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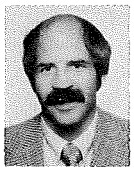

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After teaching for several years, *Boyd Pelley* became curriculum consultant on French as a second language with the Newfoundland Department of Education. During that period, he was instrumental in setting up a summer programme for students on the French island of Miquelon. Since 1973, he has been Director of Bilingual Programs for the Council of Ministers of Education, Canada, and has administrative responsibilities for several programmes involving interaction between French- and English-speaking Canadian students.

LOUIS-PAUL BÉGUIN

Louis-Paul Béguin is the author of a number of award-winning works, including a collection of poems, *Le miroir de Janus*, which won the prix de poésie de France (1967), and *L'impromptu de Québec*, which won him Québec's prix Montcalm in 1974. He is also widely known for his regular contributions to *Le Devoir*, for which he has written a column on linguistics since 1974. A great lover and defender of the French language, he has been a contributor to numerous publications and an adviser to the president of l'Office de la langue française du Québec. He has also published a *Vocabulaire correctif des assurances* and a *Vocabulaire anglais-français des assurances sur la vie* for l'Office. He is a member of the Société des traducteurs du Québec (terminology section).

EUGENE A. FORSEY

Eugene Forsey's varied and distinguished career has earned him respect as a shrewd observer and interpreter of Canadian public issues. He retired from the Senate in 1979, having spent nearly a decade as a Parliamentarian with particular interest in constitutional matters. Previously he had been a politician, trade union official and university professor. A Rhodes Scholar with a Ph.D. from McGill, he holds numerous honorary degrees and is an honorary life member of the Canadian Historical Association.

TERRY MOSHER

Terry Mosher is one of Canada's leading political cartoonists and caricaturists. Currently editorial page cartoonist for the *Montreal Gazette*, he publishes under the pen name AISLIN. In the past decade, his drawings have appeared in numerous publications in Canada, the United States and overseas. His skill as an artist and as a satirist have won him many awards, including the Canadian National Newspaper Award in both 1977 and 1978. More recently, in 1979, he co-authored a book on the history of Canadian cartooning with journalist Peter Desbarats.

Published by the Commissioner of Official Languages of Canada, Max Yalden, *Language and Society* is a magazine of information and opinion. It encourages a reflective approach to language matters, both Canadian and international, while providing a forum for informed debate on the issues.

The opinions expressed by contributors are their own, and do not necessarily reflect the views of the Commissioner.

Letters of comment and suggestions for future articles are invited.

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Letters to the editor

We are grateful for the many messages of congratulations we have received on the first issue of *Language and Society*. However, we thought our readers might be more interested in a couple of critical letters, which take us to task for an article in our first issue, and in our response. We would hope that their publication will encourage further discussion.

A mere language of translation

This refers to a poster recently issued by your office and entitled "Language over time/Deux langues, un passé". In the text of this poster, the claim is made that "Quebec was not a province like the others", because the chronology does not list a single statute or regulation from Quebec until 1967. The French version is even more categoric: "on ne trouve pas trace de texte statutaire ou réglementaire québécois intéressant les langues avant 1967, c'est-à-dire avant le centenaire de la Confédération! Le Québec n'est décidément pas une province comme les autres."

Regrettably, this claim is not correct. In 1937, the Union nationale government, which held 76 of the 90 seats in the Legislative Assembly, passed a bill which reduced English to the status of a mere language of translation.

This precursor to Chapter III of Bill 101 was repealed in 1938, after vigorous intervention by spokesmen for the minority (notably, F.R. Scott) had convinced Premier Duplessis that such legislation was contrary to section 133 of the B.N.A. Act. However, the fact remains that it did exist and that the text of this law can still be found, as Chapter 13 of the 1937 Statutes of Quebec.

Richard J. Joy
Ottawa, Ontario

Historical revisionism

I have just read your remarkable chronology of languages by Blair Neatby. The article states: ". . . we have still not mentioned the province of Quebec. The omission is easily justified. Our chronology does not include a single statute or regulation from Quebec until 1967, a century after Confederation."

Without engaging in any research to speak of, it is easy to demonstrate that Quebec's history is positively littered with language laws, regulations and harassment to promote French and demote English.

1) Up to 1963, many French-speaking Protestant children were forced by French Catholics into *English* Protestant schools. The most famous were the Chabots—the Jehova's Witnesses who protested their expulsion to the Supreme Court.

2) The anti-English law by Duplessis in the late 1930s—then he was ejected.

3) The forcing of French but not English as a requirement for tickets and streetcar signs in Montreal.

4) The Civil Service dispute in 1910-11 when French was enforced.

5) The Carnegie Library dispute in the late 1800s. As with the Manitoba Schools Act of 1890, this was largely religious but had linguistic implications and undertones—Montreal was the only place in the British Empire to *refuse* the money.

Your chronology is historical revisionism on a grand scale. Mr. Neatby proceeds from erroneous premises and builds up a vast intellectual apparatus about Quebec's history that is refreshingly original although entirely fictitious. The idea that a remarkably tolerant Quebec turning overnight into the present state of intolerance defies both common sense and the fact. The plain, easily discoverable facts about Quebec's pre-1960 language laws are totally ignored in the chronology.

Can you please explain the omission mentioned in your chronology?

Sam Allison
McMasterville, Quebec

Editor's note:

The 1937 statute referred to by Mr. Joy is an Interpretations Act. Its purpose was to grant precedence to the French version of Quebec statutes over the English version in the event of inconsistency in the texts which gave rise to a question of interpretation. As he notes, it was repealed the year after it was enacted and is not cited in the relevant jurisprudence, apparently

because there are no reported judgments which would have given some substance to it during its brief life. In the circumstances, whether it can be characterized as significant, let alone a "precursor. . . of Bill 101", is a matter of judgement on which historians can no doubt differ.

Mr. Allison also refers to the 1937 Act as the second of five pre-1967 incidents which he cites to support his claim that we have been guilty of "historical revisionism". The other matters mentioned by Mr. Allison are somewhat more difficult to deal with concisely and precisely, but they do merit some comment.

The Chabot case involved a religious issue, i.e., whether the children of a Jehovah's Witness should be allowed to attend the Roman Catholic rather than the Protestant school in their area. Although it evidently had linguistic implications, because the Chabots were Francophones who wanted their children to attend the local (French language) school, it was not argued or decided upon linguistic grounds.

The comment on tickets and streetcar signs in Montreal is presumably a reference to a 1910 amendment to the Civil Code of Quebec — known as the Lavergne Act after its sponsor—which provided for bilingual (not unilingual French) tickets and other documents to be published by companies operating such public utilities as street railways. It remained in force until repealed by a provision of Bill 22 in 1974.

It is not clear what Mr. Allison may have had in mind in referring to a "Civil Service dispute in 1910-11", although it appears that it may also relate to the debate over the Lavergne Act and to controversy over the right of certain Quebec public servants to work in French as well as in English.

The disagreement between the Roman Catholic bishops and the Carnegie Foundation involving the endowment of funds to lending libraries had a religious rather than a linguistic basis and did not involve provincial legislation or litigation.

We thus remain convinced that, whatever may have been the case with various provincial and municipal regulations, major linguistic legislation was not a feature of Quebec law over the first century of Confederation. Moreover, further research indicates that with the exception of the 1937 Act referred to above, those provisions and regulations which did deal with linguistic usage and procedures (such as in the examination of candidates for the professions or in the publication of legal and other official notices) generally underlined the equal status of both the English and French languages in the Province.

We would also remind readers that our chronology made no claim to be exhaustive and that Blair Neatby only set out to highlight the "major changes in the status of the English and French languages in Canada". We leave it to others to determine whether all this constitutes "historical revisionism on a grand scale" (as claimed by Mr. Allison)... or even on a minor scale.

One in eight citizens of the United States is of non-English background and the country has the fifth largest Spanish-speaking population in the world. Two noted educators explore the growth of minority-language education in the U.S.

The pursuit of equal opportunity

G. RICHARD TUCKER and TRACY C. GRAY

There is no "official" language in the United States though English has achieved *de facto*, if not *de jure*, status. It is also the major medium of instruction in the formal education of children and an important prerequisite of economic or social mobility. However, in a far-reaching landmark decision (*Lau* v. *Nichols, 1974*) the Supreme Court of the United States upheld the contention of a Chinese family that their child — and many others — was denied access to equal educational opportunity because he was not sufficiently proficient in English to profit from instruction in that language. Subsequently, "Lau" guidelines have been issued by the federal government which state that special educational provisions must be made whenever 20 or more pupils within a local school district share the same (non-English) mother tongue. Widespread development of bilingual education programmes funded by federal, state and local governments has followed.

Language minorities

The most recent survey, conducted in 1976, estimates that approximately 28 million persons in the U.S. (one in eight) have non-English language backgrounds. Contrary to common belief, most of these persons are *not* foreign, but are native born. Some 10.6 million of these people have Spanish-language backgrounds, giving the U.S. the fifth largest Hispanic population among the nations of the world.

Of the total, there are an estimated 3.6 million children between the ages of four and eighteen of varying levels of English ability. They represent approximately six percent of the entire school-age population of the United States and are concentrated in the southwest.

Spanish is by far the most prevalent minority-language group, accounting for some 69% — an estimated 2.1 million children. A review of enrollment patterns in the public school system reveals a very clear trend: while general school enrollment continues to decline, the number of limited English-proficient (LEP) students is increasing. For example, in New York, the LEP population has grown from 28.2% in 1975 to 29.5% in 1978. In Los Angeles, there has been an increase from 56,036 in 1973 to 85,337 in 1977; by the year 1985, it is estimated that the Hispanic population will comprise over 50% of the school age population.

Special programmes needed

These numbers reflect a growing need for special instructional programmes for children who have difficulty with English. The available statistics, however, continue to show that only a small percentage of those students are in bilingual programmes funded by local, state, or federal sources.

Another indicator of the magnitude of the problem are the results from the National Assessment of Educational Progress of Hispanic American Students (1977). This study revealed that the Hispanic American students consistently performed below the national average in reading, science, mathematics, social studies and career development. The *Washington Post* of May 21, 1977, said of the Assessment:

It is the first comprehensive nationwide attempt to determine the achievement of students of Hispanic descent. The 1971-1975 study involved 350,000 students, of which 16,000 were Hispanics.

The greatest disparity between Hispanics and national norms came among the seventeen-year-old Hispanics in the Northeast whose scores in social studies were almost eighteen percentage points below average and seventeen percentage points below the average in mathematics. In other categories and age groups, the Hispanics were found to be consistently ten, twelve, fourteen or more percentage points below the national average.

The study revealed that Hispanics tend to stay at lower grades at older ages than other students. Only 54% of all seventeen year old Hispanics in school are in the eleventh grade, compared with 61% for Blacks and 76% for Whites. More than one third of all seventeen-year-old Hispanics in school are in the tenth grade or below, which is three times the rate of white students. The report concludes that the needs of this group are not being met by the present educational system.

Against the backdrop of the Civil Rights movement of the 1960s and the continued high drop-out rate of minority-language children, U.S. federal and state governments were forced to respond to the needs of this growing constituency. The problem was to find the most effective educational programme for limited and non-English-speaking children.

Legislative and judicial mandates

Although the possible need for legislative and judicial intervention to reverse the disparity in school achievement between minority-language children and national norms was underscored by a number of studies and reports (U.S. Commission on Civil Rights, 1971-1974), the debate continued on the role the federal government should play to alleviate these problems. In the U.S. as in Canada, jurisdiction over formal educational services rests with state governments which are responsible for curriculum development and implementation, teacher training and certification and student evaluation. However, the federal government can and does intervene when it believes that an individual or class of individuals have been denied rights accorded to them under federal law.

Specifically, Title VI of the Civil Rights Act of 1964 states that "no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Although local and state funds provide the major financing for educational programmes, federal funds are received and used by all districts for various purposes. Inasmuch as each school district receiving federal monies must agree to comply with the anti-discrimination provision of the Civil Rights Act, it has become an increasingly powerful lever for helping to lessen discrimination in education.

Many scholars and community activists focused on the apparent successes of bilingual education programmes abroad as a possible solution for minority-language children.[1] A massive lobbying effort was organized to convince policymakers at the federal level that bilingual children have special needs that could not be met by the compensatory education programmes which had already been established for poor children. The result of these efforts was the Bilingual Education Act of 1968 which is Title VII of the Elementary and Secondary Education Act of 1965. This amendment initially declared it to be the policy of the United States "to encourage the establishment and operation of bilingual programmes from pre-school to secondary level to meet the needs of limited-English-speaking children." The act provides the umbrella for most federally-funded assistance to bilingual education. The programme is intended to demonstrate effective means of providing instruction for the target group in their native language in order to achieve competence in English.

At this time, it is fair to say that policymakers and the public at large remain skeptical about the goals and merits of bilingual education. Indeed, for many detractors of bilingual education the idea of using a language other than English for basic instruction is unacceptable. After a decade of federal and state involvement, the detractors persistently ask, "Why

1 U.S. Commission on Civil Rights, *The Mexican American Education Study*, Reports 1-6, April 1971-1974.

do we need these special programmes in an English-speaking country?" and "What should the federal role be in fostering bilingual programmes?" The answer to these questions may be found in examining the interlocking policy issues relating to the administration of the Bilingual Education Program.

Three issues

There are three persistent critical and controversial issues in federal bilingual education today. The first is the goal or philosophy of the programme. Many of the initial supporters of the legislation lobbied for a maintenance bilingual programme, one which encourages the use and continued development of the child's home language throughout formal schooling. Opponents of bilingual education, and even some of its supporters, have always considered this to be beyond the scope of the federal role in education. With the reauthorization of the Act in 1978, Congress reiterated its intention to provide for a transitional type of programme, that is, one which permits the student to use his home language initially, but where the goal is to learn English and move to English instruction as rapidly as possible. Many contend that this goal is often reached at the cost of sacrificing the home language. Some school districts have avoided the issue by using local funds to support the teaching and maintenance of the child's first language in the schools.

The second major issue is the identification of who should be served by the programme. While this may appear to be a straightforward question, it is complicated by the varying degrees of ability in the mother tongue and English of the target group and by the limitations of funding. In addition, federal law prohibits the segregation of children by race or language background; thus, classroom composition must reflect a balanced ethnic mix. The problem of student selection is compounded by the lack of adequate means of language assessment. Often, many children who should be receiving bilingual services are placed in all-English classrooms.

The third issue is to find the most effective pedagogical approach for bilingual classrooms. From their inception, federal funds have supposedly supported programmes which offered various educational approaches reflecting differences in school resources and student composition. Although the intent of Congress was to test the effectiveness of bilingual education models through research or pilot projects, the United States Office of Education exercised little control over which methods would be evaluated and compared, how it should be done and for how long. Thus, we find today that there exist only a handful of critical, long-term programme evaluations despite the fact that federal support has existed for more than ten years.

The goal of equal educational opportunity underlying the bilingual education programme has been reaffirmed by numerous court cases, *Brown* v. *Board of Education (1954)*, *Aspira* v. *New York City Board of Education (1974)*, and *Lau* v. *Nicols (1974)*.[2] This last landmark decision expressly approved a 1970 memorandum issued by the Office of Civil Rights of the Department of Health, Education and Welfare regarding educational opportunity for children of ethnic minorities. The court did not prescribe a specific remedy in its Lau decision; rather it left it to the Office of Civil Rights to develop a set of guidelines to implement the judicial mandate.

The resultant Lau Remedies prescribed the essential elements of a plan to be required of school districts found to be out of compliance with Title VI of the Civil Rights Act of 1964. The effect of the Lau Remedies has been to give preference to a bilingual educational approach as a matter of federal administrative policy.

Bilingual education is viewed as an important yet controversial tool for introducing non or limited English-speaking youngsters to formal schooling in their mother tongue. It is viewed as a means of capitalizing on their state of cognitive development by introducing readiness activities, concept development and basic content material in a familiar language while English is being added as a second language. Legislation provides explicitly for transitional programmes — that is, programmes which will enable the LEP child to make the transition as rapidly and effectively as possible to an all-English curriculum. There exists a great deal of support within many ethnic communities, however, for maintenance programmes which continue teaching in the mother

2 *Bilingual Education: Current Perspectives*, volume 3, Law. Arlington, VA: Center for Applied Linguistics, 1977.

tongue throughout the child's formal education.

Expansion
In the 1978 reauthorization of the Bilingual Education Act, the target group of eligible participants was expanded to include not only those children of limited English language skills but also those having difficulty reading, writing, and understanding the English language. Needless to say, this expansion has served to further emphasize the need for more effective language assessment procedures.

In academic year 1978-79, there were 567 federally-funded Title VII bilingual education projects involving 58 language groups. In addition, many other bilingual projects have been developed and implemented with state funding. For example, states such as California, Illinois, Massachusetts, New York and Texas have authorized bilingual education programmes. However, the major source of funding remains the federal government.

Legislation requires the federal government to establish, publish and distribute suggested models with respect to pupil-teacher ratios, teacher qualifications, and other factors affecting the quality of the bilingual programme. It also requires that a percentage of the total budget allocated for bilingual education be reserved for research in the areas of language acquisition, bilingualism and biculturalism. In part to further this goal, the government has just funded a national Center for Bilingual Research in Los Angeles, California.

The cost of curriculum development, preparation of materials, and teacher training for so many different languages is enormous. To help meet the need, the federal government has developed a comprehensive support system of materials development, dissemination and training centres around the country with a National Clearinghouse for Bilingual Education in Arlington, Virginia.[3] In addition, federal funds provide for advanced in-service and pre-service teacher training. In the 1979 fiscal year, approximately $150,000,000 of federal support was provided through the Bilingual Education programme.

It seems likely that support for bilingual education will remain a priority for the federal government. Section 210 of the recently enacted law establishing a Department of Education calls for an Office of Bilingual Education and Minority Languages Affairs with a director who reports directly to the Secretary.

This move toward vernacular language in primary and, in some cases, in secondary education is not unique to the United States. It is occurring in many parts of the world (for example, Cameroon, Nigeria and the People's Republic of China). Canada is not exempt. Like the United States, it has an extremely heterogeneous population. In addition to those who speak the Canadian "charter languages", there are large numbers of Italians, Germans, Ukrainians and others among the Canadian citizenry — as well as an increasingly large number of Indochinese refugees. It is inevitable that large groups with established political bases will agitate increasingly for instructional programmes in their own languages to ensure the development of literacy and to assist in the transmission of their values, attitudes and traditions. It remains to be seen, however, whether a multiplicity of educational offerings is affordable — let alone cost-effective.

3 Individuals may obtain information from the Bilingual Clearinghouse by telephoning their toll free number—(800)336-4560.

Each year thousands of Canadian students invest holiday time to perfect their knowledge of French or English with some help from Government. The National Co-ordinator of the Summer Language Bursary Programme outlines how the federal-provincial plan works.

Live and learn

BOYD PELLEY

Since 1970, some 45,000 Canadian students have spent part of their summer learning a second language under a popular federal-provincial programme which allows a chance for travel as well as study. The programme is called the Summer Language Bursary Programme, an approach to language learning which emanates from recommendations of the Royal Commission on Bilingualism and Biculturalism.

The Bursary Programme, designed for post-secondary students, offers bursaries of $1,000 (up from $850 in 1979) to eligible students who wish to learn either French or English as a second language. Each year approximately two thirds of the participants enrol in courses in French as a second language; the remaining third are French speakers who take courses in English. The immersion courses are organized by accredited educational institutions, mainly colleges and universities, and are given in every province at 46 institutions across the country. In the summer of 1979, 7,665 bursaries were offered to students under the programme which is financed by the Department of the Secretary of State, administered by the provinces and co-ordinated by the Council of Ministers of Education.

Once a student has qualified for a bursary and reached the institution where he or she will study, the work begins on the very first day of the six-week course. The first step on the part of the instructors is to determine the language proficiency of each student by means of tests and interviews. Each student is then assigned to a class with others at about the same level. Adjustments are made after a day or two of classes, and quite often students are transferred to classes that the instructors think are more appropriate to their needs. By the end of the second or third day, the students are normally settled in and ready for weeks of hard work, fun and close personal contact with other young people from all over Canada.

At the beginning, the students are usually somewhat apprehensive. For many, especially those who have just finished high school, this is their first experience of living away from home in a university residence and eating institutional food. Considering also that they are often in an unfamiliar part of the country, sharing a room with a complete stranger and speaking their second language all day long, it is not hard to understand their apprehension. A few have difficulty adapting and after a day or two return home, but most find they are soon absorbed in the various activities that are offered.

Activities

The more formal side of the course — classroom instruction — usually takes place in the morning and in most cases lasts four hours a day. Sometimes, especially at the less advanced levels, these courses are very structured and are taught from "packaged" programmes such as *Dialogue Canada*. The use of such programmes seems more widespread in French than in English courses. In most of the English courses, instructors use an eclectic approach, choosing a wide variety of materials aimed at satisfying students' needs

and maintaining interest throughout the six-week period.

Although the accredited institutions are autonomous and have little official contact with one another, the activities they organize for their students outside the classroom are surprisingly similar. These are usually of two types: workshops where students learn skills like macramé and folk dancing or study means of applying their newly-acquired language ability (e.g. journalism, theatre, etc.); and socio-cultural activities such as choral work, films and popular music, in which they also apply what they have learned, but in a less formal manner, which helps them learn about the culture associated with their second language. As a general rule, workshops are held in the afternoon and socio-cultural activities in the evening.

Weekends are usually devoted to excursions. These can be either day-long outings to points of interest near the institution or overnight trips to more distant attractions. Institutions in Quebec, for example, often organize weekend visits to "La vieille capitale", Quebec City. Students studying in Alberta go on camping trips to Banff and Jasper.

One of the objectives of the Bursary Programme is cultural enrichment. Who can fail to be delighted by his first sight of the Canadian Rockies or his first taste of "soupe à l'oignon gratinée" in a tiny Quebec City bistro?

A word now about some innovative approaches to language teaching. In one school offering an English course for young Francophones, students participate in an activity known as the Community Project. Each week, they discuss a particular theme, usually one that is timely and controversial, such as "Abortion on Demand".

Discussions centre around such things as magazine articles and television shows and, if possible, an invited speaker addresses the students. Through all of these activities, students learn the vocabulary and structures related to the theme. Then, at the end of the week, they take to the streets in small groups, armed with cassette recorders, to interview people in the community. Following the interviews, they write up their findings and discuss them in class. Such activities not only provide the students with new vocabulary and the chance to practise their newly acquired skills, but also give them an opportunity to establish personal contact with the host community.

Another novel approach has been taken by one of the institutions in Quebec. Students are divided into groups of 15 to 20 and each group is assigned to a small village within 20 miles of the institution. The students live with local families and all their courses and activities take place in the town. The courses are taught by instructors from the institution and workshops are often conducted by people from the town who have skills in some particular field such as weaving, pottery or cooking. Every attempt is made to integrate the student completely into the life of the community.

Because the Summer Bursary Programme represents a considerable outlay in taxpayers' money, those involved with funding and administration are concerned that taxpayers should get a good return on their investment and have carefully evaluated the programme's effectiveness.

Each year, participants are requested to complete a questionnaire during the last week of the programme. The response

rate has been high, with approximately 86 percent of all participants returning their questionnaires. An analysis of student responses during the 1979 programme was most encouraging:

- 84 percent of the respondents rated their progress in understanding the spoken language from good to excellent;
- 77 percent described their progress in speaking the second language as good to excellent;
- 75 percent rated the course from good to excellent in terms of helping them develop a better understanding of the values and behaviour of the other cultural group;
- 96 percent of the respondents said they would recommend the programme to a friend.

Some other less obvious benefits of the programme have been observed by the national co-ordinator during summer visits to accredited institutions. In informal discussions, many students say that, when the course is finished, they intend to spend some time visiting the region. After the course, they often visit friends they have made in the area while participating in the programme. One of the most common questions asked during these discussion is "Do you know where I can find a job so I can stay in the area for a year or so?" Many questions also concern the possibility of financial assistance to enable students to study in the host province for a year.

Despite the obvious success of the programme in the eyes of the participants, those involved in its funding and administration wanted empirical evidence that it was meeting its objectives. In 1977, the Council of Ministers of Education commissioned the Educational Research Institute of British Columbia to conduct a two-year study of the Summer Language Bursary Programme during the summers of 1977 and 1978. Its purpose was to evaluate the degree to which the national objectives of the programme had been achieved. These objectives are to improve students' ability to understand and speak the second language, to increase their knowledge of the second culture, and to foster more positive attitudes toward that culture.

The study showed that the programme was indeed highly successful. In addition to the anticipated improvement in listening comprehension, speaking ability and knowledge of the other culture, some interesting side effects came to light. Students' anxiety about speaking the second language declined. There were increases in their perceived understanding of the second culture, their attitude toward their own culture and, in some cases, knowledge of their own culture. Lastly, the study revealed that students in this six-week summer programme made more progress than those attending a one-semester college course.

For further information on the Summer Language Bursary Programme:

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Whitehorse, Yukon Territory
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Other bursary and exchange programmes:

Bursaries and Fellowships
The Department of the Secretary of State provides funds for a number of bursary and fellowship programmes to assist in the post-secondary study of second official languages. Information pamphlets on all of the programmes, which are administered by provincial Departments of Education and/or by the Council of Ministers of Education, may be obtained from:

Language Programmes Branch
Secretary of State
Ottawa, Ontario
K1A 0M5

Second-language study fellowships of up to $2,000 are awarded to post-secondary students to pursue studies in their second language for one year.

Bursaries for second- and minority-language teachers of up to $850 are awarded to take refresher courses of up to six weeks duration. Additional travel grants may be awarded.

Minority-language travel bursaries for two round-trip economy fares between their home and place of study are awarded to post-secondary students who are unable to pursue their studies in their first official language within their own province or within reasonable commuting distance.

Second-language monitor bursaries of up to $3,000 and travel expenses of up to $300 are awarded to post-secondary students for a nine month programme of study in their second official language. Recipients of these bursaries, in addition to their own programme of studies, work six to eight hours a week monitoring students of the other official language who are studying the recipient's language.

Exchange Programmes
Open House Canada enables groups of young Canadians to participate in reciprocal exchange visits with similar groups in other provinces and of the other official language. There is also a programme of individual exchanges with a minimum age limit of 16 years. Grants cover most of the cost of transportation. Participants absorb all other costs. For further information write:

Open House Canada
Secretary of State
Ottawa, Ontario
K1A 0M5

Bilingual exchanges are run by the Bilingual Exchange Secretariat, a non-profit organization, with financial support from the Secretary of State. Groups of students from Ontario and Quebec are twinned and spend two weeks as each other's guests. There is a participation fee of $85 per student. Application forms can only be obtained from participating school boards but further information may be obtained from:

Bilingual Exchange Secretariat
1580 Merivale Road, Suite 505
Ottawa, Ontario
K2G 4B5

Non-profit associations may receive aid from the Secretary of State to help meet translation and interpretation costs for their conferences and documents; for international conferences they organize in Canada; and for projects designed to develop their language potential. The maximum grant in the first two categories is $15,000 and in the third is $25,000. Further information is available from:

Language Programmes Branch,
Private Sector,
Secretary of State,
Ottawa, Ontario
K1A 0M5

Languages inevitably rub off on one another. A noted Quebec linguist explores how and why this has happened over the centuries to English and French.

A borrower or a lender be

LOUIS-PAUL BÉGUIN

They say that borrowing money from your best friend is a risky business. Does this warning also apply when borrowing takes place between two languages which have traditionally maintained friendly relations? It's a question that deserves some thought.

There are two kinds of linguistic borrowing: "lexical borrowing", in which the loan word or phrase retains the exact meaning and spelling of the original, and "semantic borrowing", which involves attributing to a word in one language the meaning a similarly derived word has in another language. An example of semantic borrowing in French would be *contrôler*, a word which is increasingly used in the same sense as the verb "to control" in English, namely "to manage" or "to direct".

Borrowing happens for obvious reasons: native speakers of a language become aware of certain deficiencies in their vocabulary and look around for words to fill the gaps. French has been very generous in this respect, providing other languages with many phrases relating to ballet, cooking and human emotions, to name just a few. English itself has taken numerous "refined" expressions from French: *croquettes à la stroganoff* sounds more elegant and reads better than beef patties with sour cream. Similarly, in French calling the light meal served at a wedding a *lunch* is the *nec plus ultra* of good taste. (It's interesting to note that *lunch* has only this one meaning in French.)

Other factors sometimes play a part too. In the nineteenth century, well-bred young ladies in the United States used French words in certain situations so as to avoid English words which were considered "vulgar" or "low": "I hear Miss So-and-so is *enceinte*". The word "toilet" entered English for the same reasons that led the French to conceal the harsh reality behind the letters *W.C.*

No matter what the language or its state of health, lexical borrowing is absolutely necessary. A country wishing to avail itself of a new technology developed elsewhere has to import the relevant vocabulary. When railways first appeared, English words had to be introduced into France, so "tunnel" and "rail" entered the language despite moans and groans from purists at the time. This new technology from England used terms which had never been employed before. The purists, of course, muttered: "We've already got *tonnelle* [arbour] so why do we need this word "tunnel"?" (The word had to be pronounced in the English manner, thus making it a truly foreign expression.) In time, however, *tunnel* became well established as a proper French word: so much so, in fact, that today nobody really cares what its origins are.

When a borrowed word undergoes some modification in form or meaning, "adapted borrowing" is said to have taken place. For example, *conteneur*, a recent gallicization of "container", has the same meaning as the original but a different form. The equally acceptable French word *week-end* has retained both the meaning and the form (if we disregard the hyphen) of the English. The reason why Quebecers consider it as foreign to French is undoubtedly because it has kept its

English pronunciation, notwithstanding its non-French spelling.

Generally speaking, the pronunciation of the loan word does change in transit from one language to the other; hence *boulingrin* from "bowling green". The loan word may also be "nationalized", depending upon the adaptive pressure brought to bear on it, a pressure which will be directly proportional to the cohesive strength of the borrowing language itself. Thus "riding coat" became *redingote* at a time when the French language was not as much under the influence of English as it is now.

Today English has become a dominant language because Anglophone countries are economically powerful and possess great technical expertise. Knowledge of other languages and the profusion of all sorts of consumer goods emanating from the United States have led to a proliferation of English words in those areas of every language's vocabulary relating to new technologies, commerce, recreation and advertising.

Migratory words

Throughout the ages, words from one language have passed into another, but it sometimes happens too that they return to their original language bearing a new meaning. Take the case of *budget*. It is very unlikely that an Englishman actually said to a Frenchman one day, "I need your word *bougette*[1]. Lend it to me and I'll give it back with interest." *Bougette* was eventually transformed into "budget" and the French later took it back, much to the horror of certain grammarians and politicians.

Since the need to expand our vocabularies is becoming more and more urgent, it is understandable that words get borrowed at the same time as the objects they designate. This has always been the case, and it is estimated that some five thousand English words were borrowed from French over four or five centuries.

English borrowing

From 1456 to 1914 English continually accumulated French words to the point where significant linguistic changes took place. This, however, did not prevent English from flourishing and becoming the most important language of science and technology.

Many French words still enter the English language: a great deal of attention is paid to gallicized English words in French, but no one ever talks about the French words which have been current in the United States for some time: "montage", "crêperie", "à gogo", "discothèque", "café" and so on, to say nothing of "détente", which gave President Ford so much trouble that he tried, unsuccessfully, to find an English substitute.

In his *Modern English Usage*, the famous lexicologist H.W. Fowler warns his fellow citizens to moderate their taste for French words and phrases: "Display of superior knowledge is as great a vulgarity as display of superior wealth. . . . That is the guiding principle alike in the using and in the pronouncing of French words in English writing and talk." He adds: "Only fools will think it commends them to the English reader to decorate incongruously with such bower-birds' treasures as *au pied de la lettre, à merveille, bien entendu, les convenances, coûte que coûte, quand même, dernier ressort, impayable, jeu de mots, par exemple, robe de chambre, sans doute, tracasseries*, and *sauter aux yeux*."[2]

There is nothing new under the sun, and French- and English-speaking grammarians and linguists alike can be unrepentant purists: one need only think of Étiemble and his magnificent outbursts when he wages war on *franglais*. This perpetually mistrustful attitude is understandable since *a language's ability to absorb foreign words is not without limits*. Once the saturation point is reached, borrowing is dangerous, especially in a bilingual environment where it easily becomes interference.

French borrowing

The reverse phenomenon, the adoption of English words by French, has become so widespread and noticeable since the last war that mistrust has given way to fear. This trend, which is largely the result of American influence in areas of high technology, poses no threat as long as it is kept under control and care is taken to control the invasion at an early stage. The French word *management* (of French stock, incidentally) has become common coin largely because a more suitable French word was not found sooner. "Data processing", on the other hand, was spotted in time, and so *informatique* was added to the French language along with a number of related words: *informaticien, téléinformatique*, and so on.

Until quite recently, however, computer manuals were still invariably written in English. I once met a French engineer who was reading a manual written in English, so I spoke to him in that language. He did not understand me because he had no knowledge at all of conversational English — he

1 A small leather bag which gentlemen attached to their belts or to their horse's harness close to the saddle.

2 Fowler, H.W. *Modern English Usage.*, Toronto: Oxford University Press, 1968.

only knew those English words relevant to his profession. That specialized knowledge was, however, essential, since the company selling the computer and the visual display unit in France supplied its operating manuals only in English.

The words "hardware" and "software" gave French lexicologists a lot of trouble, and the search for equivalents led many to heated brain-storming sessions. (Brain-storming as a term, by the way, led to the development of the French *remue-méninges*.) In English, "software" had been invented to match "hardware", a familiar word adopted by computer scientists to describe the machines themselves. The battle raged on. Every six months or so, someone would introduce new French equivalents such as *softouaire, hardouaire* — perhaps even *mollasserie* — and *quincaillerie* (the common French word meaning "hardware" in the traditional sense). To make a long story short, none of these took, and time was running out. In the end they hit upon *matériel* ("hardware") and *logiciel* ("software"). Sceptical Anglophones smiled indulgently but the new words went over very well in both Paris and Montreal. The problem had been solved before it was too late, and these two impeccable French neologisms obviated the need to borrow or form calques.

Calques

In his *Dictionnaire de la linguistique*, Georges Mounin defines a calque as a type of borrowing from one language by another which utilizes a structural arrangement rather than a lexical unit. In other words, a calque is a copy of a foreign word; it has the potential to enrich a language, but can also be quite detrimental. Mounin adds in this regard: Bad word-for-word translations . . . are a type of calque (e.g., "gallicisms" in English or "anglicisms" in French).

We must take our time and think carefully before "calquing" a foreign phrase in case the language already possesses a perfectly acceptable expression for the concept in question. There is also a danger of wrenching the language's syntax by employing phrases which have been translated too literally. Some expressions such as *libre service* (modeled after "self-service"), have retained the structure of the donor language and have been accepted by the borrowing language. These adoptions take time, however. Today words travel fast and are hastily incorporated, especially since our consumer society uses the electronic media for the instant transmission of advertising messages containing calques or words borrowed directly from other languages.

In a society where there is no linguistic conflict, borrowing can be useful in varying degrees, depending on which "register" or level of language is being employed. These registers can be classified in different ways: scientific discourse, everyday speech and slang are possible sub-divisions of language; educated speech, colloquial speech and dialect are others. Distinctions are also made between spoken and written language.

At present, scientific discourse is most in need of borrowed English terminology. English has become the major language of science, and, even though a scientist may be Francophone, he will feel most at ease talking about his subject in English if that particular specialty was first explored in an Anglophone country and provided, of course, that he is perfectly bilingual. If he writes in French, he may even have to have his work translated into English to ensure that it reaches a wider audience. However, in certain areas, French is once again assuming its role as an innovative language.

Force of habit

The need to communicate has taken on such importance that people become a little intimidated and feel obliged, when sending urgent messages (and what message isn't these days?), to use certain phrases, especially calques, without considering the consequences. French newspapers swarm with English words and admen in both France and Quebec use them for snob appeal.

In everyday speech, calques and loan words are often used deliberately in order to appear *comme il faut*. These fashionable borrowings do not last very long. The French use English words with no linguistic justification, and Americans do the same with French. The French media have assimilated *night club, meeting, star, best-seller, hit parade*, not to mention *hamburger, cowboy, hold-up*, common words borrowed from American English whose meanings are unequivocal. They might just as easily say *cabaret* as *night club*, but the latter has more class to the French ear. Certainly *vacher* in French cannot compete with *cowboy*.

Should these English words which have passed into everyday French usage be shouted out of the language and replaced with proper equivalents? I don't think so. Once they have become part of our vocabulary, loan words cannot be dislodged very easily. Using them becomes second nature, and faulty loan words resist attack, despite all

warning. We should pity the horrified members of the Académie française who periodically publish proscribed lists of loan words!

Language maketh man

Even though it is unfortunate that modern French has borrowed so heavily from English, it does not seem possible to get rid of these words arbitrarily. In this regard, man proposes and language disposes. Loan words are retained because circumstances and situations require them, not because they are imposed by the donor language. How can we blame English for the richness of its vocabulary? After all, French "users" employ English words with full knowledge of the issues involved. True, people have no say in the matter at the outset, but they do have the choice of accepting or rejecting the intruders. In the final analysis, speakers of French are the ones who gallicize foreign expressions, and English words which have recently passed into French will be standardized sooner or later. When the French (who admittedly are rarely bilingual) pronounce *week-end, footing* (a "constitutional" walk) or *shopping*, they do so *à la française*. Syntax hasn't been affected and the loan word remains a loan. Time will do the rest.

The one remaining problem is undoubtedly the sheer volume of foreign words raining down upon the hapless populace. I still believe that French is capable of absorbing most of the invasion of English words, especially since the recently established "terminology boards" will facilitate the immediate gallicization of anglicisms, lexical borrowings and hybrid words before it is too late.

Interference

Borrowing is a normal phenomenon, even when imposed by socio-economic necessity: it occurs quite openly and rarely affects the structure of the borrowing language. Interference (or transference), on the other hand, is a dangerous phenomenon. When many members of a language group are bilingual or plurilingual, their tendency to "transfer" encourages change and reduplication in their own language. Unlike normal borrowing, which results from contact "from afar", interference takes place when the contact between two or more languages is too close.

It is easy enough to confuse interference with borrowing by suggesting that, in Quebec, the former, which is eating away at the French language like a cancer, is parallel to the use of borrowed English words in Paris or elsewhere. This comparison is as misleading as it is dangerous, since it provides Quebecers and Parisians alike with arguments which, though perhaps reassuring, prevent us from discovering the deep-seated causes of this linguistic deviation.

Does the standard French of France suffer from this type of anglicization? The forcefulness of American speech has certainly made English the dominant language in the field of science and technology; snobbism and the desire to be "with it" have also been contributing factors. But French is still secure in France, and English words are not necessarily used at every opportunity. There is also the fact that, in France, the pronunciation of English words has been gallicized, whereas this is hardly ever the case in Quebec.

There are two main aspects to interference. First, there is a tendency to form faulty calques; hence, in the Quebec expression *le monde sont drôles*, even though the plural once existed in French, the English expression "people are funny" is the source of the influence. Second, words from the dominant tongue are used when their equivalents already exist in the dominated language. This is obvious in a sentence like *J'ai acheté des buns* or when the foreign expression is camouflaged, as in *cap de roue* (instead of *enjoliveur*), modelled after "hubcap".

Lexical interference can be found at all levels of language in Quebec. In specialized fields, the influence of English has always been so strong that, until recently, it was impossible to use thousands of correct words. English was the working language and knowledge of French could only be acquired through the medium of English. Thus, in the insurance business, "claim" was *réclamation*, and it took years before the correct expressions (*règlement, sinistre, demande d'indemnité*) became acceptable. The very meaning of the words had been affected.

Interference can also be semantic in nature. *Longue distance, renverser les charges* and *offres monétaires* are more or less technical phrases which have become common usage. Other examples of interference in French include *moi pour un* ("I for one"), *prendre pour acquis* ("take for granted"), *en autant que* ("in as much as"), *être sous l'impression* ("to be under the impression"). All these calqued phrases involve distortions of syntax.

Knee-jerk reflexes

Many English words have entered the French language and have taken their place in all the dictionaries as legitimate borrowings. However, some of these words have been replaced in Quebec French by calques which are unjustified,

despite their apparently French origins. In Quebec, *congère* has been replaced by *banc de neige*, even though it is an unwarranted calque on the English "snowbank". Similary *fraiseuse* and *chasse-neige* have been replaced by *soufleuse* ("snow blower"). Since such reactions against English are emotional rather than rational, a word of French origin might be preferred purely in self-defence even though it does not carry the same meaning as its English equivalent. For example, *bridge*, a legitimate loan word in French, has only two meanings in that language — the card game and a dental arch. *Pont* is incorrect. "Jurisdiction" has a more general meaning than the French *juridiction*; however, the French word *compétence*, which is in fact much closer to the English "jurisdiction", is often replaced by *juridiction*. *Breuvage* is most often nothing else but a camouflaged form of "beverage". On the other hand, the word *fun* is used all the time in Quebec, though it could hardly be more English.

This very personal, chauvinistic reaction poses a threat to the unity of the French language throughout the world. To reject *week-end* and accept *bun* and *fun* is illogical, and to create a Quebec language would be a mistake, even though such a language would be based on French.

Whatever form this reaction against English words takes, its roots lie in a confined bilingualism which has forced the two language together. Every day, Francophones see English gradually extending its sway over French. All around them, on the radio and on television, they hear English words pronounced in an English manner, even though the words in question might be legitimate loan words whose proper French pronunication should be phonetically different than the original English. When *camping* and *party*, for example, are pronounced in the English manner, they are no longer loan words but examples of interference. Fear of assimilation also plays its part.

The Trojan Horse

Mass translation has done a great deal of damage to French, and, as a result, barbarous calques have entered Quebec French over the years. Thousands of makeshift translations attacked French, relegating it to the level of a language that existed only as a translation of another. The levers of power were not in the hands of Francophones, and their language, which was nothing more than a means of reaching the consumer, ceased to be an autonomous instrument. Instead it became a sort of creole filled with archaic expressions, anglicisms and

barbarisms. (A true creole, though, enjoys a degree of autonomy denied a dominated language like Quebec French). It was inevitable that these deviations from the linguistic norm would widen the gap between Quebec French and that of France. The French of translation became so weak, so lacking in solid foundations, that it no longer had any raison d'être. English was about to replace it, since every country needs a strong, effective and up-to-date linguistic tool which can be used on all levels of discourse. French no longer had a place in the workplace.

Recovery

In recent years, however, French in Quebec has become more standardized and streamlined. Government initiatives, proper training for translators and improved contacts with France have halted the downward slide into anglicization and the abandonment of French in North America. In Quebec especially, teachers, linguists and civil servants have taken up the cause, sounded the alarm and, for the first time, co-ordinated their efforts. Governments have begun to consolidate the status of the French language, slowly at first but more and more rapidly as time goes on. An important factor in this renewal was a rapprochement between the French of Quebec and that of France which has restored to the former its identity, originality, richness and lexical precision. The degeneration of the language has been halted and recovery is in sight. We should add that making French the official working language in Quebec was an absolute necessity in this respect.

The present looks promising

The measures taken by federal and other levels of government have contributed to the advancement of French in Quebec and in the rest of Canada. They have enabled Francophones to make themselves heard throughout the world, not in another language but in their own. Consequently, both Quebec and Canada can now present a truer picture of themselves. Although these measures are still inadequate in some areas, a start has been made — once interference has been identified it can be successfully combatted. Signs of a French renaissance are already quite numerous: more books, scientific studies, plays and songs are being written, and written well, than ever before.

The question of joual is of marginal significance. Joual reflected the struggle to preserve an identity decaying with its language, but an identity which was nonetheless authentic. The ailing language had to be held up high for all to see. But every effort must be made to help this purported symbol of Canadian or Quebec French disappear as quickly as possible. A more correct, less inward-looking representation of the French language will take its place, still disfigured by the scars of a deep and painful wound, yet well on the road to recovery.

Canada's two languages can exist very well together, but their coexistence requires a stable environment. A lack of equilibrium between the two linguistic systems is at the heart of the French language "problem". Why should two languages, which are strong at all levels and in every respect, not be able to exchange their lexical creations in a friendly manner, free from the threat of interference, without fear or inner conflict?

Someone once said that love is two skins touching. This could certainly apply to languages, since all they need in order to live in harmony together is a relationship that does not threaten the structural foundations of their existence.

(Adapted from French)

On December 13, 1979, the Supreme Court of Canada rendered historic rulings on the constitutionality of two provincial language laws — one old and one new. A noted public figure gives his personal interpretation of how it all came about.

Languages and the law

EUGENE A. FORSEY

When the Fathers of Confederation were framing the resolutions on which the British North America Act was based, everyone seems to have agreed that there must be guarantees for the French language in the federal Parliament and federal courts, and for the English language in the Quebec Legislature and Quebec courts. Resolution 46 of the Quebec Resolutions (Resolution 45 of the London Resolutions) laid this down firmly.

The two Resolutions were adopted with little or no discussion, and were embodied in section 133 of the British North America Act. Everyone knew that without this provision there would be no federation. French-speaking citizens would make up almost a third of the "new nation", and most of them spoke only French. English-speaking citizens would make up about a fifth of the population of Quebec, and most of them spoke only English. (The Census of 1861 did not give language figures. But it showed eight Quebec counties with overwhelming majorities of British origin and another seven with substantial British minorities. Montreal was just over half British, Quebec City over 40 percent.)

The official status of English in Quebec was never legislatively challenged till 1937, when the Duplessis Government passed an act providing that in any case of discrepancy between the French and English texts of a Quebec law, the French text should prevail. This, however, was repealed in 1938.

Then came the Quiet Revolution, and, in 1974, "Bill 22", the Quebec Official Language Act. By this time, the situation of the English-speaking minority in Quebec had changed considerably. It still made up 14 percent of the population, but it was now concentrated mainly in metropolitan Montreal. Also, it now included a large number of people of non-British origin, and its economic power had been eroded, notably by the "nationalization" (provincialization) of the electric power industry.

Bill 22 declared French "the official language of Quebec", and provided that where any discrepancy between the French and English versions of a Quebec law could not "be satisfactorily resolved by the ordinary rules of interpretation, the French text" should prevail. The Quebec Association of Protestant School Boards promptly asked the federal government either to disallow the Act or to refer it to the Supreme Court of Canada for an opinion as to its constitutionality. The government refused to do either, so the Association itself took the case to the courts. The Chief Justice of the Quebec Superior Court upheld the Act. The Association appealed, but by the time the appeal came on, Bill 22 had been superseded by "Bill 101", the "Charter of the French Language," and on that ground the court refused to hear the case.

Bill 101, passed in 1977, directly challenged section 133 of the British North America Act. It declared French "the official language of the Legislature and Courts of Quebec." Bills were henceforth to be drafted, passed and assented to in French, and only the French text of acts and regulations was to be official. For "artificial persons" (corporations, etc.), French was to be the

language of the courts and of "bodies discharging judicial or quasi-judicial functions," and the pleadings before them were to be in French unless all parties to the action agreed to pleadings in English. Procedural documents were to be in French, unless the "natural person" concerned expressly consented to "another language." Judgments would be drawn up in French or accompanied by a duly authenticated French version, and only the French version would be official.

The Quebec government argued that these provisions were constitutional because the Quebec Legislature, under section 92, head 1 of the British North America Act, had power to amend the constitution of Quebec, and therefore power to amend or repeal that part of section 133 dealing with the Quebec Legislature and courts. Chief Justice Deschênes of the Quebec Superior Court ruled that this was not so, and that the impugned sections of Bill 101 were therefore unconstitutional. A seven-judge Quebec Court of Appeal unanimously upheld this decision. The case then went to the Supreme Court of Canada, which unanimously upheld the decisions of the lower courts. (These decisions dealt only with seven sections of Bill 101, not the whole bill.)

The Manitoba matter

Manitoba was created by an act of the federal Parliament, the Manitoba Act, 1870. This Act's section 23 was almost identical with section 133 of the British North America Act's provisions for Quebec. Without this provision (and another, section 22, intended to guarantee Roman Catholic separate schools), there would have been no Manitoba. For at that time half the population of the territory was French-speaking. Unquestionably, in 1870, French-Canadians expected Manitoba to be a second Quebec.

But the new settlers who flocked to Manitoba were overwhelmingly not French-speaking. By 1890, only about 7 percent of the population was of French origin. As Sir John A. Macdonald wrote to Sir Adolphe Chapleau in 1888, the people of Quebec would not migrate to the West: "The consequence is that Manitoba and the North-West Territories are becoming what British Columbia now is — wholly English,— with English laws, English, or rather British, immigration, and, I may add, English prejudices." In Manitoba in 1890, the English (and mainly Protestant) prejudices had been reinforced by the anti-French and anti-Roman Catholic agitation of Dalton McCarthy's Equal Rights Association, which was sweeping Ontario and the Prairies.

In 1871, Manitoba had set up an educational system of "Protestant" and "Roman Catholic" schools, "English" and "French" schools. By 1873, this latter provision seems to have disappeared; but the separate religious schools continued till 1890.

In that year, the Legislature passed two Acts, the Department of Education Act and the Public Schools Act, which together abolished the separate schools. Neither of these Acts contained one syllable on language. In the same year, the Legislature passed an Official Language Act, which purported to abolish French in the Legislature and the courts. (Unlike Quebec's Bill 101, this Act applied only to the Legislature and courts, not to business, the professions or labour relations.)

All three Acts provoked strong opposition. The Manitoba Roman Catholics, French-speaking and English-speaking, with the latter taking the lead, promptly appealed to the courts to declare the Public Schools Act unconstitutional. The case went clear to the Judicial Committee of the British Privy Council, then Canada's final court of appeal. The Judicial Committee reversed the unanimous judgment of the Supreme Court of Canada, which had declared the Act unconstitutional.

The Manitoba Roman Catholics then sought redress from the federal government, under section 22 (2) of the Manitoba Act, which provided for an appeal to that body against any provincial infringement of denominational educational rights or privileges. The Conservative Cabinet, headed by Sir Mackenzie Bowell, Past Grand Master of the Orange Order, held lengthy hearings, and, on March 21, 1895, passed a Remedial Order-in-Council ordering Manitoba to restore the separate schools. When Manitoba refused, the Bowell Government introduced into Parliament on February 11, 1896, a Remedial Bill under section 22 (3) of the Manitoba Act to restore the separate schools.

The bill was fiercely resisted by the Liberal Opposition, led by Wilfrid Laurier, and by some extreme Protestant Conservatives. There was then no time limit on speeches, no closure, no time allocation. Every Member could speak as long as he liked, and, in Committee of the Whole, as long as he liked and as often as he liked on every clause. After twelve days' debate, almost always till after midnight, second reading carried, 112-94 (82 Members with non-French names voted for the bill, 72 against). The bill then went into Committee of the Whole, which sat till after midnight for six days, then continuously night and day, for six more, then continuously for three more till 2:30 a.m. of a fourth. By that time (April 16), the Committee had passed only a handful of the bill's 112 clauses, and Parliament had less than a week to live (its maximum five years would end April 23). It was plainly impossible to get the bill through in the remaining week, and the government gave up trying.

In the election which followed, Conservatives and Liberals got almost the same number of seats outside Quebec, but Quebec gave Laurier his majority. Laurier then negotiated with Manitoba the Laurier-Greenway compromise, which did not restore the separate schools, but did provide for Roman Catholic religious teaching after school hours, and for Roman Catholic teachers and bilingual schools in certain circumstances.

The Official Language Act produced nothing like the same bitter and prolonged struggle. The Roman Catholic Bishops included it in their petition to the Governor General-in-Council against the education laws. Six Members of the Manitoba Legislature petitioned the Lieutenant-Governor against it. The Bishop of Three Rivers demanded disallowance of all three Acts. The Archbishop of St. Boniface petitioned the Governor General against all three. The "French-Canadian Convention" of Manitoba, and Members of the Legislature representing "the French population", petitioned for disallowance.

In Parliament, there was one motion for papers in the Senate, and one in the House of Commons, with almost no discussion on either.

What about the courts? The Legislature had almost invited action there by section 2: "This Act applies only so far as the Legislature has jurisdiction to enact." But there seems to have been little response, and that little long delayed.

It has been alleged that the matter was raised in a municipal election petition case, *Pellant* v. *Hébert*, 1892, before County Court Judge L.A. Prud'homme. The judge's notes, however, (which are all I have been able to find on the case) record almost nothing but the evidence of various witnesses, all with French names but almost all testifying in English, on whether Hébert could read or write, in French or English. One lawyer mentioned that the Legislature had passed the Act. It seems unlikely that Judge Prud'homme handed down any decision on the Act in this case. For it was he who, 17 years later, pronounced it unconstitutional, in *Bertrand* v. *Dussault*, and his judgment made no mention of any previous decision on the subject. His reasons for judgment were substantially the same as those of the Supreme Court of Canada seventy years later.[1]

The Manitoba Government seems to have ignored this decision, and no one, apparently, was ingenious enough or had enough money to do what Georges Forest did in 1977 when faced with a similar situation.

The next case was *Dumas* v. *Baribault*, 1916: an application to the Court of King's Bench to compel a lower court to accept a written plea in French. This reached the Court of Appeal, but was "not proceeded with... Somewhat earlier, French-speaking citizens obtained a declaration in the County Court of St. Boniface from Prud'homme J. in a suit inter partes, and the matter was then left in abeyance while further informal arrangements were made to allow the French language to be taught in selected schools, while members of the legislature representing French-speaking districts annually spoke in French to assert their rights under section 23 of the Manitoba Act."[2]

In 1976, Georges Forest, who had been given a parking ticket in English, asked the Attorney-General of Manitoba to refer the question of the Language Act's constitutionality to the courts. The

1 Photostat copies of the judge's notes in *Pellant* v. *Hébert*, and of the judgment in *Bertrand* v. *Dussault*, all in handwriting, were provided for me by the Administrator of Court Services, of the Manitoba Department of the Attorney-General.

2 The information on *Dumas* v. *Baribault* is in the law reports: 4 Western Weekly Reports [1979], at p. 246.

Attorney-General refused. Convicted of the offence, Forest appealed to the County Court, where Judge Dureault ruled the Language Act unconstitutional. The Attorney-General said he did not intend to appeal "at this time". Forest then went to the Court of Appeal, which dismissed the appeal, but gave leave to bring the matter before the Court of Queen's Bench. That court said Forest should have pursued the matter in the County Court, which, of course, would have left him where he started. The Court of Appeal then heard his case, and ruled the Language Act "inoperative insofar as it abrogates the right to use French in the courts of Manitoba." The Attorney-General appealed to the Supreme Court of Canada.

The Court decides

The Supreme Court of Canada, once it was seized of the two language legislation cases, acted promptly on both, and on December 13, 1979, simultaneously declared both the Manitoba Official Language Act and the similar provisions of Quebec Bill 101 unconstitutional.

But while it took the Quebec English-speaking minority just three years to get a final court decision, it took the Manitoba French-speaking minority 89. The explanation of this striking contrast is simple. The Quebec English-speaking minority was very large, and had money; it acted promptly, and persisted in its action till it got results. The Manitoba French-speaking minority was very small, and short of money; till the schools question was settled, it was preoccupied with that; and the fate of the appeal to the courts on the Schools Act may well have discouraged any idea of taking the Official Language Act down the same road.

Supreme Court judgments

THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC

v.

PETER M. BLAIKIE, ROLAND DURAND, YOINE GOLDSTEIN
-and-
THE ATTORNEY GENERAL OF CANADA
-and-
THE ATTORNEY GENERAL OF MANITOBA, THE ATTORNEY GENERAL OF NEW BRUNSWICK and GEORGES FOREST

THE ATTORNEY GENERAL OF THE PROVINCE OF QUEBEC

v.

HENRI WILFRID LAURIER
-and-
THE ATTORNEY GENERAL OF CANADA
-and-
THE ATTORNEY GENERAL OF MANITOBA, THE ATTORNEY GENERAL OF NEW BRUNSWICK and GEORGES FOREST

CORAM: The Chief Justice and Martland, Ritchie, Pigeon, Dickson, Beetz, Estey, Pratte and McIntyre JJ.

THE COURT

In detailed and extensive reasons for judgment, delivered on January 23, 1978, (1978 C.S. 37, 85 D.L.R. (3d) 252) Deschênes C.J. of the Quebec Superior Court granted a declaration sought by the plaintiffs Blaikie, Durand and Goldstein that Chapter III of Title I of the *Charter of the French language*, 1977 (Que.) c. 5, being ss. 7 to 13 of that Statute, was *ultra vires* the Legislature of Quebec. He held that the challenged statutory provisions were in direct violation of s. 133 of the *British North America Act* and that it was beyond the competence of the Quebec Legislature to modify unilaterally the prescriptions of that section. A similar result, and for the same reasons, was reached in a companion case brought by the plaintiff Laurier, who urged not only the unconstitutionality of the challenged provisions of the Quebec Statute but also their incompatibility with the previously enacted Quebec *Charter of Human Rights and Freedoms*, 1975 (Que.), c. 6. Deschênes C.J. concluded that in view of his declaration of invalidity it was unnecessary to pass on the alleged conflict with the Quebec *Charter of Human Rights and Freedoms*.

A seven-Judge Quebec Court of Appeal unanimously affirmed the judgment of Deschênes C.J. in both cases, (1978 C.A. 351) it too finding it unnecessary to deal with the alternative point raised in the *Laurier* case. Leave was sought and given to the Attorney-General of Quebec to argue the issue of constitutionality here, the following question being posed for determination:

> Are the provisions of Chapter III of Title One of the Charter of the French language (L.Q. 1977, ch. 5) entitled "The Language of the Legislature and the Courts" unconstitutional, ultra vires or inoperative to the extent that they violate the provisions of Section 133 of the British North America Act (1867)?

The Attorney-General of Canada had been an intervenor before the Quebec Superior Court and before the Quebec Court of Appeal, supporting the claim of the plaintiffs. He took the same position as intervenor here. In addition, the Attorney General of Manitoba intervened to support the appellant and the Attorney-General of New Brunswick intervened in support of the respondents. A late intervention in support of the respondents was allowed to Georges Forest, who was the successful party in the Manitoba Court of Appeal in attacking the validity of the *Official Language Act*, 1890 (Man.), c. 14, as being incompatible with s. 23 of the *Manitoba Act*, 1870 (Can.), c. 3, confirmed by the *British North America Act*, 1871 (U.K.), c. 28: see *Forest v.*

Attorney General of Manitoba, judgment delivered on April 25, 1979 (1979 4 W.W.R. 229). Leave to appeal this judgment was given by this Court, the case to be inscribed for hearing at the beginning of the October, 1979 term.

Chapter III of Title I of the *Charter of the French language*, entitled "The Language of the Legislature and of the Courts", reads as follows:

> 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.
>
> 11. Artificial persons addressing themselves to the courts and to bodies discharging judicial or quasi-judicial functions shall do so in the official language, and shall use the official language in pleading before them unless all the parties to the action agree to their pleading in English.
>
> 12. Procedural documents issued by bodies discharging judicial or quasi-judicial functions or drawn up and sent by the advocates practising before them shall be drawn up in the official language. Such documents may, however, be drawn up in another language if the natural person for whose intention they are issued expressly consents thereto.
>
> 13. The judgments rendered in Quebec by the courts and by bodies discharging judicial or quasi-judicial functions must be drawn up in French or be accompanied with a duly authenticated French version. Only the French version of the judgment is official.

The competence of the Quebec Legislature to enact all or any part of the foregoing provisions, in the face of s. 133 of the *British North America Act*, was asserted by the appellant mainly in reliance upon s. 92(1) of the *British North America Act*, which was said to provide adequate authority for the challenged provisions. A subsidiary contention of the appellant was that the challenged provisions were not incompatible with s. 133. Section 133 and s. 92(1) are in the following terms:

> 133. 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 Courts of Quebec.
>
> The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.
>
> 92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say, —
>
> 1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.

Chapter III of Title I of the *Charter of the French language* is a particular projection of s. 1 of Chapter 1, Title I, of this statute which declares that "French is the official language of Quebec". This Court is concerned here only with the particular, and nothing in these reasons is to be taken as passing upon the validity of any other provisions of the enactment. That being said, it will be convenient to deal with the subsidiary contention of the appellant that ss. 7 to 13 of Chapter III of Title I of the *Charter of French language* can operate or subsist compatibly with s. 133 of the *British North America Act*. In his detailed reasons for judgment Deschênes C.J. explained why he could not agree with that contention. The same view was taken in the reasons for judgment delivered in the Quebec Court of Appeal, especially those of Dubé J.A. who found the challenged ss. 7 to 13 and s. 133 to be "en contradiction flagrante" and those of Lamer J.A. (with whom Kaufman, Bernier and Mayrand JJ.A. agreed) who said that it was manifest that ss. 7 to 13 of the *Charter of the French language* were in conflict with s. 133.

Sections 8 and 9 of the *Charter of the French language*, reproduced above, are not easy to reconcile with s. 133 which not only provides but requires that official status be given to both French and English in respect of the printing and publication of the Statutes of the Legislature of Quebec. 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. What is required to be printed and published in both languages is described as "Acts" and texts do not become "Acts" without enactment. Statutes can only be known by being printed and published in connection with their enactment so that Bills be transformed into Acts. Moreover, it would be strange to have a requirement, as in s. 133, that both English and French "shall be used in the . . . Records and Journals" of the Houses (there were then two) of the Quebec Legislature and not to have this requirement extend to the enactment of legislation.

So, too, is there incompatibility when ss. 11 and 12 of the *Charter* would compel artificial persons to use French alone and make it the only official language of "procedural documents" in judicial or quasi-judicial proceedings, while section 133 gives persons involved in proceedings in the Courts of Quebec the option to use either French or English in any pleading or process. Whether s. 133 covers the processes of "bodies discharging judicial or quasi-judicial functions", whether it covers the issuing and publication of judgments of the Courts and decisions

of "judicial or quasi-judicial" tribunals, and also whether it embraces delegated legislation will be considered later.

The central issue in this case, reflected in the question posed for determination by this Court, is whether the Legislature of Quebec may unilaterally amend or modify the provisions of s. 133 in so far as they relate to the Legislature and Courts of Quebec. It was the contention of the appellant that the language of the Legislature and of the Courts of Quebec is part of the Constitution of the Province and hence is within the unilateral amending or modifying authority of the Legislature under s. 92(1). Emphasis was, understandably, placed on the words in s. 92(1) "notwithstanding anything in this Act".

What is meant by "the Constitution of the Province" is not defined or described in any enacting terms of the *British North America Act*. The Act is divided into consecutively numbered parts (following the preamble) from roman numeral I to XI (part X, respecting the intercolonial railway, was repealed as spent, by 1893 (U.K.), c. 14), each number having an associated heading. The roman numeral V has subjoined to it the words "Provincial Constitutions", embracing ss. 58 to 90 of the Act. (Sections 81 and 89 were repealed, as spent provisions, by 1893 (U.K.), c. 14).

It was urged against the contention of the appellant that whatever be embraced in a constitution as a generality or in the abstract, the *British North America Act* provided its own dictionary meaning by embracing only those provisions included under the number and heading "V—Provincial Constitutions". These did not reach s. 133 which was, therefore, outside of the amending power conferred by s. 92(1). A contrary submission was made that other provisions in the *British North America Act*, which could be properly regarded as coming within the words in s. 92(1) "The Constitution of the Province", were outside of Part V, and hence there was no logic to a limitation of those words to what was included only in Part V. Among the provisions said to be in this category were ss. 128, 129, 134, 135, 136, 137 and 144. It is apparent that ss. 129, 134, 135, 136 and 137 are transitional provisions and hence stand on a different footing than s. 133. Section 144, dealing with the establishment of townships in Quebec by proclamation of the Lieutenant-Governor of Quebec, appears to be related more properly to provincial power in relation to municipal institutions in the Province under s. 92(8) of the *British North America Act* than to the Constitution of the Province under s. 92(1). Section 128, referring to the taking of a prescribed oath of allegiance before the Governor-General or before the Lieutenant-Governor of a Province by elected or appointed members of the federal House of Commons or Senate or a provincial Legislative Assembly or Council, as the case may be, raises a different issue, referable to the office of the Governor-General and of the Lieutenant-Governor and touching the position of the Crown in respect of members of the legislative chambers, so long as such chambers exist. There has not been any Legislative Council in Quebec since its abolition by Quebec legislation in late 1968.

It was also the position of the appellant and of its supporting intervenor, the Attorney General of Manitoba, that *Fielding v. Thomas*, (1896) A.C. 600 showed that Part V was not exhaustive of what was included in "the Constitution of the Province". That case, taken broadly, concerned the privileges and immunities of members of the Nova Scotia Legislative Assembly, and legislation giving immunity from civil liability in respect of words and conduct in the Legislative Assembly was held to be *intra vires* under s. 92(1).

The fact that *Fielding v. Thomas* concerned matters relating to the constitution of the Province, in the sense that it bore on the operation of an organ of the government of the Province, does not help to establish the appellant's position as to the unlimited scope of s. 92(1). The latter may, of course, cover such changes as were dealt with in *Fielding v. Thomas* and, also, other matters not expressely covered by the *British North America Act* but implicit in the constitution of the Province. That does not, however, carry the necessary conclusion that s. 133 is unilaterally amendable. Indeed, the argument goes too far because, as pressed, it would permit amendment of the catalogue of legislative powers in the succeeding catalogue of classes of subjects in s. 92 and this was not suggested.

It does not seem necessary to come to a determination whether s. 128 is part of the constitution of the Province and amendable as such under s. 92(1), so as to lend support to the appellant's contention of the amendability by unilateral action of s. 133. The reasons for this transcend even the widest operation of s. 92(1) and are cogently set out in the judgment of Deschênes C.J., followed by the Quebec Court of Appeal. He found that s. 133 is not part of the Constitution of the Province within s. 92(1) but is rather part of the Constitution of Canada and of Quebec in an indivisible sense, giving official status to French and English in the Parliament and in the Courts of Canada as well as in the Legislature and Courts of Quebec. Concerning the qualification in s. 91(1) of the *British North America Act* (enacted by 1949 (U.K.), c. 81) to the power of Parliament to amend the "Constitution of Canada", except (*inter alia*), "as regards the use of the English or French language" it is difficult to see how this amendment enacted in the terms requested by Parliament, can be of any help in interpreting a statute expressly passed for the purpose of giving effect to a political arrangement, made more than eighty years earlier which did not contemplate such federal

power.

There is, moreover, another consideration noticed in the Courts below which should also be brought into account. In *Jones v. Attorney-General of New Brunswick*, (1975) 2 S.C.R. 182, which concerned the validity of the federal *Official Languages Act*, the Court had this to say about s. 133 (at pp. 192-3):

> . . . Certainly, what s. 133 itself gives may not be diminished by the Parliament of Canada, but if its provisions are respected there is nothing in it or in any other parts of the *British North America Act* (reserving for later consideration s. 91(1)) that precludes the conferring of additional rights or privileges or the imposing of additional obligations respecting the use of English and French, if done in relation to matters within the competence of the enacting Legislature.
>
> The words of s. 133 themselves point to its limited concern with language rights; and it is, in my view, correctly described as giving a constitutionally based right to any person to use English or French in legislative debates in the federal and Quebec Houses and in any pleading or process in or issuing from any federally established Court or any Court of Quebec, and as imposing an obligation of the use of English and French in the records and journals of the federal and Quebec legislative Houses and in the printing and publication of federal and Quebec legislation. There is no warrant for reading this provision, so limited to the federal and Quebec legislative chambers and their legislation, and to federal and Quebec Courts, as being in effect a final and legislatively unalterable determination for Canada, for Quebec and for all other Provinces, of the limits of the privileged or obligatory use of English and French in public proceedings, in public institutions and in public communications. On its face, s. 133 provides special protection in the use of English and French; there is no other provision of the *British North America Act* referable to the Parliament of Canada (apart from s. 91(1)) which deals with language as a legislative matter or otherwise. I am unable to appreciate the submission that to extend by legislation the privileged or required public use of English and French would be violative of s. 133 when there has been no interference with the special protection which it prescribed . . . .

What the *Jones* case decided was that Parliament could enlarge the protection afforded to the use of French and English in agencies and institutions and programmes falling within federal legislative authority. There was no suggestion that it could unilaterally contract the guarantees or requirements of s. 133. Yet it is contraction not enlargement that is the object and subject of Chapter III, Title I of the *Charter of the French language*. But s. 133 is an entrenched provision, not only forbidding modification by unilateral action of Parliament or of the Quebec Legislature but also providing a guarantee to members of Parliament or of the Quebec Legislature and to litigants in the Courts of Canada or of Quebec that they are entitled to use either French or English in parliamentary or legislative assembly debates or in pleading (including oral argument) in the Courts of Canada or of Quebec.

Subject to consideration of the range of protection given by s. 133 in the use of either French or English, there does not appear any need to expand any further on the main issue in this case. On matters of detail and of history, we are content to adopt the reasons of Deschênes C.J. as fortified by the Quebec Court of Appeal.

Dealing now with the question whether "regulations" issued under the authority of acts of the Legislature of Quebec are "Acts" within the purview of s. 133, it is apparent that it would truncate the requirement of s. 133 if account were not taken of the growth of delegated legislation. This is a case where the greater must include the lesser. Section 9 of the impugned provisions, in giving official status only to the French text of regulations as well as of statutes and s. 10 in providing for the subordinate position of an English version of bills, statutes and regulations appear to put all these instruments on an equal footing with respect to language and, consequently, towards s. 133.

There is, however, a more compelling answer not only to the question of the language of delegated legislation but also to the question of the language of Court pleading, Court processes, oral argument before the Courts and Court judgments, and it is to be found in s. 7 of Chapter III of Title I of the *Charter of the French language*. The generality of s. 7, "French is the language of the legislature and the courts in Quebec" sweeps in the particulars spelled out in the succeeding ss. 8 to 13. It encompasses in its few and direct words what the succeeding sections say by way of detail. Indeed, as already pointed out, Chapter III of Title I, and especially s. 7 thereof, is a particular projection of Title I, Chapter I of the *Charter of the French language*, saying that "French is the official language of Quebec". Although as a matter of construction, the particular in a statute may modify or limit the general, nothing in ss. 8 to 13 indicates any modification or limitation of s. 7. If anything, there is an extension of the term "Courts" as it appears in s. 7 to include "bodies discharging judicial or quasi-judicial functions": see ss. 11 and 12. In s. 13, the reference is to "judgments . . . by courts and by bodies discharging judicial or quasi-judicial functions" in making only the French text of such judgments official. Again, this appears to envisage an enlarged appreciation of the meaning of "Courts of Quebec", as that term appears in s. 133.

Even if this not be the view of the Quebec Legislature in enacting ss. 11, 12 and 13 above-mentioned, the reference in s. 133 to "any of the Courts of Quebec" ought to be considered broadly as including not only so-called s. 96 Courts but also Courts established by the Province and administered by provincially-appointed Judges. It is not a long distance from this latter class of

tribunal to those which exercise judicial power, although they are not courts in the traditional sense. If they are statutory agencies which are adjudicative, applying legal principles to the assertion of claims under their constituent legislation, rather than settling issues on grounds of expediency or administrative policy, they are judicial bodies, however some of their procedures may differ not only from those of Courts but also from those of other adjudicative bodies. In the rudimentary state of administrative law in 1867, it is not surprising that there was no reference to non-curial adjudicative agencies. Today, they play a significant role in the control of a wide range of individual and corporate activities, subjecting them to various norms of conduct which are at the same time limitations on the jurisdiction of the agencies and on the legal position of those caught by them. The guarantee given for the use of French or English in Court proceedings should not be liable to curtailment by provincial substitution of adjudicative agencies for Courts to such extent as is compatible with s. 96 of the *British North America Act*.

Two judgments of the Privy Council, which wrestled with similar questions of principle in the construction of the *British North America Act*, are, to some degree, apposite here. In *Edwards v. Attorney-General of Canada*, (1930) A.C. 124, the "persons" case (respecting the qualification of women for appointment to the Senate under s. 24), there are observations by Lord Sankey of the need to give the *British North America Act* a broad interpretation attuned to changing circumstances: "The British North America Act", he said, at p. 136, "planted in Canada a living tree capable of growth and expansion within its natural limits". Dealing, as this Court is here, with a constitutional guarantee, it would be overly-technical to ignore the modern development of non-curial adjudicative agencies which play so important a role in our society, and to refuse to extend to proceedings before them the guarantee of the right to use either French or English by those subject to their jurisdiction.

In *Attorney-General of Ontario v. Attorney-General of Canada*, (1974) A.C. 124, (the Privy Council Appeals Reference), Viscount Jowitt said in the course of his discussion of the issues, that "it is, as their Lordships think, irrelevant that the question is one that might have seemed unreal at the date of the *British North America Act*. To such an organic statute the flexible interpretation must be given which changing circumstances require" (at p. 154).

Although there are clear points of distinction between these two cases and the issue of the scope of s. 133, in its reference to the Courts of Quebec, they nonetheless lend support to what is to us the proper approach to an entrenched provision, that is, to make it effective through the range of institutions which exercise judicial power, be they called courts or adjudicative agencies. In our opinion, therefore, the guarantee and requirements of s. 133 extend to both.

It follows that the guarantee in s. 133 of the use of either French or English "by any person or in any pleading or process in or issuing from . . . all or any of the Courts of Quebec" applies to both ordinary Courts and other adjudicative tribunals. Hence, not only is the option to use either language given to any person involved in proceedings before the Courts of Quebec or its other adjudicative tribunals (and this covers both written and oral submissions) but documents emanating from such bodies or issued in their name or under their authority may be in either language, and this option extends to the issuing and publication of judgments or other orders.

In the result, the appeals are dismissed in both cases with costs to the plaintiffs as provided in the orders granting leave. There shall be no order as to costs either to or against any of the other parties.

THE ATTORNEY GENERAL OF MANITOBA

v.

GEORGES FOREST

-and-

THE ATTORNEY GENERAL OF CANADA and THE ATTORNEY GENERAL OF NEW BRUNSWICK

CORAM: Martland, Ritchie, Pigeon, Dickson, Beetz, Estey and McIntyre JJ.

THE COURT

For the detailed and extensive reasons written by Freedman C.J., concurred in by Monnin, Hall, Matas and O'Sullivan JJ.A. (1979, 4 W.W.R. 229) the Manitoba Court of Appeal granted to the respondent-plaintiff, Georges Forest, a declaration that *The Official Language Act* enacted by 1890 (Man.) c. 14 and now being R.S.M. 1970, c. 0-10, "is inoperative in so far as it abrogates rights, including the right to use the French language in the Courts of Manitoba, as conferred by Sec. 23 of *The Manitoba Act, 1870*, confirmed by *The British North America Act, 1871*". In the Court of Queen's Bench (1978, 5 W.W.R. 721) the plaintiff had been denied standing but, in this Court, the reversal of the trial judge on that point was not questioned. Thus the only issue is that which is set out in the constitutional question determined by order of the Chief Justice:

> Are the provisions of "*An Act to provide that the English Language shall be the Official Language of the Province of Manitoba*" enacted by S.M. 1890, c. 14 (now R.S.M. 1970, c. 0-10) or any of those provisions, ultra vires or inoperative in so far as they abrogate the provisions of s. 23 of the *Manitoba Act*, 1870, 33 Vict., c. 22 (Can.) validated by the *British North America Act*, 1871, 34-35 Vict., c. 28 (U.K.)?

The Attorney-General of Canada and the Attorney-General of New Brunswick have intervened in support of the respondent-plaintiff.

The Official Language Act adopted in 1890 by the Legislature of Manitoba provides:

> 1(1) Any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the Legislative Assembly of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba.
>
> (2) The Acts of the Legislature of Manitoba need be printed and published only in the English language.
>
> 2 This Act applies only so far as the Legislature has jurisdiction to enact.

Section 23 of *The Manitoba Act 1870* passed by the Parliament of Canada (34-35 Vic., (Can.) c. 28) reads:

> 23. 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.

The conflict between the two provisions is obvious and the only basis on which the Manitoba enactment was sought to be supported is the power conferred upon provincial legislatures by s. 92(1) of the *B.N.A. Act*, as follows:

> 92. In each Province the Legislature may exclusively make Laws in relation to matters coming within the Classes of Subjects next herein-after enumerated; that is to say, —
>
> 1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.

The scope of this provision with particular reference to language rights recently came for consideration before the courts of Quebec. In the Superior Court, Deschênes C.J. came to the conclusion, as mentioned by Freedman C.J. herein, that language rights under s. 133 of the *B.N.A. Act* did not come within the ambit of the expression "the Constitution of the Province" in s. 92(1). This conclusion was unanimously affirmed by the Quebec Court of Appeal and is upheld by judgment being delivered today on the appeal to this Court. In view of the close similarity noted by Freedman C.J. between s. 23 of *The Manitoba Act* and s. 133 in its provincial aspect, it is unnecessary to dwell upon the reasons for which the latter enactment is not to be considered as part of "the Constitution of the Province" within the meaning of s. 92(1). It will therefore be convenient to consider only whether anything in Manitoba's situation requires a different conclusion.

The wording of s. 133 exhibits a first difference in referring to the Parliament of Canada and its acts as well as to the provincial Legislature of Quebec and its acts,

> 133. Either the English or the French Language may be used by any Person in the Debates of the Houses of 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 Courts of Quebec.
>
> The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

In the second place, the *B.N.A. Act* is divided into parts, Part V being entitled "Provincial Constitutions". S. 133 is not under that heading, but in Part IX "Miscellaneous Provisions". Substantial importance was attached to this point in the Quebec case, but it was not relied on by the Manitoba Court of Appeal.

Then it must be observed that the Province of Manitoba was not admitted merely by Royal Order in Council

under s. 146 of the *B.N.A. Act* but specifically under the authority of the aforementioned *Manitoba Act*, a statute of the Parliament of Canada. There being no provision in the *B.N.A. Act* expressly contemplating such action, a statute was passed by the United Kingdom Parliament, *The British North America Act, 1871* (34-35 Vic. c. 28 (U.K.)) giving such power to Parliament and expressly validating *The Manitoba Act 1870*. Sections 5 and 6 of the U.K. Statute provide:

> 5. The following Acts passed by the said Parliament of Canada, and intituled respectively, —"An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada;" and "An Act to amend and continue the Act thirty-two and thirty-three Victoria, chapter three, and to establish and provide for the government of the Province of Manitoba," shall be and be deemed to have been valid and effectual for all purposes whatsoever from the date at which they respectively received the assent, in the Queen's name, of the Governor General of the said Dominion of Canada.
>
> 6. Except as provided by the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last-mentioned Act of the said Parliament in so far as it relates to the Province of Manitoba, or of any other Act hereafter establishing new Provinces in the said Dominion, subject always to the right of the Legislature of the Province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly and to make laws respecting elections in the said Province. (S. 3 provides for the alteration of the limits of any Province with the consent of its Legislature)

Although, in a certain way, the whole *Manitoba Act* may be said to be the constitution of the Province, it is apparent that the amending power conferred by s. 92(1) cannot have been intended to apply to the whole of this statute any more than all the provisions of the *B.N.A. Act* touching upon the constitution of the provinces in this wide sense can be said to be subject to it. For instance, the provision respecting education, s. 93, embodies an absolute legal restriction on the extent of provincial legislative power followed by a right of appeal to the federal authority in some cases. This federal power is obviously beyond reach of the provincial amending power and it would be absurd to suppose that the more rigid restriction is subject thereto and may thus be removed at will. The point is of some importance because, as Freedman C.J. noted, s. 22 of the *Manitoba Act* is identical with s. 93 except for the addition of a few words intended to cover its special situation. If the provincial power to amend the Constitution of Manitoba did extend to the whole *Manitoba Act* it would have offered a short answer to the legal challenge of one of its schools acts, but no such contention appears to have been raised in the two cases in the Privy Council referred to in the judgment of the Court of Appeal, namely, *City of Winnipeg v. Barrett* (1892 A.C. 445) and *Brophy v. Attorney General of Manitoba* (1895 A.C. 202). The judgments in those cases as well as in some other cases under s. 93 show that these provisions were considered as entrenched. It is of some significance that the provision respecting language rights immediately follows the provision respecting educational rights in *The Manitoba Act*.

There is a last point which is to be noted. If *The Manitoba Act* is to be taken as the constitution of Manitoba for the purpose of its Legislature's amending power, where will one find the power to amend *notwithstanding this statute?* If reliance is put on the "notwithstanding" in the *B.N.A. Act* it must be observed that it refers to *"this Act"*. Therefore in order to claim some authority under that provision Manitoba must take it as it is and accept that it refers only to such provision as would fall within its scope if included in the *B.N.A. Act*. For reasons already stated, which include those in the other case, the conclusion must be that this does not include language rights. If, on the other hand, *The Manitoba Act* is taken by itself it must be observed that this is a federal statute which means that, unless otherwise provided, it is subject to amendment by the Parliament that enacted it and no other. It is, however, otherwise provided in s. 6 of *The British North America Act 1871*. This section denies any amending power to the federal Parliament and the only amending power it allows to the Legislature of Manitoba is "to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly and to make laws respecting elections in the said Province".

It is unnecessary to consider in the present case whether this enactment implies a restriction of the amending power derived from s. 92(1) by virtue of s. 2 of *The Manitoba Act*. It is enough to note that on any view it certainly cannot result in Manitoba's Legislature having towards s. 23 of *The Manitoba Act* an amending power which Quebec does not have towards s. 133. Section 2 of *The Manitoba Act* reads:

> 2. On, from and after the said day on which the Order of the Queen in Council shall take effect as aforesaid, the provisions of the British North America Act, 1867, shall, except those parts thereof which are in terms made, or, by reasonable intendment, may be held to be specially applicable to, or only to affect one or more, but not the whole of the Provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the Province of Manitoba, in the same way, and to the like extent as they apply to the several Provinces of Canada, and as if the Province of Manitoba had been one of the Provinces originally united by the said Act.

The appeal must be dismissed with costs to the respondent. There will be no costs to or against the intervenors.

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OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES

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The Office of the Commissioner. A bilingual brochure describing the role of the Commissioner of Official Languages and the operations of his office.

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