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<p>CHAPTER VI – CHAPITRE VI :</p> <p><b>Particular Proceedings: Equality and Rights Procédures particulières : Égalité et Droits</b></p>	<p>Readers are referred to the list of Related Documents at the end of this Policy for additional information.</p> <p>Les lecteurs peuvent se référer à la liste des documents connexes notés à la fin de cette politique pour information supplémentaire.</p>	

## LANGUAGE RIGHTS

### 1. Introduction

The French and English languages have equality of status and equal rights and privileges as to their use in all institutions of the Legislature and Government of New Brunswick. Such language rights are provided under the *Constitution Act*, the *Charter of Rights and Freedoms*, the *Official Languages Acts* and the *Criminal Code*.

### 2. Statement of the Policy

It is the responsibility of the Regional Director or the Director of Specialized Prosecutions, as the case may be, to ensure that the office in which he or she is located serves the public in the official language of choice. While staffing profiles are intended to accomplish this objective, it is the responsibility of the Crown Prosecutor and the Regional Director or the Director of Specialized Prosecutions, as the case may be, to make any necessary internal office arrangements to provide this service.

Every person charged with an offence is entitled to proceed in the official language of his or her choice. Every witness in a proceeding is entitled to testify in the official language of his or her choice.

The Crown Prosecutor has a duty to ensure that the language rights of accused persons and witnesses are respected.

### 3. Procedure

In order to ensure that the language rights of an accused are respected, the Crown Prosecutor, should verify, where possible, prior to the laying of an information, whether the language rights of the accused person have been respected by the police or investigative agency.

The Crown Prosecutor should ensure, to the extent possible, that the accused person's first court appearance accommodates the official language choice of the accused. It follows that all subsequent proceedings should also accommodate the accused person's official language choice. Where no language election has been made by the accused, the Crown Prosecutor shall make a note in the file.

If there is any indication that the accused person's language rights have not been respected, the Crown Prosecutor shall clarify this matter and respond accordingly.

### **3.1 Provincial Court**

Where the Crown Prosecutor, after the initiation of court proceedings, is advised that an accused wishes to be tried in the other official language, the Crown Prosecutor shall advise the court if necessary.

Where it is apparent that translation services will be required at trial in respect of the Crown's evidence, the Crown Prosecutor shall ensure that appropriate arrangements have been made for such services.

### **3.2 Court of Queen's Bench**

In the Court of Queen's Bench the responsibility for making the necessary arrangements for the conduct of the trial, including accommodating language rights, is on the Clerk of the Court. It is the responsibility of the Crown Prosecutor who is put on notice of the language request to advise the Clerk of the Court of the accused person's choice of language at the earliest possible date. Where translation services will be required at trial, the Crown Prosecutor shall, as soon as possible, notify the Clerk of the Court who has the responsibility to make appropriate arrangements.

## **4. Order for a Trial in an Official Language or a Bilingual Trial**

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Under section 530 of the *Criminal Code*, the court may order a trial in either of the official languages, or can order a bilingual trial. In a bilingual trial, the questions are posed and answered in the official language of the witness. By contrast, in a trial held in one of the official languages, all questions to a witness are posed in the official language of the accused and translated out loud to the witness, where necessary, and the witness's response translated out loud to the court, where necessary.

### **4.1 Mandatory to Grant the Accused Person's Application**

Where the accused person makes an application for a trial in an official language or a bilingual trial within the time limits provided by subsection 530(1) of the *Criminal Code*, the granting of the order is mandatory.

The Crown Prosecutor shall not contest the choice of official language of the accused, unless the accused clearly has insufficient knowledge of the chosen language to instruct counsel and to follow the proceedings in that language.

### **4.2 Obligations of the Crown Prosecutor and Language Capacity**

Where an order is made for a trial in an official language, and it is apparent that any language right of the accused is not being respected, the Crown Prosecutor shall either request an adjournment to remedy the situation or obtain a clear waiver of the relevant language rights from the accused, where possible.

The accused has a right under section 530.1 of the *Criminal Code* to a Crown Prosecutor who speaks the same official language as the accused. Where an order is made for a trial in an official language, the Crown Prosecutor responsible for the file shall ensure that he or she has sufficient command in both oral and written use of the official language stated in the Order.

### **4.3 Crown's Request for a Bilingual Trial**

Where the majority of Crown witnesses do not speak the official language of choice of a bilingual accused, the Crown Prosecutor may request a bilingual trial. Such an order will permit witnesses to be examined in their own language rather than through an interpreter pursuant to subsection 530.1(c.1).

Where co-accused exercise their respective rights to be tried in different official languages, and the accused would otherwise be tried jointly, the Crown Prosecutor may seek to obtain an order for a bilingual trial. Generally, a joint bilingual trial satisfies the accused person's language rights without undue harm to the public interest. This general rule can be set aside, where it is necessary in the interests of justice, that the trial be severed or where it is established that a joint trial would cause injustice to one or more of the accused.

## **5. Disclosure of Evidence**

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There is no statutory legal obligation to provide a written translation into the official language of the accused of any evidence disclosed pursuant to the Crown's disclosure obligation.

Whether to provide translated disclosure material is a question that the Crown Prosecutor shall decide on a case-by-case basis having regard to the unique circumstances of each case. The objective is to provide the accused with adequate information about the Crown's evidence so that he or she may make full answer and defence.

Where the Crown Prosecutor receives a request for the translation of some or all of the information disclosed to the accused, the Crown Prosecutor shall follow the procedure set out in Policy 22, Disclosure.

## **6. Related Documents**

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Policy 22      Disclosure