

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. K.F., 2026 ONCA 357¹

DATE: 20260514

DOCKET: COA-24-CR-0502

Huscroft, Roberts and Pomerance JJ.A.

BETWEEN

His Majesty the King

Respondent

and

K.F.

Appellant

Colleen McKeown and Robert Nanni, for the appellant

Maria Anghelidis, for the respondent

Heard and rendered orally: May 6, 2026

On appeal from the conviction entered by Justice Jennifer D. Strasberg of the Ontario Court of Justice, on December 11, 2023.

REASONS FOR DECISION

[1] The appellant is francophone. He seeks to adduce fresh evidence demonstrating that he was not aware or informed of his right under s. 530(3) of the

¹ This appeal is subject to a publication ban pursuant to s. 486.4 of the *Criminal Code*, R.S.C. 1985, c. C-46.

Criminal Code to apply for a trial in French and that, had he known of his right, he would have applied for a trial in French.

[2] As the Supreme Court held in *R. v. Tayo Tompouba*, 2024 SCC 16, 491 D.L.R. (4th) 195, non-compliance with s. 530(3) of the *Criminal Code* is an error of law that gives rise to a presumption that the accused's right to be tried in the official language of his choice was violated. That is the case here.

[3] The Crown fairly concedes that it cannot discharge its burden to rebut this presumption in this case through the curative proviso under s. 686(1)(b)(iv) of the *Criminal Code*. Accordingly, the Crown accepts that the fresh evidence should be admitted, the appeal should be allowed, the conviction quashed, and a new trial ordered.

[4] As a result, we accept the Crown's concession, admit the fresh evidence, allow the appeal, quash the conviction and order a new trial in French.

“Grant Huscroft J.A.”

“L.B. Roberts J.A.”

“R. Pomerance J.A.”