

**THE WORKING GROUP ON THE ENHANCEMENT OF FRENCH LANGUAGE
SERVICES IN MANITOBA'S JUDICIAL SYSTEM:
AIDING THE LONG JOURNEY FROM WORDS TO ACTION
IN THE MATTER OF THE ADMINISTRATION OF JUSTICE
IN BOTH OFFICIAL LANGUAGES**

**Paper presented by Guy Jourdain, LL.B., in the framework of the colloquium
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1- INTRODUCTION

No sooner had I learned the theme chosen for this colloquium than I thought of devoting my paper to the Working Group on Enhancement of French Language Services in Manitoba's Justice System. The Working Group has in fact proven to be an effective tool through which justice and the French language are becoming more and more united in our province.

I will start by touching on the circumstances in which the Working Group was formed and move on from there to look at the Working Group's mandate, composition and mode of operation. I will then turn my attention to its accomplishments and the work it has yet to do.

II - CIRCUMSTANCES AT THE ORIGIN OF THE ESTABLISHMENT OF THE WORKING GROUP

Section 23 of the *Manitoba Act, 1870* includes constitutional guarantees in matters of parliamentary, statutory and judicial bilingualism. In the *Reference re Manitoba Language Rights*, the Supreme Court of Canada stated the following opinion about section 23: "the purpose of [...] s. 23 of the *Manitoba Act, 1870* [...] was to ensure equal access to the legislatures, the laws and the courts for francophones and anglophones alike."

Thus the administration of justice is supposed to operate in both English and French in our province, and this has been so since the province's very founding. Nonetheless, judicial bilingualism was illegally abolished for 90 years and re-established in 1979 thanks to the famous *Forest* case. As Franco-Manitobans have been used to justice in English for close to a century, it goes without saying that reviving the bilingualism of the administration of justice in the land of Louis Riel is an often grueling obstacle course.

On the other hand, in the May 1, 1986, trilogy* (namely, the *Société des Acadiens du Nouveau-Brunswick*, *MacDonald* and *Bilodeau* rulings), the Supreme Court of Canada found that there were some major gaps in the language guarantees pertaining to judicial bilingualism.

Parliament tried to fill in these gaps by passing Part III of the *Official Languages Act* and strengthening Part XVII of the *Criminal Code*. Part III of the *Official Languages Act* guarantees the right to be understood directly by federal courts. Part XVII of the *Criminal Code* grants the right to a preliminary inquiry and criminal trial in the official language of one's choice.

In 1989, the provincial government of Manitoba adopted a French-language services policy, one of the purposes of which was to fill in these same gaps outside the specific stages of the criminal proceeding covered by Part XVII of the *Criminal Code*. What is more, in 1991, Premier Filmon announced that the implementation of the French-language services policy would from that point on be founded on the principle of active offer.

During the first half of the '90s, the Association des juristes d'expression française du Manitoba (AJEFM) invested much time and energy in developing recommendations to ensure that the general principles set out in the provincial policy on French-language services were actually applied. The document containing these recommendations is commonly known as the "Provincial Court Reform Report".

Moreover, Canada's Commissioner of Official Languages made public in November 1995 the study entitled *The Equitable Use of English and French before the Courts in Canada*. In that study, the Commissioner took stock of the administration of justice in both official languages in each of the country's provinces and territories and formed recommendations for the federal government for the purpose of correcting a number of deficiencies.

In mid-February 1996, Mrs. Rosemary Vodrey, the then Minister of Justice, met with representatives of the Société franco-manitobaine and the AJEFM, as well as the Commissioner of Official Languages, to discuss what follow-up should be given to the AJEFM report and the Commissioner's study.

In view of providing the necessary follow-up to the documents in question and resolving various issues concerning the administration of justice in both official languages that had been of concern for some years, on July 22, 1996, Minister Vodrey officially announced the creation of the Working Group on Enhancement of French Language Services in Manitoba's Justice System.

III – MANDATE

The Minister of Justice gave the Working Group a very broad mandate, namely:

- to review all outstanding issues with respect to the delivery of French-language services by the Manitoba courts;
- to identify the remedial actions to be taken with respect to those issues;
- whenever possible, to implement the remedial actions so identified and, to that end, seek any approvals that may be necessary;
- to provide recommendations to the Minister of Justice of Manitoba regarding any remedial actions requiring the Minister's approval or changes to the legislation.

The fundamental goal of the Working Group is to develop a framework for the implementation of the active offer principle in the administration of justice at every stage of civil and criminal proceedings and, with respect to criminal matters, during the phase prior to contact with the judicial system (more specifically, at the time of arrest).

The framework is designed to create a climate in which francophone citizens feel perfectly at ease using their mother tongue in their dealings with the judicial system or other government bodies involved in the administration of justice. In other words, its objective is to achieve the standardization of French in the administration of justice in Manitoba. By "standardization", I mean that the use of French in this domain becomes a **standard** reality – i.e., an integral part of people's daily experience.

IV – COMPOSITION

The Working Group is currently made up of the following individuals:

- Mr. Edmond LaBossière, head of the Manitoba government's French Language Services Secretariat and Chair of the Working Group;
- Mr. Marvin Bruce, Assistant Deputy Minister of the Manitoba Department of Justice (Courts Division);
- Mr. Robin Finlayson, Assistant Deputy Minister of the Manitoba Department of Justice (Prosecutions Division);
- Mr. Robert Giasson, Director of Court Administration;
- Mrs. Laurel Repski, Director of Human Resource Services in the Manitoba Department of Justice;
- Mr. Marc Tremblay, federal Department of Justice representative;
- Mr. Michel Chartier, Chair of the Board of Directors of the Société franco-manitobaine;
- Mr. Antoine Hacault, Outgoing President of the AJEFM;
- Mr. Guy Jourdain, Secretary and Coordinator of the AJEFM.

From time to time, Mr. Richard Tardif, senior legal advisor at the Office of the Commissioner of Official Languages, participates in Working Group meetings as an observer.

The following individuals were at various times members of the Working Group but are no longer involved:

- Mr. Allan Fineblit, the then Assistant Deputy Minister of Justice of Manitoba (Prosecutions Division);

- Mr. Greg Yost, the then Director of the Criminal Justice Policy Branch at the Manitoba Department of Justice;
- Mr. Michel Francoeur, the then senior legal advisor in the Official Languages Law Group at the federal Department of Justice;
- Mr. Rénaud Rémillard, the then manager of the political/legal sector at the Société franco-manitobaine.

V – MODE OF OPERATION

The Working Group met for the first time on October 17, 1996, mainly for the purpose of clarifying its mandate and working methods. It also agreed to the following:

- the AJEFM would draw up a list of the various issues to be studied by the Working Group;
- throughout the course of its activities, the Working Group would invite to its meetings resource people capable of shedding further light on specific issues.

During the next few meetings, the Working Group studied the list prepared by the AJEFM and the Manitoba Department of Justice gave its point of view on the various issues covered.

Once this groundwork was accomplished and the members had a thorough grasp of the ins and outs of the various issues to be resolved, the Working Group focused on each issue one by one and took action to ensure that the solutions it chose were implemented as soon as practicable.

After each meeting, the AJEFM assumed the task of preparing an interim report that took stock of the problems addressed and the solutions proposed from the start of the Working Group's activities. The report was a sort of inventory that evolved from one meeting to the next, somewhat like the well-known "living tree" doctrine of constitutional law.

The Working Group usually met every six to eight weeks and a collegial atmosphere was soon established. The Group hosted at its meetings representatives from the following services or agencies:

- the Royal Canadian Mounted Police;
- the City of Winnipeg Police Service;
- Legal Aid Manitoba;
- Manitoba Corrections;
- The Manitoba Human Rights Commission;
- The Public Trustee of Manitoba;
- Better Systems Initiative (an electronic single window project of the Manitoba government).

When it had reached a fairly advanced stage in its mandate, the Working Group met with Mr. Victor Toews, Manitoba's Minister of Justice, for approval of its recommendations. Minister Toews supported the vast majority of them, while indicating that he was not in a position to decide on those involving statutory amendments as they had to have the approval of his party caucus.

In the course of a speech delivered at the meeting held by the Steering Committee of the National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ) on April 18, 1998, Mr. Bruce MacFarlane, Manitoba Deputy Minister of Justice, officially announced that the department had accepted a good number of the Working Group's recommendations, including those oriented around establishing the pilot projects described below.

Finally, it should be noted that the Working Group benefited a great deal from the fact that its recommendations were in large part reiterated by Judge Richard Chartier in his report on what should be done to strengthen the provincial French-language services policy.

VI – ACHIEVEMENTS

A – Cornerstone of Enhancement of French Language Services in the Field of Administration of Justice

The Working Group feels that, in view of its fundamental goal, the best way to deliver bilingual court services is as follows:

- offer a full range of Queen's Bench and Provincial Court administrative services in both languages at points of service in, or in certain rare instances, near, the urban and rural bilingual areas;
- create Provincial Court teams composed entirely of bilingual staff that would hear or handle in various communities in the designated bilingual areas cases relating to offences committed in the areas in question.

With respect to the teams of bilingual personnel created within the Provincial Court, the Working Group recommended that they function as follows:

- a team composed entirely of bilingual personnel would be permanently assigned to St. Boniface and would deal with all matters related to offences committed in the designated bilingual areas of the City of Winnipeg (namely, St. Boniface, St. Vital and St. Norbert);
- a team composed of entirely bilingual personnel would go once or twice a month to various communities in the designated bilingual areas outside Winnipeg and deal with all cases related to offences committed in these districts within a certain radius;
- administrative services of the Provincial Court (e.g.: magistrate) would be available in both languages on a permanent basis in St. Boniface and the other communities in which the bilingual circuit court would sit.

To ensure that such a system is efficiently implemented, the Working Group also recommended setting up two pilot projects, one urban and the other in a rural setting (e.g.: St. Pierre-Jolys). The purpose of the pilot projects would be to test the above formula for bilingual Provincial Court teams and would also involve the following:

- the police would actively offer French-language services as follows:
 - bilingual police officers would wear a badge or pin indicating that they speak French;
 - police officers would have the necessary tools available (especially computer tools) to do the required documentation in French;

- citizens would have access to Legal Aid services in French and a list of lawyers prepared to provide legal advice in French;
- citizens would be able to appear before a bilingual magistrate;
- citizens would be able to have their bail hearing in French or English.

The following Queen's Bench services would also be available:

- administrative services relating to small claims (filing of documents for hearings held in Winnipeg);
- civil marriages.

As part of the rural pilot project, a videoconferencing system would be set up so that, for the purposes of urgent proceedings such as bailing hearings, citizens could remain in the courthouse or RCMP detachment concerned.

As was pointed out above, the Department of Justice officially announced its agreement in principle to these pilot projects during the POLAJ Steering Committee meeting held in April 1998. The Department of Justice and the AJEFM have since established a partnership whereby the latter will be in charge of managing the pilot projects. The AJEFM has thus recently hired a coordinator for that purpose.

The federal government has undertaken to pay half of the costs to be incurred for the implementation of the pilot projects and it has earmarked the sum of \$75,000 to this end for the current fiscal year. For its part, the government of Manitoba is presently reviewing a funding application it recently received with respect to the pilot projects.

B – Other Recommendations Accepted or Implemented by the Competent Authorities

1. *Towards a Consolidation of Language Rights in the Administration of Justice in Canada* Document

Manitoba's Minister of Justice accepted all of the Working Group's recommendations as to the position he should take on the working document produced by the federal Department of Justice entitled *Towards a Consolidation of Language Rights in the Administration of Justice in Canada*.

The Minister thus indicated that he was in agreement with the vast majority of proposals set out in the document in question. He also expressed the point of view that, insofar as the desired resources are essentially in place in Manitoba, it would not be necessary in our province to postpone implementation of the recommendations made by the Commissioner of Official Languages on the following issues:

- the fixed time frames for presenting an application under part XVII of the *Criminal Code*;
- translation of the documentary evidence disclosed before or presented at trial;
- the competence of court interpreters.

2. Measures Pertaining to the Justice System as a Whole

2.1 Human Resources

(a) Judges

(i) Minimum Number of Bilingual Judges in Each Court

The Working Group recommends that federal and provincial legislation set a minimum number of bilingual judges for each court.

Although the Government of Manitoba has not formally taken a stand on the suitability of establishing such a minimum by way of legislation, it recently appointed Judge Glenn Joyal to the Provincial Court, after a competition aimed expressly at filling a designated bilingual position. With that appointment, the Provincial Court of Manitoba now has three judges able to preside over hearings in either official language.

(ii) French-Speaking Representative on Advisory Committees for Judicial Appointments

The Working Group recommends that the *Provincial Court Act* be amended so as to provide that a person appointed by the provincial Minister of Justice from a list of three candidates submitted by the president of the AJEFM sit on the nominating committee whenever a competition for a bilingual position is held.

While the Government of Manitoba has certain reservations as to the advisability of appointing a member of the committee from a list of candidates submitted by the AJEFM or any other similar group, it acknowledges that the nominating committee should have a representative from the francophone community. What is more, in the framework of the above-mentioned competition, the three non-jurists that the government appointed to the selection committee were fluent in both languages.

(iii) Language Training

The Working Group recommends that the Government of Manitoba approach the Government of Canada and the Office of the Commissioner for Federal Judicial Affairs to request that the funding formula applicable to language training offered to provincially-appointed judges be extended to cover the costs involved in tutorials given at the judges' place of work.

The Government of Manitoba accepts the recommendation of the Working Group and has started negotiating with the Government of Canada and the Office of the Commissioner for Federal Judicial Affairs.

(b) Legal Profession

The Government of Manitoba accepts the recommendation by the Working Group that it continue to cooperate with the Institut Joseph-Dubuc and other organizations with respect to the delivery of French legal terminology programs and continuing legal education programs in French.

(c) Court Staff

(i) Number of Bilingual Positions

The Working Group recommends to the Government of Manitoba that it take the steps necessary to deploy employees in designated bilingual positions in such a way as to ensure the greatest possible availability of French-language services in terms of both time and location.

The Government of Manitoba is determined to fill an adequate number of designated bilingual positions and to deploy its bilingual personnel as judiciously as possible.

(ii) Language Training

The Working Group recommends that the Courts Division of the Manitoba Department of Justice, in cooperation with the Institut Joseph-Dubuc, provide at least half a day of training in French legal terminology to its staff in designated bilingual positions every year.

The Government of Manitoba accepts this recommendation.

2.2 Written Materials

(a) Transcripts

The Transcription Services branch of the Courts Division recently adopted a policy under which the fees charged for bilingual transcripts do not reflect the added volume due to the delivery of interpretation services. This is a policy that has been extremely well-received among law practitioners.

(b) Consciousness-Raising Tools

In the framework of the Canada/Manitoba agreement on the promotion of official languages, the Government of Manitoba and the Government of Canada gave the AJEFM a \$50,000 grant to develop a CD-ROM to make the Franco-Manitoban population and civil servants aware of the delivery of French-language services by the courts and the other government bodies involved in the administration of justice.

3. Measures Pertaining to the Court of Appeal

The AJEFM maintains that certain provisions contained in Part III of the *Rules of the Court of Appeal of Manitoba* are inoperative as, in certain cases, they prescribe judicial unilingualism and are therefore incompatible with the guarantee of judicial bilingualism provided by section 23 of the *Manitoba Act, 1870*.

In the framework of a meeting organized with the assistance of the Working Group, the representatives of the AJEFM were able to make their concerns known to the Court of Appeal judges and come to an agreement in principle with them.

4. Measures Pertaining to Trial Courts

4.1 Criminal Law

(a) Procedure to be Followed at the Time of Arrest

The Department of Justice of Manitoba accepts the Working Group's recommendation that the department provide clear guidelines for implementing the active offer principle to the province's police forces.

(b) Prosecutors

The Manitoba Department of Justice recently filled two bilingual Crown attorney positions in Winnipeg.

The Minister has also promised to fill other bilingual Crown attorney positions, based on the needs of the pilot projects.

4.2 Civil and Family Law

(a) Examinations for Discovery and Cross-Examinations on Affidavit

Since October 1995, the Government of Manitoba has been providing free interpretation services on demand in the context of examinations for discovery and cross-examinations on affidavit. Given the lack of bilingual court reporters in Manitoba, the government is also providing the services of an official examiner whose role is to preside over the session and ensure that the proceedings are recorded in an appropriate manner. The parties can then obtain a transcript of the proceeding, it being understood that the fee charged does not reflect the added volume due to the delivery of interpretation.

Since the announcement of this policy, the Courts Division has refined the way in which it is applied, with the Working Group's support. Again, this is a policy that has been extremely well-received by legal practitioners.

(b) Proceedings before Masters

Until recently, the Court of Queen's Bench had no Master who was fluent in both English and French.

Shortly after it was established, the Working Group had recommended appointing a bilingual Master with the qualifications to hear civil and family matters (in the latter case, maintenance enforcement orders in particular).

The Government of Manitoba appointed Ms. Carol Sharp to the Master's position. She is fluent in both French and English and has vast experience in the area of family law.

VII – THE WORK AHEAD

A – Rules of Procedure

The Working Group recommends that the directives issued by the Courts Division of the Manitoba Department of Justice with respect to translation and interpretation services be made mandatory and incorporated in the rules of the Court of Appeal and the Court of Queen's Bench and in a directive of the Provincial Court. In this regard, the Working Group further recommends that the practice of automatically granting an extension of time for the translation of documents be codified in the rules of the Court of Queen's Bench.

It further recommends that the Queen's Bench rules be amended so as to codify the government's current practice of providing at its own cost interpretation services for examinations for discovery and cross-examinations on affidavit that proceed entirely in French or in both French and English.

It further recommends that the rules of procedure of the various trial courts be amended so as to codify the policy recently adopted by the Transcription Services branch of the Courts Division, under which the fees for bilingual transcripts do not reflect the added volume due to the delivery of interpretation services.

The Working Group has undertaken to submit detailed briefs on this topic to the Court of Appeal, the Court of Queen's Bench and the Provincial Court.

B – Statutory Amendments

The Working Group has undertaken to submit to the Minister of Justice briefs supporting the following statutory measures:

- guarantee in the pertinent legislation of a minimum number of bilingual judges in each of the province's courts;
- guarantee in the *Provincial Court Act* of the reservation of one or more positions for representatives of the French-speaking community on the judicial nominating committee;
- guarantee in the *Manitoba Evidence Act* to the effect that evidence given during proceedings (including preliminary inquiries or cross-examinations on affidavit) of a court or quasi-judicial tribunal be received, recorded and transcribed in the official language used by the witness.

C – Measures Pertaining to Bodies Other than the Courts

The Working Group will have to examine more closely the services provided by various non-judicial bodies that are involved in the administration of justice. They include:

- the Manitoba Department of Justice (services other than those offered by the Prosecutions Division);
- the Land Titles Office and the Personal Property Registry;
- the Companies Office;
- the Office of the Chief Medical Examiner.

D – Implementation of Approved Recommendations

The Working Group still has much to do to ensure that those recommendations that have already been accepted are properly implemented. Examples of recommendations in this category are those concerning the following issues:

- the creation of Provincial Court teams made up entirely of bilingual staff and the establishment of pilot projects;
- language training for judges and court staff;
- the development of guidelines for police forces.

E – Ongoing Advisory Role

The members of the Working Group quickly realized that the group was an excellent forum for helping government representatives and the French-speaking community to better understand their respective reality and devise practical and achievable solutions together.

Insofar as such a forum will always be relevant, we would hope that the Working Group plays a continuing advisory role in relation to the Department of Justice, even if it means that the frequency of its meetings must decline.

VIII – ACKNOWLEDGEMENTS

On behalf of myself and the AJEFM, I would like say a few thank-yous. To start with, I would like to thank Mrs. Rosemary Vodrey, former Minister of Justice, for having taken the highly productive initiative of establishing the Working Group. I also want to express my gratitude to the officials of the Department of Justice and the French Language Services Secretariat who recommended to the Minister that she create the Working Group in the first place.

I would also like to thank the current Minister of Justice, Mr. Victor Toews, whose support for the activities of the Working Group is unflinching, as the speech by his deputy

minister in April 1998 and various steps taken since then have clearly shown. I furthermore wish to communicate my thanks to the federal Department of Justice and the Office of the Commissioner of Official Languages, whose representatives diligently participated in the activities of the Working Group.

Lastly, I personally wish to thank my past and present colleagues in the Working Group, who have been giving of their time and energy for nigh on three years now. Each of them gives the best of himself or herself and, I am sure, emerges broadened by the experience.

* The principles set out in this trilogy were in large part overruled by the Supreme Court of Canada in *R. v. Beaulac*, [1999] 1 S.C.R. 768.

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