The Law Society of Upper Canada | Barreau du Haut-Canada

Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context

Information about Lawyers' Responsibilities

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Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context

Information about the Lawyer's Responsibility

> "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, a means by which the individual expresses his or her personal identity and sense of individuality."
>
> *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 at 748-749

Introduction

The mandate of the Law Society is to govern the legal profession in the public interest by upholding its independence, integrity and honour for the purpose of advancing the cause of justice and the rule of law. Canada is an officially bilingual (French/English) country and lawyers in Ontario have the responsibility to act in the public interest and, when appropriate, to advise their clients of their French language rights.

Constitutional law and quasi-constitutional law recognize English and French as the official languages of Canada and as having equal status in all institutions of the Parliament and government of Canada. In Ontario, legislation and case law recognize the right to proceed in French before most judicial, quasi-judicial and administrative tribunals. This right is particularly important to the Francophone community as it allows its members to defend themselves in their language and encourages them to continue making the necessary efforts to prevent assimilation. It also recognizes the important role played by the Francophone community in the history of this province.

In 2000, the Law Society of Upper Canada modified its *Rules of Professional Conduct*[1] to clarify lawyers' responsibilities in this area.

The objective of this document is to describe lawyers' responsibilities to advise their clients of their language rights, to discuss when and in what circumstances that responsibility applies, and to ensure that lawyers are aware of their responsibility in this respect.

[1] *Rules of Professional Conduct* (Toronto: Law Society of Upper Canada, 2000).

This document is a guide to assist lawyers in understanding their responsibility to advise clients, where appropriate, of their language rights under the *Rules of Professional Conduct.* It is not a legal opinion and is not exhaustive. It is current to the date of publication, and all members should keep abreast of legislative and jurisprudential changes.

The document is divided as follows:

Part I –	Responsibility under the *Rules of Professional Conduct*
Part II -	Constitutional and Quasi-Constitutional Language Rights
Part III -	Criminal Law
Part IV –	Languages of the Courts of Ontario
Part V -	Quasi-Judicial and Administrative Tribunals
Part VI-	Resources

Part I - Responsibilities under the *Rules of Professional Conduct*

A Lawyer should advise a client who speaks French of his or her French Language Rights

"A lawyer has special responsibilities by virtue of the privileges afforded the legal profession and the important role it plays in a free and democratic society and in the administration of justice, including a special responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario".

Rule 1.03, *Rules of Professional Conduct*

The commentary to Rule 1.03 describes circumstances in which it would be appropriate for a lawyer to advise a client who speaks French of French language rights in Ontario.

Rules of Professional Conduct

Rule 1.03 – Interpretation

Commentary

A lawyer should, where appropriate, advise a client of the client's French language rights relating to the client's matter, including where applicable

> **(a) subsection 19 (1) of the *Constitution Act, 1982* on the use of French or English in any court established by Parliament,**
>
> **(b) section 530 of the *Criminal Code* about the right of an accused to a trial before a court that speaks the official language of Canada that is the language of the accused,**
>
> **(c) section 126 of the *Courts of Justice Act* that requires that a proceeding in which the client is a party be conducted as a bilingual (English and French) proceeding, and**
>
> **(d) subsection 5(1) of the *French Language Services Act* for services in French**

from Ontario government agencies and legislative institutions.[2]

Other laws and case law, not mentioned in the commentary to Rule 1.03, also recognize language rights of clients in the judicial and quasi-judicial context. For example, Part III of the *Official Languages Act*[3] specifies that English and French are the official languages of the federal courts, and any person may use those languages in any pleading in, or process issuing from, any federal court or administrative tribunal.

A tribunal or court has yet to interpret the commentary to Rule 1.03. Jurisprudence on language rights may assist in indicating where it would be appropriate for lawyers to inform clients of French language rights.

The Supreme Court of Canada, in a criminal matter, decided that the "language of the accused" is the official language to which that person has a sufficient connection. The accused must be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The test to determine whether the accused has a right to a trial in one or the other official language is whether the accused has sufficient knowledge of the official language to instruct counsel.[4]

It is in such circumstances that the responsibility to inform his or her client of French language rights would arise. The lawyer should be proactive in this respect, and if the client wishes to receive legal services in the French language, the lawyer should ensure that the client is served in French.

Competency Includes the Capacity to Offer Services in the Official Language of the Client

The *Law Society Act* confirms the Law Society's legislative authority to regulate competence. The *Law Society Act*[5] addresses incompetent performance and identifies circumstances in which a member of the profession fails to meet standards of professional competence for the purposes of the *Act*.[6]

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[2] Section 5(1) of the *French Language Services Act*, R.S.O. 1990, c. F-32, uses the following terminology: "A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule."

[3] *Official Languages Act,* R.S.C. 1985, c. 31 (4th Supp.).

[4] *R. v. Beaulac*, [1999] 1 S.C.R. 768.

[5] *Law Society Act,* R.S.O. 1990, c. L. 8.

[6] Elizabeth Cowie, "The Lawyer and The Client" in the *48th Bar Admission Course Academic Phase, Professional Responsibility and Practice Management Reference Materials* (Toronto: Law Society of Upper Canada, 2005).

Law Society Act

Section 41 of the Act

A member fails to meet standards of professional competence if,

(a) there are deficiencies in,
- **(i) the member's knowledge, skill or judgment,**
- **(ii) the member's attention to the interests of clients,**
- **(iii) the records, systems or procedures of the member's practice, or**
- **(iv) other aspects of the member's practice and**

(b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

The standards of professional competence defined in the *Act* are client-driven and focus on the quality of legal services provided to the clients. A lawyer may not be competent to act if he or she is unable to provide quality legal services in French to clients who have requested such services or appear to require such services. These services include understanding the client in his or her official language, ensuring that relevant documents and evidence in a file are provided in the official language of the client wherever possible.

Rule 2.01 (1) of the *Rules of Professional Conduct* defines a "competent lawyer". Rule 2.01(1) requires that the lawyer not only meet the described standard of competence, but maintain that competence in a rapidly evolving world. The requirements may be divided into five areas: knowledge, skills, communications, judgment and practice management.

Rules of Professional Conduct

Rule 2.01 - Competence

<u>Definitions</u>
In this rule,

"*competent lawyer*" means a lawyer who has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client including […]

> **(d) communicating at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client; […]**

> **(h) recognizing limitations in one's ability to handle a matter or some aspect of it, and taking steps accordingly to ensure the client is appropriately served […]**
>
> **(2) A lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer.**

The commentary to the obligation to be competent explains:

> "As a member of the legal profession, a lawyer is held out as knowledgeable, skilled, and capable in the practice of law. Accordingly, the client is entitled to assume that the lawyer has the ability and capacity to deal adequately with legal matters to be undertaken on the client's behalf."

In order to fulfill this requirement, the communication must be effective for the client for whom it is intended.

A member who is incapable of effectively communicating with clients who request services, or who appear to require such services, in French may not have the "ability and capacity" to deal adequately with legal matters on behalf of the client.

The lawyer who offers services in Ontario in the French language should have sufficient knowledge of the language, including sufficient knowledge of French common law terminology (as opposed to civil law), to competently act for the client. The lawyer should be able to,

- communicate effectively, orally and in writing, with the client;
- where applicable, effectively represent the client before courts, tribunals and/or quasi-judicial tribunals.

If a lawyer does not feel competent to undertake the matter for reasons described above, the lawyer should recognize his or her lack of competence for a particular task and the disservice that would be done to the client by undertaking the task. In such circumstances, the lawyer should either decline to act or obtain the client's instructions to retain, consult, or collaborate with a lawyer who is competent for that task.

Discrimination Based on Language or Accent and Rule 5.04 of the Rules of Professional Conduct

Rule 5.04 prohibits discriminatory conduct and imposes a special responsibility on lawyers to treat clients and colleagues equally and without discrimination. Although language is not an enumerated ground of discrimination, discriminatory conduct based on a person's language

or accent may be a violation of the Ontario *Human Rights Code*[7] under a number of related grounds, such as ancestry, ethnic origin, place of origin and race.[8]

As the rule requires lawyers to respect the requirements of human rights laws in Ontario, discrimination by a lawyer against another lawyer, articled student, or any other person or in professional dealings with other members of the profession or any other person, because he or she speaks French or has an accent when speaking English, may offend the rule.

Rules of Professional Conduct

Rule 5.04 – Discrimination

Special Responsibility

A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship […] with respect to professional employment of other lawyers, articled students, or any other person or in professional dealings with other members of the profession or any other person.

[7] Ontario *Human Rights Code* R.S.O. 1990, C. H-19.

[8] *Policy on Discrimination and Language* (Toronto: Ontario Human Rights Commission, 1996).

Part II - Constitutional and Quasi-Constitutional Language Rights

> "Equality does not have a lesser meaning in matters of language. With regard to existing rights, equality must be given true meaning. This Court has recognized that substantive equality is the correct norm to apply in Canadian law. Where institutional bilingualism in the courts is provided for, it refers to equal access to services of equal quality for members of both official language communities in Canada."
>
> *R. v. Beaulac*, [1999] S.C.R. 768

There are constitutional and quasi-constitutional rights to use the French language in certain courts and tribunals across Ontario. Where appropriate, a lawyer should advise his or her clients of those rights.

Under section 133 of the *Constitution Act, 1867*[9], subsection 19(1) of the *Charter of Rights and Freedoms*[10], and Part III of the *Official Languages Act*[11], the use of the French language is guaranteed in the courts created by the federal Parliament. Provincial and superior courts in Ontario and provincially appointed administrative tribunals are not subject to those provisions. However, other laws noted below guarantee the right to use the French language in most courts in Ontario and lawyers should be knowledgeable of these rights.

Constitution Act, 1867

Use of French and English Languages

133 - Either the English or the French Language may be used by any person [...] or in any pleading or process in or issuing from any Court of Canada established under this Act [...].

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[9] *Constitution Act, 1867,* (U.K.) 30 & 31 Victoria Vict. C. 3.

[10] *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [the *Charter of Rights*].

[11] *Official Languages Act, supra* note 3.

Charter of Rights and Freedoms

Proceedings in Courts Established by Parliament

Subsection 19 (1) – Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

Official Languages Act

Official Languages of Federal Courts

Section 14 – English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court.

"Federal Court" Defined to Include Federal Administrative Tribunals

Subsection 3(2) of the *Official Languages Act* interprets "federal court" to mean "any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament."

The Supreme Court of Canada has defined the terms "Court of Canada", "court established by Parliament" and/or "federal court" broadly to encompass any federal institution that, by virtue of its organic statute, holds the authority to judge matters affecting the rights or interests of the individual and applies the principles of law. Federal courts are judicial tribunals like the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada, and administrative tribunals performing quasi-judicial functions, such as the Immigration and Refugee Board, the Canadian Human Rights Tribunal and the Copyright Board Canada.[12]

"Federal courts" include[13]:

- Supreme Court of Canada;
- Federal Court of Appeal of Canada;

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[12] *Official Languages Act* - Annotated Version

[13] Vanessa Gruben, "Bilingualism and the Judicial System" in Michel Bastarache, ed., *Language Rights in Canada,* 2nd edition (Cowansville: Les éditions Yvon Blais, 2004) at 157-158.

- Federal Court of Canada;
- Tax Court of Canada;
- Court Martial Appeal Court.

According to the Commissioner of the Official Languages, federal tribunals subject to the *Official Languages Act* also include:

- Board of Arbitration and Review Tribunal;
- Canada Industrial Relations Board;
- Canadian Artists' and Producers' Professional Relations Tribunal;
- Canadian International Trade Tribunal;
- Canadian Radio-Telecommunications Commission;
- Competition Tribunal;
- Copyright Board;
- Canadian Human Rights Tribunal;
- National Energy Board;
- National Parole Board;
- National Transportation Agency;
- Immigration and Refugee Board;
- Pensions Appeal Board.

The phrase "any person" includes[14]:

- An individual;
- A corporation;
- A litigant;
- A counsel;
- Witnesses;
- Members of juries;
- Judges;
- Other court officers.

What are your Clients' Constitutional and Quasi-Constitutional Language Rights?

Closely linked to the constitutional language rights provided by the *Constitution Act, 1867* and the *Charter of Rights,* the *Official Languages Act* is the focal piece of legislation enacted to protect language rights in Canada. Its preamble notes "Whereas the Constitution of Canada provides for full and equal access to Parliament, to the laws of Canada and to courts established by Parliament in both official languages". The purpose of the *Official Languages Act* is threefold, to

[14] *Ibid.* at 159.

(*a*) ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;

(*b*) support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society; and

(*c*) set out the powers, duties and functions of federal institutions with respect to the official languages of Canada.

Since its decision in the criminal case of *R. v. Beaulac*, the Supreme Court of Canada has adopted a purposeful and broad interpretation of language rights. In that decision, the Honourable Justice Bastarache states the following:

> 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. Language rights are a particular kind of right, distinct from the principles of fundamental justice. They have a different purpose and a different origin. When s. 530 of the *Criminal Code* was promulgated in British Columbia in 1990, the scope of the language rights of the accused was not meant to be determined restrictively. The amendments were remedial and meant to form part of the unfinished edifice of fundamental language rights.[15]

Part III of the *Official Languages Act* imposes obligations on the government that are not included in either the *Constitution Act, 1867* or the *Charter of Rights and Freedoms*. For example, Part III provides the following:

- the duty on every federal court to ensure that a person giving evidence be heard in the official language of his or her choice;
- the duty on every federal court at the request of any party to the proceedings, to make available simultaneous interpretation of the proceedings, including evidence given and taken;
- the duty on every federal court other than the Supreme Court of Canada, to ensure that every judge or other officer who hears the proceedings is able to understand the official language of the proceeding without the assistance of an interpreter. If both languages are the languages of the proceeding, the judge or other officer must understand both languages without the assistance of an interpreter.

[15] *R. v. Beaulac, supra* note 4 at para. 25.

Official Languages Act

Part III Administration of Justice

14. English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court.

15. (1) Every federal court has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in the official language of his choice, and that in being so heard the person will not be placed at a disadvantage by not being heard in the other official language.

(2) Every federal court has, in any proceedings conducted before it, the duty to ensure that, at the request of any party to the proceedings, facilities are made available for the simultaneous interpretation of the proceedings, including the evidence given and taken, from one official language into the other.

(3) A federal court may, in any proceedings conducted before it, cause facilities to be made available for the simultaneous interpretation of the proceedings, including evidence given and taken, from one official language into the other where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings.

16. (1) Every federal court, other than the Supreme Court of Canada, has the duty to ensure that

> **(*a*) if English is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand English without the assistance of an interpreter;**
> **(*b*) if French is the language chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand French without the assistance of an interpreter; and**
> **(*c*) if both English and French are the languages chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand both languages without the assistance of an interpreter.**

(2) For greater certainty, subsection (1) applies to a federal court only in relation to its adjudicative functions.

(3) No federal court, other than the Federal Court of Appeal, the Federal Court or the Tax Court of Canada, is required to comply with subsection (1) until five years after that subsection comes into force.

17. (1) The Governor in Council may make any rules governing the procedure in proceedings before any federal court, other than the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court or the Tax Court of Canada, including rules respecting the giving of notice, that the Governor in Council deems necessary to enable that federal court to comply with sections 15 and 16 in the exercise of any of its powers or duties.

Subject to the approval of the Governor in Council, the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada may make any rules governing the procedure in their own proceedings, including rules respecting the giving of notice, that they deem necessary to enable themselves to comply with sections 15 and 16 in the exercise of any of their powers or duties.

18. Where Her Majesty in right of Canada or a federal institution is a party to civil proceedings before a federal court,

> **(*a*) Her Majesty or the institution concerned shall use, in any oral or written leadings in the proceedings, the official language chosen by the other parties unless it is established by Her Majesty or the institution that reasonable notice of the language chosen has not been given; and**
> **(*b*) if the other parties fail to choose or agree on the official language to be used in those pleadings, Her Majesty or the institution concerned shall use such official language as is reasonable, having regard to the circumstances.**

19. (1) The pre-printed portion of any form that is used in proceedings before a federal court and is required to be served by any federal institution that is a party to the proceedings on any other party shall be in both official languages.

(2) The particular details that are added to a form referred to in subsection (1) may be set out in either official language but, where the details are set out in only one official language, it shall be clearly indicated on the form that a translation of the details into the other official language may be obtained, and, if a request for a translation is made, a translation shall be made available forthwith by the party that served the form.

20. (1) Any final decision, order or judgment, including any reasons given therefore, issued by any federal court shall be made available simultaneously in both official languages where

> **(*a*) the decision, order or judgment determines a question of law of general public interest or importance; or**
> **(*b*) the proceedings leading to its issuance were conducted in whole or in part in both official languages.**

(2) Where

> **(*a*) any final decision, order or judgment issued by a federal court is not required by subsection (1) to be made available simultaneously in both official**

languages, or
(*b*) the decision, order or judgment is required by paragraph (1)(*a*) to be made available simultaneously in both official languages but the court is of theç opinion that to make the decision, order or judgment, including any reasons given therefor, available simultaneously in both official languages would occasion a delay prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings leading to its issuance,
the decision, order or judgment, including any reasons given therefor, shall be issued in the first instance in one of the official languages and thereafter, at he earliest possible time, in the other official language, each version to be ffective from the time the first version is effective.

Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in only one of the official languages, of any decision, order or judgment or any reasons given therefore.

(4) No decision, order or judgment issued by a federal court is invalid by reason only that it was not made or issued in both official languages.

Any person may use either English or French in any pleading or process issuing from any federal court. Written pleadings include allegations by parties appearing for the applicant and the respondent, oral pleadings, memorandums and briefs. Section 18, however, does not cover evidence given in connection with written pleadings, since witnesses may testify in the official language of their choice.

The Supreme Court of Canada

Section 11 of the *Rules of the Supreme Court,* [SOR/2002-156], provides for the use of English or French in communications before the Court.

Rules of the Supreme Court

Official Languages

11. (1) A party may use either English or French in any oral or written communication with the Court.

(2) Subject to subrule (3), the Registrar shall provide to the parties services for simultaneous interpretation in both official languages during the hearing of every proceeding.

(3) In the case of a motion to be heard by a judge or the Registrar, the Registrar shall provide the services referred to in subrule (2) upon request of any party to the motion, made at least two days before the hearing of the motion.

Part III - Criminal Law

> "Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada."[16]
>
> *R. v. Beaulac,* [1999]1 S.C.R. 768

Most language rights protections in the *Criminal Code*[17] are set out in Part XVII – Language of Accused, section 530 and 530.1, Part XXVIII – Miscellaneous, and subsection 849(3) of the *Criminal Code.*

Section 530 sets out the conditions for granting an application by an accused for a judge or a jury who speak the official language of the accused. Section 530.1 enumerates the rights to which an accused is entitled once a section 530 order has been rendered.

Criminal Code

Section 530 – Language of Accused

(1) On application by an accused whose language is one of the official languages of Canada, made not later than

a) the time of the appearance of the accused at which his trial date is set, if

(i) he is accused of an offence mentioned in section 553 or punishable on summary conviction, or
(ii) the accused is to be tried on an indictment preferred under section 577,

(b) the time of the accused's election, if the accused elects under section 536 to be tried by a provincial court judge or under subsection 536.1 to be tried by judge without a jury and without having a preliminary inquiry, or

(c) the time when the accused is ordered to stand trial, if the accused
(i) is charged with an offence listed in section 469,
(ii) has elected to be tried by a court composed of a judge or a judge and jury, or
(iii) is deemed to have elected to be tried by a court composed of a judge and jury, a justice of the peace, provincial court judge or judge of the Nunavut Court of Justice shall grant an order directing that the accused be tried before 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

[16] Principle adopted in the criminal law case of *R. v. Beaulac*, *ibid.*, reiterated by the Supreme Court of Canada in the context of the New-Brunswick *Official Languages Act,* S.N.B. 2002, c. 0-0.5 (see *Charlebois* v. *City of Saint John*, [2005] 3 S.C.R. 563).
[17] *Criminal Code,* R.S.C. 1985, c. C-46.

of the accused or, if the circumstances warrant, who speak both official languages of Canada.

(2) On application by an accused whose language is not one of the official languages of Canada, made not later than whichever of the times referred to in paragraphs (1)(a) to (c) is applicable, a justice of the peace or provincial court judge may 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 in which the accused, in the opinion of the justice or provincial court judge, can best give testimony or, if the circumstances warrant, who speak both official languages of Canada.

(3) The justice of the peace or provincial court judge before whom an accused first appears shall, if the accused is not represented by counsel, advise the accused of his right to apply for an order under subsection (1) or (2) and of the time before which such an application must be made.

(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.

(5) An order under this section that an 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 the official language of Canada in which the accused can best give testimony may, if the circumstances warrant, be varied by the court to require that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak both official languages of Canada.

The leading authority regarding the rights of the accused under section 530 is the Supreme Court of Canada decision in *R. v. Beaulac*[18]*,* which confirmed that subsection 530(1) confers upon the accused an absolute right, upon timely application, to be tried in his or her official language. The following provides an overview of the conclusions in *R. v. Beaulac.*

Trial in official language

[18] *R. v. Beaulac, supra* note 4.

- In order to be tried in the official language of his or her choice, the accused must assert his or her official language by bringing forward an application within the timelines established in section 530 of the *Criminal Code,* with some exceptions.

- The "language of the accused" is the official language to which the accused has a sufficient connection. The accused must be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The test to determine whether the accused has a right to a trial in his or her official language is whether the accused has sufficient knowledge of the official language to instruct counsel.[19]

- The accused has a right to a trial in the official language of his or her choice even if the language chosen is not the dominant language. The ability of the accused to speak the other official language is also not relevant.

- An absolute right to a trial in one's official language exists, provided the application is made in a timely manner.[20] The application must be made within delays established in paragraphs 530(1) a), b) and c), which vary with the type of infraction. When the accused fails to apply for an order and it is in the best interest of justice to make an order, the tribunal has the discretion to order the trial of an accused in the official language of his or her choice.

Application in a "timely manner"[21]

- An accused has automatic access to a trial in one's official language when an application is made in a timely manner (within the delays established in section 530 (1) a), b) and c)). When the application is not timely, the judge has the discretion to order the trial in the official language of the accused. In exercising his or her discretion, the judge should consider factors to determine the reasons for the delay. The following questions will be considered:

    - when the accused was made aware of his or her right?
    - whether he or she waived the right and later changed his or her mind?
    - why he or she changed his or her mind?
    - whether it was because of difficulties encountered during the proceedings?

- Once the reason for the delay has been examined, the trial judge should consider a number of factors that relate to the conduct of the trial, such as,

    - whether the accused is represented by counsel;
    - the language in which the evidence is available;
    - the language of witnesses;
    - whether a jury has been empanelled;
    - whether witnesses have already testified;
    - whether they are still available;

[19] See *R. v. Beaulac, ibid.*
[20] See *R. v. Beaulac, ibid.* .
[21] Interpreted in *R. v. Beaulac, ibid.*

- whether proceedings can continue in a different language without the need to start the trial afresh;
- the fact that there may be co-accuseds (which may indicate the need for separate trials);
- changes of counsel by the accused;
- the need for the Crown to change counsel; and
- the language ability of the presiding judge.

- Mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling should not be considered.

Bilingual proceedings

- The accused may also have the right to a bilingual proceeding in some circumstances, such as ,
    - where counsel for the accused speaks only one official language and speaks a different language than the accused; or
    - where the official language of the accused is different from the majority of the witnesses.

Accused whose language is not French or English

- An accused whose language is not French or English may apply for an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, who speak the official language in which the accused, in the opinion of the justice or provincial court judge, can best give testimony or, if the circumstances warrant, who speak both official languages.

Self-represented accused

- A judge or justice of the peace must inform a self-represented accused of the right to choose French or English as the language for the preliminary inquiry and trial.

Criminal Code

Rights of Accused when Order Granted under Section 530

Section 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 therefore, 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.

Where an order is granted under section 530, section 530.1 applies. It provides as follows:

Written pleadings or documents

- The accused and his or her counsel have the right to use either official language for all purposes during the preliminary inquiry and trial of the accused, in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial.

Witnesses

- Any witness may give evidence in either official language during the preliminary inquiry or trial.

Interpreters

- The court must make interpreters available to assist the accused, his counsel or any witness during the preliminary inquiry or trial.

Judgement

- Any trial judgment, including any reasons given for it, issued in writing must be in either official languages and made available by the court in the official language of the accused.

Judges, juries, prosecutors and other court staff

- Judges, juries, prosecutors (except where the prosecutor is a private prosecutor) and other court staff must be available in either official language.[22]

Subsection 849(3) of the *Criminal Code* also provides that any pre-printed portions of a form set out in Part XXVIII of the *Code*, such as warrants and summons, will be printed in both official languages.

[22] See *R. v. Beaulac, ibid.* .

Part IV –Languages of the Courts of Ontario

"If linguistic duality were a person, today it would be an adult who communicates with others, participates in the democratic process, and cherishes tolerance and diversity; who travels, having acquired experience that is, in many respects, recognized and sought out around the world; who embodies one of Canada's strongest values and works with determination in a changing world. This person still faces many challenges in preserving past achievements and obtaining justice on as yet unexplored fronts."

Office of the Commissioner of Official Languages
Annual Report, Special Edition, 35yh Anniversary 1969-2004, Volume 1 at 115

Courts of Justice Act[23] *– Use of French and English in proceedings before Courts of Ontario*

Sections 125 and 126 of the *Courts of Justice Act* [C.J.A.][24] provide for the use of English and French in proceedings before the courts of Ontario.

The word "court" in the C.J.A. does not include administrative or quasi-judicial tribunals. See below for a discussion of the language requirements applying to such tribunals.

Sections 125 and 126 of the C.J.A. apply to:

- natural persons;
- corporations;
- partnerships; and
- sole proprietorships.[25]

Courts of Justice Act

Official Language of the Courts

Section 125

(1)The official languages of the courts of Ontario are English and French.

(2) Except as otherwise provided with respect to the use of the French language, hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and

[23] S.O. 1984, c. 11.
[24] *Ibid.*
[25] Section 126(8) of the C.J.A.

documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by the affidavit of the translator.

Bilingual Proceedings

Section 126
(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.

(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding:

1. **The hearings that the party specifies shall be presided over by a judge or officer who speaks English and French.**
2. **If a hearing that the party has specified is held before a judge and jury in an area named in Schedule 1, the jury shall consist of persons who speak English and French.**
3. **If a hearing that the party has specified is held without a jury, or with a jury in an area named in Schedule 1, evidence given and submissions made in English or French shall be received, recorded and transcribed in the language in which they are given.**
4. **Any other part of the hearing may be conducted in French if, in the opinion of the presiding judge or officer, it can be so conducted.**
5. **Oral evidence given in English or French at an examination out of court shall be received, recorded and transcribed in the language in which it is given.**
6. **In an area named in Schedule 2, a party may file pleadings and other documents written in French.**
7. **Elsewhere in Ontario, a party may file pleadings and other documents written in French if the other parties consent.**
8. **The reasons for a decision may be written in English or French.**
9. **On the request of a party or counsel who speaks English or French but not both, the court shall provide interpretation of anything given orally in the other language at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and translation of reasons for a decision written in the other language.**

Prosecutions
(2.1)When a prosecution under the Provincial Offences Act by the Crown in right of Ontario is being conducted as a bilingual proceeding, the prosecutor assigned to the case must be a person who speaks English and French.

Appeals
(3)When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks French has the right to require that the appeal be heard by a judge or judges who speak English and French; in that case subsection (2) applies to the appeal, with necessary modifications.
Documents

(4) A document filed by a party before a hearing in a proceeding in the Family Court of the Superior Court of Justice, the Ontario Court of Justice or the Small Claims Court may be written in French.

Process
(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Family Court of the Superior Court of Justice or the Ontario Court of Justice may be written in French.

Translation
(6) On a party's request, the court shall provide translation into English or French of a document or process referred to in subsection (4) or (5) that is written in the other language.

Interpretation
(7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in French or a witness gives oral evidence in French, the court shall provide interpretation of the submissions or evidence into English.

Parties who are not natural persons
(8) A corporation, partnership or sole proprietorship may exercise the rights conferred by this section in the same way as a natural person, unless the court orders otherwise.

The following summarizes the language rights provided under sections 125 and 126 of the *Courts of Justice Act*:

<u>Right to bilingual proceeding</u>

- A party who speaks French has the right to request a bilingual proceeding including a judge or judges who speak English and French.

- The right to a bilingual proceeding is a substantive right available to individuals who speak French. However, case law provides that the court has the discretion to order a bilingual proceeding even if the party does not speak French.

- A bilingual proceeding includes the following elements:

    - that the proceeding is heard by a judge who speaks English and French;
    - a hearing held before a bilingual judge and jury is only available in the designated areas mentioned below;
    - if the bilingual hearing is held without a jury, or with a jury in an area named in the designated area below, the evidence given and submissions made in English or French are received, recorded and transcribed in the language in which they are given;

  - in a proceeding that is not a bilingual hearing without a jury or with a jury in an area named in the designated area below, the court will provide interpretation of any submissions in French or any evidence given by a witness in French, into English;
  - a judge has a discretion to conduct any other part of the hearing in French if it can be conducted in that language;
  - oral evidence given in English or French in an out-of-court examination is to be received, recorded and transcribed in the language it is given;
  - the party does not necessarily have the right to file pleadings in French. For the right to file pleadings in French, see below.

Designated areas for hearing before bilingual judge and jury

- The right to request a hearing before a bilingual judge and jury is, as of right, available in all areas below (this list may be subject to change from time to time):

  - The counties of Essex, Middlesex, Prescott and Russell, Renfrew, Simcoe, Stormont, Dundas and Glengarry.
  - The territorial districts of Algoma, Cochrane, Kenora, Nipissing, Sudbury, Thunder Bay, Timiskaming.
  - The area of the County of Welland as it existed on December 31, 1969.
  - The Municipality of Chatham Kent.
  - The City of Hamilton.
  - The City of Ottawa.
  - The Regional Municipality of Peel.
  - The City of Greater Sudbury.
  - The City of Toronto.

Pleadings and other documents filed in French

- The right to file pleadings and other documents written in French may be filed in the designated areas specified below. Outside the designated areas, consent is required from the other party to file the pleadings and other documents in French.

- Opposing parties or their lawyers do not have to file their pleadings and other documents, make submissions in, or communicate with the party who requested a bilingual proceeding, in the language of that party's choice.

- At hearings before a judge and jury in the designated areas mentioned above, at a hearing without a jury, or at examinations out of court, a party or counsel who speaks English or French but not both may request, and the court will provide, interpretation of anything given orally in the other language and translation of reasons for a decision written in the other language.

- Reasons for a decision may be written in English or French. Translations of decisions, judgments or orders are not required, but when requested by a party or counsel who speaks English or French but not both, the court will provide interpretation of anything given orally in the other language at hearings and at examinations out of court, and translation of reasons for a decision written in the other language.

- Costs of translation will not be awarded against the unsuccessful party.

- A document filed by a party before a hearing in a proceeding in the Ontario Court of Justice or in the Small Claims Court may be written in French. A process issued in or giving rise to a criminal proceeding or a proceeding in the Ontario Court (Provincial Division) may be written in French.

Designated areas for pleadings and other documents filed in French

- Pleadings and other documents written in French may be filed in the following areas. In other areas, a party who wishes to file the pleadings and other documents in French must receive the consent of the opposing party (this list may be subject to change from time to time):
    - The counties of Essex, Middlesex, Prescott and Russell, Renfrew, Simcoe, Stormont, Dundas and Glengarry.
    - The territorial districts of Algoma, Cochrane, Kenora, Nipissing, Sudbury, Thunder Bay, Timiskaming.
    - The area of the County of Welland as it existed on December 31, 1969.
    - The Municipality of Chatham Kent.
    - The City of Hamilton.
    - The City of Ottawa.
    - The Regional Municipality of Peel.
    - The City of Greater Sudbury.
    - The City of Toronto.

The Provincial Offences Act[26]

Where a defendant is served with an "offence notice, parking infraction notice or notice of impending conviction in a proceeding under the *Provincial Offences Act,*" and that defendant makes a written request that the trial be held in French, the proceeding in those cases must be conducted as a bilingual proceeding and be presided over by a judge or officer who speaks both official languages.[27] If an individual requests a trial in French and the information sworn against the individual is in English, the information is considered a nullity. [28]

[26] *Provincial Offences Act,* R.S.O. 1990, c. S - 22.
[27] *Bilingual Proceedings,* O. Reg. 53/01, s. 4. The defendant is deemed to have exercised his right under section 126(1) of the *Courts of Justice Act.*
[28] *R. v. Charest,* [2001] O.J. No. 5763 (Ct. J.).

Part V - Quasi-Judicial or Administrative Tribunals

> "One of the underlying purposes and objectives of the *French Language Services Act* was the protection of the minority Francophone population in Ontario; another was the advancement of the French language and promotion of its equality with English. These purposes coincide with the underlying unwritten principles of the Constitution of Canada. As already stated, underlying constitutional principles may in certain circumstances give rise to substantive legal obligations because of their powerful normative force."
>
> *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 O.R. (3d) 505

Official Languages Act[29]

As mentioned above, the *Official Languages Act* applies to federal courts (defined to include tribunals) or other bodies that carry out adjudicative functions and are established by or pursuant to an Act of Parliament.

"Federal courts" include[30]:

- Supreme Court of Canada;
- Federal Court of Appeal of Canada;
- Federal Court of Canada;
- Tax Court of Canada;
- Court Martial Appeal Court.

According to the Commissioner of the Official Languages, federal tribunals subject to the *Official Languages Act* include:

- Board of Arbitration and Review Tribunal;
- Canada Industrial Relations Board;
- Canadian Artists' and Producers' Professional Relations Tribunal;
- Canadian International Trade Tribunal;
- Canadian Radio-Telecommunications Commission;
- Competition Tribunal;
- Copyright Board;
- Canadian Human Rights Tribunal;
- National Energy Board;
- National Parole Board;
- National Transportation Agency;
- Immigration and Refugee Board;
- Pensions Appeal Board.

[29] R.S.C. 1985, c. 31 (4th Supp.).
[30] Vanessa Gruben, *supra* note 13 at 157-158.

The following summarizes the language rights of individuals appearing before a federal administrative or quasi-judicial tribunal:

Official languages

- English and French are the official languages of the federal tribunals and any person may use those languages in any pleading in, or process issuing from, any federal tribunal.

- A party has the right to speak and be understood by the court/tribunal in the official language of his or her choice.

Judge and other officers

- Every judge or every officer who hear the proceeding must understand the language chosen by the parties without the assistance of an interpreter. The same duties are imposed on the tribunal where the parties choose a bilingual proceeding. This is limited to the adjudicative functions carried out by the tribunal.

Witnesses

- Witnesses have a right to give evidence and be cross-examined in the official language of their choice.

Simultaneous interpretation

- When a party makes a request for translation, simultaneous interpretation of proceedings will be available from one official language to the other, including the evidence given and taken.

Crown

- The Crown must, when it is a party to a proceeding, use in oral and written pleadings before a federal tribunal, the official language chosen by the other party, unless reasonable notice of language chosen has not been given or where the other parties fail to choose or agree on the official language to be used in the pleadings.

Pleadings, forms, decisions

- The term "pleadings" includes oral and written arguments, but excludes evidence presented to the court.

- Pre-printed portions of any form that is used in proceedings and is required to be served by the institution that is a party to the proceedings on the other party must be in both official languages. The details in the form may be added in the official language of the issuer but must indicate that translation is available upon request.

- Every final decision, order or judgment, including reasons must be given in both official languages.

Tribunals Created by the Ontario Government – the French Language Services Act[31] *and the Statutory Powers Procedure Act*[32]

There are few obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act*[33]*,* which only states that summonses and warrants must be in the "prescribed form (in English or in French)", and that a tribunal has the obligation to make its rules available to the public in both languages. Obligations related to services offered in official languages of administrative tribunals are found under the *French Language Services Act* (the *F.L.S.A.*)[34], supported by unwritten constitutional principles and other principles of interpretation.

The preamble to the Ontario's *French Language Services Act* sets out its underlying rationale as follows:

> Whereas the French language is an historic and honoured language in Ontario and recognized by the Constitution as an official language in Canada; and whereas in Ontario the French language is recognized as an official language in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the French speaking population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the French language in institutions of the Legislature and the Government of Ontario, as provided in this Act […]

Subsection 5(1) of the *French Language Services Act* provides a right to communicate in French with government agencies or institutions of the Legislature.

French Language Services Act

Section 5

(1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

The definition of "government agency" in section 1 of the *French Language Services Act* would include administrative or quasi-judicial tribunals a majority of whose members are appointed by the Lieutenant Governor in Council.

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[31] *French Language Services Act, supra* note 2.
[32] *Statutory Powers Procedure Act,* R.S.O. 1990, c. S - 22.
[33] R.S.O. 1990, c. S. 22.
[34] *French Language Services Act, supra* note 2.

French Language Services Act

Section 1

"government agency" means,

(a) a ministry of the Government of Ontario, except that a psychiatric facility, residential facility or college of applied arts and technology that is administered by a ministry is not included unless it is designated as a public service agency by the regulations,

(b) a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council,

(c) a non-profit corporation or similar entity that provides a service to the public, is subsidized in whole or in part by public money and is designated as a public service agency by the regulations,

(d) a nursing home as defined in the Nursing Homes Act or a home for special care as defined in the Homes for Special Care Act that is designated as a public service agency by the regulations,

(e) a service provider as defined in the Child and Family Services Act or a board as defined in the District Social Services Administration Boards Act that is designated as a public service agency by the regulations,
and does not include a municipality, or a local board as defined in the Municipal Affairs Act, other than a local board that is designated under clause (e); ("organisme gouvernemental")

"service" means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose.

The *F.L.S.A.* has been applied in the context of the Financial Services Commission of Ontario, an administrative tribunal a majority of whose members are appointed by the Lieutenant Governor in Council. In *Ndem v. General Accident Assurance Co. of Canada*[35], Arbitrator David Leitch found that the Commission is a government agency bound by the *F.L.S.A.* and that a person has the right to communicate in French and to receive available services in French from the Commission.

[35] FSCO A98-001476, November 1 and 2, 1999.

In *Dehenne v. Dehenne* [36], Justice Beaulieu of the Ontario Superior Court of Justice confirmed that the *F.L.S.A.* applies to the Office of the Public Guardian and Trustee, as it is part of the Ontario Ministry of the Attorney General. He stated [at paras. 9, 11, 12 and 15]:

> Like the Attorney General, the Public Guardian and Trustee has a duty to take the necessary steps to effectively implement language rights and cannot allege a lack of human or financial resources in an effort to justify an obstacle to carrying out his language responsibilities […]
>
> In this case, in response to an application made in French, the Office of the Public Guardian and Trustee replied to counsel for the applicant in English only, which is a breach of the letter and spirit of the *French Language Services Act*. The Office of the Public Guardian and Trustee has a duty to reply in French to communications he receives in French. The intervention of this Court should not be necessary to reinforce this right.
>
> The Public Guardian and Trustee also asked the Court to include an English text in an order although the application for that order was made in French, which is manifestly to disregard the status of French as an official language of the Ontario courts […]
>
> The right to the use of French is not a right to an interpreter: French-speaking families who pay a professional to assess a person=s capacity are entitled to an assessment conducted in French (without the assistance of an interpreter) and the preparation of a report in French. The Office of the Public Guardian and Trustee should certify a sufficient number of assessors to ensure an assessment in French and the preparation of the assessment report in French."

Therefore, the Government of Ontario is required to ensure that services are provided in French in accordance with the *F.S.L.A.*. A person has the right to communicate with and to receive services in French from any head or central office of a government agency or institution of the Legislature.

It should be noted, however, that not all of Ontario's tribunals guarantee the right to a French-language decision-maker. Thus, the Ontario Landlord Tenant Board (formerly "Rental Housing Tribunal") states in its Rule 7 (available on the ORHT's website) that:

> 7.6 Where a party is entitled to and requests French language services at a hearing, the Tribunal will attempt to schedule a French-speaking Member within a reasonable time to preside at the hearing.
> 7.7 Where a French-speaking Member cannot be scheduled to hear a matter within a reasonable time, the Tribunal may schedule an English-speaking Member and arrange for the services of an interpreter at the hearing.

These policies may be based on the tribunal's interpretation of s. 7 of the FLSA which states that:

[36] z *Dehenne v. Dehenne* (1999), 47 O.R. (3d) 140.

> 7. The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made. R.S.O. 1990, c. F.32, s. 7.

Further, the Ontario Government's Office of Francophone Affairs published French-language Services Guidelines in September 2004. Section 7 of the Guidelines applies to agencies, boards and commissions and discusses bilingual proceedings before administritive triunal hearings. In particular, the section states, at page 19, that:

> Every effort is made to appoint a sufficient number of bilingual members to administrative tribunals so that Francophones have access to hearings conducted in French....
>
> When all necessary efforts have been made and a sufficient number of bilingual adjudicators are still not available, linguistic assistance is provided by professional interpreters (consecutive or simultaneous) enabling Frenchspeaking clients to actively participate without prejudice to them.

Such guidelines are reviewed from time to time and lawyers are encouraged to consult the guidelines if they have clients who may appear before an administrative tribunal.

Statutory Powers Procedure Act, R.S.O. 1990, c. S.22

There are few language obligations and very little guidance provided to administrative or quasi-judicial tribunals in the *Statutory Powers Procedure Act*[37]*,* which only states that summonses and warrants must be in the "prescribed form (in English or in French)", and that tribunals must make their rules governing their practice and procedure available to the public in both languages.

[37] R.S.O. 1990, c. S. 22.

Part VI – Resources

To find a lawyer who provides legal services to clients in French, you may contact the following:

Law Society of Upper Canada Lawyer Referral Service
You may refer your clients to the Law Society's Lawyer Referral Service. For $6, the Law Society's Lawyer Referral Service (LRS) gives clients the name of a lawyer who will provide a free consultation of up to 30 minutes to help the client determine his or her rights and options. The LRS provides referrals to lawyers who are able to provide services in French. Your client can access the service by calling: 1-900-565-4LRS (4577)

For those callers who are incarcerated, institutionalized, under the age of 18, calling about a Child Protection issue, or are in crisis (domestic abuse) situations, please call us at (416) 947-3330 in the Toronto calling area, or toll-free (800) 268-8326 from elsewhere in Ontario.

On-line information about the Lawyer Referral Service:
http://www.lsuc.on.ca/public/a/finding/lrs/

On-line information inFrench about the Lawyer Referral Service:
http://www.lsuc.on.ca/fr/for-the-public/a/finding-a-lawyer/lawyer-referral-service/

Contact the Law Society of Upper Canada
General Inquiries
Toll-free: 1-800-668-7380
General line: 416-947-3300
Facsimile: 416-947-5263
E-mail: lawsociety@lsuc.on.ca

Write to Us
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6

Consult the Directory of the Association des juristes d'expression française de l'Ontario at :

Available on-line at : www.ajefo.ca
or at http://ajefo.ca/index.cfm?Voir=ajefo_juriste_liste

Rules of Professional Conduct
For information about the *Rules of Professional Conduct,* please contact the Practice Management Helpline at : http://mrc.lsuc.on.ca/jsp/pmhelpline/index.jsp or Call 416-947-3315 or 1-800-668-7380 extension 3315.

Information is also available on the Law Society's Members Resource Centre at
http://mrc.lsuc.on.ca/jsp/home/

Information about the Equity Initiatives Department of the Law Society of Upper Canada available at www.lsuc.on.ca.

Legislation and Jurisprudence

Competence

Law Society Act, R.S.O. 1990, c. L.8, available on-line at: http://www.canlii.org/on/laws/sta/l-8/20060314/whole.html

Constitutional law

Section 133 of the *Constitution Act, 1867,* (U.K.) 30 & 31 Victoria Vict. C. 3 available on-line at: http://www.canlii.ca/ca/const_en/const1867.html#judicature

Sections 19 and 20 of the *Canadian Charter of Rights and Freedoms,* Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 available on-line at: http://www.canlii.ca/ca/const_en/const1982.html#I

Criminal law

Section 530, subsection 849(3) and Part XXVIII of the *Criminal Code,* R.S.C. 1985, c. C-46 available on-line at: http://www.canlii.ca/ca/sta/c-46/part181644.html

Use of French Language in Courts and Administrative and Quasi-Judicial Tribunals

Sections 125 and 126 of the *Courts of Justice Act,* S.O. 1984, c. 11 (Proceedings before Ontario's courts) available on-line at: http://www.canlii.org/on/laws/sta/c-43/20060314/whole.html#BK161

French Language Services Act, R.S.O. 1990, c. F. 32 (Administrative and quasi-judicial tribunals) available on-line at: http://www.canlii.ca/on/laws/sta/f-32/20060314/whole.html

Official Languages Act (federal courts (defined to include tribunals) or other bodies that carry out adjudicative functions and are established by or pursuant to an Act of Parliament) available on-line at: http://www.canlii.ca/ca/sta/o-3.01/part204998.html

Provincial Offences Act, R.S.O. 1990, c. S. 22 (Proceedings under that Act) available on-line at: http://www.canlii.ca/on/laws/sta/p-33/20060314/whole.html

Statutory Powers Procedure Act, R.S.O. 1990, c. S. 22 (Administrative and quasi-judicial tribunals) available on-line at: http://www.canlii.ca/on/laws/sta/s-22/20060314/whole.html

Secondary Sources

For an extensive review of secondary sources, see Linda Cardinal et al., *Environmental Scan – French Language Services in Ontario's Justice Sector* (Ottawa: University of Ottawa, December 2005).

See also:

Braën, Foucher and Le Bouthillier, *Languages, Consitutionalism and Minorities* (Markham: LexisNexis, Butterworths, 2006.

Linda Cardinal et al., *Statistical Overview – French Ontario: A Statistical Overview* (Ottawa: University of Ottawa, October 2005).

Department of Justice and Department of Heritage Canada, *Annotated Language Laws of Canada,* 2nd edition, (Ottawa: Department of Justice and Department of Heritage Canada, 2000) available on-line in English at: http://www.canadianheritage.gc.ca/progs/lo-ol/perspectives/english/law/index.html. Also available in on-line in French at: http://www.canadianheritage.gc.ca/progs/lo-ol/perspectives/francais/lois/index.html

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Michel Bastarache, *Language Rights in Canada,* 2nd edition (Cowansville: Les Éditions Yvon Blais, 2004.

Case Law

Criminal law: *R. v. Beaulac*, [1999] 1 S.C.R. 768.