Supreme Court File No. 2463673
Prince George Registry
Provincial Court File No.
AJ20573780-I
Prince George Registry

Form 3 Rule 10(3)

SUPREME COURT OF BRITISH COLUMBIA

the Matter of the *Judicial Review Procedure Act* RSBC 1996, c. 241

LEARN TO EARN BARTENDING AND CONSULTING INC.

Petitioner

AND

ATTORNEY GENERAL OF BRITISH COLUMBIA

Respondent

PETITION TO THE COURT

ON NOTICE TO:
Director - Prosecution Support
Ministry of Justice
Crown Law Division
6th Floor - 865 Homby Street
Vancouver, B.C. V6Z 203

And:

Office of the Chief Judge of the Provincial Court of British Columbia
Attn: Legal Officer
Suite 337-800 Homby Street,
Vancouver, BC, V6Z 2C5
(On notice pursuant to s. 15 *Judicial Review Procedure Act* RSBC 1996, c. 241)

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(On notice pursuant to s. 15 *Judicial Review Procedure Act* RSBC 1996, c. 241)

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is: 651 Carnarvon Street, New Westminster, BC V3M 1C9

(2) The ADDRESS FOR SERVICE of the petitioner is:

Learn to Earn Bartending and Consulting Ltd.

1177 3rd Avenue Prince George, BC V2L 3E4

Fax number address for service (if any) of the petitioner:	None
E-mail address for service (if any) of the petitioner:	linda@learntoearnbartending.com

(3) The name and office address of the petitioner's lawyers is: **To be assigned.**

CLAIM OF THE PETITIONER

I. PART 1: ORDERS SOUGHT

1. An order pursuant to s. 2 of the *Judicial Review Procedure Act* RSBC 1996, c. 241 (the "JRPA") that the Order and Decision of the Honourable Judge Nadon dated March 11 2024 in the matter of Provincial Court File No. AJ20573780-I (Prince George Registry), be set aside; and

2. An order in the nature of *mandamus* and/or *certiorari* pursuant to s. 2 of the JRPA that the Honourable Judge Nadon (or any other judge of the British Columbia Provincial Court who may be assigned) duly exercise His Honour's jurisdiction to conduct the trial of the Petitioner in the matter of Provincial Court File No. AJ20573780-I (Prince George Registry) in accordance with ss. 530-535 of the *Criminal Code* R.S.C., 1985, c. C-46;

3. Such further and other relief as this Honourable Court deems just.

II. PART II: OVERVIEW

4. The Petitioner Corporation is ticketed for dancing and congregating under the repealed COVID-19 Related Measures Act, SBC 2020, c 8 (hereafter, "CRMA").

5. The Petitioner Corporation is both Francophile and operates bilingually and seeks to receive protection under section 530 statutorily guaranteeing the right to a trial in both official languages.

6. Counsel for the Crown opposed the Petitioner's request to have a section 530 order. A hearing was held to litigate this issue before the Honourable Judge Nadon, in Prince George, who denied the Petitioner its protections under section 530.

7. The Petitioner respectfully submits that the Honourable Judge Nadon erred in law by denying the Petitioner's Application and in so doing fettered His Honour's jurisdiction. Indeed, the corporation is entitled to a section 530 protections on the grounds that follow and the Provincial Court has jurisdiction to hear cases in both of Canada's official languages.

8. This is a Petition for judicial review pursuant to the JRPA of the order and decision made by the Honourable Judge Nadon of the British Columbia Provincial Court in *R. v. Learn to Earn Bartending and Consulting Ltd.* dismissing the corporation's application that it be tried in accordance with section 530 (the "Order"). It is respectfully submitted that the learned trial Judge erred in law by failing to exercise this jurisdiction to conduct the trial in compliance with section 530. Specifically, the judge below erred by failing to incorporate ss. 530 of the *Criminal Code* into the *Offence Act*, R.S.B.C. 1996, c. 338 by virtue of s.133 of the *Offence Act*. In particular, the court below erred in holding:

   a. That the corporation's power structure is insufficiently bilingual; and

   b. that the ability of a shareholder to communicate in English costs the corporation its statutory right to access to justice in both official languages.

FACTUAL BASIS

9. The corporation operates bilingually. The corporation is a bilingual entity. The corporation received two tickets listing dancing and congregating as the offences by a liquor inspector.

10. Further to these tickets, the corporation faces financial penalties of approximately $4600.00.

11. The Corporation was not informed of its election rights under section 530.

12. The Court acknowledged in open court that the Court had fallen out of compliance with Section 530 in lapsing in the requirement to inform the corporation of its section 530 rights.

13. The corporation informed the Court that requirements under section 530 had inadvertently escaped its notice and did so in a timely manner.

14. A hearing was held before the Honourable Judge Nadon for an order that the corporation attracted section 530 protections in order to remedy non-compliance.

15. On May 17, 2023, the Honourable Judge Nadon dismissed the corporation's Section 530 Application. His Order is the subject of this Petition.

III. LEGAL BASIS

a. The Standard of Review is Correctness

16. Questions of jurisdiction and questions of law are reviewable on a standard of correctness and no deference is owed to the tribunal: *Dunsmuir* v. *New Brunswick,* [2008] 1 SCR 190, 2008 SCC 9 (CanLII). In such cases, courts must substitute their own view of the correct answer.

b. Jurisdiction of the Supreme Court of British Columbia to hear the Petition

17. Section 2 of the JRPA states:

(1) An application for judicial review must be brought by way of a petition proceeding.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

(a) relief in the nature of mandamus, prohibition or certiorari;
(b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

18. In *R. v. Lindsay,* 2002 BCSC 248, this court granted an application with regard to a change of venue, which the court held was in the nature of *certiorari.* At para. 18 of *R. v. Lindsay,* the court held: "The Provincial Court judge hearing the application for change of venue certainly had the jurisdiction to hear that application and decide that issue. The court also cited Ewaschuk and his text "Criminal Pleadings & Practice in Canada 2nd Ed.", at para. 26:

> *Certiorari* is the means whereby a superior court receiving a complaint of an injustice done to the applicant by an inferior court wishes to be informed *(certiorari)* and therefore orders that the record of the proceedings be transmitted to it by the inferior court for examination for jurisdictional defects, which, if found, may result in the quashing of the impugned proceedings;

19. In *R. v. Patrick,* 2009 BCSC 560 (CanLII), this court dealt with a judicial review application brought by the accused/petitioner under the JRPA naming the Crown and the Office of the Chief Judge of the Provincial Court as respondents. The petitioner sought prerogative relief in relation to a Practice Direction issued by the Chief Judge of the Provincial Court, which governed scheduling of summary conviction proceedings involving breach allegations. Parrett J., found that superior courts generally do not intervene in the middle of a criminal process initiated in Provincial Court. However, citing Doherty JA in *R. v. Johnson* (C.A.), 1991 CanLII 7174 (ON CA), Parrett J. held that in special circumstances, this court can intervene (para.49). At para. 49,

of *R.* v. *Patrick*, Parrett J. cited Doherty JA at p. 26 of *R.* v. *Johnson* (a case dealing with the court's discretion to grant relief under the Charter):

> At p. 26, Doherty J.A. usefully analyzes a series of cases which give rise to the existence of special circumstances that may merit immediate intervention. Recognizing that these examples are not exhaustive and extracting them in the form of a list, these include instances where:
>
> 1) The superior court is the only court competent to grant the essential relief requested;
>
> 2) The applicant is suffering an ongoing Charter infringement;
>
> 3) Refusing to consider the merits ... will result in a substantial delay before the applicant has an opportunity to assert his Charter rights;
>
> 4) The trial court is implicated in the alleged Charter violation; and
>
> 5) The Charter violation could be said to be palpable or clearly threatened.

20. In this case:

a) the superior court is the only court competent to grant the relief requested;
b) the Petitioner's right in this case related to the conduct of the trial and as such he cannot have a meaningful remedy if he must wait until after his trial to seek a remedy;
c) Alternatively, to the extent that the remedy would be to order a new trial in French, it would appear absurd and indeed contrary to the court's concern for judicial economy to wait for such a remedy, when the matter could be dealt with now and a second trial can thereby be avoided;
d) the trial judge is of course directly implicated in the violation of the Petitioner's quasi- constitutional language rights; and
e) the Petitioner's right is palpable and clearly threatened if this court does not grant the remedy sought.

21. It is therefore respectfully submitted that the circumstances of this case are such that the interests of justice necessitate the immediate granting of the prerogative remedy by this court as sought herein.

c. The Statutory framework allowing for French or English quasi-criminal trials

22. The *Offence Act* applies to the Petitioner, including s. 133. There are a number of cases in which it has been concluded that provisions of the Criminal Code are applicable by reason of s. 133: see, for example, *R. v. Lindsay*, 2002 BCSC 248 (CanLII), affirmed on other grounds, 2002 BCCA 687 (CanLII) (Crown used s. 133 to incorporate provisions of the CCC that allow the Provincial Court to change the venue if it is expedient to the ends of justice); *Central Okanagan (Regional District) v. Ushko*, [1998] B.C.J. No. 2123 (S.C.) (Q.L.); *R. v. Jamieson*, [1984]
B.C.J. No. 805 (Co. Ct.) (Q.L.) ("Relying on s.122 I believe that a judge of the County Court receives his power to grant release pending an Appeal from section 752 of the Code").; *Little v. Peers* (1988), 1988 CanLII 2948 (BC CA), 47 D.L.R. (4th) 621 (B.C.C.A.); *R. v. Stad(1992)*,
40 M.V.R. (2d) 114 ("It is common ground thats. 789(2) of the Code applies to the *Motor Vehicle Act* by virtue of s. 122 of the *Offence Act* [now s.133]"; and *R. v. Singh*, 2001 BCCA 79 (CanLII).

23. There are no express provisions in the *Offence Act* dealing with the language of proceedings.

24. Section 133 of the *Offence Act* states that when there are gaps in the *Offence Act* or, in this case, the CRMA, the provisions of the Criminal Code apply. Specifically, s. 133 of the *Offence Act* provides that:

> If, in any proceeding, matter or thing to which this Act applies, express provision has not been made in this Act or only partial provision has been made, the provisions of the Criminal Code relating to offences punishable on summary conviction apply, with the necessary changes and so far as applicable, as if its provisions were enacted in and formed part of this Act. [Emphasis added]
>
> *Offence Act* [RSBC 1996] Chapter 338, s. 133.

25. Section 2 of the *Offences Act* states that:

> An offence created under an enactment is punishable on summary conviction.

26. As the *Offence Act* and the CRMA are silent regarding the language of summary conviction proceedings, the provisions of the *Criminal Code* apply. The Criminal Code provides that trials of summary conviction and indictable offences must be heard in either of the official languages of Canada: French or English. The Criminal Code also states that trials can be conducted in both English and French (bilingual trials). Indeed, courts in British Columbia, both Provincial and Supreme, regularly conduct trials in both official languages. They do so pursuant to the Criminal Code. Specifically pursuant to 530(1)(a)(i) CCC, which states:

> 530. (1) On application by an accused whose language is one of the official languages of Canada, made not later than
>
> (a) the time of the appearance of the accused at which his trial date is set, if (i) he is accused of an offence mentioned in section 553 or punishable on summary conviction, or[...]
>
> a justice of the peace, provincial court judge or judge of the Nunavut Court of Justice shall grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the official language of Canada that is the language of the accused or, if the circumstances warrant, who speak both official languages of Canada.

27. As the Petitioner is accused of an offence punishable on summary conviction and has made an Application to set this matter for trial in accordance with section 530, it has fulfilled the two necessary requirements under s.530 of the *Criminal Code* for a Section 530 order. Consequently, a Provincial Court judge must grant a section 530 order.

28. The Petitioner submits that there is no ambiguity in the legislative framework and that pursuant to a plain and ordinary interpretation of it, the Petitioner is entitled to a section 530 order.

d. The Errors

i. ***There is no statutory, jurisprudential or otherwise principled basis to conclude that certain types of provisions of the Criminal Code are applicable pursuant to s. 133 Offence Act while others are not***

29. The court below erroneously excluded s. 530 CCC from incorporation pursuant to s. 133 of the *Offence*

Act.

30. There is absolutely no basis to support the interpretation of s. 133 of the *Offence Act* that the court below subscribed to. The court below, contrary to a fundamental principle of statutory interpretation, and the division of powers between the legislative and judicial branches, legislated into the *Offence Act* the exclusion of Section 530 provisions. The meaning of a legislative text is plain and the court may therefore not interpret it but must simply apply it as written. The court may resort to the rules and techniques of interpretation only if the text is ambiguous, but there is no ambiguity. If the Legislature had intended to exclude the provisions of the Criminal Code, it would have done so.

31. It is beyond contention that, today, French is one of two languages of the courts in British Columbia by virtue of s. 530 *et seq.* CCC. Furthermore, Canada has two official languages: French and English.

32. In *Little v. Peers* [1988] B.C.J. No. 101, another decision of our Court of Appeal, Lambert J.A. applied s. 122 of the *Offence Act* [now section 133] to incorporate the defense under s.25(2) of the CCC. Specifically, the Court of Appeal held:

> That brings me to the question of whether s. 25(2) of the Criminal Code applies in this case. The subsection appears in the Criminal Code passed by the Parliament of Canada. The warrant in this case was issued under the *Offence Act* of British Columbia. The Offence Act incorporates some of the provisions of the Criminal Code. I refer to s. 122 of the Offence Act
>
> [...]
>
> I will assume that s. 122 brings about a valid constitutional incorporation of the relevant provisions of the Criminal Code into the law of British Columbia for the purposes of the Offence Act. The parties to this appeal did not argue otherwise.
>
> The next question then is whether the incorporation only brings into the Offence Act Part 24 of the Criminal Code which specifically deals with summary conviction matters, or whether it brings into the Offence Act all those provisions of the Criminal Code that have application to summary convictions matters. That question was considered by the Supreme Court of Canada in *Moore v. the Queen* (1978), 9 D.L.R. (3d) 112.

The Supreme Court of Canada decided that the latter interpretation was correct: the provision of the *Offence Act* incorporates **all** those provisions of the Criminal Code that apply in relation to summary convictions. Accordingly, s. 25(2) of the Criminal Code applies in this case.

In my opinion subsection 25(2) provides a **complete defense** to the two police officers in relation to the arrest that they made under the warrant in this case. [Emphasis added]

33. Also, in *R. v. Jamieson,* [1984] B.C.J. No. 805 (Co. Ct.) (Q.L.), the county court also dealt with a substantive provision of the Criminal Code when dealing with the question of how a judge of the County Court obtained its authority to grant an order for release pending the appeal of a summary conviction on a provincial offence under the *Offence Act.* Relying on s. 122 of the *Offence Act* [now s.133], the court held that a judge of the County Court received his power to grant release pending an appeal from s. 752 of the CCC.

34. In *Central Okanagan (Regional District) v. Ushko* (1998] B.C.J. No. 2123, this court dismissed a case against the accused for want of prosecution on the basis of s. 485 of the CCC, which was incorporated further to s.133 of the *Offence Act.*

ii. ***This court should adopt R. v. MacKenzie, 2004 NSCA 10***

35. In *R. v. MacKenzie,* 2004 NSCA 10 (CanLII), the Nova Scotia Court of Appeal dealt with issues almost perfectly analogous to those at issue in this Petition. In that case, Ms. MacKenzie was charged with speeding. The Nova Scotia Court of Appeal in no uncertain terms held:

> Contrary to s. 530(3) of the *Criminal Code* which applies here bys. 7(1) of the *Summary Proceedings Act,* R.S.N.S. 1989 c. 450, the Provincial Court judge did not inform her of her right to apply for a French trial. The Provincial Court tried Ms. MacKenzie in English, convicted and fined her.

36. In *MacKenzie,* the Nova Scotia Supreme Court stayed the case as against Ms. MacKenzie on the basis that she had not been informed of her right to a French trial. The Crown appealed the decision to stay the matter, not the ruling thats. 530(3) applied pursuant to the *Summary Proceedings Act.*

37. Section 7(1) *of the Summary Proceedings Act* operates just like the *Offence Act.* It states:

> 7 (1) Except where and to the extent that it is otherwise specially enacted, the provisions of the Criminal Code (Canada), except section 734.2, as amended or re- enacted from time to time, applicable to offences punishable on summary conviction, whether those provisions are procedural or substantive and including provisions which impose additional penalties and liabilities, apply, *mutatis mutandis,* to every proceeding under this Act.
>
> (2) In applying the provisions of the Criminal Code (Canada) to proceedings under this Act, the following expressions therein have the following meanings:
>
> (a) "Act of the Parliament of Canada" means an Act of the Legislature;

38. At para. 9 of *MacKenzie* Fichaud, J.A. held: "This [s.7] incorporates s. 530(3) of the Criminal Code for Ms. MacKenzie's speeding charge".

iii. ***Alternatively, to the extent that there is any ambiguity, the court must favour an interpretation that accords with constitutional values***

39. Moreover, language rights, including the rights enshrined at s. 530 CCC have a quasi-constitutional status. It is a principle of statutory interpretation that if there is ambiguity in the interpretation of the statute a judge must choose the interpretation that favors an interpretation that is compliant with the Constitution and constitutional values. It is respectfully submitted that such an interpretation requires this court to incorporate s. 530 CCC to proceedings conducted pursuant to the *Offence Act* (see: *Bell ExpressVu Limited Partnership v. Rex,* [2002] 2 S.C.R. 559, 2002 SCC 42 (CanLII), Iacobucci J., para. 61-62).

iv. ***Section 530 CCC has a Quasi-Constitutional Status***

40. In *R. v. Beaulac,* [1999] 1 SCR 768, at para. 21 under the heading "The Constitutional Background", Bastarache J. stated that official languages legislation "belongs to that privileged category of quasi-constitutional legislation which reflects 'certain basic goals of our society' and must be so interpreted 'as to advance the broad policy considerations underlying it'." Bastarache J. continued at para. 23-25:

> 23. When s. 530 was promulgated in British Columbia, on January 1, 1990, the scope of the language rights of the accused was not meant to be determined restrictively. The amendments were remedial (see: *Interpretation Act,* R.S.C., 1985, c. 1-21, s. I 2), and meant to form part of the unfinished edifice of fundamental language rights[...]
>
> I repeat that a trial before a judge or jury who understand the accused's language should be a fundamental right and not a privilege....
>
> > Language rights must <u>in all cases</u> be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada; [Supreme Court of Canada Emphasis]

41. In *Charlebois v. Saint John (City),* [2005] 3 S.C.R. 563, 2005 SCC 74, Charron J. confirmed that a liberal and purposive approach to the interpretation of constitutional language guarantees and statutory language rights should be adopted <u>in all cases</u> (para. 23).

42. Therefore, in accordance with the Supreme Court of Canada's decision in *Insurance Corporation of British Columbia v. Heerspink,* 1982 2 SCR 145 (pp. 157-158), unless the *Offence Act* "clearly" states otherwise, it must be interpreted in favour of affording the Petitioner a Provincial Court trial in French. In *Heerspink,* the Lamer J. (as he then was) held that the Human Rights Code was a fundamental law intended to supersede all other legislation except where a contrary intention was "clearly and unequivocally" expressed by the Legislature. Similarly, the Petitioner's quasi-constitutional right to a trial in either Canada's official languages cannot be derogated from unless the *Offence Act* "clearly and unequivocally" stated otherwise. Clearly, such is not the case.

43. Furthermore, the Supreme Court of Canada held that a purposive and liberal approach to the interpretation of minority language rights provisions must be followed by the courts. This was recently was re-affirmed by the Supreme Court of Canada:

> Before considering the provisions at issue in the case at bar, it will be helpful to review the principles that govern the interpretation of language rights provisions. Courts are required to give language rights a liberal and purposive interpretation. This means that the relevant provisions must be construed in a manner that is consistent with the preservation and development of official language communities in Canada.
>
> *DesRochers v. Canada (Industry),* [2009] 1 SCR 194, 2009 SCC 8, at para 31

44. In *R. v Munkonda* 2015 ONCA 309, the Ontario Court of Appeal held that ss. 530 and 530.1 are intended to ensure equal access to the courts by accused persons who speak either official language. Those sections must be given a large and liberal interpretation in order to achieve that objective.

45. Moreover, it is a general principle that provisions in penal statutes, when ambiguous, should be interpreted in a manner favourable to the accused *(R. v. McIntosh,* [1995] 1 SCR 686, 1995 CanLII 124, para. 29).

Breach of Section 11b of the Canadian Charter of Rights and Freedoms is Plead

This is a 2021 ticket that went to trial in 2024. Trials for provincial matters must be brought within 18 months.

Breach of Section 10b of the Canadian Charter of Rights and Freedoms is Plead

The disputant pleads a breach of Section 10b and was not permitted to use Counsel of the disputant's choice.

PART V: MATERIAL TO BE RELIED ON

Canadian Charter of Rights and Freedoms;

Other material as this court deems fair and appropriate.

The corporation estimates that the hearing of the petition will take 1 day.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Date: April 8 2024

Learn to Earn Bartending and Consulting Ltd.
1177 3rd Avenue
Prince George, BC
V2L 3E4
E: linda@learntoearnbartending.com
Counsel: To be assigned

To he completed by the court only:

Order made

D in the terms requested in paragraphs _____ of Part 1 of this petition

D with the following variations and additional terms:

_____

_____

_____

_____

_____

Date: _____ _____

Signature of D Judge D Master