court proceedings will be recorded in the language spoken. The development of a language policy for education is a high priority for the government of Alberta. The policy will . . . have four major components. One: we have fully recognized the unique rights of Francophones who qualify under section 23 of the Charter of Rights and Freedoms in the new School Act. The provision for the Lieutenant Governor in Council to establish regulations in this area reflects the importance that this government places on establishing appropriate policies and procedures for ensuring that the rights of Francophones are met. [Emphasis added.]

[21] If litigants are entitled to use either English or French in oral representations before the courts yet are not entitled to be understood except through an interpreter, their language rights are hollow indeed. Such a narrow interpretation of the right to use either English or French is

illogical, akin to the sound of one hand clapping, and has been emphatically overruled by *Beaulac*.

[22] The Crown Respondent assertion that the rights in the *Languages Act* are met by the provision of an interpreter amounts to a sloughing of the language rights of the litigant to the *Charter* legal right to due process, natural justice and a fair trial. As to the reference in the June 22, 1988, ministerial statement, to the provision of an interpreter if necessary, I infer from those words that the interpreter is to be provided for witnesses who do not speak the language, English or French, in which the trial is being conducted.

[23] It is clear from the ministerial statement that in three significant arenas of interaction between individuals and the province, the Legislative Assembly, courts and schools, the languages that may be used are English and French.

Conclusion

[24] Therefore, for the following reasons, I have concluded that the Applicants are entitled to have their *Traffic Safety Act* trials in French, with a French-speaking judge and French-speaking prosecutor:

Language rights are to be given a liberal and purposive interpretation; (*Beaulac*)

Language rights are distinct from legal rights; (*Beaulac*)

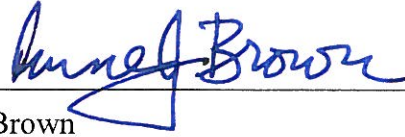
Alberta recognizes the unique rights of Francophones; (ministerial statement, June 22, 1988, *Alberta Hansard*)

The languages of the courts in Alberta are English and French; (section 4(1), *Languages Act*)

and, the language rights enunciated in section 4 of the *Languages Act* are not eroded by the failure of the provincial government to enact regulations to hone their delivery.

Heard on the 15th day of October, 2009, 29th day of March, 2010 to 30th day of March, 2010 and 24th day of June, 2010.

Dated at the City of Calgary, Alberta this 4th day of March, 2011.



A. J. Brown

A Judge of the Provincial Court of Alberta

Appearances:

B. Kristensen
for the Crown Respondent

G. Lévesque
for the Applicant Pooran

Himself
for the Applicant Vaillant