

# **ACCESS TO JUSTICE IN FRENCH**

## **THE CANADIAN EXPERIENCE OUTSIDE MANITOBA**

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### **THE 3 INGREDIENTS FOR ACCESS TO JUSTICE IN FRENCH**

- **Legal and Regulatory Framework**
  - Right to the use of French in Court
  - Regulations regarding the various aspects of French/bilingual litigation
- **Obligation to provide the service**
  - Moral and ethical obligation to provide services in French
- **Resources**
  - Bilingual judges, lawyers and other justice professionals

## **RESOURCES**

- Many Francophone graduates of various English Common Law programs
- Common Law education is available in French
  - Université d'Ottawa,
    - Programme de common law en français
    - 1977
  - Université de Moncton
    - French education
    - 1978
  - Other programs in Anglophone universities

## **RESOURCES**

- Bilingual judges
  - Bilingual judges appointed in all provinces
  - Availability a major issue
  - Representations from Francophone communities
  - Report from Commissioner of Official Languages
  - Newest issue: measuring the real bilingual capacity
- Other professionals in the justice system
  - Clerks, paralegals, police officers, correctional/parole officers, interpreters, etc.

## **MORAL AND ETHICAL OBLIGATION**

- Option to receive services in French and access Justice in French was not an issue before rights were available
  - Accessing justice in a second language is a significant barrier
  - Understanding of process is affected
  - Assessment of credibility can be affected
- As right to access justice in French became available
  - Initial reluctance by segments of the Francophone population
  - Legitimate to offer services to Francophones in English when limited equivalent services in French?

## **MORAL AND ETHICAL OBLIGATION**

- As services in French became more readily available, population was still seeking services in English
  - Anglophone Bar was not advising francophone clients of their right to access justice in French
  - Promotion of linguistic rights seen as an effort from Francophone Bar to “steal” clients from Anglophone lawyers
  - When clients asked about their rights, sometimes asked “Do you want the best lawyer or do you want a Francophone lawyer”
- 2000: efforts successful in Ontario to include obligation in Code of Conduct
  - Followed by New Brunswick, CBA, Model Code of Professional Conduct, other provinces

## LEGAL AND REGULATORY FRAMEWORK

- Significant milestones:
  - New Brunswick
    - 1969 – *Official Languages Act*
      - Right to access Courts in French
    - 1981 – *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*
      - Affirmation of the equal status of both linguistic communities

## LEGAL AND REGULATORY FRAMEWORK

- Significant milestones:
  - New Brunswick
    - 1986 – *Interpreters Regulations*
      - Availability of Court interpreters
    - 1993 – *Charter – Constitutional Amendment Proclamation (New Brunswick Act)*
      - *Charter s.16.1* – equality of the two communities

## **LEGAL AND REGULATORY FRAMEWORK**

- Significant milestones (cont'd):
  - Ontario
    - 1978 – *Judicature Amendment Act*
      - Access to justice in French in designated areas
    - 1984 – *Courts of Justice Act*
      - Official languages of the Ontario Courts are French and English

## **LEGAL AND REGULATORY FRAMEWORK**

- Significant milestones (cont'd):
  - Ontario
    - 1984 – *Bilingual Proceedings Regulation*
      - Requisition for bilingual trials
      - Amended 1993, 1997
      - Repealed and replaced 2001
        - Variety of measures to effect right to trial in both official languages
    - 1986 – French Language Services Act
      - Access to Ontario government services in French

## **THE SITUATION IN ONTARIO**

- Issues with the client population
  - Evolution over time
  - Initially
    - Many Francophones, who understood English, did not want to “bother” the Court with request for bilingual trial
    - Some negative perceptions of the Francophone Bar
  - Now
    - Population accepts and expects that Francophone lawyers are at least as good as Anglophone lawyers
    - The potential for additional costs and delays is a major aspect of decision as to whether or not client will ask for French services

11

## **THE SITUATION IN ONTARIO**

- Issues with the availability of judicial resources
  - Initially
    - More delays were to be expected in bilingual matters
  - Now
    - Availability of judicial resources vary greatly
    - Episodes when matters unexpectedly proceed in English
    - Advantage/disadvantage of having fewer judges who can potentially be assigned to a case
    - Party with the bilingual lawyer often has an advantage in Court

12

## **THE SITUATION IN ONTARIO**

- Issues with the availability of other resources
  - Initially
    - The unavailability of other judicial professionals could stop a matter in its tracks
    - Because of paucity of resources, Francophone lawyer had to create most tools from scratch
  - Now
    - Community colleges have many of the required programs and graduates are in great demand
    - Availability of many resources (precedents, forms, etc.)
    - Some commercial programs not (yet?) available in French

13

## **THE SITUATION IN ONTARIO**

- My general conclusion re: access to justice in French
  - Despite all problems, and while the client must be advised of the potential for additional costs and delays, the potential disadvantages of proceedings in French are more than offset by the advantage of being understood by the trier of facts in one's own language.

14