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French Language Rights in Alberta Get a Boost

By Brian Seaman

Cases Considered:

R v Pooran; R v Vaillant, 2011 ABPC 77

Significant consequences can arise from what might otherwise have appeared to be just another mundane case; in this instance, charges under Alberta's *Traffic Safety Act*, R.S.A. 2000, c. T-6. The facts and charges that led to Sonia Pooran and Guy Vaillant standing trial before a provincial court judge on April 14 are not important. What is important is that the entire proceedings will be in French, after a provincial court judge in Calgary decided they have that right.

On March 4, 2011, the Honourable Judge Anne J. Brown rendered her decision on the defendants' application to have their trials prosecuted by a French-speaking prosecutor before a French-speaking judge. At issue was how to interpret section 4 of Alberta's *Languages Act*, R.S.A. 2000, c. L-6. The relevant sub-section says:

> (1) Any person may use English or French in oral communication in proceedings before the following courts:
>
> …
>
> (d) The Provincial Court of Alberta.

The applicants had argued that the words of the *Languages Act* must be broadly construed to mean that: (i) Canada's two official languages are also the official languages of proceedings in Alberta's provincial court; (ii) whenever either language is used in court, the ensuing transcript must be in the language that was used; (iii) in a quasi-criminal trial, a French-speaking defendant is entitled to be prosecuted by a French-speaking Crown attorney; and (iv) a French-speaking defendant has the right to be understood, without the benefit of an interpreter, by a French-speaking judge. Contrariwise, the Crown had argued that the rights of French speakers in Alberta under the *Languages Act* entitled them to interpretive services only, not trials wholly in French.

Before Alberta became a Canadian province in 1905, its territory, along with what would become the Province of Saskatchewan, was part of the Northwest Territories. The governing statute for this vast region was the *North-West Territories Act*. According to section 110 of that Act (R.S.C. 1886, c. 50): (i) either English or French could be used in debates of the territorial Legislative Assembly; (ii) either language could be used in the courts; (iii) all records and journals of the Assembly had to be printed in both languages; and (iv) any enactments made under the Act had to be printed in both languages as well. However, all of this was subject to the provision that after the next general election of the Assembly, the Assembly could, if it decided, regulate its proceedings differently and this would include the language of recording and publishing such proceedings. By inference, then, either new Province could have made itself

unilingual French or unilingual English had it wanted to. However, in 1905, neither provincial enabling statute – the *Alberta Act, 1905*, 4-5 Edw. VII, c. 3 (Can.) and the *Saskatchewan Act, 1905*, 4-5 Edw. VII, c. 42 (Can.) respectively – replaced section 110 of the *North-West Territories Act;* indeed, neither Act said anything about official languages at all.

Section 133 of the *Constitution Act, 1867* provides for the use of English or French in debates in Canada's House of Commons and Senate, as well as in Quebec's Legislative Assembly; the records of proceedings of these legislative bodies must be published in both languages; and either language can be used in any Court of Canada. Sections 16-23 of the *Canadian Charter of Rights and Freedo*ms confirms the status of English and French as official languages of Canada, as they address the usage of both languages in federal institutions and courts and the preservation of constitutional guarantees regarding language rights and minority language educational rights.

Before arriving at her decision, Brown, J. canvassed the relevant body of case law addressing the issue of language rights in Canada. One case of particular significance was a 1999 Supreme Court of Canada decision, *R v Beaulac*, [1999] 1 S.C.R. 768. In that decision, Justice Bastarache, writing for the majority opinion, said at paragraph 25 that:

> 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 *Societé 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)

Brown, J. went on to refer to a line of judicial authority from later decisions at both the appellate level and the Supreme Court of Canada that continue to apply and support the proposition offered by *Beaulac*: language rights in Canada are to be construed liberally and purposively. She concluded her decision with an eloquent flourish:

> If litigants are entitled to use 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*. (para. 21)
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> 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. (para. 22)

Thus, in one mundane, quasi-criminal traffic case, in this province with its public face of conservatism, have the language rights of unilingual Francophones and mother-tongue French-speakers been enhanced in proceedings at the level of the Provincial Court. However, whether *R v Pooran; R v Vaillant* will have broader, more far-reaching consequences for the use of French in other courts in Alberta or the delivery of public services to French-speakers will, of course,

remain to be seen. The time for filing an appeal has passed and the Crown has not done so. Although the issue of language rights is currently before the Alberta Court of Appeal in *R. v. Caron* (see 2010 ABCA 343) the Court of Appeal refused to hear the question of whether language rights include a right to a trial in French, since there was no factual basis for that question in *Caron* (see paras. 23-25 and an ABlawg post on that decision here).