

No. N31556;
081367815W1

IN THE PROVINCIAL COURT OF ALBERTA

IN THE MATTER OF

R [REDACTED] O [REDACTED] - A [REDACTED]

A Child within the meaning of
the Child, Youth and Family Enhancement Act

P R O C E E D I N G S

Calgary, Alberta
18th December, 2008

Transcript Management Services
Suite 1901-N, Calgary Courts Centre
601 - 5th Street S.W.
Calgary, Alberta T2P 5P7

1 Proceedings taken in the Provincial Court of Alberta,
2 Courthouse, Calgary, Alberta.

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4 *December 18, 2008 a.m. session

5

6 The Honourable Judge Provincial Court of
7 Cook-Stanhope Alberta

8

9 T. Larochelle, Esq. For the Director of Child
10 Welfare

11 D. Doucet, Esq. For the Father

12 C. Le Quere, Ms. For the Mother

13 L. Newsome, Ms. Court Clerk

14 -----

15 THE COURT CLERK: R [REDACTED]-A [REDACTED], [REDACTED]

16 (phonetic) and [REDACTED] (phonetic) and the
17 Director of Children's Services. Application
18 (INDISCERNIBLE).

19 MR. LAROCHELLE: Good morning, Your Honour.

20 Larochelle for the Director.

21 THE COURT: Yes.

22 MR. LAROCHELLE: My friend Mr. Doucet is counsel
23 for the father. My friend -- I always pronounce your
24 last name incorrectly.

25 MS. LE QUERE: Ms. Le Quere.

26 MR. LAROCHELLE: Le Quere, counsel for the
27 mother. I understand the mother is consenting to the

1 Director's application. I don't believe the father
2 is at this time. Is that correct?

3 MR. DOUCET: That's correct.

4 THE COURT: Okay.

5 MR. LAROCHELLE: The issue, I understand, that is
6 before the Court today that I was asked to come over
7 and speak to is I believe there is an application
8 that the proceedings be conducted in French.

9 THE COURT: In French.

10 MR. LAROCHELLE: And I'm here to speak to that
11 application. Would Your Honour wish to hear from me
12 first or from my friend?

13 THE COURT: It is your application.

14 MR. DOUCET: Well, as I indicated to the
15 Court at our last court appearance, my client, his
16 first language is French. He is contesting the
17 application before the Court for a supervision order.
18 The matter is going to be set for a hearing. It is
19 our position that Mr. --

20 THE COURT: It has been, has it not? Did we
21 not talk about a hearing date last time?

22 MR. DOUCET: I don't think a hearing date was
23 set.

24 THE COURT: No, I guess we did not, because
25 we did not know which way we were going on terms of
26 the language of the trial.

27 MR. DOUCET: So as I indicated at our last

1 court appearance that there was case law in Alberta,
2 a recent decision by Judge --

3 THE COURT: Wenden.

4 MR. DOUCET: -- Wenden from out of Edmonton,
5 a case of Her Majesty the Queen v. Gilles Caron,
6 whereby it was -- as a result of that decision there
7 was a whole history of the constitutional framework
8 here in the Province of Alberta. It was declared
9 that to the extent that the evidence was -- the Court
10 was satisfied in that decision that there was a
11 pattern of official bilingualism within this province
12 that applied, that the English and French language
13 were equal in status, and that both of those
14 languages have equal status before provincial
15 institutions in the Province of Alberta.

16 So in light of that decision, I made a request
17 for a French trial. My understanding is, regardless
18 of that particular decision, we have at our
19 availability we have a judge who is -- a couple of
20 judges that are able to conduct a hearing in both
21 official languages. The parties before the Court, I
22 would submit that even if the mother is consenting to
23 the application, her first language is also French.
24 She is likely going to be giving evidence as well.

25 So the only party here that we have to
26 accommodate --

27 THE COURT: Excuse me. I understood she was

1 taking no -- she was not taking any position, or do
2 you agree that she is going to be called to give
3 evidence on --

4 MS. LE QUERE: That hasn't --

5 THE COURT: -- behalf of the --

6 MS. LE QUERE: That hasn't been determined,
7 so --

8 THE COURT: So let's not go there just yet.
9 It is up to Ms. Le Quere to decide whether her client
10 is going to be called in to give evidence on behalf
11 of yours.

12 MR. DOUCET: Yeah.

13 THE COURT: She is not -- she is consenting,
14 so --

15 MR. DOUCET: Well, in any event, she may be
16 -- she may well be called by -- on the part of -- she
17 might be called as a witness in relation to the
18 father's application (INDISCERNIBLE) --

19 THE COURT: By whom?

20 MR. DOUCET: I might be calling her as a
21 witness.

22 THE COURT: Well, I think you should take
23 that up with --

24 MR. DOUCET: Yeah, well, I guess my point in
25 bringing this up at this point is that the parties
26 here that are subject to this application, their
27 first language is French.

1 THE COURT: Mmm hmm.

2 MR. DOUCET: So that, combined with the case
3 that I made reference to, it is my submission that
4 Mr. ██████ is entitled to a French trial.

5 THE COURT: Tell me whether you believe that
6 one is able to transport the reasoning from a
7 criminal prosecution to a civil trial. Tell me what
8 your argument is with respect to that.

9 MR. DOUCET: Well, in the Caron case, the
10 hearing was held in French. It's a statutory --

11 THE COURT: No, I understand that it was. I
12 understand it was held in French. I referred to this
13 case last time when you made your application. Tell
14 me whether or not it applies equally constitutionally
15 to a case that is a civil case, as opposed to a
16 federal statute, which is the Criminal Code
17 prosecution. Tell me whether and how. And I am not
18 saying it does not apply. I am asking you to argue
19 it.

20 Just because there is a criminal decision, R. v.
21 Caron, does not necessarily mean under the British
22 North America Act, where the provinces have the power
23 to create statutes vis-à-vis property and civil
24 rights -- I do not know whether it is '92 or '91, I
25 can never get those -- call them to mind when I need
26 them. But tell me whether or not in a provincial
27 statute the same applies --

1 MR. DOUCET: Well --

2 THE COURT: -- based on Caron.

3 MR. DOUCET: Well, in the Caron case, in

4 fact, the -- Mr. Caron was challenging the validity

5 of the infraction that was imposed on him under the

6 Highway Act. That --

7 THE COURT: Okay.

8 MR. DOUCET: That's a provincial statute.

9 THE COURT: All right.

10 MR. DOUCET: So the (INDISCERNIBLE) Criminal

11 Code is not applicable in the -- in the Caron case,

12 but --

13 THE COURT: I have not read the Caron --

14 MR. DOUCET: Yeah.

15 THE COURT: -- case in detail.

16 MR. DOUCET: Yeah.

17 THE COURT: I just --

18 MR. DOUCET: So --

19 THE COURT: -- realize that it was a case of

20 prosecution as opposed to between litigants --

21 MR. DOUCET: So this was a --

22 THE COURT: -- (INDISCERNIBLE).

23 MR. DOUCET: This was the Highway Act that

24 applies here in Alberta. Mr. Caron was -- was

25 contesting (INDISCERNIBLE) --

26 THE COURT: Do you recognize that there is

27 any difference between that --

1 MR. DOUCET: I don't recognize --

2 THE COURT: Okay.

3 MR. DOUCET: -- the -- I think, if I could

4 just wrap this up by saying in that particular case

5 Mr. Caron was dealing with the State, the provincial

6 government, and by analogy here is the Director of

7 Child Welfare is also the State, so it would be my

8 submission that Mr. ██████ is entitled to a French

9 trial.

10 THE COURT: Mmm hmm.

11 MR. DOUCET: Thank you.

12 THE COURT: Have you given your authorities

13 to the Court?

14 MR. DOUCET: Well, you will recall at our

15 last appearance I made reference to making a case

16 available --

17 THE COURT: So you thought I would go out

18 and photocopy it for myself, or what did you think?

19 MR. DOUCET: Well, what I made reference at

20 our last appearance was that I only had a French

21 copy, and that --

22 THE COURT: And you said it was going to be

23 translated.

24 MR. DOUCET: I believe it was going to be or

25 it is being --

26 THE COURT: And has it been -- it has not

27 been translated?

1 MR. DOUCET: I haven't been able to find it
2 on Quicklaw or Westlaw.

3 THE COURT: Mmm hmm.

4 MR. DOUCET: And you will recall that the
5 Court had suggested to the court worker to invite
6 Crown counsel to call my office to discuss this.
7 I've -- first I've heard of the position of the
8 Director was this morning.

9 THE COURT: Mmm hmm.

10 MR. DOUCET: Earlier. About five minutes
11 ago.

12 THE COURT: Mmm hmm.

13 MR. DOUCET: Thank you.

14 THE COURT: So have you given -- have you
15 got the case in French?

16 MR. DOUCET: I do.

17 THE COURT: Is that it for the Court?

18 MR. DOUCET: Yes.

19 THE COURT: Okay. Hand it up.

20 MR. LAROCHELLE: We oppose the application, Your
21 Honour. I'm -- and I can get these cases, if you --
22 if you wish.

23 THE COURT: I do wish. I am not going to do
24 the research.

25 MR. LAROCHELLE: Fair enough. Fair enough.

26 THE COURT: You know.

27 MR. LAROCHELLE: I will -- I'll provide you --

1 THE COURT: This is the end of the year
2 here.

3 MR. LAROCHELLE: -- with these. I didn't know
4 what we were doing today, because --

5 THE COURT: Well, I did not either.

6 MR. LAROCHELLE: -- I wasn't here last time.

7 THE COURT: And I just put it over to be
8 spoken to. I did not --

9 MR. LAROCHELLE: Sure.

10 THE COURT: -- put it over for a huge
11 constitutional argument in the middle of my docket.
12 Frankly, I am surprised that it has proceeded, but --

13 THE COURT: Okay.

14 THE COURT: -- you know, I am not going
15 to --

16 MR. LAROCHELLE: I'll be --

17 THE COURT: -- shut it down now that I know.

18 MR. LAROCHELLE: I'll be quick. Historically, my
19 friend is right. There was a -- there was a Section
20 110 of the Northwest Territories Act that did allow
21 for hearings in both languages. Later, there was
22 some mixed case law, some Courts saying it didn't
23 apply anymore, some Courts saying it did apply, and
24 that carried on. Specially the cases seemed to be
25 criminal case, because someone's liberty was at
26 stake.

27 However, the Legislature then dealt with that

1 issue by enacting The Languages Act in 2000. The
2 Languages Act is quite clear that you are not
3 entitled to -- it is not a right to a hearing in
4 French. You have a right to a hearing in English.
5 This Court may direct -- Your Honour may direct that
6 portions of the proceeding be in French; however,
7 then we have to make allowances for translators for
8 those involved in the proceeding who aren't French,
9 i.e. if this matter --

10 THE COURT: Mmm hmm.

11 MR. LAROCHELLE: -- were to go ahead with --

12 THE COURT: As we would in any trial where
13 there was a French speaker --

14 MR. LAROCHELLE: Fair enough.

15 THE COURT: -- (INDISCERNIBLE).

16 MR. LAROCHELLE: In this case it would be a
17 little bit backwards, because Your Honour would be
18 making allowances for my office to have the matter
19 translated into English.

20 THE COURT: Mmm hmm.

21 MR. LAROCHELLE: The problems that we would
22 suggest would occur, if Your Honour used your
23 discretion in that regard, would be what if the
24 matter goes to appeal at the Court of Queen's Bench?
25 Everything would have to be translated into English
26 or they'd have to find a French speaking Q.B.
27 justice. What if --

1 THE COURT: There are several Q.B. justices
2 who --

3 MR. LAROCHELLE: What if it goes to the --

4 THE COURT: -- speak French.

5 MR. LAROCHELLE: -- Court of Appeal? Then we are
6 going need three --

7 THE COURT: There are several Court of
8 Appeal justices --

9 MR. LAROCHELLE: Okay.

10 THE COURT: -- who speak French.

11 MR. LAROCHELLE: All of the Child Welfare
12 documents would have to be in French and English.

13 THE COURT: But is your argument that it is
14 really inconvenient and that should be enough to not
15 allow --

16 MR. LAROCHELLE: Well, my argument --

17 THE COURT: -- to convince the Court not
18 to --

19 MR. LAROCHELLE: My argument is that The
20 Languages Act was enacted so that this did not occur.

21 THE COURT: But you acknowledge that there
22 is a discretion that remains in the Court?

23 MR. LAROCHELLE: There is a discretion as far as
24 Your Honour is concerned with respect to translating
25 or having translators.

26 THE COURT: Mmm hmm.

27 MR. LAROCHELLE: Our argument is that in this

1 case English under the Act is the language that would
2 be used. Your Honour can make allowances for it to
3 be translated into another language, and we're saying
4 that French should be no different than if people
5 were here speaking any other language --

6 THE COURT: Mmm hmm.

7 MR. LAROCHELLE: -- asking that the proceedings
8 be in any other language. This Court wouldn't say,
9 well, we'll do it in that language --

10 THE COURT: Mmm hmm.

11 MR. LAROCHELLE: -- then because we happen to
12 have a judge who speaks that language.

13 THE COURT: So you make a -- you make a
14 distinction between institutional bilingualism versus
15 translation?

16 MR. LAROCHELLE: Absolutely.

17 THE COURT: Okay. And the distinction is?

18 MR. LAROCHELLE: Well, the distinction is this --
19 The Languages Act does not import institutional
20 bilingualism. In fact, it does the opposite. So
21 French, after The Languages Act came in in 2000,
22 French has been treated like any other language. No
23 more rights are accorded or afforded someone who
24 wants to speak French in this matter in this court
25 than someone who wants to speak any other language.

26 THE COURT: Was The Languages Act dealt with
27 by Judge Wenden in his decision?

- 1 MR. LAROCHELLE: I haven't -- I hadn't heard of
2 that case until I got here this morning.
- 3 THE COURT: Oh.
- 4 MR. LAROCHELLE: So I haven't read that case.
- 5 THE COURT: Can you answer that, Mr. Doucet?
- 6 MR. DOUCET: Yes, exactly, that was --
- 7 THE COURT: What did they say about The
8 Languages Act specifically?
- 9 MR. DOUCET: To the extent that it limited or
10 -- or basically prohibited the use of the French
11 language, that it was unconstitutional.
- 12 THE COURT: Mmm hmm.
- 13 MR. DOUCET: And, in fact, that was the
14 argument in that particular case, where there was a
15 request to have that portion of the Act struck.
- 16 THE COURT: It is under appeal?
- 17 MR. DOUCET: It is.
- 18 THE COURT: And what is the state of appeal?
- 19 MR. DOUCET: The factums were filed in late
20 November, probably early December, and --
- 21 THE COURT: So it is not going to be heard
22 by the Court of -- is it a summary -- it is a --
- 23 MR. DOUCET: Yes.
- 24 THE COURT: -- summary conviction. Court of
25 Queen's Bench will hear it.
- 26 MR. DOUCET: Yes.
- 27 THE COURT: So it probably --

1 MR. DOUCET: Dates are set for late January.
2 THE COURT: I was going say. And then they
3 reserve. Probably June.
4 MR. LAROCHELLE: So --
5 THE COURT: It is a significant decision.
6 Obviously the Court is going to spend its time.
7 MR. LAROCHELLE: Sure. But it's a decision that
8 then, because I haven't even read it, I assume it's
9 out of Provincial Court, so it's not binding --
10 THE COURT: It's out of Provincial Court.
11 MR. LAROCHELLE: -- on Your Honour. It's out of
12 a different division, so it's arguable whether it's
13 even influential on Your Honour.
14 THE COURT: Mmm hmm.
15 MR. LAROCHELLE: And even if Queen's Bench
16 upholds it, there's an argument as to whether it
17 carries over to this --
18 THE COURT: Mmm hmm.
19 MR. LAROCHELLE: -- this court.
20 THE COURT: Okay. Can I have your
21 authorities? Did you bring your authorities?
22 MR. LAROCHELLE: Well, I have got a memorandum
23 that I would happy to give you. I am going to have
24 to get the authorities reproduced for you.
25 THE COURT: Would you do that, please?
26 MR. LAROCHELLE: Sure, I'm happy to do that.
27 THE COURT: And would you provide me -- when

1 is the translation going to be done on your case?

2 MR. DOUCET: I --

3 THE COURT: I mean, I explained to you at
4 the last time the following, and that is that
5 although I speak French I did not know that I was
6 comfortable enough dealing with this kind of thing.
7 You chose to bring your application in front of me,
8 so you better choose to translate, otherwise I am not
9 going to feel comfortable giving you a broad enough
10 response to your application. So I ask you, when
11 could it be translated?

12 Does it deal with the R. v. Beaulac in the
13 Supreme Court of Canada, which is a case about eight
14 years old?

15 MR. DOUCET: Yes, it is --

16 THE COURT: It does deal with that? Because
17 that is in English.

18 MR. DOUCET: That's in English. I can make
19 that available. In terms of having this translated,
20 I can see if the --

21 THE COURT: I expect you to provide me all
22 of the authorities cited by Judge Wenden and a
23 translation of this decision.

24 MR. DOUCET: And when would you like that,
25 Your Honour?

26 THE COURT: Well, it is really up to you. I
27 cannot answer this issue today without review, a

- 1 thorough review of the authorities. I will put it --
2 I am going to be -- this is my last day here. I am
3 not going to be back for some time, so you can
4 provide it for me in the new year and expect me to
5 adjourn for the purpose of considering the
6 application.
- 7 MR. DOUCET: Okay.
- 8 MR. LAROCHELLE: I have some authorities I can
9 give Your Honour this morning, if you -- if you wish,
10 and I'll --
- 11 THE COURT: Yes.
- 12 MR. LAROCHELLE: -- I'll make copies for my
13 friend. I don't have copies this morning.
- 14 THE COURT: Well, when you --
- 15 MR. LAROCHELLE: They are --
- 16 THE COURT: When you make copies for your
17 friend, why don't you just --
- 18 MR. LAROCHELLE: Fair enough.
- 19 THE COURT: -- provide them then to me.
- 20 MR. LAROCHELLE: I'll just tell you right now I
21 wanted your ruling on this. One of the authorities I
22 intend to provide is -- I believe it's -- is it Peter
23 Hawke (phonetic), constitutional expert?
- 24 THE COURT: Constitutional expert, mmm hmm.
- 25 MR. LAROCHELLE: He has prepared a --
- 26 THE COURT: (INDISCERNIBLE).
- 27 MR. LAROCHELLE: -- an article on this issue, and

1 I can tell you that the outcome of that article is in
2 support of our argument.

3 THE COURT: Is that post R. v. Beaulac?

4 MR. LAROCHELLE: Yes.

5 THE COURT: Okay.

6 MR. LAROCHELLE: So that is one of the documents
7 I'll be tendering.

8 THE COURT: All right. So I will choose a
9 date in the new year for you to provide me with the
10 information. If I could have it by the 26th of
11 January.

12 MR. LAROCHELLE: And could I then suggest that my
13 materials be to Your Honour even the 30th?

14 THE COURT: Actually -- okay, yes, the
15 translation and everything by the 26th. Then, yes,
16 Mr. Larochelle --

17 MR. LAROCHELLE: If I can have it by the end of
18 the week.

19 THE COURT: Okay, just to pick a day,
20 because I need to put this somewhere, 1208, the 11th,
21 2 p.m.

22 MR. LAROCHELLE: The 11th of February?

23 THE COURT: Yes.

24 MR. LAROCHELLE: And, Your Honour, what tends to
25 happen in these cases where we have side issues,
26 collateral issues like this, is sometimes we lose
27 sight of the central issue. I just want to make

- 1 sure --
- 2 THE COURT: The child is living with the
- 3 mother right now. She has a parenting order in her
- 4 favour. There is a no access for the -- or no
- 5 parenting time provision, I believe, in that order,
- 6 and the Director has been seeking and obtaining no
- 7 access all along. I think there's a criminal
- 8 proceeding with no access.
- 9 MR. LAROCHELLE: Good. Thanks.
- 10 THE COURT: Is there not? Am I right or
- 11 wrong? I cannot recall if this is the correct case?
- 12 MR. LAROCHELLE: I don't know.
- 13 THE COURT: Is there a criminal case before
- 14 the Court as well or not?
- 15 MR. DOUCET: No.
- 16 THE COURT: Okay, just the --
- 17 MR. DOUCET: No.
- 18 THE COURT: -- parenting order is in place,
- 19 and so far your order --
- 20 MR. LAROCHELLE: Okay.
- 21 THE COURT: -- that you sought.
- 22 MR. LAROCHELLE: Good.
- 23 THE COURT: Okay?
- 24 MR. LAROCHELLE: Yes, I just wanted to make sure.
- 25 Thanks, Your Honour.
- 26 THE COURT: So order is (INDISCERNIBLE).
- 27 MS. LE QUERE: Your Honour, I may not be

1 present on the 11th.

2 THE COURT: No, and I understand. You were
3 not intending to participate in the application at
4 all.

5 MS. LE QUERE: Yes.

6 THE COURT CLERK: (INDISCERNIBLE) parent status --

7 THE COURT: Yes.

8 THE COURT CLERK: -- continue?

9

10 PROCEEDINGS CONCLUDED

11

12

13 Certificate of Record

14 I, Laura Newsome, certify that this recording is a
15 record of the oral evidence of proceedings in Family
16 and Youth Court, held in Courtroom 1208, at Calgary,
17 Alberta, on the 18th day of December, 2008, and that
18 I was in charge of the sound-recording machine.

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1 *Certificate of Transcript

2 I, the undersigned, certify that the foregoing pages
3 are a true and faithful transcript of the contents of
4 the record, including the certificate of record given
5 orally by the court official, recorded by means of a
6 sound-recording machine.

7

8


J. Rumary, Ms.

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Transcriber

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12 Date May 27, 2009

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