

# Summary Sheet: Language Rights of an Accused, Sections 530 and 530.1 of the *Criminal Code* by Manon Arbour-Perron, revised in April 2026

## Provisions of the *Criminal Code* – Language of the Accused

- An accused may exercise the right granted to him or her under section 530 of the *Criminal Code* (CC) to request that his or her preliminary inquiry and trial to be held before a French-speaking (or bilingual) judge; see *R v Beaulac*, [1999] 1 SCR 768 and *R v Munkonda*, 2015 ONCA 309.
- An accused may apply to have his or her trial to be held in French during his or her first appearance or any other appearance, but no later than the time at which the date of the trial is set (see 530(1)).
- If the application is made within the timelines and the accused can instruct counsel and follow the proceedings in the chosen language, the order becomes mandatory (see 530(1)).
- If the application is made **late**, the *Criminal Code* provides that the court **may** make a discretionary order requiring the accused to be tried in French or in both official languages if it is in the best interests of justice to do so (see 530(4)). Dismissing a late application remains the exception to the rule (*R v Tayo Tompouba*, 2024 SCC 16 at para 39).

## The Accused Must be Advised of This Language Right at the First Appearance

- The judge or justice of the peace before whom an accused first appears **shall** ensure that the accused is advised of his or her language rights and of the timelines for making a request for a trial before a French-speaking or bilingual court. (see 530(3) and *R v Tayo Tompouba*, 2024 SCC 16)
- In *Tayo Tompouba*, the Supreme Court held that a breach of s. 530(3) **constitutes an error of law**. The appropriate remedy is usually a new trial. A new trial will not be warranted if the Crown establishes that, either: (i) the accused does not have sufficient proficiency in the language they were unable to choose, (ii) the accused would in any event have chosen to be tried in the language in which their trial was conducted, or (iii) the accused chose English or French in a free and informed manner.

## If an Order is Made Under Section 530:

- The accused has a right to have a **justice presiding over the preliminary inquiry or the trial** who speaks the official language of the accused or both official languages, and for the **prosecutor** to be bilingual and, where applicable, to have jurors who are able to understand and speak French (530.1(d)).
- The court staff must be bilingual (*R v Munkonda*, at para 103).
- Any witness may **give evidence in either official language** during the preliminary inquiry or trial (530.1(c)).
- The accused and his counsel **have the right to use either official language** for all purposes during the preliminary inquiry and trial and 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 (530.1(a) and (b)).

- The presiding justice or judge may, if the circumstances warrant, authorize the prosecutor to **examine or cross-examine a witness in the official language of the witness** even though it is not that of the accused or that in which the accused can best give testimony (530.1(c)).
- Any **judgment**, including any reasons given, 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** (530.1(h)).
- At the request of the accused, the Crown may have the information or indictment translated into the official language of the accused and provide the accused with a written copy of the document, as soon as possible.

### **Bilingual Trials – Subsection 530(6)**

- When two or more accused are tried together **and** if one of the co-accused speaks one of the official languages of Canada, but that language is not the same for all the co-accused, that **may** constitute circumstances that warrant that an order be granted directing that they be tried before a provincial court judge, judge or judge and jury who speak both official languages of Canada. (See *R v Sarrazin* (2005), 195 CCC (3d) 257.)
- During bilingual trials, the court and the prosecution must not favour one language over the other. There is no “primary” language and no “accommodated” language: *Munkonda*, at para 46; *R v Beaulac*, [1999] 1 SCR 768 at para 39.

### **Record of Proceedings**

- The record of proceedings during the preliminary inquiry or trial shall include any documentary evidence that was tendered during those proceedings in the official language in which it was tendered (530.1(g)).
- The transcript must include everything that was said during those proceedings in the official language in which it was said, as well as any interpretation into the other official language of what was said (530.1(g)).

### **Considerations and Best Practices:**

- If the Crown disputes the contention of an accused that they are able to instruct counsel in French and follow French proceedings, the onus is on the Crown to show that there is no basis for the contention of the accused (see *R v Deutsch* (2005) 204 CCC (3d) 361 (ON CA) and *Tayo Tompouba*, at para 38; *Beaulac*, at para 34).
- Everything that the Crown says officially must be spoken in the language of the accused (objections, voir dire, comments) unless the accused has waived that requirement (see *R v Dow* (2009) QCCA 478, *R v Potvin* (2004) 186 CCC (3d) 257) and *R v Munkonda*, 2015 ONCA 309).
- The witnesses (including the police officers) can testify in the official language of their choice (see 530.1(c), *R v M.(T.D.)*, (2008), 236 CCC (3d) 458 and *Mazraani v Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50).
- To be included in the case record, the interpretation must be recorded.
- If the accused waives his or her right to an interpreter or agrees to allow part of the proceedings to be conducted in English, that waiver must be made by the accused and not by his or her counsel, and must be unambiguous.

## Disclosure Obligations:

- The only explicit requirement in the *Criminal Code* relating to the translation of any document is in section 530.01 - **Translation of documents (information and indictment) upon request.**
- The right to disclosure includes the right to receive the documents in that language in which they exist.
- There is no obligation, **subject to the court ordering otherwise** on the Crown to have any disclosure translated (see *R v Munkonda*, 2015 ONCA 309 at paras 80-81; *R c Stockford* [2009] QJ 8369);.
- The accused can apply to the court for an order that some or all of the disclosure be translated on the grounds that doing so is necessary to enable the accused to make full answer and defence or to ensure that the accused will receive a fair trial. The onus is on the accused.
- **Best Practice:** try to reach an agreement with the defence concerning the portions of the documents to be disclosed that will be translated.

## Examples of considerations arising from *R v Munkonda*, 2015 ONCA 309

- In bilingual proceedings, accused persons who choose different official languages retain their language rights.
- The court, the prosecution and all the necessary court staff must be bilingual.
- To the extent possible, the court and the prosecution should not favour one language over the other. There is no “primary language” and “accommodated” language.
- If one of the accused addresses the court or prosecutor in French, the response should be in French.
- The fact that a French-speaking accused understands English and does not need an interpreter **has no bearing on his or her language rights.**
- Notices and other communications initiated by the Crown must be written in the chosen language of each accused (or must be bilingual).
- Translation of evidence such as wiretaps from other than French or English can be in either official language and defence counsel can then make a request to the judge for a transcript or index to be prepared in the accused’s language, as necessary.
- The court must ensure that the complete judgment, including any interlocutory decisions, are made available in the chosen language of each of the accused.