

SPEAKING NOTES

Mr. B. MacFarlane

DEPUTY MINISTER OF JUSTICE & DEPUTY ATTORNEY GENERAL OF MANITOBA
PAJLO/POLAJ

MEETING

Saturday, April 18, 1998

I am pleased to bring greetings to the PAJLO/POLAJ conference on behalf of the Honourable Vic Toews, Minister of Justice and Attorney General of Manitoba.

Mr. Toews has asked me to convey his regrets at being unable to join you for this event, and he hopes that you have very informative and rewarding discussions.

The issue of French language services in Manitoba's courts is older than the province itself. In the early days of the Red River Colony, the first legally trained judge to sit on the bench in this province was Adam Thom.

His attitude toward the French and Metis communities was one of intolerance and created serious divisions between the cultures sharing the Colony.

Thankfully, Thom's was a short career, brought to an end by a community tired of his arrogance and actions, and he was removed from the bench.

I refer to this piece of Manitoba history as a way to indicate the progress our courts - and our province - have made down through the years.

Today, bilingualism is an officially entrenched fact in the life of Manitobans. In 1989 the Province of Manitoba tabled a formal French Language Services policy in the Legislature. It recognized the fact that Manitoba's Francophone community is a fundamental part of Canadian society.

The policy is Manitoba's commitment to providing our French-speaking community and its institutions with access to equal government services in their own language as much as possible.

In 1996, a Working Group was formed to look at practical ways and means of enhancing French language services in Manitoba's justice system.

This group consists of two Assistant Deputy Ministers from Manitoba Justice, the Executive Director of Winnipeg Courts, two members of the *Association des juristes d'expression française du Manitoba* and one representative from the *Société franco-manitobaine*. Representatives from the federal department of justice and the Official Languages Commissioner have also participated in some meetings. The working Group is chaired by Manitoba's Senior Advisor on French Language Services.

The Working Group, used a variety of reports and publications, as they looked at numerous issues and questions pertaining to the French services offered in Manitoba's justice system.

The principal references were: a report on Provincial Court reform prepared by the AJEFM; the French Language Services Implementation Plan of Manitoba Justice, the Study on the Equitable Use of English and French before the Courts in Canada by the Official Languages Commissioner, and the Working Paper: "Towards a Consolidation of

Language Rights in the Administration of Justice in Canada." This Working Paper was prepared by Justice Canada as a response to the report released by the Commissioner of Official Languages.

The Group's focus is to identify practical methods of resolving problems in the implementation of the policy, assisting in making the required changes and ensure the quality of French services.

I know that the Minister very much appreciates the advice and insights provided by the Working Group to date. We both find that it is a tremendous resource in our quest to deliver enhanced French language services to the Francophone community.

We are grateful to the Group for the leadership they have demonstrated in undertaking this task and the momentum they have created in Manitoba's continuing effort to better meet the needs of our Francophone community.

We also appreciate the Group's emphasis on innovation and simplicity in seeking viable and cost-effective solutions. They have understood that resolving a problem is not merely a matter of throwing more money or resources into the mix without a carefully constructed strategy for stakeholders to follow.

The Working Group has made their recommendations to the Minister on the sixteen proposals set out in the Working Paper: "Towards a Consolidation of Language Rights in the Administration of Justice in Canada," by Justice Canada. I am aware that while many in this audience may already have been informed of Manitoba's response, many have not had any official confirmation of our position.

Manitoba is essentially in agreement with the majority of the proposals, with a few exceptions. The last three proposals suggest that there should be a waiting period of approximately five years before actions are taken on the question of time limits, the translation of evidence and the qualifications of court interpreters.

We understand that this may be an issue for other jurisdictions. However, I am pleased to say that because many of these resources are already in place in Manitoba, we do not see any need to delay action on the development of criteria for the exercise of the discretion granted to the courts under subsection 530(4) of the *Criminal Code*.

Since it is already Manitoba's practice to provide a translation of evidence disclosed prior to trial and documentary evidence tendered during proceedings, it is our position that this practice could be made a statutory right in this province without this suggested five-year delay.

It is also our position that since Manitoba already has qualified court interpreters on staff and has an established selection process in place, there is no need to delay on this proposal.

We agree with the proposal on the use of technology, such as video and teleconferencing, as a means of increasing access to both official languages in criminal proceedings, especially in proceedings other than the trial or the preliminary hearing. For this reason, Manitoba is working with our federal justice colleagues to develop a pilot project exploring ways to utilize technology more effectively

We believe there is an element missing in the proposal on judicial appointment. It states that when appointing judges, the federal justice minister should continue to consult closely with a variety of parties during the process.

The parties identified in this proposal include minority language jurists' associations, chief justices, the Office of the Commissioner of Federal Judicial Affairs and other interested organizations.

This proposal also indicates that the Office of the Commissioner of Federal Judicial Affairs should continue to provide language training to judges.

Manitoba agrees with the consultative approach suggested here, however, we noted that the provincial justice ministers were not included. This must be an oversight.

I know the Minister's federal colleague, the Honourable Anne McLellan, has been consulting with Mr. Toews on the more recent judicial appointments in Manitoba. He is very pleased with this level of cooperation and is confident this oversight will be corrected quickly.

It is our view that the Manitoba advisory committee for appointments to the federal judicial positions should include a representative from the French-speaking community. To identify an appropriate individual, we would consult with groups such as the *Societe franco-manitobaine* and the *Association des juristes d'expression francaise du Manitoba*.

Manitoba recognizes that to fulfill constitutional obligations there is a necessity to have bilingual judges within each level of courts and that it may take a reasonable period of time to appoint qualified individuals to attain these objectives.

Until that happens, Manitoba is acting to ensure the effective implementation of a system within the Provincial Court designed for the delivery of bilingual court services and the operation of a bilingual circuit court.

We are establishing a pilot project to provide these bilingual court services. This includes a bilingual circuit court which would sit periodically in a designated bilingual region.

We envision this pilot project to include several important components such as:

- identification of French-speaking police officers,
- methods to ensure that a citizen wishing to receive services in French will be accommodated,
- tools required to complete documents in French.
- provision of Legal Aid services in French,
- automatic forwarding of files to bilingual courts,
- access to a bilingual magistrate, and
- the availability of bail hearings in either English or French as requested by the accused.

Now, as a matter of policy, a representative of the Francophone community sits on the Nominating Committee of Appointments to the Provincial Court when competitions are held to fill bilingual positions. We are currently reviewing the make up of this committee and will examine the issue of making this a formal requirement.

This practice helps the Committee to evaluate a candidate's bilingual skills more thoroughly and to understand the importance of these skills to the community and to the courts.

Manitoba is examining many other areas of our judicial system in our drive to enhance the provision and delivery of French language services to our Francophone citizens. We are working on the facilitation of language training for judges, lawyers and court staff. Manitoba will work with Ottawa and the Commissioner for Federal Judicial Affairs to extend funding for language training offered to provincially-appointed judges. This would cover costs for tutorials given at the judge's place of work.

Manitoba will continue to collaborate with the Institut Joseph-Dubuc and other organizations on the delivery of legal terminology programs and continuing legal education programs in French.

Manitoba Justice would like to provide staff in designated bilingual positions with a minimum of one half day training each year in French legal terminology. The department will therefore work in consultation with the Institut Joseph-Dubuc to develop this program and provide funding for this staff training under the professional development budget.

On the issue of bilingual positions, Manitoba is committed to filling a sufficient number of designated positions and ensuring our bilingual human resources are used effectively. To achieve this goal, the department will take all steps necessary to deploy bilingual staff to ensure the availability of French language services to the largest extent possible. We will also ensure that at least two full-time bilingual Crown Attorneys are available for the proper operation of the proposed bilingual circuit court.

In addition to providing translation and interpretation services in each level of court, Manitoba will introduce steps to ensure fairness in charging fees for court transcripts. Proceedings conducted in, or partially in, French usually required interpretation services and incurred additional costs for Manitoba's French-speaking citizens.

To alleviate this inequality, transcript fees will be the same for unilingual and bilingual proceedings, with the additional costs paid by the Courts Division

Manitoba will undertake the promotion of French Language Services with a special emphasis on publicizing the availability of and access to these services within the justice system.

We will support the AJEFM project to develop a CD-Rom or a video-cassette with information on the delivery of French language services by the courts and other government bodies involved in administering justice at the provincial level.

Manitoba Justice will work with the province's two largest police forces, the RCMP and the Winnipeg Police Service, to promote the active offer of French Language Services. This means we will work with these organizations regarding precise guidelines on the active offer of French Language Services. In partnership with our federal colleagues, Manitoba will also pursue the development and implementation of new technologies which will assist communications in the official language preferred by the client.

To ensure French Language Services are available in matter of civil or family law, we feel there is a need to clarify an existing right that the evidence given during

proceedings of a court or quasi-judicial body should be received, recorded and transcribed in the official language used by the witness. An amendment to the *Manitoba Evidence Act* will be considered as a possible means of clarification.

This step will ensure appropriate procedures and practices concerning documentation at examinations of discovery and cross-examination on affidavits will be conducted in accordance with official language policies of Manitoba.

Recognizing the need to have a fluently bilingual Master of the Court of Queen's Bench to hear civil and family law cases, Manitoba has recently appointed a qualified candidate to this office.

Manitoba will work with non-judicial bodies involved in the administration of justice on enhancing the offer of French Language Services in their daily activities. These organizations include Legal Aid, the Public Trustee, our Human Rights Commission, Correctional Services, Probation Services and Fatality Inquiries,

I share with the Minister a very strong sense of pride and satisfaction on what Manitoba has accomplished in our quest to improve the level of French Language Services available in the justice system.

It is especially gratifying to realize that in many instances, the implementation process is well underway and producing positive results.

We are confident that this review and the initiatives which have been developed will have a significant national impact as other jurisdictions look to Manitoba's evolving model.

This leadership role is not new to Manitoba. We know from past experiences that many of our endeavours to adapt, enhance or innovate our legal system has drawn national and international inquiries. This recognition of our leadership is a positive reflection on the quality of work and the level of dedication of our stakeholders have put forth.

However, Manitoba is fully cognizant that many of the more complex issues facing us will require more time and input from our various stakeholders to be effectively resolved. Therefore, Manitoba Justice will continue to support the Working Group and its partners in this process. It will review the status of issues and strategies, serving as a guide for the department and all stakeholders working on the enhancement of French Language Services in Manitoba.

The Working Group is an excellent and uncomplicated mechanism that the Minister and I see as a vital component of a productive dialogue between Manitoba Justice and the Franco-Manitoban community.

Much has been accomplished towards our goal of meeting Manitoba's commitments for the delivery of quality French Language Services, but we know there is much more to be accomplished.

It will take time, a careful application of resources, the full participation of our many partners in formulating effective strategies and an unwavering dedication to the concept of full and equal access to the services of our justice system for all Manitobans.

I thank you for your kind attention, and I join with Mr. Toews in wishing each of you all the best in your future endeavours.