



Case in Brief: ***R. v. Tayo Tompouba***

Judgment of May 3, 2024 | On appeal from the Court of Appeal for British Columbia  
Neutral citation: 2024 SCC 16

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***The Supreme Court orders a new trial in French for an accused person who was not informed of his right to be tried in the official language of his choice.***

This case was about the analytical framework that a court of appeal must apply when an accused person appeals their conviction because they were not informed of their right to be tried in the official language of their choice the first time they appeared before a judge, where no decision on their language rights was made at first instance.

Section 530 of the *Criminal Code* guarantees to every accused person the right to be tried in the official language of their choice. To make certain that the accused's choice is free and informed, section 530(3) of the *Code* imposes a duty on the judge before whom the accused first appears to ensure that the accused is advised of their right and of the time before which they must apply for a trial before a judge or a judge and jury, as the case may be, who speak the official language of their choice.

Franck Yvan Tayo Tompouba is a bilingual Francophone who was convicted of sexual assault following a trial conducted in English in the Supreme Court of British Columbia. During the judicial process leading to Mr. Tayo Tompouba's conviction, the judge did not ensure that he was advised of his right to be tried in French, contrary to the requirements of section 530(3) of the *Code*. Mr. Tayo Tompouba did not apply for a trial in French or raise the breach of his right to be advised of his right to make such an application.

Mr. Tayo Tompouba appealed his conviction to the British Columbia Court of Appeal. It was then that he asserted for the first time that he would have liked his trial to be conducted in French. Mr. Tayo Tompouba alleged that his language rights had been violated due, among other things, to the fact that the judge had breached his duty under section 530(3) of the *Code*.

The Court of Appeal dismissed his appeal. While it was of the view that the judge's breach was an error of law that warranted its intervention, it found that the evidence did not make it possible to decide certain key questions, including when Mr. Tayo Tompouba had learned of his fundamental right, whether he would in fact have chosen a trial in French if he had had an opportunity to do so, and whether he had not made a free and informed choice to have a trial in English. It therefore found that the evidence was insufficient and that Mr. Tayo Tompouba had not met the burden of persuading it that the judge's breach of the duty set out in section 530(3) of the *Code* had resulted in a violation of his fundamental right to be tried in the official language of his choice.

Mr. Tayo Tompouba appealed the decision to the Supreme Court of Canada, which has allowed his appeal.

**The Court of Appeal erred in imposing on Mr. Tayo Tompouba the burden of proving that his fundamental right had been violated at first instance.**

Writing for the majority, Chief Justice Wagner stated that section 530(3) imposes a two-pronged informational duty on the judge before whom an accused first appears: to ensure that the accused is duly informed of their fundamental right and of how it is to be exercised, and, where the circumstances so require, to take the necessary steps to inform the accused of this. Chief Justice Wagner affirmed that a breach of this informational duty is an error of law warranting appellate intervention under section 686(1)(a) of the *Code*. As he explained, this breach, once established, taints the trial court's judgment and gives rise to a presumption that the accused's fundamental right to be tried in the official language of their choice, which is guaranteed to the accused by section 530 of the *Code*, was violated. The Crown can then rebut this presumption for the purposes of the analysis under the curative proviso in section 686(1)(b)(iv) of the *Code*, which allows a court of appeal to dismiss an appeal where an error or irregularity shown by the accused did not cause them any prejudice.

In this case, Chief Justice Wagner concluded, first, that Mr. Tayo Tompouba had proved that an error reviewable on appeal had been made and, second, that the Crown had failed to establish that Mr. Tayo Tompouba's fundamental right had not in fact been violated despite the judge's breach of his informational duty under

section 530(3) of the *Code*. For these reasons, Chief Justice Wagner allowed the appeal, quashed Mr. Tayo Tompouba's conviction and ordered that a new trial be held in French.

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**Breakdown of the decision:** *Majority:* Chief Justice [Wagner](#) allowed the appeal (Justices [Côté](#), [Rowe](#), [Kasirer](#) and [O'Bonsawin](#) agreed) | *Dissenting:* Justices [Karakatsanis](#) and [Martin](#) would have dismissed the appeal.

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