

**HEADING OFF BILODEAU:
ATTEMPTING CONSTITUTIONAL AMENDMENT**
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Never has litigation been as disruptive in Manitoba as it was during *Bilodeau v. Attorney-General of Manitoba*¹ and the related *Manitoba Language Reference*.² The legal turmoil created by these cases is discussed elsewhere in this volume. This article deals with the intense political controversy that the litigation generated in the Legislative Assembly of Manitoba.

The matter came to the fore in 1983 when Premier Howard Pawley's N.D.P. government proposed amendments to the French language guarantees in the province's constitution to prevent the *Bilodeau* case from proceeding to a hearing by the Supreme Court of Canada. The legislative scene became increasingly bitter, divisive and exciting until February 27, 1984, when, unique to Commonwealth experience, the government called the Lieutenant-Governor to prorogue the House while the division bells, rung to summon members to vote on the first phase of the proposal, were still ringing. Opposition members had refused to return to the chamber in response to the bells, and government attempts to persuade the Speaker to proceed in the absence of the opposition had been unsuccessful. The government finally conceded that the only way to break the impasse was to abandon the proposed amendments and allow the litigation to proceed. This brought an end to the longest session in the history of the provincial legislature.

An attempt is made here to offer a fair representation of this controversial event in hope of providing not only an insight into the legal concerns and politics of language and constitutional change in a Canadian province, but also an opportunity to re-examine the conventional roles of government, opposition and the speakership in the parliamentary system.

Historical Background

The language issue has affected Manitoba's political and social fabric since the province's creation in 1870. The sensitivity of the issue is the result of general non-Francophone uneasiness with state recognition of the French language, a recognition conferred by the federal statute which created the province and which can now be changed only by concurrent resolutions passed by the provincial legislature and federal parliament.³ This uneasiness is fuelled by provincial demographics: the Franco-Manitoban population has shrunk since 1870 from about 50 percent to about 5 percent.⁴

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1. [1981] 5 W.W.R. 393, 10 Man. R. (2d) 298 (C.A.) (hereinafter referred to as *Bilodeau*).
2. *Reference re Language Rights under Section 23 of the Manitoba Act, 1870, and Section 133 of the Constitution Act, 1867*, [1985] 1 S.C.R. 721, 19 D.L.R. (4th) 1, [1985] W.W.R. 385, 35 Man. R. (2d) 83 (hereinafter referred to as the *Manitoba Language Reference*).
3. See *Constitution Act, 1982*, s.43, s.52(2), Schedule 1, item 2, being Schedule B to *Canada Act, 1982*, c.11 (U.K.) (hereinafter referred to as *Constitution Act, 1982*).
4. Statistics Canada, *Language In Canada*, 1981 Census of Canada, Vol. 2 (Ottawa: Minister of Supply and Services Canada, 1982) of Table 1.

The federal statute that created Manitoba, the *Manitoba Act, 1870*,⁵ provides in section 23 that: a) either English or French may be used in legislative debates; b) both languages shall be used in the legislature's records and journals; c) either English or French may be used before the courts; and d) the acts of the legislature must be printed and published in both languages. These provisions comprise some of the terms of the agreement proposed in 1870 by the residents of Manitoba, represented by Louis Riel, and accepted by the federal parliament in admitting Manitoba to Confederation.

After 1870, Manitoba's population grew rapidly and the relative number of Francophones decreased dramatically. By 1875, while representation in the legislature still reflected the linguistic distribution of 1870, anti-French sentiment was becoming increasingly evident. A redistribution of provincial electoral divisions in favour of English-speaking areas in 1878 led to the demise of the use of French in the legislature. In 1879, Anglophone members supported passage of a bill to eliminate the printing of all public documents, except the statutes, in French. Its enactment was denied, however, when the Francophone Lieutenant-Governor reserved the bill.⁶

A watershed was crossed in August, 1889, when the Attorney-General, Joseph Martin, rallied to the anti-French cause of a visiting member of parliament, D'Alton McCarthy, and pledged the abolition of French as an official language or his resignation. He argued: "[T]his is a British country and the business of the House should be done in the general language of the country."⁷ A month thereafter, the cabinet abolished bilingual publication of the *Manitoba Gazette*. When the legislature met in 1890, the *Rules* of the assembly respecting the use of French in the House were repealed,⁸ provisions for Francophone jurors were removed,⁹ publicly funded denominational schools were abolished,¹⁰ and, of special interest here, *The Official Language Act* was passed. It stated:

1. Any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the House of Assembly for the Province of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba. The Acts of the Legislature of the Province of Manitoba need only be printed and published in the English language.
2. This Act shall only apply so far as this Legislature has jurisdiction so to enact, and shall come into force on the day it is assented to.¹¹

The Francophone members and daily petitioners to the assembly avowed that the move was venomous and unconstitutional, given the provisions of the *Manitoba Act, 1870*. The government contended that it was an entirely

5. *Manitoba Act, 1870*, S.C. 1870, c.3, as confirmed by the *Constitution Act, 1871*, enacted as *British North America Act, 1871*, 34-35 Vict., c.28 (U.K.) (hereinafter referred to as the *Manitoba Act, 1870*).

6. Man. Leg. Journals of the Legislative Assembly of Manitoba, 1879, 1st sess. 3rd Leg. at 65 (June 19, 1879).

7. *The Winnipeg Tribune*, February 12, 1980, at 1, col. 1.

8. Man. Leg. Journals of the Legislative Assembly of Manitoba, 1890, 3rd sess. 7th Leg. at 76 (March 7, 1890).

9. *An Act to amend Chapter 17 of 48 Victoria, being "The Administration of Justice Act, 1885", and Amendments Thereto*, S.M. 1890, c.3.

10. *An Act Respecting Public Schools*, S.M. 1890, c.38.

11. *An Act to Provide that the English Language Shall Be the Official Language of the Province of Manitoba*, S.M. 1890, c.14, s.1-2 (hereinafter referred to as *The Official Language Act*).

lawful use of its power, under subsection 92(1) of the *Constitution Act, 1867*,¹² to amend the constitution of the province. In Ottawa, the Governor-General, to whom Francophones had appealed to disallow the *Act*, declined to do so. He decided:

... [T]here can be little doubt that a decision of the legal tribunals will be sought at an early date as to the validity of the present legislation. A judicial determination of the question will be more permanent and satisfactory than a decision of it by the power of disallowance.¹³

The Governor-General was certainly right when he predicted an early challenge to the *Act*. In 1892 it was declared unconstitutional by a County Court.¹⁴ The Governor-General was certainly wrong, however, when he predicted that a judicial determination would be effective. This court decision, and a similar decision in 1909,¹⁵ were simply ignored by successive governments. Eighty-six years later, the Supreme Court of Canada finally heard a challenge to the *Act* regarding its restriction on the right to use French in the courts of Manitoba. In *Attorney-General of Manitoba v. Forest*¹⁶ the Court declared the *Act ultra vires* or inoperative insofar as it violated section 23 of the *Manitoba Act, 1870*. Subsection 92(1) of the *British North America Act, 1867*, which gave the provinces power to amend their constitutions, was held not to apply to those provisions of the *Manitoba Act, 1870* respecting language rights.

The then Progressive Conservative government then introduced *An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*¹⁷ to repeal *The Official Languages Act* and to establish a procedure for the enactment to bilingual legislation. The government also announced that, in order to meet both the spirit and legal requirements of the Supreme Court ruling, translation services would be expanded to make legislative and some public information documents available in French and English. A French Language Services Secretariat was established to recommend improved services in French, and some services were provided to enable the use of French in the courts.

In December, 1982, the subsequent N.D.P. government installed an interpretation booth in the legislative chamber so that members would be able to have their speeches interpreted simultaneously from French to English on request (in 1982, 3 of the 57 members were Francophone). This action was taken solely by the government without consultation with either the Speaker or the opposition. It signalled the government's intention to initiate further French language services.

But very little was done to enact French versions of Manitoba's statutes, most of which were still solely in English. The clincher came in 1981. In

12. *Constitution Act, 1867*, enacted as *British North America Act, 1867*, 30-31 Vict. c.3, (U.K.) (hereinafter referred to as the *Constitution Act, 1867*).

13. *Manitoba Daily Free Press*, April 11, 1891, at 1, col. 3-4.

14. *Pellant v. Hebert* (1981), 12 R.G.D. 242.

15. *Bertrand v. Dussault*, Man. Co. Ct. unreported, Prud'homme Co. Ct.J., Jan. 30, 1909, reproduced in *Forest v. Registrar of Manitoba Court of Appeal*, [1977] 5 W.W.R. 347 at 361, 77 D.L.R. (3d) 445 at 458 (Man. C.A.).

16. [1979] 2 S.C.R. 1032, 101 D.L.R. (3d) 385, [1980] 2 W.W.R. 758, 2 Man. R. (2d) 109; aff'g (1979), 98 D.L.R. (3d) 405, [1979] 4 W.W.R. 229 (Man. C.A.) (hereinafter referred to as *Forest*).

17. *An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, S.M. 1980, c.3 (S207).

that year, Roger Bilodeau, a Francophone, sought the dismissal of a speeding charge on the grounds that *The Highway Traffic Act*¹⁸ and *The Summary Convictions Act*,¹⁹ under which he had been charged and the summons issued, were invalid because they were printed in English only, contrary to section 23 of the *Manitoba Act, 1870*, which prescribed the bilingual publication of all acts of the legislature.

On July 7, 1981, the Manitoba Court of Appeal rejected Bilodeau's argument in a split decision on the ground that the provisions of section 23 were directory and not mandatory. Freedman C.J.M. reasoned:

One of the tests for determining whether a statute is mandatory or directory is the degree of hardship, difficulty or public inconvenience that will result from treating it as mandatory. The rationale for this approach is that the legislature could not have intended widespread chaos to be the consequence of non-compliance with a particular statute.²⁰

The Chief Justice then concluded that: "In the case before us the chaos that would result from declaring section 23 as mandatory or imperative would be monumental."²¹ Bilodeau appealed to the Supreme Court of Canada and arguments were scheduled to be heard in November, 1982.²² However, Bilodeau agreed to have the hearing postponed pending the developments described below.

The Agreement

The appeal was of grave concern to some senior officials and to the Attorney-General, Roland Penner. Their approach to the matter was based largely on the opinions of the government's counsel for the *Forest* and *Bilodeau* cases, A. Kerr Twaddle Q.C. (now Twaddle J.A.), and Dale Gibson, Professor of Law at the University of Manitoba, who was contracted by the Attorney-General to advise on this issue. Legal opinions from these two counsel were received in April and May, 1982.²³

Mr. Twaddle advised that it was open to the Supreme Court to find that: a) all statutes not enacted in English and French are invalid; b) all statutes passed before *Forest* are, of necessity, valid, but, those subsequently enacted in English only are invalid; or c) all statutes enacted before *Bilodeau* is decided are, of necessity, valid, but those enacted subsequently in English only are invalid.²⁴ He noted that in *Attorney-General of Quebec v. Blaikie*,²⁵ which involved a similar constitutional requirement affecting Quebec,²⁶ the Supreme Court of Canada had held that it was a constitutional requirement that statutes must be *enacted*, and not merely subsequently *printed and published*, in English and French. With regard to

18. *The Highway Traffic Act*, R.S.M. 1970, c.H60.

19. *The Summary Convictions Act*, R.S.M. 1970, c.S230.

20. *Supra* n.1, W.W.R. at 401.

21. *Ibid.*

22. Leave to appeal granted (1981), 10 Man. R. (2d) 180. See also on the procedural point: *Bilodeau v. Attorney-General of Manitoba* (1982), 17 Man. R. (2d) 438 (C.A.).

23. Tabled in the Legislative Assembly of Manitoba, June 6, 1983.

24. Legal opinion of A. Kerr Twaddle Q.C., filed in Legislative Library as Tabled Paper No. 60 at 3.

25. [1979] 2 S.C.R. 1016, 101 D.L.R. (3d) 394, 30 N.R. 225.

26. *Constitution Act, 1867*, s.133.

option a) above, he warned of “total chaos” should the Supreme Court decide that section 23 contained a mandatory requirement, since statutes were not enacted in both languages even before 1890. Even if option b) was adopted by the Court, he advised that there would, nonetheless, be uncertainty as to the status of statutes passed since 1979. He also doubted the constitutional validity of the translation process set out in *An Act Regarding the Operation of Section 23 of the Manitoba Act in Regard to Statutes*.²⁷

Twaddle then stated that if an amendment was sought to the *Manitoba Act, 1870*:

... [P]rovision should be made for the validation of all Manitoba statutes hitherto enacted in English only. Presumably the federal government would only agree to this on condition that some or all existing statutes are translated into French within a stipulated period. ... [T]he federal government might be prepared to agree that only some of the present statutes need to be translated. ...

In return for waiving their existing right to have all statutes translated, the Societe Franco-Manitobaine would require a constitutional extension of their language rights. This ... essentially would give a constitutional right to French speaking Manitobans to receive bilingual services from government and its agencies where there is a significant demand for such a service or where it is reasonable due to the nature of the office that communications be in both official languages. ...²⁸

He warned, however:

It will be appreciated that such a constitutional extension cannot be imposed on Manitoba. As there remains an excellent chance of success in *Bilodeau* before the Court, careful consideration should be given as to whether it should be agreed to as the price for relief from the obligation to translate all existing statutes. The difficulty with the suggested extension of constitutional rights is that the extent to which bilingual services must be made available is unknown. At present the government can itself decide and alter the provision of such services on grounds of cost or lack of demand as perceived by the government. ...²⁹

He concluded that two options were open to the government:

1. To proceed to respond to *Bilodeau's* appeal in the hope that the Court will decide that section 23 is directory only whereupon the obligation to translate will be unenforceable. Even if the Court found the requirement mandatory it might find existing statutes valid out of necessity. In either such event Manitoba would be in substantially the same position as if the constitutional amendment were passed, but without any constitutional guarantee of additional language rights. If the Court found all existing legislation invalid (which I consider unlikely) it is inconceivable that a way could not be found to validate existing laws.
2. To seek the constitutional amendment now to ensure (as far as possible) that chaos would not result from an adverse decision. This would mean conceding that the requirement of enactment in both languages would be mandatory in future and agreeing to a guarantee of extended language rights. Such amendment would have to have the approval of the federal government and likely that of Societe Franco-Manitobaine. A further difficulty is the time factor. ... [A] constitutional amendment should be approved by the Manitoba legislature in its current session and by parliament before it recesses for the summer.³⁰

Mr. Gibson advised that a constitutional amendment would be preferable before *Bilodeau* was decided. He stated:

27. *An Act Regarding the Operation of Section 23 of the Manitoba Act in Regard to Statutes*, S.M. 1980, c.3 (S207).

28. *Supra* n. 24, at 11.

29. *Supra* n. 24, at 11.

30. *Supra* n. 24, at 12.

I share Mr. Twaddle's opinion that if the case proceeds to a final determination by the Supreme Court of Canada the constitutional validity of the statute in question will probably be upheld. However, I do not regard that as an altogether foregone conclusion. While, as a practical matter, the Court will certainly want to find a way of avoiding the chaos that would attend a ruling that all unilingual Manitoba statutes are nullities, strong arguments can be made, from a purely legal point of view, in support of Mr. Bilodeau's position. Where a constitutional requirement that is neither ambiguous nor discretionary governs the manner in which certain laws are to be enacted, the normal consequence of non-compliance is invalidity.³¹

He further advised:

The consequence of a ruling that all or most Manitoba statutes and regulations are unconstitutional would be chaotic. Mr. Twaddle says that in that event, 'it is inconceivable that a way could not be found to validate existing laws,' by which I assume he means a retroactive constitutional amendment. But the uncertainty that would prevail until a suitable remedy could be found would be an open invitation to anarchy. And the government whose lack of foresight allowed the situation to develop would be severely criticized.

Moreover, even if the Supreme Court agreed with the Court of Appeal in upholding the validity of provincial legislation there could be unfortunate consequences. A ruling that language guarantees in the Constitution are merely 'directory', not 'mandatory', could be a serious blow to the respect accorded to the new *Canadian Charter of Rights and Freedoms* by the public and the courts.³²

Gibson agreed that *An Act Respecting the Operation of Section 23 of the Manitoba Act* was open to constitutional challenge, and concluded:

These factors, together with the fact that the government of Manitoba may not wish to be seen publicly advocating a restrictive or grudging approach to the constitutionally entrenched rights of Manitobans, seem to me to provide strong reason for seeking an immediate solution to our language-of-legislation problem through constitutional amendment.³³

Opting for a negotiated rather than an imposed solution, the provincial government initiated talks with Bilodeau, the Societe Franco-Manitobaine and the federal government, which eventually led to an agreement. Essentially, this agreement provided that Bilodeau would not proceed with his case if the provincial (and federal) government would introduce an amendment to the *Manitoba Act, 1870*. The amendment provided that: a) instead of translating all existing laws, only major statutes affecting the general public would be translated over a grace period, with federal government financial assistance, and, *in exchange*, b) English and French were to be explicitly declared the official languages of Manitoba, and c) certain French language services at government offices would be guaranteed. The latter provision was very similar to section 20 of the *Canadian Charter of Rights and Freedoms*³⁴ (see Appendix A for the text of the proposed amendment).

The Legislative Battle

The talks leading to the proposed amendment had begun in earnest by the summer of 1982. The issue did not find its way to the floor of the legislative assembly, however, until May, 1983, about a year later.³⁵ In the meantime, the Progressive Conservative opposition had been informed by

31. Legal opinion of Dale Gibson, filed in Legislative Library as Tabled Paper No. 61 at 2.

32. *Ibid.*, at 7.

33. *Ibid.*, at 9.

34. *Canadian Charter of Rights and Freedoms*, being Part I of *Constitution Act, 1982* being Schedule B to *Canada Act, 1982*, c.11 (U.K.).

35. Standings in the legislature were: New Democratic Party (NDP)-33; Progressive Conservative (PC)-23; Independent-1.

letter of the negotiations and had been sent a copy of the current draft agreement in December, 1982, by the Attorney-General.³⁶ No reply was made to this correspondence, nor was a follow-up letter sent. When Sterling Lyon, Leader of the Opposition, first raised the issue in the House, it was in response to an announcement made by Prime Minister Pierre Trudeau to a gathering of local Liberals that negotiations had been completed to better ensure official bilingualism in Manitoba. Lyon attempted to seek out assurances from Premier Howard Pawley that the government would consult the legislative assembly and the people of the province by way of legislative committee hearings on the contents of the agreement before cabinet finally ratified it.³⁷

Two days later, the Attorney-General formally announced the agreement in the legislature.³⁸ If the government believed the opposition would share its glee over the negotiations and the indefinite adjournment of the *Bilodeau* case, it was in for a painful surprise. The battle lines were drawn when Lyon immediately rejected the deal on three counts: 1) the legal rights granted to Francophones in 1870 were fully restored in 1980 and so the agreement went far beyond anything that the Supreme Court would impose; 2) Bilodeau would likely lose his case: "[T]he courts cannot impose the impossible, any more than King Canute can hold back the tides"³⁹; and 3) further action on the matter should be suspended until an inter-sessional legislative committee heard public representations on the issue. He argued: "[A]greements which go beyond the spirit and intent [of the *Manitoba Act, 1870*], which could divide our province and its social fabric are not in the public interest."⁴⁰

Russell Doern, an N.D.P. backbencher and former cabinet minister, also opposed the government's plan. Frustrated by what he argued was a hasty and ill-conceived agreement and opposed to extended guarantees of French language services, he mailed a questionnaire to his constituents on June 8 seeking their opinion as to whether or not they favoured extending French language services. This immediately raised the wrath of most of his colleagues in the N.D.P. caucus. The fury of many was often exhibited in the chamber as Doern sat in their midst as an untouchable. He continued to speak out. On June 22 he was asked by the Premier not to attend caucus meetings until the issue was resolved. By late June he had released his poll results which showed 93% of 433 respondents opposed extending French language services as proposed by the government.⁴¹ The poll can be criticized for not explaining the legal bind the government believed it was in, but Doern's campaign attracted much attention. Then other public figures got involved. Some municipalities passed resolutions against the proposal and opponents began to form small groups, frequenting the Legislative Building and voicing concern to the members.

36. Tabled in the Legislative Assembly of Manitoba, May 20, 1983.

37. Man. Leg. Debates, 2nd Sess. 32nd Leg. at 2878 (May 20, 1983).

38. *Ibid.*, at 2974 (May 20, 1983).

39. *Ibid.*, at 2977 (May 20, 1983).

40. *Ibid.*, at 2978 (May 20, 1983).

41. Mr. Doern surveys his role in his book, *The Battle Over Bilingualism* (1985).

On June 17, in answer to questioning by Lyon, the Premier made it clear in the legislative assembly that there would be no legislative committee hearings on the proposal but only "information meetings" held by the government.⁴² The Attorney-General further stated that changes to the proposed resolution to amend the constitution could not be made.⁴³ When Lyon failed to obtain a promise of reconsideration or an assurance that the Premier would call an election on the issue, the opposition moved to adjourn the House and, for the first time, walked out when the division bells rang. This tactic, which halted the business of the House, was made possible by the practice that the bells which summon members to the House for a standing vote are not turned off, and the vote taken, until the whips⁴⁴ so instruct.⁴⁵

Hoping to allay the growing signs of public apprehension about the language proposal, the government changed its approach. Ten days later, the Premier announced that committee meetings would be held but that they would not be scheduled intersessionally.⁴⁶

On June 29, a small public demonstration was staged at the Legislative Building. That afternoon, the Attorney-General, who was also House Leader, rose and announced the day's House business. He then announced that the government would hold several meetings in the province from July 7 to 14, chaired by the Dean of the Manitoba Law School, Jack London, to inform citizens of the government's intentions. Lyon was incensed. In a fury he lashed out:

Is [the Attorney-General] telling us that it is House business that the Dean of the Law School and departmental officials of his department constitute some institution or some committee of this House that will go out and propagandize the position of this government on the amendment to section 23 that they are bringing in? Is that his position? Because if that is the case, he should have made a statement to the House at the beginning about what the intention of this government was in its little propaganda venture. That has nothing to do with a committee of this House sitting properly and hearing representations from the public. This is a unilateral, authoritarian decision being made by an incompetent government to deal with one of the most fundamental constitutional amendments that this province has seen.

... [a]nd worse still — is this First Minister trying to let this Attorney-General weasel that kind of an arrangement before the House without any debate, this bunch who say they believe in open government and free debate? What kind of people, what kind of a display of authoritarianism are we seeing from this ill-considered Attorney-General?⁴⁷

The Attorney-General reacted angrily, apparently surprised at the outburst. Despite the Attorney-General's promise that a proposal would be referred to the Standing Committee on Privileges and Elections, the opposition again moved to adjourn the House and walked out until the end of

42. Man. Leg. Debates, 2nd Sess. 32nd Leg. at 3770 (June 17, 1983).

43. *Ibid.*, at 3771 (June 17, 1983).

44. A member of each caucus is appointed as 'whip' to ensure attendance in the House, particularly when votes are taken.

45. Bells, which are actually electronic buzzers, are deactivated, originally as a courtesy, and now as a tradition, when the whips of the government and official opposition caucuses advise the Deputy Sergeant at Arms that the caucus's members are present for a vote. A similar practice is followed in several Canadian legislatures and in the federal House of Commons. Bell-ringing has been used as an obstruction tactic in the federal House of Commons, Ontario, Manitoba, and Saskatchewan. Most other legislatures have time limits on the ringing of the bells.

46. Man. Leg. Debates, 2nd Sess. 32nd Leg. at 3957 (June 27, 1983).

47. *Ibid.*, at 4046 (June 29, 1983).

the day's sitting. The opposition had declared war over the issue and were clearly prepared to use dramatic tactics.

When the resolution to amend the *Manitoba Act, 1870* was introduced for debate in the legislature on July 4, the Attorney-General sought its approval, but not merely on the basis of an attempt to head off a legal problem. He also contended that a political solution was preferable to a court-imposed solution, that Canadian unity would be strengthened, that the former and present governments were expanding French language services anyway, and that the resolution would maintain the Franco-Manitoban community as a viable entity without imposing obligations on non-Francophones. The government had meanwhile widely distributed a pamphlet throughout the province explaining the proposal. While the opposition charged that the agreement would expand French language rights, the government argued that it was refining and containing those rights.

The issue quickly overshadowed legislative debate on other contentious bills. On July 22, the government introduced a motion which sought to refer the subject matter of the language resolution to the Standing Committee in order to solicit the views of Manitobans. The motion proposed that the Committee report during the current session. The opposition favoured referral, of course, but rejected the proposition that the Committee report at the current session on the assumption that this would likely allow very limited time for public hearings since the session's business was then nearing completion. As well, Lyon argued that recent experience had shown that committees meeting simultaneously with the House caused undue disruptions.⁴⁸ Opposition amendments proposing that the Committee sit after prorogation were defeated by the N.D.P. members. These were bitter proceedings, marked by intemperate language, personal insults, and inordinate heckling by members. Visitors in the galleries were surely stunned at times by cries that ranged from 'empty-headed baboon' to 'bigot', 'zealot fool' and even references to a Francophone member as 'Kermit (the frog)'. These were difficult times for the members and the Speaker. The summer's temperatures had made the Legislative Building's corridors sultry. The heated words and lost tempers that marked the fierce political battle in the chamber made things worse. Most significant at this time, however, were the persistent opposition obstruction tactics such as filibustering and, particularly, walkouts when the division bells rang.

On August 12, the referral motion was passed after both sides of the House signed an agreement which guaranteed that up to three weeks would be allowed for Committee hearings throughout the province during a House recess, and that all subsequent bell-ringing would be limited to two weeks' duration. A few days later, the House adjourned until a date to be decided by the government.

Over the course of a month, the Committee received 305 oral presentations and 99 written briefs. The hearings were sometimes stormy and they received significant media attention. Presentations ranged from the philo-

48. *Ibid.*, at 3770 (June 17, 1983).

sophical to the practical to the luridly bigoted. The government was certainly not without support for its proposal, but it was clear that there was significant criticism. This became more evident when plebiscites held in areas containing the majority of the province's population later confirmed that 70 to 80 per cent of those who voted rejected the proposal. By January, 1984, observer and political columnist Arlene Billinkoff lamented that "the long and painful journey has seriously divided the province".⁴⁹

Any hope of an improved climate in the New Year was short-lived. The legislative assembly reconvened on January 5 after a nineteen week adjournment. Amid stern faces, the assembly received the report of the Standing Committee upon a recorded vote. The report recommended that the assembly proceed with the resolution, but that it be amended to delineate, more explicitly, the government's responsibility with respect to the provision of communications and services in English or French, and that municipalities and school boards be specifically exempted from having to provide such services.

The newly appointed government House Leader and minister responsible for the resolution, Andy Anstett, then moved an amendment to the constitutional resolution to strike out the provision respecting communications between the public and certain government institutions in English and French and to make other relatively minor changes (see Appendix B). The minister then proposed Bill 115, "An Act Respecting the Operation of Section 23 of the Manitoba Act", to require the provision of French and English services at principal administrative offices of government departments, courts, quasi-judicial bodies, crown corporations and other government agencies. The Bill provided for language service districts, where English and French services would be available if the numbers warranted, according to a prescribed formula. The Bill also proposed the appointment of a Language Services Ombudsman to enforce the legislation, as well as an advisory council to deal with the implementation of services and recommend legislative changes. This was the government's compromise, introduced in response to the issues raised at the public hearings and the Committee's recommendations.

This new proposal had been explained to the newly elected leader of the Progressive Conservative Party of Manitoba, Gary Filmon, two days before the House reconvened. Anstett had claimed that the proposal met "virtually all the objections that have been raised" by the opposition.⁵⁰ The next day, Filmon had rejected the proposal as unwarranted and too costly. He was reported as stating:

I think that if you're expanding any minority rights at the expense of a majority, then you have to be concerned with the effects . . . you have to look at the practicality. If it means duplication of positions, of services and additional costs, is it a priority . . . and what does it accomplish?⁵¹

49. *Winnipeg Free Press*, January 5, 1984, at 7, col. 1.

50. *Winnipeg Free Press*, January 4, 1984, at 4, col. 6.

51. *Winnipeg Free Press*, January 5, 1984, at 1, col. 5-6.

Anstett seemed bitterly disappointed and lashed out in a press interview at the proposal's opponents for what he called their "tactics of misinformation, playing to the gallery of emotion".⁵²

It is Manitoba practice that the government House Leader calls the order of daily legislative business. For four consecutive days, when the second reading motion on the language Bill was called, the opposition moved to adjourn the House, and, when the division bells rang, refused to return before the daily adjournment. The opposition maintained that the Bill be dealt with after the constitutional resolution because it was consequential to the latter. More important, however, was their concern based on a legal opinion from Rae Tallin, Legislative Counsel.⁵³

Section 23.1 of the Constitutional Resolution stated:

As English and French are the official languages of Manitoba, the freedom to use either official language enjoyed under the law of Manitoba in force at the time this section comes into force shall not be extinguished or restricted by or pursuant to any act of the legislature of Manitoba.

Tallin interpreted this section as follows:

In my view, the courts would probably give a very broad meaning to the word freedom. This broad meaning would probably include all rights and privileges bestowed on persons under the law of Manitoba whether the law was statutory or common law. In view of the fact that Bill 115 bestows statutory rights on persons to use either English or French in certain areas of government activity, it seems to me that this kind of right would probably be considered as coming within the expression of freedom to use in the proposed section 23.1 of the *Manitoba Act*.

Bill 115, or at least those provisions of it which bestow rights, does not come into force until proclamation. Whether Bill 115 were included in the freedom referred to in 23.1 of the *Manitoba Act* would therefore depend on the date fixed for the coming into force of Bill 115 and the date fixed in the proclamation of the Governor-General bringing the amendments to the *Manitoba Act* into force. If the date fixed by the Governor-General in the constitutional amendment proclamation is earlier than the date fixed in the proclamation for bringing into force Bill 115, then the rights bestowed under Bill 115 would not be part of the freedom to use either language under the law in Manitoba in force at the time of the coming into force of the amendments to the constitution.⁵⁴

On the fifth day of the sittings in 1984, the opposition moved an amendment which, if passed, would have killed the Bill. The following day, Anstett gave notice of closure for the first time since 1929⁵⁵ and on January 24 closure was moved and adopted. The Bill was then sent to Committee, where 57 public representations were heard. Detailed consideration of the Bill by the Committee was postponed, pending the adoption of the constitutional resolution by the House.

By late January and early February, an organization formed earlier to oppose the government's plan, "Manitoba Grassroots", was instrumental in organizing protest. Newspaper ads and rallies, notably a well attended dem-

52. *Winnipeg Free Press*, January 6, 1984, at 3, col. 5.

53. Tabled in the Legislative Assembly of Manitoba, January 15, 1984.

54. Legal opinion of Rae Tallin, filed in Legislative Library as Tabled Paper No. 112 at 1-2.

55. *Man. Leg. Journals of the Legislative Assembly of Manitoba*, 1929, 2nd Sess. 18th Leg. at 179 (May 3, 1929).

onstration of opposition held at the Winnipeg Convention Centre on February 2, attracted province-wide attention.

Meanwhile, in the legislative assembly, opposition to Anstett's amendment to the constitutional resolution mainly took the form of a rejection of the wording of the proposed section 23.1, which stated, "As English and French are the official languages of Manitoba". The opposition moved a sub-amendment which sought to delete this section. It was argued that, although the earlier proposal to entrench the right to government services in French had been removed, the new text would still affect matters beyond court services and the operation of the legislature. This position was taken by the opposition despite a legal opinion from Twaddle which advised:

The revised form of section 23.1 does not declare English and French as official languages. Instead it provides that because they already are the official languages (which can only refer back to section 23) the freedom to use either such language as enjoyed presently under the law shall not be restricted. The operative part of the section is the restraint on restricting existing freedoms. The section does not create official languages: it gives as the reason for the enactment of the restraint the existing fact that the two languages are official – official to the extent their use is permitted or required under section 23. It is, in my opinion, clear that the section is not intended as adding any further right to the use of either official language than exists at the present time.

Notwithstanding my strongly expressed opinion it is possible for a court to reason that if the two languages are official there must be an implied right to use either in official business, i.e. with government, or to use this same reasoning to give a broader interpretation to section 23 than has been given to it to date. Whether a court would likely recognize rights as being created by the first part of section 23.1 would depend of the circumstances in which the issue was raised. I regard it as a remote possibility.⁵⁶

The opposition argued that a "remote possibility" was still a possibility.

After some debate on the sub-amendment, closure was again moved. In response to the closure motion, the opposition walked out on seven successive days while the division bells rang. The bells were deactivated each day at the regular time of adjournment because the divisions were not on matters of substance but simply concerned the internal ordering of legislative business. After Anstett announced that the Speaker, D. James Walding, had told him he would not intervene in the bell-ringing, Anstett moved, as a matter of privilege,⁵⁷ a motion seeking referral of the matter of bell-ringing to the Rules Committee and an interim imposition of a two hour limit on bell-ringing in order to stop what he charged was obstruction and a contempt of the legislature.⁵⁸

When the Speaker concluded that there was *prima facie* evidence of a breach of privilege, and proposed the motion to the House,⁵⁹ the government moved the "previous question"⁶⁰ at once. This debateable motion ("that the

56. Legal opinion of A. Kerr Twaddle Q.C., filed in Legislative Library as Tabled Paper No. 104 at 1, and tabled in the Legislative Assembly of Manitoba, January 5, 1984.

57. A matter of privilege deals with a contempt of the legislature or an allegation of interference with the constitutional functions and rights of the legislature or its members. Debate on the matter takes precedence over other business if the Speaker decides there is a *prima facie* case and if the matter is raised at the earliest opportunity.

58. Man. Leg. Debates, 2nd Sess. 32nd Leg. at 5868 (February 6, 1984).

59. *Ibid.*, at 5890 (February 8, 1984).

60. When a motion is being considered, this motion may be moved to restrict debate. No member may then speak more than once, and the original motion may not be amended.

question be now put") was debated until every member of the opposition had spoken. When the vote was called, the opposition again decided not to respond to the summons of the division bells. Unlike votes on the closure motions, which the Speaker ruled became redundant at the time of daily adjournment, a vote on this substantive matter meant the bells would ring continuously. It was twelve days before the bells were turned off.

The Obstruction

Obstruction is as old as parliament itself. It is perhaps a regrettable part of parliamentary activity because it tends to discredit the institution, but it has been argued that under certain circumstances it is an appropriate tool in the public interest. As the Rt. Hon. Lord Morrison of Lambeth states in his book, *Government and Parliament*:

Even if a government has a working majority there is a duty upon it to avoid highly controversial legislation or administrative policies for which it has no proper mandate from the people, unless circumstances have arisen which make action necessary in the public interest. If the opposition is to be given no moral case for obstruction, the government must 'play the game' and respect the principles of parliamentary democracy, otherwise representative government will be endangered. However, the public interest comes first, and if action is necessary to protect it, action must be taken.⁶¹

Obstruction tactics are being progressively eradicated by procedural changes, usually after bouts of obstruction. For example, interruptions in the daily schedule have been limited by restrictions on the use of procedure-related, dilatory motions; filibuster has been contained by limits on members' speaking time, fixed times of adjournment, and rules against irrelevance and repetition during speeches. Of course as a corollary, the executive is afforded more clout by each of these limits on obstruction.

Executive dominance is almost taken for granted today in many Westminster-model parliamentary democracies. However, constitutional expert Eugene Forsey reminds us that: "Parliament is not a mere creature of the Cabinet, deliberating only when, for so long, and under such conditions as the Cabinet thinks fit; pronouncing or not pronouncing judgment as the Cabinet may choose".⁶² George Bain, a Canadian political observer, perceives an ironic correlation between government power and obstruction, and warns that the growing power of the executive

... is accountable for the use of more and more drastic measures — the 1983 shutdown of the Canadian House of Commons while the bells rang, for notable example — to focus attention. It has become the case that only if a generally torpid public opinion can be somehow galvanized is there a hope that the gross disproportion of executive power can be redressed.⁶³

Bell-ringing is a relatively new-found opposition tactic and one that appears to be unique to Canada. It was virtually overlooked until it was used in the federal House of Commons in the spring of 1982. As a tactic, however, it is perceived as particularly distasteful. Parliamentary business

61. (1959) at 112.

62. *The Royal Power of Dissolution of Parliament*, (2nd ed. 1968) at 258.

63. *Quest*, March, 1984, at 58.

is stalled, not by debate and filibuster, but by extra-parliamentary action. This contradicts the very meaning of the word 'parliament'.

The perceptions held by government, opposition and the Speaker of their respective roles, and the opinions of the press were clearly exposed by Manitoba's bell-ringing episode. Bud Sherman, Deputy Leader of the Opposition, justified the opposition's action by saying: "[F]aced with authoritarian government, faced with a government that is going to act despite the wishes of the people . . . all civilized mechanisms in defence of democracy and in defence of the public are legitimate". The obstruction was crucial, he argued, because it made it possible "for the public and the media to participate in the debate".⁶⁴ On the other hand, government House Leader Anstett argued: "[T]he unlimited possibilities for obstruction, by a minority or by an opposition, of the right of government to have its legislation proceed to enactment . . . would make the opposition the government. It would make the right of government to propose and enact — one of the basic principles of parliamentary law — a nullity".⁶⁵ Speaker Walding disagreed on this point. He claimed: "There is no right of government that would see its proposed legislation enacted. There are numerous examples of government bills introduced into the House and not proceeding into legislation".⁶⁶

Premier Howard Pawley wrote to the Speaker several days into the final bell-ringing incident and asked him to advise the whips when the votes on the previous question and matter of privilege would be held, and told him the N.D.P. members would be in the House at a certain time that day for those votes. In his letter, the Premier argued:

There can be no more serious attack upon the House than a deliberate decision to prevent the members from protecting their right and privilege to duly execute the power of the legislative assembly. This defiance of the rights of the assembly also attacks the constitutional principle of responsible government. A fundamental right of the House is that a majority of members may form a government and assure it of support. The operation of this constitutional principle ensures that the choice of the electorate, expressed at a general election will be respected.

He continued, "The opposition had an unusually full opportunity to question and debate the matter of privilege. The rights of the minority in the House have thus been respected".

The Speaker replied to the Premier as follows:

The rules and procedures of the legislature are well-known and well-established. They constitute a clear set of procedures which the House expects to be enforced by its Speaker with fairness and impartiality. . . . Since the House is close to effecting a change in its rules, I am surprised that you would request that I contravene the existing rules and procedures at this time. Any unilateral action on my part could only be a betrayal of the impartiality of the Chair and would seriously undermine the integrity of the speakership.

The Speaker's referral to "the existing rules" reflected the fact that on two occasions the House Rules Committee had decided against a time limit on

64. Man. Leg. Standing Committee on the Rules of the House, *Proceedings*, 3rd Sess. 32nd Leg. at 25 (Apr. 17, 1984).

65. Man. Leg. Debates, 2nd Sess. 32nd Leg. at 5643-4 (January 23, 1984).

66. *Ibid.*, at 5890 (February 8, 1984).

bell-ringing,⁶⁷ and that the House always concludes divisions on substantive motions before adjourning, even when doing so may extend a sitting beyond the ordinary time for adjournment.

The Globe and Mail dismissed the Speaker's decision. An editorial stated: "[S]peakers are frequently called upon to take 'unilateral action' — that is, to make a decision which may please one side and displease another. It goes with the job and it has not, so far as we can see, undermined the integrity of the office".⁶⁸ The *Winnipeg Free Press* also criticized the Speaker. The paper argued: "[S]urely tradition and precedent demand that the first duty of the Speaker is to ensure that the institution can function".⁶⁹ The Speaker believed that, as the servant of the House, he must apply the rules and precedents developed by the House and could not create new precedent. It was up to the House to determine its own procedures and ensure its functioning in this case.

The Speaker was conscious of a lack of precedent to justify silencing the bells. Could a vote be taken with the opposition absent? Many argued that Speaker Walding should have created precedent. Manitoba rules and practice however prescribe that the usages and customs of the federal House of Commons must be followed in the absence of Manitoba procedure, so far as they are applicable. The Speaker of the House of Commons, Jeanne Sauve, had likewise refused to intervene in bell-ringing standoffs.⁷⁰ As Philip Laundry argues:

A discussion of the Speaker's impartiality normally lays stress on his duty to protect the rights of minorities. This is a duty of which no Speaker ever loses sight, but impartiality also implies a regard for the rights of the majority as well as minorities, and in a modern parliament no Speaker can ignore the claims of a hard-pressed government striving to achieve its legislative programme.⁷¹

Sauve acknowledged that she was obliged to protect the minority against oppression and to protect the majority against obstruction. She admitted, however, that she could do nothing to reconcile these two obligations in a bell-ringing situation and still remain impartial.⁷²

The Premier and House Leader appear to have based their argument against obstruction on an interpretation of some opposition statements that, despite the earlier opposition pledge to limit bell-ringing to two weeks' duration, they never intended to return to the chamber. Never. Is it right that our system could allow a minority to walk out of a legislature, even within the rules, and force an election by doing so? Should duly elected governments be susceptible to this peril? However, was the opposition really

67. Man. Leg. Standing Committee on the Rules of the House, *Proceedings*, Intersessional (October 14, 1971 and September 21, 1982).

68. *The Globe and Mail*, February 28, 1984, at 6, col. 1.

69. *Winnipeg Free Press*, March 5, 1984, at 6, col. 2.

70. The Speaker did not intervene in March, 1982, when a vote was held on a dilatory motion. On subsequent votes on dilatory motions, the bells were turned off only at the time of daily adjournment when the motion became redundant. There have been no interventions in bell-ringing on substantive motions.

71. "The Speaker and His Office In the Twentieth Century" in *The House of Commons in the Twentieth Century* (S.A. Walkland ed. 1979) at 125.

72. Can. H. of C. Debates, 1st sess. 32nd Parl. at 15555-7 (March 18, 1982). See also *Winnipeg Free Press*, April 5, 1984, at 7, col. 1.

using obstruction to "stop dead the democratic process", as the *Winnipeg Free Press* argued,⁷³ or was the bell-ringing just another legitimate stalling tactic? Just as the government took a political risk when it introduced the language proposal, the opposition also took a risk when it walked out. If, in a parliamentary system, each side can justify its actions on the grounds of the public interest, are those actions then legitimate and is it up to public pressure to determine the apparent winner? Should the citizenry and opposition have to accept government policies, whether or not they involve constitutional changes, and await an election to express dissatisfaction?

Intransigence and Decision

A significant point of contention between the government and the opposition was that the written agreement of August 12, which stipulated that bell-ringing would be limited to two weeks, had been breached by the other party. The opposition claimed that the government had breached the agreement by, first, moving the privilege motion to put a limit on bell-ringing and, second, by asking the Speaker to intervene before two weeks had expired. The government claimed that the opposition had breached the agreement because of the government's interpretation of some opposition statements which led the government to believe that the opposition would not return to the House until the constitutional resolution was dropped.

On February 24, two days after the Premier requested the Speaker to announce the time for a vote, the Speaker organized a meeting with the House Leaders. The purpose of the meeting was to bring the Speaker up to date on negotiations, and to offer his assistance in finding a solution to the impasse. Both sides remained intransigent, however, and no hope for a solution was realized. At this time there was speculation that the government was considering having the legislature prorogued.

On the same day, the federal House of Commons adopted a resolution, introduced by unanimous consent and agreed to by all parties, which urged the Manitoba legislature to pass the constitutional resolution.⁷⁴ This initiative followed an earlier federal resolution, passed in October, 1983, which had a similar but less urgent message.⁷⁵ Federal legislators, by their very mandate, take a national approach to policy-making. By the mid-1970's a policy of national bilingualism had been put in place which, although only affecting areas under federal authority, was based on the principle of a nation founded by two linguistic cultures and a nation of two dominant, equal partners.⁷⁶

Provincial legislators, on the other hand, have a mandate to develop more localized policy. Many Manitobans appear to believe that, although Francophones were once a dominant force, their influence has become merely one of several influences in a province developed and populated by many

73. *Supra* n. 69.

74. Can. H. of C. Debates, 2nd sess. 32nd Parl. at 1710 (February 24, 1984).

75. Can. H. of C. Debates, 1st sess. 32nd Parl. at 27816-21 (October 6, 1983).

76. About 26% of Canadians have French as their mother tongue.

diverse ethnic groups, each maintaining its culture, but generally recognizing English as the working language. The national perspective conflicted with the provincial perspective. Both federal resolutions, therefore, went unheeded by the provincial opposition.

By this time, the government faced another challenge. Perhaps unknown to the opposition, the provincial government had an acute funding shortage of about \$26 million, largely due to the demands of changing government priorities during the fiscal year. A supplementary supply bill had not been introduced, possibly due to expectations that the session would not have continued for as long as it did. Payments to some suppliers were already being withheld and, in a matter of days, the civil service payroll for several programmes would be without funds. Neither a funding grant from cabinet nor appropriation transfers were legally possible while the legislature was sitting.⁷⁷ The government, therefore, had deadlines to meet and it had to deal with an agenda which contained not merely language proposals.

On February 27, 1984, on the twelfth consecutive day of bell-ringing, the government requested the Lieutenant-Governor to prorogue the legislature. The constitutional resolution and the language Bill were killed. Section 23 of the *Manitoba Act, 1870* would remain unchanged. The *Bilodeau* case would now proceed to the Supreme Court. As reticent members awaited the arrival of Her Honour, legal and parliamentary history was in the making. When the Lieutenant-Governor entered the chamber, the bells were finally turned off. Opposition leader Filmon later said: "It certainly is a victory for the public of Manitoba".⁷⁸ Premier Pawley lamented what he described as the "disgusting, disgraceful" behaviour of an opposition which had "hijacked the parliamentary system".⁷⁹

Epilogue

A political solution to the perceived threat of *Bilodeau* had failed.⁸⁰ The Supreme Court of Canada set a date in June, 1984, for hearing the case. A reference, initiated by the federal government, which sought a ruling as to the validity of all Manitoba statutes, not just those involved in the *Bilodeau* case, was added to the Supreme Court's task⁸¹ (see Appendix C).

The reference was decided on June 13, 1985. Basically, the Court ruled that all of Manitoba's laws passed in English only were invalid and that the statutes had to be translated in the minimum time necessary.⁸² That day, Premier Pawley rose in the legislative assembly and said: "The Supreme Court decision brings us to the close of a difficult period for many Manitobans. We can, we must, now leave behind those things which might divide

77. See *The Financial Administration Act*, R.S.M. 1970, c.F55, s.42(1).

78. *The Winnipeg Sun*, February 28, 1984, at 3, col. 1.

79. *The Globe and Mail*, February 28, 1984, at 1, col. 1.

80. It should be noted that Manitoba legislators subsequently grappled with a government proposal to place a fifteen minute time limit on bell-ringing. The opposition rejected the proposal on the grounds that bell-ringing should be unlimited for votes on constitutional resolutions. However, the proposal was finally adopted on June 1, 1984.

81. See *supra* n. 2 for the Supreme Court's decision on the reference.

82. See Dale Gibson's and Kristin Lercher's article on the reference in this volume.

us".⁸³ Similar remarks by Opposition Leader Filmon that his caucus looked forward to working "to put an end to the divisiveness and to restore social order"⁸⁴ were, nonetheless, no finale. A few days later the Premier charged that the Court's decision was "the result of a gigantic miscalculation on the part of the opposition".⁸⁵ One government minister said that the opposition must "feel deep feelings of guilt for the shame they have inflicted on this province and for the waste of taxpayers' money".⁸⁶ Mr. Filmon, on the other hand, criticized the government for "unnecessarily caus[ing] a great deal of trauma, confrontation and deep social division amongst the people of Manitoba".⁸⁷ He argued that his caucus was vindicated. The decision did not create legal chaos but saved taxpayers a great deal of money, he claimed. For the Francophone community, Health Minister Larry Desjardins lamented that the decision "is not what we want. We will want some services". He urged: "I think we should at least look at it again".⁸⁸

Appendix A

MOTION for a Resolution to authorize His Excellency the Governor General to issue a proclamation respecting amendments to the Constitution of Canada

WHEREAS section 43 of the Constitution Act, 1982 provides that an amendment to the constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and House of Commons and a resolution of the legislative assembly of the province to which the amendment applies;

NOW THEREFORE the Legislative Assembly of the Province of Manitoba resolves that his Excellency the Governor General be authorized to issue a proclamation under the Great Seal of Canada amending the Constitution of Canada as follows:

PROCLAMATION AMENDING THE CONSTITUTION OF CANADA

1. The Manitoba Act, 1870 is amended by adding thereto, immediately after section 23 thereof, the following sections:

Official languages of Manitoba

"23.1 English and French are the official languages of Manitoba.

Equality of both language versions

23.2(1) The English and French versions of Acts of the legislature of Manitoba enacted in both languages are equally authoritative.

Definition of "Act"

(2) In this section and sections 23.3 and 23.6, "Act" has the same meaning as it has in section 23.

83. Man. Leg. Debates, 4th Sess. 32nd Leg. at 2920 (June 13, 1985).

84. *Ibid.*, at 2922 (June 13, 1985).

85. *Ibid.*, at 3147 (June 20, 1985).

86. *Ibid.*, at 3800 (July 11, 1985).

87. *Ibid.*, at 2921 (June 13, 1985).

88. *Ibid.*, at 3672-73 (July 8, 1985).

Act enacted after December 31, 1985 to be in both official languages

23.3 (1) Subject to section 23.6 any Act of the legislature of Manitoba enacted after December 31, 1985 is of no force or effect if it is not printed and published in both official languages.

Saving provision

(2) Notwithstanding section 23, but subject to sections 23.4 and 23.5, no Act of the legislature of Manitoba enacted before January 1, 1986 is without force or effect by reason only of its having been printed and published in only one official language.

Public general statutes to be in both official languages

23.4 (1) Any public general statute included in the Revised Statutes of Manitoba, 1970 and any public general statute enacted on or after January 1, 1970 of a kind normally included in a general revision is of no force or effect if it is not printed and published in both official languages on or before December 31, 1993.

General revision of public general statutes

(2) Any general revision of the public general statutes of Manitoba enacted after the coming into force of this section is of no force or effect if it is not printed and published in both official languages.

Delay period for revision

(3) A general revision of the public general statutes of Manitoba shall be printed and published on or before December 31, 1993.

Delay period for re-enactment of certain Acts

23.5 (1) Any private Act or public municipal Act, or any public general statute not of a kind normally included in a general revision, that is referred to in the schedule, or any amendments to or Act substituted for any such Act or statute, is of no force or effect after December 31, 1993 if it is not re-enacted in both official languages on or before that date.

Delay for re-enactment of certain regulations

(2) Any regulation enacted before January 1, 1986 that would, if enacted on or after that date, be of no force or effect under subsection 23.3 (1) if it were not printed and published in both official languages is of no force or effect after December 31, 1993 if it is not re-enacted in both official languages on or before that date.

Exception for amending Acts

23.6 Notwithstanding section 23, no Act of the legislature of Manitoba enacted before January 1, 1994 that only amends one or more Acts of the legislature of Manitoba that are in force notwithstanding the fact that they were printed and published in only one official language is without force or effect by reason of its having been printed and published in only one official language.

Communications between public and certain institutions

23.7 (1) Any member of the public in Manitoba has the right to communicate in English or French with, and to receive available services in English or French from,

- (a) the head or central office of any department of the government of Manitoba;
- (b) the head or central office of
 - (i) any court,
 - (ii) any quasi-judicial or administrative body of the government of Manitoba,
 - (iii) any Crown corporation, or
 - (iv) any agency of the government of Manitoba established by or pursuant to an Act of the legislature of Manitoba;
- (c) the office of the Chief Electoral Officer; and
- (d) the offices of the Ombudsman for the Province of Manitoba.

Idem

(2) Any member of the public in Manitoba has the right to communicate in English or French with, and to receive available services in English or French from, any office not referred to in subsection (1) of an institution described in paragraph (1)(a) or (b) where

- (a) there is a significant demand for communications with and services from that office in that language; or
- (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Section 23 not affected

(3) Nothing in this section abrogates or derogates from any rights guaranteed by section 23.

Enforcement of rights under section 23.7

23.8 (1) Anyone whose rights under section 23.7 have been infringed or denied may apply to the court for a declaration to that effect and, where that court finds that those rights have been infringed or denied, it may make a declaration to that effect.

Declaration and court order for plan

(2) Where the court makes a declaration under subsection (1), it may order the institution concerned to submit to the court a plan for changing its administration to ensure that the rights under section 23.7 are respected by the institution, and the institution shall forthwith submit a plan for the approval of the court.

Submission of plan to court

(3) Where a plan is submitted to the court pursuant to this section, the court may approve the plan as submitted, or may order the institution concerned to submit to the court a new or varied plan for the approval of the court.

When a plan is approved

(4) When a plan submitted to the court pursuant to this section is approved by the court, the institution concerned shall forthwith make such changes in the administration of the office concerned as the plan requires.

Definition of "court"

(5) In this section, "court" means the Court of Queen's Bench for Manitoba."

Coming into force of sections 23.7 and 23.8

2. Sections 23.7 and 23.8 shall come into force on January 1, 1987.

Citation

3. This Proclamation may be cited as the Constitution Amendment Proclamation, 1983 (Manitoba Act).

Appendix B

THAT the proclamation amending the Constitution of Canada set out in the Motion be amended

(a) by striking out the proposed section 23.1 of The Manitoba Act, 1870, as set out in section 1 of the proclamation, and substituting therefor the following section:

Freedom to use English and French

23.1 As English and French are the official languages of Manitoba, the freedom to use either official language enjoyed under the law of Manitoba in force at the time this section comes into force shall not be extinguished or restricted by or pursuant to any Act of the Legislature of Manitoba.

(b) by striking out the proposed section 23.5 of The Manitoba Act, 1870, as set out in section 1 of the proclamation, and substituting therefor the following section:

Delay period for Acts in Schedule

23.5(1) Any Act referred to in the Schedule, or any amendment to or Act substituted for any such Act, is of no force or effect after December 31, 1993 if it is not printed and published in both official languages on or before December 31, 1993.

Delay period for certain regulations

(2) Any regulation enacted before January 1, 1986 that would, if enacted on or after that date, be of no force or effect under subsection 23.3 (1) if it were not printed and published in both official languages is of no force or effect after December 31, 1993 if it is not printed and published in both official languages on or before December 31, 1993.

(c) by striking out the proposed sections 23.7 and 23.8 of The Manitoba Act, 1870, as set out in section 1 of the proclamation, and substituting therefor the following sections:

Rights preserved

23.7 Nothing in sections 23.1 and 23.2 abrogates or derogates from any rights guaranteed by section 23.

Local authorities

23.8 Except as may be required by section 23, no municipality, school division, school district or institution established by or under an Act of the Legislature of Manitoba with local legislative or local administrative authority is required to enact, pass, print or publish its by-laws, regulations, rules or resolutions in both the English and the French languages.

Other languages

23.9 (1) Nothing in sections 23.1 to 23.8 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed in Manitoba either before or after the coming into force of this section with respect to any language that is not English or French.

Multicultural heritage

(2) This section shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Manitobans.

(d) by striking out sections 2 and 3 of the proclamation and substituting therefor the following section:

Citation

2. This Proclamation may be cited as the Constitution Amendment Proclamation, 1984 (Manitoba Act).

(e) by striking out the words and figures "an Act to incorporate Club de Golf St. Malo," S.M. 1970, ch. 126 in the list of Private Acts set out in the Schedule to the proclamation.

Appendix C

WHEREAS the Minister of Justice reports;

1. That it is important to resolve as expeditiously as possible legal issues relating to certain language rights under section 23 of the Manitoba Act, 1870 and section 133 of the Constitution Act, 1867.

2. That in order that such legal issues be addressed without delay, it is considered necessary that the opinion of the Supreme Court of Canada be obtained in relation to the following questions, namely;

Question #1

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

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

mandatory?

Question #2

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

Question #3

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

Question #4

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

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

