

REVIVING THE BILINGUAL ADMINISTRATION OF JUSTICE IN THE LAND OF LOUIS RIEL: AN OFTEN GRUELING OBSTACLE COURSE

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I - INTRODUCTION

The purpose of the article is to take stock of the progress that has been accomplished during the last fifteen years with respect to the administration of justice in both official languages in Manitoba. The author begins by emphasizing that the restoration of language rights granted to Franco-Manitobans, more than a century ago, is part of a national phenomenon of growth and extension of bilingualism. After providing such background information, the author reviews, firstly, the language rights which are granted to Franco-Manitobans by way of constitutional and statutory enactments and, secondly, the progress that has been accomplished in order to promote the enforcement of these rights in the recent past. The discussion as to the progress accomplished since the early 1980s deals with the following topics: concerned provincial organizations with a legal mandate, human resources and documentary resources.

After a review of the efforts undertaken during the last decade and a half to ensure the enforcement of language rights, the author examines the extent to which French-speaking citizens in Manitoba exercise their language rights in every day life. The analysis ends with a prospective look at the obstacles which must be overcome so that the administration of justice in both official languages in Manitoba may become more than an anachronism or a pious hope.

II - EVOLUTION OF LANGUAGE GUARANTEES NATION-WIDE

The French-speaking citizens of Canada have always perceived the Canadian federation as the result of a formal pact between the two founding peoples.

The scheme to protect the French-Canadian minority incorporated into the *Constitution Act, 1867*¹ hinged on two main factors namely, protection of the confessional nature of schools provided for at s. 93 on the one hand, and parliamentary, legislative and judicial bilingualism within the federal and Quebec governments provided for at s. 133 on the other.

Furthermore, a few years after the birth of the federation, Manitoba also endowed itself with constitutional guarantees of parliamentary, legislative and judicial bilingualism.

These guarantees were to be illegally repealed in 1890 and, thanks to the *Forest*² case, reborn in 1979. In 1877, the Parliament of Canada established, by way of legislation, a scheme for legislative and judicial bilingualism in the North West Territories, which at the

time encompassed the provinces of Saskatchewan and Alberta. These guarantees survived on the books until their repeal in 1988 by the legislatures of Alberta and Saskatchewan in response to the *Mercure*³ ruling. However, the actual enforcement of these guarantees lasted but a few years. Thus, apart from the futile attempts made in Manitoba and the North West Territories in the last century, until the end of the 1960s, parliamentary, judicial and legislative bilingualism was limited to the federal government and the province of Quebec.

The *Official Languages Act*⁴ of 1969 marked a turning point by recognizing official bilingualism at the federal government level, and for the first time obliging the federal administration, as opposed to the parliamentary and judicial institutions, to provide bilingual services.

In the wake of this new legislation, the *Canadian Charter of Rights and Freedoms*⁵ constitutionalized the provision of bilingual services by the federal administration, and the *Official Languages Act*⁶ of 1988 set out the terms and conditions under which this new constitutional guarantee was to be implemented.

Major gains in terms of bilingualism within legislative, judicial and administrative institutions were also made at the provincial and territorial levels. We would cite, for example, the adoption of an official languages act in New Brunswick⁷ and the constitutionalization of language rights for the citizens of that province⁸, the new life breathed into legislative and judicial bilingualism in Manitoba as a result of the celebrated *Forest* case, as well as the adoption of a French-language services act in Ontario⁹ and official language legislation in the North West Territories¹⁰ and the Yukon.¹¹

III - CONSTITUTIONAL AND STATUTORY FRAMEWORK OF THE LANGUAGE GUARANTEES GRANTED TO FRANCO-MANITOBANS

A - Constitutional Framework

1. Birth, Death and Rebirth of Constitutional Language Guarantees

At the time of Manitoba's entry into the Canadian federation in 1870, the province had a population consisting of near equal numbers of francophones and anglophones.

The settlers of the Red River Colony thus obtained guarantees aimed at perpetuating the province's bilingual character. One of these guarantees took the form of parliamentary, legislative and judicial bilingualism.

This principle of bilingualism is set forth in s. 23 of the *Manitoba Act, 1870*¹² (the former *Manitoba Act*), which repeats almost verbatim the wording of s. 133 of the *Constitution Act, 1867*.

In 1890 - that is to say, 20 years after the province was created the Greenway government had the House enact legislation entitled *The Official Language Act*¹³ (note that the word "language" is in fact in the singular and not the plural). This act was manifestly unconstitutional and the lower courts did not hesitate to invalidate it over the course of the next few years.¹⁴ However, the Province did not appeal from the judgments rendered by the trial courts and merely swept them under the rug.

As a consequence, Franco-Manitobans would have to wait until the late 1970s for the matter to be referred to the Supreme Court of Canada in the *Forest*¹⁵ case and the act

entitled *The Official Language Act* to be declared unconstitutional. For all that, Franco-Manitobans were still not relieved of their troubles and had to go back before the Supreme Court several times to force the provincial government to act.

So it was that the 1985 *Reference Re Language Rights in Manitoba*¹⁶ declared the invalidity of 90 years' worth of unilingual acts enacted by the Legislative Assembly of Manitoba.¹⁷ In 1992, thanks to a direct access mechanism granted in the 1985 order stemming from the reference of that same year, the Société franco-manitobaine and the Government of Manitoba went back to the Supreme Court for clarification concerning orders in council.¹⁸

Given the strong resemblance between the wording of s. 23 of the *Manitoba Act, 1870* and that of s. 133 of the *Constitution Act, 1867* and various sister-provisions, Manitoba is in a way plugged into the language case law that has developed with respect to the similar obligations of the federal government and the provinces of New Brunswick, Quebec, and Saskatchewan.¹⁹

2. Nature of the Guarantees

Section 23 of the *Manitoba Act, 1870* contains guarantees concerning the following rights and obligations:

- a) the right to use either French or English in the debates and proceedings of the Manitoba Legislature;
- b) the obligation to enact, print and publish acts of the Legislature in both French and English;
- c) the obligation to print and publish the records and journals of the Manitoba Legislature in both French and English;
- d) the right to use either French or English as a spoken language in matters referred to courts established by the Manitoba Legislature;
- e) the right to use either French or English as the language of pleadings stemming from matters referred to courts established by the Manitoba Legislature.

3. Case Law on the Scope of the Guarantees

a) Scope of the Guarantees with Respect to Legislation

In terms of legislation, the cumulative impact of the court decisions rendered to date is the following:

- a) statutes passed by the Legislature of Manitoba must, on pain of invalidity, be enacted, printed and published simultaneously in French and in English;
- b) also subject to the obligation of bilingualism are the following forms of delegated legislation (with the exception of rules and directives of internal administration):
 - i) regulations made by Cabinet;
 - ii) regulations made by a group of ministers;
 - iii) orders laid down by a minister;
 - iv) regulations made by public agencies subject to approval by Cabinet, a group of ministers or a minister, to the extent that the approval in question is necessary for the regulations to come into effect;

v) rules of judicial and quasi-judicial tribunals;[20](#)

vi) orders in council that are determined as being "of legislative nature" based on the following criteria developed in the 1992 *Reference Re Language Rights in Manitoba*[21](#) and applied in *Sinclair v. Quebec (A.G.)*:[22](#)

With respect to form, sufficient connection is established where the instrument is, pursuant to legislation, enacted by the government, or made subject to the approval of the government;

With respect to content and effect, the following are indicative of a legislative nature:

- the instrument embodies a rule of conduct;
- the instrument has the force of law; and
- the instrument applies to an undetermined number of persons;

c) documents incorporated by reference in legislation, if they meet the following criteria developed in *Quebec (A.G.) v. Collier*[23](#) and the 1992 *Reference Re Language Rights in Manitoba*:

- i) the primary instrument into which the document is incorporated has a legislative character, according to the criteria established with respect to orders in council in the 1992 *Reference Re Manitoba Language Rights*;
- ii) the incorporation is a true incorporation in that the document is an integral part of the primary instrument as if reproduced therein (a clear example of true incorporation is found in *Quebec (A.G.) v. Collier*);
- iii) the Legislature does not have a *bona fide* purpose for incorporating the instrument without translating it, it being understood that practically the only case in which the *bona fide* purpose exception can be successfully invoked is when the document is generated by outside sources for example, by another government[24](#) or a non-government body.[25](#)

b) Scope of the Guarantees with Respect to the Courts

In terms of the language of justice, the cumulative effect of the court decisions rendered to date is the following:

- a) the right to use either French or English before the Manitoba courts only gives citizens the right to address the court in the official language of their choice and not the right to be directly understood by the court in that language (*Robin v. Collège de Saint-Boniface*[26](#) and *Société des Acadiens du Nouveau-Brunswick*[27](#));
- b) the right to use either French or English in pleadings stemming from matters referred to Manitoba courts belongs to the author of the documents in question and not to their addressee which means, for example, that a police officer can issue a ticket to a French-speaking citizen in English (*Macdonald*[28](#) and *Bilodeau*[29](#)).

B - Provincial Statutory Framework

1. Parliamentary and Legislative Bilingualism

Shortly after the Supreme Court of Canada rendered its decision in *Forest*,[30](#) the Legislative Assembly of Manitoba enacted *An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes*.[31](#)

In the 1985 *Reference Re Manitoba Language Rights*,[32](#) the Supreme Court of Canada summarized the principle embodied in this act as follows:

The heart of the 1980 Act is s. 4(1), which authorizes the bilingual promulgation of legislation in two stages: (i) the enactment of a statute in one official language only; and (ii) subsequent translation into the other official language. The translation, once certified and deposited with the Clerk of the House, is deemed "valid and of the same effect" as the formally enacted version.³³

We would point out moreover that the deposit of a translation was entirely voluntary and that, in the event of a discrepancy between the English and the French versions, the original would prevail over the translation.

In the *Reference*, the Supreme Court of Canada declared the scheme set up by the Manitoba Legislature unconstitutional to the extent that it did not comply with the principle of simultaneous use of French and English throughout the entire statute enactment process. The Manitoba Legislature followed up the declaration of unconstitutionality by repealing its 1980 Act according to the terms of the *Re-enacted Statutes of Manitoba, 1987, Act*.³⁴

No other legislative instrument has been enacted to establish a permanent framework for enforcement of the guarantees provided by s. 23 of the *Manitoba Act, 1870* with respect to parliamentary and legislative bilingualism.³⁵ However, we would point out that various statutes³⁶ have been enacted to implement the order³⁷ issued by the Supreme Court of Canada in 1985 concerning the translation and re-enactment of unilingual English legislation.

It is very important to note that the 1985 order gives effect to an agreement between the Government of Manitoba and the Société franco-manitobaine to set a timetable for the translation and re-enactment of unilingual statutes on the one hand, and to subject statutes and regulations to publication in a parallel column format on the other. It should be clearly understood that publication in a parallel column format is in no way a constitutional obligation. As a consequence, if Manitoba were to fail to publish its statutes and regulations in a parallel column format, it would lay itself open to prosecution for contempt of court rather than legal action seeking a declaration of the invalidity of the instruments in question. The other provinces that are subject to constitutional or statutory obligations with respect to the bilingual enactment of statutes and regulations and that publish these instruments in a parallel column format are acting on a purely voluntary basis.³⁸ We would note that Quebec is an exception in that it publishes the French and English versions of its statutes and regulations in entirely separate unilingual series.

Lastly, as in the case of Ontario, the legislative instruments of Manitoba do not include any express provision with respect to the obligation to publish the French version of regulations in the *Gazette*. However, we are of the opinion that s. 4 of the *Regulations Act*,³⁹ which makes publication of regulations in the *Gazette* mandatory, applies just as much to the French as to the English version of regulations made in both languages pursuant to the constitutional obligation provided for in s. 23 of the *Manitoba Act, 1870*.

2. Judicial Bilingualism

The Manitoba Legislature has only intervened in the area of judicial bilingualism to a very limited extent.

Section 32 of the *Court of Appeal Act*,[40](#) s. 98 of the *Court of Queen's Bench Act*,[41](#) and s. 51 of the *Provincial Court Act*[42](#) provide that the courts may extend time limits to allow for the translation of pleadings or other documents filed with the registries or served on the parties to a proceeding.

The *Court of Appeal Language Rules*, namely Part III of the *Rules of the Court of Appeal*,[43](#) are aimed at establishing a procedural framework for exercise of the rights provided for by s. 23 of the *Manitoba Act, 1870* in the area of judicial bilingualism.

We take the liberty of quoting the following two excerpts from an article that we had published on the subject of Part III:

[Translation] It can be presumed that, in the minds of the justices of the Court of Appeal, the purpose of this part was to place the constitutional principle of judicial bilingualism in a procedural framework facilitating its orderly enforcement insofar as the jurisdiction of the court was concerned. However, as we shall endeavour to show in the lines that follow, far beyond its laudable intent to lay down some rules of procedure, the Court of Appeal provided for the operation in certain circumstances of mandatory judicial unilingualism, or the very antithesis of the constitutional principle that it was seeking to implement. [...]

However, it is absolutely clear that rules of procedure can deprive neither pleaders nor judges of their constitutional right to express themselves orally or in writing in either French or English at any step in the proceeding. Thus, the sanction of unilingualism provided for at rules 114 and 125 is a flagrant violation of this constitutional right and, by operation of s. 52 of the *Charter*, renders these rules of no force or effect to the extent of their incompatibility with the right in question.[44](#)

Furthermore, the *Court of Queen's Bench Rules*[45](#) contain various provisions dealing with the use of interpretative services.[46](#) The Manitoba regulations are modeled on the Ontario regulations, but do not expressly state that the Government shall take responsibility for supplying interpretive services where the languages involved are French and English.

With a view to supplementing the rules in question, the Court of Queen's Bench adopted policies on the translation of documents filed in its court registries and the interpretation of court proceedings. These policies were published in *Headnotes & Footnotes*,[47](#) a periodical distributed by the Manitoba Bar Association, but do not seem to be very well known among the members of the Bar even so.

As a result, we feel it appropriate to reproduce the policies in their entirety below.

a) Queen's Bench Policy on the Translation of Court Documents

1. *Where a court action is commenced by the filing of a document in the French language, the Registry Officer is to forward a copy of the document to the Director of the Queen's Bench.*
2. *The Director will forward to Translation Services any documents that require translation from French into English.*
3. *Once translated, the Director will ensure that it is filed and forms part of the court record.*
4. *Where a reply to the action is also filed in the French language, a copy of the reply is not forwarded to the Director, as the parties are deemed to proceed the entire matter in the French language.*

5. *The purpose of the policy is to comply with cabinet approval of March 20, 1980 which states that the Crown will provide translation services for all court documents, where necessary, without costs to the litigants. It is done automatically in the first instance since ninety to ninety-five percent of the pleadings filed in French require translation because the other parties to the proceedings request same from the court.*

6. *It is necessary at times to translate English court documents into French. The policy for such matters is as follows:*

Where there is a need to translate an English court document into French, the person must request in writing, to the Director of the Queen's Bench, the need for such translation.

7. *(Usually it is the solicitor that requires the translation in order that he/she may properly advise his/her client on how properly to deal with the matter.)*

8. *All documents translated by Translation Services and filed in Court are presumed to be accurate for the purpose of avoiding frivolous objections based only on the translation.*

b) Queen's Bench Policy on Interpretive Services to the Courts

1. *All requests for the use of French/English interpreters or translators for trials, hearings, etc., will be forwarded to the Director, Queen's Bench, Winnipeg.*

2. *This policy is necessary because of the limited number of resources available to offer such a service, therefore it must be coordinated through one office. Many factors determine the type of service that can be offered (i.e. consecutive vs. simultaneous interpretation, technical equipment, translators, technicians, court reporter).*

3. *Only consecutive interpretation is offered when examining witnesses under oath at a court hearing.*

4. *When arguments are presented, only simultaneous interpretation is offered.*

It should however be made clear that, up until recently, the officials of the Court of Queen's Bench refused for the court to provide interpretive services for examinations conducted in law offices (including examinations for discovery and cross-examinations on affidavits), even though these examinations are an integral part of the judicial proceeding. All the same, the *Notice to the Legal Profession* issued by the courts' French-language services coordinator, on October 6, 1995, indicates that, from now on, interpretation services will be provided in the context of examinations for discovery. Furthermore, in a letter dated April 3, 1996, the coordinator added that the extension of interpretation services also applied to cross-examinations on affidavits. We would also like to call attention to the regrettable practice that has spread throughout certain law offices whereby, in cases where the persons examined express themselves in French, only the English interpretation of their remarks is recorded in the transcription. The relevant case law could not indicate more clearly that this practice is entirely illegal. Indeed, in *Mercure*,⁴⁸ the Supreme Court expressed its opinion on this subject as follows:

In my view, the appellant's right or power to use French would be seriously truncated if recorded in another language. For his use of the language goes beyond the immediate forum. The proceedings, for example, may continue in the Court of Appeal where the judges may quite properly wish to refer to the exact words used by a person at trial, words that person has a right to use. Absent valid legislation requiring the recording of the appellant's statements in one language

only, and none was brought to our attention, the appellant would seem to me to have a right to have his statements recorded in the French language. His situation, of course, differs from that of a person who uses a language other than English or French whose rights to translation derive solely from the requirements of due process.

Moreover, in *Robin v. Collège de Saint-Boniface*,⁴⁹ Justice O'Sullivan of the Manitoba Court of Appeal was in full agreement:

When a witness speaks French in court, what he says in French is evidence. What he says in French must be recorded so that on an appeal this court can consider his evidence in French. This may be difficult to do with simultaneous translation; nevertheless the French must be recorded and the evidence given in French must be considered.

Furthermore, we are of the opinion that, if the principle in question had not been so clearly set out in *Mercure* and *Robin*, it would have been possible to hold that the best evidence rule demanded the same finding. In *Cormier v. Fournier*, the New Brunswick Court of Queen's Bench used this fundamental rule to arrive at a very similar conclusion with respect to the importance of having access to the words actually used by the citizen in the language of his choice:

[Translation] When the court has the necessary skill to understand the testimony in the language of the witness, the court should not allow an interpreter to propose its interpretation of this testimony. The best evidence is necessarily that which the witness himself says.⁵⁰

What is more, the document entitled *Transcript Standards Manual* states as follows that, in cases where the interpretation involves French and English, the original remarks made in one language and their interpretation in the other language must be recorded in the transcription:

When interpreters or translators are used, the transcript will include both official languages used in the proceeding.⁵¹

Lastly, we would point out that the Provincial Court has not adopted any official policies of its own on the translation of court documents or the interpretation of proceedings in court. However, in actual fact, it applies the policies established by the Court of Queen's Bench on these matters in their entirety.

3. Administrative Bilingualism

In July 1983, the Pawley government tabled a draft resolution in the Manitoba Legislature, the effect of which would have been to amend s. 23 of the *Manitoba Act, 1870* by subjecting the provincial administration to the obligation to provide French-language services and repealing the obligation to enact in French various spent legislative instruments. The proposal triggered a fierce general outcry. Thus, several weeks after the tabling of its draft resolution, the Government tried to placate the population by offering to guarantee the right to French-language services in an ordinary provincial statute rather than the Constitution. Despite the Government's attempts to backtrack, Manitoba proceeded to experience one of its worst parliamentary crises, as the Opposition MLAs refused to vote on the draft resolution and the Speaker of the House refused to take steps to force them to do so. As a result, the Legislative Assembly never did vote on either the draft resolution or the bill on French-language services and both proposals died on the Order Paper.

In 1989, the Manitoba government announced a new policy on French-language services. In November 1990, the Government of Canada and the Government of Manitoba signed a general agreement on promotion of the official languages, the purpose of which is mainly to facilitate the provision of French-language services by the provincial administration of Manitoba. In 1991, the provincial government returned to the attack by announcing the second phase of implementation of its French-language services policy. This second phase was supposed to put an emphasis on the principle of "active offer".

Up to now, the Government of Manitoba has put together draft guidelines and manuals that will facilitate application of the policy. It is to be hoped that the government will shortly adopt the documents in question and proceed to the crucial phase of implementation without further delay.

It is important to point out that the policy adopted in 1989 provides for the provision of French-language services by various organs of provincial administration that work in fields directly related to the daily practice of law. We would cite by way of example the Land Titles Office, Personal Property Registry, Companies Office and Legal Aid. We would point out that the general agreement on promotion of the official languages also gave rise to improvements with respect to the provision of French-language services in the municipal and health fields.

We would further note that in 1994 the Government of Canada and the francophone community of Manitoba signed a general agreement aimed at supporting the development of the Franco-Manitoban community.

Lastly, the City of Winnipeg is, under the terms of Part III of its act of incorporation, obliged to provide French-language services. The Manitoba Legislature improved Part III through the *City of Winnipeg Amendment Act (3)*⁵² and the provision of the Act giving rise to the revision of Part III came into effect on May 1, 1994.⁵³

IV - PROGRESS MADE IN PROMOTING THE IMPLEMENTATION OF LANGUAGE GUARANTEES IN THE ADMINISTRATION OF JUSTICE

A - Provincial Bodies with a Legal Mandate

1. Background

The ruling handed down by the Supreme Court in the *Forest* case on December 13, 1979, carried considerable importance for the French-speaking jurists of Manitoba. In fact, ever since the illegal abolition of parliamentary, legislative and judicial bilingualism in 1890, Manitoba's French-speaking lawyers had had no choice but to accustom themselves to drafting nearly all of their legal documents in English and pleading before the courts in English only. They provided French-language services to their clients mainly by giving them professional advice in French and by explaining in French the content of documents written in English.

French-speaking lawyers, nearly all of whom were trained in unilingual anglophone faculties of law (there were not yet any graduates from the Université de Moncton school of law), did their best to establish, in a more or less ad hoc fashion, the French equivalents of the terms used in legal documents drafted in English.

The *Forest* case led to a complete reversal of the situation. Citizens now had the right to bilingual legislative instruments and justice in French. French-speaking lawyers rejoiced in this victory and at the same time had to take on a sizeable challenge. They had to learn the French vocabulary of common law, which had only just started to be worked out, and they had to draw up standard forms of legal documents based on this vocabulary. They also had to play an educational role vis-à-vis their clients so that the latter would be able to gradually absorb the basic elements of the vocabulary in question.

2. Committee for the Integration of French into the Practice of Law

The lawyers thus buckled down to the task by convincing the Manitoba Branch of the Canadian Bar Association to set up the Committee for the Integration of French into the Practice of Law, better known as the Committee of French-Speaking Jurists. The committee met every month to discuss solutions to the day-to-day problems posed by the practice of law in French in Manitoba, as well as the best long-term means of turning this practice into a daily reality that would become an entirely natural component of the habits and customs of the Franco-Manitoban population.

3. Institut Joseph-Dubuc

In November 1983, the Committee of French-Speaking Jurists formed a subcommittee responsible for looking at the possibility of creating a body like the Moncton and Ottawa translation centres in Manitoba. The efforts of the subcommittee led to the formation in February 1984 of the Institut Joseph-Dubuc Inc.

While the Committee of French-Speaking Jurists had taken all the necessary steps to found the Institut, the Institut became an independent body entirely distinct from the committee. At the first annual general meeting of the members of the Institut, it had in fact been agreed that the Committee would keep the role of a lobbying organization whereas the Institut would assume the more technical calling of a resource centre for French-speaking jurists.⁵⁴

In those days, the Institut performed most of its activities in the framework of the National Program for the Integration of Both Official Languages in the Administration of Justice. It worked mainly in the following areas: developing standard forms of legal documents and public legal education materials, teaching courses on law in French, and organizing continuing education workshops for French-speaking jurists.

4. Joint Committee Formed to Study the Possible Offer of French-Language Services by the Law Society of Manitoba

In May 1988, the Law Society of Manitoba and the Manitoba Branch of the Canadian Bar Association formed a joint committee charged with studying the possibility of the Law Society providing services in French.

The committee's mandate was to put together recommendations for the decision-making branches of the delegatory bodies and, towards this end, to look into the following:

- a) services that the Law Society is legally bound to provide in French;
- b) services that the Law Society could provide in French, without being legally bound to do so;
- c) the mode of financing applicable to the provision of these services;

d) the mode of implementation of these services liable to cause the least degree of backlash among Law Society members.

The Committee for the Integration of French into the Practice of Law had drawn up the following list of services or benefits that could be explored:

- a) the duly enacted French version of the rules made under the *Law Society Act*;
- b) the option of writing assignments from the Law Society's bar admission course in either French or English;
- c) printing of the exam questions of the Law Society's bar admission course in both French and English and the option to answer in either French or English;
- d) French-language instruction in the framework of the Law Society's continuing education courses and the printing in French of the documentation pertaining thereto;
- e) publication in French of the standard forms of legal documents supplied in the books used in the Law Society's bar admission course;
- f) simultaneous publication in French and English of the Law Society's public legal education documents;
- g) simultaneous publication in *Headnotes & Footnotes* of the courts' practice directions in French and English;
- h) the option to use either French or English, pursuant to *Blaikie No. 2*, in all matters referred to the Law Society's bodies of a quasi-judicial nature and in the pleadings that stem from them;
- i) the option to receive correspondence from the Law Society in either French or English.⁵⁵

No doubt for lack of political will within the delegatory bodies, the committee, chaired successively by Mr. Trevor Anderson, Q.C., then Dean of the Faculty of Law of the University of Manitoba, and Justice Michel Monnin, then a member of the Court of Queen's Bench, never produced a report.

Nonetheless, the Law Society currently publishes the following documents in bilingual version in its *Handbook of Professional Conduct*: the *Law Society Act*, the *Rules of the Law Society*, and the *Code of Professional Conduct*.

5. Creation of the Association des juristes d'expression française du Manitoba and Reorientation of the Institut Joseph-Dubuc

The Committee of French-Speaking Jurists and the Institut Joseph-Dubuc conducted their activities in parallel until the end of 1988, at which point a major reshaping took place.

To begin with, the Committee of French-Speaking Jurists was dissolved and replaced by the Association des juristes d'expression française du Manitoba, an independent body corporate.

Secondly, the Institut Joseph-Dubuc was dissolved as an independent legal entity and became a branch within the Collège universitaire de Saint-Boniface.⁵⁶ Since then the Institut also provides general, legal and technical translation services.

6. Francophone Affairs Committee within the Manitoba Branch of the Canadian Bar Association

Furthermore, the Manitoba Branch of the Canadian Bar Association felt the need two years ago to re-establish a committee in charge of francophone affairs.

7. Role of the Various Bodies

We shall see under the headings that follow the role that these bodies have played in promoting the implementation of the language guarantees granted to Franco-Manitobans.

B - Human Resources

1. Legal Training

a) University Training

Until the creation of common law programs in French at the Université de Moncton and the University of Ottawa, the Faculty of Law of the University of Manitoba received a few Franco-Manitoban students every year. Thus, all or nearly all Franco-Manitoban lawyers who completed their law studies before 1980 are graduates of the Faculty of Law of the University of Manitoba.

Since the institution of common law programs in French, the vast majority of Franco-Manitoban students who enroll in law do their studies in French in Moncton or Ottawa. In fact, it is now rare for French-speaking students to attend the University of Manitoba Faculty of Law.

Given the absence of francophones within its student body, the Faculty of Law of the University of Manitoba does not consider it appropriate to set up law courses in French. If ever it were to do so, these courses would be mainly intended for students coming out of French immersion schools.

b) Bar Admission Courses

Law graduates who wish to be admitted to the Manitoba bar must article for a year, during which time they attend bar admission courses every Friday.

The bar admission courses are taught in English only and the documentation for these courses is also produced only in English.

As we saw above, the attempt initiated in 1988 to partially bilingualize the bar admission courses provided by the Law Society proved fruitless.

c) Continuing Education

i) Continuing Legal Education

Every year, the Institut Joseph-Dubuc puts on a certain number of continuing education courses that deal with various legal topics and are given in French.

The Institut sits on a continuing education coordination committee, the mandate of which is to promote cooperation between the various players in the field and avoid duplication.

The workshops that have been the most popular until now are those that give lawyers the necessary tools to practise law in French in a particular field such as real estate law or family law. However, workshops devoted to questions of substantive law, which can also be taken in English, are sparsely attended.

ii) Continuing Language Education

Right from the start, the Institut Joseph-Dubuc has been offering legal French courses developed in the framework of the activities of the National Program for the Integration of Both Official Languages in the Administration of Justice.

In addition, the Institut has put together two course manuals of its own devising namely, the *Manuel de rédaction juridique* [legal drafting manual] and the *Manuel de cours sur la*

Charte canadienne des droits et libertés [course notes on the *Canadian Charter of Rights and Freedoms*].

The courses on legal French that the Institut Joseph-Dubuc has offered in the four western provinces over the years are as follows:

- a) the basic module on oral submissions developed by the Association des juristes d'expression française de l'Ontario;
- b) modules I, II, and III of the *Cours de français juridique en droit pénal*, developed by the Centre for Legal Translation and Terminology of the Université de Moncton;
- c) the module on real estate transactions developed by the Association des juristes d'expression française de l'Ontario;
- d) the module on family law developed by Ms. Andrée Delagrave for the Ottawa Centre for Legal Translation and Documentation;
- e) the module on tort liability developed by Mr. Nicolas Joly for the Ottawa Centre for Legal Translation and Documentation;
- f) its own legal drafting course;
- g) its own course on the *Canadian Charter of Rights and Freedoms*.

2. Judges and Officers of the Court

a) Judges

i) Background

The following French-speaking judges sit on Manitoba judicial tribunals:

- a) Justice Michel Monnin at the Court of Appeal;
- b) Justices Léa Duval and Armand Dureault at the Court of Queen's Bench;
- c) Judges Richard Chartier and Roger Grégoire at the Provincial Court.

Generally speaking, the federal and provincial governments adhere to the century-old tradition according to which at least one French-speaking judge sits on each of the judicial tribunals of Manitoba.

Since the judicial apparatus recovered its bilingual status, the francophone associations involved have managed to convince political authorities that it was appropriate for at least two French-speaking judges to sit on the trial courts. Among other things, the associations in question were able to base themselves on the decision rendered by Justice Michel Monnin of the Court of Queen's Bench in *R. v. Allain*.⁵⁷ In that decision, Justice Monnin allowed the motion to stay proceedings brought by the accused on the basis of paragraph 11(b) of the *Canadian Charter of Rights and Freedoms* and the claim that he had not been judged within a reasonable period of time by reason of the conflicts of interest and scheduling conflicts existing for the only judge in the Provincial Court capable of hearing cases in French.

Furthermore, federally-appointed judges have access to language courses dispensed by the Commissioner for Federal Judicial Affairs. Thus, a good number of English-speaking judges on the Court of Queen's Bench are now in a position to preside over trials in French, taking into account the reservations expressed below.

We shall now review the participation of French-speaking judges in the various types of proceedings that take place in French.

ii) Criminal Proceedings

Seeing the relatively small number of francophones in Manitoba, it happens fairly often that the French-speaking judges are acquainted with the accused and prefer not to preside over his or her trial.

Moreover, it also happens that judges would rather not have a criminal case referred to them if the case brings questions of a linguistic nature in issue. The fact is that, whatever their ruling, their impartiality would undoubtedly be called into question by the losing party. In the event of a negative ruling, francophones would complain that the judge sold out to the English-speaking majority. In the event of a positive ruling, anglophones would complain that the judge had unduly favoured his own language group.

It thus fairly often occurs that English-speaking judges conduct cases that proceed in French. However, lack of comprehension of regional expressions or the nuances of the language may occasionally lead to serious problems. For example, it goes without saying that a judge experiencing certain difficulties on the linguistic level is not always in a position to understand perfectly the subtleties of the legal arguments invoked by the parties' lawyers.

iii) Civil Proceedings

Seeing the relatively small number of francophones in Manitoba, it happens fairly often that the French-speaking judges are acquainted with one or the other party in a case and prefer not to preside over the trial.

It therefore happens fairly frequently that English-speaking judges conduct civil cases that proceed in French. However, the lack of comprehension of the nuances of the language alluded to above again poses difficulties.

iv) Family Proceedings

At the present time, not one French-speaking judge sits in the Family Division of the Court of Queen's Bench. Thus, family law matters that are heard in French are heard by Civil Division judges who, for the above-mentioned reasons, are often English-speaking. In the Manitoba context, if one of the spouses is French-speaking, there is a good chance that the other is French-speaking as well. Since, in this type of trial, the parties are testifying on questions of an emotional nature, and sometimes use highly colourful regional expressions, it is essential that the judge have an excellent command of informal and vernacular language, which is not generally the case among English-speaking judges having learned French as adults.

Given this situation, the Association des juristes d'expression française du Manitoba has for some time now been calling for the appointment of a French-speaking judge to the Family Division.

b) Officers of the Court

i) General Remarks

Generally speaking, it can be said that the number of officers of the court who speak French and English fluently is sufficient to meet the demand. However, as we shall see,

the fact that bilingual individuals are in officer of the court positions is more often than not a matter of pure chance. Moreover, the bilingual officers of the court have in most cases not received any French-language training and thus do not know French legal terminology very well.

ii) Masters of the Court

None of the masters of the Court of Queen's Bench understands French well enough to hear a case without the help of an interpreter.

iii) Court Registry Staff

The staff of the Court of Queen's Bench office at the St. Boniface Law Courts Building are all fluent in French and English.

A few staff members of the registries in the Law Courts Building of downtown Winnipeg are fluent in French and English but bilingualism is not a requirement for their positions. The fact that these positions are filled by bilingual people is thus usually a product of chance.

iv) Court Clerks

A few court clerks at the Court of Queen's Bench and the Provincial Court are fluent in French and English. Once again, the fact that bilingual individuals occupy these positions is generally attributable to chance.

v) Magistrates

A few magistrates appointed under the terms of Part V of the *Provincial Court Act*⁵⁸ are fluent in French and English. Again, the fact that bilingual individuals fill these positions is generally of fortuitous origin.

Moreover, none of the magistrates belonging to the category of hearing officers understands French well enough to preside over an interim release hearing without the assistance of an interpreter. Thus, francophone citizens who are arrested in the middle of the night or on weekends and who wish to present their application for interim release to a judge or officer of the court fluent in French have to remain in jail until a Provincial Court judge is able to hear the matter. On the other hand, if they agree to appear before an English-speaking hearing officer assisted by an interpreter, they can be heard immediately. The delay that francophones wishing to exercise their language rights expose themselves to was vindicated by the Court of Queen's Bench in *R. v. Maltais*.⁵⁹

vi) Court Reporters

Section 27 of the *Manitoba Evidence Act*⁶⁰ was amended in 1993 in such a way as to eliminate the necessity for court reporters to record proceedings within Manitoba courts. Thus, proceedings in court are now recorded by court clerks and transcribed by the employees of the Transcription Services Unit.

None of the transcription clerks within Transcription Services understands French. As a result, the transcription of court proceedings partially or entirely conducted in French is entrusted to the Institut Joseph-Dubuc, which receives payment for this service.

vii) Interpreters

The judicial tribunals of Manitoba have access to skilled interpreters who are civil servants in the Department of Culture, Heritage and Citizenship. Interpretation services are supplied free of charge upon request by one of the parties or the court.

It should be pointed out that in rural areas, the court office staff are not always aware of the fact that the courts have competent interpreters at their disposal. Thus, it happens all too often that the staff in question call on volunteers from the organization known as the Language Bank of Winnipeg, who usually have a poor understanding of legal procedure and legal terminology.

3. Attorneys

a) Private Sector Attorneys

i) Attorneys in Private Practice

By way of indication, the annual directory of legal services set up in 1995 by the Community Legal Education Association of Manitoba includes the names of 43 lawyers who claim to be able to provide services in French.

In the early 1980s, a large majority of French-speaking lawyers were practising in the area of St. Boniface, where there were two firms of five to ten lawyers who spoke French and English fluently. Barely a handful of bilingual lawyers were practising in downtown Winnipeg. However, since that era, the situation has completely reversed. At the present time, only about ten French-speaking lawyers are practising in the St. Boniface area, and they do so in small firms in which the number of lawyers varies from one to three. This phenomenon is explained by the fact that the oldest lawyers have retired and the restoration of language rights has pushed the large downtown firms to recruit graduates fresh out of common law programs in French.

French-speaking lawyers are now found in most of the large downtown firms, but they are scattered. The highest concentration of French-speaking lawyers in downtown Winnipeg is found in the province's largest firm, where there are three. As a result, the majority of lawyers recently trained in French are lost in a sea of English-speaking people.

ii) Attorneys Practising In-House

The francophone presence among corporate counsel is very low. Paradoxically, many national companies that have their head office in Winnipeg companies in the insurance and financial services field in particular need bilingual lawyers.

b) Public Sector Attorneys

i) Attorneys Working in the Federal Civil Service

Two bilingual lawyers work at the regional office of the Department of Justice of Canada located in downtown Winnipeg.

The French-language files that they look after have mainly to do with narcotics possession or trafficking offences, and traffic violations at the Winnipeg airport.

ii) Attorneys Working in the Provincial Civil Service

Leaving aside the Quebec civil attorneys who work at the Legal Translation Branch, the Manitoba Department of Justice has only one francophone lawyer, who occasionally acts as a Crown attorney in criminal matters involving francophones. In fact, for this type of matter, the Department of Justice generally gives an attorney in private practice a mandate to act as a Crown attorney.

Furthermore, there is an anglophone lawyer at the Constitutional Law Branch who is capable of pleading cases in French.

Lastly, a bilingual anglophone lawyer of Quebec origin works at Legal Aid.

iii) Attorneys Working in the Municipal Civil Service

One francophone lawyer works for the City of Winnipeg legal services division.

4. Support Staff

a) Legal Secretaries

The École technique et professionnelle du Collège universitaire de Saint-Boniface offers a bilingual secretarial skills program, but does not provide a program specialized in legal secretarial skills.

Thus, in most cases, French-speaking lawyers who wish to hire a bilingual legal secretary recruit graduates of the École technique et professionnelle and train them in legal secretarial skills themselves.

It is usually extremely difficult to find individuals who have very good spelling, grammar and correspondence skills in French and English, rudimentary legal terminology in both languages, and a high enough degree of initiative to handle files with a minimum of supervision.

b) Paralegals

A fair number of law firms have paralegals who specialize in specific areas, such as real estate law or the law of succession.

To our knowledge, Manitoba law firms do not at the present time have anyone working as a paralegal in both French and English.

C - Documentary Resources

1. Legislation

By "legislation", we mean not just the actual legislative instruments, but all of the rules of law laid down by the provincial government in Manitoba.

a) Statutes

In conformity with the recent decisions of the Supreme Court of Canada, the statutes of the Legislative Assembly of Manitoba are enacted, printed and published in English and in French.

Statutes are published in bilingual, parallel column format, both in the annual or sessional volumes of statutes and in the *Continuing Consolidation of the Statutes of Manitoba*.

b) Regulations

Regulations that constitute delegated legislation in the meaning of the *Blaikie No. 2* ruling are enacted, printed and published in both languages.

The regulations in question are published in bilingual, parallel column format in the *Manitoba Gazette*.

It should be noted that all prescribed forms are also drawn up and published in English and in French.

c) Orders in Council

Orders in council subject to the obligation of bilingualism according to the 1992 *Reference Re Manitoba Language Rights* are enacted, printed and published in English and in French.

It should however be pointed out that, as the criteria established by the Supreme Court of Canada in the 1992 *Reference Re Manitoba Language Rights* are rather vague, it is difficult to verify the extent to which the Manitoba Cabinet respects its language obligations with respect to the enactment of orders in council.

d) Rules of Judicial and Quasi-Judicial Tribunals

The rules of the judicial tribunals of Manitoba are enacted, printed and published in English and in French. They are published in bilingual, parallel column format in the *Manitoba Gazette* and in a special set prepared by the Queen's Printer.

However, practitioners generally make use of commercial editions of these rules that are published in a unilingual English version by the Carswell publishing house and the Legal Research Institute of the University of Manitoba.

It should be noted that all forms contained in the court rules are also drawn up and published in English and in French.

The rules of quasi-judicial tribunals are supposed to be enacted, printed and published in both languages.

According to our information, there is sometimes cause to wonder whether the requirement of simultaneous enactment in French and English is respected. It in fact seems that this requirement is little known and that many organizations tend to arrange a French translation only after the English version has been enacted.

2. Case Law

Save for some rare exceptions, at the close of an action proceeded in French, French-speaking and English-speaking judges draft their ruling in English and then have it translated by the legal translation service of the Department of Justice or the general translation service of the Department of Culture, Heritage and Citizenship. The ruling is then simultaneously issued in both languages.

On the other hand, the law reporters usually carry only the English version of rulings rendered in both French and English.

3. Secondary Materials

Since its inception, the Institut Joseph-Dubuc has been putting a collection of common law works in French at the disposal of French-speaking jurists. Over a period of about five years, the Institut would order two copies of each work and place one in its own library and the other in the library of the central Winnipeg Law Courts Building.

However, the management of the Law Courts Building library has never agreed to do the necessary cataloguing to integrate the collection of common law works in French into its own general collection.

It is important to draw attention to the efforts made by the National Program for the Integration of Both Official Languages in the Administration of Justice to facilitate the publication of original common law works written in French. To this end, we would note Professor Joseph Roach's *Les hypothèques immobilières en common law*, the *Précis du droit des biens réels* by Justice Michel Bastarache and Professor Andréa Boudreau Ouellette, and Professor Donald Poirier's *Introduction générale à la common law*. Lastly, we would point out that the *Manitoba Law Journal* generally publishes one article per issue in French.

4. Standard Forms of Legal Documents

Since its inception, the Institut Joseph-Dubuc has at regular intervals published standard forms of legal documents applying to various fields of law.

Moreover, French-speaking practitioners can in many cases take their cue from standard forms of legal documents drawn up by the Ottawa Centre for Legal Translation and Documentation and the Moncton Centre for Legal Translation and Terminology. We would cite as an example the court forms of the teams of Godin and Rouse and Williston and Rolls, which are published in both French and English.

5. Lexicographical and Terminological Works

French-speaking jurists who wish to draft letters and legal documents in French are able to consult a number of lexicographical and terminological works produced in the framework of the activities of the National Program for the Integration of Both Official Languages in the Administration of Justice. Among the most important tools, we would emphasize the following:

- a) the bilingual lexicons of common law developed in the framework of the standardization activities of the National Program for the Integration of Both Official Languages in the Administration of Justice;
- b) the common law lexicons drawn up by the Moncton Centre for Legal Translation and Terminology;
- c) the *Juridictionnaire* published by the Moncton Centre for Legal Translation and Terminology;
- d) the *Lexicon of Ontario Statutes and Regulations* developed by the Ottawa Centre for Legal Translation and Documentation;
- e) the *Dictionnaire de droit privé* and *Private Law Dictionary* developed by the Quebec Research Centre of Private and Comparative Law.

In addition, the Institut Joseph-Dubuc publishes at regular intervals bilingual glossaries of terms drawn from Manitoba provincial statutes.

6. Public Legal Education Documents

Since its inception, the Institut Joseph-Dubuc has been publishing public legal education articles in local newspapers and, together with other organizations, participates in the dissemination of public legal education documents.

On this score, the Institute has been working in close cooperation with the Community Legal Education Association for several years. There is even question of this cooperation being stepped up in the future.

V - EXERCISE OF LANGUAGE RIGHTS BY FRENCH-SPEAKING CITIZENS

We shall now review the exercise of language rights by French-speaking citizens in various types of proceedings.

A - Criminal Proceedings

In the early 1980s, the Provincial Court of Manitoba set up a system under which it sets aside one or two sittings a month for French-language cases, which are held at the St. Boniface Law Courts.

This system was designed to enable citizens to exercise the rights recognized by s. 23 of the *Manitoba Act, 1870* and Part XVII of the *Criminal Code*.[61](#)

However, the system in question does not apply to the very first appearance of an accused and, at this stage of the proceeding, very little effort is made to create an atmosphere conducive to the accused's exercise of his language rights.

French-speaking citizens who take advantage of the sittings reserved for French-language cases are generally Quebecers accused of narcotics possession or trafficking or auto theft, or Franco-Manitobans accused of traffic violations.

Generally speaking, Franco-Manitobans who are accused of serious crimes (e.g.: French-speaking priests accused of indecent or sexual assault) prefer to undergo their trial entirely in English.

The Association des juristes d'expression française du Manitoba has put together a proposal for reforming the Provincial Court, the purpose of which is in fact to establish a procedural framework to facilitate the exercise of language rights by French-speaking citizens.[62](#)

B - Civil Proceedings

It is necessary to understand that very few civil trials proceed in French, as it is relatively rare for both parties to be French-speaking. When it comes to matters touching on the business field, moreover, French-speaking citizens generally prefer to express themselves in English as negotiations with the other party took place in English and contracts and other documents were also drawn up in that language.

What is more, the difficulty up until now of organizing an examination for discovery in French was an obstacle that tended to block a civil action from proceeding in French right from the start.

C - Family Proceedings

In family proceedings, the situation is entirely different from that which is found in the case of civil proceedings. As we pointed out earlier, if one of the spouses is French-speaking, chances are the other spouse is as well. In addition, the testimony bears on questions of an emotional nature and on facts that played themselves out in the home (and therefore, probably in French).

As a result, we are of the opinion that the need for French-language services is most acute in the case of family proceedings.

Lastly, the difficulty up until now of organizing an examination for discovery in French was an obstacle that tended to block a family matter from proceeding in French right from the start.

VI - OBSTACLES YET TO BE OVERCOME

The picture that we have presented in this article enables us to draw certain conclusions.

A - Legislative and Judicial Bilingualism

Since the rebirth of section 23 of the *Manitoba Act, 1870* thanks to the *Forest* case, the ambit of the constitutional language guarantees has been sharply clarified.

We would start by recalling that, in the *Reference Re Manitoba Language Rights* the Supreme Court of Canada unanimously declared through former Chief Justice Dickson that the purpose of section 23 of the *Manitoba Act, 1870* was "to ensure full and equal

access to the legislatures, the laws and the courts for francophones and anglophones alike."⁶³

1. Legislative Bilingualism

Generally speaking, it can be said that the guarantees relating to legislative bilingualism are adequately respected and that the objective of equal access to the laws has been attained.

2. Judicial Bilingualism

Unfortunately, the same does not go for judicial bilingualism. Indeed, in the trilogy of May 1, 1986 (namely the *S.A.N.B.*, *MacDonald* and *Bilodeau* rulings), the Supreme Court of Canada observed that the language guarantees relating to judicial bilingualism harboured some serious gaps.

Federal parliament tried to fill in these gaps as much as possible by adopting Part III of the *Official Languages Act*⁶⁴ and improving Part XVII of the *Criminal Code*. Part III of the *Official Languages Act* guarantees citizens the right to be heard directly by the federal courts. Part XVII of the *Criminal Code* guarantees citizens the right to a preliminary hearing and trial in the official language of their choice.

In Manitoba, the provincial government filled in the gaps referred to above by adopting a French-language services policy. As a consequence, apart from very specific steps in the criminal proceeding that are covered by Part XVII of the *Criminal Code*, the political will of the provincial government plays a crucial role with respect to achieving the objective of equal access to the courts.

We are of the opinion that, up until now, the provincial government has not mobilized the necessary effort in this regard. There is still much to do in terms of establishing mechanisms within the judicial apparatus that will enable French-speaking citizens to feel perfectly at ease in exercising their language rights. Thought will have to be given to methods that would enable the principle of judicial bilingualism to be coupled with the concept of bilingual districts at the heart of the provincial policy on French-language services.

There must also be a response to the glaring need for language training among officers of the court.

B - Provision of French-Language Services by Attorneys

As we have seen, French-speaking lawyers already have a fair number of documentary resources at their disposal that can help them practise their profession in French.

The difficulties that they experience arise more in terms of the demand expressed by their clients⁶⁵ and access to support staff competent in French. The situation thus calls for two different types of intervention. On the one hand, an awareness-raising campaign needs to be set up to convince French-speaking citizens to conduct their legal affairs in French (e.g.: have their will drawn up in French, have documents relating to a real estate transaction drawn up in French, introduce actions in Small Claims Court in French, file pleadings in civil or family matters in French, request a French-language trial in the context of a criminal proceeding). On the other hand, steps need to be taken with educational institutions to ensure that at least a few French-language courses in legal secretarial skills are set up.

Furthermore, it is essential to continue supporting French-speaking lawyers by providing them with the continuing education they need in both legal and linguistic subjects in French.

In an ideal world, French-speaking lawyers would also need to stop working in isolation from one another and gather together in a single medium-sized firm so as to achieve the following objectives:

- the creation of a critical mass enabling them to avoid useless duplication of effort, particularly with respect to the recruitment of bilingual staff, the acquisition of French-language reference works, and the formation of a bank of standard forms of legal documents and correspondence drafted in French;
- the specialization by each in specific fields;
- the provision of a complete range of quality services in French and English to their clientele.

Should we be called upon to take stock of the situation again in the year 2010, we dare hope that we shall be able to report that the difficulties raised in this article are long since a thing of the past.

NOTES

[1](#) R.S.C. 1985, App. II, No. 5.

[2](#) [1979] 2 S.C.R. 1032.

[3](#) [1988] 1 S.C.R. 234.

[4](#) R.S.C. 1985, c. O-3.

[5](#) Part I of the *Constitution Act, 1982*, reprinted in R.S.C. 1985, App. II, No. 44.

[6](#) R.S.C. 1985 (4th Supp.), c. 31.

[7](#) *Official Languages of New Brunswick Act*, R.S.N.B. 1973, c. O-1.

[8](#) Ss. 16-23 and s. 16.1 of the *Canadian Charter of Rights and Freedoms*.

[9](#) *French Language Services Act*, S.O. 1986, c. 45.

[10](#) *Official Languages Act*, S.N.W.T. 1988, c. O-1.

[11](#) *Languages Act*, S.Y. 1988, c. 13.

[12](#) R.S.C. 1985, App. II, No. 8.

[13](#) S.M. 1890, c. 14.

[14](#) *Pellant v. Hébert* (March 1892), Supreme Court of Manitoba, (1981) 12 R.G.D. 242 and *Bertrand v. Dussault* (30 January 1909), County Court of Manitoba, (1977) 77 D.L.R. (3d) 458.

[15](#) *Supra* note 2.

[16](#) [1985] 1 S.C.R. 721.

[17](#) With regard to the Manitoba Legislature's difficulties observing the principle of parliamentary and legislative bilingualism immediately after the Supreme Court of Canada delivered its opinion in the *Reference*, see *Waite v. R.* (1986), 25 D.L.R. (4th) 696, *aff'd* (1987), 47 Man. R. (2d) 247 (C.A.) and the following commentaries: Henri Brun and Guy Tremblay, *Droit constitutionnel*, 2nd ed. (Cowansville: Éditions Yvon Blais, 1990) at 739; Guy Jourdain, "L'article 23 sitôt revigoré, sitôt bafoué" (1986) 4 *Télé-CLEF* No. 3 at 16-17; Guy Jourdain, "Le français à la législature du Manitoba: la Cour d'appel absout les gaffes de la province" (1987), 5 *Télé-CLEF* No. 3 at 14-16; André Tremblay and Michel Bastarache, "Les droits linguistiques (articles 16 à 22)", in G.A. Beaudoin and Ratushny, E., eds., *Charte canadienne des droits et libertés* (Montreal: Éditions Wilson & Lafleur, 1989) at 750-751.

[18](#) [1985] 2 S.C.R. 347.

[19](#) With regard to the possible scope of s. 23 of the *Manitoba Act, 1870*, see Rhéal Teffaine, "Le champ d'application de l'article 23 de la *Loi de 1870 sur le Manitoba*", (1986) 4 *Télé-CLEF* No. 1 at 12-14.

[20](#) The Supreme Court of Canada pronounced itself with respect to the forms of delegated legislation covered in sub-paragraphs i) to v) in *Blaikie No. 2* [1981] 1 S.C.R. 312.

[21](#) [1992] 1 S.C.R. 212.

[22](#) [1992] 1 S.C.R. 579.

[23](#) [1985] C.A. 559, *aff'd* [1990] 1 S.C.R. 260.

[24](#) (1991), 4 O.R. (3d) 705 (C.A.).

[25](#) Peter Hogg, *Constitutional Law of Canada*, 3rd ed. (Toronto: Carswell, 1992) at 1208-1209 and John M. Keyes, *Executive Legislation* (Toronto: Butterworths, 1992) at 273-276.

[26](#) (1984), 150 D.L.R. (4th) 198; see also the following comments: Roger Bilodeau, "Le

bilinguisme judiciaire et l'affaire Robin c. Collège de Saint-Boniface : traductore, traditore?" (1986), 15 *Man. L.J.* 333 and Guy Jourdain, "La Cour suprême refuse d'entendre l'appel de Robin" (1986), *Télé-CLEF* No. 3 at 13-14.

[27](#) [1986] 1 S.C.R. 549.

[28](#) [1986] 1 S.C.R. 460.

[29](#) [1986] 1 S.C.R. 449.

[30](#) *Supra* note 2.

[31](#) S.M. 1980, c. 3.

[32](#) See Note 16.

[33](#) *Ibid.* at 776.

[34](#) S.M. 1987-88, c. 9.

[35](#) With respect to the method by which the French version of statutes is drafted, see Guy Jourdain, "Bilinguisme en matière de rédaction des lois au Manitoba" (1988), 6 *Télé-CLEF* No. 2 at 21.

[36](#) *Re-enacted Statutes of Manitoba, 1987, Act*, S.M. 1987-88, c. 9; *Re-enacted Statutes of Manitoba, 1988, Act*, S.M. 1988-89, c. 1; *Re-enacted Statutes of Manitoba (Private Acts) Act, 1990*, S.M. 1990-91, c. 1; *Re-enacted Statutes of Manitoba (Public General Acts), 1990*, S.M. 1990-91, c. 3; *Statute Law Amendment (Re-enacted Statutes) Act*, S.M. 1988-89, c. 11; *Statute Law Amendment (Re-enacted Statutes) Act, 1990*, S.M. 1989-90, c. 91; *Statute Re-enactment Act, 1988*, S.M. 1988-89, c. 2; *Statute Re-enactment and By-law Validation (Municipal) Act*, S.M. 1989-90, c. 68; *Statute Re-enactment and By-law Validation (Winnipeg) Act*, S.M. 1989-90, c. 9.

[37](#) *Supra* note 18.

[38](#) In the case of Ontario, see Gilles Levasseur, *Le statut juridique du français en Ontario* (Ottawa: University of Ottawa Press, 1991) at 28.

[39](#) C.C.S.M. c. R60.

[40](#) C.C.S.M. c. C240.

[41](#) C.C.S.M. c. C280.

[42](#) C.C.S.M. c. C275.

[43](#) Man. Reg. 555/88 R.

[44](#) Guy Jourdain, "La nouvelle partie III des règles de la Cour d'appel du Manitoba : cadre procédural partiellement inconstitutionnel" (1989), 17 *Télé-CLEF* No. 3 at 19.

[45](#) Man. Reg. 553/88.

[46](#) Court of Queen's Bench Rules, r. 4.07(8), 34.09 and 53.01(3) and (4).

[47](#) (1989) Vol. 20, no. 4, p. 12.

[48](#) *Supra* note 3 at 276.

[49](#) *Supra* note 26 at 217.

[50](#) (1986), 69 N.B.R. (2d) 155 at 166.

[51](#) Manitoba Department of Justice (Courts Division Transcription Services), *Transcript Standards Manual* (Winnipeg: Government of Manitoba, 1994) at 40.

[52](#) S.M. 1992, c. 37.

[53](#) Proclamation signed November 24, 1993 and published in the *Manitoba Gazette*, Vol. 122, No. 50 (11 December 1993) at 1667.

[54](#) Rhéal Teffaine, "Le Comité du Barreau canadien pour l'intégration du français à la pratique du droit au Manitoba" (1985), 3 *Télé-CLEF* No. 1 at 19.

[55](#) Guy Jourdain, "Services en français offerts par la Société du Barreau du Manitoba" (1988), 6 *Télé-CLEF* No. 3 at 35 and 36.

[56](#) Daniel Mathieu, "L'exercice en français de la profession d'avocat au Manitoba" (1990) 19 *Man. L.J.* 5-30 at 11.

[57](#) (1991), 70 Man. R. (2d) 161 (Q.B.).

[58](#) *Supra* note 42.

[59](#) This was the decision handed down by Justice Wilfred DeGraves on November 29, 1991. The accused was nonsuited from his appeal to the Manitoba Court of Appeal on

January 6, 1992, for the sole reason that the Court did not consider itself to have the necessary authority to hear the accused's claims based on the *Canadian Charter of Rights and Freedoms* in the context of an appeal on a question of *habeas corpus*.

[60](#) C.C.S.M. c. E150.

[61](#) R.S.C. 1985, c. C-46.

[62](#) Association des juristes d'expression française du Manitoba, *Rapport sur la réforme de la Cour provinciale*, (Winnipeg:)Association des juristes d'expression française du Manitoba, 1995).

[63](#) *Supra* note 16 at 739.

[64](#) *Supra* note 6.

[65](#) Marc Monnin, "Language Rights and the Supreme Court of Canada: A Comment" (1991) 20 *Man. L.J.* 406 at 410.