LANGUAGE and society

SPECIAL ISSUE

No. 16

Manitoba and the language question: a story of conflict

Editor's note

When the Supreme Court of Canada ruled in June 1985 that Manitoba is constitutionally bound to enact, print and publish its Acts and the records and journals of its Legislature in French as well as English, it lanced a boil that has known few, if any, equals in recent Canadian history. For sheer intensity and acrimony, the highly politicized Manitoba language debate calls to mind the tumultuous weeks in 1976 when Canada struggled to resolve the bilingual air traffic control crisis.

Immediately following the Court's decision, we invited the principal parties to the Manitoba language issue and two prominent observers from outside the province to give their perspectives on recent events and an assessment of what the future holds. Taken together, we believe their articles constitute a useful document for readers seeking to understand all sides of this complex question.

Our special issue leads off with a chronology prepared by Fred Youngs, a political reporter with the *Winnipeg Free Press*. It is followed by key articles from principal players in the drama: Howard Pawley, Premier of Manitoba; Gary Filmon, Leader of the Opposition; and Réal Sabourin, President of the Société Franco-Manitobaine. Their respective statements supply very different perspectives of the moves on Manitoba's political and legal chessboard over the past five years.

Since there can be no doubt that the Manitoba language question has spilled over the borders of the province and taken on national significance, we offer two additional commentaries: one by Jean-Louis Roy of *Le Devoir*, an influential voice in Quebec; the other by William Thorsell, a westerner who worked at the *Edmonton Journal* before joining the *Globe and Mail*. The fourth estate is further represented — this time wearing its more irreverent hat — in a selection of cartoonists' comments.

Lastly, our decision to print an abridgement rather than the full 88-page text of the Supreme Court's decision is, may we emphasize, based on space considerations, not *lèse-majesté*. Our purpose in reproducing major portions of this eloquent document is to give our readers access to a landmark decision that complements those rendered in 1979 in the Forest and Bill 101 cases (*Language and Society*, N° 2, Summer 1980).

Charles Strong

LANGUAGE and SOCIETY No. 16 September 1985

is a quarterly magazine of information and opinion published by the Commissioner of Official Languages, D'Iberville Fortier. It seeks to encourage a reflective approach to language matters, both Canadian and international, while providing a forum for informed debate on the issues.

Language and Society is prepared by the Information Branch, Office of the Commissioner of Official Languages. Director: Christine Sirois; Guest Editor: Charles Strong; Production: Thérèse Boyer, Patricia Goodman and Rozenn Guillermou.

Letters may be sent to the Editor, Office of the Commissioner of Official Languages, Ottawa, Canada K1A 0T8 Tel.: (613) 995-7717.

Copies of *Language and Society* may be obtained free of charge from the above address.

Printed in Canada ISSN 0709-7751

COMMISSIONER OF OFFICIAL LANGUAGES
COMMISSAIRE AUX LANGUES OFFICIELLES

After simmering for some ninety years, the language question in Manitoba came to a boil in the 1980s. A journalist who has covered these events walks us — gently — through the political minefield.

Linguistic wrongs and rights: a political football

FRED YOUNGS

Fred Youngs, a Winnipeg Free Press political reporter, has extensively covered the language issue. He, his wife Janet and son Kyle live in Winnipeg, where Youngs plays hockey very badly.

When the Supreme Court of Canada ruled 95 years of English-only laws in Manitoba invalid this June, the judges were writing another scene in a drama that has an endless run on the province's political stage. The historic opinion that brought Manitoba to the brink of legal chaos was an uncharacteristically subdued development in a tumultuous and divisive episode of the province's history. The events that led to it had paralyzed the Manitoba government; shaken its parliamentary system; brought fierce public opposition; and attracted the participation of politicians from the Prime Minister down. They shattered old loyalties, and tarnished the image of a province that prides itself on its ethnic and multicultural sensitivities.

It was not, however, the first time the language question had bedevilled Manitoba politicians: linguistic rights have been at issue for a century, almost from the day Manitoba entered Confederation in 1870 with protection of the Anglophone minority's rights enshrined in the Manitoba Act.

Within 20 years, the slight Francophone majority had shrunk to a minority, and in 1890, the Legislature passed the Official Language Act. It removed the guarantees of Section 23 of the Manitoba Act which, like the British North America Act, required the Legislature to pass and publish its acts, records and documents in both languages, and gave French and English equal status before the Legislature and courts. The status of French in Manitoba took another blow in 1916, when the Legislature made English the sole language of instruction in schools. Although illegal, teachers and students secretly continued to use French.

Court challenges

Not surprisingly, the Francophone community objected to the Official Language Act, arguing it was unconstitutional. Twice it was challenged before Manitoba courts — in 1892 and again in 1909 — and ruled unconstitutional. Yet successive governments ignored the rulings, and passed legislation that contravened Manitoba's constitution, possibly out of ignorance of the rulings' existence.

It was 67 years before another attack was mounted on the 1890 Act. Again, it was successful in Manitoba courts, and again the government ignored the ruling. This time Georges Forest, a St. Boniface insurance agent, took his case to the Supreme Court which, on December 13, 1979, unanimously ruled the Official Language Act invalid.

The English-only parking ticket Forest used as the basis of his challenge was surely the most expensive issued in Manitoba: the judgment forced the Conservative government of Sterling Lyon to begin the arduous and expensive task of translating 4,500 unilingual statutes.

The summer of 1980 also saw the start of other events which profoundly affected Manitoba. The Winnipeg policeman who gave lawyer Roger Bilodeau a unilingual ticket for speeding probably had no idea that his actions would make history.

Bilodeau, a quiet-spoken man who now teaches at the University of Moncton, used the ticket to challenge the Highway Traffic Act and the Summary Convictions Act, and by extension, the validity of all unilingual laws since 1890.

The quest for compromise

The events that brought the issue back to the Supreme Court started shortly after the New Democratic Party led by Howard Pawley took office in November, 1981. Attorney General Roland Penner, concerned about the implications of the Bilodeau case should it succeed, began negotiating with the *Société Franco-Manitobaine* (SFM) — the political arm of Manitoba Francophones — to head off the challenge. The government entered the negotiations because it feared the high court could find all Manitoba's laws invalid. Such a ruling raised the spectre, although remote, of legal chaos, and Penner said that as Attorney General, he could not take that chance.

Linguistic rights have been at issue almost from the day Manitoba entered Confederation in 1870 with protection of the Anglophone minority's rights enshrined in the Manitoba Act.

The deal with the SFM was straightforward: the province would entrench in the Manitoba Act guarantees of Francophone rights and services. In exchange, Bilodeau — who was not a party to the agreement — would drop his case. As well, only 450 of 4,500 unilingual statutes would be translated. Reduced translation suited the SFM because it won valuable services instead of bilingual versions of musty, underused statutes.

The arrangement for a constitutional amendment, which had the concurrence of the federal government, included funding from Ottawa for translation and assistance in finding legal translators.

One frequent criticism of the Manitoba Government throughout the language controversy was that it never seemed to get a handle on the issue. In fact, it didn't even get to unveil the proposals as it wanted. In a move that contributed to taking the timetable out of the province's hands, former Prime Minister Trudeau congratulated Manitoba on the accord before it was made public. Trudeau made the comments in French only during a Winnipeg speech, and most of the media missed the reference.

The incident symbolized the so-called eastern influence that many Manitobans resented. And even though congratulatory and well-intended, it would not be the last time goodwill gestures and attempts by Ottawa to intercede in the issue would fail to influence it. Four days later, on May 20, 1983, Penner introduced the resolution in the legislature. It was, he said, a chance to send a signal to Canada on minority language rights. Besides, the eloquent former law professor argued, it was a more practical solution to a longstanding problem than translating laws no one would use.

Opposition: parliamentary and public

Penner had sent copies of the proposal to Lyon and the Tories, but they did not respond until it was in the House. No sooner had the amendment been introduced, than Lyon lit the fires of opposition. The former premier said the proposals were divisive. The Conservative opposition was based on the argument that the word "shall" in Section 23 was directory and not mandatory; that their Bill 2 — enabling legislation passed to facilitate translation — was sufficient remedy for the constitutional conundrum; and that Bilodeau's challenge was bound to fail anyway. The Conservatives, Lyon said, did not oppose extended services, but they should not be entrenched in the Constitution, which would take them out of the Legislature's purview and place them in the hands of the courts. It was not long before public sentiment began to simmer. On June 15, Patricia Maltman of Winnipeg began a drive for a civic referendum on the resolution. Maltman was joined by others, including former provincial NDP president William Hutton.

The Winnipeg policeman who gave lawyer Roger Bilodeau a unilingual ticket for speeding probably had no idea that his actions would make history.

Two days after Maltman announced her campaign, the Tories walked out of the House leaving the Legislature's division bells (actually buzzers) ringing for 90 minutes. The Opposition was angered by government intransigence over the amendment, and its unwillingness to have the proposals aired by a Legislature committee that would sit while the House was not in session.

The shot of bell-ringing was a signal. In the arsenal of parliamentary tactics, it is a howitzer: the bells which call members for votes cannot be silenced in the Manitoba Legislature until party whips agree. The tactic allowed the 23-member Tory caucus to stymie the 32 government members.

Pawley also had a revolt from one of his own MLAs. Russell Doern, a former cabinet minister who had made his dislike of the proposals public, dropped out of caucus June 22, although he remained a party member until March, 1984.

Doern, who had opposed Pawley for the leadership, gave the public opposition its first forum when he conducted a straw poll through newspaper coupons and drew a uniformly negative response to the proposals. The pace of events quickened and acrimony on all sides increased at the end of June.

After promising there would be full hearings, Penner said he would consider amending the proposed resolution. It was the first acknowledgement that the government was in trouble. Penner's suggestion brought a warning from SFM president Léo Robert, who said the organization would not accept major alterations.

By July, the mood of the Legislature soured noticeably, and the strife the language issue would cause was becoming apparent. A senior Tory MLA was ejected on July 19 for saying Pawley misled the House. Next day, another Conservative allegedly called a Francophone government backbencher "Kermit the Frog."

On July 22, the government referred the proposal to committee, but the Opposition held out for intersessional hearings. To show their displeasure, they allowed the bells to ring through the night of July 28. They did it again for 20 hours after Lyon was ejected from the House before the August long weekend. On August 12, eight days after polls showed municipalities opposed to its plans and with the House stalemated, the government agreed to intersessional hearings throughout Manitoba. It was part of deal which allowed the completion of debate on all business except the constitutional amendment, and placed a two-week limit on bell-ringing for individual votes. The session, which had lasted a record 134 sitting days starting in December, 1982, recessed August 18. The MLAs went back to work after Labour Day for the committee hearings, which ran until October 4 in eight Manitoba centres.

The hearings opened with Penner introducing changes to the constitutional amendment, including altering the opening declaratory statement; excluding municipalities and school boards; and redefining the phrase "significant demand" which would determine services. The SFM reacted adversely, but stayed on side. Despite the watered-down resolution, the committee hearings showed the depth of opposition to the government's plans. Here, the first allegations of bigotry surfaced as speaker after speaker, many of them rural politicians, condemned the proposals. The major objections were costs, and concerns that municipalities would eventually be included.

Rallies and referenda

The one bright spot for the government and the SFM came September 27, when more than 2,100 Francophones rallied in Ste. Anne.

Mallette, *The Globe and Mail.*

Waving flags and singing, the people had been bused in from across the province to show support for the resolution and for Robert, a bearded, unfailingly polite school teacher who was at the eye of the storm from the outset.

At the same time as the hearings, Winnipeg city council wrestled with the bizarre idea of a referendum on minority rights. First raised by Maltman, it gained support from councillors of all political hues, some of whom worried about having to answer for the French proposal during the election campaign.

The plebiscite was by no means universally endorsed. In fact, it was approved on September 14 only when Mayor Bill Norris used his right to a second vote to break the tie on council. Had he voted the other way, the Winnipeg election would have been no more noteworthy than any other.

One of the few groups that would publicly support the government was formed during the referendum campaign, Manitoba 23, a loose coalition of ethnic groups, mobilized to bring out the "no" vote. (The Winnipeg referendum ballot was worded in a way that required opponents of the proposals to vote "yes", while supporters voted "no".)

The deal with the SFM was straightforward: the province would entrench in the Manitoba Act guarantees of Francophone rights and services. In exchange, Bilodeau — who was not a party to the agreement — would drop his case.

The work of Manitoba 23, which included an advertising campaign, dovetailed with efforts of the SFM, which mounted a sophisticated drive to get out the vote in support of its position. Francophones from across Canada came to Winnipeg to work on the campaign.

It was a fruitless effort, though, because Winnipeg voters and residents of 22 other Manitoba municipalities resoundingly rejected the constitutional resolution on October 26. There was no silver lining anywhere in the results for the Pawley government. It had viewed the plebiscite idea as repugnant, and the morning after, Penner said the government would not be swayed.

The shot of bell-ringing was a signal. In the arsenal of parliamentary tactics, it is a howitzer.

With the plebiscite, the Manitoba language question caught the attention of the country. The three federal parties joined forces on October 5, 1983, in a unanimous Commons resolution backing the proposals. The support of then Opposition Leader Brian Mulroney for the resolution angered Lyon. Foreshadowing events, he scolded the federal leader and condemned the federal action as unwarranted intrusion.

In the last part of 1983, major actors on both sides of the drama changed. In November, backbencher Andy Anstett was promoted to the Cabinet, and as House Leader took over the language question from Penner. Meanwhile, the Tories were selecting Lyon's successor, and at a mid-December convention elected former cabinet minister Gary Filmon.

On December 13, the new leader met Pawley and Anstett to discuss dramatic new proposals in which the government had carved the services out of the constitutional amendment and put them into a bill. It also toned down the resolution, substituting "freedom" for the word "right."

Anstett called it a reasonable and principled compromise, but Filmon rejected the package as costly and unwarranted on January 3, 1984, two days before the legislative session resumed. The stage was set for the inexorable rush of events that would send the language issue to the Supreme Court.

Closure and climax

During the first three weeks, the Opposition walked out of the House repeatedly. As well, Conservatives proposed sub-amendments to the language package, a tactic that produced what amounted to a filibuster. To get around them, an exasperated Anstett — a former assistant parliamentary clerk and rules expert — announced on January 23 that he intended to invoke closure on second reading of the services bill. True to his word, closure came the next day (for the first time in the Manitoba Legislature in 54 years) and the bill was passed in a sitting that lasted into the morning. The Opposition was furious with closure being used on legislation, which could be amended unilaterally; Anstett stunned them by saying he also would apply it to the constitutional amendment unless it proceeded. But if the Conservatives ever considered dropping the blockade, events from January 26 on dissuaded them. Keep the bells ringing, supporters told them. On January 26, the citizen-based group Grass Roots Manitoba, led by former federal civil servant Grant

With the plebiscite, the Manitoba language question caught the attention of the country.

Russell, brought 800 outraged supporters to the Legislative Building for an anti-government rally. During speeches, one man shouted "Bring us Anstett, we want to hang him." Earlier, Pawley revealed he had received death threats.

There was no question public sentiment was against the NDP; but the Conservatives had to fear the rising might of right-wing groups and Grass Roots. To hold that constituency, they could not turn off the bells.

During the following days, as a Legislature committee reviewed the services bill, Grass Roots petitioned Lt. Gov. Pearl McGonigal to dissolve the government. Another rally attracted 2,500 people. The public pressure highlighted by Grass Roots painted both parties into corners. There was no question public sentiment was against the NDP; but the Conservatives had to fear the rising might of right-wing groups and Grass Roots. To hold that constituency, they could not turn off the bells.

Filmon also had to worry about relations with the federal party. As the provincial Tories showed no inclination of allowing the language package to pass, Mulroney repudiated their tactics. He also made it clear to mavericks in the federal caucus, such as Winnipeg MP Dan McKenzie, that he would brook no opposition on the language issue. Filmon denied there was a split between the two levels, but the national party began to distance itself rather than let the Manitoba issue hurt it in Quebec.

In early February, bell-ringing became the norm in the Legislature. Anstett tried to lure the Tories back into the House to vote on a proposal that would put a two-hour limit on bells. However, the Opposition used the two-week time limit agreed to the summer before, and walked out on February 16.

Five days into what would be the final clash, Pawley tried to force Speaker Jim Walding's hand into calling a vote with or without the Tories. The Premier said bell-ringing attacked the fundamental principles of Parliament, and the right of an elected government to act.

Walding delivered a final slap to the beleaguered Premier when he rejected unilateral action because, among other things, it would betray the Speaker's impartiality.

Pawley's plea was a final bid by a government that many observers believed perilously close to falling. Meanwhile, the Tories, unmoved by the federal party's prodding, again stood firm when the Commons unanimously approved a resolution on February 24 urging the language package be put to a vote.

Three days later — after division bells had rung unstopped for 263 hours — the Legislature prorogued, the language package died. Ashen-faced government members and victorious Conservatives watched a ceremony that ended a nine-month crisis in five minutes. Now, what was once a roaring blaze turned into small, local brushfires.

Final resolution

The provincial and federal Conservatives tried to patch up their differences. Mulroney came to the lion's den of Winnipeg for a gutsy speech on language rights; he and provincial deputy leader Bud Sherman agreed to disagree so Sherman could run federally.

Three days later — after division bells had rung unstopped for 263 hours — the legislature prorogued, the language package died.

The NDP set about rebuilding. Bruised and battered, Pawley and the government yearned to get back to economic issues. In the past two sessions, the government had spent its days fulfilling election promises and trying to avoid controversy as it prepared for an election. Latest polls show it had substantially cut the Conservatives' lead from early 1984. It also was thrust into the unusual position of going to the Supreme Court to argue a Conservative argument: that "shall" in Section 23 of the Manitoba Act was directory, not mandatory.

The seven Justices eventually rejected the province's position in the June 1985 ruling that Manitoba is now trying to come to grips with. It is much tougher than anyone ever expected, government

SUPPORTING CAST

Grass Roots, led by Grant Russell, a former Mountie and federal intelligence officer; an umbrella organization that opposed the NDP government proposals to extend French-language rights; helped organize the drive for a referendum on language proposals in Winnipeg and other Manitoba municipalities.

Russell Doern, a former NDP cabinet minister (in the Schreyer administration) who later opposed Howard Pawley for the party leadership; conducted a newspaper poll among his constituents which drew a uniformly negative response to the NDP government's proposals; now sits as an independent MLA in the Legislature.

Manitoba 23, named after the disputed section of the Manitoba Act and led by Neil McDonald, a University of Winnipeg professor; a coalition of ethnic groups that supported the government's proposals during the Winnipeg referendum.

Manitoba Association for the Promotion of Ancestral Languages; advocated amendment of the province's constitution to provide for education rights and schooling in English and/or French and an ancestral language "where numbers warrant".

officials have said. Manitoba has been told virtually its entire body of law is invalid, and must be translated. Also requiring translation are an undetermined number of so-called spent statutes — repealed laws not covered by legal precepts cited by the court. The judges, however, ruled the unilingual laws temporarily enforceable as long as translations are done quickly.

Ashen-faced government members and victorious Conservatives watched a ceremony that ended a nine-month crisis in five minutes. Now, what was once a roaring blaze turned into small, local brushfires.

The province also is waiting for a ruling on the Bilodeau case. The decision was on a federal government reference which asked five questions aimed at obtaining a wide, definitive ruling. In anticipation of another harsh ruling on Bilodeau, the province has introduced and passed bilingual versions of the two laws he challenged.

For the rest, Manitoba will again go to the court to beg for time because this is a court decision no Manitoba government can ignore. But whether it is the final scene in the language drama is open to question. Given the history of Manitoba, few of the players seem ready to take their curtain calls just yet.

Letters to the Editor

The multilingual family
Thank you for the thoughtful presentation "Heritage language in the preschool" (No. 15, Winter 1985).

As the mother of two youngsters (ages 5 and 6) living in a family where the parental languages (Polish and German) together with the languages of school (English and French), add up to a quadrilingual household, I have been at a loss to find educators who appreciate the need to lessen the rift between home and school.

Our experience confirms your point, that heritage languages learned early enhance further language learning. Our two can hardly wait to learn Italian! The importance of filling each linguistic context with living referents, as MacNamee and White point out, keeps us truly busy.

Hania M. Fedorowicz, MA
Researcher
Ottawa, Ontario

French immersion in Alberta
I read with great interest your No. 12 Winter 1984 special issue of *Language and Society* on immersion and in particular would like to comment on Dominique Clift's article "Towards the larger community."

In general I agree with him but I would like to qualify the availability of French immersion in our area, as it appears to favour a few. The program is being offered in one public elementary school in the city of Red Deer, the only school where French immersion is available in central Alberta. One may send one's children at no cost if one lives in the city of Red Deer. All others must pay tuition fees and take care of transportation too. Therefore, those who do not have the time to drive their children a great distance to school or have the funds to pay are denied the opportunity of attending a French immersion program and the added benefits that ensue.

The Province of Alberta is currently revising the School Act and I have written a submission in that regard.

Christine Seaville
Alberta

News from Finland
...I am editor of an Esperanto paper, "Esperanto Finnlando" published by Esperanto-Asocio de Finnlando, and as an Esperantist I am very interested in problems of language politics, language planning and bilingualism. Professionally too, I have a good deal to do with problems of children whose linguistic development has been disturbed because of unbalanced bilingualism. (...) Mostly, such children are from re-immigrant Finnish families from Sweden. Compared with them, Finland's own Swedish-speaking minority has minor problems.

Besides, I want to suggest to the editors of *Language and Society* that there are studies of the problems of the Finnish and other minorities in Sweden in the University of Gothenburgh...

Tuomo Grundstrôm
Finland

...and thanks again
After reading my first issue of *Language and Society*, I have become an avid fan. As a Francophone social worker with Cambrian College in Sudbury and president of the Chelmsford *Union culturelle des Franco-Ontariennes*, please accept my congratulations on an excellent publication.

Carole Lavallée
Chelmsford, Ontario

The Premier of Manitoba presents his views of events leading to the recent Supreme Court decision and reaffirms his government's commitment to providing certain services in English and French.

The government perspective: on with the job

HOWARD PAWLEY

Howard Pawley, Premier of Manitoba, was first elected to the Manitoba Legislature in 1969. After serving as Minister of Municipal Affairs (1969-1976) and Attorney-General (1973-1977) in the Schreyer government, he was elected leader of the New Democratic Party on January 13, 1979. He was sworn in as Premier on November 30, 1981.

Manitoba joined Confederation in 1870 under the terms of the Manitoba Act. Section 23 of that Act allowed for the use of French and English as the official languages of the Legislature and courts. In 1890, however, the provincial government of the day passed the Official Language Act and the Public Schools Act which contradicted everything in Section 23 by calling for the use of English only in Manitoba.

In 1979, the Supreme Court of Canada ruled on the Forest case. The Court's ruling reaffirmed the validity of Section 23 by striking down both of the 1890 statutes. A major effect of this decision was that all of Manitoba's laws would have to be translated and re-enacted in both French and English.

In response to the decision, the government of Sterling Lyon in 1980 passed Bill 2 which, it said, would ensure the validation of all Manitoba laws and full compliance with the Court's decision. As history would soon show, they were wrong. The Lyon government soon established a French Language Services Secretariat and proceeded with a policy of providing limited French-language services. They also began the enormous task of translating all of the province's laws.

In 1981, Roger Bilodeau, charged with a traffic ticket offence, argued in court that, under the Constitution, all of Manitoba's laws were invalid because, contrary to the Manitoba Act, they were passed in English only. Immediately, it became apparent that the Supreme Court might rule that Manitoba would have to translate all of its laws in perhaps an unrealistically short timeframe.

While the case was before the courts, the people of Manitoba, in November 1981, voted for a change of government and the New Democratic Party replaced the government of Sterling Lyon. My government came to office recognizing that the French language has a unique, historic and constitutional place in Manitoba. We also fully appreciated the province's obligation to live up to the Supreme Court decision of 1979 and to address immediately the challenge to Manitoba's laws brought by the Bilodeau case.

In March 1982, following a period of consultation with the Franco-Manitoban community, I announced my government's policy on French-language services. The policy would provide, over a number of years and to the extent possible, bilingual services in areas where the province's French-speaking population is concentrated.

At the same time our government announced its intention to introduce a parallel policy on multiculturalism. From that point forward, we also began introducing and passing all new government legislation in both English and French; we introduced simultaneous translation equipment, meaning that finally the business of the Legislature could be undertaken in either French or English. Our government's policy also called for all written public correspondence received by the government in French or English to be answered in the same language, and for public documents and certificates to be in a bilingual format. Where feasible, government information would be in

bilingual or separate language formats and priority was to be given to the gradual introduction of French-language services by government departments which have the greatest contact with the general public.

Toward a made-in-Manitoba solution

At the same time as the policy was being introduced, our government was attempting to seek an out-of-court settlement with Franco-Manitobans that would see the withdrawal of the Bilodeau case before the Supreme Court and remove the real threat of having all Manitoba's laws ruled invalid. What was being attempted was the forging of a "made-in-Manitoba" solution to the unique historic circumstances which existed in Manitoba. After months of consultations with the federal government and the French-speaking community, on May 20, 1983, our Attorney General, Roland Penner, announced a federal-provincial agreement designed to avoid the threat of a Supreme Court imposed solution.

> *We really are a microcosm of our great nation — a country with a bilingual and multicultural soul that is precious and worth treasuring.*

In the months and year that followed, the continuous and often strident opposition expressed by the provincial Conservatives obscured and virtually buried the practical, limited and real nature of that agreement. Given what did occur, it is now worth noting the precise details of what was first proposed by my government. Briefly, the proposed draft agreement tabled in the Legislature involved:

- a proposed constitutional amendment to Section 23 of the Manitoba Act; and
- a cost-sharing arrangement between the federal and provincial governments for translation and services.

In exchange for these steps the Bilodeau case before the Supreme Court would be dropped.

Details of the agreement provided for assured French-language services only to the limited designated areas of the province outlined a year earlier in the province's policy on French-language services. Municipalities with a substantial French-speaking population could, on a voluntary basis, apply for financial assistance to improve services. The federal government would provide $2.35 million in cost assistance for translation. By 1986 all new Manitoba laws and regulations were to be enacted in both languages and by 1987 those who wished could be served in French by specified government departments and agencies. Finally, we determined that these services could be provided by approximately three per cent of the work force in the civil service and that a significant percentage of these people already existed within the government.

Perhaps most importantly from the government's perspective, the agreement would have required the province to translate only the 500 most important of Manitoba's 4,500 laws. The agreement would have the advantage of greatly reducing the requirement to translate while removing the threat of both present and future court actions concerning the validity of our laws. Finally, the proposed agreement was to be signed by December 31, 1983. If it was not, the Bilodeau case before the Supreme Court would proceed.

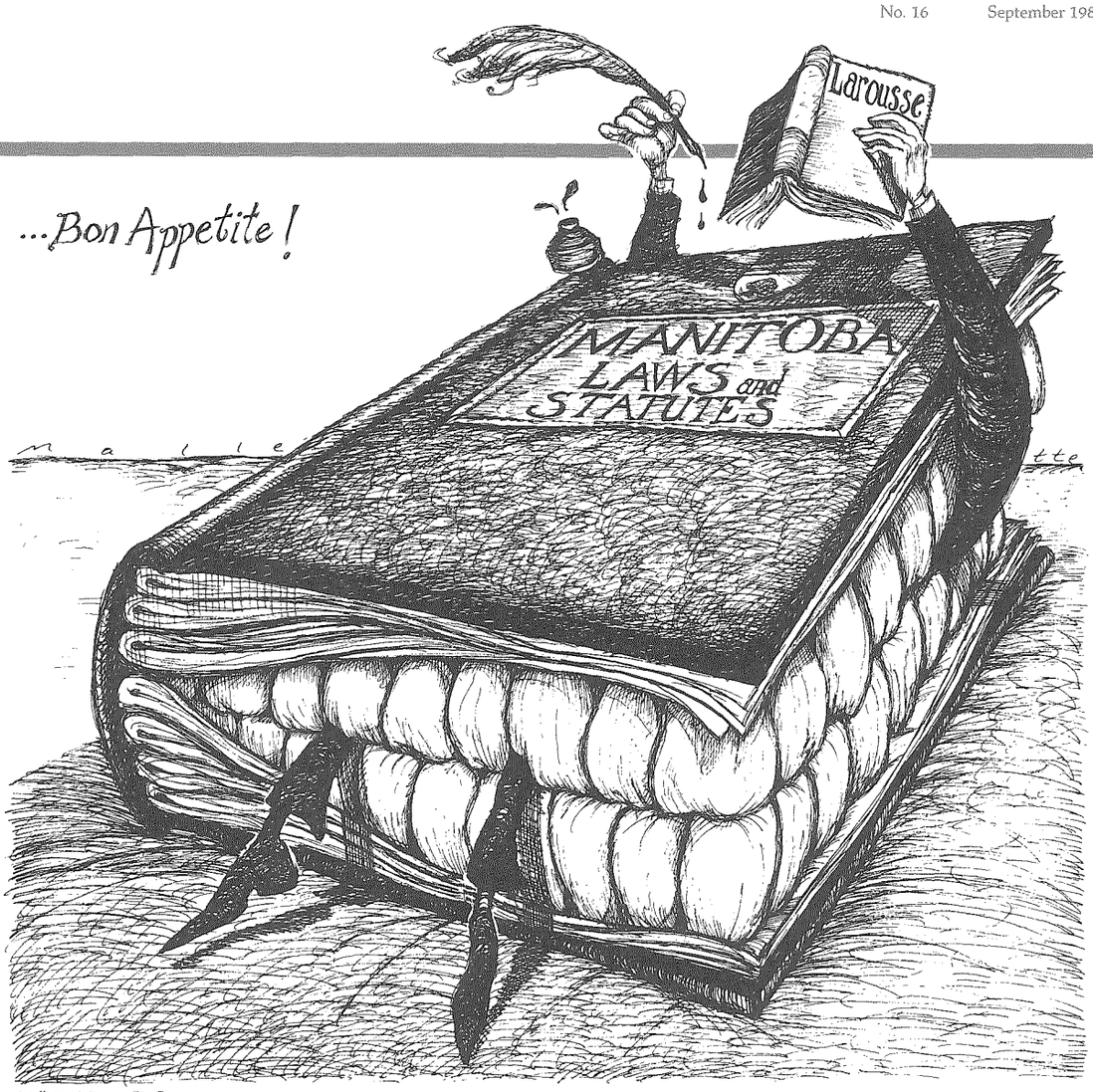
In summary, we believed and still believe that we were offering a practical approach to the French-language question by serving the practical needs of Manitoba Francophones without imposing any obligations or restrictions on those Manitobans who do not speak French. It was a rational proposal that could ensure a made-in-Manitoba political solution as opposed to one imposed by the Supreme Court — a route filled with great uncertainty.

> *The decision has no effect on our government policy of providing French-language services. The policy we introduced in March 1982 still applies and will continue to be implemented.*

The fires of opposition

We sincerely believed that our proposal, once it was fully presented and understood by the people of Manitoba, would be accepted. What we did not expect, however, was the degree and depth of opposition mounted by the provincial Progressive Conservative Party. What was tragic about the Conservative opposition was that it was motivated by political opportunism and their knowledge that it was possible for them to greatly inflame this sensitive issue. Almost immediately, the Conservative caucus led by Sterling Lyon and Gary Filmon, engaged in the politics of fear. Within weeks, their deliberate campaign of fear and distortion had poisoned the atmosphere of the Legislature so badly that it became apparent that any rational or dispassionate discussion of the agreement was impossible. Even more worrisome, it became apparent that the opposition's tactics of fear-mongering and distortion had unnecessarily alarmed many in Manitoba. By July, when the province undertook a series of public information meetings to discuss the proposal, the reality of what the government was proposing had been buried beneath a mountain of Conservative myths and inaccuracies.

As the debate in the Legislature continued, the government proceeded, trying on one hand to address the sensitivities and concerns being raised by Manitobans, while on the other offering a solution that would respect the historic and constitutional rights of



Mallette, *Winnipeg Free Press.*

French-speaking Manitobans. After the Legislature adjourned in August, public meetings and consultations with Manitobans continued throughout the remainder of 1983 to seek more public input that could help resolve the issue. Based on these consultations, the government introduced amendments and a revised agreement — a new Manitoba consensus — in an attempt to gain the support of the Conservative Opposition so that a vote could finally occur.

This compromise proposal presented before the Legislature on January 5, 1984 was different from the original in that services would now be provided through legislation (the proposed Bill 115) rather than through a constitutional amendment. Furthermore, it was now more clearly expressed and guaranteed that school boards and municipalities were excluded from the agreement, even though this was never the government's intent from the beginning unless municipalities volunteered to participate.

Paralysis in Parliament

Even though the Conservatives had earlier endorsed all the significant aspects of the new proposal at various times over the previous year, they continued, under their new leader Gary Filmon, to act opportunistically. They continued to oppose the package for political gain on the mistaken assumption that they could topple the government through their tactics. They refused to debate, and they refused to acknowledge the Speaker's call to vote, leaving the division bells ringing and the Legislature paralysed. Despite entreaties from their own national leader and an all-party endorsed resolution by Parliament supporting our proposal, the Conservatives continued to stall and filibuster, preventing debate on *any* government business from proceeding. By February 27, after weeks of stalling and bell-ringing, it became apparent that the Conservatives would not, in any circumstance, be prepared to participate in the consensus that existed in Manitoba at that time. It was evident they were prepared to let the division bells ring indefinitely. With no parliamentary option remaining for the government, and with no rules or measures with which the government could force the vote, we were faced with complete parliamentary paralysis. Ending the session became the only way to ensure that the process of government could proceed on the many other critical economic and social issues before us.

With the session's end, so ended the government proposal and the chance for a Manitoba-made solution. After nine months of

continuous effort and debate but no resolution, the Bilodeau case would proceed to the Supreme Court. While the case was before the Court, the government passed new rules for the Legislature making it impossible in future for any party to stop the parliamentary process by engaging in the sort of hijacking tactics used by the Conservatives.

> *The French language has a unique, historic and constitutional place in Manitoba.*

The Supreme Court decision

Fifteen months later, on June 13, 1985, the Supreme Court ruled on the federal government's reference before the court on the Manitoba language question. The decision was as we predicted throughout 1983 and 1984. All Manitoba's laws were declared invalid. We were told that the province must enact *all* its laws in French and English and that we must do so in the minimum period of time necessary. The province will present its case to the Supreme Court in mid-November, at which time we will indicate to the Court the amount of time the province will require to translate the thousands of laws which were passed in English only since 1890.

We were immediately aware that the Supreme Court's decision would not be satisfactory to everyone and that there would be some who would see the decision to translate all of our existing laws, and perhaps many more "spent" or obsolete laws, as a waste of time and money. But while the decision is a tough one, I believe it is one with which Manitobans can live with if the Court provides the province sufficient time. The highest court in our country has ruled and we will abide by the decision. The decision will not affect in any way the daily lives of ordinary Manitobans. The decision has no effect on our government policy of providing French-language services. The policy we introduced in March 1982 still applies and will continue to be implemented. In short, the government will make every effort to comply with the terms of the decision.

Clearly, the Court's ruling proves how wrong the provincial Conservatives were. Their prediction that the Supreme Court would never rule all of Manitoba's laws invalid nor force the province to translate into French all its laws passed since 1890 was completely wrong. The Court also threw out the 1980 Bill 2, passed by the Conservatives, in effect saying that the Bill did not go far enough to ensure that Manitoba fulfilled its constitutional and legal language obligations.

Currently, the province is proceeding with the massive job of translation. In fact, because of the hard work and preparations we have undertaken during the past year to prepare ourselves for the Court's decision, we have substantially increased our ability to comply with it. Translation of our laws has been proceeding over the last several years. A substantial number of the province's most important statutes have already been translated and are ready for re-enactment. With the anticipated assistance of the federal government, it is expected that overall requirements with regard to the enactment of legislation in both languages can be met.

As I have stated, the decision has no effect on the provincial government's policy of providing

> *These services could be provided by approximately three per cent of the work force in the civil service (...)*

French-language services. Indeed, the NDP government's commitment to providing language services to French-speaking as well as to all other Manitoba multicultural groups remains as firm now as it was in 1981 when we assumed office.

The recent debate surrounding the Manitoba language question has certainly been difficult for our province, just as the issue has been a difficult one for preceding generations not only in Manitoba, but throughout Canada. But I am convinced that we have emerged from the debate whole and with a better knowledge, understanding and appreciation of the unique nature of our province.

The Supreme Court decision has helped bring Manitoba one step closer to a final resolution of this outstanding historic issue. Whatever the final Supreme Court decision may be, I am confident that Manitobans can and will proceed now to honour their legal and constitutional obligations and responsibilities. The wounds opened by the language debate of 1983-84 have healed. With a quiet atmosphere of tolerance and acceptance again existing in Manitoba, the provincial community continues to reflect our multicultural and linguistic richness. Manitobans continue to demonstrate that we *are* the keystone province and that we really are a microcosm of our great nation — a country with a bilingual and multicultural soul that is precious and worth treasuring.

Manitoba's Leader of the Opposition explains the position of his Party and the action it took in opposing the entrenchment of French-language rights and services in Manitoba.

The opposition view: the other side of the question

GARY FILMON

A native of Winnipeg, **Gary Filmon** has had a long involvement in the business community and political life of Manitoba. First elected to the Legislature in October 1979, he served in the Cabinet of the Lyon administration and became Leader of the Manitoba Progressive Conservative Party in December 1983.

I welcome the opportunity to put forward my Party's position on the so-called "Manitoba language question". It is vital at the outset to clarify certain issues. What was involved was not a "restoration of historic rights" but a matter of establishing obligations to translate statutes. As a Party, we have never been opposed to extending the use of the French language in Manitoba in order to meet real needs. We do, however, consider it inappropriate, in the light of social realities in the province, to give French the status of an "official language" in the Constitution or to provide for entrenched government services in French where there is neither demand nor justification for such services.

Recent background

In 1979, the Supreme Court of Canada ruled the 1890 legislation repealing Section 23 of the *Manitoba Act, 1870* unconstitutional. It is important to recall precisely what Section 23 said:

"Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the *British North America Act, 1867*, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages."

A modest requirement indeed, and it will be observed that the reference to the use of either language is only with respect to the courts, the Legislature and statutes.

However, in compliance with the Court's ruling, the Lyon administration brought in legislation in 1980 repealing the 1890 legislation, established an entire French-speaking court, ensured that all courts in the province were equipped to hold trials in French, equipped the Legislature to provide simultaneous translation and provided an enhanced translation capacity to undertake the translation of past, present and future statutes and journals in English and French. Moreover, acting in the "spirit" of the decision, it went beyond the legal requirements, and consulted the French-speaking community on the extension of services in French.

The next issue was, of course, the principle involved in the Bilodeau case, namely the constitutional status of statutes passed in English only after 1890. The provincial government had a number of options available to it, the most obvious being to let the Supreme Court decide the issue. This was the course of action we supported; it was also the option preferred by four out of every five Manitobans voting in local referenda in the fall of 1983. It was also (and this is an important point), the opinion of numerous legal experts — including the province's own official legal counsel, who thought the province would win its case — that the statutes were valid. While others were less optimistic about the province's chances, few expected the Court to declare all provincial laws unconstitutional overnight, thus creating a province without laws, a province in legal chaos.

Yet the NDP government succumbed to the persuasions of those who said it would lose on appeal and that Manitoba would indeed be plunged into legal chaos. Thus, the Pawley NDP administration struck a deal with the Société Franco-Manitobaine (SFM) — withdraw the Bilodeau suit, accept a restricted translation requirement and, in return, entrench French as an official language and also entrench expanded French-language services. It should be noted that the NDP's argument at that time had little to do with "oppressed minorities", "historic rights", or "national unity", but quite a lot to do with political expediency.

What was involved was not a "restoration of historic rights" but a matter of establishing obligations to translate statutes.

The Progressive Conservative argument

We objected at the time to a number of aspects of the proposal. As I shall argue later on, we objected to the notion of entrenchment of French as an "official language" of Manitoba and the further entrenchment of the extension of French-language services in the Constitution. We also felt that the "package", as it came to be known, was a gross over-reaction, one likely to lead to massive division within the province. We were correct in this expectation, since the relationship between Francophones and their fellow Manitobans has suffered badly as a result of the initiative of 1983.

Also objectionable to us was the fact that the NDP wished to amend our Constitution without any open public consultation whatsoever on an issue where they lacked a public mandate. They initially opposed public hearings, only later relenting. In the 1984 session of the Legislature, they sought to impose closure to end debate on the package. Such actions were, we submit, alien to the democratic and parliamentary traditions that have protected our freedom in this country for many generations. It is simply not proper that a responsible government should try to force through legislation with such wide implications without attempting to solicit the views of the widest constituency possible. Further, we were unhappy that the SFM was to be the sole representative of Franco-Manitoban aspirations. Although we respect the contribution that organization has made to the life of this province, we respectfully point out that it is only one of a large number of groups, not all of them in unison, claiming some authority to speak on this issue.

The Pawley government introduced the resolution in the Legislature, later amended it, but did not relinquish the principle of entrenchment. The Legislature was brought to a halt during the "bell-ringing" of the winter of 1984. We did not act out of a desire for obstruction. We acted as we did because of the principles involved and the heavy-handed and arbitrary way in which the NDP was handling the issue. The government was forced to withdraw the legislation and went to the Supreme Court. As readers will know, a Supreme Court judgement came down in June, 1985.

We would emphasize at this point that the Conservative Party acted to implement the Supreme Court ruling of 1979. It is worth reminding readers (in light of the criticism we have received from various sources), that my Party is not composed of dinosaurs who want to stop people speaking French. Under recent PC administrations, notably those of Duff Roblin and Sterling Lyon, the use of French as a medium of instruction was enhanced, as witness the expansion of French immersion programs in the last decade.

The issue in 1983 and 1984 was not one of "restoring rights" since the 1870 Act was very limited in its application. Even in the early days after Manitoba's entry into Confederation, when French citizens constituted the majority of the population, Section 23 was honoured more in the breach than in the observance. Hence, when the Liberal administration of 1890 repealed Section 23, little protest was heard from either level of government.

French was not declared an official language of Manitoba in 1870, and was not so declared until the NDP proposals of 1983. Thus, the argument in favour of special status for French cannot be justified on the grounds of historic rights arbitrarily abrogated. Nor can such status be justified by appeal to contemporary circumstances. For, while the majority of the population in 1870 was Francophone, this majority rapidly became a minority. British, Ukrainians, Mennonites, Natives, indeed, people from all over the world came to Manitoba transforming the province into a cultural mosaic. Currently, only five per cent of the Manitoba population claims French as their principal tongue, a proportion incidentally lower than those so claiming German or Ukrainian.

My Party is not composed of dinosaurs who want to stop people speaking French.

Entrenchment vs. statutory legislation

In keeping with my party's position on the federal Charter of Rights and Freedoms which the former Liberal government first proposed in 1980, we were also uneasy about the proposal to entrench the legislation in the Constitution rather than deal with the issue as simple statutory legislation. The arguments against entrenchment as a mechanism are many, but we have space to mention only a few.

Entrenchment, for instance, can be opposed on the grounds that it

Dale Cummings, *Winnipeg Free Press.*

freezes for all time the social and philosophical consensus of a time, and thereby removes the prudent flexibility available to freely elected representatives of the people. Entrenchment also puts in the hands of the courts the sole right to, in effect, legislate on an issue. This, it may be objected, is precisely the point: certain "rights" are so precious they ought to be put beyond the reach of vote-hungry politicians doing irresponsible and unjust things for temporary gain. Those who consider court-made law more progressive or libertarian should consider two things, however.

The United States Supreme Court, a body which has had the right to engage in judicial review since the early days of that republic, has, with all due respect, not always acted in a manner in tune with the legitimate aspirations of its people. Thus, for a generation, the decent desire of United States citizens to provide opportunities for their children to pray in school have been blocked by a court taking a rather rigid view of the establishment clause of the first amendment to the Constitution. Second, the fact is that a considerable body of legislation has been passed in all jurisdictions of this land which had the effect of widening individual liberty without the urging of judicial authorities. These include human rights legislation, the office of the Ombudsman and the like.

Hence, entrenchment is not necessarily the most desirable vehicle for protecting rights. It is certainly potentially inflexible and would limit the ability of elected representatives of the people here in Manitoba to dispose of issues of language subject to the ever-present disciplines of the electorate.

Space does not permit me to do more than mention once again our main objection to the NDP's legislation: by proceeding in so arbitrary a fashion and by attempting to put in place such significant legislation without considering important the need for public consultation, the Pawley administration displayed breath-taking and staggering contempt for the normal relationship between the governors and the governed in a democratic society. What the events of the last two years have done, I regret to say, has been to impair and de-stabilize a harmonious relationship between major language groups in this province. As we warned the NDP, it has set back the cause of French-speaking people for a long time.

What the future holds

However, the Supreme Court has rendered its verdict. It did not, as the NDP in its panic believed it would, plunge Manitoba into legal chaos. It is true that the decision went further than many had hoped. In particular, we are disappointed at the requirement of having to translate some of the "dead" statutes of the province. But, as we predicted, the Supreme Court could not force the entrenchment of providing French-language services upon Manitobans, the costs of which would far exceed the translation costs.

Our position in the future remains unaltered. We shall oppose the entrenchment in the Constitution of French as an official language in Manitoba. We shall support extension of minority language services only where there is a very clear need *and* demand. We shall co-operate fully in meeting the unfulfilled legitimate legal requirements of the province which involve, as they have always involved, only translation. We are not sure what the cost will be since the province does not yet know the exact scope of what it has to do. We would expect, however, that the federal government, which was a party to the 1983 agreement and gave financial support to its protagonists, will be disposed to provide significant financial and other logistical support for the translation process. Above all, we shall do the best we can to restore the goodwill and harmony which has historically prevailed in this province between members of our multicultural family, but which has been undermined by the unfortunate events of the last couple of years.

Letters to the Editor

Aboriginal languages in Canada: questions and answers
I would like to congratulate you on publishing "Aboriginal languages in Canada" by Gordon Priest in your fifteenth issue. As one of the readers who wrote in praise of Michael Foster's article and requested another article on a similar topic, I am especially pleased to see you taking the suggestions of the readership into account so promptly.

I also have a question which I would like to ask you to pass on to Mr. Priest for me. I am very puzzled by something in Table 3. I have done some work on the history of the Wakashan family, so naturally I looked at the figures for Wakashan immediately. The table gives 30 as the number of aboriginal people with "other non-aboriginal" mother tongue who have a Wakashan language as "home language". That seems like a very high number. I know one woman who fits this category — she is a status Indian by marriage, of Danish mother tongue, but now residing in a Wakashan-speaking (Nitinaht) household. But could there really by 29 more like her? Out of a total of only 270? What mother tongues are involved? In fact, the table shows a total of 21,025 aboriginal people with "other non-aboriginal" mother tongue (regardless of their current home language). Who are they all? Either I am misreading the table, or this astounding fact deserves an article devoted to it!

I have one more question for Mr. Priest. Referring to Italian, Chinese, and Ukrainian, it is stated that "these languages are not in danger of extinction in Canada given the influx of new immigrants". This is certainly true of Italian and Chinese, but there aren't all that many new Ukrainian immigrants (not enough to call an influx, anyway). Perhaps Mr. Priest could clarify what he meant here (with respect to Ukrainian). For Ukrainian, I think the major factors are ethnic loyalty and pride, a uniting religion, as well as various political factors related to their homeland.

I would like to make one last point, on a totally unrelated topic. Could *Language and Society* adopt some sort of "non-sexist" language policy? This is an issue of great current concern in academic circles. The otherwise excellent article "Heritage language in the preschool" by Terence MacNamee and Hilary White is peppered throughout with "he", mostly referring to the language learner, when a sex-neutral reference (e.g., "he or she", or convert into plurals) would be far more appropriate.

Sheila M. Embleton, Associate Professor
(Linguistics)
York University, Toronto

Gordon Priest replies:
I am responding to Professor Sheila Embleton's letter of May 1, 1985 to the editor of *Language and Society* concerning my article on aboriginal languages.

With regard to her question about persons with non-aboriginal mother tongues reporting Wakashan as home language, I would agree that the number reported seems rather high. There can be a number of reasons for this.

First, in order to help protect the confidentiality of respondents all numbers showing the characteristics of individuals are randomly rounded to "0" or "5" in their last digit. Thus the 30 shown in the table could actually have been any number between 26 and 34 on the data base. Second, the home language data were collected on a 20 per cent sample basis and thus the possibility of error is high. Third, we have discovered that approximately 7,000 persons of East Indian origins reported themselves as native people, many as Status Indians. There is also evidence that some Canadian born non-aboriginal people, considering themselves to be "native born", reported themselves as Native People.

When such misreporting occurs it is difficult to always purge it from the data base, since it is frequently difficult to distinguish between misreported cases and legitimate cases such as you noted of a Danish mother tongue and a Wakashan home language.

For these reasons I did not treat the reported aboriginal population with other non-aboriginal mother tongues in the discussion.

With respect to Ukrainians, Professor Embleton's point is well taken. I was thinking of the pre-World War I immigration under the Sifton administration as well as the post-World War II period of 1945-54 (the latter, for example, a period during which well over one-third of the overseas-born Ukrainians, still living in Canada in 1981, immigrated). Ukrainian immigration to Canada since that time has been sparse and I would think that the factors she mentioned have been very important in keeping Ukrainian alive as a language in Canada.

Incidentally, in 1981, 529,615 persons in Canada reported their single ethnic origin as Ukrainian, 76,930 of whom also reported themselves as not born in Canada. Furthermore, 285,115 persons reported Ukrainian as their mother tongue of whom 88,440 also reported Ukrainian as their home language.

With respect to the Wakashan languages, I would consider updating the work based on results of the forthcoming 1986 Census. I would be delighted to learn more of Professor Embleton's own work with the Wakashan, particularly if she has any information on linguistic differences between the constituents of the Wakashan, i.e., Haisla, Heiltsuk, Kwakuitl and so on.

Gordon E. Priest
Director
Housing, Family and Social Division
Statistics Canada

Although pleased with the recent Supreme Court decision, the Franco-Manitoban community's goal is "the development of its institutional base and access to services in French in appropriate regions".

A recipe for redress

RÉAL SABOURIN

Réal Sabourin, a native of Saint-Jean-Baptiste, Manitoba, is a Winnipeg businessman and teacher. After working as a planning and research officer for the Société Franco-Manitobaine, the organization that represents Manitoba's French-speaking community, he became its president in March 1985.

The Supreme Court decision on Section 23 of the Manitoba Act (June 1985) obliges Manitobans in general to rethink their attitudes toward the place of French in their province, and the Franco-Manitoban community in particular to redefine its needs. The decision confirms that, for generations, this minority's rights have been seriously violated. As a result of the role played by the French and the Métis in founding Manitoba, the French language has, and always has had, equal status with English in the Legislature, courts and laws of the province. The Supreme Court decision (June 1985) clearly recognizes this fact:

> "Section 23 of the *Manitoba Act, 1870* was the culmination of many years of co-existence and struggle between the English, the French and the Métis in Red River Colony, the predecessor to the present day Province of Manitoba. . . For much of its preconfederation history, Red River Colony was inhabited by Anglophones and Francophones in roughly equal proportions."

Section 23 of the Manitoba Act must thus be interpreted in terms of a recognition of the historical role played by Francophones in establishing the province and the rights they possessed when Manitoba entered Confederation.

The conclusion of the Supreme Court goes well beyond the simple translation of acts, regulations, records and journals. According to the Supreme Court, Section 23 of the Manitoba Act:

> "establishes a constitutional duty on the Manitoba Legislature with respect to the manner and form of enactment of its legislation. This duty protects the substantive rights of all Manitobans *to equal access to the law in either the French or the English language.*" (emphasis added)

It would be very difficult to deny that this passage confirms the right of Franco-Manitobans not only to read their laws but also to receive all the services provided for in such laws in their language.

Similarly, the Supreme Court very clearly draws a parallel between Section 23 of the Manitoba Act and Section 133 of the *Constitution Act, 1867*, as the following passage (inter alia) shows:

> "Given the similarity of the provisions, the range of application of s.23 of the *Manitoba Act, 1870*, should parallel that of s.133 of the *Constitution Act, 1867*. All types of subordinate legislation that in Quebec would be subject to s.133 of the *Constitution Act, 1867*, are, in Manitoba, subject to s.23 of the *Manitoba Act, 1870*."

Such passages, linking the two sections, establish a strict parallel between the constitutional rights of Anglophones in Quebec and Francophones in Manitoba. In other words, the Supreme Court places the question of Franco-Manitoban rights at the heart of the national debate on Canada's future.

French and English, official languages of Manitoba

In what sense should Manitobans, including Franco-Manitobans, reassess their attitudes to the language

issue in light of the Supreme Court decision? The province's Anglophones must abandon the idea that there is a quick and easy, painless solution to the "problem" of bilingualism in Manitoba. This is quite simply not so.

> *The province's Anglophones must abandon the idea that there is a quick and easy, painless solution to the "problem" of bilingualism in Manitoba.*

For Franco-Manitobans, the Supreme Court decision was a tremendous victory, a validation of their historical claims and, most of all, a confirmation by the highest court in the land of the equal status of French and English in the most important public institutions of the province, the Legislature and the courts. In this respect, the Supreme Court does not hesitate to speak of French and English as the province's "official languages".

For the past twenty-five years, every premier of Manitoba has recognized, in one form or another, the bilingual nature of the province.

When announcing new language initiatives at the Société Franco-Manitobaine (SFM) 1982 annual meeting, the Premier of Manitoba gave the following explanation:

> "One clear and basic reason is that the French language has a unique, historical and constitutional position in Manitoba. The creation of Manitoba as a separate province and its early admission to Confederation were largely the work of French-speaking residents. As a result this is an officially bilingual province as the Supreme Court recently ruled."

Later in the same speech, he stated that:

> "Manitoba is the only province that is both officially bilingual and fully multicultural."

The Progressive Conservative government (1977-1981), in its 1980 Bill 2 (now declared invalid and inoperative by the Supreme Court), also recognized the official status of French. The Bill began with a statement concerning official languages:

> "1. In this Act 'official language' means the English language or the French language." (s.1, *An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, 1980, Manitoba, chap. 3)

Following the 1979 Supreme Court decision in the Forest case, the government set up an office to ensure the establishment of French-language services.

Today, Franco-Manitobans can take heart from the fact that their faith in Section 23 was not misplaced, that they do have rights, that these rights are defined in Section 23 and that their implementation is guaranteed, at least in part, by the courts.

A negotiated interpretation

However, the issue is far from settled. First, the Supreme Court decision, by its very scope, obliges the provincial government to undertake a far more extensive translation program than it had expected. The Supreme Court is explicit: the records, journals and acts of the Legislature must exist in both official languages; furthermore, this order is retroactive. Acts must even be adopted in both languages, i.e., a bill must be "adopted, printed and published in both languages" to be valid and operative. The Supreme Court added:

> "This duty protects the substantive rights of all Manitobans to equal access to the law in either the French or the English language."

Franco-Manitobans understand that the principle of equality of both languages in Manitoba is fundamental to the protection of their rights. However, they need a realistic and pragmatic interpretation of Section 23 and of the decision in order to feel "at home" in their own province. Most of all, they need to feel that, whenever they communicate with their government, they are welcome to do so *in their own language*. Again, they have been given undeniable support by the Supreme Court:

> "Section 23 of the *Manitoba Act, 1870* is a specific manifestation of the general right of Franco-Manitobans to use their own language. The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity."

Clearly, this objective will be better achieved by the adoption of appropriate laws than by the translation of the existing statutes.

Franco-Manitobans are the first to admit that much of the translation will be of no direct use to them. However, the principles by which their rights have been so clearly confirmed by the Supreme Court have henceforth become fundamental to their existence in Manitoba.

> *Ideally, a so-called "Francophone" community in Manitoba should be able to function entirely in French.*

For example, the daily newspapers that have followed the situation carefully (in particular, the *Winnipeg Free Press*, the *Globe and Mail* and the *Winnipeg Sun*), are unanimous in recommending correction of the historical wrongs that the Government of Manitoba has inflicted upon Francophones, and re-affirmation of contemporary solutions designed to meet the most urgent needs of the Francophone community with respect to legislation and services.

Obviously, Franco-Manitobans would support such initiatives *provided they are directly involved in*

the process and that existing rights are given a contemporary interpretation and are in no way abrogated.

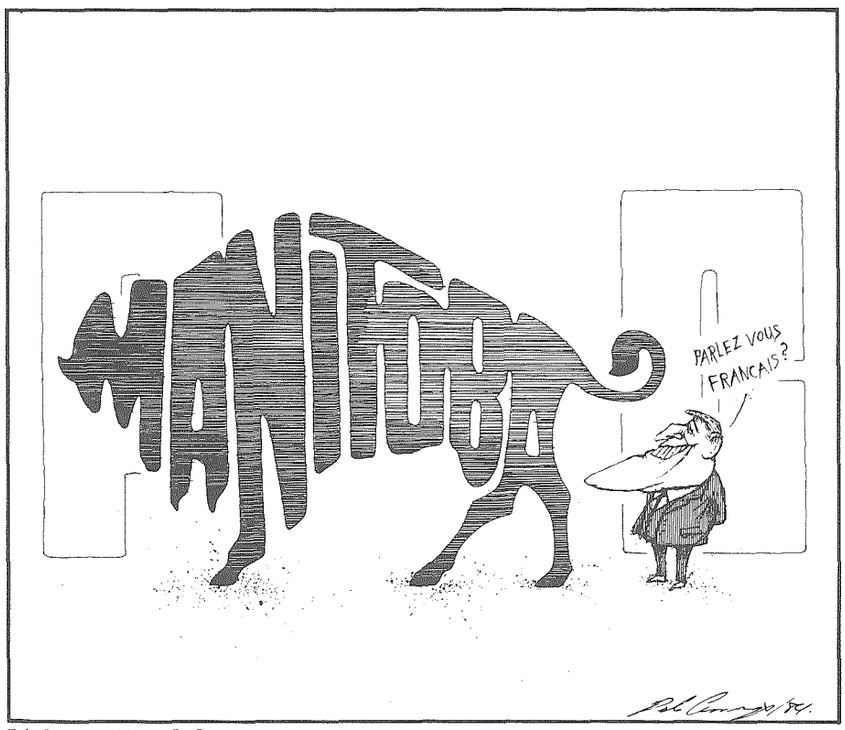
Should there be no negotiation, Franco-Manitobans will have no choice but to insist upon a full, literal application of the Supreme Court decision in the months and years to come.

What do Franco-Manitobans want?

Let us first define the term "Franco-Manitoban". The Franco-Manitoban community is a body of individual Francophones who share a wish to live in French in Manitoba. They include descendants of the founding French settlers (including Métis) and others who share this wish to live in French. It is not an exclusive group; on the contrary, it is a group which, although generally bilingual, wishes to live as fully as possible in French. Thus, a "French environment" must be created (and often re-created) for such persons wherever desirable and wherever possible throughout Manitoba.

Ideally, a so-called "Francophone" community in Manitoba should be able to function entirely in French. According to the terms of the Manitoba *Public Schools Act*, there should be French schools. All social services offered by the federal, provincial and municipal governments should be available in French. Institutions managed by the local population (hospitals, homes for the elderly, school boards, municipal councils, recreation centres) should be able to operate in French. Lastly, local economic institutions (businesses, factories, etc.) should also be able to function in French. All this would be accomplished without harm to the rights of Anglophones or members of other ethnic groups.

For Franco-Manitobans this is an ideal, but for Anglophone Quebecers it is a daily reality. The Anglophones of Quebec have always enjoyed these elements in their environment. The parallel that the Supreme Court has drawn with Quebec in constitutional terms should also become a reality for Franco-Manitobans at the institutional level.



Dale Cummings, *Winnipeg Free Press.*

The starting point, then, for a regime that truly recognizes the needs of Franco-Manitobans is first to *maintain and develop the existing institutional base of the Franco-Manitoban community*, however modest: Collège universitaire de Saint-Boniface, Centre culturel franco-manitobain, Bureau de l'éducation française, Direction des ressources en éducation française, Caisses populaires.

Next, this base should be enlarged to include other types of institutions enjoyed by the Anglophone population of Quebec: Franco-Manitobans need hospitals operating in both languages; control of the French-language school system; French-language day care centres; French-language libraries; government services in French; cooperatives; economic development and tourism.

Government services

With respect to government services in French, the Société Franco-Manitobaine has stated its position many times in recent years. In 1981, the SFM published a document entitled *Vers des services en langue française*, which proposed a policy for implementation of Section 23 of the Manitoba Act. The document set out the following principles and priorities:

1) Services in French provided by the Manitoba government should first be available in regions with a high concentration of Francophones. These regions were defined and subsequently adopted as "designated regions" by the government on March 21, 1982.

In our view, this decision and the albeit ambiguous recognition by recent Manitoba premiers of these historical rights, mean there must be a point at which both sides can rise above partisan considerations and find common ground for agreement. In the Legislature, on both the government and opposition sides, there is now recognition that the provision of French-language services is both inevitable and necessary. We therefore

believe that we are only one step away from unanimous approval by the Legislature of a compromise which, on one hand, would limit the amount of translation to be performed and, on the other, via negotiation, would ensure that Francophones have access to services in French. We repeat: *Franco-Manitobans will not accept any change in the constitutional status quo unless they are involved in and agree to any such change.*

If no such change takes place, Franco-Manitobans have no choice but to ensure that the Government of Manitoba complies with the letter of the Supreme Court decision. Since Francophones, in the past, have been unable to trust government to protect their interests, they must once again assume the thankless task themselves. If necessary, *Franco-Manitobans will not hesitate once again to take their case to court to ensure, at very least, strict respect for the Supreme Court's directives.*

A question of choice

In a sense, then, history has come full circle. So long as the people of Manitoba refuse to accept the fact that the French language and Franco-Manitobans share equal status with the English language and English-Manitobans, the Franco-Manitoban community will have no alternative but to seek recourse through the powerful protection provided by the Canadian and Manitoban constitutions. Political and legal events of the past fifteen years have confirmed the bilingual nature of our federation. Manitoba now has a choice; it will take its place in this Canadian reality either through its own generosity to a beleaguered minority and the wisdom of its political leaders, or because its own constitution requires it to do so.

> *The Franco-Manitoban community's objective is the development of its institutional base and access to services in French in appropriate regions. Implementation of such services must be based on a realistic but precise plan and timetable.*

2) The SFM listed, in order of priority, the government services that should be offered in both languages. This list still corresponds to the needs and wishes of Manitoba's Francophone community.

Progress, however modest, has been made in various areas of government activity. For example, almost all departments use some bilingual forms and certificates. Progress has also been made since 1981 in government publications. However, most of the Premier's promises to the SFM in March 1982, namely the establishment of bilingual services in government-designated regions, have come to very little. At that time, the Premier made the following specific commitment:

> "This year, realistic timeframes will be established for the introduction of the required services in the French language."

We are now in 1985 and nothing has been done in this regard: no plan, no objective, and no timetable for government services as a whole has been adopted.

Let us once again repeat that *the Franco-Manitoban community's objective is the development of its institutional base and access to services in French in appropriate regions. Implementation of such services must be based on a realistic but precise plan and timetable.*

The time for compromise is now

There should be no doubt as to the position of Franco-Manitobans with respect to the need for bilingual laws and regulations. A minimum number of existing laws and regulations must be translated to ensure that Francophones are served in their language. Moreover, all future laws and regulations should be adopted in both languages. The same holds for the judicial system: it is vital that Franco-Manitobans have access to services in their language. This principle, which has been recognized by the government and by the Supreme Court, is now being implemented.

> *Franco-Manitobans will not hesitate once again to take their case to court to ensure, at very least, strict respect for the Supreme Court's directives.*

However, the Court's decision with respect to translation goes well beyond these minimal requirements. It tells us, Francophones, that our language has legal status *throughout the entire government apparatus;* we shall thus use every means within our power to ensure it remains so in the future. If the Supreme Court calls for the translation of such a large number of documents, is it not sending a message to those who govern Manitoba? Is it not telling Manitoba politicians that French and English have equal status and that Franco-Manitobans have fundamental rights that have long been ignored and must now be given official recognition?

"You cannot change history, you can only contribute to it." William Thorsell comments on the challenge that Manitoba faces in weaving official bilingualism into vibrant multiculturalism.

Has the West been won?

WILLIAM THORSELL

Born in Cambrose, Alberta, **William Thorsell** managed the Western Canadian Pavilion at Expo 67 and later worked for the University of Alberta and Princeton University. He was Associate Editor of the *Edmonton Journal* from 1977 to 1984 and is now a member of the editorial board of the *Globe and Mail*.

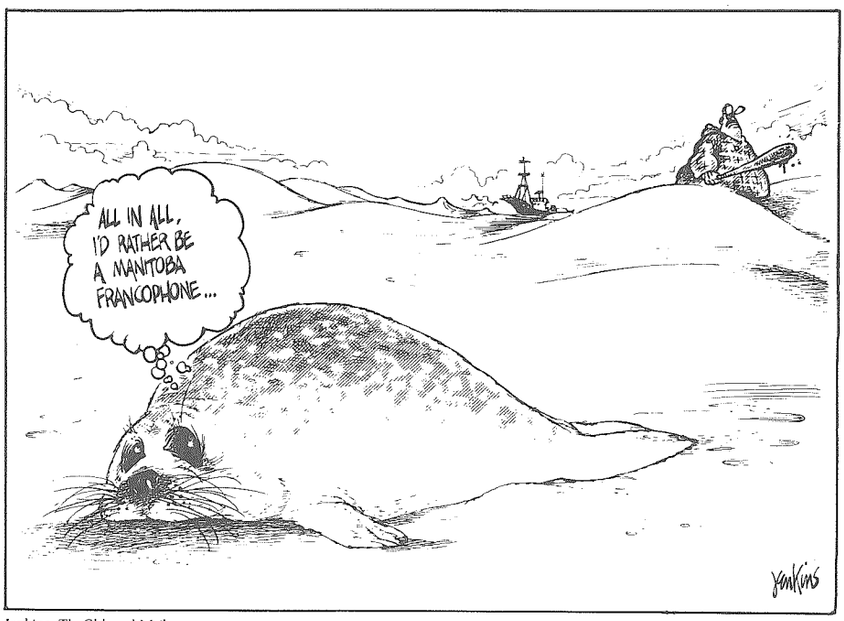
When Parliament was debating the creation of the provinces of Alberta and Saskatchewan in 1905, there were feisty disputes over such things as natural resources and the locations of capital cities. A.O. MacRae records in his *History of Alberta* that, "Mr. F.D. Monk, MP, caused still more difficulty when, on June 30, he moved a dual language amendment, the purpose of which was to make both English and French official languages in Alberta and Saskatchewan, as they were in the Dominion Parliament. However, the motion was opposed even by the French members, and was ultimately defeated by 69 to six."

Prairie Compact vs. official bilingualism

It is not generally realized that Prime Minister Wilfrid Laurier was the father and protector of the Prairie Compact — best summed up as multiculturalism under an English-speaking umbrella. This is ironic, because the Manitoba question is essentially the Prairie Compact in collision with Canada's founding deal. It was a collision Laurier — the Francophone from central Canada — did everything to avoid, and his modern successors have done much to aggravate.

The fact of multiculturalism on the prairies, based on waves of immigration from continental Europe, was so powerful so early that Wilfrid Laurier sought the "sunny way" out of Manitoba's 1890 decision to declare English its sole official language and to establish a single system of public schools. Pragmatically, good-naturedly, Laurier aimed to accommodate the modern history of the West — even, unfortunately, at the cost of constitutional integrity — rather than project the old history of Riel and central Canada onto enormous new demographic facts derived from official immigration policy. The collision Laurier tried to leave behind at the turn of the century recurred only in the 1960s, when Ottawa's commitment to official bilingualism extended to Brandon, Saskatoon and Red Deer. And it exploded again only in 1983 and 1984, with Manitoba's effort to right an historic wrong in the face of an historic change. Although Canada's modern prime ministers have been vigorous in their efforts to belatedly extend central Canada's bicultural compact to the West, they have not been ignorant of the complexities. "There cannot be one cultural policy for Canadians of British and French origin, another for the original peoples, and yet a third for all others," Prime Minister Pierre Trudeau told Parliament in 1971. "For although there are two official languages, there is no official culture . . . A policy of multiculturalism within a bilingual framework commends itself to the Government as the most suitable means of assuring the cultural freedom of Canadians."

Mr. Trudeau redefined the linguistic umbrella over multiculturalism to include French as well as English, a process immediately perceived in the West as the unfair elevation of one cultural minority above the rest. Brian Mulroney caught this almost exactly when he said in Winnipeg on March 29, 1984, "The great challenge facing Manitoba and Canada is to reconcile two different views of history — one which sees Canada as a compact between English and French, a duality; the other which sees Canada as a cultural mosaic, a land of diversity."



Jenkins, *The Globe and Mail.*

In fact, there are not two different views of history, but two different experiences, which gives them deep equivalence and makes their resolution all the more difficult.

There was general acceptance in the West by 1979 that the important but limited language rights of Francophones should be re-established under Section 23 of the Manitoba Act. As "irrational" as those rights appeared to some in practice (given a century of subsequent facts), their existence had undeniable historic legitimacy and legal force. It was possible to imagine the restoration of those rights without the appearance of an "alien" cultural compact being superimposed on prairie history. Section 23 was, after all, part of Manitoba's past, albeit lapsed. Its reappearance would at least occur within the context of the region, though based in the nature of the country. If considered a duty rather than a pleasure by most, a sense of justice prevailed over a sense of doubt.

Perceived opportunism

In this tentative context, the perceived opportunism of central Canada's establishment, abetted by a naive provincial regime, fed fires of considerable outrage in 1983 and 1984. The apparent effort to use the correction of an historic wrong to achieve a contemporary "coup" by extending official bilingualism beyond even the neglected parameters of Section 23 had predictable results: it caused a storm. It not only upped the ante against the Prairie Compact (on the basis of a convenient deal), it added to the power of the Constitution over the Legislature, the courts over MLAs.

The West had just accepted, under great duress, a constitutional Charter of Rights in 1982. Constitutional entrenchment of yet more and very sensitive matters through what appeared to be a secretive process amounted to a cultural and political provocation.

Public resistance was only heightened by the aggressive insinuation within central Canada's intellectual and media establishment that the defence of multiculturalism as understood in the West was equivalent to racism. (Westerners have always understood multiculturalism under one language to be the opposite of racism, favoritism to one minority as a sign of it.) Intolerance and perhaps even racism there was. Unfounded fears and political opportunism, certainly.

But the essential clash was a clash of identities, not of moralities. The essential failure was a failure of imagination.

The 1985 Supreme Court decision (which, ironically, rescued everyone from the disastrous political deal designed to avoid the Court) proves that the legal question can be solved. The word "solved" does not apply to history.

Political realities

You cannot change history, you can only contribute to it. If, by the umbrella under which multiculturalism exists, we are now to understand a bilingual umbrella (which is entirely feasible), this fact must occur by evolution if it is to be real. Like claims to sovereignty, which are realistically made only after the establishment of a presence, multiculturalism in Pierre Trudeau's framework — Canada's modern national framework — must arise in fact before it is proclaimed in law. In the West, the 1985 Supreme Court decision is accepted as covering old legal ground; few see it as in any way setting a legal precedent. And virtually no one shows any interest in again tying the legal question to the political one.

This suggests a return to nudging ahead, beginning with the restoration (in practice, the *creation*) of constitutional language rights in Manitoba, which should not require constitutional extension to avoid nonsensical retroactivity. Across the prairies as a whole, it suggests an Ontario-type expansion of French-language rights by policy — the creation of new historic facts to enhance the old. This does not indulge intolerance; it acknowledges experience and imperatives of the political culture.

Did the Manitoba fiasco set back the cause of French language rights in the West? In a formal sense, yes. No prairie government, including Premier Pawley's, is likely to use high-profile laws as a pro-active tool in support of French. Those

who wish to start with the Constitution rather than end with it will be disappointed. But the restoration of Section 23, experience of new constitutional rights in education across the West, and the growing awareness of a national dimension to cultural identity (fostered in part by the Manitoba crisis), should see some convergence of regional and national histories, and therefore of sensibilities. It will not, however, see their union.

As a happy matter of symmetry, the latest waves of immigration to Canada have gone largely to Ontario, which is now as multicultural in its major cities as the prairies 80 years ago. So history is creating common forces in Canada at the same time that it asserts its familiar distinctions. The challenge of weaving official bilingualism into vibrant multiculturalism will be better appreciated in Ontario in future, which should contribute to national unity facing west from Toronto as well as east.

Letters to the Editor

Dear Friends
I was somewhat disappointed to read Solange Chaput-Rolland's comments on French immersion in her article "French from coast to coast" in the most recent edition of *Language and Society* (No. 15, Spring 1985). While I have always had great respect for Mme Chaput-Rolland's thoughtful and passionate analyses of language matters in Canada, I believe her perception that French immersion children and their parents "carry on as though Francophones did not even exist in the provinces in which they live and work" is out of date and inaccurate.

All over the country, there are scores of examples of French immersion families and Francophones working together to bring French-speaking artists to their communities, to organize summer language camps, to petition school boards and ministries of education, to share common office facilities, and to exchange information and ideas.

Permit me to give these very specific examples, among many, to illustrate the concerns of Anglophone parents for the rights and needs of Francophones:

- Canadian Parents for French (CPF), Ontario, issued a policy statement in 1983 supporting the position of L'Association canadienne française de l'Ontario that Ontario become an officially bilingual province.
- Canadian Parents for French, Manitoba, publicly supported the Franco-Manitobans last year in their dispute with the Manitoba government.
- CPF as a national association published last fall a joint agreement with La Fédération des Francophones hors Québec, affirming our support for French education and other rights for Francophone minorities everywhere in Canada.
- CPF has organized five conferences on French at the post-secondary level to encourage the universities and colleges to increase courses in French in response to growing numbers of French immersion and Francophone secondary school graduates.

We parents of immersion children realize that without vibrant and growing Francophone communities outside Quebec, we, indeed Canada as a whole, will be the poorer. The interests of Anglophones and Francophones may not always coincide, but overall I firmly believe that French immersion programs and Canadian Parents for French have stimulated greater respect and cooperation among our two language communities, and in the long run will play a major role in helping Francophone minorities to flourish all over the country.

Stewart Goodings
National President
Canadian Parents for French

Thanks...
As you are no doubt aware, the International School of Bordeaux each year provides training seminars to a significant number of managers from Francophone member countries of the *Agence de coopération culturelle et technique.*

Before it closed, the Canadian consulate in Bordeaux kindly gave us its entire collection of *Language and Society.* We believe your magazine is of interest to users of our documentation centre and we should very much like to receive it and your other publications on a regular basis.

Youssouf Diawara
Director, International School
of Bordeaux

A majority of Quebecers share the conviction that protection of the language rights of Francophone minorities throughout Canada is fundamental to the definition of federalism.

Cousins in law

JEAN-LOUIS ROY

"One should, for example, be able to see that things are hopeless and yet be determined to make them otherwise."
F. Scott Fitzgerald, "The Crack Up".

Jean-Louis Roy was appointed publisher of *Le Devoir* in January 1981. A former professor of social and constitutional history at McGill University, he is the author of several works on Canadian history and poetry and he played an active role in a variety of social, cultural, educational and human rights organizations in Quebec.

Section 23 of Manitoba's 1870 founding legislation leaves no doubt as to the province's constitutional obligation to the French language and the Franco-Manitoban minority. The text of this section reproduces, word for word, Quebec's obligation to the English language and the Anglo-Quebec minority under Section 133 of the British North America Act. The difference is that Quebec kept its promise. Manitoba did not.

On this point, history cannot be denied: its effects are so visible, the injustice perpetrated against Franco-Manitobans so glaring and permanent. To forget the 1890 injustice would be to betray generations of victims, both Franco-Manitobans and Quebecers, whose respective struggles and mutual support have combined to produce a single, century-old movement.

Slippage and revisionism

But what has become today of the bond between the Manitoba minority and the Quebec majority? Is the former's status still of concern to the latter? Do they share the same hopes and misfortunes? And have the old ties been eroded to the point where they are no longer important?

A partisan interpretation of recent Quebec history might appear to support the theory of a rupture. The manner in which the sovereignty movement made an issue of Quebec's political status in the 1970s, the polarization that preceded, accompanied and followed the 1980 referendum, and the fight between the Lévesque and Trudeau governments over constitutional reform and repatriation of the Constitution created the impression that the fate of the Francophone minorities in Canada was no longer the central issue it had been for over a century in the political conscience of Quebec. This impression was reinforced by the many statements of PQ leaders, each in turn revealing undertones of disdain, indifference or less than honourable political manoeuvring.

That declining interest occurred among some Quebec intellectuals more anxious to pass judgement than to understand, or that a weakened resolve flourished in the more doctrinaire wing of the Parti Québécois, there can be no doubt. It is equally clear, however, that this attitude was largely the result of English Canada's ongoing indifference, if not hostility, toward Francophone minorities — in the East, in the West and in Ontario. The Parti Québécois' position was more a case of negative reaction than positive assertion; many individuals and groups — whether supporters of sovereignty, Quebec nationalists or federalists of various political stripes — refused to follow the siren call. These groups and individuals had not lost sight of the sense of complementarity found among all Francophone communities throughout Canada, or of the strategic importance of their solidarity and the obligation to be at their side.

Grassroots support

Above and beyond their differences on a large number of issues, this solid majority shares the conviction that protecting and guaranteeing the language rights of all Francophone minorities is fundamental to the very definition of Canadian federalism. Of every political hue, they are aware that a common condition binds all

Francophones, and that it cannot be altered for some without affecting others.

Under the leadership of Pierre Elliott Trudeau, the Liberal Party of Canada made major inroads for the French language at the national level. The Progressive Conservatives, under the leadership of Brian Mulroney, have fully supported the reform movement. Were this not the case, Quebecers would not forgive their representatives in Canada's two major political parties for any attitude that might result — even by default — in the shelving of a vigorous policy of support for minority rights.

The Liberal Party of Quebec has long been sensitive to the rights of Francophones outside Quebec. Its Beige Paper, published when Claude Ryan was leader, stated the position clearly, reflecting the profound sympathy Mr. Ryan has always demonstrated for the fate of these minorities.

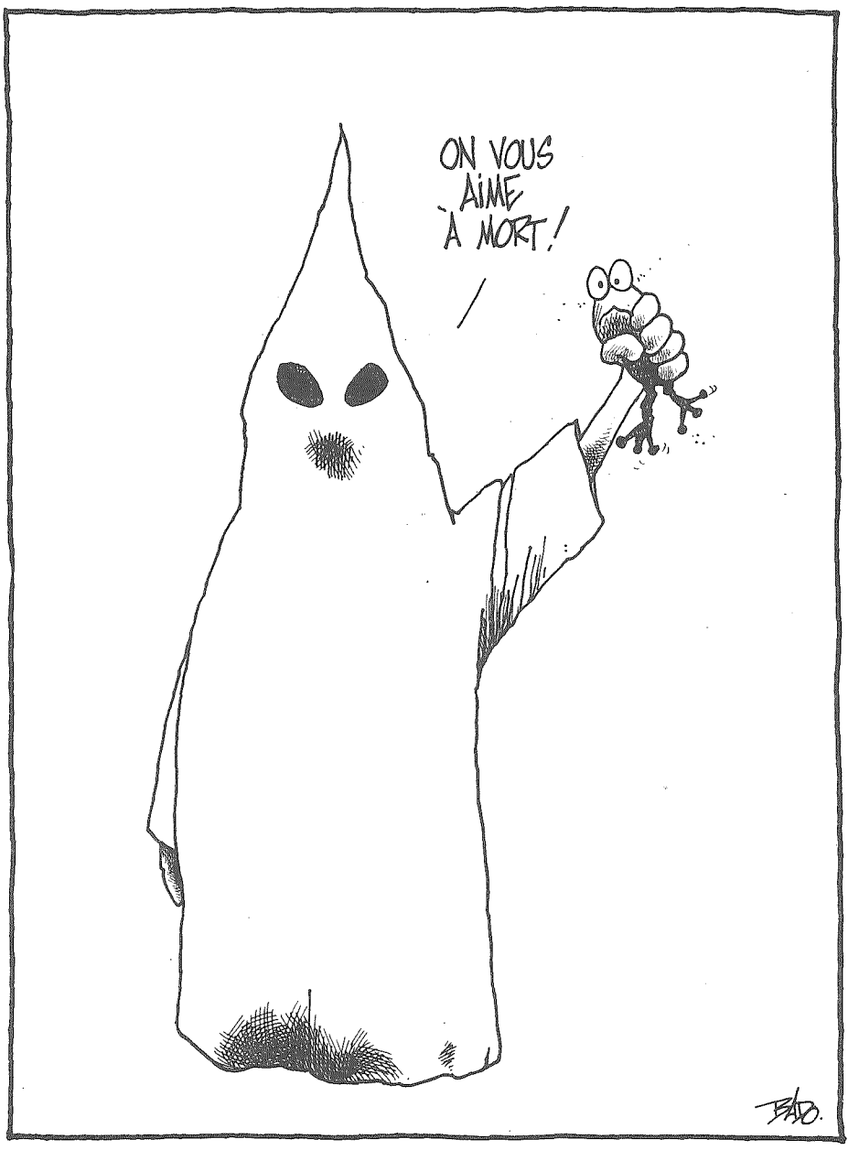
The current Quebec government recently put an end to its distressing apathy in this regard. Last May, after eight years of short-sighted policy, embarrassing improvisation and often inept statements, Pierre-Marc Johnson, on behalf of the Lévesque government, instituted "a Quebec policy for Francophone Canada".

Promoted to the rank of "major concern", this policy summed up a century of history in unequivocal terms. By making the outcome of the fight to consolidate the French language in Canada a major stake in the broader issue of maintaining the language throughout the world, Mr. Johnson placed the problem in its proper perspective and finally closed the breach opened by his government. The President of the *Association canadienne-française de l'Ontario* was not exaggerating when he described the Johnson document as one that reflected a clear desire for reconciliation.

Lastly, from the *Association canadienne d'éducation de langue française* (ACELF) to Alliance Quebec, many Quebec groups or those in which Quebecers are members have placed the protection of Francophone minority rights in Canada at the top of their list of priorities.

The common thread

But what of Quebecers themselves? The answer to that question lies in the Quebec government's new policy on *la francophonie canadienne*. "Quebecers perceive the assimilation of Francophones outside Quebec as a loss, as a dangerous weakening of the Francophone cultural movement." Taken from the Johnson document, this sentence did not flow from any sense of political generosity or strategic manoeuvring by the sovereignty intelligentsia. Rather, it resulted from a survey commissioned by the Lévesque government showing that Quebecers were extremely sensitive to issues concerning the Francophone minority rights system in Canada and its status. The results also revealed that almost 40 per cent of Francophone Quebecers had some connection with a Francophone community



Bado, *Le Droit*.

outside Quebec.

This clearly shows the permanency of the historical, social and political thread that knits Quebec to the minorities, among them the Franco-Manitoban minority.

With respect to minority rights, Quebec has no reason to envy its partners in our federation; flip-flops and evasiveness can still be found in relations between the Anglophone majority and the minorities in many quarters. Quebec's head start is immeasurable. Quebec can and must be exacting, even intransigent, in matters such as the official recognition of bilingualism in Ontario and, in the case of Manitoba, complete respect for constitutional obligations. The other provinces and Canadians of every origin must understand the true meaning of *la francophonie canadienne.*

The redress provided in the Supreme Court's decision on language rights in Manitoba, handed down in June, is irreversible and, to some, excessive. The latter have forgotten the scope of the century-old injustice suffered by Franco-Manitobans. But the Supreme Court decision is mandatory. The highest court in the land has declared every unilingual law adopted by the Manitoba Legislature since 1890 to be "invalid and inoperative". To avoid legal chaos, the judges have granted such laws "temporary" validity.

Unless the Government of Manitoba and the Francophone minority forge a new agreement for amending the Constitution along the lines of the one a racist and violent opposition aborted less than two years ago, Manitoba will have to translate every one of its "invalid and inoperative" laws.

Shared destiny

A century has been lost, the limits of endurance long ago exhausted. But if the Franco-Manitoban minority has been decimated by the majority's policy of cultural and linguistic hegemony and "things appear hopeless", the determination of Quebecers "to make them otherwise" once again appears to be the firm will of the majority.

At both the national and international levels, Quebec is almost unanimous in its wish to re-establish its historical conviction. Its fate, and that of the Francophone minorities in the rest of Canada, are intimately linked. It shares their faith in history, their passionate search for ways to preserve and enrich what they are. It knows that their failure could well spell the beginning of its own demise and a slow decline into insignificance.

The Supreme Court decision: an abridgement

IN THE MATTER OF: Section 55 of the Supreme Court Act, R.S.C. 1970, c.S-19, as amended;
AND IN THE MATTER OF: A Reference by the Governor-in-Council concerning certain language rights under Section 23 of the Manitoba Act, 1870, and Section 133 of the Constitution Act, 1867 and set out in Order-in-Council P.C. 1984 - 1136 dated the 5th day of April 1984

CORAM: The Chief Justice and Beetz, Estey, McIntyre, Lamer, Wilson and Le Dain JJ.

THE COURT:

I

THE REFERENCE

This Reference combines legal and constitutional questions of the utmost subtlety and complexity with political questions of great sensitivity. The proceedings were initiated by Order-in-Council, P.C. 1984-1136 dated April 5, 1984, pursuant to s.55 of the *Supreme Court Act*, R.S.C. 1970, c.S-19. The Order-in-Council reads:

WHEREAS the Minister of Justice reports;

1. That it is important to resolve as expeditiously as possible legal issues relating to certain language rights under section 23 of the Manitoba Act, 1870 and section 133 of the Constitution Act, 1867.
2. That in order that such legal issues be addressed without delay, it is considered necessary that the opinion of the Supreme Court of Canada be obtained in relation to the following questions, namely:

Question #1

Are the requirements of section 133 of the Constitution Act, 1867 and of section 23 of the Manitoba Act, 1870 respecting the use of both the English and French languages in

(a) the Records and Journals of the Houses of the Parliament of Canada and of the Legislatures of Quebec and Manitoba, and
(b) the Acts of the Parliament of Canada and of the Legislatures of Quebec and Manitoba

mandatory?

Question #2

Are those statutes and regulations of the Province of Manitoba that were not printed and published in both the English and French languages invalid by reason of section 23 of the Manitoba Act, 1870?

Question #3

If the answer to question 2 is affirmative, do those enactments that were not printed and published in English and French have any legal force and effect, and if so, to what extent and under what conditions?

Question #4

Are any of the provisions of *An Act Respecting the Operation of section 23 of the Manitoba Act in Regard to Statutes*, enacted by S.M. 1980, Ch. 3, inconsistent with the provisions of section 23 of the *Manitoba Act*, 1870, and if so are such provisions, to the extent of such inconsistency, invalid and of no legal force and effect?

THEREFORE, HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Minister of Justice, pursuant to section 55 of the Supreme Court Act, is pleased hereby to refer the questions immediately above set forth to the Supreme Court of Canada for hearing and consideration . . . .

Section 23 of the *Manitoba Act, 1870* provides:

Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person, or in any Pleading or Process, in	L'usage de la langue française ou de la langue anglaise sera facultatif dans les débats des Chambres de la législature; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces chambres, l'usage de ces deux langues sera obligatoire; et dans toute plaidoirie ou pièce de procédure par devant les

or issuing from any Court of Canada established under the *Constitution Act, 1867*, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages.

tribunaux ou émanant des tribunaux du Canada, qui sont établis sous l'autorité de la Loi constitutionnelle de 1867, et par devant tous les tribunaux ou émanant des tribunaux de la province, il pourra être également fait usage, à faculté, de l'une ou l'autre de ces langues. Les actes de la législature seront imprimés et publiés dans ces deux langues.

The provisions of s.133 of the *Constitution Act, 1867* are virtually identical to those of s.23 of the *Manitoba Act, 1870*. Section 133 provides:

Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Court of Quebec.

Dans les chambres du parlement du Canada et les chambres de la législature de Québec, l'usage de la langue française ou de la langue anglaise, dans les débats, sera facultatif; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces chambres, l'usage de ces deux langues sera obligatoire; et dans toute plaidoirie ou pièce de procédure par-devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l'autorité du présent acte, et par-devant tous les tribunaux ou émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l'une ou de l'autre de ces langues.

II

MANITOBA'S LANGUAGE LEGISLATION

Section 23 of the *Manitoba Act, 1870* was the culmination of many years of co-existence and struggle between the English, the French, and the Metis in Red River Colony, the predecessor to the present day Province of Manitoba. Though the region was originally claimed by the English Hudson's Bay Company in 1670 under its Royal Charter, for much of its pre-confederation history, Red River Colony was inhabited by Anglophones and Francophones in roughly equal proportions. On November 19, 1869 the Hudson's Bay Company issued a deed of surrender to transfer the North-West Territories, which included the Red River Colony, to Canada. The transfer of title took effect on July 15, 1870.

Between November 19, 1869 and July 15, 1870, the provisional government of Red River Colony attempted to unite the various segments of the Red River colony and drew up a "Bill of Rights" to be used in negotiations with Canada. A Convention of Delegates was elected in January, 1870 to prepare the terms upon which Red River Colony would join the Confederation. The Convention was made up of equal numbers of anglophones and francophones elected from the various French and English parishes.

The final version of the Bill of Rights which was used by the Convention delegates in their negotiations with Ottawa, contained these provisions:

> That the English and French languages be common in the Legislature, and in the courts, and that all public documents, as well as all Acts of the Legislature, be published in both languages.
>
> That the Judge of the Superior Court speak the English and French languages.

These clauses were re-drafted by the Crown lawyers in Ottawa and included in a Bill to be introduced in Parliament. The Bill passed through Parliament with no opposition from either side of the House, resulting in s.23 of the *Manitoba Act, 1870*. In 1871 this *Act* was entrenched in the *British North America Act, 1871* (re-named *Constitution Act, 1871* in the *Constitution Act, 1982*, s.53). The *Manitoba Act, 1870* is now entrenched in the Constitution of Canada by virtue of s.52(2)(b) of the *Constitution Act, 1982*.

In 1890 the *Official Language Act*, S.M. 1890, c.14 (hereafter "the *Official Language Act*") was enacted by the Manitoba Legislature. This *Act* provides:

> 1) Any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the House of Assembly for the Province of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba. The Acts of the Legislature of the Province of Manitoba need only be printed and published in the English language.
>
> 2) This Act shall only apply so far as this Legislature has jurisdiction so to enact, and shall come into force on the day it is assented to.

Upon enactment of the *Official Language Act, 1890* the Province of Manitoba ceased publication of the French version of Legislative Records, Journals and Acts.

III

LEGAL CHALLENGES TO MANITOBA'S LANGUAGE LEGISLATION

The Official Language Act, 1890 was challenged before the Manitoba courts soon after it was enacted. It was ruled *ultra vires* in 1892 by Judge Prud'homme of the County Court of St. Boniface, who stated: "Je suis donc d'opinion que le c.14, 53 Vict. est *ultra vires* de la législature du Manitoba et que la clause 23, de l'Acte de Manitoba, ne peut pas être changée et encore moins abrogée par la législature de cette province": *Pellant v. Hebert*, first published in *Le Manitoba*, (a French language newspaper), 9 mars 1892, reported in (1981), 12 R.G.D. 242. This ruling was not followed by the legislature or the Government of Manitoba. The 1890 *Act* remained in successive revisions of the Statutes of Manitoba; the Government did not resume bilingual publication of Legislative Records, Journals or Acts.

In 1909, the 1890 *Act* was again challenged in Manitoba Courts and again ruled unconstitutional: *Bertrand v. Dussault*, Jan. 30, 1909, County Court of St. Boniface (unreported), reproduced in *Re Forest and Registrar of Court of Appeal of Manitoba*, (1977), 77 D.L.R. (3d) 445 (Man. C.A.), at pp.458-62. According to Monnin J.A. in *Re Forest*, *supra*, at p.458, "This latter decision, not reported, appears to have been unknown or ignored".

In 1976, a third attack was mounted against the 1890 *Act* and the *Act* was ruled unconstitutional: *R. v. Forest* (1976), 74 D.L.R. (3d) 704 (Man. Co. Ct). Nonetheless, the 1890 *Act* remained on the Manitoba statute books; bilingual enactment, printing and publication of Acts of the Manitoba Legislature was not resumed.

In 1979, the constitutionality of the 1890 *Act* was tested before this Court. On December 13, 1979, in *Attorney General of Manitoba v. Forest*, [1979] 2 S.C.R. 1032, this Court, in unanimous reasons, held that the provisions of Manitoba's *Official Language Act* were in conflict with s.23 of the *Manitoba Act, 1870* and unconstitutional.

On July 9, 1980, after the decision of this Court in *Forest*,

the Legislature of Manitoba enacted *An Act Respecting the Operation of section 23 of the Manitoba Act in Regard to Statutes*, S.M. 1980, c. 3. The validity of this Act is the subject of question 4 of this Reference.

In the fourth session (1980) and the fifth session (1980-1981) of the thirty-first Legislature of Manitoba, the vast majority of the Acts of the Legislature of Manitoba were enacted, printed and published in English only.

Since the first session of the thirty-second Legislature of Manitoba (1982), the Acts of the Legislature of Manitoba have been enacted, printed and published in both English and French. However, those Acts that only amend Acts that were enacted, printed and published in English only, and private Acts, have in most instances been enacted in English only.

In *Bilodeau v. Attorney General of Manitoba*, [1981] 5 W.W.R. 393, the Manitoba Court of Appeal held that Manitoba's *Highway Traffic Act*, R.S.M. 1970, cap. H-60 and *Summary Convictions Act*, R.S.M. 1970, cap. S.230, although enacted in English only, were valid. This decision is under appeal to this Court.*

On July 4, 1983, the Attorney General of Manitoba introduced into the Legislative Assembly of Manitoba a resolution to initiate a constitutional amendment under s.43 of the *Constitution Act, 1982*. The purpose of the resolution was to amend the language provisions of the *Manitoba Act, 1870*. The second session of the thirty-second Legislature was prorogued on February 27, 1984, without the resolution having been adopted.

It might also be mentioned that on December 13, 1979, in *Attorney General of Quebec v. Blaikie*, [1979] 2 S.C.R. 1016 (*Blaikie No. 1*), this Court held that the provisions of Quebec's *Charter of the French Language* (Bill 101), enacted in 1977, were in conflict with s.133 of the *Constitution Act, 1867*. The *Charter* purported to provide for the introduction of Bills in the legislature in French only, and for the enactment of statutes in French only. The day after the decision of this Court in *Blaikie No. 1*, the Legislature of Quebec re-enacted in both languages all those Quebec statutes that had been enacted in French only. See: *An Act respecting a judgment rendered in the Supreme Court of Canada on 13 December 1979 on the language of the legislature and the courts in Quebec*, S.Q. 1979, c.61.

The implication of this Court's holdings in *Blaikie No. 1*, *supra* and *Forest*, *supra* was that provincial legislation passed in accordance with the *ultra vires* statutes, i.e. enacted in one language only, was itself in derogation of the constitutionally entrenched language provisions of the *Constitution Act, 1867* and the *Manitoba Act, 1870*, and therefore invalid. In *Société Asbestos Limitée v. Société Nationale de l'Amiante*, [1979] C.A. 342, the Quebec Court of Appeal held, in a judgment also rendered December 13, 1979, that this was indeed the consequence of unilingual enactment and struck down two statutes that had not been enacted in English.

In *Attorney General of Quebec v. Blaikie*, [1981] 1 S.C.R. 312 (*Blaikie No. 2*), this Court elaborated its earlier decision in *Blaikie No. 1* by holding that regulations adopted by or subject to the approval of the Government of Quebec and Rules of Court were subject to the requirements of s.133. However, regulations adopted by subordinate bodies, outside the Government of Quebec, and not subject to the approval of the Government of Quebec, as well as municipal by-laws and school board by-laws, were not subject to the requirements of s.133.

The Manitoba Court of Appeal, in *Bilodeau, supra*, was faced with a similar challenge to unilingually enacted legislation. That Court held that the unilingual legislation of the Manitoba Legislature was not invalid. The majority (*per* Freedman C.J.M.) held that the requirement for bilingual enactment was *directory* rather than *mandatory* and that therefore the consequence of disobedience was not invalidity. Monnin J.A. thought that s.23 was mandatory but would have applied the doctrine of state necessity (of which more anon) to prevent invalidity.

* Judgment in *Bilodeau v. Attorney General of Manitoba* will be delivered at the time of delivery of judgment in *Duncan Cross MacDonald v. The City of Montreal.*

IV

Question 1

THE MANDATORY NATURE OF S.133 OF THE CONSTITUTION ACT, 1867 AND S.23 OF THE MANITOBA ACT, 1870

Question No. 1 of this Reference asks whether the requirements of s.133 of the *Constitution Act, 1867* and s.23 of the *Manitoba Act, 1870*, respecting the use of both English and French in the Records, Journals and Acts of the Parliament of Canada and of the Legislatures of Quebec and Manitoba, are "mandatory" . . . .

For present purposes, it seems clear that the bilingual record-keeping and the printing and publication requirements of s.23 of the *Manitoba Act, 1870* and s.133 of the *Constitution Act, 1867* are mandatory in the sense that they were meant to be obeyed.

Section 23 of the *Manitoba Act, 1870*, provides that both English and French "*shall* be used in the . . . Records and Journals" of the Manitoba Legislature. It further provides that "[t]he Acts of the Legislature *shall* be printed and published in both those languages". Section 133 of the *Constitution Act, 1867*, is strikingly similar. It provides that both English and French "*shall* be used in the respective Records and Journals of Parliament and the Legislature of Quebec. It also provides that "[t]he Acts of the Parliament of Canada and the Legislature of Quebec *shall* be printed and published in both those languages".

As used in its normal grammatical sense, the word "shall" is presumptively imperative . . . . It is therefore incumbent upon this Court to conclude that Parliament, when it used the word "shall" in s.23 of the *Manitoba Act, 1870* and s.133 of the *Constitution Act, 1867*, intended that those sections be construed as mandatory or imperative, in the sense that they must be obeyed, unless such an interpretation of the word "shall" would be utterly inconsistent with the context in which it has been used and would render the sections irrational or meaningless . . . .

There is nothing in the history or the language of s.23 of the *Manitoba Act, 1870* or s.133 of the *Constitution Act, 1867* to indicate that "shall" was not used in its normal imperative sense. On the contrary, the evidence points ineluctably to the conclusion that the word "shall" was deliberately and carefully chosen by Parliament for the express purpose of making the bilingual record-keeping and printing and publication requirements of those sections obligatory. In particular, Parliament's use of the presumptively imperative word "shall" twice in s.23 of the *Manitoba Act, 1870* and twice in s.133 of the *Constitution Act, 1867* contrasts starkly with its use of the presumptively permissive word "may" twice in the same sections . . . .

In *Blaikie v. Attorney General of Quebec* (1978), 85 D.L.R. (3d) 252 (Que.S.C.), at p.260, Deschênes, C.J.S.C. had this to say about the may/shall dichotomy in s.133 of the *Constitution Act, 1867*:

> The Imperial Parliament has passed s.133 with, from all evidence, extreme care and even the most mildly attentive observer cannot help but be struck by the alternation of the means of expression that are found in considering the use of the two languages: first part, 'Either . . . may'; second part, 'Both . . . shall'; third part, 'Either . . . may'; fourth part, 'Shall . . . both'.

> The Court is totally incapable of finding in the second part of s.133 justification for the alternates or the sequence of the languages that the Attorney General of Quebec suggests can be read there: *this is not one or the other language as a choice, but the two at the same time which must be used in the records and journals of the Legislature.* (Any emphasis throughout this judgment is added.) . . .

If more evidence of Parliament's intent is needed, it is necessary only to have regard to the purpose of both s.23 of the *Manitoba Act, 1870* and s.133 of the *Constitution Act, 1867*, which was to ensure full and equal access to the legislatures, the laws and the courts for francophones and anglophones alike. The fundamental guarantees contained in the sections in question are constitutionally entrenched and are beyond the power of the provinces of Quebec or Manitoba to amend unilaterally . . . . Those guarantees would be meaningless and their entrenchment a futile exercise were they not obligatory . . . .

The conclusion seems inescapable that the drafters of the *Constitution Act, 1867* deliberately selected the imperative term "shall" in preference to the permissive term "may" because they intended s.133's language guarantees to be just that — *guarantees*. And the use by Parliament only three years later of nearly identical language in s.23 of the *Manitoba Act, 1870* is strong evidence of a similar intendment with regard to the language provisions of that *Act*. The requirements of s.133 of the *Constitution Act, 1867* and of s.23 of the *Manitoba Act, 1870* respecting the use of both English and French in the Records, Journals and Acts of Parliament and the Legislatures of Quebec and Manitoba are "mandatory" in the normally accepted sense of that term. That is, they are obligatory. They must be observed.

Nonetheless, it has been argued by the Attorney General of Manitoba that, though the words of s.23 of the *Manitoba Act, 1870* and s.133 of the *Constitution Act, 1867* are mandatory in the common grammatical sense, they are only directory in the legal sense and, thus, laws in violation of these provisions will not necessarily be invalid . . . .

There is no authority in Canada for applying the mandatory/directory doctrine to constitutional provisions. It is our belief that the doctrine should not be applied when the constitutionality of legislation is in issue. This was the position of Monnin J.A. of the Manitoba Court of Appeal, dissenting on this point in *Bilodeau, supra*, at 405-7:

> I see no necessity to import into this argument the notion of directory legislation as opposed to mandatory legislation. Unfortunately, this court raised it in *A.G. Man. v. Forest* supra, at p.247, but I am certain that this theory has been put to rest by the two decisions of the Supreme Court of Canada on the matter, especially in *Blaikie*, supra. The Supreme Court of Canada did not call to its assistance such theories, and declared that in respect to the province of Quebec all statutes must be published in both languages.
>
> . . .
>
> [T]he legislation is clear, and speaks of "shall be used" and "shall be printed". There is nothing of a directory nature in that language. Furthermore, entrenched linguistic rights are by nature mandatory and never directory. If they were directory only, the risk is that they would never be enjoyed or be of any use to those to whom they were addressed. If it were merely directory it would fly in the face of entrenchment, which, by its very nature, is mandatory. *The authorities submitted by counsel on the mandatory or directory nature of legislation has [sic] no application to entrenched rights.* Violence to the constitution cannot be tolerated.

The decision of this Court in *Blaikie No. 1, supra* and *Forest, supra* referred to by Monnin J.A. in the above excerpt are not the only constitutional cases in which the mandatory/directory distinction has not been applied . . . .

More important than the lack of authority to support the application of the mandatory/directory distinction to constitutional provisions, however, is the harm that would be done to the supremacy of Canada's Constitution if such a vague and expedient principle were used to interpret it. It would do great violence to our Constitution to hold that a provision on its face mandatory, should be labelled directory on the ground that to hold otherwise would lead to inconvenience or even chaos. Where there is no textual indication that a constitutional provision is directory and where the words clearly indicate that the provision is mandatory, there is no room for interpreting the provision as directory.

In answer to Question 1, s.23 of the *Manitoba Act, 1870* and s.133 of the *Constitution Act, 1867* are mandatory.

V

Questions 2 and 3

Question 2 asks whether the unilingual statutes and regulations of Manitoba are invalid. Question 3 asks about the force and effect of these statutes and regulations if they are found to be invalid. Before addressing the consequences of the Manitoba Legislature's failure to enact its laws in both French and English, it will be necessary to determine what is encompassed by the words "Acts of the Legislature" in s.23 of the *Manitoba Act, 1870*.

A) *The Meaning of "Acts of the Legislature"*

The requirements of s.23 of the *Manitoba Act, 1870* pertain to "Acts of the Legislature". These words are, in all material respects, identical to those found in s.133 of the *Constitution Act, 1867*. As we have already indicated, in *Blaikie No. 2, supra*, this Court held that s.133 applied to regulations enacted by the Government of Quebec, a Minister of the Government or a group of Ministers and to regulations of the civil administration and of semi-public agencies which required the approval of that Government, a Minister or group of Ministers for their legal effect. It was emphasized that only those regulations which could properly be called "delegated legislation" fell within the scope of s.133; rules or directives of internal management did not . . . .

In this judgment, all references to "Acts of the Legislature" are intended to encompass all statutes, regulations and delegated legislation of the Manitoba Legislature, enacted since 1890, that are covered by this Court's judgments in *Blaikie No. 1* and *Blaikie No. 2*.

B) *The Consequences of the Manitoba Legislature's Failure to Enact, Print and Publish in Both Languages*

Section 23 of the *Manitoba Act, 1870* entrenches a mandatory requirement to enact, print, and publish all Acts of the Legislature in both official languages (see *Blaikie No. 1, supra*). It establishes a constitutional duty on the Manitoba Legislature with respect to the manner and form of enactment of its legislation. This duty protects the substantive rights of all Manitobans to equal access to the law in either the French or the English language.

Section 23 of the *Manitoba Act, 1870* is a specific manifestation of the general right of Franco-Manitobans to use their own language. The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society.

The constitutional entrenchment of a duty on the Manitoba Legislature to enact, print and publish in both French and English in s.23 of the *Manitoba Act, 1870* confers upon the judiciary the responsibility of protecting the correlative language rights of all Manitobans including the Franco-Manitoban minority. The judiciary is the institution charged with the duty of ensuring that the government complies with the Constitution. We must protect those

whose constitutional rights have been violated, whomever they may be, and whatever the reasons for the violation.

The Constitution of a country is a statement of the will of the people to be governed in accordance with certain principles held as fundamental and certain prescriptions restrictive of the powers of the legislature and government. It is, as s.52 of the *Constitution Act, 1982* declares, the "supreme law" of the nation, unalterable by the normal legislative process, and unsuffering of laws inconsistent with it. The duty of the judiciary is to interpret and apply the laws of Canada and each of the provinces, and it is thus our duty to ensure that the constitutional law prevails . . . .

Since April 17, 1982, the mandate of the judiciary to protect the Constitution has been embodied in s.52 of the *Constitution Act, 1982*. This section reads:

52(1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.	52(1) La Constitution du Canada est la loi suprême du Canada; elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.

. . .

Section 52 of the *Constitution Act, 1982* does not alter the principles which have provided the foundation for judicial review over the years. In a case where constitutional manner and form requirements have not been complied with, the consequence of such non-compliance continues to be invalidity. The words "of no force or effect" mean that a law thus inconsistent with the Constitution has no force or effect because it is invalid . . . .

In the present case the unilingual enactments of the Manitoba Legislature are inconsistent with s.23 of the *Manitoba Act, 1870* since the constitutionally required manner and form for their enactment has not been followed. Thus they are invalid and of no force or effect.

C) *The Rule of Law*

1. *The Principle*

The difficulty with the fact that the unilingual Acts of the Legislature of Manitoba must be declared invalid and of no force or effect is that, without going further, a legal vacuum will be created with consequent legal chaos in the Province of Manitoba. The Manitoba Legislature has, since 1890, enacted nearly all of its laws in English only. Thus, to find that the unilingual laws of Manitoba are invalid and of no force or effect would mean that only laws enacted in both French and English *before 1890*, would continue to be valid, and would still be in force even if the law had purportedly been repealed or amended by a post-1890 unilingual statute; matters that were not regulated by laws enacted before 1890 would now be unregulated by law, unless a pre-confederation law or the common law provided a rule.

The situation of the various institutions of provincial government would be as follows: the courts, administrative tribunals, public officials, municipal corporations, school boards, professional governing bodies, and all other bodies created by law, to the extent that they derive their existence from or purport to exercise powers conferred by Manitoba laws enacted since 1890 in English only, would be acting without legal authority.

Questions as to the validity of the present composition of the Manitoba Legislature might also be raised . . . .

Finally, all legal rights, obligations and other effects which have purportedly arisen under all Acts of the Manitoba Legislature since 1890 would be open to challenge to the extent that their validity and enforceability depends upon a regime of unconstitutional unilingual laws.

In the present case, declaring the Acts of the Legislature of Manitoba invalid and of no force or effect would, without more, undermine the principle of the Rule of Law. The Rule of Law, a fundamental principle of our Constitution, must mean at least two things. First, that the law is supreme over officials of the government as well as private individuals, and thereby preclusive of the influence of arbitrary power. Indeed, it is because of the supremacy of law over the government, as established in s.23 of the *Manitoba Act, 1870* and s.52 of the *Constitution Act, 1982*, that this Court must find the unconstitutional laws of Manitoba to be invalid and of no force and effect.

Second, the Rule of Law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principle of normative order. Law and order are indispensable elements of civilized life . . . .

It is this second aspect of the Rule of Law that is of concern in the present situation. The conclusion that the Acts of the Legislature of Manitoba are invalid and of no force or effect means that the positive legal order which has purportedly regulated the affairs of the citizens of Manitoba since 1890 will be destroyed and the rights, obligations and other effects arising under these laws will be invalid and unenforceable. As for the future, since it is reasonable to assume that it will be impossible for the Legislature of Manitoba to rectify *instantaneously* the constitutional defect, the Acts of the Manitoba Legislature will be invalid and of no force or effect until they are translated, re-enacted, printed and published in both languages.

Such results would certainly offend the Rule of Law . . . .

The constitutional status of the Rule of Law is beyond question. The preamble to the *Constitution Act, 1982* states:

> Whereas Canada is founded upon principles that recognize the supremacy of God and the *rule of law*.

This is explicit recognition that "the rule of law [is] a fundamental postulate of our constitutional structure" . . . .

Additional to the inclusion of the Rule of Law in the preambles of the *Constitution Acts* of 1867 and 1982, the principle is clearly implicit in the very nature of a Constitution. The Constitution, as the Supreme Law, must be understood as a purposive ordering of social relations providing a basis upon which an actual order of positive laws can be brought into existence. The founders of this nation must have intended, as one of the basic principles of nation building, that Canada be a society of legal order and normative structure: one governed by Rule of Law. While this is not set out in a specific provision, the principle of the Rule of Law is clearly a principle of our Constitution.

This Court cannot take a narrow and literal approach to constitutional interpretation. The jurisprudence of the Court evidences a willingness to supplement textual analysis with historical, contextual and purposive interpretation in order to ascertain the intent of the makers of our Constitution . . . .

2. *Application of the Principle of the Rule of Law*

It is clear from the above that: (i) the law as stated in s.23 of the *Manitoba Act, 1870* and s.52 of the *Constitution Act, 1982* requires that the unilingual Acts of the Manitoba Legislature be declared to be invalid and of no force or effect, and (ii) without more, such a result would violate the Rule of Law. The task the Court faces is to recognize the unconstitutionality of Manitoba's unilingual laws and the Legislature's duty to comply with the "supreme law" of this country, while avoiding a legal vacuum in Manitoba and ensuring the continuity of the Rule of Law.

A number of the parties and intervenors have suggested that the Court declare the unilingual Acts of the Manitoba

legislature to be invalid and of no force or effect and leave it at that, relying on the legislatures to work out a constitutional amendment. This approach because it would rely on a future and uncertain event, would be inappropriate. A declaration that the laws of Manitoba are invalid and of no legal force or effect would deprive Manitoba of its legal order and cause a transgression of the Rule of Law. For the Court to allow such a situation to arise and fail to resolve it would be an abdication of its responsibility as protector and preserver of the Constitution.

Other solutions suggested by the parties and intervenors are equally unsatisfactory . . . .

The only appropriate resolution to this Reference is for the Court to fulfill its duty under s.52 of the *Constitution Act, 1982* and declare all the unilingual Acts of the Legislature of Manitoba to be invalid and of no force and effect and then to take such steps as will ensure the Rule of Law in the Province of Manitoba.

There is no question that it would be impossible for all the Acts of the Manitoba Legislature to be translated, re-enacted, printed and published overnight. There will necessarily be a period of time during which it would not be possible for the Manitoba Legislature to comply with its constitutional duty under s.23 of the *Manitoba Act, 1870*.

The vexing question, however, is what will be the legal situation in the Province of Manitoba for the duration of this period. The difficulties faced by the Province of Manitoba are two-fold: first, all of the rights, obligations and other effects which have arisen under the repealed, spent and current Acts of the Manitoba Legislature will be open to challenge, since the laws under which they purportedly arise are invalid and of no force or effect; and, second, the Province of Manitoba has an invalid and therefore ineffectual legal system until the Legislature is able to translate, re-enact, print and publish its current Acts.

With respect to the first of these problems, it was argued by a number of the parties and intervenors that the *de facto* doctrine might be used to uphold the rights, obligations and other effects which have purportedly arisen under the unilingual Acts of the Manitoba Legislature since 1890 . . . .

There is only one true condition precedent to the application of the doctrine: the *de facto* officer must occupy his or her office under colour of authority. This is consistent with the rationale for the doctrine, *viz.*, that the members of the public with whom the officer dealt relied upon his ostensible status. Simply put, "[a]n officer de facto is one who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law" . . . .

The application of the *de facto* doctrine is, however, limited to validating acts which are taken under invalid authority: it does not validate the authority under which the acts took place. In other words, the doctrine does not give effect to unconstitutional laws. It recognizes and gives effect only to the justified expectations of those who have relied upon the acts of those administering the invalid laws and to the existence and efficacy of public and private bodies corporate, though irregularly or illegally organized. Thus, the *de facto* doctrine will save those rights, obligations and other effects which have arisen out of actions performed pursuant to invalid Acts of the Manitoba Legislature by public and private bodies corporate, courts, judges, persons exercising statutory powers and public officials. Such rights, obligations and other effects are, and will always be, enforceable and unassailable.

The *de facto* doctrine will not by itself save all of the rights, obligations and other effects which have purportedly arisen under the repealed and current Acts of the Legislature of Manitoba from 1890 to the date of this judgment. Some of these rights, obligations and other effects did not arise as a consequence of reliance by the public on the acts of officials acting under colour of authority or on the assumed validity of public and private bodies corporate. Furthermore, the *de facto* authority of officials and entities acting under the invalid laws of the Manitoba Legislature will cease on the date of this judgment since all colour of authority ceases on that date. Thus, the *de facto* doctrine only provides a partial solution.

It should be noted that there are other doctrines which might provide relief from the consequences of the invalidity of Manitoba's laws. For example, *res judicata* would preclude the re-opening of cases decided by the courts on the basis of invalid laws. And the doctrine of mistake of law might, in some circumstances, preclude recovery of monies paid under invalid laws . . . . However, as the Attorney General of Canada has stated in his factum, these doctrines are of limited scope and may not cover all of the situations that could be questioned.

The only appropriate solution for preserving the rights, obligations and other effects which have arisen under invalid Acts of the Legislature of Manitoba and which are not saved by the *de facto* or other doctrines is to declare that, in order to uphold the Rule of Law, these rights, obligations and other effects have, and will continue to have, the same force and effect they would have had if they had arisen under valid enactments, for that period of time during which it would be impossible for Manitoba to comply with its constitutional duty under s.23 of the *Manitoba Act, 1870*. The Province of Manitoba would be faced with chaos and anarchy if the legal rights, obligations and other effects which have been relied upon by the people of Manitoba since 1890 were suddenly open to challenge. The constitutional guarantee of Rule of Law will not tolerate such chaos and anarchy.

Nor will the constitutional guarantee of Rule of Law tolerate the Province of Manitoba being without a valid and effectual legal system for the present and future. Thus, it will be necessary to deem temporarily valid and effective the unilingual Acts of the Legislature of Manitoba which would be currently in force, were it not for their constitutional defect, for the period of time during which it would be impossible for the Manitoba Legislature to fulfill its constitutional duty. Since this temporary validation will include the legislation under which the Manitoba Legislature is presently constituted, it will be legally able to re-enact, print and publish its laws in conformity with the dictates of the Constitution once they have been translated.

Analogous support for the measures proposed can be found in cases which have arisen under the doctrine of state necessity. Necessity in the context of governmental action provides a justification for otherwise illegal conduct of a government during a public emergency. In order to ensure Rule of Law, the Courts will recognize as valid the constitutionally invalid Acts of the Legislature. According to Professor Stavsky, *The Doctrine of State Necessity in Pakistan* (1983), 16 Cornell Int.L.J. 341, at p.344: "If narrowly and carefully applied, *the doctrine constitutes an affirmation of the rule of law*".

The courts have applied the doctrine of necessity in a variety of circumstances. A number of cases have involved challenges to the laws of an illegal and insurrectionary government. In the aftermath of the American Civil War, the question arose as to the validity of laws passed by the Confederate States. The Courts in addressing this question were primarily concerned with ensuring that the Rule of Law be upheld. The principle which emerges from these cases can be summarized as follows: During a period of insurrection, when territory is under the control and dominance of an

unlawful, hostile government and it is therefore impossible for the lawful authorities to legislate for the peace and good order of the area, the laws passed by the usurping government which are necessary to the maintenance of organized society and which are not in themselves unconstitutional will be given force and effect . . . .

Turning back to the present case, because of the Manitoba Legislature's persistent violation of the constitutional dictates of the *Manitoba Act, 1870*, the Province of Manitoba is in a state of emergency: all of the Acts of the Legislature of Manitoba, purportedly repealed, spent and current (with the exception of those recent laws which have been enacted, printed and published in both languages), are and always have been invalid and of no force of effect, and the legislature is unable to immediately re-enact these unilingual laws in both languages. The Constitution will not suffer a province without laws. Thus the Constitution requires that temporary validity and force and effect be given to the current Acts of the Manitoba Legislature from the date of this judgment, and that rights, obligations and other effects which have arisen under these laws and the repealed and spent laws of the Province prior to the date of this judgment, which are not saved by the *de facto* or some other doctrine, are deemed temporarily to have been and continue to be effective and beyond challenge. It is only in this way that legal chaos can be avoided and the Rule of Law preserved.

To summarize, the legal situation in the Province of Manitoba is as follows. All unilingually enacted Acts of the Manitoba Legislature are, and always have been, invalid and of no force or effect.

All Acts of the Manitoba Legislature which would currently be valid and of force and effect, were it not for their constitutional defect, are deemed temporarily valid and effective from the date of this judgment to the expiry of the minimum period necessary for translation, re-enactment, printing and publishing. Rights, obligations and any other effects which have arisen under these current laws by virtue of reliance on acts of public officials, or on the assumed legal validity of public or private bodies corporate, are enforceable and forever beyond challenge under the *de facto* doctrine. The same is true of those rights, obligations and other effects which have arisen under current laws and are saved by doctrines such as *res judicata* and mistake of law.

Rights, obligations and any other effects which have arisen under purportedly repealed or spent laws by virtue of reliance on acts of public officials, or on the assumed legal validity of public or private bodies corporate are enforceable and forever beyond challenge under the *de facto* doctrine. The same is true of those rights, obligations and other effects which have arisen under purported repealed or spent laws and are saved by doctrines such as *res judicata* and mistake of law.

All rights, obligations and any other effects which have arisen under Acts of the Manitoba Legislature which are purportedly repealed, spent, or would currently be in force were it not for their constitutional defect, and which are *not* saved by the *de facto* doctrine, or doctrines such as *res judicata* and mistake of law, are deemed temporarily to have been, and to continue to be, enforceable and beyond challenge from the date of their creation to the expiry of the minimum period of time necessary for translation, re-enactment, printing and publishing of these laws. At the termination of the minimum period these rights, obligations and other effects will cease to have force and effect unless the Acts under which they arose have been translated, re-enacted, printed and published in both languages. As a consequence, to ensure the continuing validity and enforceability of rights, obligations and any other effects not saved by the *de facto* or other doctrines, the repealed or spent *Acts* of the Legislature, under which these rights, obligations and other effects have purportedly arisen, may need to be enacted, printed and published, and then repealed, in both official languages.

As concerns the future, the Constitution requires that, from the date of this judgment, all new Acts of the Manitoba Legislature be enacted, printed and published in both French and English. Any Acts of the Legislature that do not meet this requirement will be invalid and of no force or effect.

VI

THE DURATION OF THE TEMPORARY PERIOD

The difficult question, then, is what is the duration of the minimum period necessary for translation, re-enactment, printing and publishing of the unilingual Acts of the Manitoba Legislature?

It was argued by the Attorney General of Canada and by the Fédération Des Francophones Hors Québec that this Court fix some arbitrary period such as a year or two years during which the Manitoba Legislature could re-enact its unilingual legislation in both languages.

This solution would not be satisfactory. We do not know how many of the Acts of the Legislature have already been translated. We know nothing as to the availability of translators or their daily output. We thus have no factual basis for determining a period during which compliance with s.23 of the *Manitoba Act, 1870* would not be possible.

As presently equipped the Court is incapable of determining the period of time during which it would not be possible for the Manitoba Legislature to comply with its constitutional duty. The Court will, however, at the request of either the Attorney General of Canada, or the Attorney General of Manitoba, made within one hundred and twenty days of the date of this judgment, make such a determination. The Attorney General of Canada was granted carriage of this *Reference* and the Attorney General of Manitoba represents the province whose laws are in issue in this case. Following such a request, a special hearing will be set and submissions will be accepted from the Attorney General of Canada and the Attorney General of Manitoba and the other intervenors.

The period of temporary validity will not apply to any unilingual Acts of the Legislature enacted after the date of judgment. From the date of judgment, laws which are not enacted, printed, and published in both languages will be invalid and of no force and effect *ab initio*.

VII

Question 4

THE STATUS OF THE 1980 ACT

Question No. 4 of this Reference asks whether any of the provisions of *An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, S.M. 1980, c.3 are inconsistent with s.23 of the *Manitoba Act, 1870* and, if so, whether the inconsistent provisions are invalid and of no force or effect . . . .

There is a dispute among the parties, however, as to whether the 1980 *Act* itself was enacted, printed and published in both languages or whether it was enacted, printed and published in English only. The Attorney-General of Manitoba claims that the 1980 *Act* was passed in both languages. Counsel for Alliance Quebec says that it was not . . . .

On the record as it stands, it is difficult to say with certitude whether the 1980 *Act* was indeed passed in both languages or whether, even if passed in both languages, it

ever received Royal assent, or whether, even if passed and assented to in both languages, it was ever actually published in French. It is unnecessary to resolve this factual question for the purposes of this Reference. It is enough to say that if the 1980 *Act* was not enacted, printed and published in both English and French, the entire *Act*, with the exception of new subs.4(3), is invalid and of no force or effect under s.23 of the *Manitoba Act, 1870*. Beyond this, several individual sections of the 1980 *Act*, including new subs.4(3), are, themselves, in substantive conflict with s.23 of the *Manitoba Act, 1870* and invalid.

In *Blaikie No. 1*, this Court held that Chapter III of Title I of the *Charter of the French Language*, L.Q. 1977, c.5, ss.7-13, were *ultra vires* the Legislature of Quebec by virtue of s.133 of the *Constitution Act, 1867*. Among the provisions struck down were these:

> 7. French is the language of the legislature and the courts in Quebec.
>
> 8. Legislative bills shall be drafted in the official language. They shall also be tabled in the Assemblée nationale, passed and assented to in that language.
>
> 9. Only the French text of the statutes and regulations is official.
>
> 10. An English version of every legislative bill, statute and regulation shall be printed and published by the civil administration.

The teaching of *Blaikie No. 1* is three-fold. First, s.133 of the *Constitution Act, 1867* demands not just bilingual printing and publication, but bilingual *enactment*. "It was urged before this Court that there was no requirement of enactment in both languages, as contrasted with printing and publishing. However, if full weight is given to every word of s.133 it becomes apparent that this requirement is implicit." (at p.1022).

Second, the English and French texts of laws must be equally authoritative. "[Section 133] not only provides but requires that official status be given to both French and English . . ." (at p.1022) (holding unconstitutional ss.8, 9 of the *Charter of the French Language*, reproduced *supra*). *Cf. Constitution Act, 1982*, s.18(1).

In the Quebec Court of Appeal, Dube J.A. said, after setting forth ss.7 to 13 of the *Charter of the French Language* and s.133 of the *Constitution Act, 1867*:

> [TRANSLATION] It seems to me, obviously, that these two Acts are in flagrant contradiction. Chapter III of the *Charter of the French Language* seeks to make the French language the only official language in the National Assembly and before the Courts, with respect to both oral and written proceedings, whereas s.133 of the *British North America Act*, 1867, on the other hand, *seeks to put the French language and the English language on exactly the same footing of equality* before the Legislature and before the Courts of Quebec, as well as before the Houses of the Parliament of Canada and before the Courts of Canada. *Attorney-General of Quebec v. Blaikie* [1978] 95 D.L.R. (3d) 42, at p.51.

Deschênes C.J.S.C., put it this way in the Quebec Superior Court:

> The Court therefore holds to its conclusion that the requirement of the printing and publishing of the laws in the two languages, French and English, necessarily implies that of their passing and assent in these two languages in a way that the two versions possess this character that Bill 22 called "authentic" and that the Charter qualifies rather as "official". *Blaikie v. Attorney-General of Quebec* (1978), 85 D.L.R. (3d) 252, at p.264.

These observations, which make clear that both versions of laws are to be equally authoritative, were adopted by this Court in disposing of the Attorney-General's appeal (at p.1027).

The third criterion which emerges from *Blaikie No. 1* is the requirement of simultaneity in the use of both languages in the enactment process.

> The Attorney-General of Quebec maintains that this expression ["both those languages shall be used"] does not imply simultaneity in the use of both the French and English languages . . .
>
> The Court is totally incapable of finding in the second part of s.133 justification for the alternates or the sequence of the languages that the Attorney-General of Quebec suggests can be read there: this is not one or the other language as a choice, but the two *at the same time* which must be used in the records and journals of the Legislature.
>
> . . .
>
> The Court concludes that arts.7 to 10 of the Charter contravene s.133 of the British North America Act, 1867, inasmuch as they purport to abolish the obligation of using *simultaneously* the two languages, French and English, in the "Records" or archives of the National Assembly. *Blaikie v. Attorney-General of Quebec, supra*, [1978] 85 D.L.R. (3d) at pp.260-61, adopted in the reasons for judgment of this Court in *Attorney-General of Quebec v. Blaikie* [1979] 2 S.C.R. 1016, at p.1027.

As this Court observed in *Blaikie No. 1* "it would be strange to have a requirement, as in s.133 of the *Constitution Act, 1867*, that both English and French "shall be used in the . . . Records and Journals" . . . and not to have this requirement extend to the enactment of legislation" (at p.1022). Simultaneity of the use of both English and French is therefore required throughout the process of enacting bills into law . . . .

As we have said, s.23 of the *Manitoba Act, 1870* and s.133 of the *Constitution Act, 1867* are coterminous. *Blaikie No. 1*, is therefore controlling on the question of the effect of s.23 of the *Manitoba Act, 1870* on the similar legislation in issue here. Applying the criteria as laid down in *Blaikie No. 1* to present case, it is clear that the 1980 *Act* does not meet the requirement of s.23 of the *Manitoba Act, 1870*.

The heart of the 1980 *Act* is s.4(1), which authorizes the bilingual promulgation of legislation in two stages: (i) the enactment of a statute in one official language only; and (ii) subsequent translation into the other official language. The translation, once certified and deposited with the Clerk of the House, is deemed "valid and of the same effect" as the formally enacted version.

This procedure is insufficient to satisfy s.23 of the *Manitoba Act, 1870*. Bilingual enactment is required by s.23 and unilingual enactment, followed by the later deposit of a translation, is not bilingual enactment. Moreover, s.4(l) does not contemplate simultaneity in the use of English and French in the enactment process, *i.e.* in the Records and Journals of the legislature, as required by s.23 . . . .

Subsection 4(2), which facilitates the process of certifying translations, is also invalid because it is inextricably linked to s.4(1). It would be meaningless standing alone. *Attorney-General for Alberta v. Attorney-General for Canada* [1947] A.C. 503 (P.C.), at p.518.

Subsection 4(3), added by amendment in 1982, is subject to the same infirmity.

The same could be said of ss.1, 2, 3 and 5. All contemplate the unconstitutional two step promulgation process authorized by s.4(1) and are designed either to facilitate or complement that scheme.

Additionally, ss.2(a) and 5 violate *Blaikie No. 1's* requirement that the English and French texts of statutes be equally authoritative. Section 2(a) provides that when one version conflicts with the other, the original enactment prevails over the subsequent translation. And s.5 provides that for all laws enacted before January 1, 1981 any ambiguities or inconsistencies in cross-references to other laws are to be resolved by reference to the English text of such laws. These provisions cannot stand. Any mechanism for resolving semantic conflicts between the English and French versions of a statute which prefers one text to the other renders the non-preferred text legally irrelevant, since it cannot safely be relied upon. The non-preferred version has the status of law only insofar as it is consistent with the preferred version. In all instances, it is necessary to have regard to the preferred version in order to know the law. This is in conflict with the command of *Blaikie No. 1* that both language versions be "official" (at p.1022) . . . .

Subsection 3(1), which provides for certification of the language of enactment, and subs.3(2), which establishes a conclusive presumption that the language of enactment was English in the case of all statutes enacted before the coming into effect of the 1980 *Act*, are clearly ancillary to and inseverable from s.2(1). They are also, as we have said, inseverable parts of the unilingual enactment scheme envisaged by s.4(1). They therefore fall with these two sections.

Section 1, which provides simply that the term "official language" means either English or French, would be innocuous in any other context. It is clearly, however, ancillary to the invalid provisions of the 1980 *Act*. The term it defines, "official language", appears fourteen times in the four unconstitutional sections discussed above. In our view, s.1, although unobjectionable in itself, is inseverable from the invalid provisions and falls with them. It would, in any event, be meaningless standing alone.

Subsection 2(b) provides that where a statute is bilingually enacted, conflicts in meaning between the two language versions are to be resolved by giving preference to the version that "according to the true spirit, intent and meaning of the *Act* as a whole, best insures the attainment of its objects". This subsection, too, is inextricably bound up with the other unconstitutional provisions of the 1980 *Act*, and is invalid for that reason.

Sections 1 to 5 of the 1980 *Act* are invalid and of no force or effect under s.23 of the *Manitoba Act, 1870*.

Sections 6, 7 and 8 of the 1980 *Act*, however, are severable from the unconstitutional moiety and do not substantively conflict with s.23. Section 7, for example, repeals the *Official Language Act* of 1890 which this Court held invalid in *Attorney-General of Manitoba v. Forest, supra*. Section 6, in turn, gives the 1980 *Act* a chapter number in the Continuing Consolidation of the Statutes of Manitoba. And s.8 simply provides for the *Act* coming into force on the day it receives Royal assent. These three provisions are unobjectionable and can stand on their own, free from the defects which infect the rest of the 1980 *Act*. They are, in our view, severable from the unconstitutional provisions of the 1980 *Act*.

To summarize, the entire *Act*, except for new subs.4(3), may be invalid under s.23 of the *Manitoba Act, 1870*, if it was not enacted, printed and published bilingually. The record is inconclusive on this point. Substantively, ss.6, 7 and 8 are unobjectionable. Section 4(1), however, violates s.23's requirement of simultaneous, bilingual enactment and ss.2(a) and 5 violate s.23's requirement that both language versions be equally authoritative. The remaining sections of the *Act* are inseverable from the constitutionally infirm provisions and fall with them.

VIII

CONCLUSIONS

i) Section 133 of the *Constitution Act, 1867* and Section 23 of the *Manitoba Act, 1870* are mandatory;

ii) All Acts of the Manitoba Legislature that were not printed and published in both the English and French languages are, and always have been, invalid and of no force and effect;

iii) The Acts of the Manitoba Legislature which would currently be in force were it not for their constitutional defect (i.e. current Acts) are deemed to have temporary validity and force and effect from the date of this judgment to the expiry of the minimum period required for translation, re-enactment, printing and publishing;

iv) Rights, obligations and any other effects which have arisen under current Acts, and purportedly repealed or spent Acts, of the Legislature of Manitoba, which are not saved by the *de facto* doctrine or doctrines such as *res judicata* and mistake of law, are deemed temporarily to have been, and to continue to be, valid, and of force and effect until the expiry of the minimum period required for translation, re-enactment, printing and publishing;

v) The Court will, at the request of either the Attorney General of Canada or the Attorney General of Manitoba, made within one hundred and twenty days of the date of this judgment, establish the minimum period necessary for translation, re-enactment, printing and publishing of (1) unilingual Acts of the Legislature of Manitoba which would be currently in force were it not for their constitutional defect, and (2) the unilingual repealed and spent Acts of the Legislature of Manitoba. Following such a request, a special hearing will be set and submissions will be accepted from the Attorney General of Canada and the Attorney General of Manitoba and the other intervenors.

vi) *An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, S.M. 1980, Ch.3, is invalid and of no force and effect in its entirety if it was not enacted, printed, and published in both official languages. In any event, sections 1 to 5 are invalid and of no force and effect . . . .