

Criminal Code

to understand why we include in the bill a distinction between one who speaks the language of the accused and one who speaks both official languages. Why a distinction between one who speaks the official language of the accused and one who speaks both official languages of Canada?

The distinction must be made between a unilingual French-speaking judge and a judge who speaks both official languages. In Ontario, as I said, all French-speaking judges are bilingual. There is no problem there. However, in Quebec one can find French-speaking judges who are not fluent in English. A choice will have to be made in certain circumstances whether to designate a bilingual judge rather than a unilingual judge.

To illustrate further the case, a choice may be made as to a judge who speaks the language of the accused and a judge who speaks both official languages in Canada. Let us situate a case in the Gaspé Peninsula or the Lac St. Jean area, where we could find a unilingual French-speaking judge designated to hear a case involving a unilingual French-speaking accused person. Some of the witnesses may be unilingual French and others unilingual English. There is no difficulty for the judge to hear testimony in the French language from those who speak French. For the witnesses who are unilingual English, the law allows the judge to swear in an interpreter who gives the judge an official interpretation. The interpretation in that court will be the language of that judge. Therefore the interpretation will be from English to French. The transcript will be in French, and the judge will make the judgement on that.

Another example, but different, is in the same locality. A unilingual French-speaking accused has elected to be tried by a judge who speaks his official language, French. However, all of the witnesses are unilingual English. It could be decided and agreed that in that case a judge who speaks both official languages of Canada would better serve the ends of justice. The judge would be able to follow all proceedings in both official languages of Canada, and the accused, this time, would be given an official interpreter. In the first case, the witness who spoke the other official language was given the interpreter, and in this case the accused is given an interpreter. Again the provisions of Bill C-42, proposed section 462.1 subsection (1), are respected.

These two examples, Mr. Speaker, at least in my understanding of the bill, would explain what is meant in the news release when the minister said, "The judge retains a discretion to order that the trial be conducted in a bilingual fashion, in other words, a mixed French and English record."

I would like to look now at existing legislation in New Brunswick and the proposed amendments to Section 127 of the Ontario Judicature Act. The province of New Brunswick in its existing legislation states at Article 13, subsection (1):

Subject to Section 15, in any proceeding before a court, any person appearing or giving evidence may be heard in the official language of his choice and such choice is not to place that person at any disadvantage.

Subsection (2) of Section 13 continues:

Subject to subsection (1), where
(a) requested by any party, and
[Mr. Gauthier (Ottawa-Vanier).]

(b) the court agrees that the proceedings can effectively be thus conducted, the court may

order that the proceedings be conducted totally or partially in one of the official languages.

In Ontario the amendments in Section 127 of the Judicature Act, subsection (5), read:

Where an application is made under subsection 3, the court may further direct that the hearing or any part of the hearing be in the French language if, in the opinion of the court, the hearing or part can be so conducted effectually.

There is a great resemblance between the New Brunswick act and the proposed amendments to the Ontario Judicature Act. As can be seen, in both cases the court is given the discretion to decide if proceedings will be heard totally or partially in one of the official languages. This may be what the Minister of Justice (Mr. Basford) meant when he talked about the bilingual fashion. I do not know. If the judge is given the discretion to decide that part of the hearing will be held in French and part in English, I want the minister to explain in committee how, in law, that will operate.

If all proceedings are to be heard in a bilingual forum with official translations of all testimony available to the accused in the official language that he speaks, Bill C-42 goes further than the provincial legislation existing in New Brunswick and the proposed legislative changes in Ontario. I stand to be corrected. The minister may explain the distinction here when in committee. However, I think we go a bit further than the Ontario and New Brunswick legislation. In my view, it is closer to the situation presently prevailing in the province of Quebec. The accused would have the right to be heard in his official language and also to hear and read testimony in that same language. This would make it possible for trials to be conducted entirely in the language of the accused.

It may be appropriate at this time to recall that, according to the Canadian Bill of Rights, all Canadians are entitled to the services of an interpreter. Bill C-42 does not change this basic right. Bill C-42 confirms that English and French as official languages of Canada can be used equally in our courts.

I am also interested in the pre-trial procedures, more especially pertaining to the preliminary hearing where a decision is made by a judge as to whether there is sufficient evidence to proceed with a trial. Will it be possible to conduct these proceedings in the language of the accused, or is this provision to be included at a later stage? The bill does set minimum standards for language rights before the courts, and I am aware that the provinces will be free to add to these. Preliminary inquiries in the language spoken by the accused could be one of them.

There are many other questions which no doubt will arise in committee.

I understand also that timing of the proclamation of this legislation will be the subject of consultation between the federal government and each province. Province by province, proclamation will provide the flexibility that would allow each province to take the administrative steps required for the efficient implementation of the proposals in the province. Minority official language trials for indictable offences may be