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CONSTITUTIONAL CONFERENCE
SUB-COMMITTEE ON OFFICIAL
LANGUAGES

Note by Secretariat

Attached are reports on judgments concerning use of language in Courts, one issued by the British Columbia Supreme Court and the other by the British Columbia Court of Appeal. Both judgments were rendered in 1968.

CONFÉRENCE CONSTITUTIONNELLE
SOUS-COMITÉ DES LANGUES
OFFICIELLES

Note du Secrétariat

Nous attachons deux rapports de jugements au sujet de la langue d'usage en cour de Justice. Un jugement a été rendu par la cour Suprême et l'autre par la cour d'Appel de la Colombie Britannique, en 1968.

OL/Sec/D1/7

REGINA v. WATTS, Ex parte POULIN

British Columbia Court of Appeal, Davey, C.J.B.C., Bull and Nemetz, JJ.A. September 18, 1968.

Criminal law — Trial — Language — Accused demanding that criminal proceedings before provincially appointed Magistrate be conducted in French — Whether English sole language to be used in provincial Courts of British Columbia — English Law Act, R.S.B.C. 1960, c. 123.

No person charged with an offence under the *Criminal Code* in British Columbia has the right to an election as to whether his trial should be conducted in English or in French. English is the sole language to be used at such trials.

APPEAL by the accused from an order of Verchere, J., 69 D.L.R. (2d) 526, [1968] 4 C.C.C. 221, 64 W.W.R. 705 *sub nom. Re Poulin*, dismissing an application for a writ of prohibition to prevent a Magistrate from proceeding with a charge of theft under $50.

G. A. Goenjon, for appellant.
G. L. Murray, Q.C., for the Crown, respondent.

The judgment of the Court was delivered orally by

DAVEY, C.J.B.C.:—The appellant appeals from the refusal of Verchere, J., to issue a writ of prohibition prohibiting the Magistrate from conducting a trial of the appellant, on a charge of theft under $50, in English.

The contention of the appellant is that any accused person charged under the *Code* in British Columbia has the right to elect whether his trial will be conducted in English or in French, that is to say by a French-speaking Judge or Magistrate and by French-speaking counsel and that the evidence, if it was not given in French or could not be given in French should be interpreted into French. He contends that that right goes so far as to entitle an accused person to make that election and to have that trial in French even though the accused person speaks no French and he desires to exercise that right simply for the purpose of embarrassing the authorities.

For my part the arguments which we have listened to this morning are entirely without merit. I would dismiss the appeal substantially for the reasons given by Verchere, J., in the Court below.

Appeal dismissed.

REGINA v. WATTS, Ex parte POULIN

British Columbia Supreme Court, Verchere, J. May 28, 1968.

Criminal law — Trial — Language — Accused demanding that criminal proceedings before provincially appointed Magistrate be conducted in French — Whether English sole language to be used in provincial Courts of B.C. — English Law Act, R.S.B.C. 1960, c. 129.

All proceedings in the provincial Courts of British Columbia must be conducted in English and no person is entitled to require that the French language be used at any trial of a criminal charge which is presided over by a provincially appointed Magistrate.

APPLICATION for writ of prohibition to prevent a Magistrate from proceeding with a criminal charge against the accused.

G. A. Goeujon, for applicant.

G. L. Murray, Q.C., for respondent and Attorney-General of British Columbia.

VERCHERE, J.:—The applicant seeks a writ of prohibition directed to Alfred Watts, Q.C., the Magistrate at West Vancouver, to prevent him from proceeding in English to try a criminal charge against her. She claims that, as a Canadian citizen who speaks only the French language, she is entitled as of right to require that her trial be conducted in French and accordingly asserts that the learned Magistrate was without jurisdiction to direct, as he did, that the proceedings in his Court would be in English with an interpreter provided to translate them for her.

The main tenor of Mr. Goeujon's vigorous and wide-ranging submission on the applicant's behalf was that the right asserted by her flowed by implication from the provisions of the *British North America Act*. Pointing to the assignment to the legislative authority of Canada of procedure in criminal matters by s. 91(27), and to the assignment to the legislative authority of the Provinces of procedure in civil matters in provincial Courts by s. 92(14), and further to the definition in the *Criminal Code* of Canada of the Courts of criminal jurisdiction, he contended that the language provisions of s. 133, by which, among other things, 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", established the right asserted here. And in addition, on the authority of the decision of the Supreme Court of Canada in *Winner v. S.M.T. (Eastern) Ltd. and A.-G. N.B.*, [1951] 4 D.L.R. 529, 68 C.R.T.C. 41, [1951] S.C.R. 887, where an order of a provincial board prohibiting the operator of a bus service running between Boston and Halifax from embussing and debussing passengers in New Brunswick was held illegal because in the words of Rand, J., at p. 559, "the privilege of using highways is likewise an essential attribute of Canadian citizenship status", and on the further authority of the judgment in *Switzman v. Elbling and A.-G. Que.*, 117 C.C.C. 129, 7 D.L.R. (2d) 337, [1957] S.C.R. 285, where the validity of a provincial statute called an *Act Respecting Communistic Propaganda* was in issue, and where at pp. 151 and 152 Rand, J., referred, in what I respectfully term magnificent language, to the right to freedom of discussion in Canada, Mr. Goeujon contended that every Canadian has the right, if he wishes, to have his trial in any Court of criminal jurisdiction conducted in the French language, when, as here, he speaks no other language.

My view, with respect, is that even if the language in which the proceedings in provincial Courts are to be conducted is no more than a matter of procedure and therefore, when those Courts are Courts of criminal jurisdiction, a matter for the legislative authority of Canada under s. 91(27), no authority, express or implied, exists in British Columbia for the right Mr. Goeujon asserts when the Court is a provincial Court. If the Magistrate's Court at West Vancouver were a "Court of Canada established under this Act", as referred to in s. 133, it might be that a very different conclusion would arise, but as it is by the *Magistrates Act*, 1962 (B.C.), c. 36, that the appointment and jurisdiction of Magistrates is governed, I hold that the Magistrate's Court is clearly a provincial Court. The definition by s. 2(10)(*b*) of the *Criminal Code* of a Court

of criminal jurisdiction as meaning, among other things, a Magistrate acting under Part XVI does not advance the matter, especially as on turning to Part XVI we find that by s. 466(*b*), the word Magistrate is defined to mean a person appointed under the law of a Province.

It was submitted by Mr. Murray, somewhat hesitatingly, however, that s. 133 had impliedly recognized English as the official language for use generally in the Courts in Canada, excepting in "any Court of Canada established under this Act, and . . . all or any of the Courts of Quebec", because if the Imperial Parliament had intended that French should be an official language for use in the Courts, other than in those expressly referred to, it would have said so. But I do not think I need decide the point that he raised. Instead, I prefer to rest my judgment, as I do, on the absence of any affirmative statement to repeal what, in my opinion, has since November 19, 1858, been the law in British Columbia relating to the use of the English language in the provincial Courts in the Province.

By the *English Law Act*, R.S.B.C. 1960, c. 129, the civil and criminal laws of England, as they existed on November 19, 1858, and were not from local circumstances inapplicable, were declared in force in all parts of British Columbia. A part of that law was the statute of 4 Geo. II, c. 26 (Statutes at Large, vol. 5, p. 575) by which it was provided that after March 25, 1733, ". . . all Proceedings whatsoever in any Courts of Justice within that Part of *Great Britain* called *England*, and in the Court of Exchequer in *Scotland*, and which concern the Law and Administration of Justice, shall be in the *English* Tongue and Language only . . ." I was not referred to nor am I aware of any local circumstance existing in 1858 to make that law inapplicable in British Columbia and consequently, in my opinion, it passed into and became part of the laws of British Columbia upon the passing of the *English Law Act* and has since remained unaffected by any enactment of Canada or of British Columbia.

I am strengthened in this opinion by the helpful judgment of Harvey, Co.Ct.J., in *R. v. Keller*, [1966] 2 C.C.C. 380. There, sitting as a Local Judge of this Court and therefore exercising a jurisdiction concurrent with my own, the learned Judge held that a notice written in plain, unambiguous English complied with s. 712 of the *Criminal Code* although the accused spoke no English and was therefore unable to understand its meaning because, in his opinion, the law relating to the use of English in the provincial Courts was governed by the statute of 4 Geo. II, c. 26, *supra*.

In holding, as I do, that the law of this Province requires that trials in provincial Courts be conducted in English, I am not overlooking the asserted unfairness of this course to a Canadian who speaks only French. But, in my opinion, when the rights of an accused person ignorant of the English language are observed and the evidence given at the trial translated to him, as it must be (see *R. v. Lee Kun* (1915), 11 Cr. App. R. 293), it cannot be assumed that any unfairness to him will then arise. And as regards the asserted desirability or otherwise of the right to use either language in any Court in British Columbia, I say only that to comment would be to exceed my function.

Being of the opinion regarding the language to be used in provincial Courts in British Columbia that I have expressed, I hold that the learned Magistrate had jurisdiction to order, as he did, that the applicant's trial would be conducted in English. Her application is accordingly dismissed.

Application dismissed.