

MANDEL

Brampton judge declares mistrial over lack of interpreters

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FIRST POSTED: WEDNESDAY, APRIL 30, 2014 08:44 PM EDT | UPDATED: WEDNESDAY, APRIL 30, 2014 08:52 PM EDT

... (i) using the earlier testimony as a prior inconsistent statement (which would never have existed but for the poor interpretation).

[42] If we chose to play-back portions of the evidence of Mr. Bryan for the jury, with another interpreter present, as suggested by the Crown in submissions, the jury would potentially be confronted with multiple interpretations of the same evidence, only causing confusion. Besides, play-backs would be out of context and potentially misleading.

[43] Taking into account the balancing exercise required, as per *R. v. Burke*, supra, and notwithstanding the seriousness of the offence, I am persuaded on balance that a mistrial is the only reasonable alternative to remedy the violations of the constitutional rights of the accused as provided for under s. 11(d) of the Charter.

CONCLUSION

[44] For the foregoing reasons, the Defence Application for a mistrial is granted.

[45] A final observation, I wish to make. I was advised that no other Jamaican Patois accredited interpreter could be found to replace the one who assisted Mr. Bryan, except a lady who works on weekends.

[46] That is not much assistance to the Court.

[47] I am shocked that, in a jurisdiction like Brampton, with the diverse population and the criminal caseload including narcotics matters involving Pearson International Airport, the availability of accredited Jamaican Patois interpreters is so slim.

[48] I appreciate that the recommendation from the Office of the Chief Justice of the Ontario Superior Court of Justice regarding the use of accredited interpreters only for certain types of proceedings, including the one here, could not have been satisfied instantaneously; however, the pace of change appears to be moving at the speed of molasses. Perhaps we can look forward to some speedier progress in the days ahead, otherwise, justice will be sacrificed.

TORONTO - An angry judge in Brampton has blasted the province and declared a mistrial in a drug case because of the severe shortage of qualified Jamaican Patois interpreters.

And no, this is not the time to propose our mayor for the job.

“I am shocked that, in a jurisdiction like Brampton, with the diverse population and the criminal caseload including narcotics matters involving Pearson International Airport, the availability of accredited Jamaican Patois interpreters is so slim,” complained Superior Court Justice Clayton Conlan in a decision released last week.

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Ministry of Attorney General spokesman Brendan Crawley confirmed the entire province has only two accredited Jamaican Patois interpreters on the ministry’s freelance registry. There are two conditionally accredited interpreters but they usually aren’t used for serious proceedings such as criminal trials.

And the shortage hardly applies to just the Jamaican dialect. Last year, a judge was forced to throw out an impaired driving case because of the delay in finding a Punjabi interpreter — with only five accredited in all of Ontario.

In this case, Jamaican citizens Ryan Douglas, 30, and Michael Bryan, 31, were being tried before a jury this month on a charge of importing cocaine after they allegedly ingested the drug before boarding a Canada-bound plane on April 30, 2011. Their defence was that they had become mules under duress — forced to swallow the pellets because their families were threatened by thugs in a Montego Bay hotel room.

When Bryan took the stand, an accredited patois interpreter was brought in to help the jury understand his heavily-accented Jamaican slang. But she was so deficient that complaints began coming in from all corners of the courtroom.

“During the first break, my client’s family approached me and said the interpreter was leaving out key words and phrases and the connections that would make the story make sense,” recalled Bryan’s lawyer Jordana Goldlist.

Bryan twice stopped and corrected the interpreter’s translation. Even a juror sent a note to the judge asking that he insist that she translate verbatim and stop paraphrasing.

At the lunch break, a non-accredited interpreter approached the Crown and pointed out problems with the translation. The judge had also realized there were discrepancies. “I made a specific note that comments made by Mr. Bryan about not being able to run from the hotel room, critical on the key issue of duress, were not initially interpreted or repeated by the interpreter,” Conlan wrote.

Goldlist asked for a mistrial. “It speaks to the heart of the accused’s right to make full answer and defence,” she argues.

The Crown admitted there were “deficiencies” in the interpretation but suggested another solution — such as playing back Bryan’s testimony for a different interpreter.

Not only would that be confusing, the judge said, but there was no one available.

“I was advised that no other Jamaican Patois accredited interpreter could be found to replace the one who assisted Mr. Bryan, except a lady who works on weekends,” Conlan complained. “That is not much assistance to the Court.”

After declaring a mistrial, Conlan, who usually sits in Owen Sound, expressed his frustration at finding a lack of qualified interpreters in such a multicultural jurisdiction — despite repeated promises by the province that this recurring problem would be addressed.

“The pace of change appears to be moving at the speed of molasses. Perhaps we can look forward to some speedier progress in the days ahead, otherwise, justice will be sacrificed.”

It’s a complaint made many times before.

In 2005, Justice Casey Hill caused an uproar when he warned that the Brampton courthouse had been using unskilled interpreters. In 2009, the ministry ordered province-wide retesting but in the GTA alone, almost half failed the exam.

In 2011, Hill declared a mistrial in a sexual assault trial when he sent a recording of the Hindi interpreter’s translation to a New York expert who found it riddled with inaccuracies — such as repeatedly translating “sexual assault” as “physical assault.”

So for Hill, this case must have been *deja vu*. Last Friday, the two accused, their lawyers and prosecutors appeared before the Brampton judge to schedule a new trial date. He was clearly not amused.

“Hill refused to allocate further court time until a fully accredited interpreter becomes available,” Goldlist says. “We have no information on when this might occur.”

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