

**MINISTRY OF JUSTICE
COURT SERVICES BRANCH
BRIEFING NOTE**

PURPOSE: For INFORMATION – Honourable Suzanne Anton, QC, Minister of Justice and Attorney General

ISSUE: Charter challenge in criminal trial following difficulty providing an accredited Cambodian interpreter.

SUMMARY:

- Following several court appearances where different Cambodian interpreters were retained for an accused, defence filed application seeking a remedy under s. 24(1) of the Charter of Canadian Rights and Freedoms alleging that his client's rights under sections 7 and 14 of the Charter were violated as a result of a lack of standardized system for court interpreters in B.C.
- The Judge reserved judgment until September 11, 2015.

BACKGROUND:

CSB Policy

- CSB is responsible for the scheduling of interpreters for court. CSB manages a directory of accredited and non-accredited court interpreters. CSB utilizes both accredited and non-accredited interpreters; however, only accredited interpreters are permitted to interpret at a trial and are given preference for most other assignments.
- Non-accredited interpreters may occasionally be used for first appearances, bail hearings, and other similar matters. All non-accredited interpreters must demonstrate experience interpreting in a court, tribunal, or quasi-judicial environment; or involvement in professional development training and must provide the names of two persons as references who can attest to their competency.
- To be considered an accredited interpreter by CSB, applicants must be certified by one of the following programs:
 - Certification as a Court Interpreter from either the Society of Translators and Interpreters of BC (STIBC) or;
 - The Canadian Translators, Terminologists and Interpreters Council (CTTIC); or
 - Completion of the Court Interpreter certification through Vancouver Community College (prior to 2012)
- All CSB accredited and CSB non-accredited interpreters undergo a criminal reference check.

- If an accredited interpreter is not available staff refer to the Provincial Government Corporate Supply Arrangement (CSA). The qualifications for a Certified Court Interpreter from the CSA are:
 - certified as a court interpreter by any of the Provincial or Territorial translator and interpreter organizations in Canada (e.g. Society of Translators and Interpreters of British Columbia, Association of Translators and Interpreters of Saskatchewan, etc.); or
 - received certification in Court Interpreting from Vancouver Community College; or
 - successfully completed certification or a diploma in court interpretation from a government accredited Canadian university or a government accredited international college or university; or
 - relevant experience of at least two (2) years OR 300 hours of court-related interpretation of the target language.
- When scheduling the interpreter from an agency on the CSA staff confirm whether agency can provide a court certified/certified interpreter.

Timeline of Events

- On September 16, 2013, the accused appeared in Court in Courtenay for judicial interim release. The accused appeared with duty counsel, and was detained in custody. There was no interpreter present at this appearance.
- At the accused's next appearance, he had retained counsel and an interpreter was provided. According to the notice of application, counsel for the accused indicated that the accused had not understood what had taken place at the bail hearing/first appearance and the accused was not aware of the implications of having had the bail hearing.
- Another hearing was scheduled. The same interpreter was retained and was subsequently dismissed. Another hearing was then scheduled with a different interpreter who failed to attend, necessitating an adjournment and a relocation of the matter to Victoria.
- The preliminary inquiry began in Victoria on August 25, 2014, the Court had secured the services of a new interpreter. Despite this, there were problems with interpretation at the preliminary inquiry.
- The subsequent trial was then scheduled in Nanaimo to begin on July 6, 2015.
- CSB was unable to provide an accredited interpreter from the CSB accredited interpreter list or from any of the companies listed in the Corporate Supply Arrangement. CSB contacted the Aquinas Institute who located two Cambodian interpreters.
- Through the Aquinas Institute, CSB found two Cambodian interpreters (1 accredited and 1 non-accredited) and sent their qualifications to counsel. The accredited interpreter had a visual impairment. Federal Crown believed that the interpreter's visual impairment would be problematic as he intended to introduce documentary

evidence at the trial. CSB retained the services of the non-accredited interpreter, s.22

- On July 6, 2015, s.22 was sworn as the interpreter. During the morning break, following the beginning of the pre-trial motion, s.22 informed both Crown and defence counsel that she did not think that the accused understood her interpretation.
- Counsel asked the accused, through the interpreter, whether he understood the interpreter's interpretation. The accused confirmed, through the interpreter, that he did not understand what had taken place in Court during the morning.
- On July 7, 2015 defence counsel filed a Notice of Application for a remedy under s. 24(1) of the Charter of Rights and Freedoms alleging that his client's rights under sections 7 and 14 of the Charter were violated as a result a lack of a standardized system for court interpreters in British Columbia. The remedy he was seeking was removal of s.22 and that the trial not proceed until a competent interpreter was secured.
- A voir dire was held July 13-14, 2015 in Nanaimo to determine whether s.22 was qualified to interpret. The court requested the attendance of a CSB representative to speak to the interpreter program. However, on July 13, the judge ruled that s.22 was not competent to interpret and declared a mistrial with respect to the proceedings that s.22 had interpreted.
- The proceedings were adjourned to July 15, 2015 to secure another interpreter.
- CSB retained two highly qualified Cambodian interpreters who were certified by the Washington State Supreme Court.
- Beginning on July 15, the judge conducted a voir dire into their qualifications. On the third day of the voir dire into their qualifications the Washington State interpreters decided to remove themselves from the proceedings. Their stated reason for leaving were that they were embarrassed and humiliated by the aggressive cross examination and as a result didn't feel like defence or the accused had confidence in their abilities. The federal prosecutor was confident that the court would qualify both of the Washington State interpreters but unfortunately, they decided to leave before a decision was made on their qualifications.
- On July 20, Crown applied to adjourn the trial to allow time to find another interpreter. The court refused this request.
- On July 21, defence filed an amended Notice of Application alleging that his client's Charter rights were breached throughout the proceedings and seeking a judicial stay of proceedings.
- The AGBC was served a copy of the notice but decided to not take a position on the application and to not appear.
- The judge reserved judgement until September 11, 2015.

Risks and Impacts

- Judge may make adverse findings/comments about CSB's program.
- The Judge may grant the relief sought and enter a judicial stay of proceedings
- If the challenge is successful, CSB may anticipate similar challenges in the future
- CSB is currently reviewing the interpreter program.

OTHER MINISTRIES IMPACTED/CONSULTED:

- Legal Services Branch – Constitutional and Administrative Law
- Legal Services Branch – CSB Legal Counsel

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Dated: August 12, 2015

Approved by:


Richard J. M. Fyfe, Q.C.
Deputy Attorney General

Dated:

**MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE**

PURPOSE: For INFORMATION of Suzanne Anton, QC, Attorney General and Minister of Justice.

ISSUE:

- 1) Meeting with Tsilhqot'in National Government on September 9, 2015 regarding First Nations Court Proposal.
- 2) Meeting with Sto:lo Tribal Council on September 9, 2015 regarding development of a Sto:lo Family Court.

SUMMARY:

- The Minister and Deputies will be attending meetings with other Cabinet Ministers and First Nations leaders for three days, starting on September 8.
- Neilane Mayhew, Associate Deputy Minister and Chief Operating Officer, Ministry of Aboriginal Relations and Reconciliation will be attending the meeting with the Tsilhqot'in Chiefs to provide information to the Ministers as to the state of the negotiation of the Tsilhqot'in reconciliation framework agreement.

Issue 1)

- There is a 30 minute meeting scheduled with the Tsilhqot'in National Government (TNG) to discuss the possibility of a First Nations Court and other justice issues within the Tsilhqot'in Territory. Chief Alphonse is particularly interested in justice issues.

Issue 2)

- There is a 30 minute meeting scheduled with Sto:lo Tribal Council for a discussion about s.13,s.16

BACKGROUND:

Issue 1)

- The Supreme Court of Canada granted Aboriginal title to the Tsilhqot'in Nation on June 26, 2014, in *Tsilhqot'in Nation v. British Columbia* 2014 SCC 44. Aboriginal title includes the right to exclusive use and occupation of the land, the right to the economic benefits of the land, and the ability to determine how the land is used. The ruling was the first in Canada designating Aboriginal title to a large tract of land outside of an Indian Reserve.
- On September 10, 2014, the Tsilhqot'in Nation, the Xeni Gwet'in and the Province signed a Letter of Understanding to explore how to implement the Supreme Court of Canada decision. Over the past year, respectful and constructive discussion has been

aimed at reaching lasting reconciliation, through the drafting of a Reconciliation Agreement.

s.13,s.16

- When the government published the White Paper on Justice Reform – Part Two, it made a commitment to develop a strategy for specialized courts. s.13
s.13

s.13,s.14,s.16

- Depending on the nature and scope of what is proposed (eg. a scheduling of all matters involving Sto:lo families at the same time, or a court that would require additional programming to be in place), the ministry may or may not have a role going forward.

OTHER MINISTRIES IMPACTED/CONSULTED:

- Legal Services Branch (consulted)
- Criminal Justice Branch (consulted)
- Court Services Branch (consulted)
- Ministry of Aboriginal Relations and Reconciliation (impacted)

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ATTACHMENT: March 2015 BN 414176 signed by Minister Anton

Approved by:

James Deitch
A/Assistant Deputy Minister

Date: September 3, 2015



Kurt Sandstrom, Q.C.
A/Deputy Attorney General

Date: *Sept 3, 2015*

ATTACHMENT A

Cliff: 414178
Date Prepared: March 11, 2015
Date Decision Required: March 12, 2015

**MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE**

PURPOSE: For DECISION by Attorney General

ISSUE: Proposal by the Tsilhqot'in Nation for the creation of a First Nations Court in Williams Lake, as part of the reconciliation process following the Supreme Court of Canada decision in 2014

DECISION REQUIRED/ RECOMMENDATION:

SUMMARY:

s.13,s.16

BACKGROUND:

- The Supreme Court of Canada granted Aboriginal title to the Tsilhqot'in Nation on June 26, 2014, in *Tsilhqot'in Nation v. British Columbia* 2014 SCC 44 . Aboriginal title includes the right to exclusive use and occupation of the land, the right to the economic benefits of the land, and the ability to determine how the land is used. The ruling was the first in Canada designating Aboriginal title to a large tract of land outside of an Indian Reserve.
- On September 10, 2014, the Tsilhqot'in Nation, the Xeni Gwet'in and the Province signed a Letter of Understanding to explore how to implement the Supreme Court of Canada decision. Over the past several months, respectful and constructive discussion has been aimed at reaching lasting reconciliation, through the drafting of a Reconciliation Agreement.
- There are primarily two proposals that relate to the Administration of Justice: Tsilhqot'in community policing initiatives; and a First Nations Court in Williams Lake.
- Policing and Security Branch will be addressing the policing initiatives; this note will address the request with respect to the First Nations Court.
- When the government published the White Paper on Justice Reform – Part Two, it made a commitment to develop a strategy for specialized courts; this strategy will be finalized by the end of March 2015.
- The specialized court strategy will propose the rationalization of any development of new courts, including a governance model that involves both the ministry and the judiciary. Consequently, it is important that the Province keep any statements or

Cliff: 414176
Date Prepared: March 11, 2015
Date Decision Required: March 12, 2015

commitments made as part of the Reconciliation Agreement consistent with the Strategy.

- This situation is similar in nature to a request from the City of Surrey for a community court. In that case, the ministry responded by assisting officials in Surrey in the development of a criminal justice task force that included representatives from both the justice community as well as other community service providers to participate in a needs assessment to determine what the current criminal justice concerns were in Surrey, examine the current range of services being provided by various organizations and what the most appropriate solution was to address the concerns. At the end of that process, the task force determined that what was actually needed in Surrey was better coordination of existing services and not the development of a community court. The main recommendation was for an Integrated Services Network based in a single location to coordinate the various agencies at the administrative level with the potential of developing a number of network locations in the community as service centres for citizens. It is important to note that the City of Surrey paid the associated costs of establishing the task force and conducting the needs assessment.

s.13,s.16

OPTIONS:

s.13,s.16

s.13,s.16

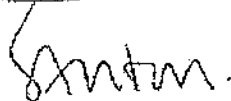
Cliff: 414176
Date Prepared: March 11, 2015
Date Decision Required: March 12, 2015

OTHER MINISTRIES IMPACTED/CONSULTED:

- Legal Services Branch (consulted)
- Criminal Justice Branch (impacted)
- Court Services Branch (impacted)
- Ministry of Aboriginal Relations and Reconciliation (impacted)

DECISION APPROVED / NOT APPROVED

DATE:



The Honourable Suzanne Anton QC
Minister of Justice and Attorney General

11 Mar 2015

CJ# 414176
Date Prepared: March 11, 2015
Date Decision Required: March 12, 2015

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