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The Manitoba French-language crisis, 1983-84: Origins and Early Legislative Debates

Presented to the Faculty of Graduate Studies

of the University of Manitoba

in partial fulfilment of the

Doctor of Philosophy (Interdisciplinary)

Degree

by Raymond-M. Hébert

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THE MANITOBA FRENCH-LANGUAGE CRISIS, 1983-84: ORIGINS AND EARLY LEGISLATIVE DEBATES

BY

RAYMOND-M. HEBERT

A thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements of the degree of

DOCTOR OF PHILOSOPHY

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Abstract

The Manitoba French-language crisis, 1983-84: Origins and Early Legislative Debates

by Raymond M. Hébert

In February, 1984, the government of Manitoba was virtually paralyzed by an issue involving a proposed constitutional amendment to the *Manitoba Act* regarding the status of French as an official language in Manitoba. Using primary and secondary sources, particularly personal and public archives, the author identifies relevant historical elements and attempts a detailed reconstruction of the events which occurred during the first four months of the crisis (May to August, 1983).

Chapters I and II describe in some detail the "prehistory" of the language crisis, from the circumstances of Manitoba's entry into Confederation in 1870 to the end of the Lyon regime in 1981. Chapters III to V describe the evolution of the new Pawley government's thinking on the language issue, in the context of an impending hearing of a major language case (*Bilodeau*) before the Supreme Court of Canada and the negotiations eventually undertaken by the government with the province's French-speaking community. Chapters VI and VII describe the first public reactions as details of the final tripartite agreement became public, including the first reactions of the opposition in the Legislature. Chapters VIII to X summarize the early debates on the issue in the Manitoba Legislature.

A concluding chapter presents a number of explanatory hypotheses based upon writings by various sociologists and political theorists, particularly R. Hofstadter, R.A. Schermerhorn, and R. Breton.

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This thesis could not have been completed in its present form without the assistance of many individuals.

First, I wish to thank the members of my Advisory Committee: Dr. Ron Duhamel, Chair of the committee, for his wise counsel and timely and effective assistance at every stage of my doctoral programme; Prof. Tom Peterson, whose professionalism and knowledge about Manitoba politics were exceeded only by his wit and motivational abilities when tedium set in; and Prof. Rita Bienvenue, who provided many sociological insights into the origins and dynamics of the Manitoba French-language crisis.

Many other individuals were instrumental in the success of the project. In providing unconditional access to their files, former Attorney-General Roland Penner and former Premier Howard Pawley allowed the story to be told in its most complete form to date. Information from their archives was supplemented with information gleaned from the SFM archives and from documentation made available by lawyers Renald Guay and Rémi Smith, who were both involved in various capacities as major participants in the events which constitute the crisis. Roger Turenne, the province's Senior Advisor on French-language services, in addition to providing unconditional access to his files on the crisis, was always available to share both his time and personal knowledge of the events with the author. Staff at Manitoba's Provincial Archives, particularly Provincial Archivist Peter Bower and Mr. Alex Ross, were unfailingly generous with their time and helpful in various ways. Finally, Clerk of the Executive Council Don Leitch provided timely access to the Penner archives.

To all of these individuals, a heartfelt "Merci!".

The Manitoba French-language crisis, 1983-84: Origins and Early Legislative Debates

Table of Contents

CHAPTER		PAGE
Introduction		1
Chapter I:	French-Language Rights in Manitoba, 1870-1976	8
Chapter II:	French-Language Rights in Manitoba, 1977-81: The Lyon Years	48
Chapter III:	The Pawley Government and Section 23: Taking Stock	126
Chapter IV:	The Year of Negotiating Dangerously	160
Chapter V:	Negotiations Awry	207
Chapter VI:	First Thunder	261
Chapter VII:	The Gathering Storm	304
Chapter VIII:	Lyon Redux	349
Chapter IX:	Stakeout at the Legislature	398
Chapter X:	The Lost Weekend	447
Chapter XI:	Conclusion	526
	Bibliography	563
	Appendix I: Text of July 4, 1983 Constitutional Amendment	
	Appendix II: Text of May 18, 1983 Draft Tripartite Agreement	
	Appendix III: List of Manitoba MLA's, 1983	
	Appendix IV: Excerpts from *La Gazette de Manitoba* & *Les Statuts de Manitoba*	

The Manitoba French-language crisis, 1983-84: Origins and Early Legislative Debates

Introduction

From May, 1983 to the end of February, 1984 Manitoba was racked by one of the most intense, divisive debates in its history, a debate which left no segment of the population untouched and which in its final stages virtually paralyzed the government of the province. In the last weeks of the debate, an eerie air of anarchy hung over the province as day after day, the seats of the Legislative Assembly remained empty; one journalist even wrote that there had been an attempted *coup d'état* by the minority party in the Legislature towards the end of the crisis in February, 1984.[1] In the end, the government capitulated, fearing that supply would be denied, thus bringing the administrative machinery of government itself to a standstill. At some point during those last weeks, the "debate" became literally a "crisis", since the duly elected government of the day came perilously close to being unable to govern.

The debate, and the crisis, was about language. Seeking at the same time to redress long-standing injustices perpetrated on the province's French-speaking minority by successive governments since the end of the 19th century and to avoid potential legislative chaos or massive expenditures which might result from a Supreme Court decision on a challenge to the constitutionality of Manitoba's English-only laws, the government ran into a stone wall of opposition in the Legislature and among various segments of the population.

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[1] F. Russell, in *Winnipeg Free Press*, March 5, 1984, p. 7.

A definitive history of the crisis has yet to be written. Our intention here is to recall briefly the elements of Manitoba's history pertaining to language which had a bearing subsequently on the crisis itself and to relate the main events leading up to the first legislative debates on the issue, debates which occurred in July and August, 1983.

In our view, the Manitoba French-language crisis has much to offer in understanding the nature and dynamics of Manitoba society. The interlacing of rational debate and raw emotion which marked the crisis at every turn poses tremendous challenges to the analyst, since it brought to the surface many facets of Manitoba society which had lain dormant for much of the twentieth century.

Initially the author, a Manitoba Francophone who was himself caught up at various points in the debate, and who therefore must be considered a "participant observer" in it, set himself a straightforward task: to identify, from the record, who was "right" and who was "wrong", confident that the opposition had grossly distorted the government's intentions on many occasions for short-term political gain and eventually to topple the government. These distortions could perhaps then be labelled "prejudice" or prejudiced behaviour, using the existing literature on prejudice as a rough theoretical framework.[1]

As he began poring over the thousands of pages of documentation made available to him by various actors in the process, and the innumerable speeches made in the Legislature and elsewhere, it became obvious that this approach was inadequate, and a second began to take shape. This would involve, first, a straightforward description of the events as they unfolded, both within

[1] See, for example, Allport's classic work on the topic first published in 1954. Allport, G.W., *The Nature of Prejudice*; Addison-Wesley, Reading, Mass., 1979; 9th printing, 1986.

government and in the public arena, then the formulation of a number of "explanatory hypotheses" which might usefully be applied to these events. Description would lead to a "first-level" analysis, which would be essentially political in nature: this would involve extracting from the record the political factors that came to bear on the crisis: strategies and tactics used by the various actors, ideologies, personal animosities, and so on.

The political manoeuvring, and especially the uncompromising, intransigent, and unwavering[1] position against the proposals taken by the Official Opposition led by Sterling Lyon increasingly begged the question: why did this stance become so popular in the province? What were the deeply-felt values that led to such emotional outpourings of antagonism to the government's proposals? The Opposition could not operate in a vacuum; it had correctly gauged the mood of the population on the issue and the opposition MLAs, as they said repeatedly in the course of the legislative debates, gained emotional sustenance from the people themselves.

This led to another question: to what extent did the Official Opposition's early negative stance towards the government proposals, and its vicious denunciations of these proposals, actually generate a shift of opinion among the population? The empirical evidence which can be gleaned from various surveys conducted over the 10-month period would seem to indicate that the opposition's insistence that "the people" were opposed to the proposals became a self-fulfilling prophecy.

To provide some understanding of these deeper forces at work among the population, a "second-level" analysis, of a necessarily tentative, speculative nature, should be undertaken: explanatory hypotheses, drawn from theoretical

[1] The appropriateness or otherwise of these adjectives can be assessed from a reading of the early legislative debates, summarized in Chapters VIII to X.

works of various authors judged to be particularly relevant to the topic, will be formulated in an attempt to gain some understanding of the traumatic events of 1983-84.

We shall therefore proceed as follows. In Chapters I and II, we shall describe in some detail the "prehistory" of the language crisis, from the circumstances of Manitoba's entry into Confederation in 1870 to the end of the Lyon regime in 1981. Chapters III to V describe the evolution of government thinking on the language issue, in the context of the impending hearing of the *Bilodeau* case before the Supreme Court of Canada and the negotiations eventually undertaken by the government with the French-speaking community. Chapters VI and VII describe the first public reactions as details of the final tripartite agreement became public, including the first reactions of the opposition in the Legislature. Chapters VIII to X summarize the early debates on the issue in the Manitoba Legislature. Finally, in a concluding chapter we shall develop explanatory hypotheses and relate them to the roles of the various actors as the crisis gathered momentum through the summer of 1983.

Methodological note

Little secondary documentation exists on Manitoba's language crisis. The only major study of the crisis is Jacqueline Blay's *L'Article 23: Les péripéties législatives et juridiques du fait français au Manitoba, 1870-1986* (1987), which originated in Blay's Master's thesis in History. It suffers from trying to do two things at once: almost half of the work is devoted to a history of Franco-Manitobans, while the rest summarizes the main events which constitute the French-language crisis itself. In addition, Blay did not have access to many archival sources.

The present study attempts a detailed chronology of events, from the perspective of each of the major actors in the crisis. The author was fortunate to gain access to the complete archives on the crisis of Premier Howard Pawley, Attorney-General Roland Penner, the Société Franco-Manitobaine, Roger Bilodeau, Roger Turenne (the Premier's Senior Advisor on French-Language Services), and the Guay-Smith archives submitted as evidence in a court case involving non-payment of fees by the SFM to the two lawyers. Through the Attorney-General's files, complete, chronologically-organized press clippings files were made available. Access to the personal archives of federal Secretary of State Serge Joyal was also offered by Mr. Joyal; the author did not take up Joyal's offer due to the mountain of material that had already been made available. Andy Anstett, who eventually became Government House Leader, also kept complete files on the crisis, and access to them was offered, but since Anstett's main involvement occurs after August, 1983, and most of the documentation on the earlier period can be found elsewhere, the author did not take up Anstett's offer.

In addition to archival materials, the entire series of legislative debates on the issue to the end of August, 1983 was scrutinized and summarized.

In all, the equivalent of 25 archival boxes of written materials were consulted by the author, whose initial intent was to write a history of the entire crisis and analyze it from various perspectives drawn from the disciplines of sociology, political science, and education. In the face of the sheer volume of these primary sources, and conscious of the fact that access to them might not be as readily granted to other researchers, the author opted instead in favour of a comprehensive description of a portion of the period over which the crisis unfolded, from May to August, 1983. Secondary sources were also used to establish the historical context and to formulate the explanatory hypotheses.

The present study has serious limitations, and must not, therefore, be considered a "definitive" work on the topic, despite the volume and extent of sources consulted. The most serious of these is the fact that virtually no personal interviews were done with the main actors involved, with the exception of Roger Turenne and Georges Forest. In the course of these limited interviews, many events were either unknown to the respondents (since they involved other actors), or the exact sequence of events had been forgotten by the respondents. It became obvious that a first step in understanding the events constituting the crisis would be to reconstruct their chronology as completely as possible using the available written material. Interviews could be conducted at a later date to obtain a description of the events that were not recorded, of interactions between actors, of the stakes involved at the various stages, and so on.

It is particularly important to point out that no interviews were conducted with members of the Official Opposition. The record shows that the Conservative caucus was split on the issue, but that Sterling Lyon prevailed in maintaining a united front. However, no attempt was made in this study to explore what was occurring in the Conservative caucus during the period considered. On the other hand, given the fact that most if not all Conservative caucus members spoke repeatedly on the issue during the legislative debates, for a total of hundreds of hours, it can reasonably be assumed that their speeches reflect decisions taken collectively by caucus in addition to their own opinions. Certainly there was no public crack in caucus unity, with the possible exception of the extraordinary Sherman/Lyon exchange on August 2, 1983.[1]

[1] See Chap. X, pp. 462-64.

ABBREVIATIONS

The following abbreviations are used to denote various archival sources:

ATG = Attorney-General Roland Penner's files.

EC = Executive Council; Premier Howard Pawley's files.

G/S = The Guay-Smith files, used in the two lawyers' court case against the SFM.

SFM = Files of the "Société Franco-Manitobaine".

Other primary sources are identified in full in the text.

Both the Pawley and Penner files now belong to the Manitoba Archives and can be consulted there with the authorization of the former Premier and Attorney-General respectively, along with the authorization of the government. The Guay-Smith files belong to the two lawyers, and the SFM maintains its own archives.

Chapter I

French-language rights in Manitoba, 1870-1976

French-language rights in Manitoba have a long, turbulent, and tragic history. Enshrined at the outset in the Canadian Constitution as a part of the Francophone Métis heritage which was subsequently to be guaranteed by the Manitoba legislature, these rights, in Manitoba's early history, were soon to be appropriated by Canadian and European francophones as the Métis "nation" disintegrated. The network of religious and language safeguards painstakingly erected and fought for by Riel, Ritchot, and Taché in 1869 and 1870 was systematically dismantled within a single generation by the Manitoba Legislature. The judicial system was incapable or unwilling to halt the process, and, when it did try, it was simply ignored by the legislative and executive authorities. Riel's victory in 1870 was a resoundingly hollow one as the weight of demographics and the rapid imposition of a simple majoritarian ideology aimed at imposing a single set of linguistic and religious values by Ontario Anglo-Saxons combined to eventually assimilate large numbers of Francophones and destroy the Métis nation in the West.

1) Riel and the "lists of rights"

The story of the creation of Manitoba and of the Riel resistance to the arbitrary assumption of authority over the Red River settlement by Canada has been told several times and there is remarkable agreement among historians as to the basic facts, if not their interpretation.[1] The geographical area now known

[1] Sources used here are listed in the Bibliography.

as "Manitoba" was originally settled by various Indian tribes over 3,000 years[1]; the first European explorers, drawn by the fur trade, arrived in the 17th century via Hudson's Bay and the Great Lakes and there began an era "in which native and European co-operated peacefully for two centuries, between 1640 and 1840".[2]

This cooperation extended to all areas of life and, inevitably, the European men took native wives "à la façon du pays", leading to "two patterns of family formation, one associated with the Montreal and one with the Hudson's Bay operations"[3]; however, "the children of the Montreal trade, offspring mainly of French and Ojibwa parents, were the most numerous and settled of the new native-born population".[4] In the early nineteenth century, another demographic factor intervened with the arrival, in September, 1811, of the first Selkirk settlers from Scotland.[5] Population in the Red River settlement grew from about 400 in 1821 to about 7,000 in the mid-1840's, of whom only about 1,000 were of European and Canadian origin and about 6,000 were French- and English-speaking Métis.[6] Not surprisingly, "Perceptions of race, class, and religion sustained numerous social divisions in Red River."[7]

Despite these divisions, life in the Red River settlement through the early 1800's was generally peaceful, as the French- and English-speaking Métis, the Scottish settlers and the few Europeans and Canadians, under the umbrella administration of the Hudson's Bay Company, found ways to accommodate each other. According to Bailey,

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[1] Friesen (1984), pp. 10-21.
[2] Ibid., p. 4.
[3] Ibid., p. 68.
[4] Ibid., p. 69.
[5] Morton (1967), p. 44; Friesen, op. cit., p. 73.
[6] Friesen, op. cit. pp. 89-90.
[7] Ibid., p. 97.

> "...the first churches, schools, community governments, courts, newspapers, and the legal records of much of this daily life were established in French as well as in English, and ... for over three generations the region functioned in French or English or both languages simultaneously."[1]

This status quo, built up through the early nineteenth century and based to a great extent upon mutual understanding and tolerance between the various components of the Red River population, began to be threatened in the 1850's, as, in Upper Canada and Britain, "The land came to be seen not as a wilderness but as a potential home for a great civilization.".[2] Friesen adds:

> The Canadian movement to annex the West had acquired strength and influence in 1856-7... It was led by a handful of men, perhaps twelve to fifteen in number, but their positions were so important and their commitment so genuine that they determined the fate of the western interior and, consequently, of the northern half of North America...As the powerful Toronto Reform party leader George Brown wrote in his paper, the *Globe*: 'Let the merchants of Toronto consider that if their city is ever to be made really great...it must be by the development of the great British territory lying to the north and west".[3]

This commitment was so all-consuming and contagious that it swept all before it, including, and perhaps especially, any opposition that might arise from the inhabitants of the region itself. It reached the Canadian Parliament, which set out, immediately after Confederation, to negotiate a final transfer of the territory to Canadian jurisdiction. The Hudson's Bay Company, in a typical display of insensitivity to the population of the region, viewed the transfer as a mere legal transaction. In an often-quoted statement, Morton summarized the process as follows:

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[1] Bailey, 1986, p. 5.
[2] Friesen, op. cit., p. 109.
[3] Ibid., p. 111.

> "...no effort was made, through the government of Assiniboia, or the clergy, or the press, or by special commissioner, to give assurances to the people of the Northwest, that land titles would be guaranteed, the Indian title extinguished by treaty, and self-government in due course freely granted. These things might have been done, but they were not attempted, and the consequences were to be serious. The responsibility for the failure is perhaps to be ascribed to the Imperial rather than to the Canadian government. One of the greatest transfers of territory and sovereignty in history was conducted as a mere transaction in real estate."[1]

The annexationist commitment was also greatly in evidence within Red River itself throughout the 1860's, as Stanley points out:

> The newcomers who had entered the colony within the last ten years felt no sense of loyalty to the Hudson's Bay Company or to the local government in the Settlement. On the contrary, many of them regarded themselves as the advance guard of a new economic and social order. All of them brought in their trunks and valises the political ideas and prejudices of the part of Canada from which they had come. Almost to a man they had come from Canada West or Ontario.[2]

The increasing agitation of this small group, under the leadership of John Christian Schultz [of whom it has been said that "Fate had manufactured a scoundrel out of material meant by Nature for a gentleman."][3] served to destabilize the settlement and generate anxiety among the settlers, especially among the French-speaking Métis. "What would happen to the old settlers, to their lands, to their simple economy, to their easy-going live and let-live bi-culturalism?"[4]

The upshot was the Riel resistance of 1869 which culminated in the establishment of a Provisional Government, broadly representative of the

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[1] Morton, op. cit., p. 117.
[2] Stanley (1963; 1985 ed.), p. 45.
[3] Friesen, op. cit., p. 115.
[4] Stanley, op. cit., p. 52.

entire settlement, French- and English-speaking Métis, Scots, Europeans and Canadians, and determined to negotiate the terms of Manitoba's entry into the Canadian Confederation.

The lists of rights

The French-speaking Métis spearheaded the resistance to the arbitrary annexation of the Red River territory by Canada. They were motivated mainly by fears as to their status, economic, political, and social, within the "new order" and by a concomitant desire to ensure that their rights to their land, their religion, their language, their schools would be guaranteed in the new order. These demands were codified in a first "list of rights" drawn up by the French Métis and ratified by the first Provisional Council on Dec. 1, 1869. This first list provided, *inter alia*, "10. That the English and French languages be common in the Legislature and Courts and that all Public Documents and Acts of the Legislature be published in both languages" and "11. That the Judge of the Supreme Court speak the English and French languages" This first list, approved by both the English- and French-speaking representatives at the convention, made no mention of denominational or bilingual schools, perhaps due to the fact that it was drawn up hastily during a two-hour meeting.[1]

The second list was drawn up and approved during the so-called "Convention of Forty" (20 representatives chosen by the French-language community and 20 by the English) and approved, clause by clause, in early February, 1870. Stanley writes that

> Throughout the list one could see Riel's anxiety to protect the lands, the local customs, the usages and languages of the people of his

[1] Ibid., p. 74.

native country. Here too would be solid guarantees against a too violent change once the country should become part of Canada.[1]

The clauses relating to language are written in identical language, but are numbered, this time, 12. and 13. respectively.[2]

The third list was drafted by Riel and the Executive of the newly-installed Provisional Government and became, on March 22, 1870, the "terms and conditions" upon which the three delegates of the Government to Ottawa (John Black, Alfred J. Scott, and abbé J.-N. Ritchot) were to negotiate the entry of Manitoba into Confederation. The list was not submitted to the entire Council, which was to lead to substantial embarrassment for Riel subsequently. Several major changes were made to the second list, notably a demand for a bilingual lieutenant-governor. The wording of this new demand is almost a "cri-de-coeur", an impassioned defence of the existing order in Red River and an appeal for unity following the execution of Thomas Scott on March 4, 1870:

> 17. That whereas the French and English-speaking people of Assiniboia are so equally divided in numbers, yet so united in their interests, and so connected by commerce, family connections, and other political and social relations, that it has happily been found impossible to bring them into hostile collision, although repeated attempts have been made by designing strangers, for reasons known to themselves, to bring about so ruinous and disastrous an event.
>
> And whereas, after all the trouble and apparent dissensions of the past, the result of misunderstanding among themselves, they have, as soon as the evil agencies referred to above were removed, become as united and friendly as ever; therefore, as a means to strengthen this union and friendly feeling among all classes, we deem it expedient and advisable;
>
> That the Lieutenant-Governor, who may be appointed for the Province of Assiniboia, should be familiar with both the English and French languages.[3]

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[1] Ibid., p. 93.
[2] Morton, 1965.
[3] In Morton, op. cit.

The previous sections relating to language were now numbered 16. (French and English in the Legislature and the courts) and 18. (Judge of the Superior Court to speak English and French).[1]

The fourth List of Rights, which Ritchot alone took with him to Ottawa, contained two significant changes again, the first relating to the nature of the Constitution of the new province (provision, *inter alia*, for a legislative assembly and an upper house) and a demand for provision for a separate school system. It would appear that Mgr Taché had a hand, directly or indirectly, in the drafting of this demand, as neither Riel nor the others involved in the drafting of the first and perhaps the second and third lists (Ritchot, Dugast, and O'Donoghue, among others) had included it.[2] This may be a result of simple naivety on their part, as the denominational school system was taken for granted in Red River in 1870. They may simply not have envisaged a potential change as radical as the abolition of this system which the more sophisticated and worldly Taché certainly did. Be that as it may, it would appear certain that the negotiations in Ottawa proceeded on the basis of both the third and fourth lists, Father Ritchot alone being in possession of the fourth "for his own guidance".[3] S. 1 of this list set out the government structure, S. 7 the demand for separate schools, and SS. 16, 17, and 18 the demands regarding use of English and French in the legislature and the courts, for a bilingual Lieutenant-Governor, and for a bilingual Judge of the Supreme Court.[4]

2) The *Manitoba Act, 1870*

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[1] Id.
[2] Stanley, op. cit., p. 126.
[3] Ibid., pp. 126 and 389.
[4] In Morton, 1965.

The negotiations with Ottawa were conducted at the highest level, including Sir John A. Macdonald himself and his Quebec lieutenant, Sir Georges-E. Cartier. They did not go smoothly; in the end, however, the Provisional Government achieved most of its objectives. On March 4, 1870, the House of Commons adopted the *Manitoba Act* by a vote of 120 to 11; it was assented to on May 12 and proclaimed on July 15, 1870.[1]

S. 9 of the new *Manitoba Act* provided for two Houses, a Legislative Council (the upper house) and a Legislative Assembly (the lower house). Sections 10 to 13 related to the Legislative Council, and provided for the appointment, by the Lieutenant-Governor, of up to 12 persons to this body as of 1874. S. 14 provided that the Legislative Assembly would be composed of "twenty-four Members, to be elected to represent the Electoral Divisions into which the said Province may be divided by the Lieutenant-Governor" as stipulated in S. 16.

The most important provisions, however, for the French and Métis of the old Red River settlement, were contained in SS. 22 and 23 of the new Act:

> 22. In and for the Province, the said Legislature may exclusively make Laws in relation to Education, subject and according to the following provisions:
>
> (1) Nothing in any such Law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by Law or practice in the Province at the Union:
>
> (2) An appeal shall lie to the Governor General in Council from any Act or decision of the Legislature of the Province, or of any Provincial Authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to Education:
>
> (3) In case any such Provincial Law, as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor General in Council or any appeal under this section is not duly executed by the proper Provincial Authority in that behalf,

[1] Stanley, op. cit., pp. 139-40.

then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial Laws for the due execution of the provisions of this section, and of any decision of the Governor General in Council under this section.

23. Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses: and either of those languages may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the British North America Act, 1867, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages.[1]

3) Abrogation of rights, 1870-1890

The process of abrogation of the hard-won rights of the Provisional Government led by Louis Riel, by all appearances guaranteed by the Canadian Parliament and by the Imperial authority in language that could not be clearer, began almost immediately after the proclamation of the *Manitoba Act*. The model of democracy to be implemented in Manitoba was to be the simple majoritarian model, the model of Ontario democracy in the mid 19th century where Anglo-Saxons imposed their language and culture upon all others by weight of numbers. As the "Canadian" faction, virtually all from southern Ontario, grew from a few hundred in 1870 to thousands then ten of thousands in the late 1870's and '80's, the authoritarian, intolerant nature of this "democracy" was clearly revealed. There can be no more obvious symbol of its nature than the elevation in 1889 to the position of Lieutenant-Governor of Sir John Christian Schultz, the "scoundrel" and sworn enemy of Riel and all that he stood for, above all the values and mores of the old settlement. A "new class" of Ontario Anglo-Saxons came into power in Red River and it dealt with the Métis more ruthlessly than even the most pessimistic among them must

[1] 33 Victoria c. 3.

have envisaged in 1870, sweeping away, in a single generation, all language, religious, and land rights they had won from the Canadian government.

In 1875, Prime Minister Mackenzie made increases in federal aid conditional upon the abolition of the upper house established in the *Manitoba Act* to ensure a continued linguistic and religious balance on the work of the lower house. The Manitoba legislature concurred, with the apparent support of the French community as expressed by Hon. Joseph Royal.[1] Perhaps this community still believed that "fair play" and moderation would prevail in the end; otherwise they would not have agreed so readily to the elimination of one of the structural guarantees established precisely to ensure the continued respect of their rights. Henceforth they were left only with the federal Parliament and the courts. Both, as subsequent history was to demonstrate, were but straw houses in the path of the emerging Ontario majority in Manitoba. In the words of Morton, "the modification of the Constitution of 1870 and of the principle of duality embodied by the growing weight of Ontario settlers in the electorate had begun" .[2]

Land claims of the Métis, which had led Macdonald reluctantly to set aside 1,400,000 acres in order to extinguish the Métis' "Indian" title, were ultimately translated into the issuance of "scrip" worth 160 acres of land. Stanley describes the process:

> Taking advantage of the ignorance and inexperience of the mixed-blood population, speculators and profiteers were able to obtain, usually for only a fraction of their worth, the scrip certificates the government had issued. Often a few dollars and a few drinks of whiskey were sufficient to induce a half-breed to part with his claim to a quarter-section of land in Manitoba.[3]

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[1] Morton, 1967, p. 149.
[2] Id.
[3] Stanley, op. cit., p. 235; see also Sprague (1988) and Flanagan (1991).

Rules had been established to protect children, at least, from speculators; yet

> Despite these careful rules, thousands of 'infant' land transactions passed through the Manitoba courts... The speculators, aided by the courts, were bending the law to the breaking point in thus bilking the metis children, and as a result the Manitoba government eventually found it necessary to pass an extraordinary series of statutes culminating in an 1885 bill that declared that all previous sales of infant metis lands were legal, notwithstanding any defect, irregularity, or omission.[1]

This and other forms of exploitation[2] or discrimination led to a massive exodus of the Métis, mainly but not exclusively French-speaking, westward to Saskatchewan, where they met their final defeat and began disintegrating as a nation.

In 1879, "an electoral redistribution reduced the French to about 6 or 7 instead of 9 seats in the 24-seat house".[3] This was inevitable in light of the growing influx of settlers, mainly from Ontario and another concrete sign of the vulnerability of the French and the Métis in the emerging political system. However, the worst by far was yet to come.

In 1890, the process of imposition of Ontario-style majoritarian democracy in Manitoba was completed, following an inflammatory speech in Portage la Prairie against Roman Catholic "special privileges" by Protestant M.P. Dalton McCarthy, Joseph Martin, Manitoba's Attorney-General, "matched McCarthy's fervour by promising to abolish the official use of French in Manitoba's legislative publications and to terminate the dual educational system".[4] Friesen points out, however, that the decision regarding the abolition had in fact been taken prior to the Portage meeting[5] and that "if McCarthy's

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[1] Friesen, op. cit., p. 199.
[2] Id.
[3] Ibid., p. 201.
[4] Ibid., p. 216.
[5] Morton, 1967, p. 243.

speech in Portage had an effect, it was to encourage the elimination of French language rights, not Roman Catholic schools, because opposition to French was the burden of his message".[1] Be that as it may, it is clear that McCarthy's words fell on fertile ground and encouraged the Manitoba government to go all the way in the abrogation of linguistic and religious rights enshrined in the Constitution.

In 1890, three laws were adopted which were to sweep away virtually all guarantees enshrined in the *Manitoba Act* and the Canadian Constitution in 1870. These were *An Act Respecting the Department of Education,* which abolished the former Board of Education, in which both Protestant and Catholic groups were represented, and established an Advisory Board of seven members with powers to authorize texts and prescribe religious exercises; the second, *An Act Respecting Public Schools,* repealed all former laws relating to education and established a system of non-denominational schools, instructing only in the religious exercises authorized by the Advisory Board. The word "non-denominational", along with the word "non-sectarian" which is often used to describe these schools, is highly misleading; in fact, the intent of the Manitoba government of 1890 was to establish Protestant schools for all, in effect imposing one type of religious practice on the entire population. As Morton points out, "The Protestant clergy...were not prepared to accept schools which should be merely secular, or, as it was conventional to put it, 'godless'"[2]; hence the "religious exercises" provision in the legislation.

Finally, a third piece of legislation was adopted, the intent of which was to abolish S. 23 of the *Manitoba Act*: the *Official Language Act,* which declared English to be the only official language of Manitoba. Hence the last link with

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[1] Friesen, op. cit., p. 216.
[2] Morton, 1967, p. 246.

Canadian duality was ruptured. The *Manitoba Act* and the Canadian Constitution were shown to be worthless as a guarantor of religious and language rights, in the eyes of Francophones and some Anglophone moderates in Manitoba and elsewhere in Canada. Morton describes the scene:

> "For one moment, as the Lieutenant-Governor stood before the legislature giving the royal assent one by one to the bills passed during the session, a wild hope rose in the breasts of the French as the titles of language and school bills were not read out in the order in which they had been passed. Were they to be reserved? But they had only been placed inadvertently at the bottom of the pile by the clerk. The harsh voice of Schultz intoned the formula of assent, the work of Taché and Riel was swept away, and the bills became the law of the province."[1]

4) The Laurier-Greenway compromise, 1896

The "Manitoba School Question" quickly became a national issue and even led to the publication of a papal encyclical, *Affari Vos*, in 1897.[2] The Macdonald government refused to intervene, forcing opponents of the legislation in Manitoba to appeal to the courts. Two cases, *Barrett* and *Brophy*, made their way to the Judicial Committee of the Privy Council in London. The first was a crushing defeat for the Catholic opponents of the school legislation and, it has been argued[3] changed forever the character of the fledgling Confederation. The second, in many ways contradicting the first, allowed that the federal government could indeed intervene should it so desire, and, by the controversy it generated, "hastened the collapse of the federal Conservative government in 1896 and thus was an important factor in the victory of the Liberals under Wilfrid Laurier in that year".[4]

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[1] Ibid., p. 250.
[2] Comeault, 1977, p. 30.
[3] Bale, 1985; see below.
[4] Friesen, 1984, p. 218.

Laurier immediately set about resolving the issue and the results of his negotiations with the Greenway government, which became known as the "Laurier-Greenway compromise", were adopted by the Manitoba legislature as S. 258 of the Public Schools Act in 1897. There were three elements to the compromise. First, where a specified number of Catholic children attended a school (40 in urban areas, 10 in rural areas), Catholic teachers would be employed. Second, where the parents of 10 children so requested, religious instruction would be held at the end of the school day by a priest or minister of their faith. Finally, in explicit recognition that the language issue was directly related to the religious issue, where 10 children or more in a school spoke a language other than English, instruction could be in English and in the other language, "upon the bi-lingual system".[1] This provision applied to all ethnic groups, not only the French; it was a provision that was to cause perhaps even more problems for Manitoba's social and political system than would have a simple return to the pre-1890 status quo. Another effect of the provision was to equate the religious and linguistic demands of the Francophones with those of other ethnic groups, who were beginning to arrive by the thousands from Eastern Europe and elsewhere. In other words, the Laurier-Greenway compromise was elaborated independently of the constitutional provisions of S. 23 of the *Manitoba Act*, as though these provisions did not exist; the effect was to reduce Francophone Manitobans to the status of an ethnic group like the others and to provide some legal basis, however specious, for the argument that all ethnic groups, including Francophones, had essentially the same linguistic rights.

[1] Ibid., p. 218; Comeault, op. cit., p. 23.

5) The abolition of bilingual schools, 1916

In abolishing the rights of the French-language minority to its own schools in 1890, the Greenway government had sown the seeds of a much greater crisis for Manitoba society as a whole. A byproduct of the 1890 school legislation was that school attendance was no longer compulsory, and there were tremendous variations in the quality of education offered by the bilingual schools, with the result that

> The backwardness of Manitoban schools was becoming notorious in Canada and the English-speaking world, as the comment of Mr. Herbert Samuel revealed in 1913 when he remarked that in the matter of education Manitoba was a generation behind the civilized world. The comment stung, and public opinion was at last being aroused to face the shortcomings of the rural schools. A series of sixty-four articles exposing the defects of the bilingual schools in the *Manitoba Free Press* during 1913 made it quite impossible thereafter to avoid the issue.[1]

In 1916, in the context of the First World War which may have contributed to an increase in xenophobia among Manitobans, and especially among the Anglo-Saxon majority, the Norris government decided to abolish the bilingual schools entirely and to outlaw instruction in any language other than English. The clause of the *School Act* providing for bilingual teaching, enacted as part of the Laurier-Greenway compromise in 1897, was simply abolished; French-speaking Manitobans were treated like other ethnic groups, even though, as recently as 1915, "the Free Press and Premier Norris had been careful to admit the special position of French under the School Act".[2] Thus disappeared the last institutional guarantee of the French community's rights, its schools, and the beginning of a fifty-year period of quiet resistance and of maintenance of a shadowy, illegal school system by the new "Association

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[1] Morton, 1967, p. 333.
[2] Ibid., p. 351.

d'Education des Canadien-Français du Manitoba" with the tacit cooperation of the Department of Education.[1]

Apart from weakening even further the French-Canadians' faith in British "fair play", constitutions, and the rule of law (not to mention the judicial system, as we shall see below), this latest legislative act had another, more profound divisive effect. A semblance of unity had been built up since 1890 among several recently-arrived ethnic groups, notably the Ruthenians (Ukrainians) and Poles, through the efforts of Mgr Adélard Langevin. His strategy was quite simple: the linking of the Catholic faith with language. Thus, Ukrainian schools, in isolating their young charges from mainstream Manitoba society through language, could in effect be raised in a thoroughly Catholic environment.[2] The "cement" uniting the groups across language barriers was the Catholic religion. This edifice crumbled at one stroke with the adoption of the Thornton Act, with an unfortunate sociological result. A former president of the "Société Franco-Manitobaine" (SFM), Gilberte Proteau, described the process as follows, from the francophone perspective:

> Between 1890 and 1916, the French-Canadians had worked in close cooperation with other language groups in their struggle to preserve their language and their institutions, and to try to regain what they knew to be their basic constitutional rights. Now, ironically, their alliance had backfired on them. The proliferation of multilingual (sic) schools had resulted in complete abolishment of all languages of instruction other than English.
> Thus died the strategy of cooperation between various ethnic groups and the Franco-Manitobans after 1920. Both World Wars, massive immigration and government insensitivity to encourage cultural diversity caused both groups to go their way. The Franco-Manitobans...lost all interest in the ethnocultural cause, preferring to struggle internally in order to preserve their language and religion. In some instances, Franco-Manitobans blamed ethnic groups for

[1] Leblanc, P.-E., "L'enseignement français au Manitoba, 1916-1968"; unpublished M.A. thesis, University of Ottawa, 1968.
[2] Comeault, op. cit., p. 255.

having been the reason that the provincial government abolished the rights of the Franco-Manitobans.[1]

6) The judicial system and French-language rights, 1890-1916

For several decades, it was thought that Francophones in Manitoba had hotly contested the schools legislation of 1890 because the attack on their religion was perceived by them as being even more fundamental than the attacks on their language, starting with the 1890 *Official Language Act* and culminating in the abolition of bilingual schools in 1916. At the same time, it was erroneously thought that Francophones had not tested the constitutionality of the language legislation in the courts. Thus someone as well-informed and moderate as former Manitoba Premier Duff Roblin could state, in 1984:

> From 1890 up until 1978, everyone believed that the constitutional position was OK...Everyone! No one had apparently tested that. It never occurred to me. It just came out of the blue as far as I was concerned... It seems to me when looking at it now, it should be clarified because if you don't, you always get the thing ticking around... For many, many years, we got along without anyone complaining about it, and I think a lot of people probably thought that Georges Forest was being a bit fussy in complaining about it, but it appears it led to a very, very important constitutional decision.[2]

It is true that Franco-Manitobans, throughout most of the twentieth century, did not generally emphasize the judicial system in their attempts at survival. There are at least two major reasons for this. First, the fifty years after Manitoba's entry into Confederation had demonstrated how easily the Manitoba Constitution could be ignored as a source of protection of their basic rights; the Anglo-Saxon majority simply did what it wanted, starting in 1890, regardless of the constitution or its judicial interpretation. Second, Franco-

[1] Proteau, 1984.
[2] Blay, 1987, p. 52.

Manitobans were acutely conscious of their minority status from the mid-1870's onward, which led to profound differences within the community itself as to the best strategies to adopt. Franco-Manitobans were confronted by a fundamental dilemma between the solid basis of their constitutional position, subsequently fully substantiated by the Supreme Court decisions in the *Forest* case and the federal *Reference* regarding French-language rights in Manitoba, on one hand, and the need to arrive at some *modus vivendi* with the majority on the other.[1]

In reality, Franco-Manitobans did go to the courts at least twice, in 1892 and 1909, to have their constitutionally-entrenched language rights upheld, and in both cases they won.[2]

***a) Pellant v. Hébert*, 12 R.G.D. 242 (St. Boniface County Court)**

Hébert, a resident of LaBroquerie, was a candidate in the mayoralty elections in his municipality. His candidacy was contested by Pellant on the grounds that Hébert was semi-literate and could therefore not properly represent his electors. The documents submitted by Pellant's lawyer to the court were in both French and English. Hébert's lawyer countered that these documents were not admissible, being contrary to the *Official Language Act* of 1890. Judge L.A. Prud'homme ruled in favour of Pellant, stating unequivocally that the *Official Language Act* was unconstitutional. He pointed out the relationship between the wording of S. 23 of the *Manitoba Act* and S. 133 of the *B.N.A. Act, 1867* and indicated further that S. 92 of the *B.N.A Act* could not be used by a Legislature to change its own constitution. Following are excerpts of the first Prud'homme decision:

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[1] See Blay, 1987, Preface.

[2] G. Friesen is wrong when he writes that "Franco-Manitobans did not attempt to recover official status for their language by reference to the courts at this time..." (Friesen, op. cit., p. 217)

> Il n'y a pas de doute que la s. 23 de l'Acte de Manitoba, et la s. 133 de l'Acte de l'Amérique Britannique du Nord sont analogues. Le mot Manitoba est substitué au mot Québec, c'est tout. (...)
>
> Les legislatures provinciales ne possèdent aucun pouvoir inhérent en dehors de ceux que leur accorde le statut. (...)
>
> Je suis donc d'opinion que le c. 14, 53 Vict., est *ultra vires* de la législature de Manitoba, ne peut pas être changée et encore moins abrogée par la législature de cette province.[1]

The Greenway government simply ignored the decision: it neither appealed it to a higher court nor attempted to change the offending legislation. The government was thus in contempt of court, but the authoritarian Ontarian mentality which had led to adoption of the 1890 measures was not about to be transformed by a mere court judgment, and one rendered by a Francophone judge at that. This *modus operandi* was to be adopted by another Manitoba government in 1909 and again in 1976 by Attorney-General Howard Pawley in the first *Forest* decision handed down by Justice A. Dureault.

***b) Bertrand v. Dussault and Lavoie* (1909), 77 D.L.R. (3rd) 458**

Again, in the *Bertrand* case, documents had been submitted in French only, and the presiding judge, again Justice L.A. Prud'homme, established the parallel between S. 23 of the *Manitoba Act* and S. 133 of the *B.N.A.Act*. Justice Prud'homme reiterated his argument that provincial legislatures were not empowered to change elements of the section of the *B.N.A. Act* under which they were established. S. 23 could thus not be modified unilaterally by Manitoba, and the *Official Language Act* was *ultra vires*. Again, the government of the day adopted the same tactic in response to the judgment: total inaction, both at the judicial and legislative levels. Yet, as Blay points out,

[1] Quoted in Blay, op. cit., pp. 34-5.

> Dans ces jugements de 1892 et 1909, il y a le fondement de tous les arguments utilisés dans l'Affaire Forest: la pertinence de l'Article 23 de l'Acte du Manitoba de 1870 face à l'Article 133 de l'Acte de l'Amérique du Nord britannique, les pouvoirs et les restrictions des legislatures provinciales, les intentions des Pères de la Confédération. Et la conclusion est la même: il y a eu spoliation des droits d'une minorité par une majorité.[1]

c) Barrett and *Brophy*

A recent analysis[2] concludes that the decisions handed down by the Judicial Committee of the Privy Council in the *Barrett* and *Brophy* cases wreaked considerable mischief upon the Supreme Court of Canada and upon the dynamics of the Canadian Confederation itself. Of more immediate import to our analysis here, the *Barrett* decision served to further alienate the French-language community from the judicial system, as it began to suspect that both the political and judicial levels were working to abrogate the hard-won constitutional rights of 1870.

i) Barrett v. *City of Winnipeg* (1891)

Barrett, a Catholic, wanted to quash a City of Winnipeg bylaw that levied a tax upon all property for the new public school system. He argued that the bylaw was invalid because of the guarantee found in s. 23 of the *Manitoba Act*. Barrett lost at the trial and Queen's Bench levels. [Bale points out that, in their judgment hand down on Feb. 2, 1891, of the four Queen's Bench judges, the three who found against Barrett were Protestants, with only Justice Dubuc, a Catholic francophone, dissenting.][3] The decision arrived in the midst of a federal election campaign; in response to an appeal for federal disallowance launched by the Catholic authorities in Manitoba, the federal Justice Minister

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[1] Ibid., p. 39.
[2] Bale, op. cit.
[3] Ibid., p. 474.

recommended against such disallowance in view of the fact that the *Barrett* case was now to be taken to the Supreme Court of Canada.[1]

The Supreme Court of Canada unanimously reversed the decisions of the two lower courts. Indeed, in this decision, according to Bale:

> We see the Supreme Court judges playing the roles of judicial statesmen in protecting the rights of the minority to denominational schools. Here is a recognition that the constitutions of Canada and Manitoba are based upon a compromise between the two founding races to which it is necessary to remain faithful, even though this may stand in the way of implementing a more efficient educational system.[2]

The subsequent appeal by Manitoba to the Privy Council was to be a different story, however. The Privy Council reversed the Supreme Court judgment, stating that "there were...no legal rights or privileges with respect to denominational schools" established by law prior to 1870:

> The Privy Council thus rendered almost totally nugatory the denominational school guarantee of the Manitoba Act by holding that only if Roman Catholic children were compelled by law to attend the public school system would their rights and privileges be prejudicially affected.[3]

The London court simply ignored the fact that

> ...it is only immunity from a tax levied to establish a public school system that can make denominational schools feasible in any practical and meaningful way.[4]

Bale adds that, in arriving at its decision,

> ...the Council failed to recognize that the Manitoba Act embodied the terms of an agreement reached between delegates from Assiniboia

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[1] Ibid., p. 475.
[2] Ibid., p. 478.
[3] Ibid., p. 480.
[4] Id.

> and the federal government, and that at least the relatively contemporaneous acts of the parties were surely cogent evidence about the meaning which they attached to the agreement. The Privy Council criticized one judge of the Supreme Court for taking the view that public schools under the Act of 1890 were in reality Protestant schools, stating:
>
> > They (their Lordships) cannot assent to the view...that public schools under the Act of 1890 are in reality protestant schools. The legislature has declared in so many words that 'the public schools shall be entirely unsectarian' and that principle is carried out throughout the Act.
>
> The Privy Council's view of reality was thus severely limited...The religious content was not perceptibly different in the non-sectarian public schools from that in the Protestant schools which had preceded them.[1]

This view is supported by Morton, who documents the position taken by leading Protestant clergymen against the "godless" secular schools and the government's subsequent acceptance of "religious exercises" in the new public school system.[2]

ii) Brophy **v.** *Attorney-General of Manitoba* **(1895)**

The Privy Council decision in the *Barrett* case meant that the focus was once again on the federal government. But, in light of the *Barrett* decision, what scope did the government have to bring in remedial legislation (independently of the inherent political difficulties of such an endeavour)? Cabinet decided, in 1893, in favour of a reference to the Supreme Court of Canada, based upon six specific questions. Essentially, the question was whether the Catholic minority had a legitimate right of appeal to the federal government. Bale describes the upshot:

> In *Barrett*, the Supreme Court, properly appreciative of the crucial importance of the case for the preservation and growth of national unity based on a bicultural conception, had unanimously taken a

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[1] Ibid., p. 481.
[2] Morton, 1967, p. 246.

> realistic and functional approach in construing subsection 22(1) of the Manitoba Act, 1870. However, after the Privy Council had, through a formalistic approach, virtually nullified the protection of subsection 22(1), some members of the Supreme Court then adopted a formalistic approach in the subsequent reference case. The result was a Supreme Court which split three to two. The majority held that the Manitoba Catholics had no right of appeal to the federal cabinet and that the federal Parliament lacked the power in this case to pass remedial educational legislation. Thus a statesmanlike approach to the issue of the westward extension of the compromise of Confederation was replaced by a narrow technical construction.[1]

The Privy Council, on appeal, perversely found that indeed "the rights and privileges existing prior to 1890 of the Roman Catholic minority were affected", and "an appeal is given in subsection 22(2) simply if rights are in fact affected".[2] Bale points out that

> The decision of the Privy Council in *Brophy* v. *Attorney-General of Manitoba* is in striking contrast to that in *Barrett* v. *City of Winnipeg*. Professor Schmeiser has categorized this change as an 'amazing turnabout'. Thomas Berger contends that '(o)nce again, the opinion of the Privy Council made little sense, unless it is regarded as a belated acknowledgement by the peers of the wrongheadedness of their opinion in *Barrett* v. *City of Winnipeg*. John S. Ewart, counsel for the minority, said that the Privy Council 'did all it could to correct its previous error'. The Privy Council contended that in each case it was simply determining the 'true construction' of the language used in the Manitoba Act by applying sound rules of construction, but the results are so startlingly different that it shows that judges could generally find what they wanted to find. The two cases cannot in any meaningful sense be reconciled.[3]

Among the many consequences of the *Barrett* and *Brophy* decisions, Bale points out, was the impact upon the French-Canadian minority in Manitoba:

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[1] Bale, op. cit., p. 485.
[2] Ibid., p. 500.
[3] Ibid., p. 501.

> The Privy Council, by interpreting the constitutional protection in subsection 22(1) of the Manitoba Act to be virtually meaningless, weakened confidence in the legal system as a protector of minority rights. The inadequacy of the settlement which followed the *Brophy* case, in which the Privy Council belatedly found some real substance in section 22, must have reinforced Franco-Manitobans' skepticism about the legal and political protection of their linguistic rights.[1]

Professor Bale concludes that these two Privy Council decisions constitute a turning point in the evolution of the Canadian federation; where Canadian duality could have been affirmed clearly and unequivocally, as the Supreme Court did in the *Barrett* case, the Privy Council's strict and contradictory constructionist approach subsequently led the Supreme Court and ultimately the Canadian federation in the opposite direction where provincial rights, in virtually all circumstances, are prior to official-minority rights. In Manitoba, the results were as follows:

> The assault upon the education rights of the Roman Catholics of Manitoba in 1890 resulted from a combination of racial and religious bigotry, a desire for educational reform, and political opportunism. The local judiciary of Manitoba was too close and too responsive to the will of the local majority to provide meaningful protection for the minority. However, in the *Barrett* case, the Supreme Court of Canada rose magnificently to the challenge. (...)
> In the *Barrett* case, the Supreme Court of Canada, recognizing that democracy has its own capacity for tyranny, firmly and unanimously told the Manitoba government that it must respect the freedom of conscience of its Roman Catholic citizens in respect to education. This rejection of the forceful assimilation policy of Manitoba, had it not been overruled by the Privy Council, might have done much to accelerate the development of respect for and pride in the bicultural and bilingual nature of the Canadian nation. The Privy Council in *Barrett* unfortunately approved Manitoba's melting pot policy. This caused French Canadians to believe that only under the protection of the provincial rights of Quebec would their cultural rights be protected.[2]

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[1] Ibid., p. 508.
[2] Ibid., pp. 517-18.

7) Bills 59 and 113

With the creation of "L'Association d'Education des Canadiens-Français du Manitoba" in 1916, Franco-Manitobans, having lost all of the constitutional guarantees enshrined in the *Manitoba Act*, undertook what was in effect a quiet "guerilla action" in the maintenance of a minimal structure to maintain their linguistic and religious identity; that structure was the school. A curriculum for the teaching of the French language (and other subjects), especially in the lower grades, was developed and maintained on an on-going basis by the Association and a *modus vivendi* was developed with the Department of Education, particularly the school inspectors. Given the strong rural base of Francophones in Manitoba throughout the first half of the twentieth century, the worst effects of the school legislation could be obviated, with the result that the rate of assimilation remained very low through the 1950's.[1]

The initial dislike of Francophones for the urban environment had its cost, however. As of the middle of the century, Francophones were virtually absent from the economic decision-making structures of the province. In addition, when urbanization hit the community, its members were almost totally unprepared to adapt their linguistic and cultural mores to the city environment, with the result that assimilation rates began to shoot upwards during the 1950's. This is dramatically noticeable in the 1961 Canadian census and in subsequent censuses.[2] However, they retained substantial influence in the political and educational spheres, an influence, some might argue, which was disproportionate to their actual numbers.

For a period of almost fifty years, from 1916 to the early 1960's, the matters of denominational schools and French-language rights, including the

[1] Hébert et al., in press, Chap. III.
[2] Id.

right to instruction in French, remained off the political agenda in Manitoba. Almost three generations of Manitobans were raised and schooled in the belief that Manitoba was an English-language province; where there was a vague awareness of the French element in the history of the province, it was more often than not related to the fact that there were many other ethnic groups in Manitoba, and indeed that two of them (apart from the British), the Germans and the Ukrainians, were more important numerically than the French.

In the sixties, however, the winds of change were blowing in the Canadian federation, and Manitoba was not to be spared. In 1952, the Campbell government had authorized teaching a "Français" course to the extent of one hour per day from Grades 7 to 12 and the Department of Education had assumed the tasks of curriculum and textbook development and inspection relating to the teaching of "Français" at these grade levels which the "Association d'Education des Canadiens-Français du Manitoba" had borne, with the Department's tacit approval, since 1916.[1] In 1963, following introduction of a private member's bill by the MLA from St. Boniface, Laurent Desjardins, the "Français" course was legalized, by regulation, starting from Grade 1. Desjardins presented, in 1965 and again in 1966 two amendments to the Public Schools Act that would have allowed the use of French as a language of instruction for other subjects. Both these bills were rejected.

On March 20, 1967, Hon. George Johnson, Minister of Education in the Roblin government, presented Bill 59 to the House and summarized its intent in the following words:

> Basically, what the Bill does provide for is the use of the French language for instruction in social studies and for such other subjects as the Minister may by regulation stipulate. To avail themselves of

[1] See Leblanc, P.-E., op. cit.

> this opportunity, the board of a district or a division must submit a proposal to the Minister in a prescribed form detailing amongst other things the total amount of time during which the French language will be used for all purposes mentioned in this section of the Act. This total time may not exceed one-half of the instructional time in any day. (...) It has also provided that pupils may be excused from such instruction on written objection from their parents or guardians. In addition, the Minister may require the board to make satisfactory arrangements for the instruction of pupils so excused before giving any proposal his approval.[1]

Later, members of the various parties rose to speak to the Bill, all of them favourably. Most of them pointed out the relationship between the Bill and Canadian dualism and established a link between tolerance for the French language and the enhancement of the Manitoba "mosaic", of other cultures and languages. Russell Doern, for example, NDP MLA for Elmwood, stated:

> I think that the people who phrased the Bill, the Minister and his advisors, have attempted to look at this very complicated question which tore this province apart many years ago, with some depth and some insight and I think they put it in a national context. They apparently did not look upon Manitoba as an isolated province or as an isolated area, but they seemed to regard our province as it should be; namely, a part of the Canadian framework.[2]

NDP MLA Sid Green clearly situated the legislation in the Canadian historical and constitutional context as well as eloquently pointing out the benefits to all ethnic groups of a tolerant, heterogeneous society which would allow such legislative recognition of a second language:

> Mr. Speaker, the people who are interested in maintaining some ties with their background, some tie with their language and some tie with their traditions, are wrong to argue that French is a minority grouping like every other minority grouping and should have the same privileges and rights as these minority groups. I think it's to the benefit of the ethnic minorities that we recognize that Canada is not a homogeneous country, it's a heterogeneous country, that it is a country which makes possible the living together of two founding

[1] Debates and Proceedings, 1st Session, 18th Legislature, 1966-67, p. 1821.
[2] Ibid., p. 2545.

> nations, two founding people, in this case the French and English founders of our country. But by broadening ourselves that far, Mr. Speaker, by broadening ourselves to the extent that Canada is not a country which strives towards a homogeneous personality or a homogeneous culture, we go one step further and say this makes it possible to think in terms of heterogeneity; this makes it possible for the rest of us to think in terms of people having a tie, a background and a tradition which they feel should be sustained and which they feel can contribute to the cultural plurality of our country.[1]

Bill 59 was adopted unanimously by the Manitoba Legislature on second reading on April 20, 1967 by a vote of 52 to 0, and on third reading on April 26, 1967.

A new spirit of renewal and militancy within the Francophone community brought about by the election of the Trudeau government in 1968 and adoption of the *Official Languages Act* in 1969 led a growing number of Francophones to believe that perhaps the impossible could come true; perhaps instruction in the French language could be fully legalized in Manitoba. The results of the provincial elections of 1969, after which the NDP needed a single seat to form a majority government, heightened the air of expectancy in the Franco-Manitoban community, since that seat was to come from St. Boniface. Larry Desjardins, who kept winning re-election in that riding regardless of the vagaries of political life elsewhere in the province, found himself in a unique situation on election night. On June 26, 1970, he described in the Manitoba Legislature the basis upon which he had decided to support the NDP under Edward Schreyer in forming a new government:

> The day after the election, I chose to support Mr. Schreyer in order that he could form a majority in the House and consequently form the present government of Manitoba. In short, the question for me was to make a choice between two men rather than two parties: Mr. Weir, leader of the Conservative party who had not shown himself to be sympathetic to the French Canadians or to the idea of a

[1] Ibid., pp. 2731-32.

> bilingual Canada; and Mr. Schreyer, who had during his campaign and on many other occasions, stated without ambiguity, his desire to see a bilingual Canada which would allow all Canadians to progress according to one or the other of the two official languages of Canada.[1]

Others, more cynical, thought simply that a "deal" had been worked out between the two men, a deal whereby Desjardins would support the Schreyer government on condition that Schreyer would bring in legislation relating to the two overriding priorities of Desjardins' public life: aid to separate schools and French-language instruction. It is probable that the two men, having become good friends in the Legislature prior to the 29th Session, simply agreed that these items were among their joint priorities in any case; hence Desjardins's rapid decision to support the Schreyer government, a decision subsequently fully endorsed at a large public meeting of his constituents in St. Boniface.

On June 1, 1970, the Hon. Saul Miller, Minister of Education and Youth in the Schreyer government, introduced Bill 113, a legislative amendment to the Public Schools Act which would legalize instruction in the French language for all subjects except English, where 28 elementary pupils or 23 secondary school students could be grouped together, at their parents' request, for such instruction. A course in English was made compulsory from Grades 4 through 12; in practice this meant that the language of instruction in Manitoba schools could be 100% French from Kindergarten to Grade 3, and up to 75% of total instruction time from Grade 4 to Grade 12. This amendment became S. 258 of the Public Schools Act.

Again this legislation gained the support of all parties in the House. Saul Miller, speaking on behalf of the Government on second reading, pointed out that the representatives of all parties, during debate on the *Official Languages*

[1] Debates and Proceedings, 2nd Session, 29th Legislature, June 26, 1970, p. 3370.

Act, 1969 in the House of Commons, had made the point that "the provinces should follow the federal initiative in their own areas of jurisdiction wherever practicable and that in fact the real tasks involved in the nationwide implementation of the official languages principle lay with the provinces".[1] He went on say that, at the Constitutional Conference of February, 1968, where Manitoba was represented by the Conservative Government of Walter Weir,

> There was recognition that French-speaking Canadians outside of Quebec should have the same language rights as English-speaking Canadians within Quebec. Further, it was recognized that governmental action required to implement that principle had to be taken as quickly as possible in all provinces.[2]

Adding that "Therein lies for the most part the motivation behind the bill that I am introducing today", Miller went on:

> "...needless to say we believe that the extension of official language rights in the provinces is both correct and a necessary measure geared to strengthening the bonds of Confederation and of course as long as the Canadian Federation remains, and so long as Manitoba is part of it, the two official languages of Canada must be enhanced as official languages in Manitoba. (...) The bill is a simple and a straightforward attempt to provide French-speaking Manitobans, and others who are interested as the case may be, with their established right to be instructed in the official language of their choice within the framework of our public school system.[3]

As Russell Doern and Sid Green had done in 1967, Miller linked Canadian dualism with the heterogeneous, multicultural society, the Canadian mosaic:

> Just as we recognize our commitments to do our part in following the federal lead in helping to strengthen Confederation and at the same time recognizing the virtue of promoting our two official languages for the sake of building our national unity, our national identity, we also recognize the necessity of following the lead of the

[1] Ibid., June 24, 1970, p. 3163.
[2] Id.
[3] Id.

> people of Manitoba. (...) We favour no melting pot philosophy. We don't believe that it works; we don't believe it can succeed. Rather we wish to encourage the development of what is now commonly known as our cultural mosaic.[1]

In this context, Miller announced that Bill 113 also provided for teaching of a language "other than the official languages of French or English" as a subject from as early as kindergarten or Grade One with the approval of the local school board.[2]

As debate over Bill 113 continued, Donald Craik, Progressive Conservative MLA for Riel, pointed out that no more had been done in any province in Canada in advancing French-language rights than the former Progressive Conservative government had done in Manitoba in the previous ten years.

On June 26, 1970, Bill 113 was adopted unanimously by the Legislative Assembly by a vote of 40 to 0.

8) Forest

The adoption of Bill 113 along with the *Official Languages Act, 1969* and the growing financial support of the Secretary of State, gave a tremendous impetus to the Franco-Manitoban community. It became increasingly militant in demanding increasing funding and programmes from government, mainly at the federal and provincial levels. At the provincial level, education remained the primary focus. After two or three years under the "new" Section 258 of the Public Schools Act (Bill 113), virtually nothing had changed within the schools of the province. With one or two exceptions, no French-language schools had resulted from this "permissive" legislation. It became clear to the

[1] Id.
[2] Id.

Franco-Manitoban community that administrative support was an essential element if French-language education was to develop in Manitoba. The creation of the "Bureau de l'éducation française" and of "l'Institut pédagogique" at St. Boniface College, both in 1974, and the appointment of the first Assistant Deputy Minister responsible for French-language education in Manitoba in 1976 were milestones in the evolution of the French-language school system in Manitoba.

In this context of renewed hope and enthusiasm within the French community, and of militancy born of a new awareness of French-language rights in Canada and Manitoba, began the judicial saga of Georges Forest, who, almost singlehandedly, mounted the most important constitutional challenge to the linguistic status quo in Manitoba since the *Brophy* decision of 1895. This time, however, the outcome was to be victory for the French minority.

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The Forest story began in March, 1975, when Georges Forest, a St. Boniface insurance broker, found a ticket for illegal overnight parking from the City of Winnipeg on his car in front of his home at 44 Champlain St.[1] He decided to challenge the City's right to issue summonses in English only, and argued that the ticket was contrary to S. 80(3) of the *City of Winnipeg Act*, which states that

> All notices, bills or statements sent or demands made to any of the residents of St. Boniface community in connection with the delivery of any service, or the payment of a tax, shall be written in English and in French.[2]

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[1] Frances Russell, undated interview with G. Forest.
[2] 5 m c. 105

In April, 1975, he argued before City Council that this section of the City's charter should be respected. The City replied through its Solicitor, Duncan Lennox, in October, 1975, that the *City of Winnipeg Act*, and specifically S. 80(3) thereof, did not apply, since a summons was a police service and thus was not covered by this section of the *Act*. In November, 1975, Forest returned to City Council and requested that they ask provincial Attorney-General Howard Pawley to define the extent of S. 80(3). The City did not respond.

On February 6, 1976, Georges Forest's daughter Nicole had left his car parked over the limit of one hour in front of his business at 160 Marion St. in St. Boniface; the car, a red 1968 Oldsmobile, was ticketed a second time.[1] This time Forest went to the St. Boniface law firm headed by Rhéal Teffaine, who felt the case was routine and minor and transferred it to his junior partner, Alain Hogue.[2] Hogue would ultimately argue the case before the Supreme Court of Canada.

Several months later, Lennox reiterated his position, on behalf of the City of Winnipeg: the parking ticket did not come under the *City of Winnipeg Act*, and, since it had not been paid, Forest received a summons to appear in Provincial Judges' court, Traffic Division. Justice J. S. Walker gave the case an entirely new dimension by ruling, on July 27, 1976, that the ticket was not a mere notice from the City of Winnipeg but, on the contrary, it was a judicial document and, as such, came under the *Official Language Act, 1890*. Justice Walker stated that "The specific provisions of the Official Languages (sic) Act take precedence over the more general provisions of the City of Winnipeg Act"[3], and fined Forest $14.90 (the original $5.00 ticket plus costs).[4] According to

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[1] Russell, op. cit.
[2] Id.; also, R. Hébert, Forest interview, June 7, 1988.
[3] Quoted in Blay, op. cit., p. 93.
[4] Russell, op. cit.

Blay, this is when Forest resolved to undertake his "crusade"; Justice Walker, in invoking the *Official Language Act, 1890*, had not only given him a cause, he had also given him a solid legal argument for taking the case to superior courts.

The appeal, before St. Boniface County Court, was heard on November 17 and 18 in St. Boniface County Court.[1] Despite a warning by the Crown attorney that the judge should consider the consequences of a ruling in favour of Forest[2], Justice Armand Dureault ruled that the 1890 law was unconstitutional. In arriving at his decision, Dureault quoted the Supreme Court of Canada (Laskin) in matters relating to bilingualism, the Privy Council decisions on the schools question and an article written by F. R. Scott in 1949, among other sources. He concluded, as had Prud'homme in 1892 and 1909, that S. 23 of the *Manitoba Act, 1870* was a substitute for S. 133 of the *B.N.A. Act, 1867*, "et par conséquent ne pouvait pas être amendé par la législature".[3] Finally, addressing the fears expressed by the Crown attorney, Dureault quoted Lord Mansfield:

> Qu'il soit bien compris, une fois pour toutes, aucun comportement de ce genre n'influencera celui qui siège à ce tribunal. Tant pis pour les conséquences! La Constitution ne permet pas à la raison d'Etat d'influencer nos jugements. Que Dieu nous en préserve! Nous ne devons pas envisager les conséquences, quelles qu'elles soient! Si la rébellion doit, de façon certaine, résulter de nos jugements, nous nous devons de dire: "Fiat justicia, ruat caelum" (Que justice soit faite, même si le ciel doit nous tomber sur la tête).[4]

It is doubtful whether Justice Dureault then envisaged the tumultuous events that would follow his ruling.

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[1] Blay, op. cit., p. 94.
[2] Russell, op. cit.
[3] Quoted in Blay, op. cit., p. 95.
[4] Ibid., p. 96.

The affair had now rebounded to the Schreyer government. The Premier's initial response was to state that his government's reaction to the Dureault judgment would be made public in January.

The judgment, because of its far-reaching implications, also forced the French community itself to react. The initial reaction of the SFM was lukewarm at best, certainly hesitant, and above all skeptical as to the ultimate impact upon the daily lives of Francophones in Manitoba. The President of the SFM, Gérard Archambault, stated, on the French radio station CKSB on Dec. 15, 1976 that

> On a beau réclamer toutes sortes de choses, toutes sortes d'institutions, si à un moment donné on néglige de faire un travail d'animation de la population, toutes ces institutions, ces lois et ces choses qui nous sont accordées n'auront plus leur raison d'être et c'est dans ce sens-là qu'on dit que nos priorités sont d'abord de travailler avec la population, de l'animer, de faire du développement communautaire, de sorte qu'un jour, on bénéficie des lois et des institutions qui sont en place.[1]

Beneath this difference in emphasis as between Forest (juridical) and Archambault (pragmatic) lies the fundamental dilemma which has confronted the French-language community almost since the founding of the province: in pressing for respect of its rights, it would raise the ire of the majority which is either ignorant of or antagonistic to these rights. Francophones' natural instinct to be "good neighbours" in their towns and villages conflicted with their need to assert their fundamental rights which, if Forest was right, went far beyond the modest gains which the 1960's and 70's had brought until then.

While the initial instinct of the SFM's President was to come down in favour of a pragmatic and "gradualist" approach to French-language rights, the

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[1] Ibid., p. 97.

organization, as the political umbrella of the French community, could not stand by passively without providing some support to Forest. This support was announced in the following terms in a press statement released by the SFM on Dec. 16, 1976:

> Depuis plus de trois mois, la SFM appuie moralement la lutte engagée par M. Forest. Il est évident que cette lutte concerne directement tous les Franco-Manitobains attachés à leur langue. C'est pourquoi la SFM croit essentiel de mettre sur pied un fond spécial qui permettra aux Franco-Manitobains d'apppuyer financièrement la lutte légale (sic) engagée par M. Forest.[1]

In the end, the SFM's "special fund" contributed only $5,500. to Forest's total legal costs. The balance was covered by himself ($3,000.) and by the federal government (over $70,000.).[2]

In mid-January of 1977, Attorney-General Howard Pawley's department released its official reaction to the Dureault judgment:

> l- The Crown is prepared to proceed to hear the merits of this particular case. We do not intend to appeal the court's ruling on the preliminary objection at this time, but do not accept the ruling of the court with respect to the constitutionality of the Official Languages (sic) Act.
> 2- The Crown specifically indicates that it does not accept the ruling of the Court vis-à-vis the Official Languages (sic) Act and is proceeding without prejudice to its position concerning this question.
> 3- The Crown wishes to indicate that in any case where the Act is brought into question it will not regard this ruling on a preliminary objection, which it now waives, as creating a binding precedent and reserves the right to argue the question in a case where it is material in issue.[3]

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[1] Id.
[2] Hébert, op. cit.
[3] Undated departmental press release, quoted in Blay, op. cit., p. 98.

Where the Schreyer government had always professed and demonstrated good will towards the Franco-Manitoban community, the community learned, in this statement, precisely where the limits were. As Blay says,

> En ne faisant pas appel, il signale à une partie de la population franchement anti-francophone ou anti-bilinguisme que les principes ont des limites qui commencent à la porte des tribunaux ou de l'Assemblée législative.[1]

The Schreyer government was attempting a juggling act which, though juridically nonsensical, nonetheless made good political sense: to the Francophones, it could point out its many accomplishments, especially in the field of French-language education; for the Anglophone Manitobans who would never accept that Francophones had any special "rights", it would maintain a hard line vis-à-vis such rights, even to the extent of being in contempt of court. Its only rationale for this latter course of action, an extraordinarily feeble one, was that it would wait for a circumstance where the *Official Language Act, 1890* would be "material in issue". Indeed, if it were not "material in issue" in this case, when would it be? How many other court decisions would be similarly ignored before the main issue of S. 23 was confronted?

In short, the Schreyer government reacted in much the same manner as the Greenway government did in 1892 to the first Prud'homme judgment and the government of Rodmond Roblin did in 1909 to the second. It was to be "business as usual", and constitutional requirements regarding language rights were to continue to be ignored.

Forest was caught in a bind. He could not appeal his own case, having won it; yet the victory was meaningless, since the government would simply ignore the Dureault court's decision. (One can imagine the consequences to a

[1] Ibid., p. 100.

private citizen if he or she attempted to do the same thing!) A way had to be found to bring the issue to the next level, the Court of Queen's Bench.

Hogue now had three precedents: the two Prud'homme judgments and the new Dureault judgment. Using these precedents he wrote the Queen's Printer, with copy to the minister responsible, René Toupin, requesting the French versions of four laws. According to Forest, Toupin said he could have them if he agreed to pay $50,000.[1] On Feb. 23, 1977, Attorney-General Pawley answered in the following terms:

> Rien dans le jugement Dureault n'empêche la poursuite du cas en langue anglaise seulement et cela incluerait l'utilisation de statuts rédigés en anglais.[2]

The province also reduced the cost of translation of the four laws requested to $17,000.

On March 17, 1977, Alain Hogue attempted to file documents in French with the clerk of the Court of Queen's Bench; the documents were initially accepted but subsequently, after discussion between the clerk and the Chief Justice, refused. The documents asked the Court to order the Attorney-General of Manitoba and the Minister of Consumer Affairs to translate the laws relevant to his case.

Only one avenue was left: the Court of Appeal. Again, after consultation with Chief Justice Samuel Freedman, the documents were refused. On April 5, 1977, Forest's lawyers filed a request for a mandamus order to force the government to give Forest satisfaction and to apply the Dureault judgment and informed the court that a constitutional matter would be placed before it.[3]

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[1] In Russell, op. cit.
[2] Blay, op. cit., p. 106.
[3] Ibid., pp. 106-7.

On May 13, 1977, while the matter was still before the Court, Premier Schreyer announced he had no intention of abrogating the 1890 law, a gesture which again had more than a whiff of the authoritarian intolerance demonstrated by the earlier Manitoba governments.

Hogue's attempt to have the case heard by the Court of Appeal failed; on June 22, 1977, the Court directed that it should be heard by a lower court, the Court of Queen's Bench, in the first instance. Chief Justice Freedman wrote the judgment for the majority, and Justice Alfred Monnin presented a dissenting opinion. Chief Justice Freedman confirmed Justice Dureault's opinion that S. 23 was indeed a part of the Canadian Constitution, having been adopted by the British Parliament; however, he also noted that S. 2 of the *Official Language Act, 1890* read as follows:

> This Act applies only so far as Legislature has jurisdiction to enact.

The Chief Justice went on to argue that, in light of this section, if a court ruled that the 1890 Act should not have been promulgated by the Province of Manitoba, a declaration of unconstitutionality would not be appropriate, since the law clearly already does not apply where the Legislature has no authority to act. In such a situation, the court should more appropriately declare that the Act is <u>inoperative</u> in terms of the parameters defined by S. 23 or again <u>not applicable</u> to such questions. This argument was to become a major element in the Court of Appeal's definitive judgment on the *Forest* case some months later.[1]

Justice Alfred Monnin's dissenting opinion is destined to be remembered mainly for its scathing comments on the January, 1977 decision of the Schreyer

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[1] Ibid., pp. 108-9.

government to ignore the Dureault decision.[2] Justice Monnin said, in essence, that he had never come across such a flagrant case of abuse of authority; the government had shown a total lack of courtesy for the judge who had rendered the decision.[3]

[2] See above, pp. 46-7.
[3] Quoted in Blay, op. cit., p. 111.

Chapter II

French-language rights in Manitoba, 1977-81: The Lyon Years

Though the right to instruction in French had been restored by the Roblin and Schreyer governments in 1967 and 1970, and administrative measures adopted to ensure the establishment of French-language schools in Manitoba through the 1970's, none of these initiatives had involved the *Manitoba Act*. Indeed, one could argue that these new "rights" were really not constitutionally grounded at all, since they did not involve recognition of denominational schools, the only "right" stipulated in S. 22 of the *Manitoba Act*. At another level, of course, one could also argue, and several court decisions in the 1970's and 1980's have done so, that the historical context was crucial in defining the actual rights granted in 1870; by that test, if one goes beyond the "black letter of the law", it is clear that the denominational schools protected in 1870 were also French-language schools, and the legislative initiatives of 1890 were meant not only to abolish denominational schools but also schools where French was the language of instruction.

In any event, it was clear in the eyes of politicians of all political parties throughout the 1970's that the school rights granted did not involve Manitoba's constitution; therefore, in a certain sense, the granting of these rights was an act of generosity on the part of the Manitoba legislature. For the French community, of course, it was a long-overdue recognition of fundamental rights acquired upon Manitoba's entry into Confederation.

With *Forest*, the ground shifted. Whereas for three generations Francophones in Manitoba had "gone underground" and had concentrated

upon survival within their well-delimited, mainly rural, communities and had ensured their survival through maintenance of "de facto" French-language schools through subterfuge or accommodation with the Department of Education[1], *Forest* was a signal that the time of quiet accommodation was over, and that, for some Francophones at least, it was time to return to fundamental rights at all levels: in the courts, in the Legislature, in government services as well as in the schools.

During the Lyon years, thanks to Georges Forest, the constitutional stage was being set for a dramatic political confrontation that was to last for 10 months and shake the Manitoba political system to its very foundations. The Lyon years were years of denial, of denial that Francophones were entitled to anything more than the Legislature, out of the goodness of its heart, was willing to grant them, and of continued denial of the existence of Sections 22 and 23 of the *Manitoba Act*. Though there were attempts by the Lyon administration to head off what the Attorney General's department was surely pointing out as a potential crisis, there was no attempt to confront the problem at its root, that is, at the constitutional level.

1) Forest in the Manitoba Court of Appeal

In its judgment of June 22, 1977, the Manitoba Court of Appeal had refused to hear the Forest case, accepting the Crown's argument that it should first be heard in the Court of Queen's Bench. Following the Lyon government's election in the fall of that year, the Crown retained the services of a new attorney, Kerr Twaddle, a former partner in Sterling Lyon's law firm.[2] Hogue alleged that the new government was employing delaying tactics in preventing

[1] See Leblanc, op. cit.
[2] Blay, op. cit., p. 113.

a date for the hearing in Queen's Bench, most significantly in calling into question, on December 2, 1977 (after 16 months of court proceedings), Georges Forest's standing in a case involving the constitutionality of legislation.[1]

Finally, the new Attorney-General, G. Mercier, convened a meeting between K. Twaddle, A. Hogue, and G. Forest; the meeting was held on Feb. 10, 1978 in Twaddle's office and allowed an assessment of the parties' respective positions but did not lead to a resolution.[2] The following month, Forest received a guarantee of federal funding of his case.[3] The stage was now set for a judicial confrontation of epic proportions.

i) The Court of Queen's Bench judgment

The Court of Appeal, in its June 22, 1977 decision, had clearly stated that it desired a first opinion on the constitutionality of the *Official Language Act, 1890* from the Court of Queen's Bench. That Court had dismissed Forest's application, "with leave to the applicant to bring a similar one in the Queen's Bench" and added that "on balance the case is stronger for holding that the Queen's Bench is the appropriate forum for the first hearing of this matter".[4]

Chief Justice Dewar of the Court of Queen's Bench, in his decision rendered on July 18, 1978, refused to offer this opinion, beyond stating that Justice Dureault had already provided an "unequivocal answer" to Forest's first question to the Court, *i.e.*, whether the *Official Language Act, 1890* was constitutional or not. On the other hand, Justice Dewar resorted to precedents establishing the Court's discretion in, first, determining the plaintiff's standing, or right to challenge the constitutionality of legislation, and second, in granting or withholding declaratory relief. In utilizing this discretion, Justice Dewar

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[1] Id.; (1979) 4 W.W.R. 229.
[2] Blay, op. cit., p. 114.
[3] Ibid., p. 115.
[4] (1977), 77 D.L.R. (3rd) 445, pp. 355-6.

denied Forest both, stating, regarding the relief sought (translation by the Crown of the necessary laws into French) that

> The conclusion of the plaintiff's County Court appeal and subsequent appeal proceedings, if any, will produce ample opportunity for the plaintiff, if the question of the constitutionality of the statute requires further judicial consideration, to take such proceedings for the purpose of obtaining same as he may be advised. In the meantime refusal of declaratory relief in this action denies him nothing.[1]

According to Blay, "Ce jugement a été, depuis sa publication, une énigme pour ceux qui l'ont analysé",[2] and indeed several of Justice Dewar's statements appear to be illogical in light of the evolution of the case over the previous months. The net effect of his position, however, as Blay points out, was to deny Forest's constitutional rights.

Hogue immediately announced his intention to appeal Dewar's judgment in the Court of Appeal; the appeal was filed on Aug. 22, 1978 and heard on Feb. 21, 1979. Again the Attorney General pursued his attempt to deny Forest standing in the Court of Appeal. Blay describes this strategy in the following terms:

> C'est la stratégie adoptée par le gouvernement Lyon, stratégie légèrement différente de celle du gouvernement précédent et qui laisse entrevoir une autre philosophie: un particulier ne devrait pas avoir le droit de poser des questions constitutionnelles aussi fondamentales.[3]

There were in reality two hearings, the first to deal with Forest's standing and the second with the substantive constitutional issue. The matter of standing was decided in Forest's favour within an hour by the court.[4] Indeed, in

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[1] (1978) 5 W.W.R. 729.
[2] Blay, op. cit., p. 117.
[3] Ibid., p. 121.
[4] Ibid., p. 122.

his inimitable prose, Chief Justice Samuel Freedman began the judgment of the Court of Appeal with the following words:

> Georges Forest's odyssey towards an authoritative judgement dealing with the validity or invalidity of the Official Language Act...is now approaching an intermediate goal. En route, he has had to move with care between a present-day Scylla and Charybdis, these being sometimes of his own making, oftener erected in his course by others. His prolonged effort in an important cause lawfully merits the judgment of this court, and I would not deny it to him.[1]

Once again, Forest's lawyers argued that S. 23 established the same rights as S. 133 of the *B.N.A. Act, 1867* and that both were constitutionally entrenched; neither Section, therefore, could be amended without the consent of both the Manitoba Legislature and the Canadian Parliament. The rights of Francophones in Manitoba thus closely parallel those of Anglophones in Quebec, granted under S. 133 of the *B.N.A. Act, 1867*. However, taking note of Chief Justice Freedman's comments in the earlier Court of Appeal judgment, Forest's lawyers also argued that, should the *Official Language Act, 1890* not be found to be *ultra vires* of the Manitoba Legislature, at the very least it should be found "inoperative".[2] In retrospect, this position may have been a tactical error on the part of Forest's lawyers, since it opened the way for a compromise judgment by the Court of Appeal.

The federal government argued in favour of Forest, while the provincial government argued strongly against him. The Attorney General's arguments were based mainly upon S. 92 of the *B.N.A. Act, 1867*, which sets out matters that fall exclusively under provincial jurisdiction. In addition, the Crown pointed out that, from 1871 to 1890, the provincial statutes were first promulgated in English, then translated into French. S. 23, then, imposed an

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[1] (1979) 4 W.W.R. 229.
[2] Blay, op. cit., p. 122.

obligation which was essentially procedural; the main stages were adoption by the Legislature and the Governor-General's assent, and the laws adopted since 1890, therefore, were valid.[1]

ii) The Manitoba Court of Appeal judgment

Chief Justice Freedman delivered the judgment of the Manitoba Court of Appeal on April 25, 1979. At the outset, the Chief Justice chastised both Chief Justice Dewar of the Court of Queen's Bench and the Attorney-General. In response to Chief Justice Dewar's refusal to grant standing to Forest, Chief Justice Freedman replied that

> With great respect, I am of the view that the plaintiff possessed and possesses the necessary standing entitling him to an adjudication by the court on the relief he is seeking. To the extent that the matter is a discretionary one I would hold that in denying locus standi to the plaintiff the learned chief justice failed to exercise his discretion with due regard to all relevant factors.[2]

As for the Attorney General of Manitoba,

> ...I must express surprise that the issue of standing was raised at all by the Attorney General of Manitoba when in his statement of defence - as a kind of eleventh-hour makeweight - he challenged Mr. Forest's status to bring these proceedings.[3]

Later in the judgment, on the same issue, Chief Justice Freedman added that "A court can be forgiven for not taking kindly to this turn of events."[4]

On the substantive issue, it can be said that the Court of Appeal's unanimous judgment was a major, though not unmitigated, victory for Georges Forest. First, Chief Justice Freedman established, and accepted, the parallel between S. 23 of the *Manitoba Act* and S. 133 of the *B.N.A. Act, 1867*:

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[1] Ibid., p. 124.
[2] (1979) 4 W.W.R. 229.
[3] Id.
[4] Id.

> No one would contend that the striking similarity between s. 133 of the B.N.A. Act, 1867, and s. 23 of the Manitoba Act, 1870, was the product of coincidence. The elements of chance operate too variously and capriciously to bring about such a result. Rather, one is safe in saying that the draftsman of s. 23 had before him s. 133, and that his deliberate quest was to reproduce in s. 23, mutatis mutandis, a counterpart of s. 133. That conclusion flows inevitably from the similarity of language of the two sections. It is supported as well by their similarity of purpose, namely, the protection of minorities with regard to language rights. In Quebec, it would primarily be the English-speaking persons who would need this protection; in Manitoba, it would be the French-speaking persons.[1]

Thus Manitoba entered Confederation essentially on the same basis, in terms of language rights, as Quebec.

Chief Justice Freedman then referred to a recent decision of Chief Justice Deschênes of the Supreme Court of Quebec [*Blaikie v. A.G. Que.* (1978), 85 D.L.R. (3rd) 252], which struck down several sections of the Charter of the French Language enacted by the Lévesque government in 1977 on the grounds that they abrogated rights enshrined in S. 133 of the *B.N.A. Act, 1867.* These rights, in Chief Justice Deschênes's opinion, could not be unilaterally abolished by the provincial legislature without the approval of the Canadian Parliament. Chief Justice Freedman endorsed the point of view expressed in the following passage of the Deschênes judgment:

> It was the intention of the Fathers of Confederation to remove the question of the use of the two languages, English and French, from the possibility of the arbitrary, or capricious or even very simply of the wish perceived legitimate by the majority, whether English in the central Parliament or francophone in the Legislature of Quebec. They intended that this provision remain intangible and secure from all legislative intervention by one or other of the elected assemblies."[2]

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[1] Id.
[2] Id.

After quoting S. 23 of the *Manitoba Act*, Chief Justice Freedman concluded that

> It is plain that what confronts us here is the counterpart of what confronted the Quebec courts in the *Blaikie* case. There, the anglophone group was the victim. Here, it is the francophone group.[1]

Chief Justice Freedman went on to make the link between the Deschênes judgment (which he endorsed) and the *Official Language Act, 1890*:

> The constitutionality of the Official Language Act must rest on the thesis that the provisions of s. 23 of the Manitoba Act can be amended by a unilateral act of the legislature of Manitoba. In my view, that thesis is untenable. For the Manitoba Act is not only a statute constituting the union of Manitoba and Canada, and its constitutional provision affect not only Manitoba but also the union. Section 23 cannot be amended unilaterally by Manitoba any more than other sections relating to the constitution of the union, such as ss. 91 and 92, dealing with the distribution of powers under the B.N.A. Act.[2]

Chief Justice Freedman eloquently recalled the link that exists between Manitoba's constitution, specifically SS. 22 and 23, with Manitoba's history, should there be any doubt on that score among the various intervenors in the case:

> To say that Manitoba could on its own diminish rights conferred by s. 23 would be to negate the very reason for the enactment of that section in the first place. History supports the view that s. 23, like s. 22 on denominational school rights, was intended to be a protection for minorities in Manitoba against the possible ill will of the majority. The French-speaking citizens of Manitoba, including not only the famous Louis Riel but all the representatives of the French-speaking parishes (who, it must be mentioned, reached a remarkable unanimity with their English-speaking representatives), were induced to put an end to the Red River Insurrection and to support the creation of a province and its union with Canada only on the

[1] Id.
[2] Id.

> basis that their rights would be ensured for the future. The enactment of the Official Language Act deprived them of the linguistic rights which were safeguarded, or thought to be safeguarded, under s. 23.[1]

Chief Justice Freedman went on to rule that

> (T)he Manitoba Act embodies a constitutionally based right to the use by any person of English or French in the courts of Manitoba, and that that right cannot be unilaterally abrogated by the legislature of the province of Manitoba.

However, he stopped short of declaring the *Official Language Act, 1890* in its entirety *ultra vires* of the Manitoba legislature. He rejected the argument that S. 2 of this *Act* was a "colourable attempt to make an ultra vires statute intra vires". Regarding the adoption of statutes in both languages, he pointed out that "an agreed statement of facts suggests that so far as can be ascertained statutes were not adopted in French in Manitoba even before 1890", and added, as a further argument against declaring S. 23 in its entirety *ultra vires*, that

> Since this court was established by a statute enacted wholly in English after 1890, it could hardly be that we could make any declaration at all if the statute providing for our existence were not valid.[2]

The Chief Justice conceded, with Chief Justice Deschênes, that perhaps there is a requirement under both SS. 133 and 23 that there be official versions of statutes in both languages; however,

> It does not follow... that a failure to comply with the provisions of s. 133 or s. 23 has the effect of rendering the statutes invalid. British law draws a clear distinction between directory and mandatory statutes, and a further distinction between those mandatory statutes that result in nullities and those mandatory statutes that result in irregularities.

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[1] Id.
[2] Id.

> Furthermore, I do not think it can be said that s. 23 of the Manitoba Act takes away the power of the Manitoba legislature to enact laws in relation to the subject matter of s. 23... I think it is obvious that there is a need for regulatory legislation on language rights in Manitoba, in order to make s. 23 effective.[1]

In the end, and for the reasons advanced in his judgment, Chief Justice Freedman declared that

> (T)he Official Language Act is inoperative insofar as it abrogates the right to use the French language in the courts of Manitoba, as conferred by s. 23 of the Manitoba Act, 1870, confirmed by the B.N.A. Act, 1871.[2]

However, in an allusion to the other elements of S. 23 (the adoption of statutes in both languages, the use of English and French in the records and journals of the Legislature), the Chief Justice added that

> (I)t may be necessary for the province of Manitoba to make regulations for the purpose of bringing about the implementation of the provisions of s. 23 in a reasonable and practical way.[3]

A final portion of Chief Justice Freedman's judgment should be quoted here, as it indicates the extent to which the Chief Justice realized that, in the final analysis, only through the political process could the matter of French-language rights be resolved definitively for the future:

> I do not think I go beyond my judicial function to suggest to all concerned that constitutions can be made to work only if the spirit of them is observed as well as the black letters they contain, and if there is a disposition on the part of all concerned to make them work in a practical and reasonable way without, on the one hand, intransigent assertion of abstract rights and without, on the other hand, a cutting down and chipping away of those rights.[4]

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[1] Id.
[2] Id.
[3] Id.
[4] Id.

Chief Justice Freedman's judgment had several effects. First, it backed away from the global declaration of unconstitutionality of *The Official Language Act, 1890* found in the Dureault judgment. Second, it narrowed the focus of unconstitutionality to the use of French in the courts. Third, it did not involve any declaration of unconstitutionality of other laws apart from the *Official Language Act, 1890* due to the fact that they had been adopted in English only since 1890. Finally, it clearly indicated to the political authorities that the rights involved were indeed the rights of the French minority in Manitoba, and that negotiations should be undertaken in the political arena to arrive at some accommodation regarding the application of these rights.

The Lyon government's first reaction was to appeal the Freedman judgment to the Supreme Court of Canada. This is understandable since, even with the reduced scope found in the Freedman judgment as compared to the Dureault judgment, a definitive interpretation was required. With great reluctance, it also undertook to implement minor measures aimed perhaps at preventing further legal action on the part of the Francophone minority and perhaps also to indicate a certain amount of good will towards it. Significantly as well, in light of their subsequent intemperate attacks upon the Société Franco-Manitobaine, the Progressive Conservatives under Sterling Lyon held several high level meetings with the organization in the years following the Manitoba Court of Appeal and Supreme Court of Canada judgments in the Forest case.

2) Forest in the Supreme Court of Canada

One month after the Manitoba Court of Appeal delivered its judgment, Georges Forest requested and received from the court a broadening of the

judgment making the *Official Language Act, 1890 ultra vires* in its entirety. There was thus no further reason for Forest to proceed further.[1] The provincial government, however, immediately appealed to the Supreme Court of Canada.

In the meantime, however, the Lyon government had been granted intervenor status in the Quebec government's appeal of the 1978 Deschênes decision in the Blaikie case to the Supreme Court of Canada. In that forum, Kerr Twaddle argued, on behalf of the Province of Manitoba, in favour of Quebec's Bill 101, stating that the *B.N.A. Act, 1867* did not guarantee the language rights of minorities, either for Anglophones in Quebec or for Francophones in Manitoba.[2] In effect, the Quebec and Manitoba governments were arguing that the powers of provincial legislatures have precedence over the rights of official language minorities and that provincial legislatures have exclusive powers in defining these rights. The federal government insisted upon the primacy of S. 133.

The appeal in the Forest case was heard by the Supreme Court of Canada on Oct. 10, 1979. In anticipation of the judgment, the SFM set up an ad hoc committee to examine various scenarios. As they were to do often during the gathering crisis, the SFM's advisors accurately foresaw the situation the Franco-Manitoban community would be in should one scenario in particular come to pass:

> A moins que la décision soit *exécutoire*, ce qu'elle ne sera pas, une telle décision est une victoire à la Pyrrhus. Alors...une défaite. Le gouvernement manitobain ne sera pas plus dans l'obligation d'agir qu'il ne l'était après le jugement Dureault...De toute façon...nous serons dans l'obligation de recommencer à zéro d'ici peu de temps.[3]

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[1] Blay, op. cit., p. 127.
[2] Ibid., p. 128.
[3] Quoted in Blay, op. cit., p. 129.

The distinction here was between a mere declaratory decision and a mandatory one: the SFM's advisors did not anticipate a mandatory one, given the Freedman judgment which, though positive to Forest, left much leeway to the Legislature to do as it wished in remedying Forest's complaint and given the actual question that had been placed by the province before the Supreme Court.

The Supreme Court of Canada rendered its decisions on the *Blaikie* and *Forest* cases on the same day, Dec. 13, 1979. The *Blaikie* decision struck down several clauses of Quebec's Bill 101; this meant that all 311 laws which had been adopted in French only since adoption of the Charter of the French Language in 1977 were unconstitutional. The Quebec legislature sat through the night of Dec. 13, 1979 formally adopting the English-language versions of these laws in order to ensure they would remain in force.[1]

In the case of Forest, the Supreme Court rejected the appeal of the Attorney-General of Manitoba, thereby letting the Freedman judgment stand. This judgment, as we have seen, simply declared the *Official Language Act, 1890* to be "inoperative".

In separate reactions to the press, both Premier Lyon and Attorney-General Mercier indicated that they would refer to the Manitoba Court of Appeal's judgment in determining how the government should implement the Supreme Court's ruling.[2] When asked whether a constitutional amendment to the B.N.A. Act would be considered as a way out of the impasse, Mercier replied that "I'd rather not get into that at this stage."[3] Several years later, Roger Turenne was to write, in a draft memo for Privy Council Clerk Michael Decter's signature, that

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[1] Ibid., p. 131.
[2] *Winnipeg Tribune*, Dec. 14, 1979.
[3] Ibid.

> I do know from conversations with political staff of the former Attorney-General that there had been discussions regarding a possible amendment. The hope was that if a Conservative Government less sympathetic to minority language rights were ever elected in Ottawa, an attempt might be made to reverse the gains made by Georges Forest in the Supreme Court.[1]

From the start, then, it is obvious the Lyon government was to be as miserly as legally possible in the recognition of French-language rights in Manitoba. Further, there is some evidence that the option of actively rolling back existing, judicially-recognized French-language rights in the province was seriously considered by the Lyon government. This is, of course, entirely consistent with the position taken by Manitoba as expressed by its Counsel, Kerr Twaddle, in the *Blaikie* case. Other Manitobans had similar reactions. Sid Green, for example, a former minister in the Schreyer cabinet, argued in favour of the supremacy of Parliament and stated that French should be an official language only in Quebec.[2] This at a time when many Manitobans and other Canadians were overwrought with the possibility of Quebec voting "yes" in its referendum on sovereignty-association: on Feb. 6, 1980, for example, the City of Winnipeg piously adopted a resolution, drafted by future Lieutenant-Governor Pearl McGonigal, appealing to Quebec to remain in Confederation.[3]

What in reality was the status of all the laws adopted in the English language only by the Manitoba Legislature from the period 1890 to 1979 after the *Forest* judgment? What were the consequences of a law not having been adopted, published, and printed in French and English, as required by S. 23? As Prof. J. E. Magnet, who was soon to become one of the SFM's lawyers, wrote in 1980:

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[1] Turenne files.
[2] *Winnipeg Free Press*, Dec. 14, 1979.
[3] Turenne, Communications File.

> Never has a judgment of the Supreme Court deliberately been more silent on such an important effect of its rulings; never has such silence brooded more portentous in Canadian law.[1]

In retrospect, Forest's victory was a hollow one. [Two future presidents of the SFM would go so far as to say, in 1986: "Sauf Monsieur Forest, on était convaincu à la SFM que, dans le domaine pratique, on n'avait rien eu avec la décision Forest."][2] Its major significance was in laying down a solid foundation for the ultimate challenge: a challenge which would aim at seeking justice for 90 years of unconstitutional legislative behaviour on the part of the Province of Manitoba, a challenge which would, if successful, not only redress the existing injustices to the French-language minority in Manitoba but also, as a byproduct, invalidate most of the current laws of the province. The jurisprudence elaborated by Dureault, Freedman, Deschênes, and, finally, by the Supreme Court of Canada itself in the *Blaikie No. 1* and *Forest* cases, all led to the same conclusion, at least in the eyes of the Franco-Manitoban community: all Manitoba laws adopted since 1890 were invalid, period, even though no court, to date, was willing to go all the way in declaring them to be so.

From the outset, however, SFM staff read more into the judgment than was warranted. An internal document written by R. Bisson and dated Jan. 8, 1980 reflected on the implications of *Forest*; it stated categorically that the judgment establishes "certain fundamental principles", one of which is that henceforth

> 3- Tout résidant du Manitoba a le droit de recevoir en français les services offerts par les divers niveaux des gouvernments de la province.[3]

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[1] Quoted in Hébert et al., in press, Chap. II.
[2] L. Robert and R. Sabourin, quoted in Blay, op. cit., p. 138.
[3] SFM, Box 41, File 24.8/4.

Forest, of course, did nothing of the kind. This line of argument was, however, to be advanced repeatedly in the course of the crisis itself, particularly by the SFM Counsel Joseph Magnet himself, and was to lead to profound divisions within the Franco-Manitoban community. Indeed, if the existing S. 23 of the Manitoba Act provided for French in the courts, the legislature, and bilingual legislation as well as French-language government services, why change it? Yet negotiations between the French community and the provincial government from 1982 to 1984 were to proceed on the assumption that existing S. 23 did not in reality guarantee such services, an assumption which was subsequently fully borne out by the Supreme Court itself.

Another internal SFM document, a draft position paper entitled "Reasonable and practical implementation of S. 23, Manitoba Act, 1870" proposed the creation of a permanent body of the legislative assembly, made up of MLA's, bureaucrats, and private citizens, to oversee implementation of the Supreme Court decision.[1]

In any case, the SFM immediately grasped the importance of the *Forest* judgment if not its true implications; in a letter to Premier Lyon dated Jan. 16, 1980, the organization's president, René Piché, requested

> a meeting with yourself to exchange points of view on the recent Supreme Court judgment concerning the Official Language Act of Manitoba, 1890.

The SFM wanted to discuss "the practical and reasonable implementation of this Supreme Court judgment".[2] At Lyon's suggestion, Piché redirected his request to the Attorney-General, in a letter dated Feb. 14, 1980.[3]

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[1] Id.
[2] Id.
[3] Turenne, *Forest* file.

The Lyon government, however, already had an implementation plan in mind. In a submission to Treasury Board dated Jan. 21, 1980, the Attorney-General requested "translation resources to implement Supreme Court decision" involving over $500,000 in supplementary expenditures for the 1980-81 fiscal year.[1] This expansion of the province's translation services was announced in a press release by the government on Jan. 25, 1980.[2]

If nothing else, the TB submission and subsequent press release were an indication of the importance which the Lyon government attached to the judgment. Another is the fact that Attorney-General Mercier requested assistance in translation from his federal counterpart or the Secretary of State on at least three occasions in 1980. A Feb. 8, 1980 letter from Mercier to Secretary of State David MacDonald (in which he states that "I would like to thank you and your Government for your enthusiastic and generous response to our need") lists no less than eight ways in which the federal government could help.[3] Help was solicited from elsewhere as well; in a press release dated Feb. 29, 1980, the Lyon government was pleased to announce that "Quebec lends Manitoba 3 French translators"; they were to be on loan for at least three months.[4]

On another front as well, Attorney-General Mercier moved quickly. On March 21, 1980, he wrote to Chief Justice Freedman, with copy to the other Chief Justices, informing him of a decision taken by Cabinet the previous day "to provide a translation service for all court documents, where necessary, and without cost to the litigants". For the Court of Appeal, the Crown "intends to develop a simultaneous translation service for oral submissions where

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[1] Id.
[2] G/S, Box 4, File 32, pp. 248-9.
[3] Turenne, *Forest* file.
[4] Id.

necessary".[1] A few months later, Twaddle was careful to point out that, in his opinion, it was "not a requirement of the law that Court process be in both official languages and that a process in English only is entirely valid". He referred specifically to "the policy recommended in your Cabinet paper and to print Court forms in both official languages, but such a policy is not obligatory, at least not at this time".[2]

3) The *Smith* and *Guay* cases

Some lawyers and constitutional experts immediately saw the possibilities for legislative chaos inherent in the Supreme Court's *Forest* judgment. None, however, reacted as dramatically as Prof. Stephen Scott of McGill University, who, on Dec. 14, 1979, a few hours after the fall of the Clark government, sent a telegram to Governor-General Edward Schreyer to

> Respectfully recommend that before dissolving parliament you require government to secure joint resolution of Senate and House of Commons in the following or like terms: resolved that the government be authorized to secure from the United Kingdom Parliament such legislation as may appear urgently required to render valid some or all the laws or purported laws of the province of Manitoba, during such reasonable time as may be required to bring the province into compliance with section 23 of the Manitoba Act, and to deal with related matters.[3]

Prof. Scott received a reply dated Dec. 17, 1979 from the Governor-General stating that the Governor-General and the Prime Minister had been apprised of the situation created by the Supreme Court judgment and requesting further information.[4]

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[1] ATG, Box 19, FLS - Transl. - Stat. - Doc.
[2] Twaddle to Mercier, Sept. 3, 1980; in ATG, Box 18, FLS - Courts.
[3] S. Scott telegram quoted in Blay, op. cit., p. 139.
[4] Blay, op. cit., p. 139.

Certainly there was no shortage of younger Franco-Manitoban lawyers who were willing to go to court to attempt, as it were, to grab the gold ring. *Forest* had rendered inevitable the ultimate challenge, the challenge to the validity of virtually all Manitoba laws on the grounds that they had been adopted in English only. If the courts at all levels were unwilling to answer the question, Franco-Manitobans were certainly not unwilling to ask it. Indeed, several of them suddenly became rather careless in their driving habits: Renald Guay recalled those days in the following words:

> ...I felt that the SFM rather than being an intervener in the Forest case should be the party... so a lot of lawyers, including myself and Robert Bétournay were going up and down the highways speeding all the time, I mean I'm being a little bit facetious, but we did manage, the three of us, in different cars on the same date all to pick up speeding tickets on Highway 59. Do you believe that? Just by coincidence.[1]

The first to do so formally was Rémi Smith, a young Franco-Manitoban lawyer. On Oct. 10, 1978, Smith had received a speeding ticket under the *Highway Traffic Act*. He had appeared in Provincial Judges Court on July 13, 1979 and lodged an appeal in County Court, where he appeared on Feb. 5, 1980, arguing that the *Act* was unconstitutional under S. 23 of the *Manitoba Act*, being enacted, printed, and published in the English language only. Justice Jewers had agreed to reserve his judgment, given that the matter was under consideration in the Supreme Court of Canada.

On Feb. 5, 1980, Justice Jewers handed down his judgment. He agreed that, given the Supreme Court's *Blaikie* and *Forest* decisions,

> It is...now beyond dispute that s. 23 of <u>The Manitoba Act</u> requires not only that the statutes be printed and published in both English and French, but that they be passed and enacted in both languages as well.

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[1] R. Guay, Examination for Discovery, pp. 90-1.

> The Manitoba legislature and those public servants charged with the responsibility of printing and publishing the Manitoba Highway Traffic Act failed in the duties imposed upon them by s. 23 of The Manitoba Act to enact, print and publish the former statute in both French and English. But what legal consequences flow from this failure?[6]

Justice Jewers went on to quote Chief Justice Freedman's 1979 judgment and his refusal to declare that all Manitoba statutes enacted since 1890 were invalid and pointed out the fact that

> In its judgment on the Forest case, the Supreme Court of Canada did not pronounce or comment upon the points made by Chief Justice Freedman... It was not necessary for the Court to do so because they were considering only the extent to which The Official Language Act of Manitoba was operative and not specifically the consequences flowing from a breach of s. 23 of The Manitoba Act.[7]

Justice Jewers quoted *Craies on Statute Law* (7th ed.) to the effect that

> (T)he intention of the legislature is to be ascertained by weighing the consequences of holding a statute to be directory or imperative, and, where the result of holding null and void acts done in breach of apublic duty would be to work serious general inconvenience to persons having no control over those entrusted with the duty, the practice is to hold the provisions creating the duty to be directive only. In my view, that principle should be applied here.[8]

Finally, Justice Jewers raised the possibility of "chaos" being created if laws of Manitoba were to be found invalid on the grounds that they had not been adopted in both English and French:

> (I)f the striking down of The Manitoba Highway Traffic Act (and the implication of a decision to do so being that virtually all provincial laws passed since Confederation are invalid) would not create chaos, at the least it would lead to serious inconvenience to an innocent public.[9]

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[6] *R. v. Smith*, W.C.C., Feb. 5, 1980.
[7] Id.
[8] Id.
[9] Id.

On these grounds, then, Justice Jewers rejected Smith's appeal.

Hard on the *Smith* decision, Renald Guay, another Franco-Manitoban and Smith's law partner, appeared in St. Boniface County Court on appeal of a decision handed down by Justice J.B. McTavish of the Provincial Judges' Court on May 23, 1979. Justice McTavish had ruled that the word "shall" used in S. 23 of the *Manitoba Act* "was a directory, not a mandatory 'shall' and, therefore, in my opinion, Section 133 of the *B.N.A. Act* as well as Section 23 of the *Manitoba Act* use the directory 'shall'."[1]

In the appeal to the St. Boniface County Court, Justice A. Dureault, who had found the *Official Language Act, 1890* to be *ultra vires* of the Manitoba legislature by virtue of S. 23 of the *Manitoba Act* in the first place, this time sided with Justice Jewers. Justice Dureault first pointed out that

> The very question raised... has already received judicial consideration. My brother Jewers Co. Ct. J., in the yet unreported judgment of The Queen and Smith (...) has dealt fully and extensively with the same ground of appeal. There is now an authoritative decision upholding the constitutional validity of the Highway Traffic Act notwithstanding its enactment, printing and publication in the English language only, in apparent contravention to sec. 23 of the Manitoba Act. The principle of stare decisis makes this judgment binding on the court.[2]

However, to leave no doubt as to where he stood, Justice Dureault went on to quote extensively from the Jewers judgment in the *Smith* case, and concluded by saying that

> That reasoning appeals to me and I adopt it without reservation. Indeed I find myself in full accord.[3]

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[1] *R. v. Guay* P.J.C. (unpublished), May 23, 1979.
[2] *R. v. Guay* St. B. C.C. March 3, 1980.
[3] Id.

Thus the judge who, in a real sense, had started it all and was willing, in 1976, to uphold the law even if the skies should fall, found himself in 1980 backing down in the face of the concrete implications of that earlier decision.

The flurry of judicial activity regarding language rights in this period was not confined only to Manitoba. On April 6, 1981, the Supreme Court of Canada handed down a decision which became known as *Blaikie 2*, stating that S. 133 of the *B.N.A. Act* does not extend to municipalities or school boards. In view of the parallel drafting of this section and S. 23 of the Manitoba Act, this judgment became relevant during the 1983-84 language crisis. In subsequent years, it became relevant for another reason: *Blaikie 2* established the language requirements in the area of delegated legislation, and Kerr Twaddle, in an opinion to Attorney-General Gerry Mercier dated April 20, 1981, stated that, in light of this judgment, most orders-in-council adopted in Manitoba would have to be bilingual.

4) Bill 2: The Lyon government reacts

The initial response of the Lyon government to the Forest decision was narrowly legalistic; Chief Justice Freedman's admonition for government to go beyond the "black letters" of the constitution, and his implied suggestion that negotiations should be initiated with the French-speaking community to develop a compromise approach to implementation of S. 23 fell on deaf ears. Though initially the Lyon government gained credit among Francophones by announcing its intention to move quickly on translation of statutes,[1] their hopes for rapid gains, especially in the field of French-language services, were quickly dashed.

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[1] See *La Liberté*, Jan. 3, 1980.

The SFM invited Attorney-General Gerry Mercier to speak at its March, 1980 annual meeting. Given the constitutional breakthrough represented by Forest's victory, it was felt by the SFM organizers that the Lyon government should be given this forum to announce its intentions for the future. The Mercier speech was a major disappointment to the Franco-Manitoban community, and it merely confirmed its long-standing cynicism towards previous Manitoba governments (the Schreyer government excepted). Mercier

> intimated that the province had already gone beyond the letter of the law in deciding to provide, at cost, translation services for litigants to permit witnesses and counsels to speak in either official language. The message was clear: an officially bilingual province amounted to translators, legislators, judges and litigants, not to mention criminals. Nothing was said about making French-language schools or immersion programs more widely available, about having drivers' licences or birth certificates in either official language, about providing social, cultural, recreational or agricultural services in French.[1]

The message was made even more explicit a few days later, when a spokesman for the Lyon government indicated to the *Winnipeg Free Press* that the government did not have any "immediate plans to make the full range of...(its) services available in both languages".[2]

The Lyon government's narrow approach to the *Forest* decisions was reflected above all in the tabling, on April 7, 1980, of Bill 2, *An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes.* (The bill itself was in both languages; however, neither the Clerk nor the Administrator understood French well enough, so they decided not to sign it.)[3]

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[1] Comeault, 1982, p. 106.
[2] Quoted in Comeault, op. cit., p. 105.
[3] W. Newman letter to S. Scott, May 11, 1981.

Bill 2 repealed the *Official Language Act, 1890* and replaced it with provisions for the adoption of bills in both English and French. However, such adoption was not obligatory, as the wording of S. 4(1) clearly indicates:

> 4(1) Where a Bill for an Act that was introduced in the Legislature was printed in only one of the official languages and was enacted before a translation thereof into the other official language was available, if subsequently there is deposited with the Clerk of the House a translation of the Act into that other official language...that translation of the Act into that official language shall, for all purposes, be valid and of the same effect as the Act in the official language in which the Bill for the Act was printed, from and after the date of the enactment of the Act.[1]

In addition, provisions were included to ensure that the authoritative version of laws adopted by the Manitoba legislature would, in effect, be the English-language version. Section 2 reads as follows:

> 2. Where the meaning of a provision of an Act in one official language conflicts with, is repugnant to or is inconsistent with the meaning of the corresponding provision of the of the Act in the other official language
>
> > (a) the provision in the official language in which the Bill for the Act was printed when copies thereof were first distributed to the members of the assembly in the assembly prevails over the corresponding provision in the other official language; (...)

As for the statutes adopted from 1890 to 1980,

> 3 (2) For greater certainty in the interpretation of the statutes of the province heretofore enacted, the Bills for all Acts heretofore enacted shall be conclusively deemed to have been printed in the English language when copies thereof were first distributed to the members of the assembly in the assembly.

Finally, S. 4(2) provided that the Clerk of the House

[1] S.M. 1980, c. 3; emphasis added.

> shall endorse on the translation a certificate certifying that the translation...has been deposited with him as of the date on which it was so deposited.[1]

In other words, it was to be business as usual. A great constitutional victory for the Francophone community was turning out to be virtually meaningless. Not only had the Lyon government legitimized, or attempted to legitimize, 90 years of unconstitutional legislative behaviour, it had enshrined, in law, the superiority of the "official" English language over the "official" French language. The government had thus turned the *Forest* decisions, which had re-established the equality of both languages, on their head. Sterling Lyon had used the "black letters" of the Freedman judgment to absolve the Legislature of virtually all obligation to adopt statutes in both languages. Indeed, had not Chief Justice Freedman stated clearly that "It does not follow...that a failure to comply with the provisions of s. 133 or s. 23 had the effect of rendering the statutes invalid"? Had he not implied that S. 23 was merely "directory" and not "mandatory"? To many Francophones, the judicial system and the Manitoba government had again conspired to grind their hard-won language rights to dust.

Sterling Lyon's patronizing attitude towards the French-speaking community and his refusal to couch even the tabling of Bill 2 in the language of "rights" stands out in the remarks he made in the House on second reading of the Bill on April 7, 1980. First he recalled Manitoba's history, with particular reference to the demographic evolution of the province through immigration. Without specifying them, he then referred to

> ...certain informal or unofficial accommodations made under which the French language continued to be used, more through a spirit of fair play and compromise which motivated, as I suggest, Mr. Speaker,

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[1] Id.

> and continues to motivate most Manitobans, rather than by legal decree.[1]

Premier Lyon added that

> The Supreme Court judgment on this matter therefore restores the full effect of Section 23 of the Manitoba Act.[2]

The effect of the legislation he was introducing was in reality to do the exact opposite.

Finally, the Premier situated the legislation in the context of the Canadian nation, stating that

> The provisions of Bill No. 2 are of a technical nature - it is true - but they will be understood throughout Canada as an indication of our loyalty to the national identity of Canada, and of our firm commitment to the rule of law and to our respect for the guaranteed rights of Canadians as set forth in our constitution.[3]

Towards the end of his remarks, however, Premier Lyon gave a muted indication of the pressures against any kind of recognition for the French language which he may have felt personally through his constituents or in his caucus:

> I recognize, Mr. Speaker, that not all Manitobans will support wholeheartedly the actions which the government is now bound to take. Those actions, however, I suggest are absolutely necessary in the national interest and in fairness and equity to our fellow Manitobans whose mother tongue is French.[4]

The leader of the NDP opposition, Howard Pawley, began by indicating that "the general nature of this bill will be supported by the opposition".

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[1] Debates and Proceedings, 30th Legislature, p. 2003.
[2] Id.
[3] Id.
[4] Ibid., p. 2004.

However, he went on to point out that action was also required in major areas related to the French language in Manitoba including the extension of immersion programmes, the training of civil servants to provide French-language services to Francophone communities, "bilingual facilities for teaching bilingualism" for MLA's, and the provision of services to LGD's and municipalities "to assist and to facilitate growth of those services in French in those communities".[1]

The MLA for St. Boniface, Larry Desjardins, regretted that

> following the judgment rendered by the Supreme Court of Canada, this government, it appears, did not see fit to respect the intent of the law, but rather the strict interpretation of the letter of the law.[2]

Desjardins's grievance, however, related only to the translation into English in Hansard of remarks he had made previously in the House. He pointed out that he had spoken French in the House, "as is my right, only to discover that if I have the right to speak French I do not, however, have the right to be understood".[3]

NDP MLA Russell Doern's stated in the House on April 16, 1980 that through Bill 2, "we will become officially bilingual ... I have no problem in supporting this measure". However, Doern added, "many more steps must be taken".

In general, the opposition did not denounce Bill 2 but in effect tacitly accepted that this was about as far as the Legislature could go in putting the *Forest* judgment into effect. Several Franco-Manitoban lawyers, however, quickly came to the conclusion that Bill 2 was a mere subterfuge on the part of

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[1] Ibid., p. 2005.
[2] Id.
[3] Id.

the Lyon government to allow it to ignore its obligation to translate any statutes at all. They believed that, in light of the government's minimalist interpretation of the *Forest* judgments in Bill 2 and its lack of commitment to action in areas relating to the French language but not strictly covered by S. 23, the *Forest* decisions would have to be tested to the limit, again in the courts.

5) Roger Bilodeau goes to court

On May 29, 1980, Roger Bilodeau, a native of Ste-Agathe, Manitoba and University of Moncton law student who had returned to Manitoba to article with a law firm, received a speeding ticket, thus joining a growing number of his lead-footed colleagues. (The incident occurred at about 5 p.m on Lyndale Drive in the Norwood area of Winnipeg. He was driving a yellow 1978 Ford LTD, and was going 68 km/hr in a 50 km/hr speed zone.)[1] Bilodeau's lawyer, Vaughan Baird, requested that the charges against his client be dismissed, arguing that the summons issued to him was invalid because the *Highway Traffic Act* and the *Summary Convictions Act* were *ultra vires* and therefore inoperative, having been printed in English only contrary to the provisions of the *Manitoba Act*.

Chief Justice Harold Gyles of the Provincial Judges Court delivered his judgment on Aug. 29, 1980 in Winnipeg's Public Safety Building. In dismissing Bilodeau's motion, Chief Provincial Judge Gyles referred briefly to the various constitutional acts and related court decisions, then added his own twist: to become effective, S. 23 of the *Manitoba Act* would have had to have been enshrined by amendment to S. 133 of the *B.N.A., 1867*:

> In my view, this general validation [of the B.N.A. Act of 1871 which provided for Manitoba's entry into Confederation] could not have the effect of amending Section 133 of The B.N.A. Act of 1867 respecting the use of the English or French languages. Such a significant amendment would have to be evidenced by a specific intention.[2]

In effect, Chief Provincial Judge Gyles rejected the constitutionality of S. 23 of the *Manitoba Act*, despite the fact that it had been duly adopted by the Canadian Parliament in 1870 and by the Imperial Parliament in 1871, because of its link

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[1] *Winnipeg Sun*, Oct. 9, 1983.
[2] (1981) 1 W.W.R. 474.

with S. 133 of the *B.N.A. Act, 1867*, which itself would require joint enactments by the provincial and federal governments.

For good measure, Chief Provincial Judge Gyles added that

> Even if the requirement of Section 23 of the Manitoba Act dealing with the printing of the acts of the Manitoba legislature in both the English and the French languages were valid, it is my view that it would be directory and not mandatory.
> I have read the Judgment of Jewers, C.C.J. in R. v. Remi Cecil Smith and concur entirely with his reasons and decision on this point.[1]

The Bilodeau case, coming on the heels of *Smith* and *Guay*, prompted some soul-searching on the part of the SFM: on one hand, a growing number of Francophones impatiently wanted to test the limits of the *Forest* judgment; on the other hand, the process, in the SFM's view, should not be anarchical, since a careless, willy-nilly approach to testing *Forest* could be disastrous in the long run for the Francophone community. These concerns are reflected in a confidential internal SFM document dated October 15, 1980, which attempted to lay out a rationale for the SFM backing individual court cases.[2]

Bilodeau's appeal to the Manitoba Court of Appeal was heard on Feb. 23, 1981 and the Court's judgment delivered on July 7, 1981. The federal government was granted intervenor status at the hearing; significantly, it argued against Bilodeau, on grounds of "the compelling logic of reality".[3] With a touch of irony, Chief Justice Freedman, speaking for the majority, dismissed out of hand Chief Provincial Judge Gyles's argument regarding S. 133 of the *B.N.A. Act*, formulated as a question to the Court of Appeal:

> Question 1 must have arisen from some failure in communication between counsel and the learned Chief Provincial Judge. No one

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[1] Id.
[2] SFM, Box 41, File 24.8/4.
[3] Bailey, *Prehistory*, p. 19.

> claimed that the B.N.A. Act, 1871 amended s. 133 of the B.N.A. Act, 1867. In my view, this question should not be answered.[1]

Justice A. Monnin, in his partially dissenting judgment, was more biting:

> I readily dispose of the first question, since all counsel agreed in open court that the learned trial judge was in error... Section 133 of the B.N.A. Act, 1867, stands by itself. Section 23 of the Manitoba Act reads as follows: (...)
> These two sections are both valid and enforceable legislation. There was never any intention on the part of the Canadian Parliament or of the Imperial Parliament to amend S. 133 of the B.N.A. Act by the introduction of s. 23 of the Manitoba Act. The answer to Q. 1 is an unqualified "Yes, you erred."[2]

The substance of the Court of Appeal's decision, however, constituted a major setback, not only for Bilodeau but also for the entire French-speaking community of Manitoba. Chief Justice Freedman situated the Bilodeau appeal in its general context:

> If M. Bilodeau is right, then not only are these two statutes invalid but all statutes enacted since 1870 (except the few enacted in both languages during the 1980 session) are equally invalid. The issue now confronting us is whether the non-compliance with the provisions of s. 23 rendered the statutes invalid.[3]

The Chief Justice then referred to his own court's previous judgment on the Forest case, to the effect that "It does not follow, however, that a failure to comply with the provisions of s. 133 or s. 23 has the effect of rendering the statutes invalid" (See Section 2 above). He elaborated on the distinction

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[1] 1980 5 W.W.R. 393.

[2] Id.

[3] Id. It was assumed, when the Freedman judgment was written, that S. 23 had been ignored right from the start; it is only subsequently that researchers rooting in the Legislative Library found that, on the contrary, S. 23 had been observed between 1870 and 1890. Appendix IV contains pages photocopied from the original *La Gazette de Manitoba* of 1874 and from *Les Statuts de Manitoba,,* 1877 and 1889 containing texts of laws in French.

between "mandatory" and "directory" statutes, mainly using the factum of the Attorney-General of Manitoba presented by Kerr Twaddle:

> There is an impressive body of jurisprudence emphasizing the distinction between statutes that are mandatory or imperative, on the one hand, and statutes that are directory, on the other. Mr. Twaddle, counsel for the Attorney General of Manitoba, has dealt with this subject in his factum, and I have derived great assistance from it.[1]

Chief Justice Freedman then came to his main point:

> Virtually every statute in Manitoba is invalid, if we give to s. 23 a mandatory effect. The result is indeed chaos.[2]

He then succinctly summarized the Court of Appeal's position on S. 23:

> Question 2 seems to put in doubt whether s. 23 is valid. In my view, it is valid. I agree with Gyles C. Prov. J. that the language requirements of s. 23 are directory only, and not mandatory.[3]

Justice Monnin, after having stated that "Section 23 of the Manitoba Act does not want for clarity", then put forth his main argument:

> The legislature of Manitoba was in breach of s. 23 from 1890 until 13th December 1979. Ex necessitatis, there is little or nothing that can be done in respect to that protracted breach. It would be humanly impossible to translate immediately 90 years of statutes. Mr. Twaddle, counsel for the Attorney General of Manitoba, argued that there was no such doctrine of necessity with respect to constitutional law. It is possible that in years past no such doctrine was required, since nowhere in the Commonwealth countries except in Quebec and Manitoba has an entrenched right to a language been so ignored, mostly in Manitoba. If there is no doctrine of necessity or impossibility of compliance, then all the laws of Manitoba since 1890 are invalid. The effect of such a conclusion would be to create chaos and social disorder of great magnitude. I would never espouse such an argument. It would not be logical nor realistic. But, having said that, I find that the situation is very different since 13th December 1979.[4]

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[1] Id.
[2] Id.
[3] Id.
[4] Id.

Justice Monnin pointed out that the Manitoba Legislature was still in breach of S. 23. He noted that, in the 1980 session of the Legislature, 115 bills received Royal Assent; only nine of these were translated, and these only in bill form. Even the table of contents for this session appear to be in the English language only. Justice Monnin went on:

> Section 23 of the Manitoba Act entrenches the use of both languages in the legislature and in the courts. It gives rights, and at this stage the argument of necessity or inability to comply no longer applies. I hasten to note that Mr. Twaddle did not rely on this argument and offered no evidence or argument on that aspect, but relied purely on the directory nature of the legislation. I am of the view that his argument is untenable, as the legislation is clear, and speaks of "shall be used" and "shall be printed". There is nothing of a directory nature in that language. Furthermore, entrenched linguistic rights are by nature mandatory and never directory.[1]

Justice Monnin recalled the historical context in which the *Manitoba Act* was adopted, and reformulated his argument, concluding that both the earlier *Smith* and *Guay* cases had been "wrongly decided":

> I have difficulty understanding the problems which s. 23 of this Act seems to raise in the minds of some persons. It is forceful but plain language which needs no interpretation. It reflects the history of Canada and Manitoba (...)
> To allege that s. 23 is only directory in order to avoid the drastic result that all laws since 1870 are invalid is to make the wrong use of an otherwise good principle but one which has no application to this case. All laws since 1890, since they were not enacted in both English and French, failed to comply with s. 23 of the Manitoba Act, but of necessity nothing can be done immediately to those enacted before the pronouncement of the Supreme Court on 13th December 1979. Since that date the invalidity can no longer be excused. The statute is clear - it gives rights which must be complied with.[2]

Finally, Justice Monnin quoted extensively from the 1980 Annual Report of Canada's Commissioner of Official Languages. After pointing out the

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[1] Id.
[2] Id.

minimal progress on translation of statutes since the *Forest* judgments and the apparent lack of serious consultation between the Lyon government and the Franco-Manitoban Society (sic), the Commissioner had concluded that

> To give it the benefit of the doubt, Manitoba may well have more positive intentions. But unless they take the form of a concrete plan to deal with the contemporary needs of the French-speaking community, an important opportunity to set an example for linguistic justice in Canada could well go by the board.[1]

The Commissioner had also alluded to the "Kafkaesque quality about (French-speaking minorities') continuing difficulty in pinning down exactly who or what is responsible for the deficiencies that beset them".[2] Through this extensive quote, Justice Monnin had accurately summed up feelings within the Franco-Manitoban community, feelings, among many, of defeatism in the face of the Lyon government's obdurate refusal to attempt to come to grips with the major constitutional change brought about by *Forest* in ways that would have been meaningful for the French community. Some months earlier, these feelings of virtual despair in some Francophone quarters had led the SFM to take a dramatic, and controversial, position in the Quebec referendum on sovereignty-association.

6) The SFM and the Quebec referendum

The Lévesque government had set its referendum requesting a mandate to undertake negotiations with the government of Canada on sovereignty-association for May 20, 1980. On April 1, 1980 (April Fool's Day, as some of the SFM's Francophone critics were to point out subsequently), Gilberte Proteau, who had been elected President of the SFM only a week earlier, called a press

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[1] Quoted ibid.
[2] Ibid.

conference and announced that the SFM was supporting the "Yes" side in the Quebec referendum. At the annual SFM meeting held on March 22 and 23, 1980, the new executive had been given a mandate only to study the effects of taking a position on the "yes" or the "no" side in the referendum. The resolution adopted read as follows:

> Que la S.F.M. initie une étude des effets d'un "oui" ou d'un "non" au référendum québécois sur la communauté franco-manitobaine.[1]

In light of this innocuous directive from the general membership (about 600 SFM members attended the annual meeting), the SFM's support for the "yes" side was a bombshell within the French-speaking community. Several francophone leaders immediately denounced the SFM's position; these included the MLA for St. Boniface, Larry Desjardins, prominent lawyer Rhéal Teffaine (whose law firm had taken Forest's case to the Supreme Court and won), City Councillors Guy Savoie and Georges Provost,[2] and a columnist for *La Liberté*.[3]

The damage, however, had been done. Rumblings among certain francophones against the SFM's isolation from the concerns and opinions of ordinary French-speaking Manitobans became more explicit and a group centered around Maurice Prince of the St. Boniface Museum and Georges Forest set up a splinter organization called "Le Comité Pro-Canadien". This group, though it rarely if ever held public meetings of its own and whose membership was always nebulous at best, was to subsist through the 1983-84 language crisis and was to cause considerable embarrassment to the SFM by

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[1] *La Liberté,* March 27, 1980.
[2] *La Liberté* , April 10, 1980, p. 3.
[3] Ibid., p. 4.

disagreeing publicly with it on several occasions, thereby playing into the hands of the opponents of the government's language proposals.

The SFM's support of the "yes" side in the Quebec referendum was to have another effect, and that was to confirm the suspicions of those Manitobans who wanted to see in any Francophone a transplanted Quebecer or, worse, closet separatist. Here was proof: Franco-Manitobans were not really Manitobans at all like other Manitobans but were virtually traitors in supporting the separatist cause at a critical moment in the history of Confederation. These feelings strongly held by many Manitobans were to have an impact in the coming crisis.

For the record, Gilberte Proteau's position, as presented at her press conference and subsequently elaborated upon, was that the SFM's "yes" was a "yes" to negotiation of a new deal for the French language throughout the country, including Manitoba, as the status quo was untenable. Her position, it must be recalled, was elaborated in the wake of an annual meeting where, following the greatest constitutional victory for Franco-Manitobans since Manitoba's entry into Confederation, the Attorney-General for Manitoba and other government spokesmen were indicating that the Francophones had in effect won nothing; it was going to be "business as usual" within the provincial government, with perhaps a few bilingual bills thrown in as token recognition that French could indeed be used occasionally within government, as a matter of "courtesy" and "good will". As the columnist for "La Liberté" wrote on April 10, 1980:

> Des renseignements recueillis en privé me font croire que l'attitude adoptée par M. Mercier à l'atelier politique ont créé un niveau de frustration tel chez les employés de la S.F.M. qu'ils ne voyaient

> aucune porte de sortie à part un geste radical tel qu'une prise de position positive sur la question du référendum.[1]

7) The debate over constitutional change, language rights, and the Charter of Rights

The process of constitutional reform which had been ongoing throughout the 1970's and which gained renewed impetus with Pierre-Elliott Trudeau's re-election in 1980 was critical in shaping Sterling Lyon's approach to language rights in Manitoba. It is true that Lyon had consistently opposed the entrenchment of rights generally at least since the 1960's; however, the crucible of the patriation process initiated by Trudeau in 1980 and Lyon's personal antipathy to the Prime Minister solidified this opposition to the proposed entrenchment of a bill of rights generally and, eventually, of language rights specifically.

Prior to 1980, a process began which was to lead to an alliance among most provinces on a "minimal" package for patriation of the constitution. A turning point in this process was the arrival of René Lévesque within the inner circle of the Premiers' Conferences. Roy Romanow, a key actor in the process of reform of the constitution and its ultimate patriation through the seventies and early eighties, described Lévesque's impact at the Regina Premiers' Conference in August, 1978 in the following way:

> Lévesque's election had temporarily disrupted the relationship which had been established with Bourassa, but the beguiling charm of the new premier, combined with the unrelenting approach of the Trudeau government on constitutional and economic issues, restored collegiality and a sense of common purpose.[2]

A consensus emerged among the premiers during the Regina conference, a consensus which, on language rights, evolved as follows:

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[1] *La Liberté*, id.

[2] Romanow et al., 1984, p. 12.

> With respect to language guarantees, the premiers had agreed in Montreal in 1978, as a follow-up to their 1977 annual meeting in New Brunswick, to enter into a series of bilateral provincial agreements for the provision of minority language education services "where numbers warrant". Their position was based on the proposition that education and language of instruction were provincial responsibilities, a position fiercely supported by the new Parti Québécois government. Moreover, the premiers now foresaw practical problems in the proposed constitutional requirements related to bilingual legislative, governmental, and courts services, even though they had generally endorsed this position in Edmonton in 1976. The discussion revealed that the real basis of this position was the opposition of most of the premiers to the principle of an entrenched charter of rights in which the language guarantees were set out. These premiers favoured the retention of the traditional parliamentary process as the method to protect individual rights in the country.[1]

Clearly there was a growing awareness among the provinces of the difficulties which entrenchment of language rights in a bill or charter of rights would create for them; most English-speaking provinces in the '70's had limited capabilities to provide French-language education to their Francophone population, much less other services. In addition, the Western provinces in particular were sensitive to their multi-ethnic populations and the backlash that might be generated if there were rapid implementation of French-language educational and other services.

Finally, in the case of Manitoba in particular, the advantages of the provincial government having exclusive capacity to determine the extent of education and other services for its official language minority, as advocated by Lévesque at the Regina conference and subsequent ones as well, was not lost upon Sterling Lyon. Indeed, Lyon could both support Lévesque (and therefore Canada's only French-speaking province) on this issue while ensuring the

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[1] Ibid., p. 13.

maintenance of the province's "sovereign" powers vis-à-vis its French-language minority. The losers, of course, were Anglophones in Quebec and Francophones in Manitoba, that is, the minorities; but they did not count for much at premiers' conferences.

The last element which cemented the majority of the premiers to each other through the late 1970's and early 1980's was the trade-off between Quebec's support for the claims of several (mainly Western) provinces to increased constitutional powers in the field of natural resources, on one hand, and their support, in return, for Quebec's position in language and cultural matters, support which, for the reasons we have enumerated, was not difficult to provide. Again, Romanow succinctly describes this last element in the provinces' alliance:

> The linkage of the regional-resource issue to the regional-ethnic issue was extremely important. It placed the demands of the western provinces on a footing equal to those of Quebec. Lévesque, endorsed by federalist spokesmen in Quebec such as Ryan, supported the western provinces on the issue of natural resources and, in exchange, the western provinces moved closer to most of Quebec's positions on language and culture.[1]

Though this process began at the Regina conference, its elements were to prove sufficiently powerful to bind the majority of the provinces together almost to the very end against Trudeau's subsequent unilateral attempt to patriate the Constitution.

The First Ministers' Conference of Oct. 31 and Nov. 1, 1978, initiated by Ottawa, led to establishment of a committee of federal and provincial ministers called the Continuing Committee of Ministers on the Constitution (CMCC). It had just over three months to develop constitutional proposals for

[1] Ibid., pp. 15-6.

consideration at the Feb. 1979 First Ministers' meeting: "the result was a so-called 'best efforts' draft, which enjoyed the support of most governments, for almost all matters".[1] The federal government wished to entrench human and linguistic rights in a Charter of Rights; though several governments were antagonistic to a charter, the Lyon government's position was clear and unequivocal: "Manitoba simply opposed any entrenchment on the ground that the principle of parliamentary sovereignty would be undermined."[2] As for Quebec, though it

> did not favour entrenchment, it was prepared to accept the entrenchment of fundamental freedoms and democratic rights if the others agreed. It remained adamantly opposed to entrenchment of the other rights, particularly language rights.[3]

At the First Ministers' Conference of Feb. 5 and 6, 1979, "Manitoba was adamantly opposed to the concept of an entrenched charter of rights", while, for their part, "Most other provinces sought to confine the scope of the charter."[4]

Following the Clark interlude, patriation of the constitution quickly returned to the top of the nation's agenda, for at least two reasons. First, Trudeau reincarnated, piqued that the political obituaries on his departure from the leadership of the Liberal party in 1979 generally concluded that his list of accomplishments as Prime Minister over 11 years was rather brief, determined that the Constitution would be at the top of his list of priorities during his renewed mandate. Second, the federalist victory in the Quebec referendum ensured that there would be constitutional renewal, however

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[1] Ibid., pp. 21-2.
[2] Ibid., pp. 43-4.
[3] Ibid., p. 44.
[4] Ibid., p. 51.

defined. Ron Graham, in an insightful analysis of the first months of Trudeau's last mandate, wrote that

> [A]fter a decade of experimentation and fumbling, Trudeau finally understood the mechanics of getting things done. Indeed, he was angry with himself at having taken so long to learn. First, he needed a short but potent personal agenda. (...) Secondly, Trudeau needed to concentrate on that agenda. (...) The referendum had finally brought his passion for constitutional reform to the top of the national agenda after a dozen years of provincial intransigence and public indifference. Trudeau wasn't going to throw away this rare opportunity.[1]

Though, in the words of Roy Romanow, "relief and celebration dominated Canada on 21 May 1980",[2] the day following the Quebec referendum celebration was nowhere to be found in the Manitoba Premier's reaction to the vote. In a typically sour and narrowly-focussed reaction to this major turning point in the history of the Canadian federation, Sterling Lyon's told reporters that Quebecers should not expect "any sort of abject appeasement" from the rest of Canada following the results of the referendum. He denied René Lévesque's claim that the results of the referendum had thrown the ball back into the federalists' court, and added that changes to which all provinces could agree "may not be all that numerous". According to the reporter to whom Lyon spoke, in an apparent reference to the doomed Victoria Conference of 1971,

> Canadians should not forget that Quebec has blocked constitutional change by refusing to agree to an amending formula for a patriated constitution...
> Quebec should not now expect other provinces to sacrifice principles for a new constitution, he said.[3]

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[1] Graham 1986 (1987 ed.), pp. 64 & 66.
[2] Romanow et al., op. cit., p. 62.
[3] *Winnipeg Tribune*, May 21, 1980.

During the same interview, however, Lyon distinguished between entrenchment of language rights in the Constitution and entrenchment of a general bill of rights:

> (Lyon) rejected Quebec Liberal Leader Claude Ryan's proposal for a bill of rights entrenching language rights.
> Mr. Lyon said he was not opposed to the entrenchment of language rights in the Constitution, but a bill of rights which Parliament would not have authority to alter "is really alien to the whole concept of a Parliamentary system".
> "I would not want anyone to read the result tonight as meaning...that we are going to sacrifice that kind of principle.[1]

Finally, the Premier added that "There are probably not too many areas of the constitution that require fundamental changes...There are many parts of the present constitution which have served us well for over 100 years."[2]

On the following day, after a meeting in Winnipeg with Jean Chrétien, who had been dispatched by Trudeau immediately after the referendum to meet with the provincial premiers to launch a new constitutional initiative, Lyon repeated his distinction between language rights and a charter of rights, and

> told reporters he continues to favour entrenching language rights in the Canadian constitution without entrenchment of a Bill of Rights.[3]

Sterling Lyon was taken to task severely in the Legislature in the wake of his comments on the Quebec referendum. In a major and impassioned speech on May 22, 1980, Wilson Parasiuk, the NDP's opposition's constitutional critic, said that

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[1] Id.; emphasis added.
[2] Id.
[3] *Winnipeg Tribune,* May 23, 1980.

> (O)f all the responses to the Referendum Vote, the response of the Premier of Manitoba saddened and disappointed me the most. Here at the very blush of victory in a sense, and I think that most Canadians felt that it was a victory for Canada, was our Premier, not being positive, not trying to exude any type of good will to the rest of the country, but rather being negative, being reactionary, being inflexible, before even hearing arguments for changes.[1]

Parasiuk added that

> the Premier is taking that negative attitude to the extreme. I believe that his position of all has been the most negative. It's the language that he uses that also is one that could incite such negative backlashes on the part of the people that we in fact are trying to conciliate and bring together, as a family of nations, as a family of provinces.
> We will not pursue abject appeasement, is the statement of the Premier. Common law provinces don't have to buckle in. That type of attitude is shocking.[2]

The forcefulness of Parasiuk's attack on the Premier was no doubt a major factor in a statement to the House on the following day, May 23, by the Minister of Finance, Don Craik. This statement, apart from its conciliatory tone relative to Lyon's first reaction to the referendum results, is significant in that it established even more clearly and placed on the record the Lyon government's support of entrenchment of language rights in the Canadian constitution:

> (T)he First Minister, Mr. Speaker, finds himself unimpressed by suggestions that a charter of rights will make any real contribution to the interests of Canadians. In addition, like Premiers of Manitoba in the past, Mr. Speaker, and that includes the immediately former Premier of this province, I'm of the view that in many respects, our present constitutional arrangements have served us well, and that changes must be undertaken only where it can be demonstrated that they are in the best long-term interests of this province and of our confederation.
> But having said that, Mr. Speaker, let me also say that we agree with those who argue the importance of moving quickly and effectively

[1] Debates and Proceedings, Vol. 28, p. 3902.
[2] Ibid., p. 3903.

> now in response to the Quebec Referendum results, to deal with the whole range of constitutional questions that exist today in Canada. While we are skeptical about the value of such steps as entrenching French language rights in a Bill of Rights attached to the Constitution, we do believe that we must establish adequate constitutional guarantees for the French language to permit the people of Quebec and French-speaking people elsewhere to enjoy a sense of complete security about the place of their language and their culture within Confederation. We enter this round of constitutional discussions, Mr. Speaker, determined to show a flexible and a conciliatory attitude, an attitude that we believe reflects the beliefs of Manitobans towards Quebec and the rest of Canada.[1]

Thus, on at least three separate occasions, the Lyon government indicated its support for entrenchment of language rights of official language minorities across the country, although this entrenchment should be done independently of any bill or charter of rights. This position was quickly lost in the flurry of constitutional conferences in 1981; by that time, Sterling Lyon's antagonism to entrenchment of rights of any kind was to become the dominant theme of his various subsequent statements on the Constitution.

The First Ministers met at 24 Sussex Drive on June 9, 1980 and the CMCC was given a new, broad mandate in view of a formal First Ministers' meeting scheduled for Sept. 8-12, 1980. Graham describes the process from the federal perspective:

> Chrétien, who hadn't fought the referendum for such a limited change [patriation with an amending formula and a bill of rights] tried for one last deal with the provinces. He, his provincial counterparts, and all their constitutional advisers met throughout the summer of 1980 to find common ground in a twelve-item agenda that ranged from resources to communications, from regional disparity to Senate reform, from patriation to fish. It was a new game.[2]

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[1] Ibid., p. 3955; emphasis added.
[2] Graham, op. cit., p. 69.

During this preparatory work, on July 8, 1980, Chrétien unveiled the text of a new Charter. Under its terms,

> The provinces of Manitoba, Ontario, and New Brunswick would be bound constitutionally by the provisions of section 133 of the British North America Act regarding official language rights.[1]

Despite the fact that, for Manitoba, this in effect reflected the status quo in light of the recent *Forest* decisions, the Lyon government remained adamantly opposed to entrenchment of any rights, including language rights, even to the extent of using procedural arguments to block discussion of the draft Charter:

> In the surrealistic atmosphere where each side denied the validity of the other's underlying position, officials and ministers tried to review the federal draft. Manitoba, however, refused to go along. It insisted that there was no agreement to discuss the specific language of the charter other than to review its effect on the constitutional powers of the provinces.[2]

Throughout the summer of 1980, given the growing intransigence of the federal government and an emerging coalition of a majority of provincial governments, the stage was being set for an ultimate confrontation. This occurred during the September, 1980 First Ministers' Conference. Part of the process, though a minor one, was the annual Premiers' Conference which began in Winnipeg on August 20, 1980 chaired by Premier Lyon, at which it became clear that there were more areas of disagreement than agreement among the provinces. "Still," according to Romanow, "the tendency of this body was to find common ground", and the final communiqué reflected this.[3] Most Premiers were attempting to appear to be more conciliatory towards

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[1] Romanow et al., op. cit., p. 76.
[2] Id.
[3] Ibid., p. 90.

Ottawa, partly perhaps because polling at that time indicated that up to 75% of the electorate supported most of the proposals for constitutional reform put forth by the Trudeau government. However, the two Ontario ministers, Tom Wells and Roy McMurtry, and Québec's Minister of Intergovernmental Affairs Claude Morin all indicated that, without Ontario's active intervention, the final communiqué would have been much tougher towards Ottawa.[1] This suggests that a hard line towards Ottawa was clearly emerging among a majority of provinces at the Winnipeg conference.

In retrospect, the September 1980 First Ministers' Conference was perhaps doomed from the outset, given the leak, deliberate or otherwise, of the now-infamous Kirby memorandum which "clearly suggested that the federal government could live with a failed First Ministers' Conference because it could then proceed to patriate the Constitution."[2] Seven premiers again opposed the principle of a charter of rights, although again Premier Lyon distinguished between human rights generally and language rights. In an interview, he is reported to have said that the main objections of the provinces were not to language rights but to the principle of a Charter.[3] On the third day of the conference, the Premier presented a lengthy brief where he reiterated his position against an entrenched charter. One press report indicates that

> (T)he Manitoba premier contended that setting down rights on paper would serve to limit them to a specific list.
> Greater freedom could be had by sticking to tradition, he said.
> An entrenched charter of rights would remove the supremacy of Parliament, leaving constitutional interpretation to the Supreme Court, he charged. And Parliament and legislatures are better equipped to deal with such matters because they are accountable to the people.

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[1] Hébert, R., in *La Liberté*, Aug. 27, 1980.
[2] Romanow et al., op. cit., p. 95.
[3] *Winnipeg Free Press*, Sept. 11, 1980.

> Lyon predicted a loss of judicial impartiality and independence. He said a charter of rights entrenched in the constitution would encourage litigation and limit new rights.
> "We've got a great system in place at the present time," Lyon said. "We're not going to have any entrenched bill of rights, period."[1]

The combination of growing lack of trust between Ottawa and the provinces, the personal antagonism between Lévesque and Trudeau which poisoned the atmosphere of the September conference, and the growing solidarity of the majority of provinces (excluding Ontario and New Brunswick) around a "minimal" constitutional agenda which would exclude a charter of rights entirely, set the stage for an ultimate showdown between the federal and provincial governments. This was now inevitable in view of the renewed will for constitutional change which existed within the new Liberal government in Ottawa. It is often thought that patriation of the constitution was a product only of Trudeau's intellect and will. This ignores the tremendous emotional commitment and energy that many members of the new government had invested in the referendum battle. Indeed, both the new cabinet and caucus fervently wanted to institute real constitutional change:

> After returning to power and winning the Quebec referendum, they weren't going to be satisfied with half-measures. Following the breakdown of the September conference, they wanted "to go Cadillac," as one Quebec MP phrased it. In other words, if they were going to be hammered for moving unilaterally, they might as well move with a first-class Charter of Rights.[2]

In this pressure-cooker atmosphere, where six of the eight provinces were to initiate court references regarding the legality of unilateral patriation and where the federal government was ultimately to ask the same question of the Supreme Court, Sterling Lyon consistently held the same position, in many

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[1] Id.
[2] Graham, op. cit., p. 70.

ways the narrow and "minimalist" position he had first outlined the day after the Quebec referendum; indeed, the common front of the eight provinces was only broken at the eleventh hour at the November 1981 First Ministers' Conference, when, in an ultimate attempt to forge a consensus, Trudeau proposed the idea of a referendum which would allow the Canadian population to vote directly on the outstanding issues on which there was no agreement. René Lévesque seized on the idea, to the horror of several of his "Gang of Eight" colleagues. The referendum idea ultimately died, but the common front had been shattered, and an agreement was hammered out in the end without Quebec's approval, in the last days of the Lyon regime.[1]

In the weeks following the September, 1980 First Ministers' Conference, the federal government had drafted a resolution for constitutional patriation and reform which it unveiled on Oct. 2, 1980; "Manitoba's response was negative...For a variety of personal and political reasons, including Premier Sterling Lyon's reaction to 'that man' Trudeau, Manitoba chose to oppose the resolution."[2] By early February, 1981, when Sterling Lyon visited London and made a major speech against the federal proposals, the "minimal" package was even more minimal; it would have involved simple patriation with no other change. His convoluted explanation of this proposal to the Manitoba Legislature on Feb. 6, 1981 was as follows:

> (I)ndeed, in the recent speech that I made in England on this topic...it was one of the suggestions that I made, namely that the Parliament of Westminster send back to Canada, patriate to Canada, the power to amend, either by way of unanimity or by way of the Vancouver proposal or, in effect, to say to the Prime Minister and the 10 Premiers of Canada, you get together and figure out your formula; we will send

[1] Ibid., p. 205.
[2] Romanow et al., op. cit., p. 108.

> it back on the basis of the precedents thus far, which of course are clearly unanimous consent.[1]

Premier Lyon added that this topic of "pure patriation by the British Parliament" would be uppermost at a forthcoming meeting of the six provinces which had initiated court references. At the same time, the Premier could not contain his personal antipathy towards the Prime Minister:

> I think it is becoming clear to the people of Canada day by day that there is only one roadblock in Canada today to consensus on patriation of the Constitution, and that roadblock is represented by the Prime Minister of Canada and no one else.[2]

On April 16, 1981, the "Gang of Eight" premiers met to determine their final position regarding constitutional change; the consensus excluded a Charter of Rights, and there were reports that Premiers Lévesque and Lyon were primarily responsible for having ensured that a charter proposal would be excluded from the premiers' final position. Under heavy questioning in the Legislature on April 20, 1981, Premier Lyon repeated his position, which had now become the stated position of the eight premiers, that

> (W)e should not be asking the Parliament at Westminster to be enacting as part of the law of Canada substantive provisions with respect to a Charter of Rights or any other matter that do (sic) not carry the support of eight of the ten provinces of this country. That is fundamentally wrong, and the provinces will not, and have not, and will not agree to that, Mr. Speaker.[3]

This intransigent position on the Charter was again linked with an attack on the Prime Minister, as Premier Lyon added:

> I realize that there has been a favorite bargaining technique on the part of the Prime Minister, and that is to ask for the extremely

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[1] Debates and Proceedings, Vol. 29, p. 368.
[2] Id.
[3] Debates, Vol. 29, p. 2847.

> outrageous, and then to fall back to a position which is only semi-outrageous, and say, well I've compromised, why won't you compromise, up to the semi-outrageous.
> Mr. Speaker, the eight provincial governments of Canada are not going to be led down any garden path by that kind of negotiation tactic which we have seen the Prime Minister of this country use to the disadvantage of the public interest of this country on too many occasions.[1]

On May 12, 1981, Premier Lyon tabled in the Legislature a constitutional resolution which was if anything even narrower in scope than his earlier positions. The resolution showed the effect of the solidarity of the eight premiers, among whom it is certain that René Lévesque played a major role, and of the great personal antipathy of both Lévesque and Lyon towards Prime Minister Trudeau. It also demonstrated a "bunker" mentality which in effect dared the federal government to "invade" what, in the eyes of Quebec and of Manitoba, was their sacred preserve, their provincial rights. The preamble succinctly laid out the Premier's political philosophy:

> WHEREAS the Legislative Assembly of Manitoba is committed to a united Canada under a Federal, Parliamentary, Monarchical system of government, and to our traditional constitutional methods of maintaining and enhancing the basic rights of all our citizens...

The resolution went on to denounce "the current unilateral action by the Government of Canada to amend the Constitution" as "divisive and destructive of the federal nature of our country" and resolved that the Legislative Assembly reject the amendments to the Constitution proposed by the federal government and "approve the patriation of the British North America Act with an amending formula to be agreed by the Parliament of Canada and the provincial Legislatures". The resolution also urged the

[1] Id.

"resumption of negotiations" between the federal and provincial governments on an amending formula.[1]

The euphoria following the results of the Quebec referendum had thus come down to maintaining the status quo, with the sole exception that Canada would have patriated its own constitution with no change and no amending formula. Sterling Lyon's firm preferences and visceral antipathy to Pierre Trudeau had combined with René Lévesque's astute manipulation of the provinces against any substantial constitutional change to produce a draft constitutional resolution in the Manitoba Legislature that was so limited in scope as to be virtually meaningless as a tool of renewal of the federation.

For the last time as Premier of Manitoba, and as a participant in the process which led to ultimate adoption of the *Constitution Act, 1982*, Sterling Lyon set out his philosophy regarding the Constitution of Canada. After denouncing the "basic affront that is being made by the Federal Government", Premier Lyon couched his subsequent comments in terms of "the part that we have to play today to enhance the preservation of that unity [of Canada] against forces that are aligned against the unity of Canada in a way that has not been seen before perhaps in our history". However, these "forces" were not defined: were they the independentists, led by Lyon's colleague René Lévesque, or were they Trudeau's Liberals? Later in his remarks, Lyon denounced the separatists but did not, at any point, explain how Lévesque and he could find common cause in the fight against Trudeau. The only explanation appears to be that provincial rights and parliamentary supremacy, in both these premiers' eyes, superseded human rights and minority language rights.

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[1] Debates, Vol. 30, p. 3532.

The gist of the Premier's speech was a summary of his personal philosophy regarding the functioning of the Canadian federation and the entrenchment of human rights. Were it not for the unmistakable Tory flavour of his comments on the Canadian parliamentary system and the Monarchy, the speech could have been made by René Lévesque himself:

> The objection that we hold to the entrenched Charter of Rights is essentially twofold. No. 1, you cannot as Mr. Trudeau has in his present proposals...have an entrenched Charter of individual rights for Canadians which purports to affect the citizens of Canada in their capacity as provincial citizens of Manitoba or citizens of this province because very simply, Mr. Trudeau's proposed Charter of Human Rights at the present time expropriates, takes away, cuts off traditional areas of sovereignty that this province has had since 1870 without the consent of the people or the government of Manitoba and that is not acceptable.
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> Mr. Trudeau can have an entrenched Charter of Human Rights insofar as the federal jurisdiction is concerned, that is insofar as he has powers under Section 91 or other sections which confer powers upon the Federal Government. He cannot..have an entrenched Charter of Human Rights that purports to interfere with proprietary rights, with civil rights of individual Canadians, with education rights, with language rights that are within the sole purview and the sole sovereignty of the province that have been there since 1867 for all provinces that joined Confederation subsequent to 1867. That's No. 1.
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> No. 2. If you were going to have a proposed or an entrenched Charter of Human Rights that does purport to affect Canadians in their dual role as citizens of the nation and citizens of the province, then those rights that you are purporting to take away from the provinces must be negotiated; they must have the consent of the provinces. The proposal that Mr. Trudeau has for an entrenched Charter of Human Rights does not carry the consent of the provinces, Mr. Speaker, in fact it is actively opposed by eight of the 10 provinces of Canada. Therefore in shortened form I say you cannot have an entrenched Charter of Human Rights as Mr. Trudeau is trying to foist upon the people of Canada at the present time. Not only, Mr. Speaker, will Mr.

> Trudeau not have it or can he not have it, I say to you very very frankly today, Sir, he will not have it - he will not have it.[1]

Lyon then began a sustained diatribe against the Prime Minister, whose constitutional proposal "purports to tear the very innards out of the division of powers" between the federal and provincial governments, who was attempting to "blackmail the parliament at Westminster", who thought "he could do the illegal in this country...the unconstitutional in this country...the unthinkable in this country", by using "devious tactics". The Premier rejoiced at seeing the Prime Minister "wiggling on the end of his own petard, because he's gotten himself into a position from which he alone is going to have to extricate himself".[2]

The Premier outlined a third reason for his opposition to an entrenched Charter of Rights:

> (I)t fundamentally would subvert the parliamentary system; because fundamentally it would take powers from the Provincial Legislatures and from the Federal Legislatures (sic) and transfer them to nine appointed judges ultimately in Canada, and would ask those judges to do what judges in Canada have never been asked to do, that is to make judicial legislation. Now that's, Mr. Speaker, another fundamental reason for being opposed to his Charter of Rights because it's wrong in itself -it's wrong in itself- and it would subvert the whole system of jurisprudence that I was talking about a few moments ago that has been built up so carefully in this country over 114 years...it would literally turn this country upside down. Canadians are not going to have their country turned upside down by one man with a temporary majority in the Parliament of Canada.[3]

Premier Lyon raised what he believed was Trudeau's underlying agenda, that of entrenching language and education rights. Based on a leaked document, the Premier said, Mr. Trudeau was only "interested in education

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[1] Ibid., p. 3537.
[2] Id.
[3] Ibid., p. 3538.

and in language rights"; in those fields, the Premier said, there have been "substantial areas of progress made in every province in Canada with respect to education and the two official languages of Canada". In the Premier's view, "you can have the enjoyment of the right where you may not have the proclamation of it...I'm always dubious about those who would like to enshrine and proclaim something in a written document as being beyond the call of Parliament, beyond the call of anyone save God himself -that is amongst those who even believe in God." In his view, "Manitobans as I know them want the enjoyment of the right. They're not much concerned about whether it's proclaimed in a Bill of Rights..."[1]

In conclusion, the Premier referred twice more to "the assault that this Federal Government is attempting to perform against the sovereign rights of the Province of Manitoba", rights that the people of Manitoba have had since 1870.[2] However, "no government worth its salt would permit" the loss of these rights, "and I'm proud to be able to say that this government has not permitted it to happen and won't permit it to happen".[3]

Opposition Leader Howard Pawley, after stating that "The Official Opposition strongly disagrees with the process initiated by the Prime Minister pertaining to the patriation of the Constitution", took the Premier to task for not providing "that kind of moderate, middle leadership that indeed should be expected from the Province of Manitoba" in the constitutional negotiations. Pawley also deplored the fact that the constitutional debate in the Manitoba Legislature only occurred at the "tail end" of the process. He added:

> The process that the Prime Minister has pursued is one that we and the Official Opposition are not hesitant to condemn. It is a process

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[1] Id.
[2] Ibid., p. 3542.
[3] Id.

> that has not taken into consideration the various points of view within Canada...But, Mr. Speaker, neither has the process that has been followed by the First Minister been any better.[1]

Pawley's greatest area of disagreement with the Premier, however, was in the area of the entrenchment of rights:

> (T)here are aspects on the other hand that I would like to at this point to (sic) express positive support for in regard to the federal resolution. One, Mr. Speaker, is the support of some basic principles pertaining to civil rights, linguistic rights to be entrenched in the Charter. Mr. Speaker, our party has supported entrenchment of basic rights, and continues to do so...the entrenchment of fundamental rights within the Constitution to protect minorities is essential.[2]

When debate resumed on the constitutional resolution on May 26, 1981, the Attorney-General, Gerry Mercier, pointed out that

> the issue is not whether human rights should be protected but what is the best method of protecting them.[3]

The "best way", in Minister of Finance Brian Ransom's subsequent comments, was clearly trust, trust in the Legislature, trust in "the Canadian way", as reflected in a story he quoted from an Ontario Senator: "remember this, laddie, you're in Canada and a man's word is his bond, poor bargain or nay".[4] Manitoba Francophones and Métis could be forgiven for gagging on these words, in light of the systematic dismemberment of their rights by the Legislature over almost a century of Manitoba history.

St. Boniface MLA Larry Desjardins argued in favour of a bill of rights; he pointed out that in the Standing Committee on Statutory Regulations and Orders, which studied the constitutional issue and heard representations from

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[1] Ibid., p. 3543.
[2] Ibid., p. 3553.
[3] Ibid., p. 3878.
[4] Ibid., p. 3885.

the public, "the majority were in favour of an enshrined Bill of Rights"; yet at the meeting after the last brief was heard, "the Government came in with a strong position". Within the context of the Committee,

> There was a member of the Committee that (sic) said, would you compromise, would you go on a Bill of Rights with the question of language, and all of them but one said yes. Some of the members of the Conservative Party were on that and privately said yes.[1]

It would thus appear, then, that the Premier's uncompromising attitude towards the Charter in the context of the federal-provincial negotiations was not shared by all members of his caucus. Desjardins also pointed out that

> (T)he First Minister now is in bed with Levesque, a separatist, for different purposes, for different reasons, of course. That is what is going to destroy Canada an awful lot more... and this hate. It's built on hate, these discussions are built on hate of the Prime Minister...[2]

On May 26, 1981, a vote was taken on the Lyon government's constitutional resolution. It was adopted without amendment by a vote of 29 to 18.

In the months and weeks before the last-ditch November 1981 First Ministers' Conference, it became increasingly clear that, if there were to be any consensus between Ottawa and the provinces, there would have to be some compromise around the Charter of Rights. By that time, all provinces, with the notable exceptions of Manitoba and Quebec, had arrived at that conclusion and had adjusted their positions accordingly:

> (W)hen the first ministers met in November, there were only two provinces which were irrevocably opposed to any charter: Manitoba and Quebec. Ontario and New Brunswick had always been in favour of the federal charter; Newfoundland had never been opposed to the

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[1] Ibid., p. 3889.
[2] Ibid., p. 3890.

> entrenchment of some rights; and British Columbia, Alberta, Prince Edward Island, Nova Scotia, and Saskatchewan, all went to the November meeting in the knowledge that they would accept some form of the charter.[1]

In the end, even Quebec made overtures in favour of a limited charter: "unlike Manitoba, it hinted that it might consider a limited charter of rights that could 'adapt and grow'."[2]

On the second day of the conference,

> The entrenchment of minority language education provisions prompted vigorous debate, as it had throughout the 1980 summer activities of the CMCC. Trudeau argued that, over a period of time, the nation would divide into two linguistic solitudes with separation being the inevitable outcome if language guarantees for English- and French-speaking Canadians were not entrenched in the Constitution and made available throughout Canada. On the other hand, Lévesque claimed that Quebec was the homeland for French language and culture in Canada and faced the constant threat of assimilation by North America. This threat could only be overcome if the Constitution acknowledged Quebec's unquestioned authority to legislate to protect the minority.[3]

The dissenting premiers struck a committee and arrived at a new proposal called the B.C. compromise, in recognition of Premier William Bennett's key role as the new Chairman of the Premiers' Conference in its formulation. This compromise provided for "immediate entrenchment of democratic rights and official language guarantees".[4] This new proposal was rejected out of hand by the federal government; however, the following day, at an early-morning meeting of the provinces, Bennett went further in breaking ranks with Quebec on the minority-language education rights issue. Other initiatives were being undertaken by Saskatchewan and Ontario, as well as

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[1] Romanow et al., op. cit., p. 257.
[2] Ibid., p. 195.
[3] Ibid., p. 199.
[4] Ibid., p. 200.

Ottawa. Manitoba, by its intransigent positions adamantly held right to the end, had forfeited any possibility of influencing events in these final, crucial days in the patriation of Canada's constitution. Significantly, Lyon was not even present during the last two days of the conference when the constitutional "deal" was finally struck; he had returned to Manitoba to resume campaigning in the provincial election.[1]

ii) The SFM position

a) SFM brief to the Standing Committee on Statutory Regulations and Orders

On May 22, 1980, the President of the SFM, Gilberte Proteau, had announced that a public meeting would be held on November 15, 1980 to determine the organization's position on constitutional change. The draft position adopted at this meeting, attended by 15 francophone organizations and over 250 people, was subsequently presented to the Standing Committee on Statutory Regulations and Orders of the Manitoba Legislature on November 18, 1980. [Though the Attorney-General had indicated, a few days beforehand, that simultaneous translation would not be available, the government reversed its decision and, when the SFM finally appeared, the translation system was in place.][2]

The SFM's brief had been prepared by four organizations: the SFM itself, "La Société Historique de Saint-Boniface", "La Fédération provinciale des Comités de Parents", and "Le Conseil Jeunesse Provincial". It began with a historical description of the abolition of French rights in Manitoba and a rationale for the contemporary development of the French language in Manitoba. Its recommendations focused upon "a new Constitution based on

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[1] Ibid., pp. 200-10.
[2] *Winnipeg Free Press*, Nov. 14 & 19, 1980.

the double reality of the association of two founding peoples and 10 provinces...without prejudice to aboriginal rights".[1] The Preamble of the new Constitution should enumerate the objectives of the federation, including "the affirmation of a particular place held by the two founding peoples within Canadian institutions" and "the importance of the Provincial Governments to recognize their official minority community and to take necessary measures with a view to giving a greater reality to the equality of the two founding peoples".[2] Means should be provided to guarantee individual linguistic rights in many areas, listed by the SFM as follows without apparent priorization:

- le droit de s'exprimer en français ou en anglais devant le parlement fédéral et les législatures provinciales;
- le droit à la traduction des lois, des archives, des comptes-rendus et des procès-verbaux du parlement du Canada et des législatures de toutes les provinces;
- le droit aux services en français ou en anglais dans les bureaux des gouvernements fédéral et provinciaux et des sociétés d'Etat situés dans les capitales et dans les régions de sorte qu'il devienne normal de transiger avec son gouvernement dans sa langue;
- le droit d'utiliser le français ou l'anglais devant les tribunaux canadiens ainsi que dans les procédures et documents des cours;
- le droit à des procès tenus entièrement dans la langue française ou anglaise dans toutes les provinces et devant les tribunaux établis par le parlement du Canada;
- le droit à l'enseignement dans leur langue maternelle pour les enfants de tous les citoyens canadiens de langue officielle et ce dans des écoles homogènes de langue officielle.[3]

In addition to this list of rights, the SFM's brief argued that, within the new Constitution as well,

> il faudrait ajouter une série de droits collectifs qui permettront aux minorités officielles d'atteindre sur le plan social et culturel un statut

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[1] Manitoba, Standing Committee on Statutory Regulations and Orders, Debates and Proceedings, Vol. 29, p. 75; quotes are from English translation of French original.
[2] Id.
[3] Id.

> égal à celui de la majorité...Ces droits collectifs prévoiraient donc que les collectivités linguistiques minoritaires de langues officielles auraient droit à des institutions distinctes dans les domaines pédagogique, culturel et social.[1]

The SFM brief thus argued in favour of collective rights which would place official language minorities on an equal footing with the linguistic majority in terms of services, but, even more importantly, in terms of control over key institutions. Clearly the model envisaged here is the Quebec model, where the Anglophone minority controls its own school system, hospitals, media, and universities.

The contrast between Premier Lyon's dogged defence of the supremacy of Parliament and the realities of the effects of parliamentary supremacy upon minorities, at least upon the French-language minority in Manitoba, showed up starkly in the SFM's brief:

> If everything is left to the Legislature, one must consider that in the Legislature there is a majority obviously...That majority does not want to hear, to learn, to listen, and the minority has nothing to say. Now there is only one recourse in that kind of a situation, and that is a recourse to justice, and unhappily this has been the case right across Canada. The Legislatures have not protected our rights. We would like to say that, yes, it is our best way, but history has proven it otherwise.[2]

Two other aspects of the SFM's presentation to the Standing Committee should be pointed out. First, a Conservative MLA referred to the stand taken the previous spring by the SFM in the Quebec referendum. Abe Kovnats, Progressive Conservative MLA for Radisson, stated unequivocally that "I have not been a supporter of your views concerning the separation of Quebec from Confederation".[3]

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[1] Id.
[2] Ibid., p. 80.
[3] Ibid., p. 76.

Second, in response to the question "What could the provincial government do at this time to implement what you're asking for?", the SFM provided a twofold answer. Proteau argued in favour of acceptance of the principle that "nous existons non seulement en tant qu'individu mais aussi en tant que collectivité".[1] Another spokesperson, Ronald Bisson, provided concrete examples:

> Je crois qu'il serait simple à ce gouvernement (sic) de mettre sur pied un service de langue française qui pourrait être sous le ministre des Affaires culturelles et ce service offrirait à la population qui le désire toute une série de services en français soit dans le milieu, soit au niveau interne du gouvernement. Ce que je dis c'est ceci: je ne crois (pas) que c'est possible, et peut-être même souhaitable, de vouloir bilinguiser toute une fonction publique.[2]

The SFM's appearance before the Standing Committee served only to highlight the fact that the Lyon government and the SFM were worlds apart in their objectives regarding constitutional change. For the Lyon government, the supremacy of Parliament, traditions, and all of the "old values" had to be safeguarded at all costs; for the SFM, the supremacy of Parliament, the traditions, the "old values" constituted a large part of the problem. Only entrenchment of language rights far beyond any proposal that was being considered by any government, federal or provincial, could offer any hope for the future.

b) SFM brief to the Special Joint Committee of the Senate and of the House of Commons on the Constitution

On November 20, 1980, the SFM appeared before the Special Joint Committee of the Senate and of the House of Commons on the Constitution. Its 14-page brief was drafted by Joseph E. Magnet, a University of Ottawa law

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[1] Id.
[2] Id.

professor who was to play a major role as an advisor to the SFM throughout most of the 1983-84 language crisis. The SFM's opening statement to the Joint Committee was much stronger and unequivocal in its support for entrenched language rights and added two key provisos:

> Franco-Manitobans, as an official language minority in the Province of Manitoba, are acutely aware that it is desirable to offer greater protection to minority rights through a Charter-based judicial review system. The Société is of the view that the rights of minorities are not best protected by legislatures, since legislatures are primarily responsible to the majority. Therefore, the Société strongly supports entrenchment of minority rights. This support is conditional upon a guarantee of access to the courts and inclusion of an enforcement mechanism to insure constitutional behaviour by public authorities. It is appropriate to allow the Courts, with their long traditions of independence, to resolve disputes about constitutionally guaranteed minority rights, rather than to leave absolute responsibility with the legislature.[1]

The SFM argued that French-language rights in Manitoba should be specifically enshrined in a new Charter of Rights, as the Trudeau government had proposed doing for the provinces of New Brunswick, Ontario, and Manitoba. However, these rights would go much farther than envisaged in the Trudeau proposal. For example, it advocated including a new section in the proposed Charter which would have read as follows:

> 19a. Either official language may be used in Manitoba by any person in dealings with any administrative body created by Parliament or the legislature of Manitoba, having regard to the necessity to promote both official languages in Manitoba.[2]

In terms of minority education rights, the SFM recommended inclusion of a new education section in the Charter which would have ensured sweeping

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[1] Brief to the Special Joint Committee of the Senate and of the House of Commons on the Constitution, letter of transmittal to Co-Chairmen Harry Hays and Serge Joyal.
[2] Ibid., Brief, p. 4.

French-language education rights in Manitoba. A proposed new S. 23.1 would read as follows:

> 23.1. Everyone in Manitoba has the right to have his or her children receive their kindergarten, primary and secondary school instruction in the official language of his or her choice in institutions which use the official language requested. Public funds shall be provided for instruction in the language requested. The language of administration shall be the language of instruction. In exceptional cases and without prejudice to the development of the minority official language, instruction may be offered in the language requested in an institution giving instruction in, and administered in, the other official language. Nothing herein stated prejudices the right to establish private schools.
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> 23.2 Everyone in Manitoba has the right to official language immersion education. Public funds shall support institutions necessary for exercise of this right.[1]

Finally, the SFM drew a lesson from bitter experience of with the lack of enforcement of SS. 22 and 23 of the *Manitoba Act* throughout Manitoba's history and the fact that "Courts are hesitant to devise constitutional remedies in the absence of such a provision."[2] It therefore recommended inclusion of the following provision:

> 25. Every person or group whose constitutional rights, powers, privileges, or immunities are infringed or are threatened to be infringed by a public authority shall be entitled to full and effectual relief, by mandatory or restraining order of a superior court. Pecuniary compensation shall be awarded in appropriate cases.[3]

Other proposals contained in the SFM brief were mainly of a technical nature; however, they were all aimed at strengthening the official language minority guarantees proposed in the federal draft Charter, in the *Manitoba Act*, or in the SFM's own new proposals.

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[1] Ibid., pp. 7-8.
[2] Ibid., p. 11.
[3] Ibid., p. 12.

The SFM's brief evidently raised eyebrows in Ottawa, both because of the radical and uncompromising nature of its proposals and by its obvious legal erudition. *Winnipeg Free Press* reporter Michael Doyle breathlessly reported that

> The group's brief goes farther than anything Trudeau has proposed and would give the six per cent of Manitobans who are francophones greater rights than even anglophones enjoy in Quebec.[1]

It is impossible to ignore the differences in tone and content between the two briefs, presented within two days of each other, the first mainly historical in nature and rather unfocussed in its recommendations, the second mainly legalistic and highly focussed upon specific, and radical, changes desired in the federal government's draft Charter. Though both broadly recommend entrenchment of minority language rights, the differences in authorship, tone, and content leap out at every page. Perhaps more unsettling, the Ottawa brief was not subjected to the same public scrutiny by the SFM membership as the brief presented to the Manitoba legislative committee, as it is known that the draft document circulated to the SFM membership on Nov. 15, 1980 was in essence the brief submitted to the Manitoba committee. In retrospect, the problem of a coordinated strategy for the organization is evident in this incident, though in this case there were to be no apparent negative repercussions.

8) The French Language Services Secretariat

In the spring of 1979, the Lyon government had obtained the secondment from the federal government of René Préfontaine, whom Duff Roblin had

[1] *Winnipeg Free Press*, Nov. 22, 1980.

abortively attempted to recruit to the provincial Cabinet on November 7, 1962.[1] A former secretary of the A.E.C.F.M., the SFM's predecessor in 1959 and 1960, Préfontaine had also been Secretary-General of the Manitoba School Trustees Association; he thus had credibility among both Francophones and Conservative Anglophones. In 1979, Préfontaine was appointed Manitoba's Deputy Minister of Cultural Affairs and Historical Resources.

Following the *Forest* judgments, Préfontaine was asked by the Premier to draft a position on French-language services in Manitoba; this document was submitted by Premier Lyon to Cabinet on October 6, 1980. In light of Lyon's subsequent adamant opposition to the Pawley government's proposals regarding French-language rights it is an extraordinary document.

Although carefully avoiding any language which might indicate that French-language services were a responsibility imposed upon the provincial government in the wake of the *Forest* decisions, the Cabinet memorandum contained several specific recommendations:

> 1) That "decisions already made" regarding translation of statutes, bills, and regulations be "confirmed", along with "our intention of furnishing translation and interpretation services in the French language within the court system of Manitoba";
> 2) No attempt would be made to provide complete translation of Hansard; however, an English translation of speeches made in French would be made available "within a reasonable time frame". Simultaneous interpretation of all proceedings in the House was not recommended.
> 3) Francophones civil servants would "of course have the right to work in that language in their informal communications with colleagues who are equally francophone".
> 4) In terms of French language services to the public,
>
> a) "All major provincial government departments should equip themselves to serve the public in French. This would likely include the hiring of bilingual civil servants where circumstances warrant", as well as language training

[1] Turenne, 1969, p. 156.

opportunities for civil servants. In addition, "It might also be desirable to establish a secretariat to receive questions and requests for advice from French speaking Manitobans and to furnish necessary information obtained from government departments to that French speaking public."

b) Letters or enquiries received by government in French would be responded to in French, "wherever practical".

c) English-language and bilingual versions of documents such as official proclamations, licences, permits, etc. would be made available to the public.

5) Finally, it was suggested to Cabinet that a "small working group of Deputy Ministers be established to examine the matter", and to report thereon to Cabinet from time to time.[1]

Reaction to the document in Cabinet was negative, not because of its content but because many Cabinet ministers had not forgotten the SFM's very public stand in favour of the "Yes" side in the Quebec referendum, which, in their eyes, made the SFM separatist sympathizers or worse. Adoption of these measures would be tantamount to aiding and abetting the separatist enemy, and this, by at least one report, was the main reason for the document's rejection.[2] This is no doubt what Turenne meant when he was to write, some time later, that

> ...je sais que cette position a effectivement bloqué tout progrès sur les dossiers francophones au gouvernement provincial pendant au moins six mois...[3]

There was perhaps a second, more subtle reason. The document was considered by Cabinet in the heat of the growing opposition of many provinces to entrenchment of rights generally, including language rights, and it may have been decided that it was not an appropriate time to proceed with the provision of French-language services when establishment of such services could have

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[1] Tabled in the Legislature as part of Exhibit III by Attorney-General Roland Penner, July 4, 1983.

[2] Hébert, R., interview with R. Turenne, June 21, 1988.

[3] Turenne letter to T. Moore, June 9, 1983; in Turenne files.

given Prime Minister Trudeau an additional argument in favour of their entrenchment.

In any case, the Lyon cabinet, having already recognized the principle of English and French as official languages of Manitoba in Bill 2, was about to embark, however modestly, in the direction of provision of government services in both languages that would give tangible form to the principle.

On Dec. 5, 1980, the Minister of Cultural Affairs and Historical Resources, Norma Price, and Attorney-General Gerry Mercier met with the President of the SFM, Gilberte Proteau, and the organization's executive director, Lucille Roch. At that meeting, the SFM presented a working document. The document began by reviewing work done on translation of laws to date: as of September, only 14 laws had been translated. The document then proceeded to set out priorities regarding the translation of new laws; these included legislation in the fields of family law, labour, and financial regulation. The SFM asked the government about its future plans, especially in the area of court services. Finally, the SFM suggested "that the government organize a 'Service de langue française du gouvernement'" under the Department of Cultural Affairs. This "Service" would have two functions: "a) explain and promote French language services internally to government employees and departments; b) explain and promote the use of these services to the French language clientele of this province; this of course includes Francophones, Immersion schools, Parents for French, etc...." The SFM also requested additional recreational services in French in francophone areas of the province.[1]

Following this meeting, René Préfontaine, again in his capacity as Deputy Minister of Cultural Affairs, drafted a second document, this time for

[1] SFM, Box 41, File 24.8/4.

consideration by Treasury Board. Dated January 19, 1981, this Submission to Treasury Board listed the functions of an administrative section of the type suggested by the SFM and recommended approval of two additional staff man years, with a total budget of $78,000. Functions of the new section would be as follows:

a) carry on the day to day liaison function between the franco-manitoban community and government departments;
b) study and recommend policies and priorities concerning services in the official minority language;
c) advise departments in the planning, implementation and delivery of programs dealing with services in the official minority language;
d) act in a liaison capacity between government departments concerning specific services required by individuals and groups;
e) assume responsibility for dossiers dealing with organizations (provincial, national, international) that are related to the promotion of French language and culture.

The Treasury Board submission pointed out, again significantly in light of the subsequent contention by many Conservative that the SFM was not representative of Franco-Manitobans, that

> It is useful that this proposal...should come from the Franco-Manitoban community. Should such a proposal have come from the government in response to pressures for more bilingual services, the government could have been accused of tokenism.

Price and Mercier both agreed with Préfontaine's strongly-held view that the senior of the two positions recommended should be classified at a "relatively senior level", in order to ensure the incumbent's credibility in his or

her dealings with government departments and agencies; in addition, "his credibility in the community must be impeccable".[1]

After considering the submission, Treasury Board decided that the issue warranted a decision at the Cabinet level, and a virtually identical document (including all of the sections quoted above), again signed by Price and Mercier, was presented as a Submission to Cabinet dated February 6, 1981. Cabinet decided, at its Feb. 25, 1981 meeting, to "authorize the establishment of a French Language Services Secretariat in the Department of Cultural Affairs and Historical Resources", authorized two SMY positions for the 1980-81 fiscal year to hire an officer and one support staff as of March 2, 1981, and authorized an additional expenditure for this Secretariat for the 1981-82 fiscal year.[2]

Establishment of the new French Language Services Section was announced in the Legislature by Premier Lyon on March 20, 1981. In his remarks, the Premier listed the functions of the new section essentially as adopted in the two submissions referred to above, with one small but interesting difference: French was clearly defined by Premier Lyon as the "official minority language". The Premier pointed out that at the recent public hearings on the Constitution, "for the first time in recent Manitoba history...briefs could be delivered in either of the official languages". Finally, the Premier added that creation of the section was being announced "after further study" had determined "what additional measures (were) required to improve the Provincial Government's capacity to meet the need for certain services in both official languages..."[3] Again, however, though admitting that French was an "official language" of the province, the Premier took care not to

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[1] Tabled in the Legislature as part of Exhibit III by Attorney-General R. Penner, July 4, 1983.
[2] Id.
[3] Debates and Proceedings, Vol. 30, p. 1941.

relate provision of French-language services to the Province's obligations under S. 23 of the *Manitoba Act* in the wake of the *Forest* decisions.

On March 23, 1981, Premier Lyon circulated a memo to all Ministers and heads of agencies along with his statement in the House announcing establishment of the new Section and requested the Ministers' and officials' cooperation with the new service.

The SFM's reaction to the Premier's announcement was positive, though privately many of its members knew that, in itself, establishment of the Section was only a small step towards a much larger goal, implementation of French-language services throughout the provincial government apparatus. In a letter to Premier Lyon dated April 3, 1981, just over a year after it announced its support of the "Yes" side in the Quebec referendum, Gilberte Proteau thanked Mercier and Price as well as René Préfontaine for their work in the establishment of the new Section as "une étape importante dans la mise sur pied de services gouvernementaux en français" and offered its cooperation in "l'orientation de ce nouveau service ainsi que dans l'établissement des priorités des services en français que pourrait offrir le gouvernement".

Meanwhile, the second of two bureaucratic battles was being fought within the government's administration. Préfontaine had wanted to ensure high status within the government's bureaucracy for the new head of the French-language services section. The first stage of the battle had been won with the approval of the Cabinet submission; the second involved classification of the position within the Civil Service Commission. In April, 1981, the Commission approved a classification at the Executive level of a "Senior Consultant", one of only five positions reporting to the Deputy Minister of Cultural Affairs and Historical Resources. The Position Description Form, under the heading Authority and Freedom to Act, explicitly establishes the link

between the *Forest* decisions (and hence S. 23 of the *Manitoba Act*) and provision of French-language services in Manitoba:

> By a decision of the Supreme Court of Canada made in December, 1979, Section 23 of the Manitoba Act was restored and to the degree of its effectiveness, Manitoba became a province on which (sic) the French and English languages are recognized. The Supreme Court decision of April 6, 1981 [Blaikie No. 2] whereby documents approved and signed by Ministers and the Cabinet of the Province of Manitoba related to Government Departments and Crown Corporations excluding municipalities and school boards are to be in the two official languages of the Province of Manitoba. These court decisions along with Cabinet policy direction validate the need and general thrust of the French Language Services program.[1]

The incumbent's mandate was very broad; he or she was to "establish policy for the Secretariat within broad policy guidelines laid down by Cabinet" and "initiate advice, alternatives and delineate key issues which have an impact on government at large including the political, bureaucratic and the general public". As well, "the incumbent must make decisions, take positions and make statements on behalf of the Government regarding French Language Services".[2]

On June 26, 1981, Cultural Affairs Minister Norma Price announced the appointment of Roger Turenne, a graduate of St. Boniface College and a politicial science graduate of the University of Manitoba to the new position. Turenne assumed his new position on August 1, 1981. Within days, he was embroiled in a bureaucratic "turf war" over the location of his office: he strongly felt that the nature of his mandate and of the contacts he was expected with senior members of the bureaucracy as well as outside organizations warranted an office in the Legislative Building. In a memo to his superior,

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[1] Manitoba Civil Service Commission, Position Description Form, Position #EX 005, April, 1981.
[2] Ibid., p. 2A.

René Préfontaine, dated August 6, 1981, Turenne strongly argued this position. Unfortunately, the "zero-sum" nature of space allocation within the Legislative Building meant that if Turenne got in, someone else would have to go.

The battle was fought over a two-month period. In the meantime, Premier Lyon circulated a memo, dated Sept. 4, 1981, to all ministers and deputy ministers announcing Turenne's appointment and the fact that "in the coming weeks, he will be calling on you and will be seeking your views on ways and means to give substance to the government announced intention of applying the spirit as well as the letter of the Supreme Court's ruling on bilingualism in Manitoba". Premier Lyon added that

> "One of the Secretariat's first tasks will be to draft a set of guidelines for Cabinet consideration, creating a framework within which Departments and Agencies which have not already done so may implement policies designed to provide at least some of their services to Manitobans in both official languages."
> I trust you will extend your full cooperation to Mr. Turenne, and that a pragmatic, imaginative and common sense approach will be applied to a policy which I consider to be very important for the Province of Manitoba."

On September 30, 1981, the Deputy Minister of Government Services wrote a terse 9-line memo to René Préfontaine saying, in part:

> My staff are currently in the process of vacating the present occupants from Room 315 and arranging for Mr. Turenne's occupancy as soon as possible.
> I trust these arrangements are satisfactory and commensurate with the priority placed by the Premier on the Secretariat's operations.

Indeed, allocation of space to the new Secretariat within the walls of the Legislative Building had required the support and active intervention not only of the Clerk of the Privy Council, Derek Bedson, but of the Premier himself (The "displaced occupant" was an assistant deputy minister of health).

Legal translation, meanwhile, was becoming a major headache for the government. On August 18, 1981, the Deputy Attorney-General, Gordon Pilkey, wrote to his federal counterpart, Roger Tassé, requesting assistance in identifying legal translators. At about the same time, the SFM submitted a document to the government emphasizing that it was less concerned with the translation of laws than with the provision of French-language services in French. This document, entitled *French Language Services in the Government of Manitoba: the Application of Section 23 of the Manitoba Act*, states in part that

> Specific emphasis is placed on government services, other than legal and judicial services, which flow from a reasonable and practical application of Section 23 of the *Manitoba Act*.

Indeed the 7-page document focuses almost exclusively upon priorities in the provision of services, and goes so far as to suggest that the provincial government examine the possibility of adopting an "Official Languages Act".[1] Suggestions contained in the document emerged from the Nov. 15, 1980 public meeting and the SFM's March, 1981 annual meeting. The document is a clear indication that opinion within the SFM had rapidly gravitated since the *Forest* judgment from translation of laws to provision of services as a priority; had this occurred earlier, or if the Lyon government itself had demonstrated greater interest and openness earlier on in discussing constructive alternatives with the Francophone community, much grief might have been saved the province subsequently. This is perhaps the first among many missed opportunities in the elaboration of a definitive resolution of the French-language issue in Manitoba.

[1] SFM, Box 41, File 24.8/4.

On September 29, 1981, Premier Lyon, accompanied by no less than four of his ministers[1] met with the S.F.M. along with four other Francophone organizations: the "Fédération provinciale des Comités de Parents"; the "Educateurs Franco-Manitobains"; the "Collège Universitaire de Saint-Boniface"; and a representative of the federal Official Languages Commissioner, at which time the SFM's document was formally presented. Apart from this additional high-level recognition of the legitimacy of the SFM as a spokesman for the Francophone community by the Lyon government, the meeting itself constituted a major breakthrough: indeed, SFM internal notes on the meeting indicate that "For the first time, the government accepts the principle of services in the French language, as well as in the legal and legislative arena".[2] This important meeting is also referred to in the 1981 annual report of the Commissioner of Official Languages; a participant at the meeting, Roger Turenne, was to recall that this was indeed "a very important and a very large meeting".[3]

On October 1, 1981, the SFM held a meeting, by invitation only, to discuss the implications and action to be taken if any regarding the Bilodeau case. That same day, an editorial in the Winnipeg Free Press, following on the heels of the SFM's meeting with the Lyon government, praised the moderate nature of the SFM's "shopping list" in these words:

> The SFM's list establishes limits to the linguistic claims of the French-speaking community. It is not asking for French-language services in parts of the province where few French-speakers live. It is not asking for French to become a working language within the civil service. Those who fear that there will be no end to the French

[1] Attorney-General Gerry Mercier; Minister of Education Keith Cosens; Cultural Affairs Minister Norma Price; and the Minister responsible for the Civil Service Commission, Ken McMaster.
[2] SFM, Box 41, File 24.3/2.
[3] Undated interview with Turenne by Paul Thomas, p. 2.

> community's demands for French in government can rest easy. The community has listed its demands and they lie within feasible limits.[1]

Clearly the SFM was hedging its bets: in light of the disappointing progress, from the standpoint of many Franco-Manitobans, throughout the Lyon years in the recognition of their now judicially-recognized rights, the SFM felt it had no option but to pursue its objectives through the judicial route to the fullest extent possible while at the same time maintaining dialogue with the politicians in the hope that some small breakthrough might occur.

On Nov. 16, 1981, the Supreme Court of Canada granted leave to Roger Bilodeau to appeal the July 16 judgment of the Manitoba Court of Appeal. The following day, Nov. 17, the Lyon government was defeated in a general provincial election.

Overview of French-language rights during the Lyon years

The most significant development in language policy through the Lyon years was the growing, and explicit, recognition of French as an official language of Manitoba. Clearly Section 23 as defined by the courts was being interpreted by the Lyon administration as conferring official status on the French language in the Legislature and indeed in government administration generally. The Mercier-Price memos and the Civil Service Commission directive are direct evidence of this trend.

At a broader level, French-language rights during the Lyon years were evolving rapidly along two separate tracks which rarely if ever met. The first was judicial: the *Forest* decisions had let the genie out of the bottle. If S. 23 was still valid, and its language so clear, then surely all Manitoba laws had to be in

[1] *Winnipeg Free Press*, Oct. 1, 1981.

both languages; if that were the case, the great majority of them were invalid, having been drafted and adopted in English only. This in turn meant, as Chief Justice Freedman himself had pointed out, that there was a real risk of the province being thrown into chaos.

On the other hand, the initial reactions of the Lyon government were as restrained as they could be, leading the French-language community to arrive at the conclusion, as 1980 dragged on, that the great *Forest* victory was a hollow shell: it would be business as usual in Manitoba and tokenism towards the Francophone minority would continue to be the order of the day.

This was confirmed, in the community's view, with Premier Lyon's increasingly strident and vociferous opposition, first to entrenchment of human rights within a Bill or Charter of Rights, then, apparently, to entrenchment of all rights including language rights.

Yet the record shows that, during 1980, the Lyon government was actively seeking ways to go farther than "the black letter of the law" in providing French-language services to the Francophone community. These tentative steps suffered a setback with the SFM's public stand in favour of the "Yes" side in the Quebec referendum, which delayed serious consideration of establishment of a French-language services section by several months. However, by the spring of 1981, the Lyon government had established the French-Language Services Secretariat and had given it a broad mandate, if not substantial resources. Here, then, was a base which could have been built upon.

It is significant as well that, beginning with the Price and Mercier meeting with the SFM on Dec. 5, 1980, relations between the government and the Franco-Manitoban community began to warm, reaching their high point, perhaps, with the establishment of the Secretariat. However, there were to be other meetings, including a top-level meeting between Sterling Lyon himself

and four of his ministers with SFM representatives in September of 1981. In addition, according to one historian, Premier Lyon had had automobile drivers' licences printed in a bilingual version in 1981, but had refrained from issuing them before the November provincial elections. Evidence of the skittishness of the Lyon government on this issue can be found in the fact that a draft memo by René Préfontaine on this topic to the Deputy Minister of Highways, dated March 14, 1980, was never sent.[1] NDP MLA Wilson Parasiuk raised the issue in the Legislature on July 25, 1980, stating that drivers' licenses were ready to be issued bilingually, but that Highways Minister Don Orchard was refusing to do so.

At one level, it is difficult to reconcile Premier Lyon's adamant stand against the entrenchment of rights of any kind with his increasingly supportive view of French-language services. Yet the two positions are not necessarily inconsistent. First, Premier Lyon had, on several occasions in early 1980, emphasized the distinction between entrenchment of human rights within a Bill or Charter of Rights and entrenchment elsewhere in the Canadian Constitution of language rights alone. This position appears to have evolved significantly through 1980 and 1981, perhaps because of Lyon's constant contact with the "charming" René Lévesque at the "Gang of Eight" meetings; Lévesque, it will be recalled, abhorred entrenchment of language rights even more than entrenchment of human rights generally, because of the limits such rights would have imposed upon the Quebec government's treatment of its Anglophone minority. Yet at no time did Lyon repudiate his earlier distinction between entrenchment of general human rights and entrenchment of language rights specifically; the distinction simply appears to fade from the record.

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[1] Turenne, *Forest* file.

Secondly, the Premier constantly argued in favour of the wisdom of the Legislature as the best guarantor of human rights. Yet, with *Forest*, he was confronted with the stark reality of past injustices perpetrated by successive Legislatures upon the French-speaking minority of Manitoba. He could not logically maintain that the Legislature was the best guarantor of rights, and specifically of language rights, without going some way towards correcting these past injustices. He may even have felt pressure along these lines at the constitutional conferences.

Finally, it is perhaps significant that most of Lyon's initiatives in terms of French-language services occurred in the last year of his mandate, and the "warming" that appears to have occurred between the Premier and the French-speaking community only happened during his final months in office. There may thus have been some electoral motivation behind these initiatives, since the Francophone vote is significant in several provincial ridings. It is more likely, however, that there was simply continuing misunderstanding between the Premier and the French-speaking community of each side's position. It is possible as well that, on the Premier's side, there were forces within his caucus and Cabinet that were urging him to "go slow" in light of the sensitivity of other ethnic groups towards any granting of "privileges" to the French community; the initial announcement of the French-langage services secretariat having been uncontroversial, perhaps the Premier was willing to go one or two steps further by the end of his term.

Chapter III

The Pawley Government and Section 23: Taking Stock

The one-term Lyon government was swept away by a rejuvenated NDP led by Howard Pawley on November 17, 1981. With a majority of 34 seats out of 57, the Pawley government, including Roland Penner as Attorney-General and Government House Leader, was sworn in on December 1, 1981.

The SFM was quick off the mark. On November 19, 1981, Gilberte Proteau wrote Pawley congratulating the government on its election and immediately informed the new Premier of the SFM's agenda. This included a request that the government support S. 23 of the new Charter of Rights and Freedoms regarding minority-language education; the SFM requested a meeting with Pawley to "determine needed modifications" to the Public Schools Act to bring it in line with the provisions of S. 23 of the Charter. Secondly, the SFM recommended that Manitoba adhere to Sections 16 to 22 of the Charter, as New Brunswick had done in the course of the constitutional negotiations. Finally, the SFM requested that the government replace Bill 2, "qui est nettement insuffisant parce qu'il amoindrit le statut du français à l'Assemblée législative du Manitoba". Draft amendments to the Charter that would have included Manitoba in SS. 16-22 were included. Copies of this letter were sent to the three francophone members of the new government, Larry Desjardins, MLA for Saint-Boniface and Minister of Health, Sports, and Recreation, Pete Adam, Minister of Municipal Affairs, and Gérard Lécuyer, MLA for Radisson.[1]

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[1] SFM, Box 41, File 24.8/1.

Penner's files indicate that he was already seized of the administrative problems caused by the massive task of the translation of laws.[1] Though the scope of translation of past laws had yet to be defined by the courts, clearly all new laws, as well as many old ones, would surely have to be translated; yet the government was still, in early 1982, ill equipped to meet even this limited challenge.

In the interim, however, Penner had decided to proceed on one matter relating to use of the French language in the courts. In a Cabinet paper dated Dec. 2, 1981, Penner recommended proclamation of S. 462.1 of the Criminal Code, which would give every French-speaking accused person in Manitoba the right to demand a trial before a French-speaking judge or jury. The name of the former Attorney-General, G. Mercier, appears clearly on the original file copy of the paper; his name is however whitened out and replaced by Penner's. This is clear evidence that the paper was ready to be presented by Mercier to the former Cabinet before the Lyon government's fall. The paper recommends that "Manitoba advise the Government of Canada that we wish S. 462.1 proclaimed in force in Manitoba as of Jan. 1, 1982".[2]

In early December, 1981 Penner met Joseph Magnet, a law professor from the University of Ottawa, for the first time; during the meeting, Magnet offered his services regarding the constitutional issue and followed up with a memo entitled "Proposed Priorities for Departmental Initiatives"[3]. In Magnet's view, the state of implementation of bilingualism in Manitoba was a "failure"; he suggested establishment of a major legislative translation program, starting

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[1] See, e.g., Penner memo to File, Jan. 21, 1982; in ATG, Box 19, FLS - Trans. - Stat.

[2] ATG, Box 19, FLS - Transl. - Stat. The first civil court case to be heard entirely in French involved Fr. Laval Cloutier and "Collège Universitaire de Saint-Boniface" in a case of wrongful dismissal; it was heard in St. Boniface County Court on Jan. 7, 1982. (*Winnipeg Free Press*, Jan. 8, 1982).

[3] Magnet to Penner, Dec. 9, 1981, in ATG, 0149, Box 17, File - Bilodeau - S.Court hearing.

with a transfer of responsibility for legislative translation from Cultural Affairs to the Department of the Attorney-General. In Magnet's view, a direct link should be established between translation and the drafting process. In addition, a plan should be drawn up to implement S. 23 of the Charter in Manitoba. Magnet went on to propose a series of other initiatives in which he would himself play a major role; indeed, Magnet indicated in this memo that he was "most interested in joining the team". The record is unclear as to whether the SFM or other francophone organizations were aware of Magnet's initiative.

Turenne, once apprised of Magnet's memo, responded in a Feb. 8, 1982 confidential memo to Penner.[1] Starting from a broad review of the Bilodeau case, Turenne went on to focus on specific administrative problems in dealing with translation of laws. Regarding the staffing problem, he argued against splitting off legal translation from Translation Services in Cultural Affairs and incorporating it into the Attorney-General's department and against the "total bilingualisation of everything to do with the Legislature" advocated by Magnet. Assuming that "no court would invalidate the pre-1979 statutes", Turenne went on to outline a plan of action regarding legal translation.

On Nov. 29, 1981, the SFM's Board met and decided to request intervenor status before the Supreme Court in the Bilodeau case, following an October 1 closed consultation of the community.[2] Proteau informed Penner of this decision in a letter dated Dec. 14, 1981. Stating that S. 23 (of the Manitoba Act) "est la pierre angulaire sur laquelle la collectivité francophone du Manitoba peut construire une communauté vibrante et dynamique", Proteau added that the SFM would shortly recommend ways to implement S. 23.[3] Responding to

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[1] ATG, 0149, Box 17, File-Bilodeau-Supreme Court hearing.
[2] "*La Liberté*", Dec. 3, 1981.
[3] ATG, Box 19, FLS-SFM.

Proteau, Penner suggested a meeting for the first week of February.[1] The SFM's application for leave to intervene was heard by the Supreme Court on Feb. 3, 1982; the Ottawa agent for the Manitoba government was instructed not to object.[2]

A major inconsistency in the SFM's correspondence with the new government should be noted here. Proteau's narrowly-focused Nov. 19 letter to Pawley outlined three priorities, the first two of which concerned education rights under S. 23 of the new Charter. In December, however, the SFM's priority appears to have shifted to S. 23 of the Manitoba Act. There are perhaps two ways to explain this apparent confusion in priorities: the first is the increasing role which Magnet* played in advising the SFM during this period. For him, as his subsequent opinions made clear, S. 23 of the Manitoba Act contained virtually every legal guarantee the French community could want. From this perspective, it is not surprising that this section would constitute the "pierre angulaire" of the future of the French community in Manitoba. On the other hand, adoption of the new Charter was seen as a major breakthrough by the French-language education lobby within the French community, a lobby which at various times put pressure both on the SFM and the various levels of government in promoting its interests. Subsequent events in the judicial and

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[1] Penner to Proteau, Jan. 14, 1982; in ATG, Box 4, FLS - 1982-3.

[2] Jan.12, 1982 letter from Twaddle to Penner - ATG, Box 0149, Box 17, Bilodeau, R.)

* It is difficult to establish precisely when Joseph Magnet was first retained by the SFM. Perhaps the closest we can come is in Renald Guay's Examination, where he says that, immediately after the Forest Supreme Court decision, several francophones, including Lucille Roch and Ronald Bisson, were talking about "doing a follow-up to Forest" (p. 88); Guay adds that "it's as a result of those discussions that Lucille Roch, through our various meetings met Jos Magnet because we had been discussing other expert constitutional experts for the SFM. Jos Magnet was unknown to me and indeed unknown generally. At that point, when the discussions began, he didn't even have his call (to the Bar) yet. He was just starting to teach at the University of Ottawa and about to get his call, and she, through her husband, Michael Decter, met Jos Magnet on a trip and came back one day and said, 'I'm thinking of hiring Jos Magnet. What do you think of Jos Magnet?' I said, 'I don't know Jos Magnet'." (R. Guay, Examination for Discovery, pp. 91-2)

political arenas ensured that, in practice, the issue of S. 23 of the Charter would take a back seat to the issue of French-language rights under S. 23 of the Manitoba Act throughout the 1980's.

The SFM meets the government

The meeting with Howard Pawley requested by Gilberte Proteau immediately following his election was held in the Premier's office at 2 p.m. on Jan. 11, 1982. Turenne's summary of the meeting indicates that the following people were present: Premier Pawley, L. Desjardins, M. Hemphill (Minister of Education), G. Lécuyer, M. Decter (Clerk of the Privy Council), and Turenne himself (Roland Penner was absent.). The SFM was represented by its president, G. Proteau, its first vice-president, Léo Letourneau, and Executive Director Lucille Roch. The SFM position, a "Summary of main points to be discussed", is incorporated into the record of the meeting. Main issues raised included French-language services, the French-language services secretariat, and appointments to government boards and commissions. The SFM also proposed a "modernization" of S. 23 of the Manitoba Act, including amendments based on the new Charter. The SFM also requested that Bill 2 be abolished and replaced by adherence of Manitoba to Sections 16 to 20 of the Charter. (ATG, Box 19, FLS-SFM) Following the meeting, the SFM issued a press release outlining the issues raised. In the course of the meeting, G. Proteau also invited Howard Pawley to speak at the SFM's forthcoming annual meeting in March. Pawley formally accepted Proteau's invitation in a Jan. 15, 1982 letter in which he also reiterated his commitment regarding French-language services in Manitoba.[1]

[1] SFM, Box 41, 24.3/2.

It is at this meeting that the idea of a constitutional amendment was raised for the first time, though it was not yet linked to the Bilodeau case. In Turenne's words,

> It was a request on the part of the SFM for the government to amend the new Constitution of Canada so that Manitoba would have status similar to New Brunswick with regard to French language services. That is Section 16 to 23 of the Charter, which applies only to the Federal Government and to New Brunswick at the moment. Now half of these sections apply to language use in the legislature and the courts; and since that is already covered by Section 23, and the SFM's point was that it was only a cosmetic change; their point was to add the substance of the clause relating to services which is really the only thing that makes sense. To have just a narrow constitutional provision saying that you can use French in the courts and in the legislature doesn't give the community very much. What you need are services which flow from this legislation. Now the Charter of Rights recognizes that by including a provision on services, and New Brunswick voluntarily joined in.[1]

Turenne adds that at the meeting,

> most of the discussion centered around French language services. At the end, the President of the SFM raised the proposal for the constitutional amendment and said 'Could you look into this?' The Premier sort of looked at the text and said 'Well, you know that is a legal, technical kind of thing, and I think you should probably discuss that with the Attorney-General'. And they said all right.[2]

Three days later, on Jan. 14, Roland Penner, in a letter to Minister of Justice Jean Chrétien, suggested that Roger Turenne meet with Roger Tassé, the Deputy Justice Minister; Chrétien agreed.[3] Penner told Turenne he should "advise Mr. Tassé of our concerns and of the fact that such a proposal (constitutional amendment) is going forward".[4]

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[1] Turenne interview, p. 21.
[2] Ibid.
[3] Chrétien to Penner, March 15, 1982. In Turenne files, Jan. '82-May '83.
[4] Penner to Turenne, March 18, 1982, in Turenne files, ibid.

Turenne had, of course, spoken to Penner in the interim. He was also being consulted, or was offering advice, on the Bilodeau case as well. In a memo to Penner dated Jan. 15, 1982 entitled "The political implications of the Bilodeau case", Turenne advocated shifting Manitoba's position in the Supreme Court from supporting the "directory" interpretation of S. 23 to the "mandatory" interpretation.[1] Twaddle disagreed with Turenne's interpretation of the "mandatory" nature of S. 23[2]; He added that "the directory nature of S. 23 is the only argument available to support the validity of Manitoba statutes passed since 1890". In the meantime, Turenne informed Penner[3] of a discovery made by Warren Newman, a student of Stephen Scott's at McGill, that all of the pre-1890 statutes had been published in French.[4] This finding invalidated one of the major elements of the Manitoba Court of Appeal's *Bilodeau* judgment. Turenne pointed out the significance of this discovery, but cautioned Penner against exaggerating its importance.

The meeting between Penner and the SFM was set for Tuesday, Feb. 23, 1982. In preparation, Penner met with his senior advisors at his office at 11 a.m. Feb. 18, 1982. Present were Deputy Attorney-General Gordon Pilkey, Gil Goodman, Assistant Deputy Attorney-General, and Turenne. Discussions centered around Turenne's Feb. 8 memo to Penner, where Turenne had suggested implementation of an eight-point translation and court interpretation scenario before the Bilodeau case was heard by the Supreme Court, the rationale being that Manitoba would then be in a stronger position

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[1] ATG, 0149, Box 17, Bilodeau file.
[2] Twaddle to Penner, Feb. 15, 1982; ibid.
[3] Turenne to Penner, Feb. 5, 1982; ibid.
[4] The discovery is described in detail in a letter from Warren Newman to Vaughn Baird, Bilodeau's counsel. In Turenne files.

before the Court. It was agreed at the meeting that Penner would await hearing the SFM's position before taking any further decisions.

On Feb. 23, Penner, accompanied by Pilkey, Goodman, and Turenne, met with the SFM delegation, which included Proteau, L. Roch, R. Bisson (an SFM analyst), and Magnet. Proteau led off by presenting Penner with a letter signed by herself and Magnet, and obviously drafted by Magnet. Participants at the meeting immediately noticed the SFM's new, aggressive tone. Stating that the government "has no plan at all" for implementing official bilingualism in Manitoba, the letter went on:

> The Société is now seriously concerned that the Government of Manitoba take the necessary measures to insure compliance with its constitutional obligations.
> ...there is now no excuse for continuing the incapacity of the government to take steps to respond to constitutional imperatives.

The SFM therefore "seeks to initiate a consultative process" regarding this and other matters. Attached to the letter was a memorandum entitled "Implementing Official Bilingualism in Manitoba (II)", a summary of a 180-page report submitted by Magnet to the SFM earlier in February, which recommended and suggested ways of implementing a programme which would include:

- Abbreviation of the translation task;
- Contracting out translation;
- Amending Bill 2;
- Savings incurred in translation (estimated at $6 million) should be "devoted to the development of an infrastructure capable of supporting official bilingualism in Manitoba";
- Savings involved in not translating Hansard were estimated at $14 million; therefore
- Manitoba should spend $25 million over 5 years to develop "training facilities" for "an official bilingualism effort", including scholarships to encourage students to enroll at the law school in Moncton;

- Financial support for upgrading of French-language legal skills for Francophone lawyers;
- Develop French-language courses at the University of Manitoba law school;
- Introduce bilingualism in the courts and tribunals of Manitoba.[1]

Nothing in this agenda related to French-language services, despite the projected expenditure of huge amounts of money; yet this was the priority that had appeared to emerge at the SFM's Jan. 11 meeting with Pawley.

At the meeting itself, discussion revolved mainly around the difficulties encountered in translation of laws since *Forest* and the SFM's growing impatience regarding this situation. Discussion also centered around the Magnet proposals, as well as the possibility of establishing a translation school in Manitoba. At the end of the meeting, Penner pointed out that, although the possibility of a constitutional amendment had by then been mentioned several times by the SFM, he had as yet received no firm proposal. On the contrary, Penner had indeed received a written proposal; Turenne was to recall the sequence of events as follows:

> A month later (after the Jan. 11 meeting with the Premier), the SFM had a meeting with the Attorney-General. Again, as part of the preparation for this meeting they sent him a letter, which included, among many other things, the text of that proposed amendment. Well the Attorney-General didn't read it and he didn't think about it in any way, because when it came up again at the end of a meeting (this was in February 1982) they asked him 'What do you think about our constitutional amendment proposals?', and he said 'What constitutional amendment proposals?'. So then they said 'Well those we presented to the Premier last month, and he said we should discuss them with you.' Then he said 'Oh! well, I haven't had the chance to look at it. So maybe later we can talk about it.' End of discussion. Neither the Attorney-General nor the SFM followed up.[2]

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[1] ATG, Box 19, FLS - SFM.
[2] Turenne interview, p. 23.

Incredibly, the SFM ended the meeting by saying it would soon be submitting a proposal for a summer training programme for francophone lawyers enabling them to become legal translators, an idea that was also included in the Feb. 23 Proteau-Magnet letter; no mention was made of following up the idea of a constitutional amendment. To this extent, therefore, the evidence would seem to corroborate Turenne's interpretation. Magnet had proposed bringing to Manitoba "a team of legal translation experts", and an 8-point work plan was outlined.[1]

In a summary of the meeting[2], Turenne outlined his reactions to the SFM's letter and document and to the meeting itself:

> As you can see from the attachments, the supercilious tone of the letter and the many unrealistic recommendations in the memoranda were not conducive to a very fruitful discussion.
> The SFM's attitude appeared to be a departure from the constructive and realistic approach it has taken over the past year and a half. This is probably due to the influence of their legal counsel, Mr. Joseph Magnet...[3]

However, there appears to be no doubt that the meeting jolted Penner and his colleagues; for the first time, Penner came face-to-face with representatives of the French community and heard their concerns first hand. Up until this point, Penner had thought these concerns related almost exclusively to the lack of progress in translation since *Forest*, and his response to the Feb. 23 Proteau-Magnet letter reflected this perception. He informed the SFM of the proclamation of S. 462.1 of the Criminal Code in Manitoba, which had been approved by Cabinet on Feb. 24 to be effective July 1. Regarding translation of laws, Penner stated that, in terms of allocation of financial resources, "we give this matter high priority"; however, the main difficulty was

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[1] SFM minutes of meeting, in ATG, Box 4, FLS - 1982-83.
[2] Turenne to Desjardins, Lécuyer, and Decter, March 1, 1982; in ATG, Box 19, FLS - SFM.
[3] Id.

in "finding the right human resources". Penner, however, also reaffirmed his intention that S.23 become a reality in Manitoba.[1]

Within days after its meeting with Penner, the SFM again wrote to Penner "summarizing submissions made to the Attorney-General by the SFM" at the Feb. 23 meeting with him. Again, the summary focused on translation and included four elements: 1) "a team of translation experts should be brought to Manitoba for the summer of 1982" to "train a minimum of 8 francophone lawyers as legal translators"; these "experts" would also "act as management consultants to the existing Manitoba legal translation unit"; 2) translation of the Order Paper and Votes and Proceedings will proceed "prospectively immediately"; 3) a French-language services coordinator will be added to the Attorney-General's department, and report directly to the Minister; 4) a scholarship fund will be established immediately for Franco-Manitobans wishing to study law in Moncton.[2] Magnet apparently had his own agenda in that a short time later he put forth a formal proposal to the SFM[3] for an "intensive programme in legal translation" for the summer of 1982, at a cost of $112,435. Roch transmitted the proposal to Turenne's office on March 11, 1982.[4]000o

Turenne tore Magnet's proposal apart in two separate memos. On March 12, he wrote to R.H. ("Rae") Tallin and Tom Carson, Assistant Deputy Minister of Cultural Affairs, saying that he saw two flaws in the proposal: 1) "the assumption that we could easily attract eight Quebec Law graduates to come to Manitoba at the same time"; and 2) "what we need most are qualified revisers or senior translators". Perhaps, Turenne added, the government should "forget

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1 ATG, Box 19, FLS - SFM.
2 Proteau-Magnet to Penner, Feb. 28, 1982; in SFM, Box 41, File 24.8/1.
3 Magnet to Roch, March 4, 1982; in SFM, Box 41, File 24.8/2.
4 SFM, Box 41, 24.3/2.

the trainees and hire the profs."[1] Three days later, Turenne was more biting, writing that "Joseph Magnet's fellow professors from the University of Ottawa are all quite keen on getting well paid summer jobs in Winnipeg."[2] Tallin's response to Magnet's proposal was, however, generally supportive.[3] The issue appears to have been definitively resolved at an April 2 meeting between Tallin, Carson, Greg Yost, assistant to the Legislative Counsel, and Turenne; Turenne's account to Penner says the consensus at the meeting was that Magnet's translation proposal was "really a non-starter", since the most pressing need at that time was for one competent senior legal reviser.[4]

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On Feb. 24, the day after the meeting with the SFM, Turenne met with Philippe leQuellec, an Assistant Deputy Minister at the federal Department of the Secretary of State, along with Carson, regarding federal assistance in translation of laws. Specifically, Turenne asked leQuellec to organize the contracting out of the 950 pages of the 1980-81 Manitoba statutes. LeQuellec's response was positive.[5] However, when Tallin got wind of Turenne's proposal, he reacted strongly against it, and set out solid arguments in favour of recruitment of experienced translators.[6] The government was experiencing great difficulty in finding such qualified translators and attracting them to Manitoba; in the meantime, the backlog of legislation that should have been adopted in both languages was growing inexorably. Turenne responded to

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[1] ATG, Box 4, FLS - 1982-83.
[2] ATG, Box 19, FLS - Transl. of Stat., Nov. 1, '81-Dec. 31, '83.
[3] Tallin to Turenne, March 25, 1982; in ATG, Box 4, FLS - 1982-83.
[4] Turenne to Penner, April 6, 1982; in ATG, Box 19, FLS - Transl. of Stat., Nov. 1, '81 - Dec. 31, '83.
[5] Turenne to Penner, Feb. 24, 1982; in ATG, Box 4, FLS, 1982-83.
[6] Tallin to Penner, March 2, 1982; ibid.

Tallin on March 5, 1982, underlining the fact that the main problem facing the government at that time was invalidation of statutes by the Supreme Court.[1]

As if to underscore the point, Roland Penner himself, in a statement to the House on March 8, 1982, admitted that in the two years since *Forest*, and the expenditure of $400,000., only 9 of 450 statutes adopted had been translated. He anticipated that the cost of complying with the *Forest* ruling would be $2.2 million. On the same day, perhaps as a reaction to the Turenne-Tallin debate regarding the benefits of hiring translation staff or contracting, or perhaps in frustration at not having direct control over the administration of legal translation, Penner wrote his colleague Eugene Kostyra, Minister of Cultural Affairs, a memo requesting the translation of 905 pages of statutes and 1,600 pages of Regulations by September, 1982.[2]

A few days later, Penner set out his priorities in statutes to be translated.[3] There is evidence the Penner memo to Kostyra generated great anxiety within the Department of Cultural Affairs, since Kostyra subsequently recommended that "André Martin be fully in charge of translation services", including legal translation.[4]

Over the next few weeks, Penner was to become progressively more alarmed with the slow rate of translation of statutes, given that the date for the Supreme Court's hearing of the Bilodeau case was slowly drawing nearer. On April 13, 1982, he impatiently pointed out that "The matter of obtaining and keeping legal translation staff is becoming more urgent as each week passes." He suggested a senior official, presumably Turenne himself, travel to Ottawa to meet with officials of the Secretary of State at the highest level; if this yielded

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[1] Ibid.
[2] ATG, 0149, Box 17, Bilodeau, R.
[3] Penner to Carson, March 19, 1982; in ATG, Box 19, FLS - Transl. of Stat. - Nov. 1, '81 - Dec. 31, '83.
[4] Goodman to File, March 11, 1982; ibid.

no results, a ministerial intervention should be considered.[1] Turenne responded on April 20, saying that Tom Carson had indeed met with Secretary of State officials, who had said their Department could not bail out Manitoba with its own resources; however, the department had identified six individuals who could perhaps provide some assistance to Manitoba. If contact with these individuals yielded no results, Turenne agreed with Penner that the ministerial route would have to be pursued.

The situation did not improve in the short term. On May 7, Kostyra wrote Penner informing him of his department's failure in identifying outside expertise, in Ottawa as elsewhere.[2] Three days later, Turenne described the translation situation in the following terms:

> ...the hopeful news is all long-term. The bad news is all short-term. For the moment, we are in a very difficult situation and it is unlikely that things will get any better before the Supreme Court hears the Bilodeau case. This underscores the urgency of our reaching a decision on the question of a constitutional amendment.[3]

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Following his meeting with the SFM on Jan. 11, Pawley had established a French-Language Services Committee at the Cabinet level. This committee was chaired by Pawley himself, and included Desjardins, Adam (as of Feb. 26, 1982), Lécuyer, and Turenne.[4] On Feb. 23, the committee, along with Penner and Decter, discussed and finalized a draft Policy on French-Language Services in the Government of Manitoba. This draft was incorporated in a submission to

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[1] Penner to Turenne, ibid.
[2] ATG, Box 4, FLS - 1982-83.
[3] ATG, Box 4, ibid.; emphasis mine.
[4] EC 0016, Box 8, Oct.-Dec. 1983.

Cabinet by the Premier adopted on March 3, 1982[1]; the policy was to be announced at the SFM's annual meeting on March 21, 1982. A policy on multiculturalism was adopted along with the French-language policy. Turenne established the cost of the proposals to be announced at a modest $103,000.[2]

Meanwhile, Turenne, in the heat of these various events, and conscious of the dilemma posed by Bilodeau, slowly began to piece together a strategy. Later he was to recall the process as follows:

> Now exactly when proposals for a Bilodeau-related constitutional amendment first emerged, I'm not sure. There was a reference in one discussion - I think it was by Kerr Twaddle who mentioned something like 'You know we could always amend the Constitution', sort of as a joke. But that tweaked something in my mind and so I started looking into it, because I was still struggling with the idea of how to get out of the Bilodeau connundrum (sic)...
>
> At the next meeting to discuss strategy in Bilodeau, I just made a remark to the effect that one way out of it would be to change the Constitution, to change Section 23. It was at the end of the meeting and everybody laughed and thought it was a joke... The Attorney-General didn't laugh, not as much as the others anyway. I got a few looks, you know, 'Roger, mind your own business. You're not a lawyer'. So I was the wrong person to have suggested that.
>
> But unbeknownst to me, at the same time that I mentioned this, the Attorney-General had just received a letter from Stephen Scott from Montreal. He is a constitutional lawyer and one of the intervenors in the Bilodeau case, acting on behalf of the anglophones of Quebec. Now Stephen Scott is perhaps the one person who immediately saw the full implications of the Forest case...[3]

Turenne's own memory appears to have failed him in this interview. Indeed, the record shows that Penner received the Scott letter in question on March 9, 1982 (though he may have had one or two telephone conversations with him

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[1] EC 0016, Box 7.
[2] Turenne to Pawley *et al.*, March 19, 1982; in ATG, Box 4, FLS - 1982-83.
[3] Turenne to P. Thomas, op. cit.

before this date); Scott was to respond only some weeks later. In the meantime, Penner had received a memo from Turenne himself dated March 2, 1982 proposing a strategy regarding constitutional amendment. The SFM proposals, Turenne says, "would not pose too many problems". However, Turenne suggested that the government should not agree too quickly to a process of constitutional amendment, and it would "certainly be premature to do so before the Bilodeau case is resolved". Yet Turenne went on to propose a *quid pro quo*:

> In return for entrenchment (of services), we might obtain their (SFM's) agreement to a constitutional amendment relaxing the requirements of Section 23 to include only the translation of new Public Acts, certain Regulations, and the Legislative Journals. Successful negotiations with the SFM would open the way to Federal concurrence and eventually in the saving of some millions for the Province.[1]

The idea of a *quid pro quo*, entrenching French-language services in return for a "relaxing" of the strict requirements of Section 23 regarding availability of legislation in both languages was to become central to the government's subsequent strategy.

A few days later, Penner received Scott's March 9 letter. Prof. Scott requested Penner's support for the "Positive Action Committee", a group representing Quebec anglophone language interests, receiving intervenor status in the Bilodeau case; such support should be granted, according to Scott, because of "our proposed contribution to the solution of the complex issues" (emphasis in text). Specifically, the group intended to "draft and propose a constitutional amendment to validate unilingual Manitoba legislation for an appropriate period...and to propose also the mechanism appropriate to its

[1] ATG, Box 19, FLS - SFM.

enactment".[1] Where Turenne and even Twaddle were thinking along the lines of a *quid pro quo,* a point of view that would come to be shared and even promoted actively by the SFM, Scott had no feel for the complexities of the Manitoba situation; his only concern was with validation of statutes and with restoration of respect of French-language rights in the limited way in which they were set out in S. 23. The possibility of radically changing S. 23 in any way does not appear to have occurred to him; indeed, Scott's position would certainly have been seen as inimical to the Franco-Manitoban community's long-term interests in terms of the strategy that the SFM eventually came to adopt. In any case, Penner asked Scott to "please forward a copy of the proposed constitutional amendment to my office and to Mr. Twaddle".[2] Penner subsequently informed him that he had "written the Minister of Justice asking for a meeting to discuss a possible constitutional amendment designed to validate unilingual Manitoba legislation for an appropriate period of time". Penner again requested a draft constitutional amendment.[3]

Penner's letter to federal Minister of Justice Jean Chrétien is dated March 25, 1982. Penner summarized the status of the Bilodeau case and concluded that

> it is deemed urgent that the Government of Manitoba discuss with the Government of Canada, the possibility of a constitutional amendment to Section 23 which, while retaining the essential nature of the requirement that the statutes be enacted in both languages, would not subject this province to the far-reaching implications of a strict interpretation of the presently worded Section 23.[4]

Penner suggested that a meeting be held with the Minister of Justice; it was eventually set for July 6.

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[1] ATG, Box 4, FLS - 1982-83.
[2] Penner to Scott, March 12, 1982; ibid.
[3] Penner to Scott, March 24, 1982; in Turenne file, Jan. '82 - May, '83.
[4] EC 0015, Box 7, 042.

On April 7, 1982, Penner received Scott's draft constitutional amendment. Scott proposed a 20-year time limit for translation of all Manitoba statutes as required under S. 23, and a further 10 years for translation of records and journals. Scott referred to his telegram to the Governor-General, which had proposed "the securing of an Imperial Statute to regularize the position in Manitoba". He added, "If it had been up to me, you would have been entirely spared the current litigation and the need to promote an amendment now".[1]

Scott's position would have amounted to a virtually painless legitimization of unconstitutional behaviour by Manitoba for almost a century. It would also have thrown away one of the few levers available to the francophone community in obtaining a better deal from the province in the future. Scott, of course, did not know or care about these implications, his perspective being a narrow, legalistic one. It was diametrically opposed to the strategy the SFM was eventually to adopt.

Pawley speaks to the SFM

Several strands of policy regarding language and multiculturalism developed by the NDP government after its November, 1981 election came together in the afternoon of March 21, 1982. At 3.45 p.m., before several hundred SFM delegates assembled at St. Boniface College for the organization's annual meeting, Premier Pawley rose to give one of the more pleasant speeches of his first term of office, and certainly one of the best received. Among his first words were the following:

> It is significant that the subject of French-English relations in Manitoba is no longer a matter for political partisanship, that the principle of providing French language services is now accepted on

[1] ATG, Box 4, FLS - 1982-83.

both sides of the House - something that would have been unthinkable a few decades ago.[1]

The Pawley plan unveiled at the SFM meeting contained the following elements:

1) French language services would be provided where the French population is concentrated in Manitoba. (A map outlining these areas was subsequently published by the French Language Services Secretariat.)
2) Correspondence received by the government in French would receive a reply in French.
3) Forms, certificates, and so on would be published in French.
4) Drivers' licenses would be issued in both languages.
5) Priorities in the development of French-language services government services would be provided to the population in areas with high concentrations of French-speaking citizens; priority would be on services to youth and senior citizens.

Finally, Pawley again mentioned the proclamation of S. 462.1 of the Criminal Code, which had previously been announced.

In a burst of enthusiasm, the SFM delegates rose as one in a thundering standing ovation; many had tears in their eyes. Here, finally, they felt, they had a provincial leader who understood them, whose sense of justice and fair play would not only lead him to redress past wrongs but who would even, slowly perhaps but surely, begin to create conditions in their province which would allow them to survive and thrive as Francophones. Two days later, Pawley circulated the policy to all his Ministers and Deputy Ministers.[2]

Print and electronic media coverage of the Pawley speech was extensive. One group reacted quickly but negatively: members of the Union of Manitoba Municipalities, the mayors and reeves of the Interlake region, condemned Pawley's plan to extend French-language services "by an almost unanimous

[1] ATG, Box 19, FLS - SFM
[2] SFM, Box 41, 24.3/2.

show of hands".[1] Editorial reaction, however, at least in the Winnipeg area, was unanimously supportive of the Pawley plan.

At the same general meeting of the SFM, two persons were elected to the organization's new Board who were to play key roles in subsequent events: Léo Robert, a schoolteacher from Ste-Agathe, Manitoba was elected President, and lawyer Rémi Smith was elected director. Robert became chief spokesman for the organization. Smith's role was more complex and less obvious; in his associate Renald Guay's view, it was as follows:

> To a large extent, and I want to choose my words carefully because I am not trying to demean anyone, but to a large extent Rémi would be ... the key player, or ... the person who holds it all together. That was my perception then and indeed it is still my opinion today... Because he had flexibility that no one else had. Rémi Smith was the only individual who was always there at that time. It didn't matter what was happening, he could be there. If they had to have a political discussion he could be there, either as a member of the Board or as Vice-President of the SFM, he could just put that hat on, right, but he walked into a meeting at the Department of Justice in Ottawa and there's twelve lawyers on the other side. He could say, 'I'm the lawyer of the SFM', same thing with the Province (when) he was meeting Roland Penner... He is the guy that tied it all down and held it all together on all fronts.[2]

The government explores its legal options

In the course of the winter, Penner had requested an opinion from Kerr Twaddle regarding the Bilodeau case. On April 14, 1982, Twaddle informed Penner that Bilodeau's Supreme Court hearing date had been set for Nov. 2, 1982. Subsequently this date became critical, since the idea of a constitutional amendment, once linked to the Bilodeau case, became linked at the same time

[1] *Winnipeg Free Press*, March 25, 1982.
[2] R. Guay, Examination for Discovery, Feb. 25-27, 1985.

to the vagaries of Court decisions in it. In this context, the hearing date became a deadline.

Twaddle's 14-page opinion, submitted on the same date and entitled *The implications of the challenge to the validity of Manitoba statutes and the available options*, consisted of a review of the consequences of an adverse finding by the Supreme Court, remedial action that might be taken by the Manitoba government, and possible constitutional amendments to avoid an adverse ruling. Twaddle added that his instructions from Penner had included the following:

> You have also asked that in considering possible constitutional amendment I, in consultation with Messrs. Tallin and Turenne, give thought to amending the requirements of Section 23 in such a way as to make them less onerous (to the Province), but still responsive to the needs and rights of the French speaking community.[1]

Twaddle began by summarizing the gravity of the province's position in this way:

> It is open to the Supreme Court to find:
> a) That all statutes not enacted in both English and French are invalid, or
> b) That all statutes passed prior to December 13, 1979 are, of necessity, valid, but those subsequently enacted in English only are invalid, or
> c) That all statutes passed prior to its decision in *Bilodeau* are, of necessity, valid, but those enacted subsequently in English only are invalid.[2]

Twaddle described the implications of a finding of invalidity, total or partial, in these words:

> Not only are the statutes themselves invalid, but institutions created by them would be non-existent and the abolition of the legislative

[1] Twaddle opinion to Penner, April 14, 1982, p. 2.
[2] Ibid., pp. 2-3.

> council would have no validity. Thus the present legislature would have no validity. Thus the present legislature would be totally incompetent as would all Courts not created prior to or by the Manitoba Act 1870. A legislative assembly would have to be elected under the provisions of the 1870 Act and a legislative council appointed. Even if this could be done, the time factor in doing so and in replacing the invalid statutes with statutes printed and published in English and French would result in total chaos.
>
> If the Supreme Court were to find all Manitoba statutes passed prior to December, 1979 valid on the basis of necessity, the constitutional problem would be alleviated, but not solved. The present legislature was elected pursuant to The Elections Act, 1980, which was enacted in English only, although subsequently printed and published in French and retroactively enacted under the provisions of Ac Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes. The validity of this procedure might itself be questioned as it was designed to effect after the fact compliance with directory requirements. Further attacks may then be launched against statutes passed by the present legislature even if passed in both official languages. Thus even though chaos will have been avoided uncertainty as to the status of the present legislature and the validity of statutes passed by it will remain.[1]

Regarding a possible constitutional amendment, Twaddle pointed out that Section 43 of the 1981 Constitution Act allowed an amendment relating to the use of the English or French language in a province could be made by the federal Parliament and the legislative assembly of the province involved. However, "The difficulty is that if the Supreme Court rules that the statutes of Manitoba are invalid, the present legislative assembly will likely not be properly constituted and vested with authority to pass the necessary resolution."[2]

Assuming that a constitutional amendment was possible under S. 43 of the Constitution, what, then, should be the content of this amendment?

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[1] Ibid., p. 4.
[2] Ibid., p. 5.

> Obviously provision should be made for the validation of all Manitoba statutes hitherto enacted in English only. Presumably the federal government would only agree to this on condition that some or all existing statutes are translated into French within a stipulated period. What that period should be must depend on the advice which you receive from those responsible for translating the statutes.[1]

At this point, Twaddle injected the opinions of Tallin and Turenne:

> Mr. Tallin would prefer that the constitutional amendment itself not impose the obligation to translate prior statutes, but that be done pursuant to an agreement with the federal government and the Société Franco-Manitobaine. Mr. Turenne believes the Société would agree to a limited number of existing statutes only be translated, substantially reducing the work in and cost of translating past statutes. Obviously the Société would require something in return for its agreement to which I will refer later.[2]

Twaddle went on to consider alternatives regarding future statutes; perhaps, for example, it might be possible to modify the requirement "that all statutes be enacted in both official languages be modified so that only those statutes of relevance to the French speaking population need be enacted in French".[3] Twaddle set out criteria whereby the statutes to be printed and published in both English and French could be selected; however, on reflection, Twaddle concluded this approach should probably not be pursued, since

> "It would be naive to think that the federal government would agree that the Manitoba legislature could decide which statutes should be in both languages and which in English only. This would enable the English speaking majority, if so minded, to avoid the requirement."[4]

Twaddle then outlined the actions that would be taken immediately. First, Tallin would draft a possible constitutional amendment "which would

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[1] Ibid., p. 7.
[2] Ibid., p. 8; emphasis added.
[3] Id.; emphasis added.
[4] Ibid., pp. 9-10.

have the effect of validating all existing statutes, including those passed at the present session, and making it clear that statutes passed after, say, January 1, 1983 would be invalid unless enacted in both languages". Turenne, on the hand, "will prepare a list of those existing statutes which will have to be translated by agreement to which must be added all statutes passed since December 13, 1979".[1]

Finally, Twaddle described what might be the essence of an agreement with the Société Franco-Manitobaine, outlining the possible nature of the *quid pro quo* first raised as a possibility by Turenne:

> In return for waiving their existing right to have all statutes translated the Société Franco-Manitobaine would require a constitutional extension of their language rights. This will be included in the draft amendment to be prepared by Mr. Tallin, but essentially would give a constitutional right to French speaking Manitobans to receive bilingual services from government and its agencies where there is a significant demand for such a service or where it is reasonable due to the nature of the office that communications be in both official languages. These are somewhat similar to the constitutional rights afforded by the Constitution Act, 1981, with respect to the federal government in western Canada.[2]

Having outlined this option, Twaddle immediately cautioned against the dangers in it:

> The difficulty with the suggested extension of constitutional rights is that the extent to which bilingual services must be made available is unknown. At present the government can itself decide and alter the provision of such services on grounds of cost or lack of demand as perceived by the government. If the obligation is constitutionally entrenched the Courts will determine what 'significant demand' is and when 'it is reasonable due to the nature of the office'. If the obligation is construed more widely than the government thought

[1] Ibid., pp. 10-11; emphasis added.
[2] Ibid., p. 11.

would be the case, the government is nonetheless bound by the interpretation of the Courts.[1]

Twaddle concluded by summarizing the two options which, in his view, were open to the government:

> 1) To proceed to respond to Bilodeau's appeal in the hope that the Court will decide that section 23 is directory only, whereupon the obligation to translate will be unenforceable. Even if the Court found the requirement mandatory it might find existing statutes valid out of necessity.
> 2) To seek the constitutional amendment now to ensure (as far as possible) that chaos would not result from an adverse decision. This would mean conceding that the requirement of enactment in both languages would be mandatory in the future and agreeing to a guarantee of extended language rights. Such amendment would have to have the approval of the federal government and likely that of the Société Franco-Manitobaine.[2]

After laying out these two options, Twaddle refrained from recommending one or the other, beyond saying that the two options should not be proceeded with at the same time. There is no doubt, from the tone of his analysis, that he favoured the first option; however, he did not argue strongly in favour of one option over the other.

In many ways, this is a seminal document in the language crisis. Many important elements of the crisis are found in the Twaddle opinion: the risks facing the government in pursuing the judicial route, up to and including "total chaos", the possibility of negotiations with the SFM, the role of the federal government, the possibility of entrenchment of French-language services, and the difficulty of defining with precision what such services might mean to the Courts.

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[1] Ibid., p. 12.
[2] Ibid., p. 12.

At the outset, therefore, Penner was faced with two options which appeared mutually exclusive: pursuing the Bilodeau case in the courts and hoping for a victory, however limited, which would avoid "total chaos" in the province; or negotiation of a constitutional amendment which would, on one hand, reduce the province's obligations, particularly the translation of past laws, and, on the other, recognize French-language rights in the form of the provision of French-language services in areas of significant demand in the province. At the outset also, Penner received advice that supported the idea of a constitutional amendment satisfactory to the French-speaking community of Manitoba: Twaddle himself recognized the validity of such an approach, though on balance it was not his preferred option; both Tallin and Turenne, on the other hand, clearly supported the idea of a negotiated constitutional amendment.

Another consideration must be added, a consideration which must have weighed heavily in Penner's overall analysis of the situation: Twaddle's conviction that Manitoba had a good chance of winning in the Supreme Court ("...there remains an excellent chance of success in *Bilodeau* before the Court..."[1]) was surely balanced, in Penner's mind, and among his departmental advisors, by the fact that Twaddle, as Counsel for the Province of Manitoba, had already lost once before the Supreme Court, in the *Forest* case in 1979. Indeed, there is no allusion, in Twaddle's April 14, 1982 opinion, to the federal dimension involved, specifically the links between Section 133 of the B.N.A. Act and S. 23 of the Manitoba Act. Yet such links could surely not be ignored by the Court. This means that a decision on the meaning of S. 23 in terms of the rights of the French-speaking minority of Manitoba had a direct impact on the

[1] Ibid., p. 11.

rights of the English-speaking minority in Quebec; the Court had already clearly highlighted this link in its *Forest* (Manitoba) and *Blaikie No. 1* (Quebec) decisions delivered on the same date, Dec. 13, 1979. This dimension of the Bilodeau case was ignored in Twaddle's April 14 opinion to Penner.

On April 14 as well, Penner received from Rae Tallin the draft constitutional amendment mentioned in the Twaddle memo. This first draft already anticipated the *quid pro quo* that might be required in exchange for the abandonment of the requirement that all previous Manitoba laws be translated. Thus, the draft included provisions whereby French-language services would be provided by the provincial government where significant demand existed; in addition, French-language services would be provided by school boards and municipalities, where significant demand existed.[1]

The next day, after pondering these various conflicting opinions, Penner wrote to Prof. Dale Gibson of the Faculty of Law at the University of Manitoba requesting his opinion on the three documents he now had in his possession: Kerr Twaddle's April 14 opinion, Prof. Scott's draft constitutional amendment, and Tallin's draft amendment.[2]

A few days later, Turenne wrote Penner outlining the pros and cons of the two options described by Twaddle. Turenne concluded that "We should proceed with the constitutional amendment, irrespective of the Bilodeau case", for several reasons; in particular, Turenne estimated that the cost savings to the province would range from "$2 to $25 million depending on how the courts would interpret past as well as future obligations". Turenne also recommended that, in the event the Bilodeau case was proceeded with, "Twaddle should be

[1] ATG, Box 17, Bilodeau, R.
[2] Penner to Gibson, April 15, 1982; ibid.

asked to base his defense on a 'mandatory' interpretation of Section 23, coupled with a validation of our laws based on the theory of necessity"[1].

In the meantime, Penner was becoming impatient with the lack of coordination between the activities of the Cabinet's French Language Services Committee and his own department; he deplored the "unnecessary duplication and overlap" between the Cabinet Committee and his department: "... the strategy on the Bilodeau case and the proposed constitutional amendment should be the subject, I believe, of separate meetings originating in this Department".[2]

On May 3, 1982, at 11 a.m. the Cabinet Committee met in Room 204 of the Legislative Building. Members of the Committee at that point included Pawley, Desjardins, Penner, Adam, Lécuyer, Decter, and Turenne. No minutes of this meeting exist in the files; however, the agenda circulated by Turenne on April 26 indicates that two items were to be discussed: first, the Committee was to receive and discuss an update on implementation of French-language services since the Premier's SFM speech; secondly, the committee was to debate "strategy on the Bilodeau case and a proposed constitutional amendment". As background for the meeting, three documents were circulated: a summary of the issues involved; Twaddle's April 14 memo; and Tallin's draft constitutional amendment. Presumably it is at this point that Penner's concerns regarding coordination came to the fore; it can also reasonably be assumed that this is the point where Penner became formally responsible for developing strategy on the constitutional amendment.

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[1] Turenne to Penner, April 21, 1982; in ATG, Box 4, FLS - 1982-83.
[2] Penner memo to File, in ATG, Box 18, FLS - Misc.

Penner received Gibson's opinion on May 10, 1982. The document contained a "general assessment of the issues involved in the *Bilodeau* case, their consequences, and the various recourses now open to the Government of Manitoba".[1] Gibson began by stating that

> I share Mr. Twaddle's opinion that if the case proceeds to a final determination by the Supreme Court of Canada the constitutional validiy of the statutes in question will probably be upheld. However, I do not regard that as an altogether foregone conclusion. While, as a practical matter, the Court will certainly want to find a way of avoiding the chaos that would attend a ruling that all unilingual Manitoba statutes are nullities, strong arguments can be made, from a purely legal point of view, in support of Mr. Bilodeau's position. Where a constitutional requirement that is neither ambiguous nor discretionary governs the manner in which certain laws are to be enacted, the normal consequence of non-compliance is invalidity.[2]

After describing the two lines of argument that could be used to avoid invalidity, the "directory vs. mandatory" argument and the "necessity" argment, Gibson concluded that there remained, in his view, a "significant risk" that the Supreme Court would not find the requirement of bilingual legislation in S. 23 to be directory.[3] He disagreed with Twaddle that a constitutional amendment should await the disposition of *Bilodeau*: "it is wiser to seek an amendment before the Supreme Court renders its decision", since

> there is a small but significant risk that the Court would rule in Mr. Bilodeau's favour. The consequences of a ruling that all or most Manitoba statutes and regulations are unconstitutional would be chaotic. Mr. Twaddle says that in that event, 'it is inconceivable that a way could not be found to validate existing laws,' by which I assume he means a retroactive constitutional amendment. But the uncertainty that would prevail until a suitable remedy could be found would be an open invitation to anarchy.[4]

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[1] D. Gibson opinion, May 10, 1982, p. 1; in ATG, Box 4, FLS - 1982-83.
[2] Ibid., p. 2.
[3] Ibid., pp. 4-6)
[4] Ibid., p. 7.

After considering other elements which contributed to the "risk" factor, Gibson concluded that

> These factors, together with the fact that the Government of Manitoba may not wish to be seen publicly advocating a restrictive or grudging approach to the constitutionally entrenched rights of Manitobans, seem to me to provide strong reason for seeking an immediate solution to our language-of-legislation problem through constitutional amendment.[1]

Regarding the draft constitutional amendment that Penner had in hand, the Tallin draft, Gibson found it "generally satisfactory as to content, subject to changes that may have to be made as a result of negotiation".[2] Finally, Gibson pointed out "certain constitutionally questionable provisions" of Section 2 of the Lyon administration's Bill 2 and recommended that it be amended, since "That section gives priority to the version first introduced in the Legislature (usually English), which certainly does not comply with the spirit of the language guarantee, and might even be *ultra vires*".[3] Similarly,

> "there is considerable doubt about the constitutional validity of Section 4 of the same Act, which authorizes full effect to be given to a translated version of a statute or bill first introduced in one official language if that version has been certified as a true translation by a person designated by the Speaker... this provision may well be unconstitutional."[4]

The Gibson opinion proved to be a turning point in the government's approach to the Bilodeau case; henceforth, *Bilodeau* and the idea of a constitutional amendment became clearly intertwined. Henceforth the Pawley government was to adopt the idea of a constitutional amendment as a way out of a constitutional impasse while maintaining, extending, or "modernizing"

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[1] Ibid., p. 9.
[2] Ibid., p. 14.
[3] Ibid., p. 15.
[4] Id.

the constitutional rights of the French-speaking minority as entrenched in the 1870 Manitoba Act. In Turenne's view, the Gibson memo was the turning point in the government's decision to abandon the Court route:

> [T]hat crucial point arrives in mid-May, when Gibson presents his memo and says 'There are pros and cons, but the pros outweigh the cons.' Also, for the first time, a lawyer whom the Attorney-General respects, says that Bill No. 2 that the Conservatives had passed is probably unconstitutional.
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> One of the very first points I made in January '82 to the Attorney-General was that we should not pay too much attention to Bill No. 2, we should probably abolish it, or modify it, because in my view it was unconstitutional. Well, I'm not a lawyer, and he didn't buy it at all. Not only didn't he buy it, he actually made an amendment (to it) in the Session of 1982. It was only a technical amendment, but it was a way of recognizing the validity of Bill No. 2. Well along comes Gibson who says 'No, this does not work.' Then the Attorney-General started to take it seriously and, of course, the ultimate conclusion was that in Bill 115 ... there was a clause to abolish Bill No. 2.
>
> As far as I could see, the turning point came at (a) meeting in May in which Dale Gibson and Kerr Twaddle, and Rae Tallin, and Gil Goodman (the Assistant Deputy Minister) and Gordon Pilkey (Deputy Minister) and myself, and also Greg Yost (who was Assistant Legislative Draftsman) participated. It appeared that the weight of Gibson's argument is the one that swayed the Attorney-General. The Attorney-General didn't give a final decision that we should go with a constitutional amendment, because that wasn't his decision to make. He would have to consult with Cabinet. But he did say something like: 'Well O.K., let's see what kind of text we can come up with. What would a constitutional amendment look like if we should decide to go ahead with one.' And then he made up a drafting committee, made up of what came to be known as the three T's or the terrible T's: Twaddle, Tallin and Turenne.
>
> Immediately after that meeting, we got together in Tallin's office and we spent a couple of hours thrashing ideas... Twaddle was still not sold on the idea of a constitutional amendment. He thought the whole exercise was nonsense. And my point was, and I had to keep on arguing, you know maybe you don't think it's a good idea, maybe I think it's a good idea, but that is not relevant, that's a decision for the politicians to take. Our job is to draft a text, and then let them

decide whether to go ahead or not. So it took longer because of this conflict of views.
(...)
The major debate, the major argument, was what kind of amendment we were going to have. In the previous discussions, before the drafting committee was set up, I had always argued that a constitutional amendment validating the statutes would not wash at all with the French community. It was saying 'you know we have broken the law for 90 years and now we will make it all right simply by passing retroactive legislation'. It didn't have a hope in hell. Even if you provided a delay for translating the laws in the future, and even a certain amount of backlog from previous legislation, the attitude in the French community was - and I knew that because I always tried to keep plugged in - 'What's in it for us? Why on earth would we look at an out-of-court settlement?'

They were so sure that the Court of Appeal decision was nonsense, that they felt 100% confident that by simply going to Court they would get what they wanted. This was always an impediment once the negotiations got started because they always thought...that they had the ace card. They had this safety net, they could negotiate as hard as they wanted with the government and if it didn't work, it didn't matter because they would go to Court and win anyway. Now that makes for difficult negotiations. And, of course, they were encouraged in this view by Joe Magnet.

(On the other hand) The point of view in the Attorney-General's office - and here I am not speaking of the Attorney-General himself, but of the advisors, and the lawyers in the department - was that if we have a constitutional amendment and we agree to legislate in English and French in the future, this was a great favour that was being done to the French community.
(...)
And this is also why I knew that unless they had services as a quid pro quo, there was no way that they would get involved in the discussion process, they would just go right to Court.
(...)
There was considerable hesitancy, and Twaddle's argument was: 'You're mixing apples and oranges, here we're trying to solve the Bilodeau case with a technical amendment to the Constitution to regularize the situation, and you come along talking about French services and the Charter of Rights. These are two separate things.' My argument was that they may be two separate things; but unless you link them, you are not going to get anywhere.[1]

[1] Turenne interview, pp. 29-32.

There is a discrepancy between the process as described by Turenne and the documents found in the files. As mentioned above, a draft constitutional amendment had already been forwarded to the Attorney-General by Rae Tallin on April 14, 1982; Gibson himself in his May 10 opinion commented on it. However, it is possible that Turenne had not received a copy of this document, that Penner ignored it in instructing his "advisory group" to come up with a draft, or that Tallin used it merely as an input to the "advisory group". In any case, a draft constitutional amendment was finalized by Tallin, Gibson, and Twaddle on May 20, 1982.[1]

At that point, Penner decided to bring the issue to Cabinet. Twaddle sent Penner a "Rationale for a Constitutional Amendment" on May 25, 1982[2], incorporated into a Cabinet Paper dated May 26, 1982[3] in which Penner formally requested a mandate to negotiate a constitutional amendment.

The Cabinet Paper briefly described the background to *Bilodeau*. In Penner's words, "The Province of Manitoba faces a critical situation"... The issue was "the validity of all statutes of Manitoba since 1870". There was a "significant risk" of a contrary ruling, therefore of invalidity" of statutes. Penner also warned of the possibility of "legal chaos", based on the opinions he had received from Twaddle and Gibson; as for negotiations with the Francophone community, the *quid pro quo* would be entrenchment of services. Penner recommended that

> After consultation with leading members of the Franco-Manitobaine community...the Attorney-General be authorized to meet with the

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[1] Tallin to Penner, May 21, 1982; in ATG, Box 17, Bilodeau, R.
[2] Ibid.
[3] ATG, Box 4, FLS - 1982-83.

> Minister of Justice as soon as possible to propose a constitutional amendment as outlined in Appendix A.[1]

Cabinet considered the paper on June 2, 1982; it agreed that consultations with the French-speaking community should be undertaken, but on the basis of a revised draft constitutional amendment which would exclude any reference to French-language services. This is made clear in a subsequent Cabinet Paper, dated October 7, 1982:

> At that time [May 26], Cabinet mandated the Attorney-General to discuss with representatives of the Franco-Manitoban community a proposal devoid of any reference to French Language Services.[2]

In preparation for the June 2, 1982 Cabinet meeting, Turenne had also submitted to Penner an estimate of savings in translation costs which would result from Penner's recommended approach, as well as timetables that might be discussed with the French-speaking community regarding those statutes that would still have to be translated.[3] In addition, Tallin sent Penner a modification to the May 26, 1982 draft including rules of practice and procedure for courts and quasi-judicial tribunals, in order to bring the draft in line with the Supreme Court's April 6, 1981 *Blaikie No. 2* decision.[4]

In May, 1982, La Société Franco-Manitobaine set up a Politicial Action Committee. The stage was now set for a year of negotiations between the government and the French-speaking community of Manitoba that was to end with the conclusion of a tri-partite agreement on an amendment to the Manitoba Act between the federal and provincial governments and the Société Franco-Manitobaine.

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[1] Ibid.
[2] Ibid.
[3] Turenne to Penner; in ATG, Box 17, Bilodeau, R.
[4] Turenne files, Jan. '82 - May '83.

Chapter IV

The Year of Negotiating Dangerously

With the mandate received from Cabinet, preparations for negotiations began in earnest. On June 8, 1982, Turenne forwarded to Penner a list of statutes to be proposed for translation to the SFM, in the form of a Schedule to be attached to the draft constitutional amendment.[1] Penner, in the meantime, was constantly being reminded of the major problems plaguing the translation process. On June 9, 1982, Yost sent Tallin a memo summarizing the status of the translation effort; Tallin sent it on to Penner on June 14, pointing out the delays met and the need for a "considerable increase in our translation resources".[2] Despite this information, however, and the impending meeting with the SFM, Penner indicated to Twaddle that "no delay (should) be requested at this time" in the Bilodeau hearing before the Supreme Court, which was still set for Nov. 2, 1982.[3]

On or about June 10, 1982, Penner wrote to the SFM requesting a meeting with the organization for "next week".[4] This crucial meeting, which launched what was to become a long and arduous process lasting an entire year, was held on June 17, 1982. At its board meeting the day before, the SFM decided informally to set up a "political committee" to meet with Penner; this three-person committee included the president, Léo Robert, a director, Rémi Smith, and the executive director, Lucille Roch.[5]

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[1] ATG, Box 19, FLS - SFM.
[2] ATG, Box 4, FLS - 1982-83.
[3] Penner to Twaddle, June 15, 1982; in ATG, Box 17, Bilodeau, R.
[4] SFM Board minutes, June 16, 1982; in G/S, Box 6, File - SFM Minutes.
[5] Léo Robert, Examination for Discovery, pp. 154-5.

On June 17, 1982, Penner informed the SFM that the government was considering a constitutional amendment as a way out of the *Bilodeau* impasse, and presented the draft amendment approved by Cabinet earlier in the month. Some time later, Gilberte Proteau was to recall that she was "flabbergasted" to learn of the government's plans and that she "almost fell off her chair".[1] However, it should be recalled that in June, Proteau was no longer president of the organization, and that, as past president, she may simply not have been aware of the informal contacts referred to in the Turenne interview. Indeed, a memo from Roch to the SFM board dated June 22, 1982 states that a meeting had been held on June 16, the day before Penner's meeting with the SFM, between the SFM's "political committee" and Roger Turenne, at which time the committee was fully informed of the draft constitutional amendment that was to be presented officially the next day by Penner.[2]

Whether or not the SFM was shocked by the very idea of a constitutional amendment, it was certainly shocked by the content of the draft amendment presented by Penner[3], for two reasons. First, Section 1 of the proposed amendment provided for the outright repeal of S. 23 of the Manitoba Act. Given the great wave of enthusiasm that followed the *Forest* victory within the French-speaking community, the outright repeal of this "rampart" of French rights in Manitoba just two years after the judgment could only have this effect.

Secondly, the draft amendment contained no *quid pro quo*: the French-speaking community was being asked, in effect, to reduce substantially the government's obligations in terms of translation of statutes without receiving anything in return. Why not, in this context, go to the Supreme Court and

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[1] *Winnipeg Free Press*, May 15, 1985.
[2] G/S, File 16, pp. 1-2.
[3] See Blay, 1987, p. 161.

hope to get the whole translation loaf rather than the quarter loaf Penner was offering? Turenne's instinct regarding the SFM's probable reaction to a proposal that contained no *quid pro quo* was already proving to be accurate.

Turenne's advance notice of the content of Penner's draft amendment allowed the SFM to draft an initial internal response to it, a response which was apparently not transmitted to Penner at the meeting, since the SFM wanted to consult further with the Francophone lawyers' group. This 3-page document, which points out how Section 23 would be limited in scope by Penner's proposed amendment, also indicated "what could be supported by the community"; this included the following elements:

- give up the obligation to translate statutes and regulations that are repealed;
- give up the obligation to translate Hansard, the spent versions of Hansard and of (sic) the spent records and journals of the Assembly;
- accept a well designed approach (to be phased in over a five year period) to translate all current statutes and regulations;
- include in the revised amendments Articles 16 and (sic) 20 of the Constitution of Canada.

The SFM summarized its position as follows:

> It therefore appears to us important to develop a broad approach in amending the Constitution, and rather than limiting the amendments to Section 23 of the Manitoba Act of 1870, we would request that the government include amendments which would not only define more clearly the parameters of Section 23 of the Manitoba Act but which would include an amendment concerning government services.[1]

Penner requested a response from the SFM for the following week, June 22, since he still anticipated meeting with the federal Minister of Justice on July 6.

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[1] G/S, File 16, pp. 26-8.

The following day, June 18, Lucille Roch sent a memo to all francophone lawyers* briefly outlining the situation to them and including five relevant documents: a copy of S. 23, a copy of Penner's draft amendment, the SFM's briefing notes for the Penner meeting, the SFM's January, 1982 recommendations to Pawley, and a summary of the situation regarding translation of statutes.[1] Roch pointed out the urgency of receiving the lawyers' proposals and recommendations, since Penner wanted to return to Cabinet on June 23 to receive instructions for his July 6 meeting with Chrétien. Roch asked the lawyers to meet at 4 p.m. June 21 at the SFM offices.

The SFM was not the only party to be concerned about the government's proposed amendment. On June 18, Vaughan Baird, Bilodeau's counsel, sent a three-page letter to his client pointing out the pitfalls of the Penner amendment. Baird's main concern was that

> It repeals s23. It is my submission that s23 of the Manitoba Act of 1870 should not be repealed. It is 'the Gibralter' (sic) of the constitutional rights of both the English and French speaking people in our province. A 'Gibralter' must remain inviolate. The fact that it is repealed would destroy the idea of permanency...
> If the Government of Manitoba is desirous of doing something with s23, it is my submission that it should only be an amendment and an improvement to The Manitoba Act.

Baird added:

> S. 5 (of Penner's draft amendment) and in particular SS. (4) nullifies, really, your case...It is my submission that all acts of the Province of Manitoba must be translated (within a minimum of five years, Baird added).

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* Roch's list of francophone lawyers included Robert Bétournay, Roger Bilodeau, Léa Duval, Renald Guay, Alain Hogue, Marc Monnin, Michel Monnin, Laurent Roy, Rémi Smith, Rhéal Teffaine, and Léo Teillet.

[1] G/S, Box 3, File 17, pp. 1-2.

In addition, the Court of Appeal's *Bilodeau* decision must not be allowed to stand:

> ...to say that 'shall' is permissive... especially in a constitutional matter would render our constitution a eunuch.[1]

Bilodeau in turn transmitted these comments to Rémi Smith[2] prior to the Francophone lawyers' meeting. Thus began a pattern of coordination between Bilodeau and his counsel and the SFM which was to remain virtually unbroken throughout the negotiation phase and the language crisis itself.

One of the first things the lawyers agreed upon at their meeting was that the deadlines for decisions proposed by Penner were unrealistic given the magnitude of the constitutional undertaking. For Penner and the Pawley cabinet at that time, the main problem was administrative and legal: the sooner the province could meet, in a definitive way, the requirements of the *Forest* decision, the sooner it could dispose of attacks on its flank by Bilodeau and others who might want to challenge its lack of effective action in translating statutes. For Franco-Manitobans, however, the issue involved their fundamental rights as a linguistic minority, and any change to the constitutional status quo needed careful and deliberate analysis, with assent only if it improved their legal status. Universally among francophone lawyers, SFM board members and staff, and Bilodeau and his counsel, Penner's first draft was seen as a regression.

In their initial reaction to Penner's draft, the francophone lawyers wanted a "statute translation committee" established, which would give the francophone community an input into the selection of statutes to be translated should the translation burden imposed by Section 23 be reduced by

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[1] SFM, Box 41, 24.8/4.
[2] G/S, Box 3, File 17, p. 51.

constitutional amendment; secondly, the francophone lawyers strongly believed that S. 23 should explicitly cover regulations as well as statutes. Finally, the lawyers wanted a reference to French-language services included in any redraft of Section 23. These points among others were to be taken up again at a second meeting, to be held on August 4.

On Tuesday June 22, the SFM board met and, after being briefed on developments over the previous week by the executive director, developed a course of action. First, the meeting scheduled that day with Penner would be cancelled; secondly, a series of steps recommended by Roch was adopted. These steps ("étapes") were as follows:

1) Rencontrer: les députés Desjardins, Adam et Lécuyer pour leur expliquer notre position.
2) Développer (en terms légaux) des amendements qui pourraient répondre aux besoins de la communauté sans nécessairement annuler l'article 23 comme tel.
3) S'asseoir à nouveau avec des représentants de la communauté afin de s'assurer que ces propositions sont acceptables.
4) Présenter ces propositions au conseil d'administration.
5) Rencontrer à nouveau M. Penner vers la fin août et discuter nos propositions avec lui.[1]

That same day, Léo Robert wrote Penner to inform him that

> Compte tenu que la communauté n'a eu que quelques jours pour étudier vos propositions, et compte tenu de l'envergure de l'Article 23, nous ne sommes pas en mesure de vous présenter ce soir, à la réunion prévue, des propositions concrètes. Nous nous proposons plutôt d'étudier au cours des prochaines semaines les amendements proposés par votre gouvernement et de vous présenter des amendments qui pourraient répondre et aux besoins de la communauté et aux besoins du gouvernment.[2]

[1] SFM Board minutes, June 22, 1982; in G/S, Box 6, SFM minutes.
[2] G/S, Box 3, File 16, pp. 33-4.

Penner reluctantly agreed to the delay. In a letter to Léo Robert dated July 7, Penner informed him that he had cancelled his July 6 meeting with the Minister of Justice and rescheduled it for July 28. At the same time, he suggested that he meet again with the SFM on Tuesday, July 20.[1]

By this time, both sides were beginning to get more detailed opinions from their respective counsel. In June, Penner had asked Twaddle to attempt to identify "those Boards, Commissions, Corporations and agencies which will be subject to the bilingual language requirements of proposed section 23.8 of the Manitoba Act".[2] Twaddle identified some126 such bodies as "potentially falling within the requirement". However, Twaddle pointed out that S. 23.8 of Penner's draft constitutional amendment did not significantly increase Manitoba's obligations in this area, in light of the Supreme Court's recent *Blaikie No. 2* decision:

> You will appreciate that according to the Supreme Court of Canada's ruling in *A.-G. Quebec v. Blaikie* (no. 2), Section 133 of the British North America Act, 1867 (now the Constitution Act, 1867) already gives persons the right to use either English or French before a quasi-judicial tribunal in Quebec. There can be little doubt that the present section 23 of The Manitoba Act confers a similar right in Manitoba. In the result proposed section 23.8 does not, at least in practical terms, add materially to existing obligations as to the language of communication.[3]

In the meantime, the SFM's Lucille Roch had asked Joe Magnet[4] to draft a constitutional amendment which would incorporate the SFM's concerns. Magnet submitted his text on July 7, 1982; in addition, he suggested a public strategy if the negotiations with Penner were to fail, since, in his view, the

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[1] SFM, Box 41, 24.8/1.
[2] Twaddle to Penner, June 23, 1982; in G/S, Box 3, File 13, pp. 16-22.
[3] Ibid., p. 2.
[4] Roch to Magnet, June 24, 1982; in SFM, Box 41, 24.8/3.

government had "displayed a consistent course of conduct, including illegal measures, to defeat the obligations imposed by the Article". The SFM was also systematically implementing the strategy it had adopted on June 22, meeting, for example, with two francophone members of the government, Desjardins and Lécuyer.[1] According to Blay, a "study group" was established within the federal government during the summer of 1982 to examine the SFM's position regarding constitutional amendment[2]; this indicates that contacts had been initiated at least informally with the federal government by the SFM by the summer of 1982.

On July 8, 1982, Roland Penner told the Toronto *Globe and Mail* that a constitutional amendment to S. 23 had been drafted to avoid the possibility that all of Manitoba's laws could be declared invalid, saying that the changes the government would make to S. 23 would be "for the benefit of Francophones". He added that "What we are attempting to do is to find a political solution to a legal conundrum."[3] The *Free Press* added, on July 13, 1982, that a draft of Penner's proposals had been forwarded to the SFM for their views. Penner's statement was immediately denounced by Baird, who made public his position that the amendment the government had in mind would "destroy the Gibraltar of English and French language rights in Manitoba".[4]

Gerry Mercier, reacting on behalf of the Conservative opposition, said the provincial government did not have the authority to amend the Manitoba Act of 1870; he added that Penner should wait until after the Supreme Court ruled on the Bilodeau case before considering an amendment. However, he did not

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[1] Blay, op. cit., p. 162.

[2] Id. No documentation exists in the files to corroborate Blay's statement; on the other hand, she may be referring to the "small working group" established shortly after the SFM's August 18, 1982 meeting with Penner (see below).

[3] *Globe and Mail*, July 9, 1982; *Winnipeg Free Press*, July 10, 1982.

[4] *Winnipeg Sun*, July 12, 1982.

comment negatively on the Pawley government's approach in negotiating with the SFM. Georges Forest said he was "shocked and disappointed" at the Pawley government's attitude; Forest likened the government's action to that of a "legislator who gets caught raping someone and then tries to change the laws so rape is no longer an offence".[1]

On July 14, the Winnipeg Sun wrote that Penner was

> "trying to reach an agreement with the province's French community that will allow Manitoba to compromise on the costly and time-consuming translations.
> Penner said a compromise solution is currently being studied by representatives of Manitoba's 80,000 francophones."

Penner also said he had no intention of acting unilaterally in the matter.[2]

The *Winnipeg Free Press* reacted positively to the process outlined by Penner, in a July 14, 1982 editorial entitled "Manitoba eager to settle out of court". In its view, settling out of court "may produce a result highly advantageous both to the province and to its French-speaking population". It lauded the "creative approach Mr. Penner has adopted" in his attempt to meet the "real needs" of the French-speaking community.

La Liberté reacted negatively to the government's first proposal.

In an attempt to reduce the antagonism his first proposal generated in the French-speaking community, Penner wrote to *La Liberté*, pointing out that court services in French were being implemented and outlining the government's policy regarding French-language services.[3]

Meanwhile, events were unfolding on other fronts. In mid-July, Penner received a draft factum in the Bilodeau case on behalf of the Government of Manitoba from Kerr Twaddle. On July 23, one of Twaddle's law partners wrote

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[1] *Winnipeg Free Press*, July 13, 1982.
[2] *Winnipeg Sun*, July 14, 1982.
[3] *La Liberté*, July 22, 1982.

Penner confirming that this factum was satisfactory to the Attorney-General.[1] The factum argued the position that Section 23 of the Manitoba Act was directory and not mandatory; in addition, Twaddle developed an argument based on the doctrine of "necessity" whereby, even if S. 23 was found to be mandatory, all Manitoba laws should still be held to be valid, at least for a certain time, since a finding of invalidity would create chaos in the province.

On July 29, 1982, Penner met with the federal Minister of Justice, Jean Chrétien.[2] A "memorandum for discussion" between the Minister of Justice and the Attorney-General for Manitoba drafted for the Attorney-General provides an indication of the nature of discussions at this meeting. The memorandum states that the government of Manitoba "proposes a political solution in the form of a constitutional amendment to Section 23". The memorandum adds that a first proposal made to the SFM "was not accepted by the Société", and says Manitoba is "not comfortable with arguing the Court of Appeal position in the Supreme Court", a clear indication of Penner's thinking on the arguments advanced in Twaddle's factum. It goes on to say that

> No proposal for a constitutional amendment to Section 23 will be made by the Province of Manitoba to the Government of Canada unless it has the concurrence of the Franco-Manitobaine community. (emphasis in text)
> (...)
> [There should be] no more than a preliminary exchange of views with a view to ascertaining the position of the Government of Canada in the event a proposal for amending Section 23 of The Manitoba Act had the concurrence of the Government of Manitoba and the Franco-Manitobaine (sic) community."[3]

In his August 3 follow-up letter to Chrétien, Penner appealed to the Minister of Justice for assistance in recruiting a head for the legal translation

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[1] ATG, Box 17, Bilodeau, R.
[2] Penner to Chrétien, Aug. 3, 1982; in ATG, Box 19, FLS - Transl.-Stat.
[3] ATG, Box 4, FLS - 1982-3.

programme for one or two years, having received from Tallin yet another memo saying this was "becoming more and more urgent all the time but we seem to be making absolutely no headway".[1] Penner's concern about the translation process is evident elsewhere; at about the same time, he wrote,"I clearly need a much more comprehensive memo or brief on the progress of statute translation from translation to revision to printing, publishing, enacting."[2] A few days later, he received a memo from Yost saying "I am acting as the Head of the (translation) department pending finding a permanent head or my being required to draft English language legislation."[3]

On August 3, Prof. Scott sent Penner an opinion, requested by Penner on April 16, as to whether an invalidly-constituted Legislature could adopt a constitutional amendment, a problem raised by Twaddle in his April 14 opinion. In Scott's view, the Supreme Court would allow actions by the Legislature that were strictly necessary, but not others, in the event the province's laws were found to be invalid.[4]

The SFM regroups

In early August, 1982, the SFM held two consultative meetings and received several written opinions regarding the direction it should adopt in what was clearly becoming perceived within the French-speaking community as an historic opportunity for a full-fledged recognition of long-standing French-language rights, yet one that was fraught with danger, since the mechanism would be the modification of the fundamental law of the province and of Canada.

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[1] Tallin to Penner, July 30, 1982; in ATG, Box 4, FLS - 1982-83.
[2] Penner memo to File, Aug. 5, 1982; in ATG, Box 19, FLS - Transl. - Stat.
[3] Yost to Penner, Aug. 12, 1982; in ATG, Box 4, FLS - 1982-83.
[4] Ibid.

On August 4, the SFM met for a second time with the francophone lawyers; the following day, it met with former presidents and vice-presidents of the organization, along with a few academics and Georges Forest. A consensus emerged from these discussions, a summary of which was circulated to the SFM board by Lucille Roch on August 11, 1982.[1] Roch described the elements of the consensus as follows:

1) Keep Section 23 of the Manitoba Act intact, because of its link with S. 133 of the Constitution Act, 1867.
2) Ask the Attorney-General to entrench the rights of Manitoba francophones in the Charter of Rights, a position already transmitted to Premier Pawley on January 11, 1982.
3) The SFM is willing to discuss the implementation of Sections 16 to 20 of the Charter with the provincial government. (Translation from French)

The Penner proposals were unacceptable, since

- S. 23 would be revoked under these proposals; further, these proposals would do away with the obligation to translate laws adopted in the past but still in force. Further, under the Penner proposals, amendments to laws after the implementation date could be adopted in English only.
- Laws adopted in English only after a date set by the Attorney-General would be invalid; however, laws adopted before this date and still in force would remain valid.
- There is no provision in the Penner proposals for Hansard to be published in both French and English (although there is some doubt as to whether this is an "official" document under S. 23).
- The Penner proposals do not provide for French-language services.[2]

On the positive side, Roch's memo pointed out that the Penner proposals recognized both English and French as official languages, and declared that the French and English text of laws would have equal status, thereby eliminating the need for Bill 2.

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[1] SFM, Box 41, 24.8/3.
[2] Id.

The SFM received other inputs. On August 12, Joe Magnet transmitted modifications to a draft constitutional amendment previously sent to Lucille Roch on July 7.[1] The Magnet proposal would have set a short delay after the coming into force of the amendment (6 months) for the enactment, publishing, and printing of all new and revised statutes and regulations (as defined in *Blaikie No. 2*) in English and French. In addition, all statutes and regulations in force in Manitoba, regardless of when they were adopted, would have to be printed and published in both languages within five years after the coming into force of the amendment. Statutes and regulations not conforming with these requirements would not be valid or enforceable, and English and French versions of laws would be equally authoritative.

The Magnet proposals also included a certification process for translations by a Statute Translation Committee, made up of three members appointed by Cabinet, of whom at least one would be "a member in good standing of the Law Society of Manitoba".[2] Records and journals of the Legislative Assembly would be published in English and French, except for records and journals of proceedings held before the coming into force of the amendment. Hansard would be exempt entirely from this requirement, unless the French-speaking population of Manitoba came to exceed 10% of the total population of Manitoba, at which time Hansard would have to be published in both languages. Simultaneous translation would be provided in the House on one day's written notice to the Speaker. Finally, Section 20 of the Charter would be amended by inserting the following words:

> (3) Any member of the public in Manitoba has the right to communicate with, and to receive available services from, any office

[1] G/S, Box 3, File 17, pp. 56-70.
[2] Ibid., p. 3.

> of an institution of the legislature or government of Manitoba in English or French where
> (a) there is a significant demand for communications with and services from that office in such a language; or
> (b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.[1]

Although at the two meetings held in early August the consensus was that the Magnet document was "trop technique, trop détaillé, trop limitatif pour être enchâssé dans un projet de loi"[2] it seems clear that it reflected opinions generally held among Manitoba francophones at that time as to a possible counterproposal to Penner's July 17 position.

Georges Forest, on the other hand, was more categorical towards the Penner proposals; he also responded vigorously to the "SFM proposals" (presumably Magnet's July 7 draft). In a letter presented at the Aug. 5 meeting, Forest pointed out the contradictions between Bilodeau's position and the Penner proposals, arguing for the integral maintenance and implementation of S. 23 as it existed in the Manitoba Act. Within the context of this principle, Forest went on to develop a detailed, point-by-point criticism of the Magnet proposals. His major objection was to abolition of the obligation to translate Hansard; a time span of 3 years or 15 years might be required, but "Tout comme l'usage des deux langues est de rigueur au Parlement Canadien, dans la parole la documentation les archives et des procès verbaux, il doit en être ainsi au Manitoba..." Finally, Forest came to the radical language agenda which in his view flowed from the existing Section 23:

> Si la langue française est officielle, pourquoi pas l'enseigner à tout (sic) les élèves du Manitoba?

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[1] Ibid.
[2] L. Roch August 11, 1982 memo; in SFM, Box 41, 24.8/3.

> Si la langue française est officielle prévoyons par un échéancier à court et à long terme tous les services gouvernementaux dans les deux langues.
> Si la langue française est officielle le post (sic) du lieutenant gouverneur du Manitoba devrait être occupé dorénavant par une personne connaissant l'anglais et le français. (Item 17 du Texte de la liste des droits provenant du Gouvernement provisoire de Louis Riel.)
> Si la langue française est officielle tout nouveau juge nommé à siéger au Manitoba après (exemple) l'année 1990 serait connaissant des deux langues officielles.
> Si la langue française est officielle l'étude du droit au Manitoba après (exemple) l'année 1990 serait faite dans les deux langues officielles.
> En somme tout ce que nous demandons c'est l'application de l'Acte du Manitoba. Rien de plus, mais également rien de moins.[1]

Forest concluded that "Le Cas Bilodeau ne doit pas être interrompu dans son progrès vers la Cours (sic) Suprême du Canada".

Forest's position, which might be described as "radical bilingualism" for Manitoba, was to be a source of constant tension within the French-speaking community as Francophones struggled to develop a strong but reasonable bargaining position vis-à-vis the provincial government. At its root lay a profound misunderstanding as to the scope of Section 23. To Forest, Section 23 automatically established English and French as official languages in Manitoba. One might logically draw this conclusion from even a cursory reading of the history of Manitoba's entry into Confederation (see Chapter I); however, between the probable intent of S. 23, in Louis Riel's and others' eyes, and the actual text of this section, there is a wide gap. A further complication is Section 23's link with S. 133 of the Constitution Act, 1867; no informed person, in Quebec or elsewhere, would argue that this Section makes Quebec officially bilingual; on the contrary, with the adoption of Bill 101 in 1977, Quebec signified to all of Canada its rejection of that interpretation of S. 133. If English

[1] G/S, Box 3, File 17, pp. 8-16.

and French were to be the official languages of Manitoba constitutionally, then words to that effect had to be adopted. This was one of the few positive elements that the SFM saw in Penner's initial proposal, and it was to become ultimately the downfall of the Pawley government's proposals. Yet, to Forest and his small coterie, Section 23 already rendered Manitoba officially bilingual.

Secondly, Forest made several unwarranted assumptions as to the implications of the "bilingualism" prescribed under S. 23, including the half-dozen items in his list: the teaching of French to all public school students in Manitoba; the provision of all government services in both languages; bilingualism as a requirement for the position of Lieutenant-Governor and for all judges appointed in Manitoba after, say, 1990; and creation of a fully bilingual law school in Manitoba by 1990. Not only was there latent disagreement between Forest and the rest of the French-speaking community as to the content of this programme of "radical bilingualism" (very few Francophones in Manitoba would have actively fought for even one of the items listed above by Forest); there was also profound disagreement as to the scope of existing Section 23, from which it would be impossible to deduce even one of the items in Forest's programme. Unfortunately for the French-speaking community and the SFM in particular, the SFM's own counsel was to become increasingly radical in his own interpretation of S. 23, thereby throwing fuel on Forest's fire.

At its August 11 board meeting, the SFM considered these various inputs and decided to adopt the following position vis-à-vis the provincial government regarding Section 23:

> (1) garder intact l'article 23 de l'Acte du Manitoba, qui est directement relié à l'article 133 de l'Acte de l'Amérique du Nord Britannique;

(2) que la S.F.M. tente d'obtenir du gouvernement un engagement d'enchasser (sic) dans la nouvelle charte canadienne nos droits fondamentaux tels qu'accordés au Nouveau Brunswick et aux Canadiens (en ce qui concerne les institutions fédérales);
(3) qu'une fois les principes de base acceptés, la S.F.M. serait heureuse de discuter de modalité (sic) d'application de ces principes;
(4) que la S.F.M. fasse parvenir au gouvernement provincial un document expliquant sa position et qu'elle en informe simultanément MM. Chrétien et Bockstael;
(5) que la S.F.M. rencontre par la suite MM. Desjardins et Lécuyer du gouvernement provincial.[1]

The SFM therefore opted to stick with the consensus position developed among francophone lawyers, academics, and others, while rejecting Forest's "radical bilingualism": Section 23 should be retained intact, and Manitoba should adhere to SS. 16 to 20 of the Charter. In addition, the SFM board decided to begin lobbying the federal government more formally in favour of its position.

At 6.30 p.m. Wednesday, August 18, Léo Robert met with Penner at his office at the Legislative Building*. Robert informed Penner of the consultations undertaken within the Franco-Manitoban community and added that the consensus was in favour of keeping S. 23 intact; because of its link with S. 133 of the B.N.A. Act, 1867, any amendment to it "would limit the scope of Section 23". Secondly, Robert asked

> That your government initiate discussions with the federal government to entrench the fundamental rights of Franco-Manitobans in the new Constitution such as has been undertaken by the government of New Brunswick and the federal government.

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[1] G/S, Box 6, SFM minutes.

* The following persons were present at the meeting: Penner, his Deputy, Gordon Pilkey, Assistant Deputy Attorney-General G. Goodman, and Roger Turenne. The SFM was represented by L. Robert, R. Smith, and L. Roch.

In Robert's view, this would "modernize" the rights contained in the 1870 Manitoba Act.

Finally, Robert asked that, "following agreement upon those principles to be entrenched", a tripartite committee including the federal and provincial governments and the SFM be struck "in order to study those procedures for application of Sections 16 to 20 of the Canadian Constitution in Manitoba"; these procedures would then be incorporated into a statute. In Robert's view, if this approach were followed Bill 2 would in effect be replaced by Section 18 of the Charter, which says that both English and French language versions of statutes are equally authoritative.[1]

Penner, on the other hand, pointed out the practical difficulties to be resolved: Section 23 had already been "seriously impaired" by the Court of Appeal's judgment (reflecting his department's dominant view), and even a judgment such as Monnin's at the Supreme Court level would leave a lot to be desired for Franco-Manitobans. Penner added that he had no intention of acting unilaterally, and that he wanted an agreement with the Franco-Manitoban community; he also pointed out the difficulties the government was encountering in the translation process, especially in staffing. Penner said he understood the SFM's concern and the uncertainty generated in the community regarding the possibility of modifying or eliminating Section 23. Finally, he asked the SFM to come up with some concrete proposals as to a constitutional amendment. It was also agreed at this meeting that neither side would talk to the press at this stage.[2]

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[1] Robert to Penner, Aug. 18, 1982; in ATG, Box 4, FLS - 1982-83. SFM briefing notes for this meeting containing the same points also exist in G/S, Box 3, File 16, pp. 29-30.
[2] SFM meeting notes; in SFM, Box 41, 24.8/1.

The next day, Léo Robert met with Desjardins and Lécuyer informing them of his discussions with Penner and of the SFM's position.[1] Shortly afterwards, the SFM set up a small working group, made up of Rémi Smith, Marc Monnin, and Lucille Roch, to draft a proposal for submission to Penner.[2]

In an interview with the press on August 20, Penner did reveal that he was dropping his plan to replace Section 23, saying that he would now prefer to leave S. 23 intact and add a clause that would give the government about five years to complete the translations. Penner added that he expected to introduce an amendment at the next session of the Legislature, expected to begin in December, 1982. The same press report indicated that the French-speaking community was pleased to be consulted.[3]

Meanwhile, the wheels of Justice were grinding on inexorably. On Sept. 7, 1982, Twaddle informed Penner that the Bilodeau hearing before the Supreme Court had been confirmed for the week of Nov. 1, 1982, despite Twaddle's attempts to have it set for a later date.[4] A week later, Penner sent a confidential letter to Robert expressing his disappointment at the fact that the SFM would not be ready to discuss its position before October 4 and that so little time was left to develop a consensus before the November Bilodeau hearing; however, he suggested the SFM meet with him on Oct. 5, since he had to report to Cabinet on the following day, Oct. 6.[5]

Robert had his reasons for delaying meeting Penner. On Wednesday, Sept. 15, he met with the presidents of the main francophone organizations in Manitoba to brief them on the evolution of his discussions with Penner

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[1] SFM Sept. 8, 1982 board minutes; in G/S, Box 6, SFM minutes.
[2] Id.
[3] *Winnipeg Free Press*, August 21, 1982.
[4] ATG, Box 17, Bilodeau, R.
[5] ATG, Box 4, FLS - 1982-83.

regarding S. 23. [The SFM had had three previous meetings of this nature, on June 8 and Feb. 26, 1982, and Jan. 20, 1981. At this latter meeting, the presidents had heard a report on the SFM's Dec. 5, 1981 meeting with Lyon ministers G. Mercier and N. Price.][1] At the same time, work was proceeding on the SFM's draft proposal; at the same time, Roch called a meeting of the working group for Sept. 20, 1982.

On Sept. 17, Robert met with "les députés et les sénateurs sur le dossier Penner".[2] The SFM was thereby keeping federal representatives, including the MP for St. Boniface, Robert Bockstael, and Senator Joseph Guay, informed of developments in its negotiations with the Province.

On Sept. 24 and 27, 1982, Roch circulated memos to a number of Franco-Manitobans*, including SFM board members, requesting their reactions to the SFM's proposed position in the form of "principles" to be presented at its forthcoming meeting with Penner. Roch summarized the position as follows:

> Il est donc question de deux projets de loi à être adoptés au Manitoba et à Ottawa - un qui serait un amendement à la Constitution canadienne qui enchâsserait nos droits, le deuxième qui stipulerait les modalités et les échéances à rencontrer et qui serait sans force de loi et sans effet après que la dernière échéance a été rencontrée.
> Il nous apparaissait important que les droits de la communauté franco-manitobaine [tels que décrit (sic) dans la Constitution canadienne, voir les Articles 16 à 22] soient enchâssés dans la nouvelle Constitution canadienne et que la communauté soit reliée directement à d'autres communautés. De la vient notre requête que le Manitoba 'opt in' en ce qui concerne les Articles 16 à 22.
> Par ailleurs, nous sommes conscients que le gouvernement manitobain n'a pas les effectifs nécessaires pour mettre sur pied l'appareil administratif nécessaire pour répondre aux exigences de la

[1] Minutes of the Sept. 15 meeting are in SFM, Box 41, 24.5.

[2] SFM board minutes, Oct. 14, 1982; in G/S, Box 6, SFM minutes.

* Several times between 1982 and 1984, the SFM circulated draft positions to persons whom it wanted to keep informed and from whom it wanted feedback. The nucleus of this group was, of course, the francophone lawyers, but it also included academics and various other concerned individuals. A complete mailing list does not exist in the files, and it seems reasonable to assume that the list of names varied from time to time.

> Constitution. Il est donc nécessaire de stipuler, dans un deuxième projet de loi, les modalités et les échéances qui guideraient les actions du gouvernement et qui les protègeraient durant cette période intérimaire tout en nous assurant qu'à l'intérieur de ces échéances nos droits seront respectés.[1]

It is clear from this memo that the SFM and Penner were still worlds apart. Penner, at the outset, had wanted an essentially administrative adjustment incorporated into the Manitoba Act to reduce its constitutional obligations in the area of translation of statutes; not only had he run into a brick wall of opposition to this approach from the French-speaking community during the summer; now the community, sure of its ultimate victory in the Supreme Court, not only wanted to maintain S. 23 intact but also wanted Manitoba to adhere to the language provisions of the Charter of Rights and Freedoms! There were times, during that fall of 1982, when Penner must have wondered what Pandora's Box he had opened.

On October 1, the SFM transmitted its proposals to Roland Penner; these were based essentially on the contents of the SFM memo quoted above. Turenne sent his analysis of these proposals to Penner on Oct. 4.[2] In Turenne's view, the proposals raised two "real contentious issues". First, the SFM's position implied that all statutes, past and present, would have to be translated; secondly, through Manitoba's adherence to the Charter, French-language services would be entrenched in Manitoba. Turenne added that "a full consensus might be achieved through a trade-off between the two", pointing out "illusions" that Léo Robert and others had as to what it might be possible to obtain through these negotiations.

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[1] In G/S, Box 3, File 16, pp. 19-20; emphasis in text.
[2] Turenne files, Jan. '82 - May '83.

Indeed, at this stage, not only did a quid pro quo not exist for the SFM agreeing to amend Section 23 but the SFM was itself attempting to turn the tables on the government by simultaneously maintaining Section 23 intact in addition to obtaining entrenchment of French-language services. Just as Penner's proposal of June 17 was a non-starter because its advantages were all on the government side, so the SFM's October position was doomed at the outset because it provided no advantages to the government. There appears to be no doubt that, at this stage, the misreading of the scope of Section 23 by Forest and Magnet was having a major and deleterious effect on the negotiations.

At 6 p.m. on Tuesday, Oct. 5, 1982, the SFM again met with Roland Penner at his office in the Legislative Building.* SFM minutes of the meeting indicate that it unfolded roughly as follows.[1] Penner, following on a suggestion made in Turenne's Oct. 4 memo, began by focusing on areas where the two parties agreed. These were:

1) The validation of all Manitoba laws;
2) Section 23 must be mandatory and kept intact for symbolic, historical reasons, and for legal reasons;
3) The government would need time to implement S. 23.

Robert replied that indeed the SFM and the government were agreed on these points. Penner then went on to identify the problems involved, based on the SFM's position transmitted to him on Oct. 1. Penner noted that the SFM had introduced services into its proposals; where, he asked, is the quid pro quo for the government? How could he sell this to his colleagues? The SFM replied that the *quid pro quo* was in the time being given to the government to

* There is some confusion as to the exact date of this meeting, since a Cabinet paper dated Oct. 7, 1982 says the meeting occurred on Oct. 4. All other documents, however, indicate the meeting was indeed held on Oct. 5. In attendance were L. Robert, R. Smith, and L. Roch for the SFM; and R. Penner, G. Pilkey, G. Goodman, R. Tallin, and R. Turenne for the government.

[1] SFM, Box 41, 24.8/1.

translate the laws, and in the SFM's acceptance of a temporary validation clause while the laws were being translated. On the other hand, the SFM agreed that there were many "useless" laws on the books, and if a way could be found to eliminate them, the SFM would be willing to discuss them. Tallin pointed out that this could be done in the course of a forthcoming revision of Manitoba laws.

Penner then tackled the issues of a constitutional amendment and French-language services. Basically, he said, there were two options; one was to opt into the Charter of Rights and Freedoms; the other was to add to Section 23. Regarding services, Penner asked whether, in the SFM's view, school boards and municipalities would be defined as "institutions" of the government; if so, he envisaged major political problems, since the government would then be in a position where it would have to impose bilingualism. The SFM replied that yes, "nous avions prévu inclure les municipalités et les divisions scolaires qui faisaient partie de régions identifiées comme celles qui avaient des concentrations de francophones". After discussion, Penner still saw this as a major problem.

Penner raised the matter of quasi-judicial tribunals; do you realize, he asked, how many there are? The SFM replied that these had been included because of the recent *Blaikie* decision, which extended the application of Section 133 to quasi-judicial tribunals, although the SFM pointed out that most requests for French-language hearings would probably be limited to about 10 tribunals. On the six-month deadline for translation of all statutes, the SFM said it was "flexible".

Finally, Penner asked whether, in the SFM's view, if an agreement were arrived at between the government and the SFM, this would have an effect on the Bilodeau case. The SFM replied that the Court was in a difficult position. If

it found S. 23 to be mandatory, the result would be chaos; yet if it did not, this would have an impact on other parts of the Canadian Constitution. The Court "will no doubt look for a compromise".[1] Penner replied that he preferred that the compromise come from us rather than from the Court. At the end of the meeting, Penner agreed to consider the SFM proposals and to respond.

Following the Oct. 5 meeting with the SFM, Penner drafted a Cabinet paper. Dated Oct. 7, 1982, the paper describes the consultative process to date: three meetings held between Penner and the SFM; the previous Cabinet position, which specifically excluded the provision of French-language services; the fact that this position was rejected by the SFM; new draft received from the SFM and discussed on Oct. 4; areas of agreement acknowledged; problems with the SFM's position pointed out, especially the fact that the Province's constitutional obligations would be extended far beyond S.23, with no quid pro quo. Finally, Penner requested a new mandate from Cabinet based upon six counterproposals recommended to the SFM's proposals; these counterproposals would provide for "considerably less than the SFM demands which, apparently, would obligate municipalities and school boards as well as the government itself to provide French-language services".[2] At its Oct. 13, 1982 meeting, Cabinet accepted Penner's recommendations and gave him a new, expanded mandate to negotiate with the SFM; this mandate included discussion of French-language services provided by the provincial government.[3]

At 4 p.m. the following day, Penner met with Twaddle at his office in the Legislative Building to discuss the implications of the recent developments for

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[1] Translated from SFM minutes, ibid.
[2] In ATG, Box 18, FLS - Draft proposals and Stat. Options.
[3] Decter to Penner, Oct. 15, 1982; in Turenne, Jan. '82 - May '83.

Manitoba's position in the Bilodeau case.[1] On Oct. 15, he instructed Tallin, with Twaddle and Turenne, to draft a new proposal for constitutional amendment to be made to the SFM, on the basis of the new mandate given Penner by Cabinet. Penner described that mandate as follows: 1) a constitutional amendment in the form of an addition to Section 23; 2) the "validation concept", i.e., deadlines would be set for translation of statutes, but in the interim the statutes would remain in force; 3) the provision of services, based on the language found in the Charter but adapted to Manitoba. Regarding the definition of the word "institution" in the Charter, Penner added that "I have advised you that the Government would rather not be seen to be in a position of forcing municipalities to provide French-language services".[2] Tallin responded on October 19 with a draft incorporating the "new instructions" of Oct. 15, using the June, 1982 draft as a basis.[3]

Rush to adjournment

By this time, the pressure of the deadline imposed by the Supreme Court's hearing date for the Bilodeau case, still set for Nov. 2, began to be felt by all parties; it also became obvious that the few days remaining before the hearing date did not allow enough time for the areas of disagreement between the SFM and the government to be resolved. Twaddle contacted Baird by telephone, informing him that the government had drafted a new proposed constitutional amendment and raising the idea of an adjournment of the Bilodeau case in the Supreme Court.[4]

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[1] Goodman to Twaddle, Oct. 8, 1982; in ATG, Box 17, Bilodeau, R.
[2] Turenne files, Jan. '82 - May '83.
[3] Tallin to Penner, ATG, Box 17, Bilodeau, R.
[4] G/S, Box 3, File 28, pp. 28-9.

On Oct. 26, 1982, Twaddle transmitted a copy of the government's latest draft constitutional amendment to Baird.[1] This new draft, in the form of an amendment to Section 23, would leave Section 23 intact (one of Bilodeau's and Baird's key demands) and included the provision of French-language services by the provincial government. Baird responded the next day, indicating that he wanted a declaration that "shall", in the context of Section 23, was mandatory. Baird's purpose was of course to nullify the Court of Appeal's decision in his client's case. In addition, Baird wanted Section 23.4 of the proposed amendment (eliminating the requirement to translate debates and proceedings of the House) to be reconsidered by the government; he also wanted a letter from the Attorney-General saying his client, Roger Bilodeau, would be considered not guilty in his case and not liable to a fine. The key statement in Baird's letter, however, was the following:

> We agree to an adjournment sine die of the case in the Supreme Court of Canada in order that the proposal can be made available to all parties to the case and also to the French speaking barristers and any other interested parties so that it can be considered and possible suggestions as to amendments therein.

For good measure, Baird added:

> You are going to be in contact with us with regard to this matter and we are going to hear by Thursday otherwise we will be proceeding in this action.[2]

Twaddle responded the same day, saying the purpose of the adjournment "is to permit discussion as to the terms of a proposed constitutional amendment". Twaddle added that the Attorney-General would only agree to consider "suggestions" to amend the proposals; however, the Attorney-General did agree with a provision to confirm "the mandatory nature of the

[1] SFM, Box 41, 24.8/3.
[2] Id

requirements of section 23 of the Manitoba Act with respect to statutes". Twaddle also pointed out that

> "The adjournment remains subject to the consent of the Société Franco-Manitobaine and to the approval of the Court. The other intervenors have either agreed to the adjournment or have agreed to it subject to the consent of the Société."[1]

Twaddle also informed Baird that the hearing for the application for adjournment by the Supreme Court had been tentatively set for Friday, October 29 at 11.30 a.m. if all parties agreed; in addition,

> The Attorney-General is to meet with representatives of the Société on Thursday, October 28, 1982 at 3.45 p.m. at which time a decision one way or the other will be made.[2]

SFM notes taken at this meeting* indicate that Penner asked the SFM to consider adjournment, to allow the negotiations to move forward. He indicated that he proposed to keep Section 23 intact, and that a constitutional amendment could be presented as soon as possible, perhaps at the session beginning Dec. 2, since this would be the best time, politically, for the government to do so. Penner also indicated he would be willing to consider eliminating Section 23.4 of the draft amendment, as requested by Vaughan Baird.

On October 29, Twaddle informed Penner that the Bilodeau case had been taken off the Supreme Court's list for the current session; he added that "It now remains for you to reach an agreement with the Société Franco-Manitobaine and Roger Bilodeau, and subsequently with the Federal Government, as to the terms of a constitutional amendment."[3] In a press statement, Penner said he

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[1] Id.
[2] Id.
* Present at the meeting were L. Robert, R. Smith, and L. Roch for the SFM; and R. Penner, K. Twaddle, G. Pilkey, and G. Goodman for the government.Ibid.
[3] ATG, Box 17, Bilodeau, R.

had been discussing with representatives of the French community the possibility of a constitutional amendment, adding that "very considerable progress" had been made towards such an agreement. Penner added that this would require an act of the Manitoba Legislature, and "I have no doubt that this is the kind of issue upon which there will be broad non-partisan support."[1] The adjournment was reported in the *Winnipeg Free Press* on October 30 under the heading, "Language Reprieve Granted". *La Liberté* reported, on November 12, that it was the new government proposal regarding French-language services that had allowed the postponement of the Bilodeau hearing.

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Following adjournment of the Bilodeau case and its Oct. 5 meeting with Penner, the SFM continued to consider the latest Penner proposals and of the various options open to it. It asked Magnet to analyze the Penner proposals; Magnet sent his 19-page opinion to the SFM on Nov. 3.[2]

Magnet's attack on the Penner proposals was scathing. His premise was as follows:

> Section 23 of the Manitoba Act means to insure the equality of the French and English languages in the machinery of provincial government operations... it goes on to guarantee bilingual government operations by requiring use of both French and English in legislative records, Journals, and Acts... there is, therefore, comprehensive protection for both languages in the machinery of government.[3]

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[1] Turenne, Bilodeau file.
[2] G/S, Box 3, File 17, pp. 93-111.
[3] Ibid., pp. 1-2.

On the other hand, Magnet admitted that there were "gaps in constitutionally protected official bilingualism", especially in the areas of education, language of work in the provincial public service, the regulation of the language in which government services are delivered, and language of culture (which can be regulated by the province).[1] Magnet then pointed out the safeguards provided by SS. 16-20 of the Charter; however, these safeguards could only be obtained by a linguistic minority if the province decided to adhere to them, by constitutional amendment agreed to with the federal government.

From his analysis of the meaning of SS. 16-20 of the Charter, Magnet concluded that Penner's proposed amendments to S. 23

> "have nothing in common with the spirit of the recent constitutional reforms. They do not intend extension of constitutional protection for official bilingualism. Their intention is quite the reverse. They seek to restrict the extent of currently entrenched official bilingualism. This is done by restricting the scope of the obligation to publish statutes in English and French, by restricting the right to use English and French before quasi-judicial tribunals, in forestalling application of language of work protections in Manitoba, and by restricting the obligation to commnicate with and provide services in English and French to the minimum possible. In every instance but one, the proposed amendments cut down existing guarantees, either by restricting their scope, or by destroying the remedies for their enforcement. The quid pro quo offered is entrenchment of an obliglation to communicate and provide services in both languages, subject to tests of 'significant demand' and 'reasonableness'.
> This spirit must be appreciated against the momentum generated by the constitutional reforms of 1982. The centerpiece of those reforms was to fill gaps in the protection for official language minorities, and to extend constitutional protection for the use of English and French. The intention of these present proposals is exactly the reverse. It is to widen the gaps in existing constitutional protections; and to restrict the obligation of the government to serve the Franco Manitoban community in the French language. The *Constitution Act, 1982*

[1] Ibid., p. 2.

> moved the French language forward; the present proposal would move it backwards.[1]

Magnet then proceeded to dissect the Penner proposals in detail. Magnet's view of the first section, S. 23.1, stating that English and French were the official languages of Manitoba, was that "it is doubtful that this adds anything to the juridical status of the French language in Manitoba", since it only had a "declaratory" effect.[2] Penner's Section 23.4 "removes the existing requirement to publish Hansard in English and French".[3] Magnet deplored the fact that "The proposed amendments contain no enforcement clause. They do however destroy the remedy of invalidity, which is the strongest weapon the Franco Manitoban community now has to ensure compliance with constitutional obligation."[4]

Could it be said, at least, for Penner's proposed amendments that they would constitutionally entrench the provision of French-language services? Magnet's view was that

> I doubt whether S. 23.5(1) will change anything, or very much, in the existing provision of government services in Manitoba... it would appear to place existing practices on a constitutional plane, immune from legislative abridgment. I can see that it does little more.[5]

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Magnet's premises at the outset were basically flawed. Through no interpretation, except perhaps the most liberal, historically-based one, could it be said that S. 23 "guaranteed bilingual government operations", or that there

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[1] Ibid., pp. 8-9.
[2] Ibid., p. 10.
[3] Ibid., p. 17.
[4] Ibid., p. 18.
[5] SFM, Box 41, 24.8/4.

was "comprehensive protection for both languages in the machinery of government". Most mainstream interpretations, not to speak of common sense, would hold that Section 23 said what it said, that is that both French and English could be used in the Legislature, that laws and legislative documents had to be available in both languages, and that trials had to be conducted in French where required; this is a far cry from "comprehensive protection for both languages". Magnet admitted that there were "gaps in constitutionally protected official bilingualism", and pointed out the advantages for minority Francophones in their Province's adhering to SS. 16-20; but what if it did not want to? What then?

There was also inconsistency in Magnet's use of the words "official bilingualism". In his view, Penner wanted to "restrict the extent of currently entrenched official bilingualism"[1]; yet, by his own admission, there were "gaps in constitutionally protected official bilingualism". Could it not be that many of the gaps could indeed only be remedied through constitutional amendment? The conclusion seems inescapable: in Magnet's view, Section 23 contained virtually everything Manitoba Francophones could want, including French-language government services; it only sufficed to force the province, presumably by repeated recourse to the courts, until the French-speaking community obtained the full implementation of Section 23, including the provision of services. Magnet apparently did not conceive that citizens (or the courts) could interpret Section 23 literally, in which case the words merely said what they purported to say. From this second perspective, Section 23 was sadly lacking and had to be substantially improved if the Franco-Manitoban

[1] Magnet, op. cit., p. 8.

community was to have guaranteed access to government services in its own language.

In normal times, where one lawyer's opinion remains an opinion to be confirmed or modified or rejected through consultation with other lawyers, Magnet's views would have been relatively unimportant; in the hothouse negotiating atmosphere of the fall of 1982, however, Magnet's opinions were to inflict considerable damage upon the Franco-Manitoban community's attempt at developing solidarity on the issue. Political strategy in the negotiations on Section 23 was a direct function of one's interpretation of the scope of Section 23: if Section 23 already guaranteed French-language services, why negotiate with the government on the issue? Why not go directly to court to force the government to provide them? On the other hand, if Section 23 only does what it says it does, then services are obviously excluded from its scope, and a realistic and worthwhile objective then becomes to negotiate with the government in the hope that a trade-off can be agreed upon whereby translation of mounds of laws, including spent laws, is bargained away in favour of the provision of French-language services in areas with significant French-speaking populations.

These fundamentally divergent views as to the scope of Section 23 were to plague the Franco-Manitoban community throughout the negotiations and indeed throughout the French-language crisis itself. Broadly speaking, the Magnet view that the existing Section 23 covered virtually everything Franco-Manitobans could want was held as well by Georges Forest, Roger Bilodeau and Vaughan Baird, and a group called "L'Association des Pro-Canadiens", led by Maurice Prince and including Georges Forest. Opposed to this view were several Franco-Manitoban lawyers and the leadership and staff of the SFM itself, though, in the fall of 1982, few people grasped the contradictory nature of

these two interpretations of Section 23. This contributed in a major way, of course, to the difficulties Penner was encountering at this stage in his negotiations with the SFM: the French-speaking community itself could not agree as to what, precisely, was contained in the existing Section 23.

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On Nov. 8, 1982, Penner's draft constitutional amendment proposals were made public; Turenne noted, in a memo to Penner, that they were the "main item" in both French radio and TV news.[1] Turenne noted that the only immediate public comment on the draft proposals within the French community came from Georges Forest, who "vowed to fight the proposal every way he could, through the courts, and through lobbying of various kinds in both Manitoba and Ottawa".[2] A few days later, the proposals were published in *La Liberté*.[3]

On Nov. 12, the SFM's working group, now expanded to include the president of the SFM himself and a second SFM employee, Réal Sabourin, met to examine Penner's October draft.[4] Minutes of this meeting[5] contain several detailed comments on the draft. The committee mainly noted that in Penner's new draft, Section 23 remained intact, which was "une amélioration sensible sur ce que Penner proposait cet été", that is, the outright repeal of S. 23. Regarding 23.1, the committee noted that the second part of Section 16 f the Charter had been omitted from the declaration that English and French are the

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[1] Turenne file, Jan. '82 - May '83.
[2] Turenne to Penner, Nov. 9, 1982; in Turenne file, Jan. '82 - May '83.
[3] Nov. 12, 1982.
[4] The other members of the committee were still Rémi Smith, Marc Monnin, and Lucille Roch.
[5] SFM, Box 41, 24.8/8.

official languages of Manitoba*; however, the committee felt that it was perhaps not realistic to think that the province would accept the second part. The committee also noted that up until this point in the negotiations, no dates for translation of statutes had yet been discussed with Penner. Regarding Section 23.5 (1), which provided for French-language services, the group noted "des différences subtiles" between the text of the Charter and the text proposed by Penner, the main one being the substitution of the word "agency" in the Penner text for the word "institution" in the Charter. Finally, the committee thought a remedial section should be added to the Penner text.

In addition to Magnet's opinion and, via Rémi Smith and Marc Monnin, opinions of the francophone lawyers who had met on Nov. 4* and 10[1], the SFM's working group received the Twaddle-Baird correspondence preceding adjournment as an additional input. It decided to meet with Bilodeau and Baird on Nov. 17, 1982, at which time "Nous espérons... s'entendre (sic) sur les modifications que nous proposerons à M. Penner la semaine suivante."[2] Earlier, presumably that same day, Rémi Smith had met with Penner.[3]

On Nov. 18, the SFM board itself examined the Penner proposals and considered the response recommended by the working group, in consultation with Bilodeau and Baird, and decided "que les modifications proposées soient

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* S. 16 of the Charter reads as follows: 16. (2) English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick. Penner's draft said merely that "The English language and the French language are the official languages of Manitoba."

* The group was to meet several times in November, 1982; references can be found in the record to meetings held on Nov. 10 (G/S, Box 4, File 35, p. 18) and Nov. 17 and 23 (Yost memo to Penner - Turenne file, Jan. '82-May '83)

[1] G/S, Box 4, File 35, p. 18.

[2] L. Roch memo to SFM board, Nov. 12, 1982; in G/S, Box 3, File 28, p. 37.

[3] G/S, Box 4, File 35, p. 19.

approuvées et que les négociations continuent avec M. Penner relatives à l'Article 23 de l'Acte du Manitoba".[1]

These proposed changes were transmitted by Léo Robert to Penner[2]; however, Robert made it clear that the SFM's preferred option still remained Manitoba's adherence to SS. 16 to 20 of the Charter[3]; nevertheless, the SFM had studied Penner's proposals, and proposed a number of changes to them.

The SFM's federal strategy

At about this time, the SFM stepped up its lobbying effort vis-à-vis the federal government. The Guay-Smith accounts indicate that Rémi Smith* was at a four-hour meeting with the Secretary of State on Nov. 8, 1982.[4]; a meeting had also been held on Nov. 4 with the Liberal MP for Saint-Boniface, Robert Bockstael.[5] Smith also was at the Secretary of State's office in Winnipeg on Nov. 9, 1982.

On Nov. 15, 1982, Léo Robert wrote to Secretary of State Serge Joyal and to Robert Bockstael suggesting that the SFM meet directly with the Minister of

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[1] SFM board minutes, Nov. 18, 1982; in G/S, Box 6, SFM minutes.

[2] Robert to Penner, Nov. 26, 1982; in G/S, Box 3, File 28, p. 43.

[3] There were several reasons why this was the SFM's preferred option. First and most important was the use in the Charter of the word "institution", which could be interpreted to include municipalities and school boards as well as the provincial government. Secondly, the remedies provided under the Charter for non-compliance were seen as being stronger than those proposed at this point by Penner. Thirdly, there was the link with other francophone minorities, specifically the Acadian community in New Brunswick: by adhering to the Charter, Manitoba would be strengthening minority language rights across the country, and this could but have a positive effect on the Franco-Manitoban minority itself. Finally, the federal government itself, through Serge Joyal, was nudging the SFM in this direction. (See pp. 242 ff. below.)

* The Guay Smith & Associates Statements of Account to the SFM constitute an important part of the chronology of the French language crisis. Though they provide no detail as to the content of the meetings referred to, they do tell us that meetings were in fact held. A major difficulty with the accounts is that they often do not indicate whether the time billed for was Guay's or Smith's; the format used is simply "for services rendered". It is assumed that at this point, and through most of 1983, Rémi Smith was still the key player within the firm, given his position on the board of the SFM. Guay himself testified in his "Examination for Discovery" that his direct role in the crisis only began in the fall of 1983.

[4] G/S, Box 4, File 35, p. 18.

[5] Id.

Justice, Mark MacGuigan; it sent a letter to MacGuigan requesting this meeting on the same day, suggesting that it be held during the week of Nov. 29, 1982.[1]

On Nov. 22, Penner wrote to Léo Robert asking him when the SFM would be transmitting its response regarding his latest (October) proposal.[2] The following day, Rémi Smith attended a meeting with the Attorney-General, presumably to brief him as to progress being made in the SFM's analysis of his proposals.[3]

Work on the Penner proposal was indeed proceeding at a furious pace on the SFM side. The francophone lawyers' group met again on Nov. 22[4]. On Nov. 23, Magnet transmitted a new draft constitutional amendment based on modifications to the Penner proposal suggested by the francophone lawyers at their November meetings. The Magnet draft indicates that the two parties were drawing closer together; the major area of disagreement appears, in the Magnet draft, to be in utilizing invalidity as the major sanction should the government neglect to translate laws and regulations: "This - invalidity - is the rule, subject only to specific exceptions which follow...; also, "exceptions are to be interpreted restrictively". Since the government had already made its major concession in offering to entrench French-language services in its latest draft, the SFM and its counsel appear, at this point, to have been mainly concerned with "tightening up" the requirements for translation of laws and regulations that would still have to be translated under the Penner proposal.[5]

The extent of the SFM's compromise with the government in order to secure entrenchment of government services at this stage of the negotiations

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[1] G/S, Box 3, File 16, p. 36.
[2] ATG, Box 19, FLS - SFM.
[3] G/S, Box 4, File 35, p. 19.
[4] According to a memo from Yost to Tallin dated Nov. 24, 1982; in ATG, Box 17, Bilodeau - Nov. 12 - .
[5] G/S, Box 3, File 17, pp. 78-82.

emerges clearly from a letter from Magnet to Lucille Roch, following a meeting between the SFM and Roger Bilodeau and Vaughan Baird.[1] Magnet points out that if an amendment were adopted based on the SFM's own draft proposals, "the government will be free of the following obligations to which it is currently bound", including the translation of repealed acts, regulations, rules of practice, and revised statutes. Magnet added that "the SFM, as I understand, may indicate to the Attorney General it is prepared to release him from the following obligations", including the requirement to translate spent votes and proceedings, spent order papers, spent Manitoba Gazettes, and spent Hansards. Finally, Magnet pointed out,

> ...a constitutional amendment in the terms proposed by the S.F.M. settles the Bilodeau case. This means that the possibility that all Manitoba laws will be declared invalid is removed. It also means that all possibility the government will be forced to translate under court supervision is removed. The government becomes entitled to conduct an abbreviated translation programme on a timetable to which it has agreed.[2]

It is obvious from the terse tone of the letter that this constituted, in Magnet's eyes, an abdication on the part of the SFM, a conclusion which is not surprising given his assumptions regarding the scope of the existing Section 23.

On Nov. 26, Léo Robert told Penner that the French-speaking community's preferred option was still the adherence of Manitoba to Sections 16 to 20 of the Charter of Rights and Freedoms; however, Robert included a counterproposal to Penner's October draft.[3]

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[1] Magnet to Roch, Nov. 26, 1982; in G/S, Box 3, File 16, p. 39.
[2] Ibid.
[3] Robert to Penner, Nov. 26, 1982; in G/S, Box 4, File 33, p. 134.

The SFM met with Penner on Nov. 30 to present and discuss its counterproposals.[1] Penner did not respond immediately; however, immediately following this meeting, Penner drafted a Cabinet paper dated Dec. 7, 1982, which included a draft constitutional amendment to be submitted as a "final proposal" to the Franco-Manitoban community; this proposal included a declaration that "The English language and the French language are the official languages of Manitoba", in addition to a validation date, a Schedule of Private Acts or Public Municipal Acts to be translated, and a remedies section. It also provided for the entrenchment of French-language services. Penner pointed out in the paper that the SFM was now prepared to drop its requirement for an amendment to the Charter.[2] The paper was approved by Cabinet shortly thereafter, probably on Wednesday, Dec. 8, 1982.[3]

For Penner and the SFM, then, a consensus appeared to be emerging at this stage; however, they had not anticipated objections from another quarter, Bilodeau and his counsel. On Nov. 30, Baird wrote Rémi Smith[4] telling him he had received a copy of Magnet's Nov. 26 letter to L. Roch, along with a copy of Léo Robert's Nov. 26 letter to Penner along with the SFM draft amendments; Baird stated flatly, "we are not in accord". His objections, however, related mainly to the process of negotiations rather than the substance of the amendments being discussed. According to Baird,

> It was our full understanding that we were having various meetings to finalize certain things therein. We are receiving input from other intervenors with regard to the proposed amendment.

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[1] According to an undated, unsigned document in SFM, Box 51, 24.8/3; this meeting was also mentioned during the SFM board's Dec. 13, 1982 meeting.
[2] In ATG, Box 4, FLS - 1982-83.
[3] Penner to Pilkey, Dec. 14, 1982; in ATG, Box 4, FLS - 1982-83.
[4] G/S, Box 3, File 17, pp. 83-8.

> We also think that the public should be allowed an input before finalization therein.
>
> To me a 'closed door policy' with regard to constitutions is anti-democratic and opposed to by myself.[1]

Substantively, Baird proposed that any statutes or regulations not enacted, printed and published in both official languages on or before December 31, 1990 would "cease to have force or effect". This is of course a reflection of Magnet's concern that invalidity should be the ultimate sanction should the government not live up to its translation commitments. In addition, Baird proposed that the word "regulation" be left undefined, since the courts had given it a broad interpretation already.

The minor nature of the changes proposed clearly indicate that he was piqued at not being a major player in the negotiations; however, this letter is perhaps also an indication of the effect Magnet's arguments were having on various actors involved in the process. This is confirmed by Baird himself, as a few days later he wrote: In a letter to Robert dated Dec. 8, 1982; Baird stated that

> We were surprised that you would give to The Attorney General your suggested amendments before we were in accord with it (sic). In the main, we approved, there were trivialities throughout where you have put enacted, printed, and published where grammatically there should be no comma after the word printed. We have changed that throughout. However it is paragraph 23.5 which is the most important.*

In any case, these differences between the SFM and Baird appeared to have been cleared up since, on Dec. 8, Twaddle transmitted Baird's proposals regarding a constitutional amendment to Penner; the submission at that point was identical to the SFM's. In addition, Twaddle pointed out that Baird wished

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[1] Id.

* Section 23.5 stipulated that "shall" in S. 23 "shall be interpreted as mandatory and imperative". Baird to Robert, Dec. 8, 1982; in G/S, Box 4, File 32, p. 2.

that the proposal be made available to all interested parties, and "that it be made available to the public".[1]

On Dec. 3, 1982, Penner described to Ed Broadbent, Leader of the federal NDP, (in anticipation of an SFM meeting with Broadbent) the conundrum faced by the government in the Bilodeau case: it could simply argue that S. 23 was "directory", but Penner feared the "negative political repercussions in the Franco-Manitoban community". He told Broadbent that negotiations on a constitutional amendment were proceeding on the basis of "mutual acceptance of two principles: the validity of the Manitoba statutes and the mandatory nature of the bilingual obligation".[2]

On December 6, 1982, a three-person SFM delegation descended upon Ottawa and began a whirlwind lobbying round of meetings with practically any politician who could remotely influence the constitutional amendment process. The purpose of the meetings was as follows:

> (1) d'informer les partis politiques fédéraux des démarches entreprises auprès du Procureur général, M. Roland Penner; et sur l'Article 23 de l'Acte du Manitoba;
>
> (2) demander leur appui et l'appui de leur parti, si nous réussissions dans nos négociations et qu'un projet de loi aboutisse devant le Parlement; et
>
> (3) avoir aussi des précisions sur l'interprétation de l'article 43* de la Constitution canadienne.
>
> Lors de ces rencontres, il était clair que nous voulions obtenir une solution politique plutôt qu'une solution juridique.[3]

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[1] ATG, Box 17, Bilodeau - Nov. 12 - .
[2] Ibid.
* S. 43 allows a constitutional amendment relating to official languages to be adopted by the federal Parliament and by the legislature of the province involved.
[3] As described in the SFM board's Dec. 13, 1982 minutes; in G/S, Box 6, SFM minutes.

Of the dozen or so politicians met in the course of those three days,* the key ones were undoubtedly Mark MacGuigan, Minister of Justice, and Serge Joyal, Secretary of State. The SFM met both men on Dec. 7, 1982*; according to its preparatory notes for these meetings, the SFM requested federal support of a constitutional amendment to Section 23. It informed them of the SFM's position on the amendment, and indicated it preferred a political to a judicial solution. The SFM's position as outlined to MacGuigan and Joyal was as follows:

- that Manitoba adhere to Sections 16 to 20 of the Charter;
- that Section 23 remain intact;
- all laws and regulations presently in force must be translated;
- no changes to S. 23 would be acceptable unless translation deadlines were included;
- Section 23 should be expanded to include services.

The SFM also requested support from the federal government in three specific ways: 1) support for the SFM's interpretation of Section 43 of the Canadian Constitution; 2) concrete assistance if Bilodeau went on to the Supreme Court. For example, the SFM pointed out that the federal government's position as developed in its factum in the Bilodeau case, was much less supportive than it should have been, in the SFM's eyes; and 3) support for the SFM's position in its negotiations with the Province.[1]

Financial assistance for the SFM's mounting costs, legal and otherwise, in the attempt to secure a constitutional amendment was also requested, and the SFM Board's Dec. 13 minutes state that Serge Joyal assured the SFM of his

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* During the blitz, the SFM met with Mark MacGuigan and his Deputy Minister, Serge Joyal, Jean Chrétien (former Minister of Justice), Jake Epp, Senators Jos Guay, Jacques Flynn, and Nathan Nurgitz, MP Robert Bockstael, Ed Broadbent, leader of the NDP, Cyril Keeper, and Rod Murphy. (SFM Board Minutes, Dec. 13, 1982)

* Present at the meeting were Mark MacGuigan, Minister of Justice; Serge Joyal, Secretary of State; Robert Bockstael, MP for Saint-Boniface; and Léo Robert, Rémi Smith, and Daniel Boucher for the SFM.

[1] SFM, Box 42, 24.8/9.

financial support "en nous invitant à soumettre des factures pour les frais encourus par nos négociations avec M. Penner".[1] Léo Robert leaped at the offer and followed up with a letter to Roger Collet, Regional Director of the Secretary of State in Winnipeg, saying that

> Monsieur Joyal nous a non seulement assuré de son appui politique, mais aussi de son appui financier en nous invitant à envoyer au Secrétariat d'Etat un état de compte relatif à ce dossier. Nous vous l'envoyons ci-joint...[2]

Briefing notes prepared in preparation for the meeting also give an indication of the SFM's "bottom line" at this point in the negotiations: the SFM would not be willing to agree to the following:

a) que l'Article 23 soit annulé (raisons historiques);
b) qu'on libère le gouvernement de son obligation de traduire toutes les lois et règlements présentement en vigueur (emphasis in text);
c) qu'on permette au gouvernement de proposer des modifications à l'Article 23 sans exiger des échéances (dates précises)

On the other hand, the notes concede that Manitoba's adherence to the Charter was perhaps impossible: "si ce n'est pas possible, on accepterait que la province ajoute des clauses à l'Article 23, clauses qui préciseraient l'application de l'Article 23"; the notes add that the SFM was also attempting to have S. 23 expanded to include French-language services.[3]

The SFM also briefed the opposition parties regarding the possibility of a constitutional amendement to Section 23. SFM briefing notes for the meeting with Jake Epp, for example, point out that a three-person SFM delegation (Gilberte Proteau, L. Roch, and R. Bisson) had already met Epp immediately prior to the organization's annual meeting in March, 1982 to make him aware

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[1] In G/S, Box 6, SFM minutes.
[2] SFM, Box 42, 24.8/9.
[3] In G/S, Box 4, File 35, p. 7.

of its presentation to the provincial government regarding French-language services and to "initier des contacts avec le parti conservateur". The notes add that Epp should be made aware that the SFM had not yet met with Sterling Lyon and Gerry Mercier, but that "nous nous proposons les rencontrer en janvier '83".[1]

A meeting was also held on Dec. 9, 1982 with a member of Leader of the Opposition Joe Clark's staff, Bill Parsons[2]; the SFM representative told Parsons that

> ...we were seeking the support of the federal conservative leadership. The support we wanted was a communication to the provincial tory (sic) leadership that the provincial tories would not make an issue out of the amendment adding Manitoba to section 1-20. I was seeking his help, in a meeting with Mr. Clark, to communicate the federal tory view to the provincial tories that the federal tories supported this move, or at least that it was not profitable for the provincial tories to start a 'race war'. [3]

The SFM's lobbying effort vis-à-vis the Conservatives did not end there. On Dec. 17, 1982, an SFM delegation, including Rémi Smith, met with Senator Nathan Nurgitz "pour faire un peu de sensibilisation"[4]; that same day, Magnet was meeting with Brian Mulroney, who was then in the midst of the run-up to the Conservative leadership convention scheduled for the end of January, 1983. Magnet described the meeting as follows:

> Brian Mulroney, President of Iron Ore Company of Canada, returned my call today. I described the process of constitutional amendment to him at some length. I told him that we were seeking the support of the federal conservative leadership in the amendment process. I said particularly we would like signals to be sent back to the provincial

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[1] G/S, Box 4, File 35, p. 6.

[2] Unsigned notes on this meeting can be found in G/S, Box 3, File 28, p. 57; since there is a reference to "my client", it may be assumed that it was Joe Magnet who met Parsons on behalf of the SFM.

[3] Ibid.

[4] SFM, Box 51, 24.8/3.

> caucus that this is not an issue on which the provincial tories should raise a rumpus.
> He raised the problem, which Clark's E.A. also raised, that the timing was not propitious. There is a leadership process on the 28th-29th of January in Winnipeg... There are many people in caucus, he said, that (sic) would not support this kind of amendment. He did not say who.
> He himself, he said, very much favours the effort. He undertook to convey those views to Joe Clark, and to Sterling Lyon personally.[1]

Magnet followed up with a letter to Mulroney on December 20, 1982, in which he pointed out that the SFM's preferred option was still entrenchment of French-language rights in Manitoba via opting in to sections 16 to 20 of the Charter; he added that

> For various reasons, the Manitoba government has preferred to concentrate on amendments to section 23 of the Manitoba Act respecting the implementation process. However, the discussions have resulted in the positions of the parties involved now being so close to sections 16-20, that that option is now boldly spotlighted as the preferable course...
> In order for these negotiations to bear fruit, it is crucial that all political actors play responsible roles. If the provincial conservative (sic) caucus were to be recalcitrant on this issue, it would likely die. That would throw the issue back to the Supreme Court of Canada, which, in the view of the Société Franco-Manitobaine, is in nobody's best interest.[2]

A few days later, Magnet informed the interim executive director of the SFM, Cécile Rémillard-Beaudry, of the various contacts he had made in Ottawa.[3] He summed up his contacts with the Conservatives in these words:

> To sum up in a nutshell: there are obvious difficulties in finessing conservative (sic) support for the opt-in amendment. We may be able to achieve intermittent support, and that support may well influence the provincial conservative caucus. However, we will have to choose our federal sposkesmen with care. A key player will be Jake Epp. I think the SFM leadership should arrange another

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[1] G/S, Box 3, File 28, p. 68.
[2] Id.
[3] Magnet to Rémillard-Beaudry, Dec. 21, 1982; ibid., p. 70.

> meeting with him, perhaps over the holidays, to press upon him how seriously the SFM regards this issue. Mulroney may prove to be another key player. His heart is in the issue, and from his position as a member of the anglophone minority community in Montreal, he can speak with conviction and authority that many other tories (sic) lack. Clark is utterly preoccupied with the leadership issue, and, I suspect, will be unwilling to press this issue for fear of offending certain members of the conservative (sic) caucus.

According to Blay, the SFM also met with the provincial Conservative caucus on Dec. 23, 1982 [1]; however, there is no corroborating evidence in any of the files examined.

On Dec. 16, 1982, Penner wrote L. Robert to inform him that "la province du Manitoba est à même de se conformer à la plupart des requêtes faites par votre Société".[2] Although the province could not agree with the SFM's request that Manitoba adhere to Sections 16-20 of the Charter (a response the SFM had anticipated, as we have seen), Penner pointed out there was agreement on a date for validation of the statutes, on translation of certain private acts and public municipal acts (a list of which was to be provided by the SFM), and a remedies clause. There is no mention of services in Penner's letter, but this is no doubt due to the fact there had already been agreement on this point between the government and the SFM. Penner also included another draft constitutional amendment, Cabinet's "final proposal" to the SFM.

On the following day, Dec. 17, the SFM again met personally with Penner and Desjardins, no doubt to discuss the contents of Penner's letter.[3] On the same day, it circulated Penner's latest proposal to the francophone lawyers' group[4] and sent out letters to 45 francophone organizations inviting them to a special general meeting of the organization to be held on January 15, 1983[5]; a

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[1] Blay, op. cit., p. 165.
[2] ATG, Box 4, FLS - 1982-83.
[3] G/S, Box 5, Print-Out, Q. 14, 1.
[4] G/S, Suppl. Doc., p. 120.
[5] SFM Box 42, 24.8/8.

few days later, it followed up by circulating an "information package", including a copy of the government's draft constitutional amendment, to the organizations.

On December 16, Penner informed the NDP caucus that an agreement had been reached between the Speaker, the Government, and the Opposition regarding simultaneous translation of speeches in the Legislature. Under the terms of the agreement, simultaneous translation would be provided for speeches made in French on 24 hours' notice given to the Speaker.[1]

On Dec. 17, 1982, feeling confident that he had in effect a "done deal" following his meetings and correspondence with the SFM, Penner wrote to the Justice critic for the opposition, Gerry Mercier, summarizing the *Bilodeau* process, informing him of the status of the negotiations with the SFM, and enclosing a copy of the draft proposed constitutional amendment to Section 23. Penner also sent a copy of this letter to the Leader of the Opposition, Sterling Lyon.[2] The Opposition did not respond.[3]

On Dec. 20, 1982, both Roland Penner and Léo Robert "went public". Léo Robert told the *Winnipeg Sun* that the province and Manitoba's francophone community were on the brink of an "historic agreement" on bilingualism; Penner also said he expected an agreement soon. The *Sun* added, in a report headed "Bilingualism pact near", that

> The two sides have been negotiating since last summer to reach an accord on bilingualism in the province, including translation of all laws into French.

The report added that the SFM was holding a general meeting on the issue on January 15, 1983.[4]

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[1] ATG, Box 17, FLS - Caucus - Cabinet.
[2] ATG, Box 18, FLS - Fed.-Prov.; Box 17, Bilodeau - Nov. 12 - ; Box 4, FLS - 1982-83.
[3] MacKenzie, p. 277.
[4] *Winnipeg Sun*, December 21, 1982.

On December 29, 1982, vandals attacked Georges Forest's offices at 160 Marion St. in Saint-Boniface, spraying graffitti on the outside walls and windows.[1]

Thus ended the year 1982: a year of great hope and anticipation in the French community, hopes first raised with Pawley's speech at the March annual meeting of the SFM and heightened with virtual agreement upon a constitutional amendment that in its eyes would have finally ended a century of injustice and lack of recognition. Yet it was also a year that ended ominously, with Magnet's warning of political clouds on the horizon, and a display of physical violence that proved to be a mere inkling of what was to come.

[1] *Winnipeg Sun*, Dec. 30, 1982.

Chapter V

Negotiations Awry

Roland Penner, Léo Robert, and Rémi Smith, confident, at the end of 1982, that they had a deal, were in for a rude awakening in early 1983.

On Jan. 5, Vaughan Baird informed Kerr Twaddle that he was going back to the Supreme Court. Since no provision had been made in the draft constitutional amendment agreed to between the government and the SFM in December that the meaning of "shall" in S. 23 be made explicitly mandatory, Baird told Twaddle that he was "instructing our agent to inscribe the matter for hearing at the subsequent session" of the Supreme Court.[1] Twaddle sent the letter on to Penner on Jan. 11, suggesting a drafting change to satisfy Baird.[2] Chinks were already showing in the agreement, mainly due to the different agendas being pursued by the SFM, on one hand, and Bilodeau and his counsel on the other, and perhaps to the fact that Baird was miffed at having been excluded from the negotiations. The francophone lawyers' group continued to meet[3] to attempt to resolve the differences.

Meanwhile, the SFM was pursuing its lobbying campaign. Rémi Smith met with Senator Duff Roblin on Jan. 7, 1983;[4] more importantly, on January 13, 1983, representatives of the SFM, including Rémi Smith, met with the Leader of the Opposition, Sterling Lyon, and members of the Progressive Conservative caucus, including Brian Ransom, Gary Filmon, Gerry Mercier, and Bud Sherman, to inform them of the status of the negotiations between the SFM

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[1] ATG, Box 17, Nov. 12 - .
[2] Turenne, Bilodeau file.
[3] Jan. 10 and 12, according to the Guay/Smith accounts - G/S, Box 4, File 35, p. 21.
[4] G/S, Box 4, File 35, p. 21.

and the government, and of the SFM's position in these negotiations.[1] This meeting lasted over two hours.[2] Rémi Smith spoke to Roland Penner on the same day[3]; however, the content of the conversation and whether it occurred before or after the meeting with the Conservative caucus, is not documented in the files.

On Jan. 12, the SFM Board of Directors met and discussed the state of negotiations with the Attorney-General. A significant hardening of the SFM's position, if not a reversal of its December position (when, it will be recalled, the SFM had agreed with the Attorney-General on a draft) is evident from the minutes, which read in part as follows:

> Le Président fait le compte-rendu sur les négociations avec le Procureur-général et repasse article par article les propositions et les raisons pour lesquelles les amendements sont proposés.
> Il rappelle aussi que notre première position reste l'enchâssement du Manitoba dans les articles 16 à 20 de la Charte canadienne des droits et libertés.[4]

The following day, the SFM wrote the Attorney-General stating that its preferred option remained the adherence of Manitoba to Sections 16 to 20 of the Charter, and asked why Penner did not accept this position; however, proposed amendments to the Penner draft accompanied Léo Robert's letter. These were to be presented as well at the general meeting called by the SFM for Jan. 15. Robert's letter was the first formal reaction by the SFM to Penner's Dec. 16, 1982 draft proposals, proposals which he believed at that time were virtually accepted by the SFM. The state of negotiations between the SFM and Penner at that time were summarized in an article by Richard Cleroux in the Jan. 13, 1983 edition of the Toronto *Globe and Mail.*

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[1] SFM, Box 51, 24.8/3.
[2] G/S, Box 4, File 35, p. 21.
[3] Ibid.
[4] G/S, Box 4, File 35, p. 10.

On Jan. 13, Penner again met with the SFM. Tallin had transmitted a new draft constitutional amendment to Penner incorporating "dates which you suggested to the Société Franco-Manitobaine at the meeting last Thursday. It also includes some changes in wording which you agreed to." However, Tallin added that "the only change in substance occurs in S. 23.5(2), where the opportunity to obtain a declaration from the Court is broadened out as I suggested at the meeting."[1]

On Jan. 15, 1983, about 200 Franco-Manitobans and members of the general public[2] converged upon St. Boniface College for the SFM's special general meeting on the state of negotiations with Roland Penner.[3]

The meeting began at 1.45 p.m. that Saturday afternoon with a description of the history of Section 23 of the Manitoba from 1870 to 1979 by lawyer Rhéal Teffaine, followed by a summary of the state of negotiations between the SFM and Penner and the political implications of these negotiations, outlined by the SFM's president, Léo Robert. Rémi Smith then explained the judicial implications of the Bilodeau case.[4] A document was circulated to persons in attendance containing a side-by-side comparison of the government's and the SFM's proposals.[5]

Jacqueline Blay's account of the meeting[6] highlights the divergences between the parties as well as the internal tensions within the Franco-

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[1] Tallin to Penner, Jan. 18, 1983; in Turenne file, Jan. '82 - May '83.

[2] Though the meeting was organized by the SFM, participation was not limited to members; indeed, many members of the press as well as interested non-Francophones were in attendance. An account ran in the *Winnipeg Sun*, Jan. 16, 1983.

[3] On the day of the meeting, representatives of the SFM, including Rémi Smith, held extensive discussions with Penner; the Guay-Smith accounts contain a reference to a seven-hour meeting with Penner. G/S, Box 4, File 35, p. 22.

[4] G/S, Box 4, File 35, p. 12.

[5] SFM, Box 42, 24.8/8.

[6] Blay, 1987, pp. 165-7.

Manitoban community. According to Blay, Léo Robert underlined areas on which all parties (provincial government, SFM, and Bilodeau/Baird) agreed: there must be a negotiated definition of Section 23 to avoid judicial chaos; Section 23 must be amended to limit its mandatory nature regarding the translation of a large number of laws; bilingual services could be included; laws should be translated in the course of a forthcoming statutes revision process; and French and English are the official languages of the province.

Robert also identified the areas of disagreement. Roger Bilodeau wanted a more precise determination of the laws which would have to be bilingual; in addition, Bilodeau was concerned about redress which, in his view, should not be limited to services. Bilodeau was also concerned that the responsibility to penalise violators of S. 23 would be left with the courts. The provincial government, on the other hand, held that there was no obligation under Section 23 to translate Hansard, which had only come into existence in 1958. The government also did not want to make the provision of bilingual services compulsory in all provincial institutions, specifically in municipalities, school divisions, and universities, but rather would limit such services to agencies of the provincial government.

Finally, the SFM would prefer an earlier date (1990) for completion of translation of laws and regulations which would have to be bilingual; in addition, there was disagreement with the government regarding the implementation date of bilingual services.

The meeting revealed profound disagreement among Franco-Manitobans around both the content of the negotiations and the strategy to be adopted vis-à-vis the provincial government. Maurice Prince, president of the "Association des Pro-Canadiens du Manitoba", accused Léo Robert of usurping the right to represent the Franco-Manitoban community and even of betraying

its interests. His perspective has been described above (see Chap. 4): the existing Section 23, and the Forest judgment, contained everything the community could want. Turenne was later to describe Prince and his group in the following words:

> Maurice Prince is Assistant Director of the St. Boniface Museum. He claims to be President of the Association Pro-Canada with a membership of 5,000 Franco-Manitobans. In fact, Maurice Prince represents no one but himself, has no following whatever in the Francophone community, and his Association Pro-Canada is non-existant (sic).
> The 5,000 Manitobans do however exist. They are the people who signed a petition organized by Prince and Henri Létourneau, St. Boniface Museum Director, in 1980 supporting the "NON" side in the Quebec referendum as means of protest over the SFM's brief flirtation with the "OUI" forces. Ever since that time, Prince has been fraudulently using that petition as constituting the membership of his "Association".
> (...)
> The substance of Prince's objections to the proposed amendment are that Section 23 of the Manitoba Act already guarantees to Francophones all their rights including the right to full bilingual services from the Government, and that it is inviolate because drafted by Louis Riel. To tinker with Section 23 is therefore an abomination. Because it is the fundamental law of the Province, it cannot be amended and therefore the proposed amendments are unconstitutional. Never mind the logic.[1]

Georges Forest also joined in the fray, against the SFM's position, and also calling into question its right to be the sole representative of the Francophone community on the issue. Finally, apart from his evident antagonism towards the SFM, expressed in terms that would subsequently be taken up gleefully by the opponents of the S. 23 amendment, Forest publicly reiterated his position which we have described above as "radical bilingualism":

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[1] Turenne to Penner, Aug. 31, 1983; in Turenne files.

> entrain de créer des ghettos (en offrant des services là où le nombre le justifie). Si on reconnaît l'aspect bilingue de la province, ça veut dire qu'à partir du semestre prochain, on doit enseigner en français dans toutes les écoles...[1]

Full translation of Hansard, bilingual services throughout the province (independently of numbers of Francophones), compulsory teaching of French to all Manitoba students: these were only part of Forest's agenda; and yet, paradoxically, Forest was adamant in his opposition to the SFM's position, which might have opened up some of these avenues, so convinced was he that all of this and more was already contained in Section 23 and in the Supreme Court judgment that bore his name.

The meeting, since it was informational and consultative in nature and since it occurred in the midst of negotiations that were far from being in their final stages, was inconclusive; no vote was taken on any of the detailed positions of the various parties. Blay summarizes the end result in this way:

> Il n'y aura pas de vote à l'issue de cette réunion d'information. Elle n'atteint pas la dimension 'historique' que l'on attendait, car les négociations ne sont pas terminées. Dans la communauté, la tension commence à se faire sentir.[2]

The press accounts[3] highlighted the disagreements among Franco-Manitobans and especially Forest's accusations that the SFM was falling into Penner's "trap", and that any "compromise" over Section 23 would create French "ghettos". The *Sun* reported that Forest would "fight" should Léo Robert sign an agreement with the Pawley government to amend the Manitoba Act.

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[1] Blay, op. cit., p. 167.
[2] Id.
[3] *Winnipeg Sun*, Jan. 16, 1983; *Winnipeg Free Press*, Jan. 17, 1983; Toronto *Globe and Mail*, Jan. 17, 1983.

Meanwhile, probably as a result of the SFM's December lobbying effort, the federal government's involvement in the issue began to be more pronounced. Senator Joseph Guay announced, at the SFM's special meeting, that the federal government fully supported Bilodeau, financially as well as otherwise.[1]

On January 19, 1983, only four days after the SFM's general meeting, Vaughan Baird announced that he and Bilodeau were going back to the Supreme Court. "We set our term (sic), the government didn't meet it, so to court we go", Baird told the *Winnipeg Sun*.[2] The *Sun* added that "meanwhile, the province is still negotiating with representatives of the francophone community on the translation of laws". Baird and his client were still holding fast to the view that under the existing Section 23, it was mandatory that all Manitoba laws be bilingual. Penner responded the following day, saying that "The province is trying to negotiate an agreement with the francophone community on the translation of provincial laws and the provision of bilingual services."[3]

Negotiations indeed continued, and Penner met with the SFM on Jan. 21 and 25, 1983.[4] In the meantime, however, Georges Forest was stepping up his campaign against any kind of agreement. On January 22, he sent an eight-page letter to Penner, with copy to an extensive list of federal and provincial politicians, saying that the negotiations were "chipping away" at Section 23, and that the SFM was "killing the hen that lays the golden egg". Adding that "conspirators are about to sabotage our S. 23", and suggesting that Penner had "overstepped his authority by commenting on a matter that is before the

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[1] Blay, op. cit., p. 167.
[2] *Winnipeg Sun*, Jan. 20, 1983.
[3] *Winnipeg Sun*, Jan. 21, 1983.
[4] G/S, Box 4, File 35, p. 22.

Supreme Court", Forest appealed to Penner to "withdraw your proposals for amending S. 23 of the Manitoba Act 1870"[1].

Penner replied on Feb. 7, 1983, saying "Unfortunately I cannot agree with many of the things which you have written". Penner defined the crux of the disagreement between Forest on one hand and the Government and the SFM on the other in these words: "There is absolutely nothing in Section 23 which guarantees to Franco-Manitobans any provincial government services in the French language..." Penner added that the proposed amendment "is plainly and obviously an extension of the French language rights currently guaranteed in section 23 of The Manitoba Act".[2] Penner's opinion, in addition to being diametrically opposed to Forest's, also contrasted sharply with that of the SFM's own counsel, Joseph Magnet.

At about the same time, the SFM received a 10-page opinion from Joe Magnet regarding Penner's latest draft proposals.[3] Magnet objected to the lengthy delays provided for in Penner's latest proposals regarding the translation of current statutes: "In my opinion, 13 years is an unreasonably long delay for the government to comply with its constitutional obligation to translate current statutes."[4] Secondly, "the proposed amendments validate all consolidated statutes which are in English only (s. 23.2-2). This destroys the remedy of invalidity or voidability which was the S.F.M.'s principal legal weapon in the *Bilodeau* case." To remedy this flaw, Magnet concluded that "this section should include a clause which specifies that the existing revision will be invalid unless published bilingually by December 31, 1995."[5] He

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[1] ATG, Box 17, Bilodeau - Nov. '82 - .
[2] Id.
[3] G/S, Box 3, File 16, pp. 121-30.
[4] Ibid., p. 2.
[5] Ibid., p. 3.

proposed a similar provision regarding regulations and Rules of Practice of provincial courts and quasi-judicial tribunals.

Ominously, Magnet pointed out that should invalidity not be provided for in the amendment,

> "It is highly doubtful that this would be acceptable to the federal government. Mr. Tassé, Deputy Minister of Justice, told me specifically that the federal government would not agree to a provision such as this."[1]

Magnet also objected to the wording of the bilingual services clause, and specifically to the exclusion of institutions of the legislature as well as of the government, as initially suggested by the SFM. According to Magnet, this difference in wording might mean that "the S.F.M. might well get the right to bilingual services from government departments, but not from administrative tribunals which exercise power under an Act of the legislature".[2]

Regarding the remedial clause contained in the government's proposals, Magnet pointed out that "the proposed remedial clause will not provide compensation for past deprivation of language rights under S. 23", whereas the SFM's proposed wording would have authorized the courts to do so. Magnet added that "obviously, the S.F.M.'s clause is to be preferred".[3]

Finally, Magnet concluded that

> The major problem with the government's proposed amendments is the suggestion that the government be freed from its obligation to translate the consolidated regulations and Rules of Practice of courts and quasi-judicial tribunals. In my opinion, this issue should be broken off from the package, and negotiated separately *now*.[4]

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[1] Ibid., p. 6.
[2] Ibid., pp. 7-8.
[3] Ibid., p. 8.
[4] Ibid., p. 9.

Magnet went so far as to suggest that the SFM write to Penner to obtain a firm commitment on this matter and that, if such a commitment were not provided, talks with Penner should be broken off.[1]

On Sunday, January 25, 1983, a columnist for the *Winnipeg Sun* and well-known local talk-show host, Peter Warren, wrote a vituperative and incendiary column distorting and denouncing the entire process of negotiations between the provincial government and the SFM. Under a bold headline entitled *Blackmail's the name of the SFM game,* Warren wrote in part that

> These closed-door meetings between a simple society executive (paid with tax dollars) negotiating with a duly-elected government are deplorable... The government of Manitoba has no business negotiating with the society...

Referring to the fact that Penner had given a copy of his draft constitutional amendment to the Justice critic, Gerry Mercier, and to the leader of the opposition, Sterling Lyon, Warren added:

> Unusual, you say, for a provincial government to offer a draft proposal of new legislation to the opposition before it's ready to roll. You bet your sweet life it is.[2]

Warren made no mention of the government's by now well documented and publicized dilemma regarding the Bilodeau case. The quid pro quo required by the SFM in return for withdrawing the Bilodeau case from the Supreme Court had become blackmail; the exchange of millions of words of translation for government services was ignored, as was the long-standing tradition of bipartisanship on language matters in Manitoba; the possibility of judicial chaos raised by the Manitoba Court of Appeal should Bilodeau win his case was similarly ignored; and finally, the legitimacy of the SFM as an official

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[1] Id.

[2] *Winnipeg Sun,* Jan. 25, 1983.

spokesman for the Franco-Manitoban community was impugned directly, without any explicit justification. The idea had been planted in the public mind that the SFM was an illegitimate organization engaged in criminal activities; criminal acts against it were therefore justified.

The low road in the language debate had been staked out; it was soon to become a highway.

The SFM sought legal advice, and a francophone lawyer, Michel Monnin, appeared before the organization's Board on March 8, 1983. After hearing Monnin's comments, the Board decided unanimously to send a letter of intent of legal proceeding to Warren.[1] Subsequently, the SFM sent a copy of the article to Magnet to determine whether there were grounds for legal action against Warren. Magnet's opinion, dated April 15, 1983, concluded that the article was "actionable in several ways" and suggested the SFM initiate an action under the Manitoba Human Rights Act.[2]

On the night of January 30, 1983, five days after the Warren column, the SFM's offices were gutted by fire. Manitoba's Fire Commissioner confirmed two days later that the fire had been caused by arson.[3]

In the aftermath of the destruction of the SFM offices, Gilberte Proteau, the immediate past president of the organization, revealed that she had received death threats during her term of office.[4] It was also revealed that less than two days before the fire, anti-French graffiti had been painted on the SFM building; the front window of the building had been smashed in for the second time in a week.[5]

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[1] G/S, Box 6, SFM board minutes.
[2] SFM, Box 41.
[3] *Winnipeg Free Press*, Feb. 3, 1983.
[4] Ibid., Feb. 1, 1983.
[5] *Winnipeg Sun*, Feb. 1, 1983.

The SFM fire constituted a dramatic escalation of violence against property which had begun some time before with the graffiti scrawled on Georges Forest's Marion St. office. Richard Cleroux of the Toronto *Globe and Mail* called it

> The most serious, but not the first nor the last in a series of continuing racist attacks in the past six months against the province's francophone community.[1]

The SFM board of directors was badly shaken by these events. Léo Robert presented a report on the events at a board meeting held on Feb. 3, 1983, stating that Fire Commissioner Thorimbert had confirmed the criminal nature of the fire and describing the indications of financial, material, and moral support received from many Franco-Manitoban organizations, including St. Boniface College (which provided temporary quarters to the organization), the Franco-Manitoban Cultural Centre, the francophone youth organization ("Conseil Jeunesse Provincial"), the Festival du Voyageur, the senior citizens' organization ("Fédération des Aînés Franco-Manitobains"), and so on. Robert added that a meeting of the presidents of francophone organizations had been scheduled for Monday, Feb. 7, and that a joint press conference would be held the following day. Assistance would also be requested from the Jewish and Ukrainian communities in responding to the acts of vandalism.[2]

The previous day, one Douglas Lockhart had announced the formation of his Manitoba Unity Committee against "creeping bilingualism".[3] A few days later, a K. Krysansk, claiming to represent the same group, sent a letter to *Winnipeg Free Press* columnist Gordon Sinclair regarding the organization's objectives.[4] Sinclair commented that

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[1] Toronto *Globe and Mail*, Feb. 10, 1983.
[2] G/S, Box 4, File 35, pp. 13-16.
[3] *Winnipeg Free Press*, Feb. 2, 1983.
[4] *Winnipeg Free Press*, Feb. 9, 1983.

> It is views like theirs that give root to the acts of arson and vandalism and, above all, of racism that are flaring in St. Boniface.

The same day, Richard Cleroux wrote, in the Toronto *Globe and Mail*, that "So far police have been powerless to stop the escalation of the racist incidents..."

Lockhart had also written to Roland Penner, who replied, on Feb. 10, 1983, in response to his criticism that the Manitoba government was establishing official bilingualism in the province, that "...English and French are *already* the official languages" of the province.[1]

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Negotiations, meanwhile, were grinding on. With the Bilodeau case set on the Supreme Court's winter docket, proposals and counterproposals again began to fly. On January 25, Twaddle transmitted a new draft amendment to Baird. On Jan. 27, Tallin sent a "further redraft of proposed amendments" for a meeting between Penner and the federal Minister of Justice scheduled for the evening of Jan. 31. This redraft provided for the mandatory nature of Section 23, a provision insisted upon throughout the negotiations process by Baird and Bilodeau.[2] Turenne suggested further modifications to the redrafted S. 23.5(1) on Jan. 28.[3] On Feb. 3, Tallin transmitted a revised draft to Penner, incorporating provisions suggested by Twaddle "arising by the demands of Vaughan Baird", as well as changes to S. 23.5 (1) discussed with Twaddle and

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[1] ATG, Box 18, FLS - Correspondence to Sept. '83 (emphasis in text).
[2] ATG, Box 17, Bilodeau, Nov. 12 - .
[3] Id.

Turenne. In addition, the effective date for implementation of S. 23.5 was set for Jan. 1, 1987, as suggested by Turenne.[1]

Meanwhile, a copy of the government's new proposals had been transmitted to Vaughan Baird by Kerr Twaddle; Baird sent them on to the SFM on Feb. 4, requesting the organization's comments as soon as possible. The new draft included a provision that "the requirement that the Acts of the Legislature be printed and published in both the English language and the French language is mandatory".[2] The francophone lawyers' group met that same day to discuss the new proposals, a copy of which was provided by Roger Bilodeau himself.[3]

On Feb. 7, 1983, in the wake of the gutting of the SFM's offices and of Warren's column in the *Winnipeg Sun*, 15 francophone organizations representing thousands of Franco-Manitobans held a joint press conference confirming the SFM as their official spokesman.[4] The following day, the *Sun* reported that "Police have stepped up their surveillance of Winnipeg's francophone neighborhoods..."[5]

Articles on the unease felt by francophone residents of Winnipeg appeared in the Toronto *Globe and Mail*[6] and *Winnipeg Sun*[7] A few days later, the *Winnipeg Sun* carried a bizarre report that a group of young people, calling themselves "the painters", had anonymously confessed responsibility for the spate of graffiti in St. Boniface that had preceded the torching of the SFM offices.[8] The group had presumably sought to distance itself from the SFM fire, a grave criminal offence, and which sources at the SFM at the time called a

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[1] Turenne files, Jan. '82 - May '83.
[2] G/S, Box 3, File 16, pp. 40-6.
[3] G/S, Box 4, File 35, p. 22; File 33, pp. 100-6.
[4] ATG, Box 19, FLS - Clip.
[5] *Winnipeg Sun*, Feb. 8, 1983.
[6] "Winnipeg anti-French incidents stir alarm" - Feb. 9, 1983.
[7] "Vandalism blamed on small group" - Feb. 9, 1983.
[8] "Secret gang confesses to graffiti" - Feb. 13, 1983.

"professional job". In any case, the "confession" did not prevent the appearance of new graffiti on the walls of the Tourist Hotel in St. Boniface on Feb. 15.[1] Neither the graffiti writers nor the arsonists were ever identified.

Following the weeks of consultations on the content of his latest proposals, Penner felt sufficiently confident to transmit them to his federal counterpart for reactions. On Feb. 8, he sent a copy of the latest draft proposals to the Minister of Justice, Mark MacGuigan, adding that the Manitoba government "could not accept" an amendment to the Constitution Act (that is, the Charter of Rights, as still requested officially by the SFM). Penner emphasized the nature of the *quid pro quo* : limits to the numbers of statutes to be translated and the time needed to do so in exchange for French-language services.[2] Two days later, Penner sent this latest draft to translation.[3]

Vaughan Baird transmitted his reactions to the new Penner proposals in a letter to Twaddle dated Feb. 16, 1983.* Baird's main objections centered on the meaning of the word "shall" in the original S. 23: "In regard to your s. 23(2) you have restricted the word 'shall' to be interpreted as being mandatory in regard to the printing and publishing of the Acts of Legislature, while in our opinion 'shall' applies to other matters and principles in s. 23". Interestingly, Baird also proposed, on behalf of his client as a "concerned citizen" that regulations be left to "further interpretation by the courts (if necessary)" instead of being included in the amendment; similarly, Hansard should, in Baird's view, be left to the

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[1] *Winnipeg Sun*, Feb. 16, 1983.
[2] ATG, Box 17, Bilodeau, Nov. '82 - .
[3] Id.
* The Guay/Smith files contain two letters written by Baird at this time, one dated Feb. 14 (G/S, Box 3, File 16, p. 47), the other Feb. 16 (G/S, Box 3, File 22, pp. 1-2). Only the Feb. 16 letter is signed, however, which indicates that the earlier one was a draft, probably discussed with the SFM. The Feb. 16 letter is more precise in requesting certain wording changes; otherwise the two texts are substantially the same.

courts rather than being eliminated outright, as S. 23.4 of Penner's draft proposed.

The close link between Bilodeau and the French-speaking community is also highlighted in this letter, as Baird concludes with the words "In so far as the content of the other subsections of proposed amendments, my client makes no comment regarding same as this a matter for the french (sic) speaking community to decide". Significantly, the "other subsections" included French-language services, the fundamental demand of the Francophone community.[1]

Twaddle responded on behalf of Penner on Feb. 21, 1983.[2] Regarding the mandatory nature of the word "shall", Twaddle set out the government's position:

> "Shall" is used twice in section 23. It is used with regard to the language to be used in the records and journals of the House and with regard to the languages in which the Acts of the Legislature are to be printed and published. In both instances the word is imperative as distinct from permissive. The Manitoba Court of Appeal held that in relation to Acts of the Legislature the failure to use both languages did not result in invalidity, the provision being directory rather than mandatory. This latter distinction is only relevant in determining the consequence of non-compliance. The proposed amendments make it abundantly clear that non-compliance with the requirement that Acts be printed and published in both official languages results in invalidity. In the case, however, of records and journals such a distinction is really without meaning. What is to be invalid if a record is made in one language only? A provision that the requirement that both languages be used in the records and journals is mandatory could be construed as invalidating an Act during the passage of which an entry had been made in a record in one language only. Such a consequence for what may amount to no more than an inadvertent slip by a committee clerk is too severe. Every effort will, of course, be made to comply with the requirement that both languages shall be used, but the Minister is not prepared to specify that such a requirement results in invalidity.

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[1] G/S, Box 3, File 16, p. 47.
[2] Twaddle to Baird, G/S, Box 4, File 16, pp. 51-2.

On the other points raised by Baird, Twaddle was equally unambiguous:

> The Minister is not prepared to eliminate the definition of "regulation" nor to take out section 23.4 dealing with Hansard. The definition of "regulation" is in conformity to (sic) the ruling of the Supreme Court in *Blaikie* #2. It is not the intention of the proposed amendments to enlarge the scope of "regulations" which have to be printed and published in both official languages. With respect to Hansard it is the Minister's view that section 23.4 merely confirms the existing constitutional position. There is, however, a very pragmatic reason for ensuring that there is no obligation to translate what is said in the House. It is likely that in the future audio-visual equipment will be used to record debate and that the tapes will constitute Hansard rather than a transcription.

Twaddle's (and perhaps Penner's!) exasperation, as well as the high stakes involved, emerge subtly from Twaddle's concluding paragraph:

> I believe I have covered all of the points raised by you. Would you please advise if your client is satisfied with the amendments now proposed or whether he intends to proceed with his appeal.[1]

Other events had intervened, however, presumably coordinated with Vaughan Baird and Roger Bilodeau but involving many more actors. These events are reflected in a confidential letter dated Feb. 14, 1983 from Penner to Léo Robert in response to "recent representations made by yourselves". Penner indicated to Robert that he wanted to leave the provision excluding Hansard from the purview of S. 23 in his draft "in order to safeguard the Province against a Court action which could result in a decision requiring us to translate *HANSARD* ". Penner added that he agreed with some of the suggestions made regarding French language services and clarified his position on more minor points in the amendment, including in particular the year by which a bilingual Schedule of Regulations should be available (1997). Finally, Penner again underlined the importance to the Province of concluding a satisfactory agreement, pointing out that the Bilodeau case "has to be resolved and the

[1] Id.

federal government has to agree before a Resolution is brought in the House". He added, "I believe the Société understands the importance of its continuing efforts in these areas".[1]

Work on the SFM side, which at this point was working closely with Roger Bilodeau and Vaughan Baird along with its main source of advice throughout the negotiations, the francophone lawyers' group, continued at a feverish pace. Other persons were also being consulted by the various actors; for example, at Vaughan Baird's request, Stephen Scott sent his comments on a government draft dated Feb. 4, 1983.[2] Scott's comments were sent on to the SFM by Baird.[3]

The SFM also requested Magnet's opinion on the government's Feb. 4 draft; this was submitted on Feb. 28.[4] Magnet was typically categorical:

> It is my opinion that the government's proposed amendments will seriously dilute existing constitutional prescriptions for official bilingualism in Manitoba. For reasons which follow, it is my opinion that the government's proposals are unacceptable to protect the interests of the francophone community which the Société Franco-Manitobaine represents.[5]

Magnet pointed out the government's draft provided that translation only of legislative "acts" would be mandatory; according to Magnet, the existing S. 23, "as judicially interpreted", included, in addition to acts, regulations, rules of practice of provincial courts and quasi-judicial tribunals, the Manitoba Order Paper, the Manitoba Votes and Proceedings, the Manitoba Gazette, and Hansard. With the government's draft, the government would be free to

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[1] ATG, Box 19, FLS - SFM.
[2] Scott to Baird, Feb. 16, 1983; in G/S, Box 3, File 16, pp. 48-50.
[3] Baird letter to Bilodeau and R. Smith, Feb. 22, 1983; in G/S, Box 3, File 16, p. 53.
[4] G/S, Box 3, File 16, pp. 131-140.
[5] Ibid., p. 1.

continue all items except the acts themselves in English only, "without fear of legal sanction". For Magnet, this would amount to "a virtual repeal of S. 23".[1]

In the government's draft, the declaration of English and French as official languages of Manitoba was a truncated version of S. 16 of the *Charter*, which reads as follows:

> English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and Government of Canada.

According to Magnet, previous court judgments had established that this wording "is the legal foundation of the right to work in French or English in the public service"[2]; by dropping all the words after the declaration of official languages, "the proposed S. 23.1 ensures that francophones obtain no right to work in the provincial public service in the French language. As I have said previously, it is difficult to see that S. 23.1 gives any other significant protection."[3]

Magnet also critized the lack of judicial sanctions should the government not meet the various deadlines for translation set in the draft; this destroyed "the remedies of invalidity and voidability by which the S.F.M. is seeking to control the Government's illegal actions in *Bilodeau's* case". Hence, "If the government continues illegal unilingual publication, these proposals imply that noboby can do anything about it."[4]

Regarding municipal and private acts, the government and the SFM had arrived at a compromise to avoid having to translate them all. "In my opinion," Magnet wrote, "this principle is unsound." Rather, he proposed that

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[1] Ibid., p. 2.
[2] Ibid., p. 3.
[3] Id.
[4] Ibid., p. 4.

> "the government should identify those private and municipal acts which it thinks do not justify translation. The S.F.M. could consider whether any item on that list adversely affects the community's interests. All other private and municipal statutes should continue to be embraced by the general rule now enshrined in S. 23."[1]

According to Magnet, the same principle applied to regulations, on which the SFM and the government had reached a similar compromise.

Magnet also critized the deadlines for translation of current acts, which gave the government until 1996 to complete translation: "In my opinion, this is an unreasonably long time to begin translating current acts."[2] The same comment applied to translation of regulations.

Regarding services, Magnet said the government's use of the words "government" or "agency of the government" were insufficient; it was necessary to add the words "legislature" and "agencies of the legislature" since "the majority of government services are delivered by agencies of the legislature, not agencies of the government".[3] He added that, in the government's draft, municipalities and school boards would not have to provide bilingual services; worse, the exclusion of the words "institutions of the legislature" from the government's draft, in light of the text of S. 20 of the *Charter*, would "undoubtedly be given great significance, especially by Manitoba courts".[4]

Finally, the government had proposed, as an enforcement mechanism, the submission of plans prepared by the government to the courts where it had been found that the government was delinquent in providing bilingual services. Magnet found much to criticize in this provision:

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[1] Ibid., p. 5.
[2] Ibid., p. 6.
[3] Ibid., p. 9.
[4] Ibid., p. 10.

> In my opinion, the enforcement clause at S. 23.5(2) is wholly inadequate. It applies only to the right to receive services at S. 23.5(1); it does not apply to S.23 language rights generally. It is prospective; it is not retrospective. It is a unique animal, unrelated to clauses protecting other minorities; it would be better if the enforcement clause were closer in wording to the enforcement clause in the *Charter*, so that it will be uniformly treated in a Canadian context. (p. 10) [S. 24 (1) of the *Charter* provides recourse to the courts "to obtain such remedy as the court considers appropriate and just in the circumstances".]

Magnet concluded with a few comments regarding strategy:

> I have prepared a draft constitutional amendment which incorporates the ideas and objections raised in this opinion. In my view, this text should be submitted to the government as a final counter-proposal. My text cuts close to the bone of the minimum that, in my opinion, the francophone community should accept in these negotiations. (...) If the negotiations fail, the S.F.M. must be prepared to return to the Supreme Court, while it still occupies a strong position.[1]

Magnet's draft explicitly extended bilingual services to municipalities and school boards, where numbers warranted.

The Magnet opinion put the SFM in an awkward position. On one hand, it felt it had made substantial gains over the months of negotiations with Penner, especially in having obtained constitutionally-entrenched French-language services; yet Magnet was in effect saying that virtually any change to the existing S. 23 was fraught with danger, since the original text was so all-encompassing as to include virtually everything the francophone community might want, *including* services. From his optimistic reading of S. 23, the SFM was being led down a path which would result in the loss of important *existing* rights.

Opposition to the SFM's position in the negotiations was shortly to come again from a now-familiar quarter: Georges Forest. In early March, Forest girded

[1] G/S, Box 4, File 33, pp. 121-2.

his loins and strode onto the battlefield again. In a broadside against the SFM, Forest called the talks with Penner "rape with consent"; he added that he was "intent on organizing opposition to the SFM" to fight the proposed amendments to the Manitoba Act. Specifically, at this point, Forest was opposed to the phrase "where numbers warrant" in the provision of French-language services which, in his view, constituted an unwarranted limitation in the provision of such services by the government.[1]

It is not known whether Forest was inspired by Magnet's most recent opinion, since his own vision of radical bilingualism went even further than Magnet's. However, the impact of the opinion among the various actors revolving around the SFM can be judged from Vaughan Baird's response to Twaddle's Feb. 21 letter.[2] Starting again with the definition of "shall", Baird indicated to Twaddle that "we can not (sic) agree to the deletion of records and journals being in one language... We just desire that the Act remain as it is and not be tampered with". Similarly, regarding regulations, "We are not requesting an enlargement of the scope of regulation, we are only saying that it is up to the courts to determine what it is".

Baird also disagreed with Twaddle's interpretation regarding Hansard; in his view, "The courts have not spoken on the constitutional position in Manitoba regarding Hansard. Our client can not (sic) agree to the question of the section being put in as regards to (sic) Hansard".

Baird also argued in favour of setting a deadline "after which no unlingual public general statutes will be left in force in Manitoba"; he suggested Dec. 31, 1995.

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[1] *Winnipeg Free Press*, March 3, 1983; *Winnipeg Sun*, March 3, 1983.
[2] Twaddle to Baird, March 18, 1983; in G/S, Box 3, File 16, pp. 54-6.

Twaddle responded in a letter to Baird dated March 18, 1983. This document is perhaps the best illustration of the differing perspectives of the outstanding issues in the negotiations at this time. Twaddle's growing impatience also clearly shows through in the text.

Taking up Baird's insistence upon the word "shall" being interpreted as mandatory and as encompassing legislative documents beyond acts and regulations, Twaddle replied that:

> The proposed amendments do not, as you suggest, delete the requirement that both languages be used in the records and journals. My comment was that a failure to fulfill the requirement should not invalidate legislation which might be the consequence of specifying that "shall" is to be construed as mandatory throughout section 23. You say you desire the Act to remain as is and not to be tampered with. With respect the contrary is true. You are asking that it be amended to state that "shall" is mandatory, which the Manitoba Government certainly does not concede to be the law at the present time. It is because we are tampering with the Act that care has to be taken that only those changes intended are in fact made.

Regarding the translation of regulations, Twaddle was equally blunt:

> As you know, there is no express reference to "regulations" in the present Manitoba Act. By necessary implication, the Court found certain regulations to be included in the bilingual requirements. In the proposed amendments, regulations are dealt with expressly. There is a real danger that the Courts will construe the reference to regulations on a broader basis than the Supreme Court did when there was no express reference to them. It is not intended to extend the bilingual requirement with respect to regulations and, hence, the definition.

As for Baird's desire to exclude Hansard from the amendment, Twaddle replied that "This section is part of the quid pro quo for other provisions of the proposed amendments which extend bilingualism in Manitoba". Regarding Baird's desire to include an absolute deadline beyond which all public general

statutes would have to be translated, Twaddle admitted the validity of Baird's point:

> It is true that this leaves a few obscure statutes not included in a general revision which will not be translated, but it would cost more to provide for their translation than the use to which the translations would be put would justify and their translation would not be of any practical benefit to French speaking Manitobans.

Twaddle concluded that

> I believe the concerns of Mr. Bilodeau and the Franco-Manitobaine (sic) community have been met to a significant extent and that your client's interests will be better served by waiting until a final text [negotiated with the federal government] is determined rather than reinscribing the appeal for hearing at this time.[1]

This exchange clearly illustrates the fundamental differences in the government's approach, on one hand, and the Baird/Bilodeau/SFM coalition on the other. For the government, the aim was to limit the possible damage that might be inflicted upon the province by the Supreme Court, given its *Forest, Blaikie #1,* and *Blaikie #2* decisions; in its view, it had already conceded a great deal by drafting a constitutional amendment that would, on one hand, greatly limit the amount of translation required in return for entrenching French-language services in the constitution.

On the other hand, Baird, Bilodeau, the francophone lawyers, and the SFM itself could not but be greatly influenced by Magnet's reading of Section 23 as already guaranteeing virtually anything Francophones in Manitoba might want; any concession, therefore, by the key players (especially Rémi Smith and Léo Robert) on the SFM's side was immediately attacked as being potentially disastrous for the community, as an abandonment of century-old rights by the other actors in the process.

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[1] Ibid., pp. 58-9.

Baird's response was merely to reiterate his position and to inform Twaddle that, despite the ongoing negotiations with the SFM, "we are proceeding to have a new date set for the hearing..."[1] On March 31, Twaddle wrote Penner informing him that Baird intended to ask the Supreme Court to set a new hearing date on April 12, 1983; the hearing would be set for either June 16 or May 26, 1983.[2] The sword of Damocles began to sway again over Penner's head.

The draft constitutional amendments: outstanding issues

The Guay-Smith files contain many different government and SFM drafts produced during this period, most of which are undated; the files also contain side-by-side comparisons of the various government proposals along with the SFM reactions.[3] The main points at issue at this stage were as follows:

- definition of the "mandatory" nature of S. 23; in addition, the SFM wanted a provision whereby any legislation or regulation not translated beyond the dates stipulated would be "void and of no effect";
- the SFM wanted shorter deadlines for translation, enactment, and publication of legislation and regulations;
- regarding French-language services, the SFM wanted to incorporate the wording found in S. 20 of the *Charter*, that is, that such services would be provided by "any head or central office of an institution of the Legislature or Government of Manitoba"; Penner, on the other hand, wanted to use the word "agency" of the government of Manitoba. The word "institution", in the view of his advisers, could be construed to include municipalities and school boards.
- the SFM wanted the constitutional amendment to cover explicitly municipalities and school boards. In its view, S. 23.5 (the services clause) should include wording to the effect that "any member of the public in Manitoba has the right to communicate with and to receive available services from, any office of a municipality or

[1] Baird to Twaddle, March 25, 1983; in ATG, Box 17, Bilodeau, R., Nov. '82 - .
[2] Ibid.
[3] G/S, Box 3, File 16, pp. 70-110.

school commission (sic) in Manitoba in English or French where numbers warrant".
- finally, the SFM wanted the services clause to come into effect on July 1, 1984, a full three years sooner than Penner proposed; this would have given the government just over one year, at that point, to gear up administratively to provide these services.

The federal government stirs

Meanwhile, the federal government's role in the issue was about to take on new dimensions. The Justice Department was involved because any constitutional amendment would have to be adopted in the House of Commons and Senate, after having been approved by the Government itself. On March 18, 1983, Turenne informed Penner that the federal government would be transmitting written comments on the Manitoba Feb. 4 draft by the following week.[1]

The following day, Secretary of State Serge Joyal flew into town. As guest speaker at the SFM's annual meeting, he delivered a major speech which injected him directly into the negotiations. Since his appointment to the federal Cabinet a few months earlier, he had quickly established a reputation as a defender and promoter of French-language rights across the country, a reputation that was reinforced by his SFM speech.[2]

Joyal told his audience that, when journalists had asked him immediately after his swearing in about his priorities, he had replied: "Ma priorité est très simple comme Secrétaire d'Etat du Canada, c'est de raffermir le fait français au Canada."[3] He reminded them that it was French that was endangered in Canada, not English; that assimilation was continuing unabated

[1] Turenne File, Jan. '82 - May '83.
[2] G/S, Box 3, File 19, pp. 10-28.
[3] Joyal speech, p. 2.

in French communities across the country, as the 1981 census data had revealed; and that the SFM's negotiations with the provincial government on Section 23 were critical to the future of the Franco-Manitoban community.

Then Joyal turned to specifics. He outlined a multi-faceted approach which would ensure the survival of the French community in Manitoba in the long run, an approach which included management of French schools by Francophones, economic development, communications (including links between French-language communities across the country via cable television), libraries, and so on. His main message, however, in the context of the on-going negotiations on Section 23, was as follows: the best safeguards for French-language rights in Manitoba would be found in Manitoba's adherence to Sections 16 to 23 of the *Charter*:

> Et ça parle de quoi, les Articles 16 à 23? Ca parle des droits de la langue française au Canada; c'est de ça dont ça parle. Et c'est de ça dont il faut s'occuper fondamentalement.
> Et c'est à ceux-là que la société francophone du Manitoba doit s'attarder dans ses négociations avec le Procureur général du Manitoba. Demandez que ces articles soient l'object (sic) fondamental de l'adhésion du Manitoba à la Constitution canadienne... et vous serez protégés comme le Nouveau-Brunswick est protégé. C'est ça qu'il faut obtenir.
> Cassez-vous pas la tête pour chercher d'autres formulations; on a passé deux ans à les écrire. (...)
> Et si vous voulez faire des progrès, faites les pressions et les représentations nécessaires pour que le Manitoba adhère aux Articles 16 à 22 de la Constitution canadienne. On s'est battus (sic) assez longtemps pour obtenir ça que ça en vaut la chandelle. Et je puis vous assurer à cet égard-là, et je le dis publiquement, le gouvernement canadien est loin d'être insensible à une initiative comme celle-là parce qu'en fait vous risquez de montrer la voie à l'Ontario. Ca peut paraître un peu bizarre que la lumière apparaisse tout à coup à l'ouest pour nos amis ontariens; mais je pense que c'est là véritablement où vous aurez fait l'oeuvre de pioniers (sic) qui doit servir et être utile aux autres provinces.[1]

[1] Ibid., pp. 5-6.

Joyal also formally committed his government to providing financial assistance to the Franco-Manitoban community in initatives aimed at meeting the federal government's constitutional objectives in matters of language:

> Et je puis vous assurer que dans cette entreprise, je puis vous garantir l'appui de mes collègues du Conseil des ministres et les fonds nécessaires à cette activité.
> Ceci m'apparaît tellement important que lorsque la Cour suprême du Canada a statué sur les droits de la langue française au Manitoba, le Secrétariat d'Etat est immédiatement entré en contact avec les autorités provinciales pour leur offrir toute l'aide technique et financière nécessaire pour entreprendre l'oeuvre de traduction, pour faire en sorte de mettre en place les services juridiques nécessaires à respecter la lettre et l'esprit de la loi constitutionnelle du Manitoba.
> Alors, ne craignez rien. Et je le dis à mes amis du gouvernement du Manitoba: ne craignez rien. Le gouvernement canadien est à la mesure de vous apporter l'aide nécessaire si vous voulez joindre les objectifs constitutionnels que nous avons enchâssés.[1]

Joyal also raised the possibility of entrenching Manitoba's Section 23 in the *Charter;* in terms of objectives which should be priorities for the Franco-Manitoban community over coming years:

> Je me suis dit, il a d'abord, évidemment, garantir l'interprétation pour les francophones de l'Article 23. Ca c'est en marche.
> Ensuite, il faut faire accepter l'enchâssement de l'Article 23 dans la Charte des droits du Canada.
> Ensuite, il faut faire déclarer obligatoire l'Article 23 dans cette nouvelle constitution.[2]

Sensitive to a wave of criticism which had greeted a speech he had made before the Acadians of Nova Scotia in December, 1982 (his notorious "French state" speech), Joyal took up the gauntlet and "clarified" his earlier comments:

> J'étais invité par la Fédération des Acadiens de la Nouvelle-Ecosse au mois de décembre, à l'occasion de leur assemblée annuelle. Je leur ai dit les choses suivantes: il faut que le Canada reflète autant le fait français qu'il a toujours reflété le fait anglais; il faut qu'il soit aussi profondément français qu'il est profondément anglais. On ne veut

[1] Ibid., p. 6.
[2] Ibid., p. 9.

rien enlever aux anglophones mais on veut prendre toute notre place nous les francophones.[1]

The Joyal speech was remarkable in several ways. First, it set out clearly the context within which the federal government viewed the Manitoba negotiations: to Joyal (though not, as will become evident below, to MacGuigan), Manitoba was a crucial test of bilingualism in Canada. Having just emerged from the bruising referendum debate in Quebec in 1980 and the subsequent constitutional debate leading to patriation in 1982, many federal Liberals, especially Quebec MP's, saw the extension of bilingualism across the country, in provincial jurisdictions as well as the federal one, as being critical to the "new deal" they had promised Quebec in 1980. Canada was to be as French as it was English, from coast to coast. Utopian as it may seem from the post-Meech Lake perspective, it was fervently advocated by many federal Liberals in the early '80's, including Trudeau himself; at stake, in their view, was nothing less than Canada itself.

Second, as has been noted above, Joyal, through his speech and his suggestions that Manitoba adhere to the *Charter*, directly involved himself in the Manitoba negotiations and thereby instantly became a major actor in an already complicated process.

Third, Joyal's promise of financial assistance was taken at face value by the French-speaking community; it was a promise he was undoubtedly to rue, as the subsequent debate became a crisis generating ever-increasing demands on his budget.

Press coverage of Joyal's speech included an article by Richard Cleroux of the Toronto *Globe and Mail*. Cleroux wrote that the SFM and the Manitoba

[1] Ibid., p. 2.

government had been negotiating for eight months, and that during that time over 50 meetings had been held between the parties.[1]

Joyal's speech may also have been a contributing factor to Brian Mulroney's involvement in the issue. Indeed, pressure was mounting on candidates for the national Progressive Conservative leadership, and particularly Mulroney (whose campaign strategy was heavily focused on Quebec) to state their positions on the issue. Mulroney's first public pronouncement on the issue seems to have taken place during an interview with CKSB (Manitoba's French-language AM radio station) on March 25, 1983.[2] Though vague on the issue of whether Manitoba should adhere to Sections 16 to 23 of the Charter, Mulroney clearly indicated he intended to take positive steps to promote the French language and culture across Canada if he were elected Prime Minister:

> As Prime Minister, I will always try to act in such a way as to make sure that the role of French culture in this country is fully understood, that it is seen as an absolutely indispensable instrument of our survival as a nation. Its expansion throughout the country, and the protection of the French language throughout the country, is an important obligation for me and my colleagues.[3]

Mulroney was then asked how this could be squared with anti-bilingualism positions being taken by some members of the federal Conservative caucus, such as Dan McKenzie, the MP for St. James in Winnipeg; Mulroney replied that

> The principles of bilingualism are supported by the vast majority in the Conservative Party in Ottawa. There may be some exceptions but we will get along with them, have no fear.[4]

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[1] Toronto *Globe and Mail*, March 21, 1983.
[2] A transcript exists in Turenne's "Communications" file.
[3] Translated from transcript; ibid.
[4] Id.

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A flurry of activity followed on the heels of Baird's March 25 letter to Twaddle, and there is no doubt that a new sense of urgency was felt by all the actors involved; in any case, sufficient progress had been made on a draft that a face-to-face meeting between senior officials of both levels of government could be scheduled. The meeting was set for April 8, 1983.

Prior to the meeting, Roger Tassé, the Deputy Justice Minister, wrote Turenne giving Manitoba the first official federal reaction to the province's draft constitutional amendment.[1] Tassé expressed concern that the draft did not follow the wording used in the *Charter*; specifically,

> There is little doubt in my view that the expression "institution" of the legislature or government of Manitoba would not cover municipal institutions which constitute a distinct order of government at the local level, as clearly recognized by the Supreme Court of Canada in *Blaikie (No. 2)*.

In addition, the federal officials' positions differed from those of Baird's on several points, including, for example, Hansard, where, Tassé pointed out, bilingualism had not been the practice anywhere except in the federal and Quebec legislatures. Regarding the definition of regulations that would have to be included for translation, Tassé pointed out this had already been done by the Supreme Court, again in *Blaikie No. 2*.

In preparation for the meeting between the two governments, and to determine where the SFM stood on the draft that was to be discussed with the federal government, Roland Penner met with an SFM delegation in his office at 4.30 p.m. April 7. The delegation included Léo Robert and Rémi Smith; also

[1] ATG, Box 17, Bilodeau, R., Nov. '82 - .

present at the meeting were Turenne, Twaddle, and Tallin.[1] That evening, Tassé met with a number of prominent Franco-Manitobans in Turenne's St. Boniface home.

At 10 a.m. the following day, Tassé, accompanied by Louis Reynolds, counsel in the Constitutional Law Section of the federal Department of Justice, met with Penner in his office.[2] Tassé's notes on the meeting[3] indicate that three outstanding issues remained: 1) the definition of "regulations"; 2) the translation of Hansard; 3) whether or not municipalities and school boards should be covered by the "services" clause. Regarding municipalities, Tassé wrote that "...there was agreement as to its intent: that it [the amendment] should cover Provincial Government Departments and Crown Corporations, but not municipalities and school boards". Finally, it was agreed that a further postponement of the *Bilodeau* hearing would be sought. In his own summary of the meeting, Turenne wrote that there had been "agreement on all substantive questions" between the two parties.[4] Turenne added that "The ball is now squarely in the Federal court."

Immediately following the meeting, Tallin transmitted a redraft of the government's Feb. 4 draft constitutional amendment to reflect Penner's discussions with the various actors over the previous two days, and particularly the April 8 meeting with the federal officials.[5] In Tallin's redraft, almost all references to regulations were dropped (since it was felt they were already covered by *Blaikie No.* 2), except for a provision setting a deadline of Jan. 1, 1996 for translation of stipulated regulations. The Hansard provision was redrafted

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[1] Penner to Turenne, March 21, 1983; in Turenne File, Jan. '82 - May '83.
[2] Turenne to Penner, April 6, 1983; in ATG, Box 17, Bilodeau, R., Nov. '82 - .
[3] Turenne File, Jan. '82 - May '83.
[4] Turenne to Penner, April 11, 1983; in ATG, Box 17, Bilodeau, R., Nov. '82 - .
[5] Tallin to Penner, April 8, 1983; in Turenne File, Jan. '82 - May '83.

in more positive terms, without, however, guaranteeing its translation. Finally, the provisions covering statutes would be altered to read more easily as covering regulations as well as the statutes themselves, again to reflect the *Blaikie No. 2* judgment.

On April 12, 1983, the SFM received a new draft amendment from Penner.[1]

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At about this time[2], the *Winnipeg Free Press* published a detailed analysis of the negotiations that had unfolded over the previous months between the SFM and the provincial government, in a two-part series by Terence Moore. In the second part, Moore described in detail the elements of the proposal as it stood at that time. In an editorial published in its April 8 edition, the Free Press took the view that

> A negotiated amendment to S. 23 of the Manitoba Act almost certainly is a more intelligent route than pursuing the Bilodeau appeal through to a Supreme Court judgment.

However, the Free Press sounded a cautionary note:

> Those who are engaged in the discussions and negotiations over the amendment of Section 23...should recall that the Manitoba Act is not the private property of Franco-Manitobans nor the joint property of the parties to the Roger Bilodeau speeding ticket case. They should open up the process of developing the amendment to see how well some of the proposed paragraphs stand up to the comments of other interested Manitobans. The amendment is unlikely to pass smoothly through the Manitoba legislature or through the federal Parliament if it is not well understood and generally accepted by the Manitoba public...

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[1] Noted in G/S, Box 4, File 35, p. 24.
[2] April 7 and 8, 1983.

The editorial is significant, not perhaps as much for its content as for the sense of trouble brewing which its writers obviously had at that time. The editorial could have pointed out, for example, the tradition of all-party unity which had existed since the 1950's on matters relating to religion and language in the Manitoba legislature; that it did not, and that, on the contrary, it prophesized rough going in the legislature in the absence of public debate, is of major significance. To whom were the editors talking? And, perhaps more importantly, why was the traditional all-party unity on this matter suddenly in jeopardy?

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On April 12, 1983, the Supreme Court set the Bilodeau hearing for May 26, 1983. Turenne informed Penner of this development on the same day.[1] Turenne pointed out that "Counsel for both Bilodeau and the SFM opposed any postponement", and explained the circumstances in which the new date was set: Baird was on a European trip, and the SFM had taken its decision to oppose any postponement in his absence, on April 11, 1983. The SFM was represented by Joe Magnet, who was, in Turenne's words, "his usual confrontational self at this morning's hearing". Turenne added a positive note, however: Léo Robert "is sufficiently encouraged with last week's development to believe that full agreement is possible before May 26th".

For the first time since the negotiations had started, Penner felt angry and betrayed by the SFM for not having opposed postponement, in light of what he felt had been significant progress achieved in the previous days. He also felt

[1] Turenne to Penner, April 12, 1983; in ATG, Box 17, Bilodeau, R., Nov. '82 - .

that the tight deadline would lead to hasty decisions, and to improper management of the issue vis-à-vis the various actors, not least with his own caucus, which had been kept in the dark on the negotiations as they had unfolded over the previous months.

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Tallin's new draft was quickly sent to the SFM, which in turn circulated it to the Francophone lawyers' group.[1]

On April 19, Greg Yost transmitted a new SFM-Magnet draft amendment to Penner,[2] a draft which included provision of bilingual services by municipalities and school boards. Magnet's accompanying comments stated that "the government's proposed amendment (would) seriously dilute existing constitutional prescriptions for official bilingualism in Manitoba", trading "hard" rights in existing Section 23 for "soft" rights. Magnet included his now-familiar interpretation of Section 23, the "true purpose" of which was the "creation of a bilingual infrastructure...in the machinery of government".

At its board meeting of April 18, Léo Robert informed the organization's directors that the SFM would "neither encourage nor discourage" Bilodeau from going to the Supreme Court; the board minutes added laconically that "Le Procureur général de la province ne semblait pas très heureux de notre intervention."[3] Robert informed the board of the May 26 hearing date, adding that Magnet would be standing by to represent the SFM. Sensing that it was being excluded from the province's negotiations with federal government on

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[1] SFM to Francophone lawyers' group, April 14, 1983; in G/S, Box 2, File 12, p. 7.
[2] ATG, Box 17, Bilodeau, R., Nov. '82 - .
[3] G/S, Box 6, SFM Board minutes.

the amendment, the board also set a deadline of April 22 for its renewed involvement in these negotiations:

> Il est donc décidé que nous attendrons jusqu'au 22 avril une communication de la province pour voir si le fédéral et la province continueront de négocier avec ou sans la communauté francophone. Nous informerons aussi la F.F.H.Q. [the Federation of Francophones Outside Québec] pour qu'elle soit prête à jouer son rôle national et si besoin est un voyage à Ottawa sera planifié pour faire du lobbying auprès des politiciens en place.

Two other noteworthy events occurred at this board meeting. First, a new executive director, Raymond Théberge, was appointed, following the March 30 resignation of Cécile Rémillard-Beaudry.* Secondly, the board decided to pursue its defamation case against Peter Warren for the "blackmail" column.

Meanwhile, informal contacts were continuing with Penner. The Guay-Smith files document at least one meeting at which Smith was present, on April 13, 1983.[1] Another meeting with Penner occurred on April 21, at which a new lawyer for the SFM, Rhéal Teffaine, was present.[2] Penner's office was also in touch with Rémi Smith in the days following.[3]

Following these meetings, and the day after another meeting of the francophone lawyers,[4] Teffaine forwarded new SFM proposals to Penner.[5] The main change to the government's April 8 draft requested by the SFM was the elimination of the remedy clause whereby administrative plans would be

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* Rémillard-Beaudry had replaced Lucille Roch, who had submitted her resignation to the board on Jan. 6, 1983. Evidently, however, (though no documentation exists in the files), Roch left earlier than anticipated.

[1] G/S, Box 4, File 35, p. 24.

[2] The Guay/Smith accounts also note meetings with "unidentified individuals" that same day; ibid.

[3] An entry for April 25, 1983 in the Guay-Smith accounts states, "Reception of documents from Penner. Draft reply." Ibid.

[4] G/S, Box 4, File 35, p. 24.

[5] Teffaine to Penner, April 27, 1983; in G/S, Box 3, File 16, pp. 61-6.

drawn up by the government when it was found by the courts to be delinquent in the implementation of bilingual services. Teffaine wrote that

> The Société Franco-Manitobaine however is not opposed to a mechanism which would depersonalize constitutional conflicts but would prefer an arbitration mechanism with right of appeal to the Court of Appeal and the Supreme Court. If you are interested in such a concept, then please advise and we will draft a proposal accordingly.

Teffaine added two new conditions, however, "if an agreement is to be reached between the Société Franco-Manitobaine and the government of Manitoba". These were as follows:

> 1. That the government of Manitoba will be responsible for all costs associated with identifying the Private Acts and Public Municipal Acts and regulations thereunder to be contained in Schedules "A" and "B" and the consent of the Société Franco-Manitobaine must first be had and obtained on the choice of the individual or individuals which (sic) will carry out such work as the same must be acceptable to our client.
> 2. That...favorable consideration will be given to the government of Manitoba reimbursing all of our client's legal costs incurred in its effort to find an acceptable revision of Section 23 of the Manitoba Act.[1]

At the same time, Turenne was writing to Penner that the SFM "still do not have their act together", and indicating to him the specific points the SFM would be making, based on Magnet's recommendations. He added[2] that Bilodeau was himself involved in the drafting of the SFM's latest proposals, and that he had indicated to Turenne he would be dropping his case if these proposals were accepted. However, Turenne doubted "this is something we can rely on since Vaughan Baird will no doubt try to get him to change his mind".

At 4 p.m. on April 27, Penner had a telephone conference call with Justice Minister MacGuigan. Turenne summarized the officials' conference as

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[1] Ibid.

[2] In a second memo dated April 27, 1983; in ATG, Box 17, Bilodeau, R., Nov. '82 .

follows: there was consensus that the amendment would cover the Manitoba Act only, and would not involve Manitoba's adherence to the *Charter*; in MacGuigan's view, bilingual services could be extended "selectively" to municipalities and school boards, to which Penner replied that here, "politics" was a problem; and Hansard remained an outstanding issue. Finally, it was agreed that a three-person federal working group would be in Winnipeg the following Wednesday (May 4) to "try to work out a final draft".[1]

On April 28, Léo Robert wrote Penner requesting a change in the proposals Teffaine had transmitted to Penner the previous day. Robert wanted the government to begin to print and publish its regulations related to the legislation that would be translated under the amendment as of Dec. 31, 1985 rather than 1987.[2] The same day, the SFM stepped up its lobbying campaign aimed at the federal government, transmitting the text of its latest proposals to Serge Joyal, Robert Bockstael, Jeannine Séguin,[3] Senators Jos Guay and Gil Molgat, Minister of Justice Mark MacGuigan, and Roger Tassé. On April 28 as well, the latest federal and provincial drafts of the amendment were circulated to the francophone lawyers for their comments.[4]

Clearly, negotiations had entered a critical phase for all parties. Guay was to state later that "very heavy negotiations took place in the early part of May, leading to the agreement that took place on May 16, 1983 in McGuigan's office in Ottawa".[5]

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[1] Turenne to Penner, April 27, 1983; in ATG, Box 17, Bilodeau, R., Nov. '82 - .
[2] ATG, Box 19, FLS - SFM.
[3] President of the Federation of Francophones outside Quebec.
[4] G/S, File 1A, pp. 98 ff.
[5] G/S, Box 5, File "Documents des procédures de cour", top document.

On May 2, Rémi Smith and Rhéal Teffaine met with Turenne and Tallin regarding Schedules A and B, the lists of laws that would have to be translated under the agreement. A tentative agreement was reached at this meeting, subject to Penner's assent.[1] The same day, the Justice Department officials transmitted to Turenne "Draft Proposed Amendments to the Manitoba Act" in preparation for the May 4 federal-provincial meeting. Representatives on the federal side were to be Associate Chief Legislative Counsel Mary Dawson, Louis Reynolds, and Roger Collet.[2]

Penner was also deeply preoccupied by the issue on May 2. Apart from meeting with Rémi Smith and perhaps others of the SFM,[3] Penner sent a copy of his draft response to the SFM's letters of April 27 and 28 to Turenne for his comments.[4] Penner's frustration and anger are clearly apparent in the draft, despite some softened edges after Turenne's review.

Penner sent the letter the following day.[5] Pointing out that "the basic document arrived too late to be assimilated and discussed with the Minister of Justice", Penner noted the differences of opinion that still existed, particularly as regards Hansard ("Your proposed Section 23.3...destroys the parallel [with Section 133 of the B.N.A. Act] which you have tried so hard to maintain. You will understand my perplexity.") and the remedies. Other outstanding issues were implementation dates and "the provision of French language services to selected municipalities and school divisions". Penner pointed out that "These and technical drafting questions are to be the subject of further discussions between Federal and Provincial officials later this week."

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[1] Turenne to Penner, May 3, 1983; in Turenne File, Jan. '82 - May '83.
[2] Strayer to Turenne, May 2, 1983; in ATG, Box 17, Bilodeau, R, Nov. '82 - .
[3] G/S, Box 4, File 35, p. 24.
[4] ATG, Box 17, Bilodeau, R., Nov. '82 - .
[5] The final text is in ATG, Box 19, FLS - SFM.

Penner then vented the frustration that had been building over the course of months of negotiations and the betrayal he had felt at the SFM's decision not to oppose Bilodeau's request for a postponement of the Supreme Court hearing:

> You no doubt realize that because of the opposition of Bilodeau and yourselves to the requested adjournment we are now working against a nearly impossible deadline. In that context your new proposals are astonishing since (as with some aspects of your proposed Section 23.2(1)) they raise issues not heretofore discussed. Frankly, I cannot comprehend how, on the one hand, you force upon us a hearing date which provides virtually no time for negotiations, particularly of new proposals, and, at the same time place new proposals and new drafts before us.

Penner then laid out the strategy he intended to follow to arrive at an agreement before the hearing date:

> The course of action we propose to follow (because I do not believe any other is realistic) is to use our last draft as a basis for discussions within the limited time at our disposal in order to effect if we can a primary agreement with the Government of Canada, making every effort to incorporate the S.F.M. and Bilodeau concerns, and then to invite your further comments on that draft. The object is to produce such a draft prior to May 26, 1983.

Penner then, for the first time, raised the possibility of his government's suspending the negotiations entirely:

> If at that time either the S.F.M. or Bilodeau finds that draft unacceptable, and the Governments of Manitoba and Canada are unable to accept the position of the S.F.M. or Bilodeau then, as I'm sure you will understand, Manitoba reserves the right to withdraw its proposal completely. I give no assurances that once the issue is argued in the Supreme Court the Government of Manitoba will still be willing or able to amend Section 23.
> Given the substantial improvement in constitutional guarantees for the French language which would be contained in such an amendment, it would be sad indeed to see all our efforts come to naught.

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The meeting of federal and provincial officials took place as scheduled on May 4, 1983. Two issues remained outstanding at the end of the meeting.[1] The first related to the deadlines for completion of translation required under the agreement. Penner wanted over 10 years (to 1995) to complete translation; if an earlier deadline was to be met, financial assistance would be required from the federal government. The federal government, on the other hand, wanted translation to be completed by 1985. Input would be requested from the Department of the Secretary of State regarding possible financial assistance.

The issue of bilingual services to be provided at the municipal and school board level was also unresolved at the end of the meeting: the federal government wanted the provision of such services to be included in the amendment, at least on a selective basis, while the province wanted them excluded.

Turenne's summary of the respective positions of the parties at this stage is confirmed by documentation from the federal side. Louis Reynolds wrote Turenne on May 6 and included a new federal draft, which, according to Reynolds,

> reflects technical changes made for clarity and for compatibility with other guarantees such as section 133 of the *Constitution Act 1867*.[2]

The Reynolds letter confirms that at this point in the negotiations the the Province was not in agreement with the federal government regarding translation deadlines nor in the area of provision of bilingual services at the municipal and school board levels.

Meanwhile, Stephen Scott at McGill had received a copy of the province's April 8 draft via Vaughan Baird. Baird received Scott's comments in

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[1] According to Turenne's summary. Turenne to Penner, May 4, 1983; in ATG, Box 3, FLS - 1983.
[2] Reynolds to Turenne, May 6, 1983; in Turenne File, Jan. '82 - May '83.

early May and sent them on to Rémi Smith.[1] Scott made a strong argument in favour of clarifying the full extent of the "mandatory" nature of S. 23 in any constitutional amendment that was agreed upon:

> The effect of the present government draft proposal will, in my view, simply leave open the question of the mandatory character, and legal consequences, of the requirement in s. 23 of the *Manitoba Act, 1870*, where, speaking of the English and French languages, it provides that "both those languages shall be used in the respective Records and Journals of those Houses".
> Our position, of course, is that the requirement is mandatory in the fullest sense -- non-compliance involving invalidity of the proceedings recorded. The Attorney-General, as I understand his position, does not accept this.
> (...)
> Surely it is not in the Attorney-General's interest to leave this "loose end". To be sure, non-compliance with the requirement of bilingual "Records and Journals" will, even on the present draft, no longer affect the validity of legislation enacted in one language only. That is so because the language of legislation will be separately, and exhaustively, dealt with in the draft provisions. Yet, -- legislation only excepted, -- all other proceedings of the Legislative Assembly are potentially affected: *inter alia*, all of its resolutions and orders.
> Without a "validating provision" for "Records and Journals", past unilingual legislative proceedings will continue to be challengeable for an indefinite period of time; and, without a "breathing space" for translation of "Records and Journals" for some period of time, future unilingual proceedings will be likewise forever at risk, so that the Government must immediately begin to comply with the duty of translation.

Scott's solution was simple, and very cost-effective: simply validate all past unilingual "Records and Journals", whatever they may be:

> Given all these inconveniences, I frankly cannot see why the Attorney-General, having regard to his own interest, should resist a constitutional provision for "Records and Journals" parallel to those now in the draft for legislation. This would involve: (1) an acknowledgement of the mandatory character of the requirement to use both those languages in the "Records and Journals"; (2) the validation of past unilingual "Records and Journals"; and (3) if the

[1] G/S, Box 2, File 12, pp. 134-40.

Government desires, a suitable delay for compliance, comparable to that for legislation.

The rub, of course, was in the last sentence: compliance would mean the translation of more mounds of legislative documents, which was precisely what Penner was trying to limit through the negotiations process. The SFM, on the other, with its primary goal of entrenching French-language services while protecting the "integrity" of S. 23, was under continuous pressure from Baird and Bilodeau to guarantee the "mandatory" nature of the Section in all areas. Once again, Scott's well-meaning intervention had the effect of complicating the negotiations.

On May 6, a federal Justice official, Gérard Bertrand, transmitted an alternative draft amendment to the province[1] which explicitly eliminated the requirement for a bilingual Hansard under S. 23; however, it substituted the word "institutions" for "agency" of the government of Manitoba, a word which, as we have seen, could have been interpreted to include municipalities and school boards. In this draft, bilingual services would be provided where there was "significant demand" or where it was "reasonable", due to the "nature of the office" that it provide such services.

In response to the Bertrand draft, Turenne suggested yet another formula for the provision of bilingual services by municipalities which would have effectively limited the requirement to about 30 of Manitoba's 202 municipalities.[2] Under this formula, a municipality with either 800 French-speaking residents or a population which was at least 8% French-speaking would be constitutionally obligated to provide French-language services to its residents.

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[1] G/S, Box 4, File 33, pp. 141-6.

[2] Turenne to Penner, May 9, 1983; in ATG, Box 17, Bilodeau, R., Nov. '82 - .

Penner transmitted the latest draft developed by the federal and provincial officials to Léo Robert on May 9, 1983.[1] Penner stressed that there was as yet no agreement between the two governments regarding municipalities and added that there was only a "limited possibility" that the province could agree to extend constitutionally-entrenched bilingual services to the municipal level.

The same day, Robert left for Ottawa.[2] He was greeted at the airport by Jeannine Séguin, whom he briefed on the state of negotiations at that point. Later that day he met with Rémi Smith and Joe Magnet in preparation for a number of top-level meetings the following day.

On the following day, May 10, the SFM delegation led by Léo Robert met with Justice Minister Mark MacGuigan, Secretary of State Serge Joyal, and St. Boniface MP Robert Bockstael. The delegation learned that the two federal ministers had agreed in principle to finance 50% of all costs related to the constitutional amendment. This included 50% of the cost of translation of statutes, estimated at $3.5 million, 50% of the cost of setting up a special unit to translate regulations, and 50% of a $400,000. programme to assist and encourage municipalities to offer French-language services.[3]

Robert and Smith returned to Winnipeg the following day, where they met with Bilodeau and Turenne.[4] However, Rémi Smith returned almost immediately to Ottawa for a "tripartite officials meeting"[5] on May 12 where the final tripartite agreement was hammered out.

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[1] ATG, Box 17, Bilodeau, R., Nov. '82 - .
[2] L. Robert Activity Report, April-May 1983; in G/S, Box 3, File 31, pp. 82-3.
[3] Turenne to Penner, May 11, 1983; in ATG, Box 3, FLS - 1983.
[4] L. Robert Activity Report, op. cit.
[5] As Turenne called it; in Turenne to Penner, May 16, 1983; in Turenne File, Jan. '82 - May '83.

Robert reported on the status of negotiations at the SFM's May 12 board meeting, where he reviewed all the options open to the organization at that point: 1) proceed with the Bilodeau case in the Supreme Court, where the maximum that could be obtained would be French-language trials and legislation and legislative proceedings adopted in both languages; 2) request an adjournment of *Bilodeau*; 3) aim for an agreement on a constitutional amendment which would ensure the constitutional entrenchment of bilingual services.* Robert added that Smith had participated in further negotiations in Ottawa that same day; he was expected back in Winnipeg that evening, and would be providing an update on the negotiations to the board at that time.[1]

It was a jubilant Rémi Smith who entered the SFM board room late that evening to announce that the elements of an agreement were in place. The board proceeded to a detailed, clause-by-clause analysis of the province's proposals relative to its own, and agreement among board members was reached on the following:

> Les points que les members du conseil sont prêts à accepter sont:
> 1) Hansard: qu'il ne soit pas mentionné du tout dans le texte;
> 2) La définition de "règlement" tomberait;
> 3) Annexe A: liste des lois publiques figurant au recueil de 1970, plus les lois qui étaient dans la refonte excluant les lois privées;
> 4) Annexe B: tombe complètement;
> 5) Agences et non institutions; par contre, le gouvernement refuse toujours de parler de municipalités et de divisions scolaires. Cependant, Me Smith mentionne que le fédéral est prêt à donner des argents aux municipalités qui voudraient se bilinguiser.

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* The board minutes on this last point reflect either jumbled drafting or jumbled thinking. The actual text reads as follows: "(3) Viser une entente constitutionnelle; procéder du côté législatif et avoir encore une possibilité de maintenir notre position au niveau du Procès Bilodeau sur le mot "shall" et si on obtient une entente on a les services." From this text, which flies in the face of the entire negotiations process as it had unfolded over nine months, it would appear the SFM wanted both a constitutional amendment and the Bilodeau case to proceed.

[1] SFM Board minutes; in G/S, Box 6, SFM minutes.

> 6) Clause rémédiatrice: il est entendu que la clause rémédiatrice ferait partie de l'entente.[1]

All board members agreed that negotiations should proceed on this basis with the provincial and federal governments, in view of reaching an agreement which would then be submitted to the SFM's membership at a special general meeting which the board scheduled for May 24.[2]

It is clear from these minutes that the May 12 meeting was the critical one in terms of the agreement which was ultimately concluded between the parties. The Guay-Smith files, for example, contain a draft amendment with the hand-written notation "Jos - May 12/83", presumbably written by Magnet for the SFM. This draft states explicitly that

> 23.3(1) Any Act, regulation, rule of practice, legislative record and journal, administrative instrument or other official document of the legislature of Manitoba that is subject to Section 23, that is not enacted and printed and published in both of the official languages or otherwise violates Section 23, is invalid, unenforceable and of no effect.

This subsection was followed by another granting a period of grace, to 1993 or 1995, for translation of all Acts enacted before Jan.1, 1986 or 1988.

A further section in Magnet's draft reads as follows:

> 23.4(2) Any member of the public in Manitoba has the right to communicate with, and to receive available services from, any office of a municipality or school commission (sic) in Manitoba in English or French where numbers warrant.

Clearly the SFM and Magnet, at this critical point in the negotiations, were still holding out for translation of all legislative texts, including Hansard, and the constitutional entrenchment of bilingual services, not only at the provincial level but also at the municipal and school board levels.

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[1] Id.
[2] Id.

In the end, the Hansard issue was left unresolved, no doubt to Magnet's, Baird's, and Scott's great disappointment, and Penner had held fast against entrenching bilingual services at the municipal and school board levels, against great pressure on the part of the SFM and the federal government. On the other hand, the SFM had won, for Manitoba's French-speaking community, what it considered to be an honourable trade-off between mounds of useless translation and the constitutional entrenchment of bilingual services at the provincial level.

On the SFM's side, there remained the task of informing Baird and his client, Roger Bilodeau, of the results of the May 12 negotiations. The following day, May 13, Léo Robert, Rémi Smith (who had been elected Second Vice-President of the SFM at the organization's meeting two days earlier), and Réal Sabourin (a policy analyst for the SFM) met with Roger Bilodeau;[1] this was followed by a second meeting on May 15 involving Robert, Smith, Sabourin and Vaughan Baird; appropriately, they all descended upon Bilodeau's home town in Ste-Agathe, Man. to discuss the state of negotiations in the course of a meeting that lasted almost three hours.[2] The SFM representatives informed Baird and Bilodeau of the Board's position regarding the various outstanding issues, and the two men apparently decided to support the agreement. Turenne informed Penner that following these meetings Bilodeau and Baird "indicated they would agree to an adjournment if the results of the last round of negotiations were as now agreed".[3]

With all of the major actors now "on side", one last meeting was needed to confirm the elements of the agreement, which was now taking the shape of a

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[1] G/S, Box 3, File 25, p. 177 (a).
[2] Id.
[3] Turenne to Penner, May 17, 1983; in ATG, Box 3, FLS - 1983.

constitutional amendment to the *Manitoba Act*, on one hand, and a federal-provincial funding arrangement on the other. This "meeting" took the form of a conference call involving Mark MacGuigan and Serge Joyal for the federal government, Roland Penner and Roger Turenne for the province, and Léo Robert and Rémi Smith for the SFM. Penner had obtained Cabinet authorization to conclude the deal on May 16.[1]

The call in large part confirmed the agreement in principle that had been concluded on May 12, except that firm deadlines were now set: after December 31, 1985, the provincial government would begin enacting all new legislation in both English and French; provincial bilingual services would be in place by Jan. 1, 1987; and the province would have until Dec. 31, 1993 to publish its Revised Statutes in both languages.[2] Both requirements to translate Hansard and to provide bilingual services at the municipal and school board levels were dropped.

Baird immediately had second thoughts. Although, in a letter to Twaddle dated May 17, he stated clearly that "we will agree to an adjournment to the Bilodeau case sine die pending the passage of the constitutional amendment provided it is expedited post haste (sic) ... subject to us seeing the final text", Baird noted that there was no statement that S. 23 was "mandatory" in the final draft; he added that

> As this has not been included, we want an agreement that if the constitutional amendment is passed, that (sic) we will have the Government of Manitoba's support in the Supreme Court that the Court of Appeal's decision in the Bilodeau case be reversed.

Baird also asked "that our client be declared not guilty by the Province of Manitoba and no fine paid. (sic) As it appears that there is a reluctance towards

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[1] Decter to Pawley, May 20, 1983; in EC 0016, Box 7.
[2] G/S, Box 2, File 12, pp. 146 ff.

costs, we will ask the Supreme Court for costs throughout on a solicitor and client basis".[1]

Twaddle replied on the same day, thanking him for his letter "advising of your agreement to the adjournment of the Bilodeau case sine die pending the passage of the constitutional amendment" and indicating to him his expectation that "our respective Ottawa agents will apply for the adjournment on Thursday, May 19, 1983". Regarding the passage of the resolutions in the federal and provincial legislatures, Twaddle added

> I am advised that it is the intention of both governments to introduce them this fall in sufficient time to ensure passage before the end of the year.

Twaddle then addressed the remaining issues Baird had raised:

> With respect to the mandatory nature of the requirement that Acts be printed and published in both English and French, a clause to that effect was inserted in an earlier draft. The federal draftsmen thought it was superfluous and Mr. Magnet did not like the form of it. In consequence it was deleted.
> Assuming the appeal is not proceeded with the Attorney-General will refer Mr. Bilodeau's conviction and fine to the Executive Council for remission and the Registrar of Motor Vehicles will be requested to expunge the conviction from his records.
> This leaves two outstanding matters. The first is your wish to have the decision of the Manitoba Court of Appeal reversed. As you know, it is my view, and certainly that of federal draftsmen, that this is the effect of the proposed amendments and that a Court declaration is thus unnecessary. At the same time I am aware of your strong views to the contrary and I will certainly take up the question with the Attorney-General and ascertain if there is some way to accommodate you. (...)
> The final issue is costs. I am seeking instructions as to the willingness of the Attorney-General to make a contribution towards costs. There is also the possibility that further costs will be paid to you by the federal government. I do not think this should prove an insurmountable problem.[2]

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[1] G/S, Box 2, File 12, p. 152.
[2] G/S, Box 3, File 16, pp. 67-8.

Turenne subsequently transmitted to Baird the final version of the constitutional amendment as agreed to by all parties on May 16, noting that a new Section 23.7(3) had been added*, "meeting one of your demands in your letter to Twaddle of May 17, 1983".[1]

Baird, however, was beginning to get caught up in the euphoria of the moment, and his punctiliousness gave way to enthusiasm. On May 18, he wrote to Premier Pawley and to Penner suggesting, as he did also to Rémi Smith of the SFM, that

> It would be most fitting if the Government of Manitoba asked the Government of Canada to invite Her Majesty Queen Elizabeth II to give Royal Assent to The Amending Act, in the Province of Manitoba. The Great Seal of Canada could be affixed here in Manitoba. As Queen Victoria assented to the Act of 1870, it would be fitting that her great, great, granddaughter assented to The Amending Act, which has re-established french (sic) speaking rights in our province.[2]

A three-page draft federal-provincial agreement, dated May 18, 1983, is found in the files of all major actors.[3] The agreement stipulated that both the Prime Minister of Canada and the Premier of Manitoba would present to their respective legislative assemblies resolutions to amend the *Manitoba Act, 1870* as specified in the Schedule hereto with a view to adoption of the resolution on or before December 31, 1983". The agreement also stated that

> 2. The Government of Manitoba and the Société Franco-Manitobaine will use their best efforts to reach agreement on or before September 1, 1983 on a list of Acts to be re-enacted in both official languages pursuant to subsection 23.5(1) of the proposed amendments.

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* This subsection read as follows: "Nothing is this section abrogates or derogates from any rights guaranteed by section 23".

[1] Turenne files.

[2] ATG, Box 18, FLS - Corr. to Sept. 1983; G/S, Box 3, File 16, p. 69.

[3] ATG, Box 3, FLS - 1983; Turenne files; G/S, Box 4, File 33, pp. 164-6; see Appendix II.

Any dispute regarding the list would be resolved by reference to the Statute Revision Commission of Canada, in the case of public acts, or to "a third party acceptable to Manitoba and the Société Franco-Manitobaine", in the case of private acts.

The agreement stipulated the federal government's financial contribution to the various elements of the agreement: a contribution of $400,000. "to assist the province in acquiring the capability to enact new legislation in both official languages"; and

> "a contribution of 50% of provincial expenditures incurred for preparation to print and publish in both official languages a general revision of the public general statutes of Manitoba and certain other statutes to be set out in a schedule to the resolution...to an overall maximum federal contribution of $1,750,000..."

Finally, the federal government would cover 50% of all expenditures incurred "to develop the provision of municipal services" to a maximum of $200,000. The provision of such services by municipalities would be voluntary; however, the agreement stipulated that

> 4. The Government of Manitoba will negotiate an arrangement with the Société Franco-Manitobaine, in consultation with [appropriate municipal bodies] to enable certain municipalities [including those in an agreed list] with a substantial population of persons whose mother tongue is French to provide services to the public in both official languages by January 1, 1987.

The agreemeent provided for signatures by "Canada" and "Manitoba"; a third line appeared beneath the words "And with the participation of...Société Franco-Manitobaine".

The agreement was never signed. According to Renald Guay,

> ...it would only be signed upon Pierre Trudeau coming down to Winnipeg. It was supposed to be signed in Winnipeg and there's a

whole story there about why it didn't get signed...which is a tremendous foul-up by our Premier here in Manitoba...[1]

There is indeed evidence of some confusion within the government at this critical juncture. The Turenne files contain a "CONFIDENTIAL - URGENT' memo from Penner dated May 20, 1983, in which Penner stated:

> I would like to discuss with you how negotiations on this accord are to be conducted. I am not sure from our last conversation if it is expected that they will be conducted on the officials level or whether I should write or call the Minister of Justice with respect to our concerns.

A draft, unsigned response to Penner, presumably by Turenne, is attached to the Penner memo:

> With reference to your memo of this morning on the subject, there is no set protocol for negotiating this kind of accord. At the Federal level, it is being handled at the officials level, and I see no need at this stage to communicate directly with the Minister of Justice unless of course we encounter some major difficulty with the text. We will no doubt want to make changes to the paragraph on municipalities but I do not believe that the Federal Government would have difficulty with a counter-draft from ourselves on this subject.
> Michael Decter has asked me to inform Ottawa that the signing of the agreement could not take place next Wednesday [May 25] because Cabinet would first have to be appraised (sic) of the text of the accord. He also suggested that the question of the signatories might be the subject of Cabinet consideration.

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On May 16, Prime Minister Pierre-Elliot Trudeau travelled to Winnipeg to speak before the Laurier Club, an exclusive Liberal club. In the course of his speech, Trudeau revealed, in an off-hand comment in French, that Manitoba would soon be officially declared a bilingual province.[2] The comment was picked up by the French media and was reported on French television news

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[1] R. Guay, Examination for Discovery, p. 219.
[2] "Bilingual hint dropped in French only"; in *Winnipeg Free Press*, May 18, 1983.

that evening. It was only the next day that the English media realized that Trudeau had made the statement, and, more importantly, its implications in the context of Manitoba politics.

The manner in which the agreement became known was a God-send to the opposition, which was still led by the fire-breathing, anti-Trudeau, anti-Charter Sterling Lyon, heading a viscerally anti-bilingualism, rural-based caucus. Months later, journalists were still reporting the fall-out of Trudeau's error, undoubtedly one of the worst of his career. Penner himself was to say, a few months later, that Trudeau's statement "frightened the hell out of a lot of people".[1] The government's public relations staff were already admitting, on May 30, 1983, that, because of Trudeau's May 16 comment, the provincial government had "lost control of the issue".[2] Frances Russell, a *Winnipeg Free Press* columnist, in an article entitled "Trudeau's error damaged NDP strategy", quoted a Manitoba cabinet source to the effect that "we were pre-empted by the Prime Minister...the damage was done".[3]

On May 17, Penner sent an "urgent" memo to Turenne, saying that "due to the premature announcement of an 'agreement' between Manitoba and Canada" regarding S. 23, he needed to take the issue to his caucus "at noon today" and to Cabinet "tomorrow" (May 18). Penner asked Turenne to provide information immediately on the agreement, especially on the financial arrangements and on the implications of the agreement for municipalities.[4]

Turenne summarized the agreement as confirmed in the previous day's conference call, including the deadlines and funding arrangements; he pointed out that municipalities were not covered by the agreement: "All parties agreed

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[1] *Financial Post*, Sept. 24, 1983.
[2] Communications Strategy Document, May 30, 1983; in Turenne, Communications File.
[3] *Winnipeg Free Press*, August 24, 1983.
[4] Turenne file, Jan. '82 - May '83.

that municipalities would not be covered by the constitutional amendment"; however, Turenne added that a "non-legal agreement" was also part of the package though which funds could be provided to municipalities wanting to implement bilingual services on a voluntary basis. This information was put in the form of a draft Cabinet Paper which Turenne transmitted to Penner on the same day.[1] Turenne also informed Penner that the text of the proposed constitutional amendment had been approved by the federal cabinet that same day, along with the subsidiary federal-provincial cost-sharing arrangements.[2]

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On May 18, Premier Howard Pawley rose in the Legislative Assembly of Manitoba to confirm that an agreement had been concluded with the federal government on bilingualism in Manitoba. According to the *Winnipeg Free Press*,

> Penner said the media had created the impression that French is going to be shoved down your throats. He said this wasn't the way the agreement would take effect.[3]

Thus began one of the worst political and legislative crises in Manitoba history, a crisis that was to divide Manitobans profoundly against each other and at its height virtually paralyze the government entirely.

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[1] Id.
[2] Id.
[3] *Winnipeg Free Press*, May 19, 1983.

Chapter VI

First Thunder

Roland Penner, caught off-guard by Trudeau's premature announcement of the federal-provincial agreement on a constitutional amendment to S. 23, immediately began a damage-control operation. On May 18, he presented a "Submission to Cabinet" outlining the "agreement in principle" with the federal government and the three subsidiary cost-sharing agreements. The submission was approved in principle by Cabinet.[1] (The final draft of the agreement, including the draft constitutional amendment, had been circulated to the NDP caucus the previous day.) The federal cabinet approved the agreement on the same day, in Ottawa.

Just after two p.m. that afternoon, in response to a question by Leader of the Opposition Sterling Lyon, Premier Pawley confirmed that an agreement had been concluded with the federal government.

In a supplementary question, Lyon formulated what was to become the first battle cry in his protracted battle to kill the constitutional amendment:

> ...Mr. Speaker, in view of the fact that these negotiations have been in the public domain now for some several months, can the First Minister indicate to us if it would be the intention of the government...to submit this matter of principle before it is finally approved by the government, to submit it to the Legislature and, indeed, by way of Legislative Committee hearings to the people of Manitoba in order that they might voice their opinions on this change that is being proposed in the statute or the Constitution Act?[2]

Premier Pawley replied that "we certainly would take under consideration the suggestion by the Leader of the Opposition pertaining to any public hearings".

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[1] ATG, Box 17, FLS - Caucus-Cabinet
[2] Debates, May 18, 1983, p. 2878.

Lyon pressed the point:

> Would the First Minister also give serious consideration to the Legislature seeing this matter by way of resolution, or by way of a draft bill before it is finally sanctified by the Executive Council of Manitoba. In other words before the deal is made, in order that this Legislature and the people of Manitoba may be of whatever help they can to the government in completing a negotiation which is an important one for the people of Manitoba, and one that all parts of Manitoba society will wish to be familiar with before it (is) finally approved.

Pawley pointed out that there had already been communication if not consultation with the Opposition on the matter:

> Mr. Speaker, we will certainly take that under consideration. I understand there has been consultation throughout between the Attorney-General and the critic from the opposition benches for the opposition, or at least there has been consultation in respect to this matter...

Lyon's response then defined what was to become a second major theme in the ensuing debate. Contradicting his own statement a few minutes earlier that "these negotiations have been in the public domain now for some several months", Lyon attacked the "secret" nature of the negotiations between the provincial government and the SFM:

> Mr. Speaker, again I thank the First Minister for his agreement to take that suggestion under consideration.
> I can confirm for him that there was a communication from the Attorney-General to the Honourable Member for St. Norbert on the date of 17 December 1982 on this matter. I think it would be wrong to characterize that as ongoing negotiations, but there certainly has been communication between the two.
> In order that there be no misunderstanding, will the First Minister agree to consider, if not to give the undertaking here today, that before any final ratification is given by Cabinet to this matter, that the matter be raised with the House. It has been discussed at this stage privately only with the Franco-Manitobaine Society, and while we appreciate having had the original draft of what was being discussed last December, neither the opposition nor the people of Manitoba are aware of what is now presently in contemplation. (...)

Pawley replied that to his knowledge there had been "no substantial change" to the proposals initially transmitted to the Opposition, "subject to correction by the Attorney-General"; he added:

> I would certainly be prepared to examine ways by which there could be fuller and more complete consultation. This is a matter certainly that (sic) we want to insure the fullest understanding by members in the Chamber and I will indeed take this matter up with the Attorney-General as to continuing that process; needless to say at a point which would in all likelihood be during this Session, there would be legislation that would have to be introduced into the House for debate and I assume from that debate in the normal process there would be public hearings.[1]

Later, Opposition Justice Critic Gerry Mercier asked the Attorney-General whether he would

> advise this Legislature as to the advice he and the government have received from the province's lawyers retained in this matter as to the probability of success of the Bilodeau case?[2]

Penner was still fighting a rearguard action, not being in a position to make a full statement in the House, again due to the premature announcement by Trudeau; he promised he would be making such a statement the next day. However, Penner added

> With respect to the question posed, the premise is inaccurate in that it suggests that the only reason why negotiations were entered into between Canada and Manitoba principally; some discussions, of course, with the Société Franco-Manitobaine and, of course, with the appellant himself, Roger Bilodeau, was the court case. That is correct. The court case, which was already in place when we assumed office, was the starting point of our beginning to look at the best way of dealing with a situation which posed grave legal risks for the Province of Manitoba as I estimated it and in the view of counsel.
> It was not the view of counsel, nor was it my view, that the risk would be that, in fact, the Supreme Court of Canada would invalidate the statutes of Manitoba. That technically, legally, was a possibility, and one doesn't play political dice with that kind of thing because if

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[1] Id.

[2] Debates, May 19, 1983, p. 2908.

that indeed had been the result of the court case, then the gamble would have been foolhardy to the extreme.
The risk rather was...that the Supreme Court would adopt a position that, indeed, following the Forest decision in 1979, the obligation to enact our legislation in both languages, French and English, was an obligation which the province had since 1870, and that our failure to do so required a remedy.
The Supreme Court in my view and in the view of counsel were likely in today's context to have reversed the Manitoba Court of Appeal and said that this was a mandatory obligation - the word "shall" means shall, because this is the word used in Section 23 - and that the Supreme Court...would fashion a remedy imposing upon the province an obligation with respect to the translation of statutes and regulations; might impose a remedy with respect to the journals of the House, which would first of all be an imposed remedy and not one that either party might necessarily feel appropriate, and might put this province under constraints with respect to fulfilling that constitutional obligation at a time when we were not ready for it and at a cost we could not afford to pay. So what happened...was that we found it advisable in those circumstances, rather than have a solution imposed, to negotiate a solution which gave us the time and gave us the resources and the funds to do the job.

In response to a further question by Mercier, Penner added that

> given the historic facts in Manitoba, given the language of Section 23 of The Manitoba Act, which is a constitutional instrument, that it would be better to see if we could have a consensual solution rather than an imposed solution.

Mercier pressed on:

> On the basis of the opinions submitted to him by counsel, does he really believe that the Supreme Court would have ruled against the Province of Manitoba and not allowed a reasonable time for completion of the statutes?

Penner replied:

> I would think that the Supreme Court would likely have granted some time... The question is how much time and under what conditions. What we have attained is a great deal of time, with a great deal of money being paid to assist us in carrying out the job and a great deal of assistance in finding those scarce resources that the

> Member for St. Norbert acknowledges there are in this highly specialized field.[1]

Several elements of the government's position are already to be found in these first statements by Penner: the risk, admittedly minor but still real, that the Supreme Court might find all Manitoba's laws to be invalid; the risk of the Supreme Court imposing unrealistic deadlines for translation, given limited available resources; the desirability of a "consensual solution", given Manitoba's history and the "current constitutional context"; and, finally, the importance of Ottawa's financial contribution. What is not found in these statements is a recognition that the wrongs inflicted on Manitoba's Francophone community over almost 100 years of unconstitutional behaviour by successive Manitoba legislatures were being righted by the agreement in a way that was thoroughly acceptable to the community (even Georges Forest was moved to say that the deal "looks good", and encouraged "the dissidents to approve this".[2])

On May 20, two press statements were issued, by Justice Minister Mark MacGuigan for the federal government and by Attorney-General Roland Penner for the Manitoba government, describing the terms of the agreement. The federal release was a straightforward description of the agreement; however, in his remarks in the House of Commons and to the press, MacGuigan was reported as emphasizing the fact that henceforth Manitoba was to be a bilingual province. Under the heading "Manitoba viewed as bilingual leader", the *Winnipeg Free Press* reported MacGuigan's comments in the following words:

> Justice Minister Mark MacGuigan said yesterday he hopes Ontario will follow Manitoba's lead and make itself a bilingual province.

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[1] Debates, May 19, 1983, pp. 2909-10.
[2] *Winnipeg Sun*, May 19, 1983.

> MacGuigan confirmed in the Commons the federal and Manitoba governments and the Société Franco-Manitobaine have signed an accord making Manitoba the third bilingual province in the country, in addition to New Brunswick and Quebec.
> (...)
> MacGuigan said despite encouraging signs in Ontario, he has had no indication the province will follow Manitoba's lead and make itself bilingual.[1]

The Manitoba release pointed out that the agreement "does not affect any individual, corporation, or non-governmental institution nor any municipality or school board".[2]

At 10 a.m. that morning, Roland Penner rose in the House to make a formal Ministerial Statement. Penner recalled the Forest case and the wording of Section 23, as well as the Blaikie judgment, concluding that "the net effect of all of this was a requirement that some 14,000 pages of our laws and regulations would have to be translated". Penner pointed out "the enormity...and cost of this task", given the difficulty the province was experiencing in recruiting translators; he raised the possibility of a declaration of all of Manitoba's laws being declared invalid, which would "amount to a legal disaster for Manitoba". He acknowledged that such an outcome was "unlikely"; however,

> it was likely that the court would fashion some remedy requiring us to meet this obligation within a specified period of time and, perhaps, an unrealistic period of time. It was a situation which we thought cried out for a negotiated rather than an imposed solution.

Penner then came to the gist of his statement:

> After a year of intense and often difficult negotiations with the Federal Government and discussions with the Société Franco-Manitobaine representing the main body of Franco-Manitobans in this province, an agreement in principle has been reached which effectively gives us ten years to complete the translation of the backlog, and gives us until January 1, 1986, to sufficiently expand and develop our own legal translation unit, so that in addition to keeping

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[1] *Winnipeg Free Press*, May 20, 1983.
[2] SFM, Box 41, 24.8/2.

> up with the current production of new Acts, which we are now doing, we can keep up with new regulations and still have a little left over to bite into the backlog of statutes and regulations.
> The draft agreement between Canada and Manitoba consists of a proposed constitutional amendment to Section 23 of The Manitoba Act, which I am tabling at this time...(,) three subsidiary cost-sharing arrangements between the Governments of Canada and Manitoba, and an agreement that the Bilodeau case will first be adjourned in the Supreme Court and subsequently dropped entirely when the constitutional amendment is adopted, as indeed I hope it will be.

Penner announced that on the previous day, all parties had applied to the Supreme Court to have the Bilodeau case adjourned indefinitely.

He then proceeded to describe the elements of the agreement, this time relating it to injustices suffered by Franco-Manitobans through the unconstitutional behaviour of the Legislature; the agreement, Penner said

> seeks to correct anomalies created by breaches of the Constitution for over 90 years in Manitoba. It seeks to address the long-term question of the status of the French language in Manitoba in a reasonable and practical manner that does not affect the situation of any Manitoban who does not want to be affected in the sense of being required to use the language.
> It seeks to assist the Francophone community to maintain itself as a viable entity in this province without imposing any obligations whatever on the vast majority of Manitobans who do not speak French.

Penner then proceeded to describe in some detail the elements of the constitutional amendment itself. First, he pointed out the generous deadlines for translation of the backlog of statutes and regulations and indeed, the fact that

> we are, by the terms of the agreement, exempt from any requirement to translate a considerable number of unrepealed and unconsolidated Acts, municipal Acts, and private Acts.

Secondly, the French language services section, "deals with the right to receive government services in either official language from government head offices...where numbers or the nature of the office warrant". This section would

come into force January 1, 1987, "giving us a full three-and-one-half years to make the necessary arrangements". Penner pointed out that, thanks partly to efforts made by the previous (Lyon) government, "much of this facility to deliver French language services is already being done, is already in place"; he took care again to point out that "this obligation...does not...apply to any municipality or school board".

Penner described the cost-sharing arrangements that had been negotiated with the federal government.[1] Regarding the third element of the agreement, he said the province was prepared, "with federal assistance, to help those municipalities with significant numbers of Franco-Manitobans who voluntarily wish to provide French language services". This service was to be targeted to "approximately 30 out of the 200 municipalities in this province where Manitoba Francophones are concentrated". Finally, Penner described in precise terms the underlying basis of the negotiations, the *quid pro quo* which had motivated the parties throughout the difficult process and which could allow both the Francophone community and the provincial government to claim the agreement represented a significant gain:

> In concluding, Mr. Speaker, let me reiterate that since 1979 Manitoba has been obliged by the provisions of our Manitoba constitution, that is The Manitoba Act, to have all of its statutes and regulations in both official languages, a difficult and a costly task. With the agreement I am announcing today, Manitoba not only receives considerable assistance from the Federal Government, but is also permanently relieved of an important part of the retroactive translation burden. These savings should more than offset the provincial cost of municipal assistance and of entrenching the right to certain French language services. It is a rational policy rather than an imposition by the Supreme Court in Ottawa.

[1] See previous chapter.

Recalling Premier Pawley's 1982 statement that "the subject of French-English relations in Manitoba is no longer a matter for political partisanship", Penner ended on a principled, upbeat note:

> This agreement then builds upon the foundations which were established and it recognizes that it takes time to build on those foundations. Franco-Manitobans are an essential and a vital part of our province and its diverse cosmopolitan culture. This agreement recognizes the unique place that Franco-Manitobans have in Manitoba as well as the province's constitutional obligations. I believe that it is an achievement of which all Manitobans can be proud.[1]

The Pawley government had of course already had preliminary reactions from Lyon and Mercier; if Pawley and Penner still truly believed that "French-English relations in Manitoba (were) no longer a matter for political partisanship", they were in for a rude awakening.

Lyon began by listing his own government's accomplishments following the Forest judgment, notably Bill 2, the establishment of the French Language Services Secretariat, the establishment of a French language court in St. Boniface, the translation of some statutes, and publication of some informational pamphlets in French, adding that "we were moving in a reasonable way to accomplish the spirit and the letter of the judgment of 1979".

Quoting extensively from the Freedman judgment in the Bilodeau case, Lyon went on to formulate his first, formal objection to the government's strategy in the case:

> And on and on the judgments go [Lyon had quoted only one], showing the practical absurdity of the position being advanced by Mr. Bilodeau and his council (sic) to say that all laws passed since 1870 would be invalid. (...)
> I suggest with the greatest of respect, Sir, that no court in this land can order the impossible to be done, and that the burden of support for the provincial position on the Bilodeau case was such that this

[1] Debates, May 20, 1983, pp. 2974-5.

> government and its counsel should have had no fear of going before the Supreme Court, because if the proposition advanced by Mr. Bilodeau was to have been given effect by the Supreme Court, of course, chaos would have resulted and no court would have permitted chaos to result.

Lyon went on to "make a few observations". In his view, "it is the second phase of the agreement out of which, I think, most of the trouble will come"; the second phase, the services section of the draft amendment, in Lyon's view, constituted "an extension of Section 23...that I think the people of Manitoba will be more concerned with than the translation". At one stroke, then, Lyon rejected the *quid pro quo* which had been carefully wrought in a year of negotiations.

After quoting extensively from the services section of the draft amendment, Lyon concluded that "those sections...(go) well beyond what was ever intended to be the effect of Section 23 of The Manitoba Act...we have gone well beyond anything that the court could have imposed as a result of that judgment which is now stillborn". He then attacked the notion of Manitoba as a bilingual province:

> Mr. Speaker, the amendment that is proposed in this agreement to Section 23, as I have said, goes far beyond the spirit and intent of Section 23. It will have the effect of bilingualizing Manitoba in a way that was never contemplated by Section 23. Mr. Speaker, all we need do is look at the headline in this morning's paper for confirmation of that fact by the Justice Minister of Canada...saying that he hopes Ontario will follow Manitoba's lead and make itself a bilingual province.
> I suggest...that Section 23 did not make Manitoba a bilingual province. It provided for bilingual services to be provided in certain stated institutions in Manitoba, period, paragraph. And the effect of the Forest case was to cause the governments subsequent to that case, to move as our government did, as the present government is doing, to give a force and effect to Section 23, but not to the widespread effect that this agreement will give to bilingualism in the Province of Manitoba.

Lyon denounced the provision in the draft amendment for court-ordered redress as a "very dangerous provision" and a "violation of our whole tradition of parliamentary supremacy in this country".

Regarding the funding provided by the federal government, "the amounts...may or may not be satisfactory, but for $1.7 million, I don't think this province should be capitulating in the way that it is with respect to the draft agreement as we see it now". The "nub of the problem", as Lyon saw it, was in "providing for services to be given to the people of Manitoba in both languages".

Twice Lyon referred to language "zealots": early in his speech, he used the word in relation to the pace of implementation of changes in language policy following the *Forest* judgment:

> Some, I fear mostly zealots, would say the the work that was undertaken by the former government, and the present government, was not moving fast enough.[1]

Towards the end of his speech, Lyon used the word again, this time juxtaposing it with a quotation by Chief Justice Freedman; the broader context of this reference is important, as it raises the spectre of a small minority imposing its will unfairly on the population generally:

> Mr. Speaker, as we work, as we have - both governments have attempted to - with reason and fairness toward re-establishing the linguistic rights for 6 percent of our citizens in this province, we must be ever vigilant that we do not create a tyranny by that very minority, because that, Sir, in some ways, is what has happened with respect to the implementation of The Official Languages Act in other parts of this country. Legislation that could lead to the kinds of administrative excesses seen elsewhere must be studiously avoided in Manitoba. I suggest, Sir, that the social fabric of the province cannot and should not be made hostage to what Chief Justice Freedman referred to in his judgment in the Forest Case as, "intransigent assertion of abstract rights" by language zealots.

[1] Debates, May 20, 1983, p. 2976.

Lyon then attacked the nature of the negotiations themselves:

> ...it does not appear to be a negotiation in which the Government of Manitoba, on behalf of the people, ended up with something that will be seen to be fair in the interests of the totality of the public interest in Manitoba.

and offered his own solution:

> ...it is imperative that we have...a suspension of all further action on this agreement at the present time, until the agreement can be placed before a Legislative Committee, authorized to sit between Sessions - that is between the end of the 1983 session and the beginning of the 1984-85 Session ... and to report at the next Session of the Legislature on the advisability as to whether or not the Legislature should confirm this agreement by resolution...
> The instrumentality...would be this: That the government would introduce a resolution...to refer the agreement to a Standing Committee of the House, that would then proceed intersessionally to sit and to hear representations about the agreement and then, and only then, would the committee make a recommendation, which would come back to this House, as to the advisability or otherwise of this agreement in its present form or in an amended form...

Finally, Lyon addressed the question of timing, rejecting implicitly the December 31, 1983 deadline agreed upon by all parties to the agreement:

> Mr. Speaker, there is no rush for this agreement. The province can continue and the government can continue its steady and reasonable progress toward implementing Section 23, started by the previous government and carried on ably by the present government...
> ...(A)n injustice was done in 1890 when the Legislature of Manitoba purported to repeal Section 23 of The Manitoba Act. That injustice demands correction, fair play in the rule of law demand nothing else. But agreements which go beyond the spirit and the intent of Section 23, which could divide our province and its social fabric are not in the public interest.

Many of the major themes that were to be developed by the opposition to the constitutional amendment can be found in this, Lyon's first major speech on the issue: a "secret deal" had been negotiated which could rend the province's "social fabric" and a public debate was therefore required; progress on French-language translation and services was satisfactory, and there was no

need to accelerate their implementation; the threat of "chaos" to the Province resulting from a negative Supreme Court judgment was so minor as to be virtually nonexistent; Section 23 did not make Manitoba a bilingual province, and the proposed amendment went "far beyond the spirit and intent of Section 23"; there was a danger the province would be held hostage by a small minority of "language zealots"; the proposed amendment was taking the province into "uncharted waters".

A few days later, on May 24, Gerry Mercier appeared on the CBC phone-in show "Questionnaire". Apart from repeating many of the points made in Lyon's May 20 speech, Mercier formulated additional concerns, including the cost of implementing the agreement, the expanded role of the courts if the agreement were implemented, and the adverse impact he predicted on the civil service; he added that the Conservative solution would be to let the Bilodeau case go to the Supreme Court.[1]

The following day, May 25, Lyon himself was interviewed on the CBC television news programme *24 Hours*. Lyon refused to admit, in answer to a question, that "social divisiveness" would arise because of "comment in the Legislature"; in his view, it would arise because the constitutional amendment meant "importing", "embedding in the Constitution" an Official Languages Act in Manitoba, which would mean that, based on the federal experience, "the merit principle would be put to one side in the civil service...in crown corporations, in departments and so on because of the preoccupation...by linguistic zealots with bilingualism". He added:

> The attempt by this agreement to make Manitoba officially bilingual has all sorts of seeds of problems in terms not only of hiring within the government, costs of government, and so on, but in what the people will tolerate.

[1] Notes by Ginny Devine, May 24, 1983, in Turenne "Communications" file.

> What will happen is that gradually, as already I believe Mr. Forest has said, this is only the opening of the door and gradually we will be seeking, said he on behalf of Franco-Manitobans, will be seeking more rights...

The agreement, Lyon added,

> "represents...a quantum leap beyond what is required in law or in fairness or in reason. And I think the government has gone too far. I think they've capitulated with respect to the Bilodeau case and their abject fear of what the Supreme Court might say in the Bilodeau case. And ultimately this is the kind of subject where people would say we'll have a referendum. I don't say have a referendum, I would say that if the government intends to proceed with this matter as it indicates now then there should be a provincial general election. Any government would be ill advised, imprudent to try to shove this kind of an agreement down the throats of people of Manitoba without first consulting the people of Manitoba. This government does not have a mandate to make this kind of a fundamental change in the Constitutional law of our province. So it can't do it without consulting with the people and ultimately perhaps having a provincial general election based on this matter.[1]

The Lyon comments added several important new elements to the debate: the government was attempting to "shove" the agreement "down the throats of the people of Manitoba"; it had no mandate to do so; therefore it should consult the people directly on the issue, preferably by a general election. This seems to be the first recorded point at which the possibility of a referendum on the issue was raised by a member of the Legislature, although the idea must already have been circulating in certain rural areas, since that same day the *Valley Leader* published an article with the heading: "We demand a referendum!"

The following day, Dan O'Connor[2] wrote the Premier and his assistant, Garth Cramer, suggesting answers to questions that might be forthcoming in the House on the language proposals. Regarding the holding of a general

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[1] Turenne transcription of interview; in Turenne, Communications file.
[2] Communications and Coordination Secretary to Premier Pawley.

election on the issue, he pointed out that a precedent for not holding elections on such grounds had been set by the former government itself,

> which negotiated extensively much broader amendments to the Constitution and gained the approval of the Legislative Assembly for that position without once considering so much as a remote possibility an election on the issue.[1]

Though the *Winnipeg Free Press* and other media reacted positively to the proposed constitutional amendment at the outset[2], the government knew from Lyon's May 20th speech and his and Mercier's subsequent interviews that it was in for a rough ride on the issue. Many calls were already coming in from around the province, and a memo from Penner's Executive Assistant, Ginny Devine, to all NDP MLA's, Senior Assistants, and Executive Assistants designated Turenne to handle all enquiries regarding S. 23.[3]; she also informed Penner that a draft Communications Strategy was being finalized by Cramer, O'Connor, Turenne, Phillips, and herself.[4]

As part of this process, the government belatedly attempted to develop information and analysis that would put the amendment in the best light. For example, Turenne was asked by O'Connor to estimate the savings that would result from implementation of the agreement, and particularly in translation costs foregone; he estimated these savings at $2.4 million over 10 years.[5] Regarding the strategy itself, Turenne suggested that the government pursue an "offensive" rather than "defensive" two-pronged communications strategy on the issue, focusing on the Legislature and the media, and included a draft 10-

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[1] O'Connor to Pawley and Cramer, May 26, 1983; in ATG, Box 3, FLS - 1983.
[2] The *Winnipeg Free Press* concluded, in its May 21, 1983 editorial that "the amendment that is proposed, or one very like it, ought to be adopted"; the *Winnipeg Sun* wrote that "Manitoba is constitutionally bilingual, and has been for nearly a century".
[3] May 26, 1983; in ATG, Box 17, FLS - Communications.
[4] May 27, 1983; ibid.
[5] Turenne to Dan O'Connor, May 23, 1983; in EC, 0016, Box 7.

page statement that could be made in the House.[1] On May 25, O'Connor suggested to Turenne that "an immediate and major initiative" was needed to correct the "misleading and incorrect description of the proposal which continue to be used by CBC and many other media".[2] O'Connor believed it was necessary to "clearly establish the limited extent of the agreement and extremely limited impact of the proposed amendments".

Turenne responded with a perceptive analysis of the *de facto* policy that had existed until then and of the factors that had brought about the need for a new, more explicit one:

> Ever since the present Government undertook its French language services policy, the accompanying communications strategy has been to keep down the volume of public debate and hence the level of controversy. It has been extremely successful...
> Our present difficulty stems not from the fact that we neglected to formulate a communications strategy, but rather that we implicitly assumed we could carry on successfully with the old one: the low-profile nothing-much-is-happening-here approach.
> It might have worked but for two factors: our approach has always depended, whether we like to admit it or not, on the tacit cooperation of the Conservatives. To a remarkable degree, this has been forthcoming. For a year and a half, not one hostile question was put in Question Period, and as far as I can remember, only one unfriendly comment outside the legislature. Last week, the Conservatives made a complete about-face and in so doing, left us, at least temporarily, exposed and vulnerable.
> The second flaw stems from the very success of our previous strategy: we have been so low-key that many people were not aware that we have been in the French language services business for some time. When they suddenly see it entrenched in the Constitution, it appears as a radically new policy.

Turenne agreed with O'Connor that an "immediate and major initiative" was needed, and made two suggestions: calling a press conference or using a public speaking opportunity "to denounce the 'disinformation' being

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[1] Turenne to Devine, Cramer, & Phillips, May 24, 1983; in Turenne files.
[2] O'Connor to Turenne, May 25, 1983; in ATG, Box 3, FLS - 1983.

spread about by the Conservatives, and distribute a new paper on the financial implications of the Agreement, with the emphasis on the 2.4 M in savings for the Province". Secondly,

> We should use the Quebec/National Unity card - so far absent from the debate - for all it is worth (...)
> I have...discovered through numerous conversations with callers that it is the one question where they are most apt to change their attitude from hostility to support when informed of the real situation. I have found it quite easy to convince those callers that the best way to help the situation of Quebec Anglophones is to provide better protection for Francophones here.
> The Conservatives are very vulnerable on this question and do not know how to handle it, as witness Gerry Mercier's awkward reply when confronted with it on a radio show. Their policies would have the effect of seriously undermining the Quebec Anglos position because of the Manitoba-Quebec parallel. (...)
> If Manitobans generally are quite indifferent to the fate of Francophones, a great many do care about what they perceive as injustice vis-a-vis English in Quebec, and are quite receptive to appeals for fair play.[1]

Finally, probably as a further input into the communications strategy, Turenne developed a first draft of a "Question and Answer Handout regarding the Constitutional Amendment", and circulated it to Penner, Decter, and others.[2]

O'Connor's 17-page draft "Communications Strategy" was circulated to the key actors on the issue within the government on May 30, 1983.[3] The document conceded that "by virtue of the manner in which the federal-provincial agreement was announced and subsequently reported, the provincial government, in the initial stages, has lost control of this issue". (p. 1) It outlined one overriding objective:

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[1] Turenne to O'Connor, May 26, 1983, in ATG, Box 3, FLS - 1983.
[2] May 30, 1983; in ATG, Box 3, FLS - 1983.
[3] ATG, Box 17, FLS - Communications

> Our immediate and long term tasks must be to develop a legislative and public strategy that will help contain the issue - stem the flow of media reporting and minimize further controversy. This is based on the premise that the sooner we can achieve a state of normalcy, the very reality of how little the provincial community has been changed by this agreement will in itself dissipate the issue.

O'Connor warned of the consequences should the government not be able to "contain" the issue:

> Clearly...failure to achieve our objectives leaves the potential for this issue to remain hanging for several months. And although it is unclear whether this could result in long-term political damage, a lengthy public airing of this issue will, in the short term, hurt the image of the public and will unnecessarily detract public and media attention away from our political and communications agenda. (p. 1)

Further in the document, the authors stated their concerns in even stronger language:

> If we are unsuccessful in regaining control of this issue, and if the agreement is not correctly understood by the public, the resulting controversy and hostility will spread and take root.
> We should assume there exists real potential for long-term political damage on a scale impossible to gauge. (emphasis in text; p. 4)

The main objectives of the communications strategy were, 1) to "contain, defuse and bury the issue by undertaking all necessary steps to ensure that the media, the Conservatives nor public opposition have further opportunity to generate continued public interest in this issue" and 2) "to telescope the legislative and media time frame - Steps must be taken to restrict the time frame of this issue to the shortest number of weeks possible". (p. 2)

The document considered various options, weighing the advantages and disadvantages of each; these included "minimal action" ("wait for the tempest to blow over...the issue will run its course like any other"); an "active public relations approach" ("people will only understand and accept our actions if we tell them about it"); and "public hearings versus no public hearings" ("Demands by the Leader of the Opposition, coupled with remarks by the

Premier in the Legislature have left some degree of expectation for a public hearing process").

The document concluded that "A state of preparedness and high priority should be fixed to this issue until we are certain it has run its course." (p. 17)

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Meanwhile, the SFM held its special general meeting at St. Boniface College as scheduled on the evening of May 24, 1983. About 600 people were in attendance. All of the major actors in the negotiations were present; Jacqueline Blay even called it "an evening of reconciliation" between the SFM and Georges Forest. For three hours, Léo Robert and Rémi Smith explained the agreement in detail, clause by clause. Twice the SFM's board of directors was saluted with standing ovations. In the end, the SFM's membership overwhelmingly approved the agreement, by a vote of 576 to 11. The 11 votes against were cast mainly by persons associated with Maurice Prince's phantom association mentioned in the previous chapter. The few votes it garnered confirmed the fact that it was virtually non-existent; Turenne described this aspect of the vote in the following words:

> The true extent of his [Prince's] support in the community can better be measured by the votes he managed to obtain at the May 24th General Meeting of the SFM on the constitutional agreement. Prince and another representative of a similar self-styled organization tried to get the meeting to reject the proposal. Their combined forces garnered eleven (11) votes.[1]

[1] Turenne to John Klassen, NDP Caucus, Aug. 31, 1983; in Turenne files.

Blay also describes the barely-contained emotion in many speakers' voices as they anticipated the long-awaited righting of the historical injustice visited on the Franco-Manitoban minority in 1890:

> Le 24 mai au soir, les Franco-Manitobains ont l'occasion d'entendre et de partager, avec beaucoup d'émotion à certains moments, les termes, qualifiés d'historiques par certains, qui ont été négociés...
> Dorénavant, les Franco-Manitobains pourront, légalement et fièrement, parler français en dehors de leurs foyers, de leurs écoles et de leurs églises...
> Les Franco-Manitobains connaissent leur histoire et savent que l'entente qui a été conclue est primordiale pour leur avenir comme communauté, que rien n'est gagné mais que l'égalité législative, juridique et institutionnelle est plus proche qu'elle ne l'a jamais été.[1]

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In those first few days after the announcement of the agreement, press reaction began to emerge, in Manitoba and across the country. In two articles, published in the *Winnipeg Free Press* on May 25 and 28, 1983, columnist Frances Russell saw the agreement, and Lyon's initial reaction to them, in this way:

> The calm non-partisan accord by which Manitoba was proceeding to end "93 years of injustice" to the province's French-speaking people came to a sudden, shuddering halt in the legislature last Friday.
> Opposition Leader Sterling Lyon served notice that his party will fight the Manitoba government's proposals to implement the 1979 Supreme Court judgement returning the province to its original bilingual status.
> ...Lyon raised the spectre of "social chaos" flowing from the proposed agreement between Manitoba, Ottawa and the *Société Franco-Manitobaine*.
> Unfortunately, Lyon's decision to turn a constitutional requirement which even he acknowledges has existed in law for 113 years into a partisan political issue could make his fear of social chaos a self-fulfilling prophecy.
> (...)

[1] Blay, op. cit., p. 175.

> Lyon's stand...ignores Canadian and Manitoban history and ignores constitutional reality.
> Manitoba's bilingualism is not the invention of any current politician, federal or provincial. It is not a matter of suddenly choosing to shove French down people's throats. It is a 113-year-old constitutional law that now, as a result of a series of court cases, can no longer be broken.
> Manitoba was made officially bilingual by the Conservative government of Sir John A. Macdonald in 1870 when this province joined Confederation. And, according to the 1979 judgement of the Supreme Court of Canada, the 93 years the province spent recognizing "English only" were illegal, the result of an 1890 law that was beyond the legislature's jurisdiction.
> The opposition Conservatives are ignoring history, the law and the constitution by encouraging Manitobans to believe they can continue to disregard the province's constitution and the ruling of the highest court in the land.[1]

A *Montreal Gazette* editorial, entitled "Lyon proves the point", was more blunt:

> Sterling Lyon is living, breathing proof that minority rights need protection in the constitution.[2]

On CJOB's open line morning programme hosted by Peter Warren, callers, encouraged by Warren himself, began to discredit the SFM as a legitimate spokesman for the Francophone community in Manitoba. A letter by one Neil Fraser published in the *Winnipeg Free Press* on May 28, 1983 reflected this sentiment; Fraser stated outright that the SFM did not represent the majority of French-speaking citizens of Manitoba. Though this claim was to remain unsubstantiated throughout the language crisis, it was soon to be taken up by the Opposition in the Legislature and by various other adversaries of the constitutional amendment.

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[1] *Winnipeg Free Press*, May 25 & 28, 1983.
[2] *Montreal Gazette*, May 27, 1983.

On May 30, 1983, Mercier raised the issue of translation costs in the Legislature, in the following terms:

> Could he [Penner] advise the House as to the expected costs of translation up to and including the year 1993 under the proposed amendment to The Manitoba Act, would the cost to that date be in the order of $15 million to $20 million?

Penner took that question as notice; Mercier followed with a supplementary, asking the Minister to confirm whether, "since the translation of statutes has begun, the Queen's Printer Office have sold 25 French statutes". Penner again took the question as notice. Finally, Mercier came to his point:

> Could the Attorney-General inform the House as to what, if any, negotiations took place with the Federal Government in (sic) the Franco-Manitoban Society with respect to the obligation of the Provincial Government to translate statutes into both languages in Manitoba, in light of I believe a viewpoint of a significant number of French-speaking people in Manitoba, that they do not require all of the statutes of Manitoba to be translated into French and that there is a significant waste of money because of the strict requirement to translate all statutes and regulations?

Penner's response was as follows:

> In fact, Mr. Speaker, the Honourable Member for St. Norbert has it all wrong. Had we allowed the matter to proceed and be faced with a decision that the language of Section 23 of The Manitoba Act was mandatory, that is, that we were under an obligation ot translate our statutes, we would have been faced with the kind of cost that he's talking about in perhaps tens of millions of dollars.
> The result of the accord, which will come forward in the House by way of an amending resolution, is that we have saved most of that money because part of the accord is that rather than being obligated to translate all of our statutes, including the private charters and some of the municipal charters, there will be a relatively short annex to the accord, representing perhaps a tenth of what we might otherwise have to translate in that particular area of the law, and the saving to the Province of Manitoba can be measured in millions of dollars.
> The amending provision which, as I say, will be presented to the House by way of resolution requires us to have a general revision of the statues (sic) by 1993 in both languages, and certain of the Acts

> which normally would not be contained in a revision. The Acts of character that I described, private charters of institutions and certain municipalities, some of those will have to be translated but the vast bulk do not.[1]

This brief exchange, reported both in the *Winnipeg Free Press* and the *Winnipeg Sun* on May 31, were the opening shots in what was to become an ongoing debate as to the nature and extent of the costs, or savings, to the Province in the area of translation as a result of the constitutional amendment.

The day after Mercier's questions, Legislative Counsel Rae Tallin wrote to Penner pointing out "the enormity of the problem of old unconsolidated Acts".[2] Tallin also wrote Turenne the same day saying the June 15, 1983 deadline in the tripartite agreement for determining the list of acts to be translated was unrealistic; he suggested it be pushed back to September 1, 1983.[3] On May 31 as well, Greg Yost[4] sent Penner his recommendations regarding a "Translation Program to meet requirements of new Constitutional Agreement"; his recommended option involved the hiring of five new staff.[5]

Cultural Affairs Minister Kostyra, as minister responsible for translation services, had also requested an analysis of the cost implications of the tripartite agreement from his Deputy, Joy Cohnstaedt. Her memo to Kostyra, dated May 25, 1983, indicates the difficulties that Department was having in coming to grips with the implications of the agreement:

> How our existing contracts to translate the consolidated version of back-logged statutes will mesh with the offer to share in the creation of an updated English and French version of statutes is unknown. Whether existing contracts will have to be dropped, additional costs incurred, or new priorities made, is not known. This will have to be

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[1] Debates, May 30, 1983, p. 3200.
[2] Tallin to Penner, May 31, 1983, in ATG, Box 18, FLS - Language.
[3] Tallin to Turenne, May 31, 1983; ibid.
[4] At this point, Yost was technically responsible for legislative translations, though evidently he was involved in various ways in the constitutional amendment process.
[5] Yost to Penner, May 31, 1983, in ATG, Box 3, FLS - 1983.

> worked out with the Attorney-General's Department and the Federal Government.
> The implications of fixing a financial figure in the agreement before assessing this situation (one to two weeks) cannot yet be assessed. Nor do I have any perception on the flexibility of the figure.[1]

On June 2, 1983, Kostyra rose in the House to answer Mercier's earlier questions about translation costs. Regarding amounts actually spent since 1979, Kostyra stated that

> The figures that we have with respect to those costs to date, including what is estimated for this current fiscal year, are $1,204,987, which are made up as follows: the year 1980, $94,989; 1981, $205,000; and 1982, $390,000.
> The member further asked me whether or not what we expected (sic) the costs of translation, up to and including the year 1993, under the proposed amendment to The Manitoba Act, and he quoted a figure of $15 million to $20 million. No, Mr. Speaker, the figure of $15 million to $20 million would be a vast overstatement of the cost of translating statutes and regulations under the proposed amendment.
> (...)
> The amendments and the agreement with the Federal Government should enable us to undertake a complete revision of statutes in English and French, and the government has already announced that the cost of this revision is projected to $3.5 million shared 50-50 with the Federal Government. It's my estimate that the net cost to Manitoba for this revision and for the translation of statutes and regulations on a current basis will not exceed $6 million over the period in question.

To which "a member" replied:

> Lying.[2]

Penner was also increasingly concerned about the cost and staffing implications of the French-language services clauses in the agreement. Turenne estimated that, to provide "active services", 400 positions in the civil service

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[1] Cohnstaedt to Kostyra, May 25, 1983; in Turenne files.
[2] Debates, June 2, 1983, p. 3358.

> "will require some sort of language designation, of which approximately 240 could be considered indispensable. Of those 240, roughly one-third are currently staffed by bilingual personnel, leaving some 160 positions to be filled before 1987."[1]

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Within days after the announcement of the tripartite agreement, letters expressing concern about it began to flow into Doern's and Penner's offices, among others. In addition, the Penner files contain a number of resolutions from municipal councils, some dated as early as May, 1983.[2].

The first indication that the municipalities were concerned and upset about the agreement occurred in the Legislature, on May 24, 1983, when the MLA for Swan River, Doug Gourlay, asked Minister of Municipal Affairs A.R. ("Pete") Adam whether he could "confirm that he has met with the Union of Manitoba Municipalities with respect to the bilingual agreement". Adam confirmed that "I did meet them Friday and there were a number of topics on the agenda, and that which he indicates was one of the items on the agenda". Gourlay then asked the Minister whether he was able to "give any assurances to the Union of Manitoba Municipalities officials that there would be provision for further discussion with respect to this bilingual agreement". The Minister's response was as follows:

> Mr. Speaker, what we discussed, in regard to municipal services, was that there was an offer from the Federal Government to provide for some assistance to those municipalities who would want to provide services, or extend services, already provided at two French-speaking communities on a voluntary basis.[3]

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[1] Turenne to Penner, May 30, 1983; in ATG, Box 3, FLS - 1983.
[2] ATG, Box 3, FLS - 1983.
[3] Debates, May 24, 1983, p. 2994.

Two days later, Gourlay asked Adam a second series of questions in the House on his meeting with the Municipal Advisory Committee. Adam replied:

> I believe they [municipalities] would have liked to have been part of the consultative process and they mentioned that... We met with them on Friday and it was only on the Monday prior to that that even the province was aware that there was a suggestion that the Federal Government would be willing to assist some municipalities on a voluntary basis if they wanted to provide any French services, but it wasn't binding or they were not insisting upon it. They said, if any municipality wanted to avail themselves (sic) of that assistance, it would be provided and that's where it stood.[1]

Indeed, following the May 20 meeting, which Penner also attended, Secretary-Manager Bill Rusk of the UMM wrote all members expressing his fear that bilingualism would "infiltrate" school divisions and municipalities. He suggested members discuss the issue at the organization's June, 1983 Council meeting; in addition, he suggested that local councils adopt resolutions against the French-language proposals and send them on to the Premier and the Attorney-General by June 17, 1983.[2] Letters from municipalities, most of which included resolutions adopted by their councils, poured into the offices of the Premier, the Attorney-General, and the Minister of Municipal Affairs throughout June, 1983. Several pointed out that, despite assurances to the contrary, they "believed" or "feared" that bilingualism would "infiltrate" the municipal level.[3] Many of these letters also requested a province-wide referendum on the issue. Some, such as the R.M. of Russell, adopted resolutions linking the issue of bilingualism with the implementation of the metric system in Canada.[4] Many stated that the government was "misleading" the people of Manitoba, and some, for example the R.M. of Clanwilliam,

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[1] Debates, May 26, 1983, p. 3135.
[2] EC, 0016, Box 7.
[3] Ibid.
[4] At least four Towns or Rural Municipalities linked bilingualism with "metric", and sent Premier Pawley letters or resolutions to that effect. These were Portage la Prairie, Woodlands, Russell, and Gilbert Plains. See EC 0016, Box 4.

expressed their concern that Manitoba was about to be declared a "Bilingual Province". Some also expressed concerns about the cost of bilingualism.[1] A resolution adopted by the R.M. of Shellmouth on June 9, 1983, is of particular interest; it stated:

> We are Canadians and we favor legislation so that the affairs of our country, especially the province we live in should be conducted in Canadian only.[2]

At the outset, the urban municipalities took a somewhat more reserved approach. The Manitoba Association of Urban Municipalities circulated results of a survey to all mayors and councillors represented by the organization. The survey indicated that 57% of the organization's membership was opposed to the government's language proposals; these results, in President Greenslade's view, made it "difficult for the Executive to express with great vigor total opposition to the resolution". However, Greenslade also informed his membership that he had met with Pawley and Penner on the issue, and that he had indicated to them the organization was "extremely concerned with the possible costs to municipalities".[3]

In response to these growing pressures from his Department's constituency, Adam met with SFM representatives on June 7, 1983. Léo Robert made the point that, although his organization would have hoped to include municipalities in the French-language services clause, the SFM had finally agreed that it would be wise to exclude municipalities altogether from the constitutional agreement and to attempt to have such services provided by the municipalities on a voluntary basis.[4]

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[1] ATG, Box 18, FLS - Municipalities.
[2] ATG, Box 3, FLS - 1983.
[3] ATG, Box 18, FLS - Municipalities.
[4] Ibid.

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Turenne, meanwhile, was grappling with the residual problem of the schedule of Private Acts, Municipal Acts, and Public General Statutes not of a kind normally included in a general revision of statutes. The list of such statutes to be translated under the tripartite agreement still had not been drawn up.

On June 3, after having received Tallin's memo saying the deadline should be extended to Sept. 1, he wrote Penner informing him of Tallin's opinion, adding that Léo Robert would be communicating with him later that day and that Penner "should impress upon him the urgency of completing the work on the schedule to the amendment". Turenne said the schedule was of "extremely peripheral importance to the French community", and that one day should be sufficient to complete it.[1]

In the end, Turenne's suggestion prevailed. At the SFM board meeting of June 7, it was decided that Rémi Smith, working with Rhéal Teffaine, would submit the schedule to Penner by June 15, 1983.[2] According to Renald Guay, Rémi Smith ended up doing the work alone:

> So then what you get into, what Rémi is doing is he's doing the work to complete the schedules to that agreement which is legal work because you've got to go through all the statutes to find out what has to be translated and what doesn't have to be translated, what has been passed in French, what isn't. Is it one that we need or one that we don't need. I mean it's a very -- you have to go through all the amendments of all of the entire statutes of Manitoba, all the way back to Confederation.
> Q. And who was doing this?
> A. Rémi did it.
> Q. Just Rémi?

[1] ATG, Box 18, FLS - Courts.
[2] G/S, Box 4, File 35, p. 30.

A. That's correct.[1]

On June 15, Schedules 1 and 2, the lists of Private Acts, Public Municipal Acts, and Public Statutes which would not be exempted from translation, were transmitted by Rémi Smith to Tallin; according to Smith,

> Those Acts in Schedule 2...represent groups or Associations which the SFM will contact to ascertain their willingness or desire to have the Acts translated by the Province voluntarily.[2]

The following day, Tallin informed Penner that

> Remi Smith has now pretty well settled the list of Private Acts, Public Municipal Acts and Public Statutes not of a kind normally included in a general revision of statutes which will be required for the Constitutional amendment to The Manitoba Act, section 23. The list now is reduced to 8 pages which I don't think is unreasonable.[3]

The eight-page list contained a total of 130 Acts to be translated, over and above the current Public Acts which were already provided for in the draft constitutional agreement.

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Parallel to the increasingly complex political story, the judicial story was evolving as well. On May 30, a decision by the Quebec Superior Court provided an additional indication to the government as to the Supreme Court's ultimate ruling in the *Bilodeau* case should it finally be heard there. This decision, one of the many *Collier* decisions, was indeed destined to be heard in the end by the Supreme Court. It involved a finding of invalidity of a decree issued by the Quebec government because it had been adopted in French only, contrary, in the Superior Court's view, to S. 133 of the *Constitution Act, 1867*. The implications were clear, both for the Quebec and Manitoba governments: the

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[1] R. Guay, Examination for Discovery, pp. 217-8.
[2] SFM, Box 41, 24.8/2.
[3] Tallin to Penner, June 16, 1983; ATG, Box 18, FLS - Language.

requirement for bilingualism under the terms of S. 133, and of S. 23 of the *Manitoba Act*, which uses virtually identical wording, was much more extensive than had been believed. In the Pawley government's view, this was all the more reason to pursue a negotiated settlement with francophones in Manitoba rather than risk going to the Supreme Court and having, at worst, virtually all laws, regulations, and other legislative instruments declared invalid or, at best, having a huge, costly, translation load imposed on the province.

The Quebec court's finding was first raised in the House by NDP MLA Don Scott, on May 31, 1983. After summarizing the case briefly, Scott asked Penner "how this relates to the case that was going before the courts in Manitoba, the Bilodeau case". Penner's reply emphasized the importance of the case as a precedent which might indeed have an impact in Manitoba:

> The section of the Constitution of Canada which was in consideration in the case in Quebec, Section 133, is word for word the same as Section 23 of the Manitoba Act, therefore, there is an exact parallel between the two cases. This is the first instance in which a superior court has held in effect that the failure, in this case the failure of the Province of Quebec, to use both official languages, amounts to an invalidity. (...)
> The only additional comment I would make in answering the question is that this demonstrates the risk that would have been run when the Bilodeau case went to the Supreme Court when it was our concern that the Supreme Court could come to the same conclusion. There is now a precedent for a court coming to that conclusion and demonstrates the fact that the cautionary approach was the correct approach to take.[1]

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On June 6, 1983, Sterling Lyon launched a second major offensive in the Legislature against the government's proposed constitutional amendment,

[1] Debates, May 31, 1983, pp. 3262-3.

adding new arguments to the ones he had already presented and fleshing out the previous ones.

In the afternoon, during consideration of the Executive Council's estimates in Committee of Supply, Lyon raised the matter of a publication of the Civil Service Commission, "Inside Outlook", dated May, 1983 and dealing with the government's French-language services policy. After asking several specific questions relating to the cost of bilingual services generally, and the cost of the publication itself in particular, Lyon raised the first matter of principle, challenging a statement found in the publication to the effect that "Manitoba entered Confederation in 1870 under conditions guaranteeing the equality of both official languages.":

> When one considers that Section 133 can hardly be thought historically to have guaranteed the equality of both official languages, except in the courts, in the Legislature, and for the printing of the statutes, what then is the derivation of the statement that Manitoba entered Confederation under conditions guaranteeing the equality of both official languages?

Premier Pawley replied:

> I think, reflecting back to the historical circumstances of 1870, the main function of government, the two levels of government, both the lower and the higher level of government at that particular point, and the courts and the Statutes and the journals of the House, that was the intent; that was the nature of the understanding. From that, can we assume that Manitoba was designated as a bilingual province? No, I think that it was anticipated that there would be access to certain services in the province to be provided to our French-speaking and English-speaking peoples in their own language and in particular fields and areas.

Pawley went on to contrast the province's constitutional proposals with federal bilingualism policy, pointing out in particular that French-language services would be provided on a limited basis, in areas of the province where numbers warranted, and in head offices of Departments or Crown corporations.

Lyon returned to the services that had begun to be provided under his administration, pointing out the crucial difference, that

> ...all of that was being done not as a direct result of the Forest case. It was being done as an evidence of good will of the government, but it was not being done under any imperative, either constitutional or statutory such as is envisaged in the draft agreement...which now will make what was being done heretofore a constitutional imperative.

Pawley replied by recalling the possibility of "unreasonable" deadlines that could be imposed by the Supreme Court, the possible invalidation of all Manitoba laws, since "courts do sometimes rule in bizarre ways", and the large numbers of statutes that would not have to be translated as a result of the agreement. He then recalled the nature of the *quid pro quo* that was at the heart of the agreement:

> ...we have agreed in return to provide the kind of services that were announced in March of 1982, and the kind of services that the Leader of the Opposition while Premier had no quarrel in respect to the establishment of, when the then Premier established the French Language Service area. To achieve time, to achieve financing, it's necessary at the same time to be prepared to commit ourselves to give something in return. In this case, what was given were the commitments that were already given policy-wise and I assumed, in fact, with the support of the opposition in the Legislature in March of 1982.

Penner added that Lyon was right to raise the issue of Manitoba being "constitutionally completely bilingual", adding that "that statement must be read with qualifications". Referring to a Supreme Court's statement in one of the *Blaikie* decisions, to the effect that the B.N.A. Act had planted in Canada "a living tree capable of growth and expansion within its natural limits", Penner added that it was in that spirit that "adjudicative agencies which play so important a role in our society" had been added within the scope of S. 23. As for French-language services themselves,

> ...the Leader of the Opposition is correct in pointing out that there is something in the proposal which, with respect to the obligation on government to supply its services from head offices and other offices where numbers warrant its services in both languages, that that is new.

Lyon considered the parallel between Manitoba's Section 23 and S. 133 of the B.N.A. Act, distinguishing between the texts themselves on one hand and actual practice and conventions on the other:

> I say, Mr. Chairman, that there is a tendency on the part of some academic, some writers, on this topic, to make the easy transference between the situation in Quebec and the situation in Manitoba. I suggest that neither history, the law, or any of the touchstones that one would ordinarily look to, support that kind of easy transference as to, if something is done in Quebec, it must be done in Manitoba. There is no convention, that I am aware of, historical, legal, political or otherwise that makes that the case.[1]

This point, a fundamental one, avoided the possibility that practice and convention would have been radically different in Manitoba had successive governments not acted unconstitutionally after 1890. Whether illegal and unconstitutional acts could or should create legal and constitutional conventions was not considered in his analysis, even though he accepted that Manitoba had indeed acted unconstitutionally since 1890.

The debate resumed in the evening, and took up a good part of the evening sitting. Lyon quoted comments by a Mr. "Roberts", President of the "Franco-Manitoban Society" to the effect that "The accord goes even farther than the courts could have done" and asked for Pawley's response. Pawley admitted that French-language services "undoubtedly would not have been part of any court ruling...these kind (sic) of services would probably not have been provided in any court case". Penner agreed, and added:

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[1] Debates, June 6, 1983, pp. 3462-4.

> ...the converse has to be put on record; namely, what did Manitoba get?
> Now, Manitoba got at least two things - well, a lot more - but two things in particular. One is that we were saved the possibility, and I've never put it higher than that, of having our statutes invalidated and that could have happened in that case.

Penner then referred to the recent Quebec Superior Court decision as reinforcing this possibility, and continued:

> More than that, however, in terms of what did Manitoba get, it again was possible - given the case that was before the Supreme Court - that we would have been required, perhaps over time but nevertheless required, not only to translate as we're now constrained to translate, should the agreement be validate, the 375 or 380 statutes appearing in the continuing consolidation, but we would have had to face the question of what to do about approvimately 3,800 - that's 10 times as many - other statutes which don't appear in the continuing consolidation and which now we don't by this agreement have to translate in order to guarantee their validity...we will not be required to translate all of these 3,800 statutes; we may have to translate about 40 to 100.
> (...)
> Finally, in terms of what did Manitoba get, we got all of what will be required, effectively, to translate the continuing consolidation. The continuing consolidation will be revised by 1993. In the process of doing it we will complete the translation of the backlog. The estimate that we have in 1982 dollars for that job is $3.5 million, and half of that will be paid by the Federal Government, so a balanced view has to be struck.
> What did we in a sense give? We gave a constitutional protection to French Language Services which, under the previous government and extended under this government, we'd begun to provide in any event. So what did we get? We got the insurance of the validity of our statutes. What did we get? We got the insurance that we wouldn't have to translate all of these 4,000 other statutes. What did we get? We got, by the collateral agreements, something in the order of $2,400,000.00.

Later in the debate, Penner played the "national unity" card:

> Alliance Quebec...has applauded us for this step recognizing how it has served the interest of our English speaking colleagues and friends in the Province of Quebec. I think it's no exaggeration to say that even though it is true that in terms of the provision of some of the services, it's gone further than the court might have ordered in

> the particular case. It has and will continue to have, over time particularly, a tremendously important unifying effect in Canada.

Lyon ignored this argument, and turned to the Twaddle and Gibson opinions which Penner had tabled that day in the House. Lyon pointed out that in the opinion of both men "the constitutional validity of the statutes in question will probably be upheld" in the Supreme Court. Penner interjected: "Probably." Lyon then raised a point made by Twaddle, that even with the constitutional amendment, there was no guarantee this would be the end of the litigation; in Twaddle's words,

> ...it would be open to someone to challenge the validity of such an amendment on the ground that the Legislative Assembly of Manitoba was not properly constituted...If, however, the amendments had the approval of the French-speaking population of Manitoba, perhaps the issue would never be raised. There would remain, however, the right for someone now, or at a future date, to challenge the authority of the Manitoba Legislature to act at all.

The substance of the Twaddle and Gibson opinions, according to Lyon, was that "the fear expressed by the Attorney-General...that the decision of the Supreme Court, the statutes passed in one language only invalidated the statutes" was a "hollow fear":

> ...because this hollow fear has been advanced the Attorney-General and his government appear to be selling off - not selling, giving away the farm. Because someone came along and uttered a legal boo, they say, "What can we settle for?"

Lyon referred to the Manitoba Court of Appeal judgment which said that it would be wrong to find that all Manitoba laws would be invalid since this would lead to "chaos". He quoted Penner's previous statement to the effect that "We may have been placed in a position by the decision of the Supreme Court that the fact that these statutes were passed in one language only invalidated those statutes", and added:

> That's primarily where the pressure came from, but when you read as I only have the opportunity to do today very quickly, the initial opinions of Mr. Twaddle and of Mr. Gibson, you find that they don't support that proposition.
> ...Why was Manitoba so bound and determined in the face of this kind of, if I may say so, hollow threat of litigation, so bound and determined to extend the provisions of Section 23 in the leaps-and-bounds method that they did in the the proposed agreement which was tabled in the House the other day? What possibly could have been the motivation? Surely it couldn't have been any motivation brought about the (sic) legal opinions of Messrs. Twaddle and Gibson.

In response, Premier Pawley quoted Gibson's conclusions:

> No. 1 - "the Bilodeau case proceeds to final judgment, the validity of pre-1979 statutes is likely to be upheld, but there is significant risk of a ruling to the contrary."
> No. 2 - "because the legal consequences of an adverse determination would be chaotic and even a favourable ruling would have unfortunate ramifications, it would be wise to seek an appropriate constitutional amendment as either a substitute for or a supplement to a decision by the Supreme Court of Canada."
> This is basically what the Attorney-General has been doing.

As to Lyon's summary dismissal of a court ruling that could create chaos, Pawley reminded him that, on the heels of the *Collier* decision,

> Certainly in the case of Mr. Levesque, he is faced now with a very very chaotic type of situation in the Province of Quebec pursuant to that ruling. What will happen in respect to appeal? One does not know, but certainly the wording is near identical except for the exchange of the names of the provinces.

Lyon responded with an alternative to which he was to return many times in the ensuing debate: he proposed an "agreement" with the Francophone community that would deal with translation only.

> If that agreement had presumed to deal only with translation, then I think the First Minister could have expected to come before the House, because that was the proposition that was at issue in the Bilodeau case and say, we've made a political settlement with respect to translation...
> (...)
> [T]o go beyond the proposition of Bilodeau and to say that not only are we going to do the translations in a fixed time, but in addition to

> that we are in effect, and I haven't seen the First Minister or anyone deny this proposition, we are going to effectively bilingualize Manitoba. We are going to say that the head office of every department and of every quasi-judicial board, and so on, shall have to have a bilingual capacity in it...
> (...)
> ...there are things that can be accomplished with respect to immersion courses and so on in French if they are not under a constitutional imperative, that can't be accomplished...if they are under a constitutional imperative. That has to do, Mr. Chairman, with knowing your province; that has to do with knowing your people; that has to do with knowing what they will tolerate and what they will not tolerate.

Lyon said there was a "decided aversion" in Manitoba that had existed for "a good many years...to the concept that something, if ordered, must be done":

> Mr. Trudeau tried that in The Official Languages Act and look how far he got with [it] and acceptance in this province, or in many parts of Canada, because of the dictatorial nature of the implementation of the Act. Not that the principle was wrong, but the methodology of implementation has been terribly wrong with respect to any person who has an understanding of human nature in this country.
> To avoid that kind of calamity, and I use the word advisedly, I would think that any government in Manitoba would want to be very very chary about grafting constitutional extensions onto Section 23 when Manitoba are (sic) only now beginning to digest the effect of the Forest case with respect to Section 23 and its implementation - never mind its extension...

What pressure, Lyon repeated, had led Manitoba to enter into an agreement on a constitutional amendment?

Penner recalled that, upon his appointment as Attorney-General, the Bilodeau case was already before the Supreme Court, and that

> not unnaturally, when exploring the consequences of an adverse ruling, which one would have to do, one always looks at the worst possible scenario. I asked counsel for an opinion.

Penner pointed out that in Gibson's view, there was a "significant risk" of a finding of invalidity; he went on:

> I don't believe in playing macho politics with the future of this province, and indeed the very existence of this province. I could not, in all conscience as the Attorney-General of this province...say, let's throw the dice; to hell with them; let's go get them; we're right. You can't do that. I think you can't do it responsibly. So taking the fact that I was advised that there was a significant risk of a ruling to the contrary, we sought to see whether we could effect an honourable solution outside of court, and told time and again as a lawyer, and I'm sure the leader of the Opposition was told the same, that it's better to make a settlement than to risk the consequences of an adverse ruling in court.
>
> Let me say parenthetically, that since the decision of the Quebec Superior Court...Mr. Twaddle has said to me that he certainly considers that this puts a different light on the matter. He hasn't said that [he] now is sure that we would lose. Mr. Twaddle's a very careful lawyer. He simply said that this decision, which he would not have expected, put something of a different light on the question of the risk before the Supreme Court.

As to Lyon's suggestion of an agreement that would have covered the matter of translation only, Penner replied that

> ...it takes two to tango. You can't just put your conditions for a settlement, and say sign here... What resulted was the result of a lot of give-and-take in a situation in which both sides stood to lose enormously, but both sides could gain by a calm, sensible approach to this problem.
>
> To characterize what has been proposed or what is being proposed in this settlement, as to effectively bilingualize this province, is utterly wrong and raises a scare. It is in effect, whether intended or not, scare tactics...this is not the bilingualization of the Province of Manitoba. Certainly there is no concept, for example, of The Official Languages Act to which the Leader of the Opposition has adverted in this settlement whatsoever... This is not requiring, for example, as the language of the workplace, that civil servants will have to, in great numbers, learn a language they don't want to learn... The inventory that we have begun, and only begun with respect to our ability to deliver French Language Services, indicates that we already have in place a substantial number of people who are effectively bilingual.

Penner turned to Lyon's argument against the entrenchment of French-language services. He pointed out that services provided by quasi-judicial agencies were already covered by the Supreme Court's *Blaikie I* decision and read the following quote from that decision into the record:

> "...by virtue of Section 23, The Manitoba Act, and is there as a matter of law that French language services be available not only through the courts of the province, but through the adjudicative agencies." Adjudicative agencies are precisely those referred to by the Leader of the Opposition as quasi-judicial boards. So to say that there's something new here in this proposed amendment in terms of the delivery of services in quasi-judicial boards is to misstate the case that was already decided by the Supreme Court in 1979.

Lyon then returned to a theme he had begun sketching out in the afternoon: a parallel could not be drawn between Manitoba and Quebec in terms of convention and practice. In his view, "conventions and practice" between the two provinces had been "radically different", ignoring the fact that even Manitoba's Court of Appeal had accepted the parallel between S. 133 of the *B.N.A. Act, 1867* and S. 23 of the *Manitoba Act*.[1] He again asked Penner

> What guarantee do the people of Manitoba have, even if this agreement were passed, that there would not be further litigation going up to the Supreme Court of Canada on this same point, because the agreement does not purport to invalidate present or anticipated legislation with respect to this point?
> (...)
> ...we make this grandiose settlement, which extends by a quantum leap the effect of Section 23, what guarantee have we got that having sold, not sold but given away the farm under the agreement, that we still won't be faced with the threat in the Supreme Court of Canada on the very same points, because that's what legal counsel is advising the government?

Pawley conceded that "there's no guarantee at any time that there will not be a challenge insofar as any legislation is concerned...But what the Attorney-General has done...is certainly moved to the lessening of effective challenging of the legislation..." He then reinforced the distinction Penner had drawn between federal bilingualism and his government's proposals, indicating that

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[1] See Chap. II, pp. 57-8.

> the Leader of the Opposition has interchanged, and I think unwittingly - but it does create concerns - words which would leave the impression that we are equating this approach with the dictatorial implementation by Mr. Trudeau. Of course, what we are doing is absolutely at distance to anything that the Federal Government has done over the last number of years...
> (...)
> [W]hat we are doing by way of the provision of French languages services is not requiring French to be the working language of the Civil Service, as was the case at the federal level. There will be no one that will be promoted or demoted...
> ...There will be a very very small number of public servants that will be required to be bilingual in the various offices [or] the ...head offices of the departments and Crown corporations.

Lyon replied that it was the Attorney-General of Canada who had congratulated Manitoba "for being the third province in Canada to be officially bilingual". The "bilingualization" of Manitoba was not contemplated in S. 23, and Penner should give "very serious consideration to the results that may accrue from this kind of a quantum leap that they have negotiated with respect to what was, heretofore, a very simple legal case", since "I know something of the depth of the feeling of this matter in the Manitoba community":

> God knows there is enough opinion in the Manitoba community that may not be able to sit as we sit here tonight and argue this proposition as abstractly as we are arguing it tonight because the depth of emotion on a topic of this nature runs very very deep in the blood of Manitoba families. So I say to the First Minister... Take the agreement to the people of Manitoba.
> Here, as Mr. Trudeau used to say, is a chance for an educative process as he used to say with respect to the Charter of Rights.

Pawley replied that the "quantum leap forward" that Lyon had described was merely "the policy that was announced in March of 1982, and I did not hear the Leader of the Opposition at that time demur... It has been my understanding, in fact, that it was a continuation of the policy that the Leader of the Opposition, when he was First Minister, foresaw, when he established the French Language Services Division." Lyon replied that "It is one thing to state a

policy or a plan by a government, it is another thing to make it an entrenched constitutional provision", adding:

> When you take a matter of policy and entrench it in a constitution and call it a "right', and then give anyone, be he a reasonable citizen of Manitoba, a language zealot or whomever, a right of enforcement, then you have created a form of potential tyranny in the hands of a few people who can cause chaos.
> (...)
> This is a form of official languages act for Manitoba, which unlike The Official Languages Act is now being carved in stone in the Constitution of Manitoba.
> (...)
> [There is] nothing wrong with the principle...of saying that people should be able to deal with governments in Manitoba in French or English, so long as you don't carve that into stone and put into the hands of zealots and others a tyrannical weapon that can rip apart the social fabric of this province.

To which Penner replied:

> I don't know why I'm reminded of that line from, I guess it's Hamlet, "Cry havoc and let loose the dogs of war."[1] The alarmist kind of rhetoric that the Leader of the Opposition has indulged in in the last few moments is precisely the kind of thing that can...appeal to the few, thank God few, language zealots that there are in the Province of Manitoba.

Penner then responded to Lyon's argument that he had no objection to French language services so long as they were not entrenched in the Constitution:

> ...he says it shouldn't be in the Constitution. So we get down to his old concern, the self-same concern that he argued with respect to the Charter of Rights. Yes, let's have these rights, but let's not have a Charter. Well, the majority of Canadians, some 85%, from time to time, said no. If we are to have these rights, they don't mean anything as a right unless there's some constitutional guarantee, and you take them out of the political arena once and for all... And the Charter...has a remedy section. Because we all, as lawyers, and indeed

[1] The author is indebted to Prof. T. Peterson for pointing out that the quote "Cry 'Havoc!' and let slip the dogs of war" comes not from *Hamlet*, as Penner suggests, but from *Julius Caesar* (III, i.).

> I think every lay person of common sense knows that a right without a remedy is not a right at all...
> The point is this, that the rights, the remedy section of the Charter, Section 24, is far more sweeping than anything that we have in this proposed agreement...
> In our proposed amendment to Section 23, the court cannot fashion a remedy. The court can only say, what is your plan should somebody come to court. The plan is produced, and the court can say, well, I think that's not good enough, go and get it better. That's all the court can do, the most limited remedy that one could think of. So to talk about language zealots running to court and to tear apart the social fabric of this nature is mischievous, it is "Cry havoc and let loose the dogs of war," it is inflaming the language zealots, it is preventing the type of unity that we should fashion around that thing upon which we are agreed. We are agreed, I heard if from the mouth of the Leader of the Opposition that we should provide these French language services. He only says he doesn't want it in the Constitution because he doesn't like constitutions.
> So that's what we're down to. We're down to an abstract constitutional debate, but to turn an abstract constitutional debate into something that renders a sound, wise political agreement into an instrument of divisiveness is not to serve the cause of unity in this province.

Then, for the first time, the legislative debate took a vicious, personal twist; referring to Penner, Lyon said:

> My honourable friend favours alien remedies; I don't. I favour the system that we have; it has worked very very successfully for well over a hundred years in this country... I don't think we need alien importations of European or even, to some extent, United States concepts, grafted on like a third arm, onto our Constitution...
> What we need is better understanding among all of our people here, something that will not be used as a form of tyrannical weapon by minorities...who have no concerns...for the social fabric of this province.
> (...)
> In constitutional arrangements which respect and understand human nature, as I think ours does, then you have that fundamental, spiritual principle fairly well embedded in the system...and I know that that is the best way in which you can achieve harmony in a nation such as ours.[1]

[1] Debates, June 6, 1983, pp. 3477 to 3488.

No member of the Legislature had any doubt as to Lyon's meaning: while denying it explicitly, he was in effect referring to the fact that Penner was born of European immigrants, and that he had, as a young man, been a member of the Communist party.

Sterling Lyon honed his main theme on that evening of June 6, the theme that was to emphasize his support in principle for the principle of French-language services along with the dangers of entrenchment of such services for Manitoba and its "social fabric". In the final minutes of the debate that evening, he had done more: he had set the stage for a rancorous, personalized debate in the House that was to last nine months.

The June 6 debate was reported extensively in the local press on June 7 and 8, 1983. An indication of the heat generated can be found in a report by Bill Harley in the *Winnipeg Sun*: according to Hartley, Howard Pawley had stated that Lyon was "attempting to exploit that latent hate" among some segments of Manitoba society.

v. 2

The Manitoba French-language crisis, 1983-84: Origins and Early Legislative Debates

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in partial fulfilment of the

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Degree

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THE MANITOBA FRENCH-LANGUAGE CRISIS, 1983-84: ORIGINS AND EARLY LEGISLATIVE DEBATES

BY

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Chapter VII

The Gathering Storm

In early June, 1983, work was continuing on a final draft agreement between the province and Ottawa on the constitutional amendment and related matters. The main stumbling block on the provincial side was a suitable draft of the section in the amendment relating to municipal services: the province wanted to be sure that municipal and school services were specifically excluded from the scope of the amendment. On May 19, the day after having received the federal draft agreement, Turenne had made the following comment to Penner:

> I see no difficulty with it except in two areas. The first relates to the date of September 1st, 1983 [for establishment of the schedule of unconsolidated acts to be translated; Turenne suggested this be completed by June 15, 1983]
> The other problem concerns paragraph 4 on assistance to municipalities. The Federal draft states that the province will negotiate with the SFM in consultation with municipal bodies. I suspect that this approach would not sit well with municipal bodies, and I would suggest the following alternate wording:
>
> > 4. The Government of Manitoba will establish, in consultation with the Société Franco-Manitobaine, the Union of Manitoba Municipalities and the Manitoba Association of Urban Municipalities, a program to enable municipalities with a substantial population of persons whose mother tongue is French to provide services to the public in both official languages by January 1st, 1987.[1]

There is no indication in the files that Penner responded to this memo; in any case, in the rapidly deteriorating debating climate in the Legislature and in public opinion generally, it would seem the signing of the agreement itself receded somewhat as a priority. On June 14, Turenne wrote that

[1] Turenne to Penner, May 19, 1983; in Turenne files.

> the subject is currently in limbo. The Attorney-General has not yet submitted a text for the approval of Cabinet, and there is now talk of dispensing with a formal agreement entirely, replacing it with simple agreements on the transfer of funds with the relevant departments.[1]

Opposition to the tripartite agreement and the constitutional amendment was now surfacing from other quarters, including the ranks of the government itself. Russell Doern, the NDP MLA for Elmwood, as well as most other members of the NDP caucus, had been silent on the issue since the beginning; according to Doern, the matter had been on the agenda of two caucus meetings, on May 24 and May 31, 1983; it was finally discussed for the first time on June 6.[2] Doern describes the meeting as follows:

> ...Gerard Lecuyer was the chairman of the NDP caucus; it was clear from his mood and attitude that he was severely agitated by the question. Lecuyer was a dedicated "Francophone" who had served in the Franco-Manitoban society.
> At 7.15 p.m. on Monday, June 6th, chairman Lecuyer suddenly introduced the question. In a huff, he turned to me and said: "You have put this matter on the caucus agenda. You have asked that it be discussed. You have three minutes."
> (...)
> Nevertheless, I plunged ahead. I attempted to outline my major concerns, especially the bilingualization of our boards, commissions and agencies. About fifteen speakers participated in the debate, while the premier listened. Two or three members expressed mild reservations but another dozen endorsed the proposals. Roland Penner's forces carried the day.
> The die was cast. Penner had persuaded Pawley, the cabinet and the caucus.[3]

Having lost the battle in caucus, Doern decided to break ranks and go public. He sent a letter, dated June 9, to his constituents asking their opinion. With no indication as to the content of the tripartite agreement or of the constitutional amendment, the letter nevertheless asked:

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[1] Turenne to J. Cohnstaedt, June 14, 1983; in Turenne files.
[2] Doern, 1985, p. 22.
[3] Ibid., pp. 22-3.

> What do you think?
> The question is complex: some people argue that Canada is a bilingual nation and therefore French-Canadians have special rights and privileges, while other citizens contend that French-language services in Manitoba would be costly at this time, should be limited in a province with a large ethnic population and that the ability to speak French could become a condition of employment.[1]

Doern asked his constituents to return an enclosed ballot to him within seven days; he would then total up the responses and make the results public, and "take your views into consideration when speaking and voting on the matter". He mailed 7,500 copies of this "pamphlet" to his constituents as his annual constituency mailing on June 8; he also sent a letter to ministers and MLAs, and a press release to the media.[2]

An account of Doern's actions was carried on the front page of the *Winnipeg Free Press* on June 10, and, by his own account, Doern was interviewed by several radio stations that morning.[3] The NDP immediately began a damage-control operation, sending an Information Package on the proposed constitutional amendment to all ministers, members of the NDP caucus, executive assistants, and special assistants.[4] That same day, the package was circulated to all members of the Elmwood NDP constituency executive by a member of Penner's staff, Nancy Allen.[5]

The party leadership and caucus members were furious at Doern's unexpected break with party ranks on the issue. O'Connor attempted to reach Doern by telephone several times on the morning of June 10 in the midst of his radio interviews; finally he reached him at 10.40 a.m. and asked him to cease giving interviews to the press until a caucus meeting later that day, and

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[1] Ibid., p. 24.
[2] Ibid., p. 25.
[3] Id.
[4] Penner memo, June 10, 1983; in ATG, Box 17, FLS - Communications.
[5] ATG, Box 3, FLS - 1983.

informed caucus of his conversation with Doern.[1] Allen had also told the Elmwood executive, in her letter accompanying the information package, that Doern had been asked that day to "stop expressing his views to the general public until he meets with his fellow MLA's on Monday afternoon". The same day, Lecuyer, as caucus chairman, asked the caucus secretaries not to handle any work for Doern related to his constituency poll.[2]

Predictably, at the Monday, June 13, caucus meeting, "reaction was," in Doern's words, "cold and icy",[3] though, by his account, the matter was only discussed the following Thursday, June 16. There was a general feeling of betrayal among many Cabinet and caucus members; one indication of this mood is found in a memo from Ginny Devine, Penner's executive assistant, dated June 13, in response to a previous memo from Doern insisting he had done nothing "underhanded". Devine's memo documents Doern's actions to that point, including the circulation of the survey in his riding.[4]

Penner's files indicate that the draft constitutional amendment, presumably a draft of the full text of the constitutional amendment received by Turenne from the federal authorities dated June 10 and sent on to Penner June 14[5], was circulated to the NDP caucus by Penner on June 15.[6]

The French-language issue was discussed at length within the NDP caucus during three different sessions on June 16, according to Doern's account.[7] On the same day, between these sessions, Doern began assisting in organizing a citizens' committee against the constitutional amendment,

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[1] O'Connor memo to caucus, in ATG, Box 17, FLS - Communications.
[2] Doern, p. 26; Blay, p. 186.
[3] Doern, p. 27.
[4] Devine to Penner, June 13, 1983; in ATG, Box 18, FLS - R. Doern)
[5] Turenne to Penner, June 14, 1983; in ATG, Box 3, FLS - 1983.
[6] Penner to NDP Caucus, June 15, 1983; ibid.
[7] Doern, pp. 27 and 35.

meeting with a person who was to become one of the key organizers of the movement, Patricia Maltman. Doern describes the events of that afternoon, and Mrs. Maltman's subsequent role in the controversy, in the following words:

> That Thursday I met Patricia Maltman who brought in a petition with some 250 signatures calling for a plebiscite. Mrs. Maltman, a registered nurse, was well-informed on the question of official bilingualism. She had acquired half the signatures for her petition from businessmen and half from the CN shops in Transcona. This was staggering, because if the feeling was prevalent in the CN shops against the government's position, then it meant that the very foundation of the NDP was in jeopardy. (...) After a short conversation, I took Pat Maltman to the press room for an interview with the *Free Press*'s Mary Ann Fitzgerald and then on to the premier's office. Mrs. Maltman also arranged an interview with the *Winnipeg Sun*. She was the first among many who collected petitions in opposition to the provincial and federal governments.[1]

In the afternoon of June 16, Doern was called into a meeting with the Premier and Ministers Len Evans and Sam Uskiw; according to Doern, it was agreed to "leave the basic discussion for the full caucus meeting at 5.30 p.m."[2] At this meeting, several caucus members attacked Doern's position and actions over the previous days, including (according to Doern himself) Penner, Andy Anstett, and Myrna Phillips. In the end, again according to Doern, three conditions were laid down for Doern's continuing membership in the NDP caucus: "1. Do not release the poll results. 2. Apologize to caucus, and 3. Promise never to do anything like this again."[3] At the resumption of the caucus meeting at 8 p.m., an unrepentent Doern refused to accept the conditions.[4]

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[1] Ibid., p. 28.
[2] Ibid., p. 31.
[3] Ibid., p. 32.
[4] Ibid., pp. 33-5.

By that time, Doern was also having difficulty receiving general caucus office support for his campaign. He wrote to Government Services Minister John Plohman

> requesting an electric typewriter, desk, chair and private telephone. Plohman refused and echoed a letter sent by Lecuyer contending that "full caucus services are available to you as to any other member of caucus" and that they could be accessed at any time.

Doern subsequently raised the matter in the House:

> On July 11th and 12th, I raised two matters of privilege requesting that the assembly "instruct the Committee on Privileges and Elections to examine the withdrawal and/or restriction of my privileges as a Member of the Legislature for Elmwood." The Speaker ruled that this did not meet all the technical conditions of a matter of privilege.[1]

Within the NDP, regular party members were beginning to make their voices heard: the Rev. Bill Hutton, for example, a former President of the provincial association, wrote to caucus on June 16 expressing "concerns" over the issue and the government's position[2].

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The rural municipalities, in the meantime, were stepping up their pressure against the government's constitutional proposals. The Board of Directors of the Union of Manitoba Municipalities (UMM) met on June 16 at Portage la Prairie to discuss the issue of a draft resolution to be proposed to their member-municipalities in opposition to these proposals. The UMM's position at that point was that the government should provide a guarantee that municipal services would be specifically excluded from the constitutional amendment and that municipalities have no obligation to provide French-

[1] Ibid., p. 29.
[2] EC, 0016, Box 8.

language services. To bring home this point to the government, it was decided to request a meeting with Premier Pawley on June 21.[1]

Turenne pointed out to Pawley that three of the 12 UMM Board members actually "supported the government proposals and objected to the misinformation being spread by [executive secretary] Rusk".[2]

The *Winnipeg Sun* reported, under the heading "Rural Councils bash bilingualism" that, of 200 rural municipalities, 50 had already adopted resolutions condemning the government's proposed constitutional amendment.[3]

Municipal Affairs Minister Pete Adam was becoming increasingly concerned about the mushrooming opposition to the proposed amendment at the municipal level. On June 20, he wrote Penner that

> ...various members [of UMM] are of the opinion that the vast majority of the concerns expressed could be redressed if a new amendment confirmed the municipal position: a specific section precluding any formal requirement for municipalities to provide French-language services.

Adam added that

> If we do not proceed as suggested, I expect the emotional pleas on this matter to gather momentum.[4]

Penner replied that

> It is neither possible nor desirable to include in a constitutional provision a negative statement such as the kind suggested by you.

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[1] Turenne to Pawley, June 21, 1983; in ATG, Box 18, FLS - Municipalities.
[2] Id.
[3] *Winnipeg Sun*, June 17, 1983.
[4] Adam to Penner, June 20, 1983; in ATG, Box 3, FLS - 1983.

He suggested that a "positive" letter be sent to the UMM "explaining the nature of the assistance available" in implementing bilingual services at the municipal level and the "voluntary nature of the program".[1]

In any case, the UMM's leadership in promoting opposition to the government's proposals was quite effective: articles appeared in the local rural press around the province throughout the month of June informing readers of resolutions adopted by municipal councils against the proposals.

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On June 17, 1983, in the wake of a "highly heated" NDP caucus meeting which had gone on late into the previous evening[2], Roland Penner, announced in the legislature the holding of "public information meetings" on the constitutional amendment.

Far from appeasing the opposition, Penner's announcement had the effect of further provoking it. Sensing the government's unease and internal tensions, the Conservative opposition pressed its advantage. Sterling Lyon repeated his party's request for legislative committee hearings, proposing that

> the resolution should be introduced and referred immediately to a standing committee of the Legislature, which has power, of course, inherently to sit intersessionally, and that that resolution should then be dealt with after adjournment of this House, with the understanding that if time limits have to be met before the end of the year, that the House would then reconvene to deal with the resolution after it has heard from the people of Manitoba.[3]

Lyon pressed the point through Question Period. Premier Pawley rejected his call for legislative hearings, stating that "it's not an instance where we could fairly say that intersessional committee hearings could change the nature of the

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[1] Penner to Adam, June 22, 1983, in ATG, Box 18, FLS - Municipalities.
[2] *Winnipeg Sun*, June 22, 1983.
[3] Debates, June 17, 1983, p. 3769.

agreement that has been arrived at".[1] Lyon asked whether the government's information meetings would then be "some form of propaganda sales pitch": "Is the First Minister...saying that the government is going to go out and propagandize its point of view, and to hell with the people of Manitoba, we'll pass it anyway?"[2]

Roland Penner responded by recalling the context in which the constitutional agreement had been negotiated, noting that, with the Bilodeau case, there was "the possibility of a decision which could have created legal chaos in the Province of Manitoba". He added that, at that stage "it is open to us to do one thing, but one thing only, that is, to reject the agreement completely... What we can do, and I hope we won't because of the importance to Canadian unity of what we're doing, is pull back from the agreement entirely." Penner then added, "We will give factual information instead of the poisonous, race-hatred kind of propaganda that has been stirred up by very very few people, I'm happy to say."[3] Lyon immediately sought, and received, an assurance that Penner was not referring to anyone in the Legislative Chamber.

Lyon then pursued the point made by Penner, that the agreement either had to be adopted without modifications or rejected entirely:

> Why is he trying to suggest, Mr. Speaker, that an agreement that was arrived at largely in private negotiations between himself, the Government of Canada and the Franco-Manitobaine Society, which only saw the light of day some three weeks ago, why is he trying to say that agreement is somehow or other chiselled in stone and that the comments of the people of Manitoba, indeed the comments made from this side of the House, made by his own back bench could not have the effect of moderating some terms of that agreement even it it means that he must go back to the other partners with whom he negotiated to make the changes, or even if it means that

[1] Ibid., p. 3770.
[2] Ibid., p. 3771.
[3] Id.

> the Bilodeau case can go ahead, because if he reads the opinions which he has tabled in the House offered to him by the counsel whose advice he's sought, the proceeding with the Bilodeau case represents no real threat to the constitutional stability in Manitoba in any case?[1]

Penner began by responding to Lyon's "secrecy" argument:

> First of all, Mr. Speaker, for the record, the debate on the proposal has taken place in the public arena for over a year, well close to a year. The first major press reports with many details began to appear in July of last year. There have been editorials. I recall a lead editorial in the Free Press in July of last year. There have been full page articles. There have been, in French language newspapers as well as in the local newspapers (sic); there has been discussion on the radio; there has been discussion on TV. There have been reports of open meetings held by the Societe Franco-Manitobaine, in which the issue has been very strenuously debated with many, including Mr. Forest, for example, originally denouncing the negotiations as being a sellout to the Franco-Manitobans and things of that kind.

Penner then pointed out that the Conservative opposition had itself received from the government a copy of the draft constitutional agreement several months earlier and had not responded to it in any way:

> But more to the point, the Leader of the Opposition, in my view, is being less than candid in the form of the question and its preamble because in December of this last year, I mailed to the Member for St. Norbert, a copy to the Leader of the Opposition, a letter outlining the fundamental nature of what was taking place and not once, Mr. Speaker, between that time and the time when the agreement was announced did I receive any comment, did I receive even the courtesy of a letter back acknowledging my letter. Was there a question asked in the House? Was there an attempt to raise the issue in any way? Not once, from December of 1982 to May of 1983 when they knew exactly what was taking place...
> So to suggest that there has been some kind of sub rosa, under the table, hiding of this thing is to fly in the face of reality...
> If ever there was, Mr. Speaker, a negotiation of a court case that pre-eminently took place in the public arena, this was it. Normally, negotiations of court cases even involving the government in matters relating to constitutional difficulties and all the rest of it take

[1] Ibid., pp. 3771-2.

place between lawyers, behind closed doors. That was not the history of this event.[1]

Lyon said he had indeed acknowledged the "courtesy of the Attorney-General in sending us the first draft of the agreement"...two weeks earlier. Then he returned to his main point:

> The point of the question is why is this Executive Branch of government not prepared to listen to the Legislature of Manitoba and to listen to the people of Manitoba...
> Why will the Attorney-General and the government not consider finishing the business of the House in a regular way...then referring the agreement ...to a committee of the House which can sit interessionally...as a legitimate, democratic, free committee of this Legislative Assembly so we can hear the people of Manitoba in the normal way... Why is that not the better, the more prudent procedure for something that is not just the settlement of a civil matter, something that is fundamental to the future of Manitoba, a major constitutional amendment that will affect generations yet unborn?[2]

Penner could barely conceal his exasperation:

> The resolution will be introduced into the House and there the legislators of the Province of Manitoba duly elected by the people of Manitoba will, in the fullness of time and one hopes in the rightness and maturity of wisdom, debate the issue in public as they should. One hopes that debate will be on a high level; one hopes that it will be a debate that will not appeal to zealots; one hopes that it will be a debate that will look at fact and not fancy; one hopes that it will be a debate that indeed will demonstrate what has not been demonstrated at all in the time that I have been in this House, that there is an opposition capable of rising to the occasion just once, capable of demonstrating statesmanship just once, capable of looking at the question of Canadian unity just once, capable of putting aside narrow partisanship just once. If they could only demonstrate that, what a marvellous reaffirmation of the worth of this Legislature we will have.[3]

Dismissing Penner's comments as "rather wild declamations" of an Attorney-General who is "losing track of his equilibrium", Lyon repeated his

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[1] Ibid., p. 3772.
[2] Id.
[3] Id.

question, this time addressing it to the Premier, who repeated that the public information meetings would be held and that a resolution would be tabled and debate begun in the House in 10 days. Lyon repeated his denunciation of the process, this time adding a few choice adjectives:

> ...will he (Pawley) not reconsider the authoritarian announcement that has been made this morning by his Attorney-General... Will the First Minister not give an undertaking this morning that that normal procedure be followed, rather than the hastened-up, hurried, authoritarian, one-sided propaganda approach which appears now to be what the Attorney-General was announcing this morning?[1]

Lyon then played his trump card: "I ask (the Premier) very seriously about calling immediately a provincial general election on this topic. If he's saying no (to) that, then, Mr. Speaker, I move, seconded by the Member for Fort Garry, that this House adjourn." After some procedural debate, the Speaker ruled the motion out of order. Shortly thereafter the Conservatives, taking a page from parliamentary tactics developed the previous year by their federal counterparts,[2] walked out of the House, leaving the division bells to ring for 90 minutes.

The tension-laden debate in the Legislature and the Opposition walkout was extensively reported and analyzed in the press; one reporter described the scene in the House as "chaotic".[3] Press reaction to this dramatic turn of events, as well as the reaction of many Manitobans, including supporters of the government, is perhaps best summarized in an article published in the *Winnipeg Sun* on June 22, 1983:

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[1] Ibid., p. 3773.

[2] The tactic of walking out during a debate, thereby preventing the work of the House from proceeding, had first been used in Canada between March 2 and March 17, 1982 during a House of Commons debate on the omnibus "Energy Security Act". At that time, the work of the House had ground to a halt when the federal Conservatives, led by Joe Clark, called for a recorded vote on the bill, then walked out of the House. The impasse continued until an agreement between the parties ended it.

[3] *Winnipeg Free Press*, June 18, 1983.

> ...having stumbled into a decision to hold 'information meetings' on a matter they themselves say is non-negotiable, the NDP has opened up the whole bag of worms again.
> Nobody, least of all the government caucus, knows exactly how it happened.

In this reporter's view, there was no doubt that the catalyst in the June 16 decision by the NDP caucus was Russell Doern, who "wants to hear more from his constituents". The *Sun* also described the situation in the legislature as "the gathering storm"[1] and referred to a "growing wave of public opposition" to the government's constitutional amendment.[2]

Though the government's commitment to holding information meetings and not legislative public hearings appeared iron-clad in the June 17 debate, just three days later Pawley opened the door further by stating that full public hearings were not precluded:

> We are considering Law Amendments Committee or public hearings in addition to informational meetings. We may adjourn for them now or hold them in the fall... I will make an announcement early next week.[3]

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Internally, the government was still wrestling with the "Doern problem". By his own account, Doern met with the Premier, Roland Penner, Jay Cowan, Gérard Lecuyer, and Bill Regehr in the morning of Tuesday, June 21, at which time "there was agreement that I would not attack the government and would make moderate public statements"; the following morning "I arranged for an interview on Peter Warren's hotline show on Winnipeg radio

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[1] On June 19, 1983
[2] On June 22, 1983.
[3] Quoted in Doern, op. cit., p. 35.

station CJOB".[1] The government was taken aback by what it viewed as this further betrayal, occurring as it did within hours of the "agreement". Doern records the event and the scene at the radio station in the following words:

> I notified three representatives from the meeting so they could monitor the program to see that I had lived up to our verbal agreement - cabinet minister Jay Cowan, aide Dan O'Connor and caucus chairman Gerard Lecuyer. As I reached the radio station just prior to 8.30 a.m., there was a frantic phone message from O'Connor. I did not feel like speaking to him, since I was about to enter the studio. He responded by sending over a large package of material concerning the language question by courier. O'Connor and others encouraged Lecuyer to phone in, then provided information while he was on the telephone.

What was Doern's motive in "arranging for this interview"?

> I wanted to demonstrate to my colleagues the extent of public concern and force the government to carefully reconsider and reassess its position before proceeding.[2]

On the air, Doern, in response to Warren's own incomplete description of "the entire story", proceeded to lay out the main elements of his criticism of the proposed constitutional amendment: in his view, some 240 or 250 boards, commissions, agencies, and crown corporations "would in fact require communication in French and English". He then asked,

> "just what does this mean? If this means that we're going to have one person in each of these 250 boards and commissions and agencies sitting around for the day when somebody *might* drop in and want to speak to somebody in French, then I say this is a waste of money - a colossal waste of money![3]

Doern then stated his second major criticism of the amendment:

> I also felt, from the beginning, that it would be absolutely essential for the government to have public hearings or public meetings so

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[1] Doern, op. cit., p. 37.
[2] Id.
[3] Ibid., p. 40.

> that individuals could come to speak and organizations could come to present briefs on this particular question.[1]

The rest of the interview is significant in that no further specific criticisms of the proposed amendment were formulated; Doern in effect cast himself as a spokesman for "the people" in denouncing Trudeau's bilingualism policies and, in particular, expressing the fears of "the people"; the following excerpt summarizes these fears:

> But the people are sick and tired of this sort of thing. They're saying things like:
> Can we afford this in Manitoba? Isn't it a waste of money? Will this become a condition of employment? What about the Ukrainians and the Germans and the Icelanders and the Dutch and the Polish people? Will this make them second-class citizens? If you have a job in the Civil Service, will it mean you can't get promoted, or that you can't get a position?[2]

At several points in the interview, Doern suggested that he was only trying to be helpful, that his only concern was that the government "listen to the people" and make appropriate changes to the proposed amendment:

> The first point, which I was trying to make, was that there must be public hearings. The government has agreed and the government is now in favour of public meetings or public hearings. That is a very important step forward and the government is to be commended for that.
> Now let's see what the people say about the government proposals.
> (...)
> ...if the legislation is moderate and reasonable, it can be explained and sold to the public of Manitoba - it will be accepted. But if there are major concerns that are not met, then I tell you there is going to be a backlash on this particular issue.[3]

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[1] Id.
[2] Ibid., p. 42.
[3] Ibid., pp. 44-5 and 47.

Similarly, on the French-language services issue, which, as it turned out later in the interview, was also a major concern of Doern's, he appeared to want to be helpful to the government:

> We're obviously making a change. We're obviously extending French-language services. We are in fact entrenching certain things in the constitution. And there's quite a difference between having a policy and entrenching a policy... Therefore, if we're going to do it, let's take our time and let's give it a lot of thought before we make a move.[1]

A further statement indicates that Doern himself did not oppose the extension of French-language services:

> Yes, we must provide services. We should provide services. How many and how far and how much? How many people are involved? That is the question. (...)
> This is what we are discussing this morning. This is the whole issue: To what *extent* should we introduce the French language?[2]

Later in the programme, Georges Forest called; though Doern and Forest disagreed about the bilingual nature of Manitoba, they did agree on one thing: it was not necessary to entrench French-language services in Manitoba:

> DOERN: But look George the point is this: if you're saying that it makes sense for boards, commissions, agencies and the government to have people around who speak more than English, I'm not going to disagree with you. It's when you say that they must be bilingual and they they must know French, and they must be there and it must be entrenched in the constitution, then I don't agree with you.
> FOREST: Well I didn't say that it must be entrenched in the constitution.
> DOERN: OK So then you and I may agree on that.
> FOREST: Oh we agree on that. [3]

The Warren programme, in Doern's own words, "blew the lid off".[4] After the programme, Doern was called to a meeting with Pawley and Muriel

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[1] Ibid., p. 48.
[2] Ibid., p. 49.
[3] Ibid., p. 61.
[4] Ibid., p. 71.

Smith at 1 p.m. that afternoon in the Premier's office. Doern described the meeting in the following words:

> Pawley said there was a serious disagreement and that he felt it would be in everyone's best interest if I absented myself from caucus until the language question was resolved. I accepted. It seemed to be the best arrangement. I left the premier's office and withdrew from caucus based on this mutual separation agreement.[1]

Doern's actions during those days indicate that, far from being a "helpful fixer" attempting to find ways for the government to resolve the issue, he was actively involved in organizing all-out opposition to the constitutional amendment. Following the Warren programme (and before his 1 o'clock meeting with Pawley), again by his own account, five women showed up at his office offering "encouragement to fight the good fight":

> This was the origin of a long relationship with this group which consisted of Lynn, Sally, Brenda, Valerie and Joan. These enthusiastic women played a major role in the language debate; passing out literature, attending the public informational meetings and hearings, writing letters and making phone calls. They played a key role in the establishment of Manitoba Grassroots and the Interlake Citizens' group. Joan and Valerie fanned throughout the province and made contact with other centres in Western Canada.
> Roland Penner was later to characterize this dynamic group as 'Hell's Grannies'.[2]

On June 23, Doern released the results of his constituency poll[3]; on the same day, the *Winnipeg Sun* published the results: out of 7,500 brochures distributed, Doern had received over 400 replies, 90% of which were opposed to the constitutional agreement.

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[1] Ibid., p. 72.
[2] Ibid., p. 71.
[3] Ibid., p. 72.

On June 24, Doern's status within the NDP caucus was again discussed; though some NDP MLA's wanted to expel him outright, it was decided that no further action would be taken against him.[1]

Despite the substantial support which Doern's position was evidently receiving in his constituency, this support was by no means universal. On June 26, an Elmwood NDP worker, Edith Cochrane, told the *Winnipeg Sun* that Doern should resign. She said Doern's attacks on the government "could be a result of his disappointment at (his) not being included in Premier Howard Pawley's cabinet".

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Editorial reaction to these various events in the local press was virtually unanimous in condemning the Opposition and Russell Doern. While the *Winnipeg Free Press* took a stand in favour of public consultation to "be sure that the amendment rests on the solidest possible foundation of public consent"[2], and asked the government to "Explain the amendment"[3], it also criticized Sterling Lyon for proposing "a narrow, defensive and mean-spirited policy on the protection of language rights for French-speaking Manitobans".[4]

The *Winnipeg Sun* similarly criticized the opposition to the amendment; in an editorial headed "Doern, Tories ignore history", the *Sun* wrote that

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[1] The Guay/Smith documents indicate that either Rémi Smith or Renald Guay attended at least a portion of this caucus meeting. (G/S, Box 5, Print-out, Q. 14, II). Smith had met with Anstett informally for over an hour on June 22, 1983. (G/S, Box 3, File 25, p. 180)
[2] June 21, 1983.
[3] June 27, 1983.
[4] June 22, 1983.

> The Tory-Doern opposition seems to be based on a belief that Manitoba is a unilingual province whose government has decided to extend official language rights to a linguistic minority.[1]

The most critical analysis of Doern's and Lyon's opposition of the amendment came from *Free Press* columnist Frances Russell. In two articles in May, Russell had written that

> Manitoba was made officially bilingual by the Conservative government of Sir John A. Macdonald in 1870 when this province joined Confederation. And, according to the 1979 judgement of the Supreme Court of Canada, the 93 years the province spent recognizing 'English only' were illegal, the result of an 1890 law that was beyond the legislature's jurisdiction.

Russell concluded that "The position of the Manitoba Tories on language is irresponsible".[2]

A few days later, Russell wrote that

> The calm, non-partisan accord by which Manitoba was proceeding to end '93 years of injustice' to the province's French-speaking people came to a sudden, shuddering halt in the legislature last Friday.
> (...)
> Unfortunately, Lyon's decision to turn a constitutional requirement which even he acknowledges has existed in law for 113 years into a partisan political issue could make his fear of social chaos a self-fulfilling prophecy.[3]

On June 24, Russell reviewed in detail the two legal opinions that had been submitted to Penner on the *Bilodeau* case and wrote that

> Manitoba's two top constitutional lawyers have told the Pawley government that the province risked anarchy if the Supreme Court had ruled that Manitoba was required by its 1870 constitution to pass all laws in English and French.
> (...)
> Opposition Leader Sterling Lyon has argued that the Supreme Court would not cause chaos, and has said constitutionally guaranteed

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[1] *Winnipeg Sun*, June 26, 1983.
[2] F. Russell, "Lyon policy defies Conservative tradition", *Winnipeg Free Press*, May 18, 1983.
[3] F. Russell, "Lyon's stand on language ignores reality", *Winnipeg Free Press*, May 25, 1983.

> French government services are too high a price to pay for the risk of allowing the Bilodeau case to proceed.
> However, a number of other lawyers, including constitutional scholars Dr. Stephen Scott of McGill University and Prof. Joseph Magnet of the University of Ottawa, do not share Lyon's confidence.[1]

On July 2, Russell examined the claims of the opposition that large numbers of civil servants would have to be hired under the government's proposed constitutional amendment and found them to be baseless:

> It is simply untrue that the proposed constitutional amendment 'bilingualizes' Manitoba. French language services are only to be ensured at provincial government head offices. Municipalities and school boards are specifically exempt unless they choose to opt in.
> (...)
> Significantly, Roger Turenne, appointed by Lyon to head the French language secretariat, has not changed his original plans for assessing the need for French services within the provincial government.
> In an interview, Turenne said that while his canvass of government departments is not yet complete, he estimates that no more than 400 of Manitoba's 12,000 full-time civil service positions will be viewed as 'essential' or 'preferred' bilingual.
> Of those 400 positions only 240 are likely to be considered essential. Of the 240, one-third are already staffed by bilingual personnel, 'leaving approximately 160 positions remaining to be filled before we can honestly claim to be able to provide French language services where 'there is a significant demand' or 'due to the nature of the office.'

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Meanwhile, the Pawley government began taking some initiatives on the public relations front. A letter received from one Shirley Heintz of Glenella criticizing the government received a reply from the Premier dated June 20, 1983 stating that Manitoba in 1870 was "declared to be bilingual in some very specific and limited ways" and summarized the need for, and the effect of, the constitutional amendment which was being proposed.[2] This reply became a

[1] F. Russell, "Bilingualism challenge courted chaos", *Winnipeg Free Press*, June 24, 1983.
[2] ATG, 0149, Box 18, FLS - Muncipalities.

model for similar letters to the Premier and was replicated dozens if not hundreds of times.

Beyond merely responding to letters, the government retained Wordsnorth Communications Services Ltd. in June, 1983 to develop a public relations strategy. Wordsnorth billings to the government began June 23, 1983 and continued through July 29, 1983; they eventually totalled $106,390.06[1] The firm was involved in organizing the public information meetings, at a cost of $12,138.75. However, the main costs were incurred in the production of a tabloid entitled "Constitutionally Speaking" (45,000 copies) and a brochure to be mailed to every household in Manitoba (400,000 copies). Production and mailing costs of these two items were estimated at $69,600 and came in somewhat lower. A public opinion survey done by the firm on June 30, 1983 cost a total of $14,452.51. The first estimates of this public relations campaign had initially been higher: a memo to Penner dated July 19, 1983 estimated them at $133,351.91.[2]

The content of the proposed campaign provoked some debate among the various advisors to the government. After seeing a draft copy of the brochure, for example, Turenne wrote that

> The text is unjustifiably negative and defensive.
> Without major changes in approach and detail, we would be better off to scrap this brochure entirely and save ourselves some money.[3]

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[1] Detailed cost breakdown contained in a memo from B.W. Arnason to Penner (copy to Treasury Board) dated Sept. 23, 1983, in ATG, Box 19, FLS - Promotional Costs.
[2] B. Phillips to Penner, July 19, 1983. It should be noted that another document in the Penner files sets the grand total paid to Wordsnorth at $120,394.65. (ATG, Box 19, FLS - Promotional Costs), though the Arnason figure, being the latest, appears to be the definitive one.
[3] Turenne to Cramer, July 19, 1983. In Turenne, "Communications" file.

On June 23, at the request of Penner (presumably prompted by Doern's statements on the Warren programme about the 250 boards and commissions), Kerr Twaddle identified the boards, commissions, corporations, and agencies that would be subject to the bilingual language requirements of the proposed S. 23.8 of the constitutional amendment).[1] The following day, Penner circulated a memo to the NDP caucus refuting Doern's claims; the real number of agencies covered by the amendment would be closer to 60; however, Penner emphasized that, under the *Blaikie II* Supreme Court judgment,

> we are already under a legal obligation to provide service in the French language on demand for such quasi-judicial bodies. (emphasis in text)

Penner concluded that

> Measured against these facts Mr. Doern's continued public objections and criticisms becomes (sic) even more incomprehensible than it (sic) already is".[2]

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[1] ATG, Box 18, FLS - Draft Proposals and Statutory Options
[2] EC 0016, Box 17.

The national implications of the Pawley government's proposed constitutional amendment were also becoming increasingly clear. Quebec's English-speaking community in particular was already contemplating the repercussions on its future linguistic status should the Pawley amendment fail, and had indicated strong support for it from the outset. Eric Maldoff, president of Alliance-Quebec, the Quebec Anglophone community's equivalent of the SFM, congratulated Pawley on his initiative in a letter dated June 1, 1983.[1] Turenne informed Penner on June 10, 1983 that Léo Robert was talking to Alliance Quebec "today or on the week-end" to enlist their public support of the amendment;[2] he also reported on an offer of support from Anglo-Quebecers made by Stephen Scott on June 10.[3]

On June 20, Turenne informed Penner of a forthcoming visit to Manitoba by Alliance Quebec and suggested that this should be seen as a "welcome initiative".[4] On June 24, Maldoff met with Pawley and with both the NDP and Conservative caucuses; these meetings were reported both in the Toronto *Globe and Mail* and the *Winnipeg Free Press* on June 25, 1983. Maldoff impressed on both caucuses the importance of the constitutional amendment for national unity. Sterling Lyon stood firm: according to the *Free Press* report, "he agrees with the intent of the proposals, but 'we would never in a month of Sundays entrench it in the Constitution'".

While Alliance Quebec was urging the Manitoba Conservatives to drop their opposition to Pawley's constitutional amendment, the Quebec government was vigorously denouncing the SFM for having had the temerity to intervene in the *Collier* case before the Supreme Court. The case, as a report

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[1] G/S, 2nd Supplementary Documents, pp. 116-8.
[2] ATG, Box 17, Alliance Quebec file.
[3] ATG, Box 3, FLS - 1983.
[4] ATG, Box 17, Alliance Quebec file.

published in the *Winnipeg Free Press* had pointed out on May 25, 1983 was critical in terms of defining language rights in Quebec under S. 133 of the B.N.A. Act and, by extension, in Manitoba under the Manitoba Act (given the parallel texts). The question posed by the case was simply, "Must documents accompanying legislation be bilingual under S. 133 of the B.N.A. Act?"; the immediate issue was a challenge launched by Quebec school teachers against Bill 105, legislation outlawing strikes by public school teachers. Collier and others argued the text accompanying the legislation, a collective agreement modified by the legislation, was illegal since it had been drafted in French only. The broader issue was whether all "sessional papers" would have to be adopted in both languages, under S. 133.

Joseph Magnet strongly urged the SFM to intervene in this case. In a letter to Léo Robert dated May 27, 1983, Magnet pointed out that he had already argued before the Quebec Superior Court that

> (a) the sessional papers are part of the Act and thus subject to the discipline of S. 133;
> (b) the sessional papers are 'records' of the Legislature and thus required to be bilingual under S. 133.[1]

Magnet strongly impressed upon Robert the importance of the case for Franco-Manitobans:

> If I succeed with this argument, the Court's judgment will leave a momentous impression on Article 23 of the *Manitoba Act*. The entire internal functioning of the Legislature will have to be in both languages. A member of the Franco Manitoban community could then be elected to the Legislature, or work in the Legislature, in the French language. This is what was understood in 1867 when the original four provinces were federally united into the Dominion of Canada, and in 1870 when Manitoba joined that union.
> The Act which incorporates the S.F.M. mandates it to <u>defend</u> and <u>further</u> the interests of the French speaking population of Manitoba. In my opinion, the struggle in which we are engaged in Linda

[1] Magnet to Robert, May 27, 1983, p. 2; G/S, Box 2, File 12, p. 155.

> Collier's case is really the whole raison d'être for the S.F.M.; that is why I recommended that we intervene, and why I recommend that we continue to the Supreme Court.[1]

The SFM agreed with Magnet, and decided to intervene; it did not, however, anticipate the Quebec government's anger at this intervention. In a letter dated June 22, 1983, Adrien Boulanger, "Directeur des Programmes d'aide et de coopération" in the "Canadian Affairs" section of the Department of Intergovernmental Affairs, vigorously denounced the SFM's decision to intervene:

> De la part de la Société franco-manitobaine qui doit connaître la situation de la minorité anglophone au Québec, situation que la Fédération des francophones hors Québec et de nombreuses associations francophones ont déjà qualifié d'enviable, il y a de quoi surprendre.
> Pourtant, nous avions l'impression que le gouvernement du Québec avait toujours fait preuve d'une grande ouverture d'esprit envers les Franco-Manitobains. Le ministre des Affaires intergouvernementales, monsieur Jacques-Yvan Morin, n'avait-il pas déclaré aux présidents et directeurs généraux des associations francophones de l'Ouest réunis à Edmonton en mai 1982, qu'il comprenait leurs revendications, qu'il ne s'attendait pas à ce qu'ils appuient toutes les démarches du Québec, mais qu'il espérait néanmoins qu'ils ne feraient rien pour nuire au Québec?
> Et ce geste d'inimité est d'autant plus étonnant qu'il ne m'apparaît pas que d'attaquer les politiques québécoises soit de nature à aider de quelque façon que ce soit les minorités francophones du Canada. Au contraire, un Québec fort m'apparaît la meilleure garantie que ces minorités recevront un minimum d'attention de la part de leur gouvernement respectif.

Boulanger then strongly intimated that the Quebec's government's financial support to the rebuilding of the SFM's burnt-out headquarters might be called into question by the SFM's intervention in the *Collier* case:

> Quoi qu'il en soit, il ne m'appartient pas de contester les décisions de la Société franco-manitobaine, mais à défaut de précisions de votre part...il m'importe de savoir si la Société franco-manitobaine désire toujours entretenir des liens avec le Québec. Nous n'envisageons pas

[1] Ibid., pp. 2-3.

de remettre en cause l'offre d'aide qui vous a été formulée par le ministre au lendemain de l'incendie qui détruisait les locaux de la Société franco-manitobaine, ni les programmes découlant de l'entente Québec-Fédération des francophones hors-Québec. Mais vous comprendrez sans doute que nous devons savoir à quoi nous en tenir, afin de ne pas nous engager dans des actions qui vous paraîtraient maintenant inopportunes.[1]

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Alliance Quebec's visit to Manitoba, the various press analyses and editorial comments, and the Pawley government's own reasoned defence of the constitutional agreement had no effect on the opposition, which indeed was already becoming firmly entrenched behind the positions established in the House by Sterling Lyon. The opposition was also encouraged by various signs that the government was weakening in its resolve. On June 26, the *Winnipeg Sun* published comments by Roland Penner which appeared to be the first chinks in the armour. Under the heading "Government language policy not etched in stone", the report stated that "The government will consider changes to its bilingualism proposals before putting them to a vote, says Penner."

On June 27 in the House, Premier Pawley stated, in reply to a question, that a suggestion to hold a free vote on the issue in the Legislature was "worthy of serious consideration". Later the same day, he repeated that the public information meetings would not be the only forum in which the constitutional amendment would be presented; in addition, the Attorney-General would, in due course, "introduce a motion to refer the subject matter of the resolutions to one of the Standing Committees of the Legislature to provide a more formal opportunity for presentations from the public".[2] At the same time, he maintained his position that the government "will not agree to referring the

[1] A. Boulanger to L. Robert, June 22, 1983; in G/S, Box 2, File 11, pp. 13-15.
[2] Debates, June 27, 1983, p. 3957.

subject matter of any of the resolutions to a committee of the House for intersessional study";[1] however, the more definite statement regarding the referral to committee indicated to the opposition that it was making progress on that front.

Two days later, Penner announced in the House the details of the conduct of the public information meetings. These were to be held in Dauphin and Brandon on July 7; in Thompson July 13; and in Winnipeg on July 14. The meetings were to be chaired by Jack London, Dean of the Law Faculty at the University of Manitoba. Penner added that "in addition to these meetings, the resolution as announced will be referred to one of the standing committees on a date yet to be announced". Finally, Penner announced that the resolution itself would be introduced formally in the House on July 4, 1983.[2]

Lyon again denounced the public information hearings as the government's "little propaganda venture", "a unilateral, authoritarian decision being made by an incompetent government to deal with one of the most fundamental constitutional amendments that this province has seen". These statements in themselves were nothing new; however, the debate indicates that the opposition attempted to deny that Penner was indeed considering a referral to a House committee, as the exchange immediately following Lyon's comments indicates:

> Hon. R. Penner: Mr. Speaker, I announced very clearly as the First Minister did on Monday of this week, as I did yesterday...that the resolution as debated in the House, the matter of that resolution and the other resolutions will be referred to a committee of the House...
> A Member: It's not a House committee.
> Hon. R. Penner: Yes.
> A Member: No, it's not.

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[1] Id.
[2] Debates, June 29, 1983, p. 4046.

> Hon. R. Penner: (...)It was said by the First Minister on Monday; it was said by me yesterday; it is said by me again today that the constitutional resolutions are being referred to a comittee of the House. Indeed I will announce today, as I just did a moment ago, the particular committee, and that is the Committee on on Privileges and Elections. (...)
> Hon. S. Lyon: That's not what you announced.[1]

Following the exchange, Conservative MLA Frank Johnston, seconded by former Attorney-General Gerry Mercier, moved adjournment of the House; the Tories then walked out again, leaving the division bells ringing for an hour. The *Winnipeg Sun* reported that the Tories "vowed to continue such tactics"; Lyon told the reporter "we'll stay here 'til hell freezes over if that's what it takes".[2]

The Conservatives were no doubt encouraged by the presence in the legislative building of 70 to 80 "angry protesters"[3]; a heated exchange occurred in a committee room between Penner and Doern, according to the *Winnipeg Free Press*, and the protesters "burst into applause" at Lyon's speech and gave Doern a standing ovation.[4] The demonstration, according to the *Winnipeg Sun*, was a "no-name affair", since, as both Winnipeg dailies reported, none of the participants were willing to give their names. Doern attempted to link the protests with civil servants, but was unable to back up his statements at a press conference he held the following day.[5]

Whatever else it may have been, the demonstration was not a surprise for Russell Doern; his description of the events of that day states that his admirers, "Hell's Grannies", had helped organize the protest, which, in Doern's words, was "carefully planned". One of the "Grannies", "Sally", distributed a

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[1] Debates, June 29, 1983, pp. 4046-7.
[2] Winnipeg *Sun*, June 30, 1983.
[3] Winnipeg *Free Press*, June 30, 1983.
[4] Id.
[5] Winnipeg *Free Press*, July 2, 1983.

leaflet saying the group was "not opposed to the provision of French-language services, where numbers warranted, but were opposed to the entrenchment of French-language rights in Manitoba's constitution", a position Doern himself repeated in a letter to the French-language weekly *La Liberté*.[1]

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The SFM, meanwhile, was mobilizing. Realizing that the constitutional amendment for which it had fought so hard over the previous year was now in jeopardy, Léo Robert, Rémi Smith, and other board and staff members began making contacts within the two major Manitoba political parties and with the federal government. Rémi Smith had already had discussions with Andy Anstett (on June 15 and 22)[2] and he and Léo Robert had met with the NDP caucus on June 24. On June 29, Smith phoned Senator Nathan Nurgitz[3], presumably to express his concerns about the hard line being taken by the Tories in the House, and there are indications that Smith met with the Conservative caucus on July 5, 1983, probably with Léo Robert.[4]

During the month of June, Smith also communicated several times with the Regional Director of the Department of the Secretary of State, Roger Collet,[5] and on July 1, he received a call from Secretary of State Serge Joyal himself.[6] Thoughout July and August, he spoke on a regular basis with Martial Fontaine and Bill Balan, members of Collet's staff.[7] It is probable that most of these conversations involved additional funding for the SFM in its ongoing struggle

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[1] Doern, R., op. cit., pp. 80-3.
[2] G/S, Box 3, File 25, pp. 179-80.
[3] Ibid., p. 181.
[4] Id.
[5] Ibid., p. 180.
[6] Ibid., p. 181.
[7] Ibid., pp. 180 ff.

to have the constitutional amendment adopted. Renald Guay was later to describe Secretary of State Joyal's position on the matter as follows:

> ...you have to understand that this...matter, the Article 23 situation, was of the highest priority in terms of the Secretary of State, it was like the priority.
> Q. Are you talking Canada-wide?
> A. I'm talking Canada-wide. This was the No. 1 priority. It's not that you don't have other matters, we're not talking in terms of dollars, we're talking in terms of political priorities. And there were some fairly strong messages sent confirming that; there's public statements confirming that from Serge Joyal, and the net result of all this, which is unusual, was that Leo Robert was dealing with Serge Joyal directly and personally throughout the entire period. Leo Robert could place a phone call and have Serge Joyal pulled out of a meeting with other people in order to discuss whatever it was that he wanted to discuss, a good part of which was funding.
> Q. And from (sic) what information are you relying upon to make those statements?
> A. My discussions with everyone involved at the time. They even had for a good while a weekly meeting set up in order to be able to have at least one telephone conversation a week which I believe was Thursday afternoon.[1]

At the July 4 SFM board of directors meeting, Léo Robert reported on a meeting he had with the Secretary of State the previous day. The minutes, though spare, indicate that "M. Joyal réitère son appui financier pour la Maison franco-manitobaine" and that "M. Joyal étudiera notre demande de remboursement des frais d'avocats."[2] It is clear from these minutes that the SFM was attempting to have its legal fees for its involvement in the constitutional amendment and others, including no doubt the *Collier* case, reimbursed by the Department of the Secretary of State. It also seems clear, on the basis of this record, that the SFM was not at this time seeking other types of special financial assistance (although, arguably, the definition of "lawyers' fees" could cover a lot of ground).

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[1] G/S, Box 6, Examination for Discovery of Renald Guay, Feb. 25-7, 1985.
[2] G/S, Box 4, File 35, p. 35.

At the same meeting, the Boulanger letter from the Quebec government was discussed, and directors of the SFM pointed out that the Quebec government had not, when the shoe was on the other foot, hesitated to intervene in the *Forest* case before the Supreme Court against the SFM; in any case, it was agreed that "notre meilleure protection c'est le respect de la Constitution". The Board decided to pursue its intervention in the case.

Finally, the Board, after some discussion, authorized the president, Léo Robert, and the Executive Director, Raymond Théberge, to meet with other ethnocultural groups and to back their "reasonable and legitimate demands". This was a major turning point for the SFM, which had always maintained an attitude of aloofness towards other ethnic minorities.

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On July 4, as promised, Roland Penner rose in the House to table the government's French-language constitutional resolution, but not before Sterling Lyon had attempted to steal his thunder by moving that an emergency debate be held on "the failure of the government to provide for intersessional sittings of a Committee of the House to hear...representations from the people of Manitoba on the proposed changes to the Constitution..." This motion allowed Lyon to denounce yet again the government's proposed process for dealing with the resolution. The Speaker ruled that, as Roland Penner pointed out, "the matter has been set down for debate this very day according to Hansard, p. 4046.[1]

[1] Debates, July 4, 1983, p. 4056.

Finally, Penner tabled the long-awaited text of the constitutional resolution.[1] The most significant and most controversial amendments to the *Manitoba Act* were as follows:

> 23.1 English and French are the official languages of Manitoba;
> 23.7(1) Any member of the public in Manitoba has the right to communicate in English or French with, and to receive available services in English or French from
> (a) the head or central office of any department of the Government of Manitoba;
> (b) the head or central office of
> (i) any court,
> (ii) any quasi-judicial or administrative body of the Government of Manitoba,
> (iii) any Crown corporation;
> (iv) any agency of the Government of Manitoba established by or pursuant to an act of the Legislature of Manitoba;
> (c) the office of the Chief Electoral Officer;
> (d) the office of the Ombudsman for the Province of Manitoba.
> (2) Any member of the public in Manitoba has the right to communicate in English or French with, and to receive available services in English or French from, any office not referred to in subsection (1) of an institution described in paragraph 1(a) or (b) where
> (a) there is significant demand for communications with and services from that office in that language;
> (b) due to the nature of the office, it is reasonable that communications with and services from that office be available both in English and French.

Finally, the resolution provided for redress in the form of Court of Queen' Bench declarations and administrative plans "where the court finds that these rights have been infringed or denied".[2]

Penner then launched into an impassioned speech in which he recalled in detail the historical and constitutional background leading to the tabling of the resolution. He tabled the Twaddle and Gibson opinions, and summarized

[1] The text in full is found on pp. 4056 and 4057; see Appendix I.
[2] Debates, July 4, 1983, p. 4057.

their arguments; as regards invalidity, Penner pointed out that both Gibson and Twaddle had said,

> "well, that's possible; they didn't feel that it was likely, but it was possible. They went on to say, both of them,...that if in fact the Supreme Court of Canada did find that our statutes were invalid because of this failure to observe our own constitution for over 90 years, there would be, and they both used this term, in effect, legal chaos.
> Sir, I felt that was not a risk that I as the Attorney-General of this province had the right to take, and I'm not so sure that the former Attorney-General [Lyon], had he continued in office, would have felt that he had the right; indeed, I would be shocked if he felt that he had the right to take that risk of saying, well let's chance it, let's see if they do or don't. I mean, after all, if they do find our laws invalid, well we just don't have any courts, we don't have any laws, we don't have any Legislature. He would not, I venture to say, have taken that risk. In any event, I certainly did not feel that was a course of action I could commend to the government if there was a reasonable and an honourable alternative.

Penner tabled exhibits documenting Manitoba's existing language obligations under the Charter of Rights and recent court judgments, including the Quebec Superior Court's judgment in the *Collier* case which supported his view that "there was a real possibility that the Supreme Court of Canada, in this new constitutional era, could have found the Statutes of Manitoba invalid".[1] He did not mention the implications of the *Collier* judgment, if it were upheld by the Supreme Court, on the sheer amount of translation involved, since all sessional papers, and not only laws and regulations, would now have to be translated; it is possible he and his advisors did not fully grasp the import of the judgment for Manitoba at that time.

Penner then returned to the *Bilodeau* case facing the Pawley government. He reminded the House that every time Manitoba had gone to the Supreme Court on language issues, the province had lost:

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[1] Debates, July 4, 1983, p. 4059.

> I would remind those who urge that course of action that the Government of Manitoba, through Counsel as instructed, took that stance of 'fight it' in the Forest case in the Supreme Court and lost, and went on to instruct Counsel in the Blaikie case, in the same court, on the same issue, and lost. That's what our record is, zero for two, in the Supreme Court on these very same issues.[1]

Suppose, on the other hand, Penner went on, the court did not rule that all laws were invalid; suppose the court gave a certain period, say five years, the result would be that

> we would have had to translate all of our statutes, 4,500 approximately of our statutes... One cannot, incidentally, belittle the task of translating those apparently minor acts which do not ordinarily appear in the consolidated statutes because, for example, many institutions, municipal governments, towns, hospitals, charitable institutions, Winnipeg Foundation, you can name them, their legal existence rests on a statute passed in one language only and, if they cannot exist legally unless it's in two languages, then we would have the duty, would we not, as a government, and the expense, and the agony, of translating every one of those. So that was another possible outcome.[2]

Finally, Penner examined the most optimistic outcome, complete victory for the Province, and its implications:

> Or thirdly...we might have had a complete, and I put this in quotes, Sir, 'Victory' for the government as respondent in the case. The Supreme Court could have said, we agree with the majority of the Court of Appeal; go home Mr. Bilodeau, all of the statutes of Manitoba, even though passed in violation of a constitutional mandate, they're okay, but, Sir, with a result like that, in my judgment, I would think in the judgment of anyone who looks rationally...on the constitutional history of this province, that there would be no victors, there would be only losers.
> It would be a blow to constitutional guarantees, as I pointed out earlier. It would be open for people to say, it's a piece of paper; it's worthless because it's unenforceable; 'shall' only means 'may', there is no remedial strength to the Constitution; it would be a blow - let there be no doubt about that - to Canadian unity. It would leave, in my opinion...a residue of bitterness we could not possibly dissipate in

[1] Ibid., p. 4059-60.
[2] Ibid., p. 4060.

> our lifetime; indeed, that would be a victory would it not? It would be a Pyrrhic victory and we could all keep our hands warm over the ashes of constitutional guarantees.[1]

Having established why his government had opted for negotiations rather than proceeding to the Supreme Court, Penner then described the process. First, he recalled that "there were, by the time the matter had ripened on the vine, seven parties to the action", including the Government of Manitoba, Bilodeau, the Attorneys-General of Canada and New Brunswick, the SFM, and the Positive Action Committee representing Quebec anglophones. Discussions had been held between the federal Minister of Justice and the SFM, since the organization was "a party to the action"; there was "a tradition of dealing with the Société Franco-Manitobaine on this important question, a tradition established by the previous government..."; and "they are clearly the most representative organization of the French, Franco-Manitoba community".[2]

Penner described how the negotiations had evolved; how the government's initial position, a mere reduction of the translation load without a quid pro quo, was rejected out of hand, since, in the other parties' view, "You're asking us to give something for nothing. There is no quid pro quo; no this for that. You can't be serious." What, then, was the quid pro quo? "...Essentially it was that there should be some constitutional guarantee for French language services which were already being delivered by the government; and that then became the key negotiating issue."[3]

Penner said Serge Joyal's earlier suggestion before the SFM, that Manitoba adhere to Sections 16-20 of the Charter, had been rejected by the government, since a key word, the word "institution" at Section 20(1) of the

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[1] Id.
[2] Id.
[3] Id.

Charter in terms of provision of bilingual, "would include municipalities, school boards, a whole range of institutions", and that, the government had refused to do.[1] Penner then responded directly to the concerns expressed by Manitoba municipalities:

> ...We felt that while the government of the province indeed could accept an obligation upon itself or for itself, that where in fact, significant numbers of franco-manitobans live in only approximately 30-35 of about the 208 municipalities, that we would not and could not impose an obligation on these bodies. So that became one of the key factors in the negotiations.
> I note parenthetically, Sir, that some municipalities say that well this is the thin edge of the wedge. I say to them and I say to members of the opposition with respect, quite the contrary. What we have in effect by choosing this language with care, choosing language suited to Manitoba that we have a constitutional limit which protects the rights of schools boards and municipalities to do as they will. What we have indeed as a subsidiary agreement is a grant program available only where numbers warrant and only a voluntary basis. So we prevailed in this respect.[2]

Penner described the contents of the agreement itself as reflected in the resolution: first, it contained

> "a validation of our laws passed in one language only; an extension of time to complete the translation of the major public statutes as they appear in the consolidated Statutes of Manitoba until the end of 1993; and a drastic reduction in the number of those statutes which don't ordinarily appear in the consolidated statutes - from approximately 4,000 of them - about 150 of those...which appear in the schedule to the resolution".

A second part of the agreement, dealt with the quid pro quo, provision of French-language services, in return for large cuts in numbers of laws and regulations to be translated. A third part, finally, dealt with the question of remedies; again, Penner pointed out how the government had rejected the

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[1] Ibid., p. 4061.
[2] Id.

remedies found in the Charter in favour of court-ordered administrative plans and how such remedies would work:

> ...The only thing the court can do is say to the particular government agency or department, well what is your plan? Would you please bring in your plan of how you propose to deal with what are alleged to be inadequacies? And the government may do that, bring in a plan and the court cannot alter that. It may say well, if we don't think that's good enough come back with another plan but that's it.[1]

Penner then turned to what he called the "main bone of contention", French-language services:

> There are two rational arguments which are raised; one is that the services being proposed by this agreement are too expensive; secondly, that in any event they ought not to be entrenched constitutionally.[2]

In this context, after quoting extensively from Lyon's comments of the June 6 debate, Penner dropped a bombshell, tabling as exhibits documentation of decisions taken by the Lyon government itself regarding French-language services: the October 6, 1980 Cabinet memorandum regarding French-language services, "arrived at...by negotiating with the Societe Franco-Manitobaine"[3]; the Jan. 19, 1981 Treasury Board submission; documentation of the Dec. 5, 1980 meeting between two Lyon government ministers and the SFM; the Feb. 6, 1981 submission to Cabinet; and Lyon's letter to the civil service dated Sept. 4, 1981 regarding Roger Turenne's appointment and mandate.[4] Judging from the number of "interjections" and "oh's" in this passage of the debates, the opposition was clearly taken aback at the tabling of these documents. For a rare moment during the language crisis, Penner appeared to enjoy himself in debate:

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[1] Ibid., p. 4062.
[2] Id.
[3] Ibid., p. 4063.
[4] Id.

> I detect, Sir, by the agitation over there there's a certain amount of unease about the record finally being made public. Oh no, oh no, but they heckle and they squirm, and they grow a little red in the face. Let the record speak for itself lest there be any suggestion that there's a little hyprocrisy on that side.[1]

Penner concluded that

> ...As I see it there are some areas of agreement if not between what we propose with all members of the opposition, at least it appears with some members of the opposition, an agreement in principle on two key issues, namely the question of the necessity to translate the statutes over a period of time in an orderly and non-costly way, and that of course the agreement does, and with respect to the general question of the provision of services in both official languages to the Francophone members of the community, where warranted.[2]

Penner then contrasted what the government was currently obliged to do with what was proposed in the constitutional amendment. Quoting from Twaddle's analysis of the *Blaikie* judgments, which did not attempt to distinguish between "quasi-judicial" and "administrative" bodies, Penner said the number of such agencies covered by the constitutional proposal would be 59:

> Of these 59, I have done a quick analysis, some 22 of these 59 quasi-judicial, administrative bodies, Crown corporations, agencies of the Government of Manitoba and some borderline cases, of these 59, twenty-two are quasi-judicial; that is, they are already required, by the Blaikie decision of the Supreme Court in 1979, to deliver services, as requested, in English or French. So you're down to a balance of 37 and, Sir, of those 37, approximately a little better than half already have persons there able to carry out their functions bilingually, so that we're down to something like 15 or 20 - that is in terms of these boards and commissions and agencies - we're down to 15 or 20. That's the extension by this agreement.[3]

Penner quoted Turenne's analysis, according to which only 400 positions in the entire civil service were considered to be "essential" or "preferred" in

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[1] Id.
[2] Ibid., p. 4064.
[3] Id.

terms of bilingualism, and, given the numbers of positions already filled by persons meeting these requirements, the requirement in terms of new hiring might be, at most, 160. The following exchange then occurred:

> Hon. S. Lyon: Subject to what the courts say, subject to the courts.
> Hon. R. Penner: Read the section again, the courts cannot impose...
> Hon. S. Lyon: You have entrenched it, you fool. Don't you see that?
> Hon. R. Penner: Sir, the Civil Service is still operated on merit hiring. There is no language of the workplace requirement in this, there is no required language training, and promotion policy is not based in any way, shape or form on dual language ability.[1]

Penner pointed out that the net cost of the agreement to the province over a ten-year period of time with the agreement would be $2,950,000, and without the agreement, $5,400,000, and tabled an exhibit documenting the cost differential.

Finally, Penner turned to the "entrenchment" objection to the resolution and noted two inconsistencies in the Conservatives' position:

> The argument is that this leaves too much to the court. That it subverts parliamentary democracy. That is not a view, Sir, shared by most Canadians.
> (...)
> I note, Sir, a certain inconsistency here, in that all of this leaves too much to the court. They [Conservatives] have introduced a resolution to be debated shortly in this House asking for a further amendment to the Charter to introduce property rights. So that's okay to leave to the courts. But the rights, the constitutional rights of the French minority in this province may not, even in a limited way, be left to the courts.
> (...)
> I point out, Sir, another inconsistency in the Leader of the Opposition's approach. He says with respect to the Bilodeau case that we had nothing to fear from the Supreme Court of Canada. He said, and it's on the record, courts are reasonable. But here he seems to employ scare tactics by suggesting that on this issue the courts will be unreasonable... You can't have it both ways.[2]

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[1] Ibid., p. 4065.
[2] Ibid., pp. 4065-66.

Penner ended with a plea in favour of national unity, relating the resolution with the future of the federation:

> The issue of Canadian unity, a fragile thing throughout our history, but under severe strain now. Let no one underestimate the strain that Canadian unity is under, and no more so than with our fellow Canadians in Quebec. These are all our fellow-Canadians, French-Canadians and English-Canadians alike. The Franco-Canadians of Quebec beguiled, all too many of them, with the notion that they cannot exist as a culture in Canada, these people are looking to the leadership that Manitoba can give.
> (...)
> What we say and what we do here will play a tremendous role...in countering that divisiveness which exploits the notion of two solitudes, exploits that which apparently divides us, ignores that which clearly unites us.
> Let us, I implore, deal with the real issues... Let us rise above narrow political advantage which, in any event, is illusory and transient. Let us pay that debt which we owe to our own history. Let us pay it with dignity. Let us pay it with responsibility.
> (...)
> Let us tell Manitobans, you have nothing to fear. Let us tell Manitobans rather, you have everything to gain. You will have not only paid history's debt in a reasonable and an economical way, you have done something, we can say to ourselves and to Manitobans, you have done something for Canadian unity that will live long in the history books, long after we have left this place of noise, strife and turmoil.[1]

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As Blay points out[2], the official opposition took a week to respond to Penner's hour-and-a-half long speech, described in the *Winnipeg Sun* as a "ringing defence" of the constitutional amendment.[3] The first group to react publicly was the Manitoba Government Employees Association (M.G.E.A.), whose President, Gary Doer, deplored the fact that his organization "has not

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[1] Id.
[2] Blay, J., op. cit., p. 190.
[3] Winnipeg *Sun*, July 5, 1983; see also Winnipeg *Free Press*, July 5, 1983.

had the same input [regarding bilingualism] under the NDP government"; according to Penner, this wasn't the case.[1] Penner met with Doer on July 5, and followed up the meeting with a confidential letter to him dealing in particular with his concerns regarding the hiring and promotion of civil servants and the role of the courts under the proposed S. 23.8 of the resolution. Finally, Penner suggested the M.G.E.A.'s counsel meet with Kerr Twaddle for further explanations and, presumably, reassurance.[2] Doer replied on July 7, saying his organization's position would be finalized the following week. Penner responded, saying he hoped for "the courtesy of a follow-up meeting before any public announcements are made", and suggested Doer call him on the morning of July 13 to advise him of the organization's decisions.[3]

On the same day, Pawley met again with representatives of the Union of Manitoba Municipalities and apparently received a legal opinion transmitted to the UMM by Alan W. Scarth on July 5.[4] Scarth expressed his concern that the Courts of Revision (a significant quasi-judicial function of municipal bodies) might be required to provide services in French under the government's resolution. Scarth's overall conclusion, however, was that this was the only area involving municipal activities that might be affected by the resolution:

> The only potential statutory obligation on municipal corporations which I now see relates to the Courts of Revision.[5]

After the meeting with Pawley, both parties appeared to be guardedly optimistic in their comments. According to one report, the Executive Director of the organization, David Harms, said he did not have as many objections to the government's proposal as he had before the meeting; Harms added,

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[1] Winnipeg *Free Press*, July 5, 1983.
[2] Penner to Doer (confidential), in ATG, Box 19, FLS - Unions.
[3] This correspondence is also found in ATG, Box 19, FLS - Unions.
[4] This opinion is found in ATG, Box 19, FLS - Unions.
[5] Id.

however, that "he was uncertain whether the proposal could be sold to the members of his group, but 'surely we could make the thing go a little easier'."[1]

The glimmer of a truce between the government and the UMM was snuffed out in a matter of hours. The next day, July 7, the *Sun*, under the heading "Municipalities back on war path", reported that Harms

> ...Met with executive members yesterday morning and found that some things Pawley had said may not have been accurate.
> At the least, the municipalities want a constitutional guarantee they will never have to provide bilingual services, he said.[2]

The *Winnipeg Free Press*, under the heading "Municipalities firmly reject language deal" reported that surveys of 48 members of the Manitoba Association of Urban Municipalities and 162 members of the Union of Manitoba Municipalities revealed that "The anti-bilingual sentiment is fiercer among smaller rural municipalities, towns and villages."[3]

The SFM was also active on July 5, meeting with the Minister of Municipal Affairs, Pete Adam, and with the Conservative caucus; the *Free Press* reported that the Tories' main fear was entrenchment.[4] On the same day, Bud Sherman told Bill Hartley of the *Winnipeg Sun* that "the government is playing partisan politics" on the issue, in an "overt bid for the French-speaking vote". Sherman added he was excited by the idea of a "fully bilingual Canada", and said we should be devising a strategy to create a "new Manitoba".[5]

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[1] *Winnipeg Sun*, July 6, 1983; see also *Winnipeg Free Press*, July 6, 1983.
[2] *Winnipeg Sun*, July 7, 1983.
[3] *Winnipeg Free Press*, July 7, 1983.
[4] Ibid., July 6, 1983.
[5] *Winnipeg Sun* , July 6, 1983.

Within the Pawley government, debate was heating up about the type of communications strategy that should be adopted. Wordsnorth Communications transmitted the results of the poll it had conducted for the government, along with a three-page confidential executive summary, which read in part as follows:[1]

> A small majority, 51.1%, indicate without prompting, the Manitoba proposal is a bad idea. 38.6% feel it is a good idea and the remainder do not know. In our opinion, this is an unbiased reading of Manitoba adults.
> Those who consider it a bad idea are able to articulate firm reasons. Top of the list is, 'only need English, French unnecessary,' and 'it's a waste of money'.
> From among those who feel it is a good idea, the largest group (yet considerably smaller than any group of the opponents) is not able to say why it is a good idea. They just feel that way. The largest group able to articulate its suport for the idea, says it is, 'because Canada is bilingual'.
> (...)
> People begin at a high emotional level on the subject and through discussions, 'calm down', think it through when presented with information and give support to the Manitoba proposal.
> People do not agree with the Manitoba government negotiating a settlement out of court. The largest number of people feel that it should have been left to the Supreme court, and a large percentage are unable to take (sic) an opinion on the subject even after given (sic) the background. The issue is too complex for most Manitobans.
> The statement that the Manitoba program will be different from that of the Federal Government's reverses the numbers in the support/non-support groups. About 50% of the people agree, with 34% still in opposition.
> When the statement, 'in parts of Manitoba where there are substantial numbers of people whose mother-tongue is French' is added, the agree (sic) moves to an overwhelming 71%. The hard-core opposition drops to 13.4%.
> These numbers remain firm when people are asked to consider all things and invited to agree or disagree with the proposed Manitoba program. 71% of Manitobans agree with French Language Services in

[1] E. Martens (Wordsnorth) to G. Cramer, July 5, 1983; in Turenne, "Communications" file. The poll was based on 606 interviews of randomly selected adult Manitobans and was accurate within 4.5% 19 times out of 20. According to Martens, "the sample was within an acceptable range of the description of the Manitoba adult population"; the rural-urban distribution was 39%-61%.

> the Province and the hardcore opposition settles at 13.7%. An additional 6.4% say they disagree with the program, they want more than a limited approach.

Martens then presented his firm's overall conclusion:

> We conclude that Manitoba adults are somewhat opposed to the idea of French Language Services in Manitoba. Presented with information, these same people move to a support position.
> We conclude that a well-positioned, low profile public information program, will manage the issue in satisfactory (sic) fashion without any long term damage to the Government. People very clearly move with information, and therefore, a Public Information Program is called for. If the issue is not to be dropped, any other action or inaction at this point, would risk serious consequences. Left to their own, people will gravitate toward the negative forces on the continuum.[1]

Turenne, for one, did not agree with the "low-profile" approach. In a confidential memo to Pawley, Penner, Desjardins and others the following day, Turenne wrote:

> I have only one reservation concerning Woodsnorth's (sic) conclusion which calls for a 'low profile public information program'. This is almost a contradiction in terms. The misinformation which has been spread about the province has been very high profile, and if we are to reach those people who have been misled, we have to take an equally high profile. No misinformed editorial in a weekly newspaper should go unanswered. All interview and public speaking opportunities should be used to plug the message. Otherwise, as Woodsnorth indicates, 'Left to their own, people will gravitate towards the negative forces on the continuum.'[2]

In terms of the poll results themselves, Turenne pointed out that they confirmed results obtained in November, 1982 in a federally-commissioned survey carried out by CROP of Montreal:

> To the CROP question 'Are you personally in favour or not in favour of bilingualism in your province?', 39% of Manitobans declared themselves in favour, and 52% against. This compares to

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[1] Id.

[2] Turenne to Pawley et al., July 6, 1983, in Turenne, "Communications" file.

> 38.6% and 51.1% respectively for the equivalent question in the Woodsnorth (sic) survey. The CROP survey indicates that 40% of Manitobans support federal bilingualism, while the Woodsnorth survey gives this figure as 42.6%. Such strikingly similar results obtained from two survey firms, at different times, and using a different sampling, tend to confirm the reliability of the results and conclusions in each case.[1]

Turenne pointed out that, according to CROP, "the highest level of opposition to bilingualism comes from older age groups, and the strongest support...is found among young adults".

Wordsnorth also supplied advice regarding an overall communications strategy to the government. In an undated eight-page document entitled *Public Information Meetings - Amendment to Manitoba Act*, Wordsnorth said that

> Research has proven that if people are supplied with sufficient information, delivered in a manner which is acceptable to them, their attitudes on a particular issue can be changed.[2]

On the basis of their analysis, Wordsnorth recommended public information meetings.

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[1] Id.

[2] In ATG, Box 1, Misc. - FLS.

Chapter VIII

Lyon Redux

On July 7, 1983, several elements of the Pawley government's hastily developed strategy on the language issue came together. Armed with the Wordsnorth recommendations and a consensus among its main political advisors[1], the government launched a belated "low-profile public information" campaign, coinciding with the first of the "public information meetings". Penner issued a press statement regarding his "French Services Plan", emphasizing it was a "practical, limited approach" to French-language services in Manitoba.[2] The following day, the Information Services Branch issued two press releases[3] summarizing the main elements of the resolution Penner had introduced in the House on July 4. The releases quoted him as saying the agreement was not only "honorable and defensible, but was one which would make a significant contribution to Canadian unity". According to Penner,

> The agreement provides a 'constitutional limit which protects the rights of school boards and municipalities to do as they will. What we have, indeed, as a subsidiary agreement, is a grant program available only where numbers warrant and only a voluntary basis'.[4]

The releases also contained the detailed figures regarding actual numbers of quasi-judicial boards, administative bodies, Crown corporations, and agencies of the Government of Manitoba that "might be affected by the

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[1] Garth Cramer and Dan O'Connor of the Premier's office and Ginny Devine in Penner's office.

[2] Presumably the statement requested at the June 8, 1983 Cabinet meeting; see Chapter 7 . In ATG, Box 17, FLS - Communications.

[3] Entitled *Language Resolution Presented in House* and *Penner Outlines French Language Services Plan*. In G/S, Box 2, File 11, pp. 20-3.

[4] Ibid., p. 20.

resolution" given by Penner in the House on July 4, as well as numbers of bilingual civil servants that would be required under the agreement. The release quoted Penner's statements in the House:

> The requirement at most may be 160 out of 16,000 - one per cent - and this is not mandatory until January 1,1987.
> There is no language-of-the-workplace requirement ... there is no required language training, and promotion policy is not based in any way, shape or form on dual language ability.[1]

Finally, the releases mentioned the cost savings to the province, estimated by Penner to be in the order of $2.4 million.

On July 7 as well, a tabloid-style brochure entitled *Constitutionally Speaking* developed by Wordsnorth was made available for general distribution by the Pawley government. In four pages, the brochure, "Published by the Department of the Attorney-General to inform Manitobans about proposed constitutional amendments", highlighted the government's position, and included most of the specific data already mentioned in Penner's speeches and in the press releases under various headings obviously meant to counter what were felt to be misconceptions or "misinformation".[2] In an attempt to situate the amendment to Section 23 in a broader context of constitutional change (as the Pawley government had done in the Legislature), the brochure included the heading *A Promise of Aboriginal Rights,* and a front-page photograph of Pawley, Penner, and MLA Elijah Harper taken at the First Ministers' Conference on Aboriginal Matters held in Ottawa March 15-16, 1983. The brochure also contained a map of Manitoba showing areas where French-

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[1] Ibid., p. 21.

[2] Following are some of the headings: *A Practical Approach to FRENCH LANGUAGE SERVICE - Quite Different from Federal Bilingualism; Important points in the proposed agreement between Manitoba and Canada; Court Decision Might Have Caused Legal Chaos; A Traditional Reality: A Part of Manitoba's History Since 1870; Manitoba is not going bilingual - French language services offered in limited and specified areas only; What will it cost?; A Thoughtful Process: Amending Canada's Own Constitution.*

speaking Manitobans lived "in substantial numbers". The cutline again made the point that

> It is these areas that may **voluntarily** join the French Language Services program or where the provincial government may offer additional language service where there is significant public demand. No municipalities or school boards will be required to join. (emphasis in text)

Ginny Devine circulated the brochure to all Ministers, MLA's, and senior civil servants on July 7.[1] The next day, Pawley himself circulated a memo to all Ministers, saying that henceforth, only ministers should answer questions addressed to the government regarding French-language services.[2] This was apparently an attempt to coordinate the government's response in the face of growing public reaction to the government's proposals; it also, perhaps coincidentally, signaled the beginning of Turenne's "fall from grace" as a trusted government advisor on the issue.

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These initiatives on the part of the government, the press releases and the publication of *Constitutionally Speaking*, occurred on the same day as the public information meetings began in Dauphin on July 7, 1983.

At 11 a.m. on July 7, the first information meeting, at the 11th Avenue (Ukrainian Catholic) Hall in Dauphin, was called to order by the Chairman Jack London, dean of law at the University of Manitoba. The meeting was described as follows by Richard Cleroux of the *Globe and Mail*:

> About 75 people, most of them elderly, retired men, were waiting for Mr. Penner, a remarkable turnout considering the time of day and the short notice given for the meeting.

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[1] Devine memo, July 7, 1983, in ATG, Box 17, FLS - Communications.
[2] EC 0016, Box 7.

> The hall was not the hotbed of bigots some of the national news media had half-expected, but a gathering of genuinely worried, skeptical and upset townspeople who politely spoke their discontent and sat down again to applause from the audience.

Cleroux summarized the main objections to the agreement by quoting various speakers. After Penner had pointed out that the agreement "would not force anything on individuals, private businesses, municipalities or school boards", one speaker, Gerry Wachsmann asked, "Where will it stop? It will mushroom." Another speaker, Clarence Kiesman, reeve of Grahamdale,

> said he had 'no sympathy, no time and no money' for minority groups. He said no other minority group except francophones are pressing for rights, except for 'the Indians, and who are they learning it from?'
> (...)
> Tom Smart, the reeve of Ochre River, said he was neither 'anti-Indian nor anti-Ukrainian' but the Government's money would be better spent creating jobs than translating laws into French.
> (...)
> Elwood Birss, a retired post office employee from Dauphin, said the only solution is for Quebec to be French and the rest of Canada to be English.
> Earl Moberg, 40, an unemployed teacher, said: 'I can't agree with a small group (Franco-Manitobans are 6 per cent of the population) having more rights than larger minority groups.

Penner again pointed out that no municipality would be forced to translate any laws, but that 30 of 208 municipalities had been designated eligible for federal grants if they chose voluntarily to provide some services in French. As for translation of laws, Penner said the government had no choice but to translate because of the 1979 Supreme Court decision; it could choose the timetable, or let the court set it. He preferred the former course.[1]

Winnipeg Sun reporter Andrew Coyne described the meeting more melodramatically:

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[1] R. Cleroux, Toronto *Globe and Mail*, July 8, 1983.

> In Dauphin, Penner faced a crowd of about 80 townspeople and national and local media representatives in the sweltering heat of the town's Ukrainian Catholic Hall.
> He gave it his best shot, reiterating the government's defence of the plan.
> But with the first salvo from the floor microphone, it became evident Penner had changed no minds.
> In voices crackling with suppressed anger, speaker after speaker rose to denounce the bilingual amendment to applause and cheers from the crowd.

Coyne quoted Wachsman (sic) as saying the legislation represented "the thin edge of the wedge" and that "it will mushroom"[1]. Coyne wrote that only one person had supported the government's proposal, whereas Cleroux identified at least two, Ferdinand Guiboche and David Yeo.[2]

From the outset, however, the major themes were clearly expressed: the fear that the Penner proposal constituted the "thin edge of the wedge" which would lead to greatly expanded official bilingualism in Manitoba; concern with costs, both of services and translation; concern that the French would have more rights than other minorities in the province; and concern that no minority group should be treated differently from the others.

The second information meeting began that same evening at 7.30 p.m. at the Red Oak Inn in Brandon, where, according to Coyne's account, "it was much the same story (and) 150 predominantly elderly people grilled the attorney-general":

> One man said the next step will be 'martial law' while another said francophones should learn to speak 'the Canadian language'.[3]

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[1] *Winnipeg Sun*, July 8, 1983.

[2] The contrasting reports illustrate the difficulty of reporting objectively on a given, complex event: what were, for Cleroux, "polite" statements were expressions of "suppressed anger" for Coyne. Both reporters may be right. However, the more vivid shading of the Coyne report, which was characteristic of *Sun* reporting of events relating to the language issue throughout the crisis, may have itself contributed to increasing expressions of anger in the province. A comprehensive analysis of media reporting during the language debate and the legislative crisis is obviously beyond the scope of this study.

[3] Id.

The *Winnipeg Free Press* reported that one speaker, a woman in a wig, said "The sky is the limit once they (language rights) are entrenched",[1] reflecting fears of future expansion of bilingualism expressed earlier that day in Dauphin. According to the *Montreal Gazette*, one speaker insisted that "the person calling the shots" in the language debate was "the master himself, Trudeau".[2] Premier Pawley engaged in some "fed-bashing" of his own. In an article entitled "Uproar all feds' fault: Pawley", the *Winnipeg Sun* reported that

> The federal government is to blame for much of the hostile reaction to Manitoba's language policies, Premier Howard Pawley said yesterday.
> Federal cabinet ministers have said Manitoba is becoming a bilingual province, increasing people's fears, he told a news conference.
> Some municipalities opposed to the bilingualism proposals have used comments by federal cabinet minister Serge Joyal to support their case.
> As well, the federal bilingualism program has been such a flop that Canadians are gun shy about the word bilingualism, Pawley said.[3]

Editorially, the *Winnipeg Free Press* concluded, after the first two meetings, that

> The meetings have produced plenty of forceful statements about language, culture, Quebec, minorities, Indians and Ukrainians, but they have not yet produced reasons why the constitutional amendment should not be adopted... The major objections which have been offered are objections to something else and not to Mr. Penner's amendment. [4]

Penner was clearly taken aback at the force of the opposition to the amendment. Upon his return from Brandon, he wrote an "urgent" memo to Regehr and Cramer of the Premier's office and to his assistants Devine and

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1 *Winnipeg Free Press*, July 8, 1983.
2 *Montreal Gazette*, July 11, 1983.
3 *Winnipeg Sun*, July 8, 1983.
4 *Winnipeg Free Press*, July 9, 1983, p. 6.

Allen. The Dauphin and Brandon meetings, he wrote, "demonstrated the need to redouble our efforts with respect to getting out our own support and having a number of people prepared to make statements". In his view, "The opposition clearly succeeded in outgunning us at both meetings" and concluded that "it is a matter of top urgency that the Party be mobilized". He wanted "at least 100 of our people" at the forthcoming Winnipeg meeting, and suggested that the Premier's office and his aides also contact the University.[1]

The third information meeting, held at the Ukrainian Hall in Thompson on July 13 was eclipsed by the "main event", the Winnipeg meeting which was held the following day. According to the *Winnipeg Free Press*, 850 people turned out at the International Inn, and reaction to Penner was mixed. According to reporter Dave Roberts, "of the 42 people to question Penner, 23 were in favor of the government and 19 against"[2] Roberts also pointed out, however, that opposition to Penner in the crowd was vociferous:

> Penner's remarks were interrupted frequently by hecklers shouting: 'Go back to Russia', 'How much is this going to cost?' 'Who's going to pay for it?' and 'How many will lose their jobs?'

In addition, according to Roberts,

> One speaker accused the government of stacking the meeting with its own supporters.
> 'A good number of people supporting your policy with their neat little notes are from groups funded by the NDP. The rest are card-carrying NDPers,' said Fred Debrecen, a former NDP organizer.

Penner responded, after the meeting, that the charges were "absolutely ridiculous".

One opponent, Ian McPherson, said:

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[1] Penner to Regehr, Cramer, Devine, and Allen, July 8, 1983; in ATG, Box 3, FLS - 1983.
[2] *Winnipeg Free Press*, July 15, 1983.

> I've watched this country become slowly Canadian. The French are separate. They don't want to become Canadian. You'll have to speak French to get a job. A person who can't speak French is a second-rate person in this country.

These concerns again were to be repeated over and over again in the course of the ensuing debate: the fear that future government employment would require knowledge of French and the status anxiety expressed in the feeling that the French, through the bilingualism policies, somehow were becoming "superior" to other Canadians.

One significant aspect of the meeting was the active public participation of other ethnic groups in the debate. According to Roberts,

> Many representatives of Winnipeg minorities were present. Speaking in support of the proposed amendment were spokesmen from the Portugese, Irish, Ukrainian, Dutch, French, Chinese, Indian and Metis associations.
> Leo Robert, president of the Societe Franco-Manitobaine, did not take the floor. 'There's a vocal minority here tonight... I'm surprised at the number of ethnic groups who came out in favor of this,' he said privately.

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In fact, support for the constitutional amendment had already been building among ethnic organizations in the previous days. On July 11, a letter from "concerned members of the Ukrainian-Canadian community of Manitoba" went out to various groups, the media, and politicians, including the Attorney-General. The letter stated:

> We are writing this letter because the agreement is being miscontrued by some people as an infringement on the rights of other minority communities; we suggest that this kind of thinking is inaccurate. The Franco-Manitobans were deprived of their linguistic rights by the Provincial Government in 1890. The Supreme Court of Canada recently ruled that the Legislation was in fact ultra vires.
> (...)

> Canada is officially a bilingual and multicultural country. Manitoba, with its rich cultural heritage, should be at the forefront of guaranteeing rights to its Franco-Manitobans and therefore all minority groups should support this endeavour, because the rights of the French community are indivisible from those of Manitoba's other communities and the denial of rights to one community is in fact a denial to all others.
> We therefore publicly extend support for this agreement and the speedy passage of the enabling legislation.[1]

On July 13, the *Winnipeg Free Press* reported that the leaders of eight ethnic groups had come out in favour of the Pawley government's constitutional proposals. Letters of support from ethnic groups also begin to show up in the government's files at this point: the first on record, dated July 14, 1983, appears to be from Mrs. Pushpa Chandra, president of the Winnipeg Chapter, National Association of Canadians of origins in India, who expressed the "unqualified support of the East Indian Community" of Winnipeg, numbering 20,000, for the constitutional amendment to entrench French-language rights.[2] Another, also dated July 14, was received by Eugene Kostyra from the Vietnamese community.[3] Letters signed by Israel Ludwig and by a group of eight Ukrainians, including Myron Spolsky, appeared in the July 16 edition of the *Free Press.*

Three days later, a new group, the Manitoba Association for Bilingual Education, formed by representatives of Manitoba Parents for German Education, Manitoba Parents for Hebrew Bilingual Education, and Manitoba Parents for Ukrainian Education, issued a "Statement Regarding the Amendment of Section 23 of the Manitoba Act". The statement read in part:

> We fully support the proposed amendment to Section 23 of the Manitoba Act. Our rationale is as follows:

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[1] The letter was signed by N. Budyk, D.M. Lega, L.C. Melosky, J.S. Petryshyn, T.J. Prychitko, M.J. Spolsky, R. Yereniuk, and A.J. Yaremovich. In Turenne, Communications File.
[2] ATG, Box 3, FLS - 1983.
[3] ATG, Box 4, FLS - 1983.

1) We believe that the proposed amendment is concerned with the reinstatement of linguistic rights that Franco-Manitobans were deprived of in 1890.
2) We believe that the restoration of these rights is essential to the development of a firm Canadian identity rooted in official bilingualism and multiculturalism.
3) Our support for the proposed amendments arises from our concern over the erosion of Canada's many cultures. Our support of Franco-Manitoban minority rights is an expression of this concern but it also underlines our belief that minority groups must assist each other in overcoming their problems. We feel that the aspriations and rights of the Franco-Manitoban community are intrinsically linked to those of Manitoba's other communities and that the denial of rights to one minority constitutes a denial to all others.
4) We believe that a responsible government must recognize the legitimacy of the proposed amendment of Section 23. We therefore congratulate the provincial government for showing courage by introducing this amendment. We also suggest that the Societe Franco-Manitobaine involve interested heritage language groups in future consultations throughout the implementation of what will be an efficient and successful program.[1]

The letter was signed by Myron Spolsky, chairperson of the new group and was published in the *Winnipeg Free Press* in mid-July. The Winnipeg Jewish Community Council decided to support the amendment and sent a letter to that effect to several newspapers on July 22 and a copy to the Attorney-General on July 25.[2] A group of Mennonites, including John Klassen, NDP Caucus Communications and Research Director, held two meetings on July 18 and 22. Klassen reported on four initiatives that were to be taken by this group to Penner on July 25, 1983.[3]

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[1] Ibid.
[2] ATG, Box 3, FLS - 1983.
[3] Id.

In the meantime, the French-language issue was being raised almost every day in the Legislature. On July 7, Lyon asked whether the Premier would not again consider convening an intersessional committee,

> so that neither the people of Manitoba nor indeed this Legislature will be hurried or forced into a situation of disorder such as we are seeing every day with the conduct of government business?[1]

Pawley replied that the House was not in speed-up, and that the government was "prepared to discuss the legislation and analyze it carefully. At the same time, I think it's important that the informational meetings take place". After referring to Lécuyer as a "zealot" and a "fool", Lyon reiterated his request for a committee sitting intersessionally, since

> as we were just informed at noon, that at the propaganda meetings the Attorney-General is conducting on behalf of this particular resolution, the public were allowed five minutes each, after the Attorney-General had given a one-hour dissertation on the matter. Now that's not democracy; that's not the way to organize anything that is connected with this House. Let's have an unhurried committee hearing on this matter intersessionally.[2]

Pawley denounced Lyon's treatment of Lécuyer and added that "this is the type of intemperate language that is unduly frustrating the normal course of proceedings in this Chamber". In response to Lyon's question, Pawley replied that

> The informational meetings will take place; there will be debate in this Chamber; there will be a legislative committee that will receive briefs from the members of the public and we will proceed in due course with the debate. The legislative committee and I was (sic) not aware that we were in any particular undue haste or hurry.

Lyon asked Pawley to admit "the common sense of the suggestion that has been made and reiterated on this side of the House", and that "if he would

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[1] Debates, July 7, 1983, p. 4161.
[2] Ibid., p. 4162.

stop being so bullheaded and order the Consitutional Amendment Resolution to be heared intersessionally...he would avoid some of the disruptions that are occurring..."[1] Pawley replied that "it's for that reason that, indeed, informational meetings are proceeding..." and that "there will be opportunity for municipalities and villages and towns and for others to make presentations to a legislative committee of this House dealing with this particular resolution when it is referred to that committee".[2] As debate continued, Lyon repeated his request for a third time and, following unrecorded interjections, added "I'll put it on record any day of the week, Mr. Speaker, that the First Minister is acting like a fool in the House."[3] Pawley repeated his earlier responses; Lyon, unsatisfied, repeated the question again, this time framing it in distinctly insulting terms:

> Mr. Speaker, a further question to the First Minister who need not, out of the barrenness of his thought processes, reflect or impute motives to this side of the House about wanting holidays. This side of the House has some understanding of the fundamental importance of this Constitutional Amendment which he and his incompetent government have negotiated...
> The question, Mr. Speaker, is very simply this, and I'm asking for an answer, not a weaseling around such as we've been hearing from him...will he not agree that it would be in the interests of the people of Manitoba (to) schedule these meetings intersessionally...

To which Pawley replied:

> Mr. Speaker, I've already responded to three speeches, not three questions, by the Leader of the Opposition. I don't intend to abuse the Rules of the House by entering into a fourth speech in response to a speech by the Leader of the Opposition.[4]

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[1] Id.
[2] Ibid., pp. 4162-3.
[3] Ibid., p. 4163.
[4] Id.

Later that day, Doern asked Premier Pawley whether he was considering a free vote on the question of bilingualism in Manitoba. Pawley replied that "certainly (Doern) will be able to vote as he sees fit; he added that

> Insofar as a free vote, that's a matter that will have to be determined in due course, I'm sure, by the caucus opposite and our own particular caucus. At this particular time, no one on our side except for the Member for Elmwood has expressed any concern about whether the vote be free or not.[1]

Doern then asked Pawley whether the matter would also be "a matter of confidence in the government"; Pawley replied that "it's been made very clear it's a matter of confidence".[2]

Sterling Lyon then asked whether the Premier would consider setting up a "free phoning area" by which the people of Manitoba could communicate with the government on the issue,

> because this government thus far has seen (sic) to forestall and to squelch and to hold down people from telling the government what it thinks about the Constitutional Amendment.

Pawley replied that there already existed a toll-free line, the Citizens' Inquiry Service, by which citizens could communicate with the government and that efforts had been made to communicate with them "by letter...and other means". Pawley added that he had himself visited several communities personally and that the issue had been discussed, to which Lyon responded that "the best way is an intersessional committee; will he not consider an intersessional committee, Mr. Speaker?" Andy Anstett seized the opportunity to throw out the idea of a government advertising and public information campaign regarding the amendment, knowing, of course, that the government's *Constitutionally Speaking* publication was in the process of

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[1] Debates, July 7, 1983, p. 4165.
[2] Id.

being circulated. Pawley agreed that perhaps the government should indeed consider communication of this type, given "all the misinformation that members of the Conservative opposition have been spreading about the province" on the issue. Lyon challenged Pawley "to identify one piece of misinformation that has been spoken by me or by this opposition party since he introduced the Constitutional Amendment", and added, ambiguously,

> We are not the ones, Sir, who have been issuing misinformation. Let him speak to the President of the Union of Municipalities (sic) about misinformation, coming from him, with respect to an issue about which this First Minister knows very little.[1]

On July 8, Penner confirmed, in answer to a question by Mercier, that polling was indeed being done by the government and that "the results or analysis will be tabled when available". Mercier then asked Penner where and when the legislative committee to be charged with reviewing the proposed amendment would meet, "in view of the widespread and deeply-felt concerns expressed at the government's informational meetings yesterday" in Dauphin and Brandon. Penner took the question as notice, and added that he "should be in a position to make an announcement in the House on Wednesday" [July 13]. Mercier again asked the government to have the legislative committee meet intersessionally; Penner replied that he could not add to the Premier's previous comments on the matter.[2]

Later that day, Doern asked the Premier whether he would "consider postponing a final decision on this question until the October Municipal Elections and a province-wide referendum" on the issue. Pawley replied that he would not. What, then, would the Premier "accept as evidence that the public

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[1] Ibid., p. 4166.

[2] Debates, July 8, 1983, p. 4197.

wants no part of the proposals, particularly that refer (sic) to the bilingualization of the Civil Service of Manitoba"? Pawley replied that "our responsibility is to communicate, to explain and to ensure that the public is fully aware that this is French Language Service, not bilingualism that has been practised at the federal level". Upon which Lyon interjected: "You've capitulated to Trudeau again."[1]

Still later the same day, Lyon, having received the *Constitutionally Speaking* brochure, asked Penner whether "there is a document in existence between the Government of Manitoba and Mr. Bilodeau or his counsel, indicating that in the event this constitutional agreement is passed, that the Bilodeau case will be abandoned. Is that the case, and if so, could we have a copy of that agreement?" As for the possibility of other cases of the same type, "What kind of prohibition is built into the constitutional resolution that will prohibit any other person from bringing an action, based on the agreement, that this government is purporting to enter into?" Penner replied that "of course, technically anyone can walk over to the court office and file a Statement of Claim".[2] After being interrupted by interjections from the opposition, Penner added that "The Leader of the Opposition well knows, but apparently chooses to ignore the fact that the key element is the validation of all of our statutes which were passed unconstitutionally in one language only, since 1870 in fact, as a result particularly of that piece of legislation in 1890, The Official Language Act..."[3]

On July 11, the opposition again asked Pawley whether he intended to hold a free vote on the issue; again he replied that "it will be a matter that will

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[1] Debates, July 8, 1983, p. 4199.
[2] Ibid., p. 4203.
[3] Ibid., p. 4204.

be dealt with in our caucus, as I'm sure it will be also one that will be dealt with in the opposition caucus".[1] Later in the day, Doern rose in the House to protest what the press called "caucus punishments" because of his stand; three days earlier, he had begun sending out his mail-in poll to 7,500 adresses in his Elmwood constituency.

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The matter of legislative hearings was indeed being considered behind the scenes within the Pawley government. This is documented in a memo from Garth Cramer to various operatives[2] concerning the government's communications strategy. Cramer informed the others, following a meeting of the Strategy Committee of Cabinet "today", that he had ordered an additional 35,000 copies of the *Constitutionally Speaking* tabloid through Wordsnorth; he wanted to ensure that these copies would be mailed out rapidly, and suggested that staff and resources from a number of departments should be mobilized. He also wanted to hear "specific recommendations regarding the on-going communications strategy"; following this, a "tailored information piece for distribution to all Manitobans" would be developed. In light of these initiatives, he recommended that legislative hearings not be held at least until July 27, 1983.[3]

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On July 9, 1983, *Winnipeg Free Press* columnist Frances Russell documented the growing split among Conservative ranks regarding the

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[1] Ibid., p. 4215.

[2] Including Judy Wasylycia-Leis, Ginny Devine, and Nancy Allen.

[3] Cramer to Wasylycia-Leis, Devine, & Allan, July 12, 1983; in ATG, Box 3, FLS - 1983.

constitutional amendment, in an article entitled "Bilingualism Policy is Dividing Tories". Russell wrote that:

> The provincial Tory party's opposition to the Pawley government's constitutional amendment recognizing Manitoba's historic official bilingualism has brought it into conflict with federal Conservative policy.
> That conflict was one of the topics of dicussion earlier this week between the provincial caucus and federal party representatives in Winnipeg to map strategy for the next federal election. Speaking to reporters following the meeting, Tory MPs Jake Epp and Jack Murta backed the opposition's demand for public hearings, but carefully dodged questions on the issue.
> The internal party strains have arisen with the election of Brian Mulroney as the new federal leader. In contrast to Opposition Leader Sterling Lyon, Mulroney supports both the federal Charter of Rights and the constitutional entrenchment of minority language and education rights.
> According to the Montreal *Gazette*, Mulroney described the Manitoba proposal as a 'laudable' initiative by the Pawley government.
> When Mulroney was in Winnipeg during the leadership race, he gave an interview in French to CKSB in which he strongly endorsed the extension of French language rights throughout Canada.
> Francophones, he said, must be accepted as full-fledged citizens in Canada. '(This) means citizens with all the protections of a constitution or of a society, at all times, and in all circumstances. There are no exceptions.'
> (...)
> ...the difference between Mulroney and the provincial Tories is more fundamental. The provincial Tories are parliamentary supremacists, while Mulroney, as a member of Quebec's official language minority, recognizes Canada's written constitution and constitutionally-entrenched rights.

Perhaps not coincidentally, the SFM was continuing its lobbying efforts vis-à-vis the federal Tories; the Guay/Smith papers document a telephone conference between Raymond Théberge, executive director of the organization, Vaughan Baird, Bilodeau's lawyer, and Tory Senator Nathan Nurgitz.[1]

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[1] Guay/Smith papers, Box 3, File 25, p. 181.

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Throughout June and early July, the Manitoba Government Employees Association, representing most provincial government employees, analyzed the implications of the government's constitutional proposals and formulated its position. In mid-July, it made this position public.

On July 12, Gary Doer, president of the MGEA, called a press conference where he released two documents: a "preliminary opinion" on the government's proposals by the organization's lawyers, Thompson, Dorfman, Sweatman and a letter to Premier Pawley requesting a meeting with him and criticizing the government for failing to circulate the precise wording of the proposed amendment at the public meetings and to the provincial employees.[1] Doer added that his association would not support the measure unless it was modified.[2]

In its instructions the MGEA had advised its lawyers that

> the MGEA is not opposed, in principle, to the recognition of French and English language rights in the Province of Manitoba and indeed, the MGEA does not object to the principle of limited bilingualism in the public service provided this principle is ultimately implemented in a realistic and workable manner.[3]

The opinion pointed out that, given existing constitutional provisions, including the *Manitoba Act*, and by virtue of judicial interpretation,

> there are already considerable constitutional guarantees afforded to the English or French language before the Courts and quasi-judicial tribunals in Manitoba because if an individual has the right to initiate a process or argue a case before such bodies in either official language then it is reasonable to expect that the tribunal in question will have to possess the facilities to conduct

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1 *Winnipeg Free Press*, July 13, 1983.

2 *Winnipeg Sun*, July 13, 1983.

3 Thompson, Dorfman, Sweatman opinion to Manitoba Government Employees Association, July 12, 1983; in G/S, Box 3, File 26, pp. 5-11; at pp. 1-2.

> proceedings in either official language. The difference is that while a body such as the Manitoba Labour Board may have to have the functional ability to accept documents in French and conduct a hearing in French, it has no legal obligation to render its decision in French.[1]

However, the lawyers, contrary to Joseph Magnet, believed that the government's proposals constituted an extension of rights contained in the existing Section 23 of the *Manitoba Act*; they also saw problems with specific words used in terms of the MGEA's interests, especially in the section that would entrench French-language services. In their view,

> The constituency represented by the MGEA would undoubtedly find the principle of bilingualism in the civil service more acceptable if the said services have to be provided on the basis of objective and precise criteria. The proposed criteria of 'significant demand' and reasonable 'nature of the office' used in Section 23.7 (2) are not capable of objective or precise definition.

Counsel also pointed out the ambiguity of the "official languages" declaration in the government's Section 23.1 and proposed a solution:

> [U]nder the proposed Section 23.1 English and French are '...the official languages of Manitoba'. This is capable of two interpretations. On the one hand, it may be interpreted as a fundamental statement of principle which is not qualified to any extent. On the other hand, it may be taken to be limited in its scope by virtue of later specific provisions. Regardless of which interpretation is adopted, in giving meaning to Section 23.7 the Courts may recognize Section 23.1 as a constitutional statement that English and French are the official languages of this Province (i.e. they stand on an equal footing) and result in a wider meaning being attributed to phraseology used in Section 23.7 than what is now anticipated.
>
> It seems to us that our concerns in this regard could be eliminated if Section 23.1 was converted into a definition section which might read as follows:
>
> "23.1 In Sections 23.3, 23.4, 23.5 and 23.6 'official languages' mean French and English."
>
> We would point out that the expression 'official languages' is not used in Section 23.7 and therefore a definition section need not

[1] Ibid., p. 5.

encompass this particular Section. Alternatively, Section 23.1 might be modified by additional phraseology such as '...to the extent set forth in Section 23 and Section 23.2 to 23.8 both inclusive'. We believe this would leave no doubt that English and French are the official languages of this Province for the purposes enumerated in the existing Section 23 and the new amendments proposed under the Proclamation.[1]

The lawyers' overall conclusions and recommendations to the MGEA were as follows:

> Given the nature of the principles of construction that apply to constitutionally entrenched provisions, it is, in our view, in the interest of the MGEA and its constituency, to raise its concerns regarding ambiguous phraseology in Section 23.7(1), which identify (sic) those institutions where bilingual services must be made available as of right regardless of demand or the nature of the office. It would be our recommendation that the phrases 'or central' and 'administrative body' be removed. This would be consistent with the MGEA's support of the principle of a workable and practicable bilingualism, while at the same time seeking realistic limitations where bilingual services have to be made available as of right. The deletion of these phrases from Section 23.7(1) would not derogate from the principle limited (sic) bilingualism and indeed would enhance it because, if appropriate amendments were made to subsection (2) by the inclusion of more objective criteria there would at least be more precise guidelines by which it could be determined whether bilingual services should be made available. Alternatively, the MGEA might wish to explore with the Government the possibility of the Legislature or a politically accountable official or body having the right to determine whether the criteria of 'significant demand' or reasonable 'nature of the office' apply in a given situation. This would then afford the MGEA some opportunity to discuss with the Government of the day realistic implementation of bilingual services in the context of legitimate employment concerns of both its existing and future members.

[1] Ibid., p. 9.

> As indicated, the Proclamation is clearly a constitutional extension of language rights over those contained in the Act of 1870. In giving you our opinion we share the concern that '...the difficulty with the suggested extension of constitutional rights is that the extent to which bilingual services must be made available is unknown'. The extent of this obligation will ultimately rest with the Courts and because the obligation will be constitutionally entrenched the Legislature of the Province of Manitoba will be virtually unable to change the Court's interpretation of the obligation, notwithstanding that the same may be much wider than that originally intended at the time of the making of the Proclamation. It is therefore imperative that the intention of the Legislature as expressed in the Proclamation be precise, certain and free of ambiguity.[1]

Gary Doer and the MGEA Board of Directors accepted their counsel's analysis and proposed, in Doer's letter to Pawley, that three changes be brought to the government's proposals: 1) the deletion of the term "central office" from Sections 23.7(1) (a) and (b); 2) deletion of the term "administrative body" from the proposed Section 23.7(1) (b) (ii); and 3) a more precise definition of the term "significant demand" in the proposed Section 23.7 (2) (a), since "we are unclear as to what is intended by this terminology". Doer concluded:

> In summary, Mr. Premier, the Manitoba Government Employees' Association fully supports the reinstatement of the constitutional language rights that existed in the Manitoba Act of 1870. Had those rights not been abrogated, there would be no need for the potentially divisive debate on this issue today.
> We further support a limited extension of those rights in the provision of practical bilingual government services. Any extended rights must be implemented in a realistic and workable manner in order to avoid future conflicts.
> The Manitoba Government Employees' Association is clearly an interested party in the current debate, as the proposed changes have direct implications for our membership. Our suggestions are made at this time, based on our initial review of the proposed amendments, which have been in our posession (sic) for barely one week. We are, of course, prepared to continue discussions with the Attorney General, Government Counsel,

[1] Ibid., pp. 10-11.

> individual M.L.A.'s, party caucuses and yourself, in order to ensure that the rights of all Manitobans are protected in a fair and equitable way.[1]

Copies of the letter were circulated to all Members of the Legislative Assembly.

At the news conference, Doer also issued a press release indicating his organization's support of "the concept of a limited extension of those constitutional rights to the provision of practical bilingual government services in this Province"; however,

> the specific amendments proposed provide, in our view, not for practical bilingualism, but for ambiguous bilingualism. On that basis, we find that we are unable to support the proposed changes as presently worded.[2]

The release detailed the three specific changes recommended to the government.

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At 2:00 p.m. that afternoon, Lyon rose in the Legislature to ask whether the government would consider the M.G.E.A.'s proposed changes to the constitutional resolution and "give the House, the MGEA and the people of Manitoba further time... by delaying any public committee meetings until after this Session has adjourned?"[3] Pawley replied that the MGEA hadn't requested any delay; however, he added,

> They have raised three very important concerns pertaining to the phraseology pertaining to definitions and other items that are outlined on Page 2 of their letter, and as I indicated to Mr. Doer yesterday I would be anxious to meet with the MGEA in the company of the Attorney-General, in order to review their

[1] Doer letter to Pawley, July 12, 1983; in G/S, Box 3, File 26, pp. 16-18, pp. 2-3.
[2] In Turenne files.
[3] Debates, July 12, 1983, p. 4254.

particular concerns to ascertain whether or not we can make any appropriate amendment, if indeed their concerns be justified.[1]

Lyon again asked, in light of the MGEA's concerns, whether it would not be "reasonable and prudent" to hold intersessional committee meetings; Pawley replied that the MGEA's letter had raised three "valid points"; however, "nowhere in the letter does the MGEA suggest that there be a postponement or a delay"; indeed, he added, "The MGEA has indicated its support for the basic principle of the resolution that we are dealing with."[2]

Lyon again reiterated his question and added a second:

> (I)s the First Minister now indicating, because he has gone to some length to indicate that he thinks that the suggestions made by the MGEA on Page 2 of their letter for amendment of the resolution are reasonable, is he now indicating a changed position from that which he and his Attorney-General announced a few days ago when they said that they would not tolerate any amendments to Section 23?

Pawley replied:

> (W)hat has been indicated is that the Manitoba Government cannot unilaterally make changes in the resolution... Obviously we cannot proceed in respect to a settlement that is reflected in the resolution without the agreement of all parties.[3]

Lyon drew his own conclusion, asked rhetorically whether "the First Minister (is) now saying that the resolution that is before the Legislature is not chiselled in stone, as he and his Attorney-General tried to indicate initially..."[4]

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Later that afternoon, Lyon again rose in the House, this time to launch formally the debate on the constitutional amendment which had been

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[1] Id.
[2] Ibid., p. 4255.
[3] Id.
[4] Id.

adjourned the previous week after Penner had tabled the constitutional resolution and related documents. In a three-and-a-half hour speech, Lyon formally laid out his party's position, ranging from a detailed review of the content of the resolution to attacks on the credibility of the SFM as a negotiator of the constitutional agreement and on the "incompetent" "socialist" government which agreed to it.

At the heart of Lyon's opposition to the resolution was the fact that, not only was bilingualism being extended in Manitoba, this extension was being irrevocably entrenched, creating "prejudice" for "generations of Manitobans yet unborn". After noting that this was the first constitutional amendment "of fundamentally serious proportion" to be presented to the Manitoba Legislature since adoption of the new Constitution Act in 1982 and noting the importance of the precedent being set in terms of procedures used in adopting a constitutional resolution in Manitoba, Lyon outlined his major concern with the proposal:

> This particular amendment... will become for all practical purposes an entrenched amendment... once entrenched (it) will become practically irreversible.[1]

He returned to this theme over and over again in the course of his speech, focusing increasingly not only on the fact of entrenchment itself but upon its future impact on the province. He recalled the measures his own government had implemented in terms of translation and implementation of French-language services and how

> governments have been in office... which were able to carry forward that kind of forward-looking policy without arousing undue fears among the people of Manitoba and without, in any

[1] Ibid., p. 4262.

> way, trying to entrench them, or trying to make them irreversible matters of policy in the Constitution...[1]
> (...)
> But the entrenchment of those and the irreversibility of those services, once entrenched, and the taking away from government of the control over such policy development and putting into the hands of the courts, all of that, Mr. Speaker, could not have been imposed by any court so the quid pro quo about which the Attorney-General spoke the other day, the quid pro quo that he was asked to put up in response to this apparently craven fear that he had of the Bilodeau case, was a very very severe settlement to impose upon the people of Manitoba because no Supreme Court could have imposed that on the people of Manitoba at all.[2]
> (...)
> (T)he extra amount [beyond translation of statutes] that the Franco-Manitoban Society is asking for goes way above and beyond anything that is at issue in the Bilodeau case at all and imposes upon Manitoba constitutionally entrenched conditions that no court, no other authority, could ever impose upon our province.[3]

In the evening, he returned to this central theme, adding a new twist: Manitoba had never been a bilingual province, and the Pawley government had not realized that

> courts will now be able to make the determination as to what the degree of linguistic services will be in Manitoba because this government has solemnly entrenched and made irreversible the fact that English and French are the official languages of Manitoba, something that's never been part of our history, never been part of our political traditions at all in this province.[4]

Towards the end of the evening, Lyon raised the spectre of a major transformation of the province due to entrenched bilingual services, which would affect future generations:

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[1] Ibid., p. 4268.
[2] Ibid., p. 4270.
[3] Ibid., p. 4271.
[4] Ibid., p. 4284.

> The cost, Mr. Speaker, with respect to the grandchildren of the Minister of Agriculture, the grandchildren of the Minister of Transportation, who come 30 years from now to seek a job in the Civil Service of Manitoba and are told that because English and French are the official languages that the court has ordered that people must be bilingual in this position and that position, and it's beyond the control of the government. That's the effect that I worry about tonight. I'm not worrying, Mr. Speaker, about myself or about anybody in this House, particularly, I'm worrying about generations yet unborn.
> (...)
> I worry about the children and the grandchildren of Members of this House and of Manitobans generally who are going to find, Mr. Speaker, as surely as I stand here tonight that a form of tyranny will have been made out of these entrenched and irreversible sections just as surely as a form of tyranny has been made out of The Official Languages Act by unthinking bureaucrats, by zealots and by others who don't care about the unity of this country at all.[1]
> (...)
> (Y)ou can take a sweet and kind and loving little pussycat, which you may call policy with respect to bilingualization, and the minute you entrench that policy and make it entrenched and irreversible, you can create because you create because of zealots (sic), and because of the utilization of the courts that can be made of it - we're seeing it already today - you can make of that a screaming tiger that will tear this country apart, that will tear this province apart.[2]

Lyon summed up his anti-entrenchment argument in the following words:

> Mr. Speaker, given the examples to date... here and elsewhere of what language zealots can do in the courts of this country and in the courts elsewhere with respect to certain abstract rights that are attempted to be entrenched... (y)ou can ensure (sic) that litigation from now on is going to be multifarious if these entrenched parts of the Constitution are agreed to. I guarantee you, Mr. Speaker, that the Franco-Manitoban community won't benefit much but the lawyers of this province for generations will. They'll be bringing every frivolous and vexatious case cluttering up the courts of this province and the Supreme Court of Canada with the kind of stupidities that can flow from

[1] Ibid., p. 4288-89.
[2] Ibid., p. 4290.

> entrenchment of a policy that need not be and should not be entrenched in our Constitution.[1]
> (...)
> Mr. Speaker, in the strongest terms I can I urge the government not to make a massive and a wounding mistake to our province. What they have in hand in this resolution will, mark my word, create a massive and wounding prejudice to all generations of Manitobans yet to come. If we thought for a moment that this amendment, this entrenchment, the irreversibility of this act that we are being asked to rush through by this government, was in the best interests of our province, Mr. Speaker, we would support it. We have no argument with the Government of Manitoba, to repeat myself; we have no argument with the Franco-Manitoban Society, or with the Francophone community of Canada with respect to Section 23 and its reimplementation which we were engaged on, which this government started to do; we have no problem, Mr. Speaker, with the expansion of bilingual services in requisite offices in Manitoba.[2]

Although the entrenchment argument was the touchstone of his speech, Lyon made a number of others. One of these was the nefarious role he attributed to the federal government in the development of the constitutional amendment. Early in his speech, Lyon alluded to

> the various attempts of the present Prime Minister of Canada to force his will upon the provinces of Canada to compulsorily and unilaterlly (sic) change the federal nature of our country... (T)hrough negotiations he was thwarted from carrying out that desire of his and the country, Sir, while not ending up with a constitutional package that is perfect - God knows it is not perfect - ended up with a constitutional package which at least today acknowledges the existence of the federal nature of our country, something that Mr. Trudeau's package was prepared to overrun and to cast aside as a useless part of our history.[3]

Later he returned to this theme, quoting extensively from Joyal's March 19 SFM speech[4], taking it, not as advice from a federal Francophone minister to

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[1] Ibid., pp. 4292-93.
[2] Ibid., pp. 4292-93.
[3] Ibid., p. 4262.
[4] Ibid., pp. 4272-74 and 4279.

a small French-speaking community but as evidence of collusion if not conspiracy between the federal and Manitoba governments:

> Well, Mr. Speaker, these statements, I suggest now as we read them, should have alerted all Manitobans including us as to what was really going on between the Government of Mr. Trudeau and the Government of Howard Pawley because the Prime Minister, of course, mentioned that these negotiations were coming to fruition. He said it in French in Manitoba, and we asked questions based upon his statement, in French in Manitoba, a day or two later as these statements were not widely reported because they were spoken in the French language.
> I suggest to you, Sir, that if we were looking for a reason as to why we have an agreement that is really unaccountable in terms of any judicial threat that faced the Province of Manitoba, or indeed, the public interest of Manitoba, that perhaps in those statements that I have read from Mr. Joyal, we find the real reason for this agreement to be here.
> We find a kind of coalition between the Trudeaus and the Pawleys of this world with respect to what they are going to do with Manitoba, in terms of negotiations which they have been conducting - negotiations which they have been conducting in secret largely for the better part of a year - and it leaves open the suggestion, Mr. Speaker, and the real suggestion that the Federal Government played a much greater role in this settlement than the present socialist government of Manitoba is prepared to admit. They're attempting to make the Franco-Manitobaine Society the black player in this game.
> Mr. Speaker, I suggest after reading those quotations to you from the Federal Minister, the Federal Secretary of State, that we can see the guiding hand with respect to the agreement that this Legislature is now being asked to ratify, an agreement that was consummated in a form of political perfidy between the Trudeau Government and the socialist government of this province, which pays very little attention to what the people of this province want to see happen.
> Mr. Speaker, if we're now looking for a reason why this government wants to rush through the public hearings, I think we are beginning to see, the mist is beginning to clear, and we're beginning to see that the strong hand of the Federal Government is present in, and was present in these negotiations.
> (...)
> So if we're looking for a real reason as to why we have the agreement that is before us, a bad agreement, I suggest that we

> can't ignore the role of the Federal Government, the intimidatory (sic) role of the Federal Government with respect to this weak government in Manitoba which has demonstrated from November 30, 1981 that it is not prepared to stand up for the rights of Manitobans as opposed to those matters that Trudeau would try to impose upon Manitobans.
> (...)
> Mr. Speaker, while not making that firm indictment in this matter, I suggest after the time that I have taken to read these matters into the record, that there is an onus upon this government, this socialist government to demonstrate what the real reason was for entering into this agreement, the merit of which has failed to impress itself upon this House or upon the people of Manitoba thus far.[1]

A third theme developed by Lyon revolved around the bilingual nature of Manitoba. Lyon took the position that S. 23 provided only for the use of French in the legislature and in the courts and that this did not make Manitoba a bilingual province; he made this point several times in his speech:

> Mr. Speaker, the Attorney-General keeps referring to Manitoba being a bilingual province... I have read into the record, for good reason, Section 23 of the Manitoba Act, which made the use of French and English available in Manitoba for limited purposes of the court and the Legislature and so on... Section 23 did not make Manitoba a bilingual province, except to that limited extent as is provided in Section 23.
> (...)
> Manitoba was bilingual for the limited purposes of the courts, and for the limited purposes of this Legislature, and the publication of the Statutes.
> Everything else...that subsequent governments have done, as a matter of policy, with respect to bilingual services in Manitoba, is not because they're under any constitutional imperative to do it, but because it was the reasonable and the honourable thing to do with respect to the Franco-Manitobans resident in this province. That's why, Mr. Speaker; not because there was any constitutional imperative.

[1] Ibid., p. 4279-80. Several of the Joyal quotes were taken up a few days later by Fred Cleverley of the *Winnipeg Free Press*, in a column published on July 18, 1983.

Lyon then expanded the argument beyond the words of the constitution to the province's entire history:

> So, while not making a big point of it, I regret that I have to keep coming back to the point, which has already been agreed to by this First Minister and by his Attorney-General, that that statement of Manitoba being a bilingual province just isn't true; it's not true historically; it's not true politically; it's not true legally. It has never been true that Manitoba was conceived as a bilingual province.[1]

Having made that point, Lyon then launched his attack against the government's proposed Section 23(1), the declaration that both French and English were the official languages of Manitoba, each time repeating and expanding the scope of his basic proposition:

> (T)hat, Sir, becomes the umbrella under which all other interpretations will be made and no matter how much the First Minister, no matter how much the Attorney-General may say that this is a limited form of bilingualism for Manitoba, do they realize what they have done by including that statement which was never in Section 23, which was never in The British North America Act and which has never been part of our Constitution, our heritage, our tradition, our history, our politics, our legal obligation in this province, that English and French would be the official languages of Manitoba.[2]
> (...)
> (T)his government has solemnly entrenched and made irreversible the fact that English and French are the official languages of Manitoba, something that's never been part of our history, never been part of our political traditions at all in this province.
> (...)
> (O)ne of the reasons this resolution will fail, Mr. Speaker, is because the Attorney-General and the First Minister have tried to avoid the real questions, and that urged on by unthinking zealots like the Member for Radisson and others on the other side, they are trying, Mr. Speaker, to paint anyone who is in opposition, be it the Member for Elmwood, be it the Member for Brandon West, be it me, be it anybody, be it any of the municipal

[1] Ibid., p. 4272.
[2] Ibid., p. 4283.

> people. They're trying to paint them all as racists, redneck, anti-French and they're using all of the calumny that they can, from their shallow minds, dredge up. But, Mr. Speaker, that kind of calumny won't work in the face of hard questions, and one of the hard questions I put to this government tonight is, why is that statement about the equality of English and French languages in Manitoba which has no historic tradition in this province except for Section 23; why is that being engrafted (sic) irreversibly into the Constitution of Manitoba today by this government? Why indeed?[1]

Later, after having asked Lécuyer to "sit down, you zealot fool"[2], Lyon pursued this argument, answering his own question by linking the "fact" that Manitoba had never been bilingual to the conspiracy he saw between the federal and Manitoba governments:

> So we're only left to conjure that my honourable friends opposite in their zeal to co-operate with the Federal Government and to get money from the Federal Government are trading off the birthright of Manitobans. Trading off the constitutional history of this province, trading off, Mr. Speaker, the total history of this province for their own petty, partisan purposes and trying to leave this province with an entrenched irreversible constitutional amendment which is not in sympathy with or in accord with the background or the history or the tradition of this province in anyway (sic) whatsoever.[3]
> (...)
> So we judge from these examples, Mr. Speaker, the kind of legal and moral and political fibre that we see sitting opposite us because there is not much fibre there. There's not much understanding of law. There is very little understanding, if I may say so, of the traditions and the history and the heritage of this province, Mr. Speaker, or, indeed, of the realities of this province as it exists in 1983.[4]

Over the three-and-a-half hours, Lyon mentioned the "secret" nature of the negotiations between the SFM, the Manitoba government, and the federal

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[1] Ibid., p. 4284.
[2] Ibid., p. 4285.
[3] Id.
[4] Ibid., p. 4286.

government several times, to the point where this must also be counted as a major theme of the speech. Lyon started with Joyal:

> In March of 1983 he [Joyal] knew that the Societe was in negotiation with this government, with the NDP Government; nobody else did, but Mr. Joyal knew that.[1]

(Later in his own speech he again acknowledged Penner's courtesy of having notified him of the negotiations in December of 1982; he also stated "we had a meeting with the Franco-Manitoban Society after we had had this notification".[2])

Later in the evening, recognizing that "the negotiations were largely conducted in private which is understandable, I suppose"[3], Lyon again mentioned that "this was an agreement arrived at privately by the Government of Manitoba with the Franco-Manitoban Society under what appears to be the urgent urgings (sic) of the Federal Government..."[4]

On the matter of the Bilodeau case itself, Lyon made three major points. First, he claimed that the possibility of the government losing the case before the Supreme Court was virtually nonexistent. He quoted Twaddle's opinion extensively to that end.[5] In the afternoon, he quoted Gibson briefly, where Gibson shared Twaddle's opinion that "the constitutional validity of the statute in question will probably be upheld".[6] In addition, Lyon added,

> other lawyers have been heard to say...that the whole principle involved in the Bilodeau case, even though the courts haven't said this, but others I think could honestly say that the principle involved in the Bilodeau case verges on being frivolous because

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[1] Ibid., p. 4273.
[2] Ibid., p. 4280.
[3] Ibid., p. 4280.
[4] Id.
[5] Ibid., pp. 4268-70.
[6] Ibid., p. 4268.

> a court was being asked to impose a chaotic condition upon the people of Manitoba.[1]
> (...)
> (T)he Pawley government...is taking a quantum leap...to settle a case...in which the chances of the province losing are infinitesimal.[2]
> [There is] an outside chance at the very best that a court... would have paid any attention to the rather outrageous proposition that was being advanced by Mr. Bilodeau.[3]
> (T)here is no real substantive threat in the Bilodeau case to justify the kind of craven fear, and to justify the kind of capitulation that my honourable friends opposite are engaging with respect to this agreement.[4]

In the evening, perhaps because of heckling or of comments made to him privately, Lyon read into the record the portion of Gibson's paragraph where Gibson added that "I do not regard that as an altogether foregone conclusion... (S)trong arguments can be made from a purely legal point of view in support of Mr. Bilodeau's position."[5] This did not change Lyon's view, however, since

> with the greatest of respect to Mr. Gibson I think that the judgments of Chief Justice Freedman, as he then was, the present Chief Justice of Manitoba [Monnin] dissenting only in part would take rather more precedence than the opinion of some well-intentioned academic with respect to Manitoba's intentions.[6]

This, of course, ignored the fact that the Freedman view on language rights in Manitoba had already failed partially before the Supreme Court, in the *Forest* case. Lyon expanded upon Twaddle's basic proposition:

> The Attorney-General tried to say that there was a possibility that all of our laws would be declared invalid, but that kind, as I have attempted to indicate before, from legal opinions, from the

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[1] Ibid., pp. 4268-69.
[2] Ibid., p. 4270.
[3] Id.
[4] Ibid., p. 4271.
[5] Ibid., p. 4286.
[6] Id.

> Court of Appeal judgment and so on, that kind of expectations was unreasonable in the extreme.[1]
> (...)
> Well, Mr. Speaker, the extension of linguistic services...is now going to be entrenched and entrenched for what? For the quid pro quo of withdrawing the Bilodeau case. My heavens, Mr. Speaker, has ever before so much been given away for so little? Has ever before so much been given away for so little because a litigant comes up to the Government of Manitoba and says, 'Boo, I've got you'. Then they give away the birthright of Manitobans yet unborn and constitutionally entrench and make irreversible conditions that will affect every man, woman and child in this province for generations to come.[2]
> (...)
> Mr. Speaker, it would have been interesting to consider the fate of all of the institutions of Manitoba that are apparently put in jeopardy by Mr. Bilodeau. I don't think they're put in jeopardy by Bilodeau at all, nor does any other reasonable-thinking lawyer in this province or in this country; but if the Franco-Manitobaine Societe isn't prepared, or Bilodeau isn't prepared to give another adjournment, then I say, to hell with Mr. Bilodeau. Go on and fight your case in the Supreme Court of Canada because you've got nothing to fear... I know, with every fibre of my being, that no Canadian court worthy of the name...would throw this province into a situation of chaos, such as, that perverse proposition advanced by Bilodeau would attempt to do; nor would the Franco-Manitobaine Societe, if they stopped and thought of it in terms that are reasonable.[3]

If there was no reason to fear any Supreme Court decision, if Bilodeau was "frivolous" if not "outrageous", and Section 23 was limited to the courts and the legislature, what, then, should be provided to Manitoba Francophones, in recognition of 90 years of unconstitutional behaviour by successive Manitoba governments? Precisely what the Lyon government had been in the process of offering from 1977 to 1981. Lyon recited his various accomplishments in this area during his term of office[4]; he then added that, not only had his government been actively implementing bilingual services, all previous

[1] Id.
[2] Ibid., p. 4286.
[3] Ibid., p. 4287.
[4] Ibid., pp. 4266-67.

Manitoba governments in the twentieth century had been doing the same thing:

> Ever since 1890, there have been bilingual services available in one form or another as a matter of policy of the governments. Mr. Speaker, it had been going on in the times of the Bracken Government... the Garson Government, the Campbell Government, the Roblin Government, the Schreyer Government, our government and then on into the Pawley Government as well.[1]
> (...)
> (T)he government will have given over to the courts all of the power of policy making which government now, and government alone, possesses; and which I make mention, again, Mr. Speaker, since the time of John Bracken, since the time of Stuart Garson and Douglas Campbell and Duff Roblin and Ed Schreyer and Lyon and Pawley, has caused no social disruption in Manitoba by a gradual accretion of bilingual services in this province...[2]

As for the SFM, Lyon added his voice to those, like Peter Warren a few months earlier, who had already attacked its legitimacy and the appropriateness of its being a party in the negotiation of the constitutional amendment: Manitobans discovered, after a public meeting held by the SFM, that

> their future and the future of generations yet unborn was being negotiated by this government with a private society in Manitoba, the Franco-Manitoban Society, an honourable society but nonetheless a society, no greater or no lesser than the St. Andrew's Society, the St. David's Society or any other society representing any other group in Manitoba. The Polish Competence Society (sic)[3] would be an equivalent... They had no legal status to be negotiating any such agreement anymore than would the Interlake Committee of Ukrainian Canadians or would the Selkirk Legion or any other group in Manitoba, none whatsoever. The fact that they had voluntarily made themselves a party to the action of Bilodeau vs. the Attorney-

[1] Ibid., p. 4266.
[2] Ibid., p. 4287.
[3] This appears to be a reference to the Polish Combatants' Association.

> General of Manitoba was of interest but of no greater consequence at all.[1]

Regarding the translation burden that the Pawley government was trying to avoid, Lyon felt the government should negotiate only to reduce the burden without giving anything to Francophones in return; if, ultimately, the issue was placed before the Supreme Court and this resulted in much more translation, then so be it, irrespective of cost:

> (T)ranslation is an obligation that the Supreme Court laid on the province, and the negotiation has to be how much, how pragmatic, how reasonable. What are the statutes that Franco-Manitobans work with and want to have translated today. Do they want to have the Winnipeg Foundation statute translated into French when nobody is going to read it? No, of course not, that's what reasonable negotiation is based upon... The principle that's involved is more important and you don't give away the farm to avoid a million dollars worth of translation...[2]

Finally, Lyon warned civil servants, and singled out Turenne in particular, not to speak publicly on the issue unless they wanted to be identified with the government in power:

> Let me issue a friendly warning to the government and to any senior civil servant who want (sic) to speak on this matter. This is a highly volatile political matter, and I would humbly adjure any civil servants in the Government of Manitoba to keep their silence on matters that this government is making so partisan. This is not a fight in which innocent and long-term and respected civil servants should become involved.[3]
> (...)
> Mr. Turenne, and I have respect to (sic) Mr. Turenne, he can't tell you how many civil servants because the minute this amendment is passed it's in the hands of the courts.[4]

In the course of his speech, Lyon offered only two specific suggestions to the government as to how to proceed. The first, repeated several times, was his

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[1] Ibid., p. 4280.
[2] Ibid., p. 4288.
[3] Id.
[4] Ibid., p. 4291.

previous proposal for a legislative committee which would hold public hearings intersessionally. At two points, he expanded this proposal to include the federal parliament:

> (W)hat would be wrong with canvassing the idea that the Parliament of Canada and the Manitoba Legislature have a joint committee that would travel throughout Manitoba and have hearings with the people of Manitoba?[1]

He repeated this suggestion toward the end of his speech.[2] Failing this, and Lyon ended on this note, "(l)et them immediately call a provincial election on this problem".[3]

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During this period, Quebec anglophones were making their views known directly to Manitoba's political leaders. Towards the end of June, a delegation from Alliance Quebec, led by its president, Eric Maldoff, met with members of the Pawley government, the media, and with the Conservative caucus. On July 12, Maldoff wrote Lyon thanking him and his colleagues for having met with his group on June 24, adding

> During our meeting, you indicated unequivocally that it is the position and policy of your party to support French language services in Manitoba. This is to be commended. However, we reiterate that it is of great importance that the public understand and perceive your support for this principle. Based on recent press coverage, we fear that current opposition to the proposed constitutional amendment is being communicated and understood as opposition to the underlying principles rather than as an expression of concern about the form and some of the details of the proposal...
> (...)

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[1] Ibid., p. 4264.
[2] Ibid., p. 4293.
[3] Id.

> We cannot emphasize enough that Canada's future unity and strength relies on a concrete recognition of the dual heritage of this country. That duality must be reflected meaningfully in our Constitution... For us, constitutional entrenchment of the basic language rights of English-speaking and French-speaking Canadians is essential to their future protection.[1]

Stephen Scott of McGill University wrote to Pawley himself on July 14, indicating his "unqualified support" for his government's proposals. Scott added:

> The first point to be emphasized to your critics is the very real likelihood that the Supreme Court of Canada would indeed, if the *Bilodeau* appeal went forward to decision, hold that unilingually-enacted legislation is void. This your critics seem unwilling to believe...
> (...)
> Surely it is the Honourable Sterling Lyon himself, your chief critic, who has done more than any other single person to make this constitutional amendment inevitable. As Premier of Manitoba on December 13, 1979, when the Supreme Court rendered its decision in the Forest Case, he took no significant steps to bring the province into compliance with the Court's ruling that provincial legislation must be bilingually enacted, printed, and published. In fact, his government's Act assented to on July 9, 1980 [Bill 2]... sought to give authentic character to translations not enacted by the Legislature, -- and even prepared after the completion of the legislative process; whereas the Suprem Court had decided that statutes must be duly enacted in both languages. Mr. Lyon, in other words, so far from showing that the province would do its best to comply with its constitutional obligation, involved the province in a new breach. Mr. Lyon, then and through the remainder of his administration, proved what René Lévesque had shown earlier in Quebec, -- that is to say, that the constitutional guarantees as to language rights would be respected only under actual coercion by the courts or under the fear of that coercion.[2] (emphasis in text)

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[1] Turenne files.

[2] EC 0016, Box 8, Bilodeau - October-December, 1983. This letter was for public consumption; it was accompanied by a confidential covering letter in which Scott indicated he was writing "as a consequence of Mr. Roger Turenne's indication to me of the desirability of my public support".

Scott included a copy of a "hate letter" he had received earlier from a Winnipeg citizen, Dave Miller; this appears to be the first letter on record received during the French-language crisis which contains violent language. It reads in part:

> I wish you people in the East would mind your own business and quit telling us in Manitoba what we should do about the French. We don't need it and we don't want it and if we have to get rough we will do that too. We have had some no more french (sic) paintings on walls, but when I get mad there will not be any walls. The sooner Quebec seperates (sic) the better.
> Mr. Lyon is right we want the right to vote so we can get rid of french (sic) once and for all, we should also have that right clear across Canada. Because of gutless politicians we have been forced to suffer with this bilingual crap long enough. It comes down to two choices 1) Vote - 2) Another Irland (sic) with all the blood shed and death and all the innocent people getting caught in the middle.
> We don't care what Quebec wants or likes, if we had our way, we would build a wall on both sides of Quebec and flood the land.
> If this was the U.S.A. Trudeau would have been shot long ago. So if you want to do something positive try and get the Federal Government to let Canada vote and quick.[1]

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The MGEA lawyers' brief and press release set off a flurry of activity within the government. Penner immediately requested an opinion on the MGEA's three proposals from his Legislative Counsel, Rae Tallin, an opinion which he received on July 15, 1983. As to the MGEA's first point, the use of the words "central office", Tallin agreed that they were taken from S. 20 of the Charter and he did not believe they were used in any statutes relating to or creating provincial government structures. In his view, it was unlikely the broader interpretation feared by the MGEA would be favoured by the courts.

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[1] Id.

Tallin then discussed at length the meaning of the words "administrative body" when linked with quasi-judicial agencies. In his view, "most organizations which are declared to be agencies or agents of the government are also corporations which can be fairly easily identified as Crown corporations"; agencies such as the Textbook Bureau "might have sufficient identity to be considered as an agency of the government but are not likely to be considered to be bodies", since they were not headed by boards or commissions. However, some organizations administering certain programs on behalf of the government, such as the Credit Union Stabilization Fund, were headed by bodies appointed by the Lieutenant-Governor-in-Council "and therefore should be considered to be bodies of the government", even though they had no quasi-judicial functions. Tallin went on:

> I suppose the real difficulty arises in many boards and commissions which have some quasi judicial functions and some administrative functions. When acting in a quasi judicial function they would not normally be considered to be agencies of the government per se in that they were not acting as an agent of the government. However in respect of their administrative functions...they would not be considered quasi judicial. Insofar as some of these boards and commissions might establish separate areas of organization to deal with the separate functions, one area might be considered to be purely administrative and in that area the body would come within the general description of 'administrative body', even though the other area administered by other employees of the body might be considered 'quasi judicial'.

On the other hand, the courts might take a narrow view and restrict the phrase "agency of the government" to "those organizations which are specifically stated by statute to be agencies or agents of the government"; this would exclude organizations such as the Manitoba Law Reform Commission, the Minimum Wage Board, etc.

As to the third point, the matter of "significant demand", Tallin again admitted there was ambiguity; the language was also taken from S. 20 of the Charter, and "(j)ust what interpretation the courts would give to this phrase is uncertain". He added:

> I am sure however that the courts would not take the narrow meaning that it depended solely on the number of francophone residents using the particular office. The significance might not be in numbers but in the nature of the demand itself. For instance 20 demands for communication dealing with inconsequential information in a particular period of time may not be considered by the courts to be significant whereas 5 demands for communication within the same period dealing with infringement of important rights or with major complaints might very well be considered significant.[1]

Overall, the thrust of Tallin's memo, though not stated explicitly, was that there were indeed potential problems of interpretation with the constitutional amendment which could lead to the inclusion or exclusion of large areas of governmental or quasi-governmental activity.

The day after the MGEA press conference, Penner also instructed Ginny Devine to organize a meeting for the morning of July 18 with representatives of all public service unions to explain the government's French-language services program; Turenne and Paul Hart of the Civil Service Commission were also to be asked to attend. The meeting was held at 10.30 a.m. in the Cabinet room. Both Pawley and Penner were in attendance, as well as Doer for the MGEA. After explaining the government's proposals, Penner told the group the government was open to getting the best wording possible; however, he pointed out that there were two main constraints, the time factor and the fact that other parties were involved. Concerns expressed were essentially those of

[1] Tallin to Penner, July 15, 1983; in ATG, Box 19, FLS - Unions.

the MGEA; CUPE, for example, did not disagree with entrenchment but had concerns with wording used.[1]

On July 15, Penner had a telephone conversation on the same topic with Roger Tassé, Deputy Minister of Justice in Ottawa, who confirmed[2] that the purpose of the terminology used was "to cover every possible type of agency of the government of Manitoba other than a department". He added that the reason different words from the Charter were used was that Manitoba did not wish to use the language of subsection 20 (1) of the Charter ("institutions"), since it was felt this word was too vague and could be interpreted to include municipalities. As for the words "central office", it was up to the provincial government to interpret it.

At the same time, the government was getting preliminary reactions from the SFM regarding the MGEA's concerns.[3] In the SFM's view,

1. Central office is required due to regional services where it is mandatory that citizens attend at a given office to avail themselves of certain services, i.e. land titles registrations, court offices.
2. 'Quasi-judicial body' is already included under Section 23 by interpretation of Supreme Court of Canada. 'Administrative body' is required as it is a form of government which has greatly expanded and will continue to do so, affecting all citizens in their daily contact with government. ie. Hog Marketing Board, etc...
3. 'Significant demand' has not yet been judicially interpreted but will certainly be interpreted in the context of Manitoba in 1983 if the case arises...

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[1] From minutes taken by G. Devine, July 18, 1983; in ATG, Box 19, FLS - Unions.
[2] In a subsequent letter to Penner dated July 20, 1983; in ATG, Box 19, FLS - Unions.
[3] A document in Turenne's files with the hand-written notation "SFM comments re MGEA" dated July 13, 1983 indicates that SFM had already transmitted its comments to the government, probably through Turenne's office; in Turenne files.

In the meantime, Russell Doern was getting press attention nationally as well as locally. An article in the July 16, 1983 edition of the *Globe and Mail* headed "Doern and the NDP snub" described his rocky relations with his own party. "I'm not a bigot," Doern was quoted as saying. "I taught history; I think I'm a tolerant person." However, "(t)he central point is that the plan is too expensive and we don't need it." Various rural newspapers gave his views prominent coverage; on July 15, for example, the Opasquia *Times* published a list of his "official" reasons for opposing the constitutional amendment.

Doern was also at that time reaching out for potential allies. In a letter to the Mayors and Reeves of Manitoba dated July 13, 1983, he wrote that "This legislation is only the thin edge of the wedge", and included quotes from Joyal's SFM speech to bolster his argument, ending with a suggestion that municipalities hold a referendum on the issue.[1]

Though his views were in sympathy with those of most municipalities, he was finding less sympathy in the legislature; on July 13, Speaker Jim Walding ruled that Doern did not have a matter of privilege regarding "withdrawal and/or restriction of [his] privileges as a Member of the Legislature for Elmwood", as Doern had alleged in the House on July 11 and 12. This had followed a letter Doern had written to John Plohman, Minister of Government Services on June 28 requesting a number of services, including that of a private secretary.[2]

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[1] EC 0016, Box 4.

[2] Doern to Plohman, June 28, 1983; in EC 0016, Box 7. See also Doern's own account, in Doern, op. cit., p. 29.

On July 15, 1983, as the debate on the constitutional resolution continued, Gérard Lécuyer took the floor and gave a speech described by Blay in the following terms:

> Si son discours a paru naïf aux conservateurs qui ne cessèrent de le huer, il n'en avait pas moins les accents d'un francophone d'abord, d'un militant franco-manitobain bien sûr, mais aussi d'une façon de voir totalement différente des conservateurs, ou même de ses collègues anglophones. C'est lui qui saura placer le débat dans un contexte historique et qui donnera, en français, la version de la communauté au sujet de l'amendement constitutionnel. Ce faisant, il retrouvera des expressions, des phrases, des accents qui n'avaient pas vus (sic) le jour depuis 1890.[1]

Lécuyer began by stating how "(t)oute cette question me touche évidemment de très près et préoccupe les Franco-manitobains puisqu'ils sont les premiers à y (sic) être affectés"; he added, however, that

> Comment le Manitoba traite la minorité officielle de cette province aura une grande répercussion sur tous les autres groupes minoritaires. Comment cette province respecte les droits des Manitobains d'expression française en dira long pour le respect des minorités qu'ils (sic) soient Ukrainiens, Allemands, Chinois ou autres.[2]

Lécuyer then described how S. 133 of the 1867 BNA Act had protected the language and rights of the English minority in Quebec and how the Francophones led by Riel wanted the same protections in Manitoba in 1870. Lécuyer then asked:

> Pourquoi alors, Monsieur le président, a-t-on saboté les droits des Franco-manitobains? Pourquoi a-t-on eu recours à des lois néfastes et illégales en 1890 et en 1916? Pourquoi pas enfin, aujourd'hui redresser les torts et les injustices du passé car il n'est jamais trop tard pour faire justice.[3]

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[1] Blay, op. cit., p. 195.
[2] Debates, July 15, 1983, p. 4351.
[3] Ibid., p. 4352.

In his view, the constitutional proposals clearly did not "bilingualize" all sectors of the province:

> (C)e sont donc nécessairement des droits précis et restreints qui sont accordés dans cette résolution vis-à-vis l'utilisation du français. De plus, nous sommes contraints à assurer que ces droits restreints fassent partie d'un amendement à la Constitution canadienne afin que des gens comme le chef de l'opposition ne nous redonne (sic) pas à nouveau des coups comme ceux qu'on a dû subir en 1890 ou en 1916, afin que nos droits ne soient pas réduits à des privilèges qui nous obligent à vivre dans la crainte et les conflits.
> (...)
> Cette résolution va-t-elle trop loin et trop rapidement comme le prétendent ceux qui sont aveuglés et obsédés par leur ignorance et/ou leur bigoterie. A mon avis, cette résolution est un juste compromis qui répond à des attentes raisonnables pour une minorité qui a toujours marqué une patience et une tolérance remarquable (sic). Après tout, nous avions des garanties dans l'Acte du Manitoba, mais elles nous furent illégalement enlevées pendant 90 ans alors qu'elles furent assurées sans interruption aux anglophones du Québec. Il est impossible de recréer la situation qui prévalait au Manitoba lorsque ces lois néfastes furent passées et cette résolution ne se veut pas un retour en arrière mais plutôt un pas en avant démontrant une plus grande ouverture d'esprit et un plus grand sens de justice pour l'avenir.[1]

As Lécuyer then shifted into English, he responded emotionally both to the on-going heckling which greeted his speech and to Lyon's earlier taunts:

> Some of those guilty of scare tactics, guilty of trying to portray the proposed amendment as something that it isn't (sic) sit right here in this House, These are people who in the past, and even today, see me and those of other ethnic backgrounds as people less worthy than they, who are (sic) white Anglo-Saxon background. That is why we are sometimes told by members of this House that we are not worthy of sitting in this Chamber since - and I quote the words of the Leader of the Opposition - 'We don't have the right background.'
> Lately many racial slurs have been shouted at me from members across, some of them from the Member for Arthur.

[1] Id.

> Generally I ignore these remarks, as they are I hope, generally made in gest (sic). But at the moment I cannot help but wonder whether they are meant jovially as words of endearment or are they really perhaps meant as disparaging racial (sic) expressions.[1]

In Lecuyer's view, the opposition's position on the constitutional amendment was fuelling bigotry in the province, in addition to ignoring its history:

> The fact remains that so far on this resolution, the opposition has done its best to fire up the rednecks and the bigots who have tried to hide their racial (sic) feelings behind such red herrings and unfounded arguments as entrenchments (sic), costs, waste of money, etc. The obligations and the responsibilities we have as legislators to abide by the law, to exercise justice, to honour acts and treaties and to remain true and honest to history, should come first. Certainly we should not distort history; certainly we should make an effort to understand; and certainly we should make every effort not to be blinded by gross bigotry and flagrant injustice.[2]

Lécuyer referred to the growing support for the constitutional amendment on the part of ethnic groups, quoting a letter by Terry Prychitko stating that "If the rights of the Francophones in Manitoba are denied in Manitoba then the rights of any other multicultural (sic) groups in Canada could just as easily be denied." Lécuyer added that the resolution would have "important ramifications in favour of Canadian unity", and that Alliance Quebec had praised it as a step in the right direction.[3]

Lécuyer then tackled the cost argument, pointing out that, under the Manitoba Act,

> "the costs of translation should have been borne throughout these last 113 years... [Now] the highest court in the land, in 1979 has reaffirmed that this must be so. People who say today that it costs too much don't seem to realize that we don't have a choice in this matter, unless as a government we choose to break the law.

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[1] Ibid., p. 4353.
[2] Id.
[3] Id.

(...)
In fact this resolution...saves many millions of dollars because as per the agreement proposed only a fraction of the existing statutes will now have to be translated - and I remind you - all of them would have been required to be translated were it not for this agreement... Furthermore, Canada as a whole will subsidize the province in meeting its obligation as per the law. No supreme court decision could have provided us with financial assistance.[1]

How, Lécuyer asked, could people logically not object to costs associated with translation of statutes yet object to spending money on services where numbers warrant?

> Does it not make sense that if you accept the translation costs that (sic) you also accept the fact that in the area where it is most sensible and most practical - that of communication - the service will also be provided? (...) Of what value... are translations without the availability of services?[2]

Lécuyer returned to his main theme, the implications of the constitutional resolution for the French-speaking minority in Manitoba and for Canadian duality in general:

> Mr. Speaker, it cannot be true that for me to be a Canadian I must deny my heritage, renege on my culture and limit the use of my mother tongue to the home, to the courts, or the Legislature. For me to accept to speak only English, or to speak 'white,' or to speak 'Canadian' - as some ignorant people will sometimes tell me - would mean that I also have to accept that this country is forever divided. It would also mean that there is no place for me in this province and in this House.[3]

Lécuyer then directly addressed some of Lyon's arguments. He pointed out that Manitoba had chosen not to adhere to the text of the Charter; the fact that the word "institutions" was not used in the constitutional resolution was significant:

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[1] Ibid., p. 4354.
[2] Id.
[3] Id.

> That is why the word 'institution' for instance is not in this amendment. That is why this amendment doesn't apply to school boards and municipalities. That the Leader of the Opposition should also have stated.
> Instead we chose to amend The Manitoba Act, and it is clearly spelled out who has to provide services. The municipalities and the school boards are not included, and the courts are given a very restrictive role as compared to the role they are given in the Charter of Rights in Canada where the courts are allowed to make interpretations which is not the case in the amendment we are proposing.[1]

Finally, Lécuyer tackled what was becoming a major issue in the debate, the definition of the meaning of "official languages":

> Now what makes a language the official language of a country, of a province, of a state? (...) It means that these are the languages of the government. By the fact that we have this amendment as part of The Manitoba Act which says that the statutes, the laws and the records of this Legislature have to be in both languages automatically makes those two languages both official languages of this province.
> All right, if you say that French has not historically been a language of this Legislature or of this province, what has been the official language of this province? None? English? Well English is also one of the languages stated in that statement which says, French and English are the official languages of Manitoba. But by stating that, we are not in any way stating that this province is bilingual. That is the difference, and that you should understand.[2]

In concluding, Lécuyer told the House that Franco-Manitobans had not been unreasonable: "ils veulent uniquement ce qui est important pour pouvoir vivre en français, à part égale". He pointed out that they could have pushed their demands to the limit:

> S'ils avaient voulu pousser cette question à la limite, ils auraient pu se buter à exiger que toutes les lois et les statuts adoptés antérieurement soient traduits. Ils auraient pu exiger que toutes les institutions gouvernementales leur fournissent des services complets dans les deux langues comme c'est le cas

[1] Ibid., p. 4355.
[2] Id.

au Québec, ou au Nouveau-Brunswick. Au lieu, la collectivité francophone du Manitoba a négocié de bonne foi et a négocié un compromis raisonnable.[1]

[1] Id.

Chapter IX

Stakeout at the Legislature[1]

By mid-July, Attorney-General Roland Penner knew his proposal for amending the constitution was in trouble; indeed, Penner was already contemplating changes to the agreement that had been negotiated over the previous year with the SFM and the federal government. The immediate cause of this reassessment was the position on the issue taken by the Manitoba Government Employees Association, the largest public service union in the province.

The MGEA position was made public on July 12, 1983. On July 16, reporting on a statement made the previous day by Penner, the *Winnipeg Free Press* published an article entitled "Penner may soften stand on language pact changes"; in an interview with reporter Mary Ann Fitzgerald Penner admitted "I was too categorical in my original stand" of refusing to renegotiate any part of the original agreement; however, Fittzgerald wrote that Penner "won't back away from the basic principles". The *Winnipeg Sun* reported on July 17 that the "Bilingualism pact [was] hard to change"; implicit, however, was the message that the agreement could indeed be changed.

The SFM's reaction, in the form of a statement by Léo Robert, was captured succinctly by the heading given to the report of the *Winnipeg Free Press* on it on July 18: "Group won't accept major changes to pact".[2] However, Robert added that the SFM was willing to discuss "minor changes" with Penner, and pointed out that both Ottawa and Bilodeau would have to agree

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[1] Title with apologies to Robert Mason Lee, who wrote an article with a similar title published in the Ottawa *Citizen* on June 5, 1990.

[2] *Winnipeg Free Press*, July 18, 1983.

with any changes. The following day, Robert met with Penner in person, no doubt to verify whether Penner was indeed weakening in his resolve.[1]

However, Penner was not the only member of the government caucus to be shaken by the MGEA position. Part of Cabinet's July 20 meeting was taken up with discussion of the French-language issue, and "[i]t was agreed that an amended resolution would be proceeded with as soon as possible".[2]

In the Legislature, debate on the resolution continued and began settling into a pattern, with various speakers reiterating points already made by their respective leaders, sometimes with embellishments and shifts of emphasis; occasionally new points were made. As the debate progressed, it increasingly took on the characteristics of a filibuster; it is not surprising, therefore, that it was generally dominated by the Conservative Opposition.

On July 18, Eugene Kostyra rose to defend his government's proposals "from a cultural and historical context".[3] In his view, the issue went beyond French-language rights and touched the very nature of the province:

> While those on both sides of the constitutional debate will argue whether the courts would ever cause legal chaos by rendering our statutes invalid, we forget that the issue is not just one of whether they could or whether they would, the issue is whether the country's minorities, those here at that time, as well as those who have arrived later, can be guaranteed the right to retain and to be educated in the language, the culture and the religion of one's heritage.
> (...)
> Canada is both a bilingual and a multicultural country and our vision of ourselves cannot have validity without taking this fact into account. We cannot form a society worth living in if we do not recognize fully the contribution that each of its members make to it. Our vision of our society will be flawed if we do not dedicate ourselves to enabling all of our residents, no matter

[1] G/S, Box 6, SFM Minutes, Aug. 16, 1983.
[2] Excerpt of Cabinet minute in Decter memo to Penner, July 21, 1983.
[3] Debates, July 18, 1983, p. 4373.

> what their linguistic and cultural heritage might be, to participate fully in the formation and development of our future.[1]

Kostyra pointed out that many representatives of ethnic communities, and all who appeared at the public information meeting held in Winnipeg, "believed that the province's bilingual character must be accepted as a premise to understanding the province and the country's multicultural nature"; he added: "I also share this belief about the nature of this province and this country," concluding with the following words:

> I concur with those in the ethnocultural community (sic) who believe that without the entrenching of Francophone rights and services in Manitoba's Constitution, no ethnic minority can be assured that governments and, in fact, the entire population will have the tolerance necessary to ensure that all of us continue to have available to use the very essence of the makeup of this province, that being its ethnocultural diversity.[2]

Kostyra was followed by Conservative MLA Harry Enns. Speaking from the perspective of "for want of a better phrase - third ethnic groups", Enns said

> I've never assumed nor have any of the people that I'm associated with, that I need entrenchment of my minority rights in any Constitution or that I need entrenchment on the part of some other minority group.
> (...)
> The suggestion that people of Ukrainian background, people of Jewish background, people of German background or Italian background or Portuguese background can't continue to further the culture of the community that they are part of in some cases by distant ancestry, that that somehow is jeopardized because a minority group has not got some specific rights entrenched in the Constitution, it just simply escapes me.[3]

Enns repeated the notion that French-language rights had indeed been trampled upon for some 90 years, but "it was my privilege to be part of a

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[1] Ibid., p. 4374.
[2] Ibid., p. 4375.
[3] Ibid., p. 4376.

government that had to respond and had to react appropriately too, when that was restored by virtue of a Supreme Court case in 1979".[1] Enns was

> not prepared to argue with... members opposite, that what the present agreement and resolution now proposes should not be considered by this Legislature, or by the people of Manitoba...
> (...)
> The position that we are being asked to consider under this resolution is one that may well be considered by this House and may well, in the greater context of nation-building, be appropriate if properly understood and if appropriate time is taken to allow the kind of study and the kind of scrutiny that this very important resolution requires.[2]

In order to do this, what better mechanism than an "intersessional committee"[3]? Finally, in Enns's view,

> "the heat on this issue is of their making because most of it is caused, not by the subject matter itself... but in the manner and way in which they're handling it; the idea of arriving at an agreement with a private citizen, Mr. Bilodeau, in this case, that will affect (sic) a fundamental constitutional change... the very way that they're approaching this problem is what is creating the biggest part of the problem.[4]

The following day, debate on the French-language issue began with a question to the Premier from Conservative MLA Doug Gourlay, who accused Pawley of having misquoted S. 23 of the Manitoba Act in a letter to the Town of Swan River, replacing the word "those" with the word "official" before the word "languages" in the last line of the Section; the issue was important because "the word 'official' has a very important connotation to the whole concept of this resolution that's been brought into the House".[5] Pawley admitted there had been a typographical error, and added that Lyon himself, as

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[1] Id.
[2] Ibid., pp. 4376-77.
[3] Id.
[4] Ibid., p. 4377.
[5] Ibid., p. 4395.

Premier, had also used the word "official languages" in reference to the use of English and French in Manitoba.

As debate continued, Larry Desjardins quoted from the Lyon government's document instituting the French-Language Services Secretariat which would assist in implementing "policies designed to provide at least some of their services to Manitobans in both official languages". "Who said that?", asked a member; Desjardins replied, "this is signed by Mr. Sterling Lyon on September 14th...", and was then drowned out in a roar from the opposition benches.

Pawley returned to the point made by Gourlay; he admitted there had been a typographical error in his letter and assumed full responsibility for it; he added "certainly there was no intent at any time to mislead and that is an imputation of motive on my part that I intended to mislead Manitobans in respect to the letter", and asked that imputation be withdrawn by Gourlay. The Speaker ruled that Gourlay should indeed withdraw the imputation. Gourlay replied, "Mr. Speaker, if I had indicated the word 'deliberate', I would withdraw that. But I still put on the record that the letter has misled a lot of people of Manitoba by being inaccurate." He asked that Pawley issue letters of apology or corrections to the people to whom he had addressed the letter; Pawley said he would take that under consideration, but that he would certainly also "ensure that there is a distribution of the letter dated September 4th, 1981" signed by Lyon.[1] Gourlay repeated that Lyon "was not quoting Section 23 of The Manitoba Act in his letter". Pawley then quoted the entire passage. Gourlay asked Pawley to table the document; Pawley replied that it, along with other documents, had

[1] See Chap. II.

been tabled earlier and that Gourlay had obviously "not been reading the documents as tabled in this Chamber during this debate".

Conservative MLA Brian Ransom then jumped into the fray, asking of Pawley:

> Was the information, which the First Minister is now quoting in an attempt to mislead the public further, was that material distributed to the public and did it purport to accurately quote Section 23 of The Manitoba Act?

Pawley said Ransom "suggested that I am attempting to mislead the public of the Province of Manitoba. I ask that those statements be withdrawn." Ransom repeated that Pawley's letter to Swan River and his subsequent introduction of "other material" in the debate was, in his view, "misleading". Penner then called Ransom's comments "clearly unparliamentary", and "must be withdrawn". The Speaker agreed, and "I now tell him that he should withdraw those remarks"; finally, in the face of Ransom's refusal, the Speaker named Ransom "for defying the authority of the chair"; Penner moved that Ransom be suspended to 3.30 p.m. that afternoon; the motion was adopted by a vote of 26 to 20.[1]

Later that day, Lyon rose on a point of order, having read the English translation of Lécuyer's July 15 comments and his reference to the Leader of the Opposition in the context of the setbacks suffered by the French-speaking community in 1890; he tabled his comments of April 7, 1980 in which he announced his government's initial reaction to the *Forest* judgment. Lyon added, in regards to Lécuyer: "He's an embarrassment to this House and to this province. When I finish with him he may not want to stay around... let the Honourable Member for Radisson, if [he] has the guts, sit here and take his cowardly medicine instead of trying to skivver out from under the words that

[1] Ibid., pp. 4395-98.

he uttered in Hansard the other day..."[1] Secondly, Lyon objected to Lécuyer's statement that Manitoba Francophones "could have stubbornly insisted that all the laws and statutes previously adopted be translated"; that, Lyon said, was a "complete misstatement of fact",[2] adding, "I don't need any half-baked Member for Radisson telling me, or imputing motives to me, about what our government did with respect to French language services in this province". Lyon then asked Lécuyer to withdraw these two "false statements". Penner replied that "it is clearly not a point of order, it is an abuse of the privileges of this House..." Mercier entered the debate, stating Lécuyer was clearly imputing motives to Lyon and asked for a withdrawal or an apology. Lécuyer elaborated on his July 15 comments, adding

> "I did not imply anything to the Leader of the Opposition. I merely reiterated the fact that these things happened in 1890; they happened in 1916, and we're asking that they be entrenched so that not you, nor anybody else, can do those things again".[3]

Lécuyer refused to withdraw the comments. NDP MLA Don Scott then jumped in, and, referring to Orchard, said:

> When he is talking about attitudes of persons, and if the Leader of the opposition wishes to link himself with those previous attitudes, he is doing a very good job of it. When he refers to the Member for Radisson as a zealot fool; when he refers to the Member for Radisson as Kermit the frog; when he tells him to go back and get on his lilypad...

At that point, he was interrupted by a chorus of "oh's" from the opposition benches. Conservative MLA Don Orchard rose to say that "no such name calling was done in this House. No member in this House referred to any

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[1] Ibid., p. 4405.
[2] Id.
[3] Ibid., p. 4406.

member of this House as Kermit the frog and I wish he would withdraw that remark". Scott persisted:

> Mr. Speaker, I cannot withdraw a comment that the Member for Pembina repeats sometimes 15 times in 10 minutes. He does it constantly from his Chair and if Hansard hasn't picked it up, it is not for me to refute the words from the member for Pembina. He does it constantly incessantly, Mr. Speaker, and it shows you the racious (sic) tone and the bigotry that belies (sic) upon that man.[1]

Orchard again requested that Scott withdraw his remarks or apologize to him; again Scott said, "I will not withdraw a comment that that member has put forward in this House numerous times, Mr. Speaker, countless times. If he wishes to withdraw remarks, he is the one that should stand and apologize to the Member for Radisson..."[2] The Deputy Speaker then pointed out that "The Rules of this House refer specifically to the language used in debate. If these words are not on the record they are not used in debate." Scott persisted:

> Mr. Speaker, I am sad to say that I cannot withdraw remarks that I have heard no less than a hundred times from the Member for Pembina. If the House so desires to discipline me then I will certainly accept the ruling of this House; but I shall not, Mr. Speaker, withdraw comments, be they on the record or off the record, that that member has made incessantly. It is time, Mr. Speaker, that the members of this House be accounted, not only for when they're on their feet, but also for the slurs and the attacks that they throw from their chairs.[3]

Orchard again denied having referred to a member of Scott's caucus as Kermit the frog, "whoever that member may be", and again asked that Scott withdraw his comments. In the end, Scott did, but suggested to the Deputy Speaker that "we instruct Hansard... to pick up more of the comments that come across this floor. For Hansard not to have heard his screaming time and time again across

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[1] Ibid., p. 4407.
[2] Id.
[3] Id.

this House - I'm referring to the Member for..." Again Scott was drowned out by the opposition. Orchard called Scott's withdrawal merely a "provisional" withdrawal and this was not acceptable to him; the Deputy Speaker, however, ruled that Scott had "withdrawn his remark sufficiently for the purposes of this House".[1] The Speaker's definitive ruling on Lyon's point of order regarding Lécuyer came on July 25, when he concluded that "no point of order exists for the Chair to decide".

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Following the rancorous July 19 debate in the House, Turenne wrote a memo to Pawley and Penner on the "Definition of an 'official' language",[2] saying in part:

> From yesterday's Question Period, I gather that the Opposition is attempting to ascribe some sinister motive to the term 'official language'...
> What is an official language? It is one which has an officially recognized status in law or in a constitutional document. Thus, even if the typographical error in the letter to the municipalities had been deliberate, it would not have been misleading. Section 23 plainly gives official recognition to the English and French languages, and had it been drafted with the word 'official' instead of 'those', this would not have changed its meaning by one iota. The commonsense recognition of this fact contained in Sterling Lyon's letter of September 4th, 1981, and repeated in Section 23.1 of the amendment, does not change the legal status of the Province in any way.
> That a language may be considered 'official' says nothing about the extent of its use, or character of the obligations which flow therefrom. These are spelled out elsewhere in the constitutional document.

Turenne then went on to give two specific examples from Europe:

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[1] Ibid., p. 4408.
[2] July 20, 1983; in ATG, Box 18, FLS - Language.

> I can think of many cases where languages are declared equally 'official' but where the rights which flow therefrom are quite different. For example, in Switzerland, Romansh is spoken by fewer than 1% of the population, and is not used in the Civil Service. Some Romansh language services are offered in only one restricted area of the country. Nonetheless, the Swiss Constitution recognizes Romansh as one of the country's four official languages.
> In Finland, Finnish and Swedish are the two official languages. 94% of Finns speak Finnish, and only 6% speak Swedish. Finnish is the working language of the Civil Service. However, Swedish language education and the provision of government services in the Swedish language in designated areas are guaranteed by the Constitution. Constitutional entrenchment of these rights ended years of language debates because each group now feels secure in its cultural identity, does not feel threatened by the other, and the country can go on to other things. Which is why no one ever hears about Finnish bilingualism.
> These two examples are not ancient history. Both are more recent than the Manitoba Act. The Swiss constitutional amendment dates from 1937, and the Finnish one from 1921. These two cases may be a bit too exotic for use in the current legislative debate, in spite of the almost exact parallel with the situation in Manitoba. But then again you never know.

The following day, Penner wrote to Kostyra, possibly because of questions Kostyra may have asked him after his own participation in the House debate, giving him background regarding the constitutional negotiations and the language ultimately agreed upon in the amendment. Penner wrote that "Legally speaking, French and English have been the official languages of Manitoba since 1870, and were acknowledged as such in his [Lyon's] statements on the issue in 1981." The words "official languages" used in the proposed amendment were only declaratory of the existing situation in Manitoba. In terms of the negotiations with the SFM, "We strenuously and successfully resisted this attempt" to adhere to the Charter, for two reasons: 1), the remedies section of the Charter was "far too wide and gives a Court a far greater power than we provide in S. 23.8 of our proposed amendment", and 2), the word "institution" in the Charter "might well be interpreted to include

municipalities and school boards". Penner added that "(t)he other terms used by us were the result of the advice of legal counsel and officials and, of course, some hard bargaining". Reflecting Cabinet's decision the previous day to consider drafting changes to the resolution and his meeting three days earlier with the unions, Penner suggested that he and Kostyra meet:

> I would like to meet with you this week to discuss our strategy and tactics to deal with what wording changes we might propose which might be acceptable both to the public sector unions and to the parties to the legal cases.[1]

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On Friday, July 22, 1983, Penner rose in the House to move that the Constitutional Amendment regarding Section 23 be referred to the Standing Committee on Privileges and Elections "to hold such public meetings, at such times and places as it may deem advisable, to receive briefs and hear representations" and that "the Committee report to the Assembly at this Session of the Legislature".[2]

Penner emphasized that the government wanted full public participation in the debate:

> The process here envisages that the public will come and, of course, can make representations on the resolution as a whole or any aspect of it, and when the public representations have been heard the committee will report back and the House, which indeed can continue to debate the matter as it wishes, will come to a conclusion of that debate and there may well be amendments.[3]

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[1] Penner to Kostyra, July 21, 1983, in ATG, Box 19, FLS - Unions.
[2] Debates, July 22, 1983, p. 4489.
[3] Id.

Penner added that "certainly we're prepared in scheduling to make sure that those who are on the list will have the time to come and it will not be at inconvenient hours".[1]

Penner appealed to the opposition to keep the debate at a "high level" and, perhaps having in mind earlier times in the history of Manitoba when language issues were decided unanimously in the Legislature, suggested that "this is one of the areas where there should be maximum cooperation between the government and the opposition".[2] Penner addressed the opposition's position that the committee's work proceed intersessionally: the context was the resolution of a court case; Bilodeau or his lawyer would have to agree to any postponement before the Supreme Court; the matter would, if it went to a committee sitting intersessionally, die on the Order Paper and be reintroduced in a new Session. Finally, Penner appealed to the opposition to "not so delay the referral to a committee that, in fact... those who would like to be involved in the debate, are denied their democratic opportunity to come before the committee".[3]

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On July 21, Pawley met with the executive of the Union of Manitoba Municipalities in Lac du Bonnet to discuss his government's language proposals; he subsequently received a letter from Secretary-Manager Rusk thanking him for having attended.[4] The next day, July 22, the UMM issued a press release against the government's proposals, calling them "one of the most dangerous steps any government has contemplated under existing conditions";

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[1] Id.
[2] Id.
[3] Ibid., pp. 4490-91.
[4] Rusk to Pawley, July 23, 1983, in EC 0016, Box 8.

it could "leave a never healing scar on the citizens of Manitoba, regardless of their ethnic background and nationality". On July 27, the UMM presented a four-page text outlining its position to the Premier, essentially requesting a guarantee that school divisions and municipalities would be excluded from the scope of the constitutional amendment.[1]

On Monday, July 25, Lyon raised the matter in question period, and, linking it with the MGEA's previous comments, again asked Pawley whether the government would consider referring the entire issue to a committee that would sit intersessionally. Pawley called the question "repetitive" and said a motion had already been tabled dealing with that very matter. Lyon then asked whether the government would be "supportive" of municipalities who would "wish to place as an item of referendum before their electors this fall the question as to whether or not Section 23 of The Manitoba Act should be amended in the manner in which this government is proposing". Pawley replied that this matter was at the discretion of municipal councils. Lyon repeated his first question twice before the Speaker commented that "The honourable member's line of questioning is becoming somewhat repetitious."[2]

Anstett rose later to clarify comments made in the UMM's press release. Specifically, he quoted a statement in the release to the effect that "agricultural representatives hired now will have to be bilingual...", and asked Agriculture Minister Uruski whether that was in fact the case. Uruski replied that there had been no change in departmental policy, and that "(w)hen vacancies will occur, those positions which have been designated...bilingual...will be filled on that basis."[3]

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[1] EC 0016, Box 7.
[2] Debates, July 25, 1983, pp. 4494-95.
[3] Ibid., p. 4499.

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In the afternoon of July 25, debate on the Attorney-General's resolution to refer the constitutional amendment to a legislative committee sitting during the current session. Bud Sherman spoke first for the opposition, ending his remarks by proposing an amendment to Penner's resolution to the effect that the committee "sit during recess after prorogation and report to the next Session of the Legislature".[1]

Sherman developed two arguments in favour of his amendment, both already stated repeatedly by his leader: the need to allow time for debate on the resolution to proceed in an "unrushed" way, and the need, in particular, to reject the entrenchment of French-language services. According to Sherman, the government had injected "an element of discoloration and discord into what is a very historic and crucially important chapter in Manitoba's history". Noting that there was "genuine and sincerely held and profondly held disagreement" over the government's course of action, it was necessary to take a "sober second look at the urgent time limitations placed upon this Legislature where this resolution is concerned". He asked for a "reasonable amount of time that would permit digestion of the issue by Manitobans generally"; that period would be "the time between now and the time that this Manitoba Legislautre is next called into Session, presumably the spring of 1984". It was a matter "merely of months"; yet this period was "crucial for proper comprehension on the part of Manitobans generally, of what is embodied in the government's proposal". Sherman did not know "what the precise motivation is for the haste in bringing this issue to a conclusion", but since "Manitoba's society is split on the

[1] Ibid., p. 4508.

issue, and it's split passionately and sincerely," the best course of action was to hold committee hearings intersessionally.[1]

Sherman then moved on to his second major point, the problem of entrenchment:

> We are not concerned with extension of language services. We are not worried about our capability and capacity as well meaning members, all of us, of a mosaic of one million Manitobans of a variety of cultural backgrounds to achieve a reasonable, fair and equitable extension of services in the French language alongside the English language in this province, but what we are concerned about is the move, implicit in the government's action to entrench those services in an official way and take administration and consideration and ajudication (sic) of them out of the hands of the elected representatives of the people, out of the hands of the members of this Legislature and place them for all time beyond the reach of the people, place them for all time in the courts.[2]

Sherman referred to the UMM's July 22 press statement, saying that many groups had "spoken up vigorously in opposition" to the government, but "none of them... more emphatically or effectively than the Union of Manitoba Municipalities"; it was therefore important "that some references from it [the statement] be read into the record at this time, because what the Union of Manitoba Municipalities has had to say in this particular statement is of very profound importance in the debate on which we are engaged".[3] Sherman then read into the record the following excerpt from the statement:

> A very significant majority of the members of the Union of Manitoba Municipalities and also a very large percentage of the citizens of this province oppose the amendments to Section 23 of The Manitoba Act as presented by the Government of Manitoba. It is not that we oppose French language services when it (sic) is needed or requested, but we feel that the application of such a service should be entirely up to the

[1] Ibid., pp. 4504-06.
[2] Ibid., p. 4506.
[3] Id.

> Provincial Government to administer and should not be entrenched in the Constitution and left to the decisions of the courts of law in Canada to enforce.[1]

It was important for the government to listen to this message, since here, at the municipal level, "is where the very roots of a government, the very roots of administration, exist and are felt and are affected by the people in society who work at the grassroots levels". Sherman continued reading the UMM's objections into the record:

> The statement... goes on... to argue that the proposal of the government is arguable and challengeable constitutionnaly and legally and also financially, that the program is too costly in the words of the union, is not practical as a dual language program, is cumbersome and unworkable and, 'most importantly, it is not needed in Manitoba. The most important reason for not implementing such a program is that it is going to and already has created hurt feelings, and our legislators should have realized this. Not a single community in our province is made up entirely of one ethnic group, but most communities have representations of three or four ethnic groups. It has also created the same hurt feelings within the ethnic groups even on the family level. So, instead of uniting, it is dividing the entire fabric of the community spirit that already existed in our province'.[2]

Sherman said his main point in reading these excerpts into the record were that they deserved "media and public attention" and that they reinforced "the position that my leader has attempted to make" in requesting intersessional committee meetings; the committee could even be a joint one, involving Manitoba's federal representatives as well. The ultimate goal was "a responsible report, and heaven knows... we want nothing other than a responsible report..."[3]

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[1] Ibid., pp. 4506-07.
[2] Ibid., p. 4507.
[3] Ibid., p. 4508.

Doern rose to speak on Sherman's amendment; since there was no doubt that "if we are going to proceed with a constitutional amendment...there should be a provincial consensus". The nature of that consensus was evident from the response to his survey:

> (M)y impression is very clear that it [the community at large] is overwhelmingly opposed to the proposal put forward by the administration...
> My survey came in at 93.3 percent, and I am willing to bet that in a referendum across Manitoba, the numbers will be very very similar. They will certainly be at least 70 percent, and they might hit 80 or 90 percent. My own thinking is 90 percent or better, but we'll see. We'll see, first of all, in the referendums that will be held throughout the province in October. We'll see at the next provincial election and we'll see at the next federal election...[1]

In case the government benches had missed the point, Doern made it more explicit:

> (I)n a couple of years we will get a report from the people of Manitoba about the Provincial Government's actions on this matter. Mr. Speaker, I can only believe that will be a disaster for anyone on this side of the Chamber who supports that policy as it presently exists.[2]

Doern went on:

> Mr. Speaker, I want to be quick to add that people who opposed this resolution are not opposing it because they don't like French-Canadians or they don't like the French language, which is the easy cheap shot and the scare tactic that comes sometimes from the supporters of the resolution. People who don't want this resolution are concerned about introducing bilingualism on an official basis into the province and into the Civil Service, and we don't need that kind of nonsense in our province. We don't need a policy that'll strain the kind of harmony that exists in...the province.[3]

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[1] Ibid., p. 4508.
[2] Id.
[3] Id.

Doern's advice to the Pawley government, given the level of opposition to the proposals, "is as follows: Hold a referendum and that way you could get off the hook. You could take the results of the referendum and act according to those results. Follow the wishes of the people; listen."[1] Since many municipalities were going to put the matter of nuclear weapons to a referendum, "this ballot could also have on it a question on bilingualism".[2]

Doern made a few other points. Why was the SFM a partner to the negotiations? "(B)ecause the Federal Government made it a condition of negotiation that the government had to negotiate with the Franco-Manitoban Society."[3] Regarding the public information meetings, Doern quoted Andrew Coyne's report on the Dauphin meeting, saying, "Let me tell you, if you studied that sentence carefully, it is dynamite. That's dynamite. Suppressed anger, crackling voices, speaker after speaker denouncing the amendment, and the crowd cheering and applauding that particular approach."[4] As for the Winnipeg meeting,

> "That meeting, Mr. Speaker, was stacked and packed. Now, I don't deny that there may have been stacking on (sic) packing on both sides. It's probably true. It's probably true that there were a lot of Conservatives out there hoping to put the boots to the government, that's probably true... There were certainly a lot of New Democrats, Mr. Speaker...[5]

Doern then read into the record headlines from various newspapers:

> 'Rural councils bash bilingualism' You'd better believe it; they're not going to have this stuff... 'Municipalities firmly reject language deal'... 'Municipalities back on the warpath'... 'Civil servants want changes in French bill'.[6]

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[1] Ibid., p. 4509.
[2] Id.
[3] Ibid., p. 4510.
[4] Ibid., p. 4511.
[5] Id.
[6] Ibid., p. 4512.

He concluded, "This is not a bill; it's an amendment to the constitution, and if you are going to do that, you surely need an input from people all across the province."

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Outside the Legislature, Doern was still very much in the news. On July 22, the *Winnipeg Sun* published an article entitled "The Sins of Russ Doern", in which it listed a number of statements made by Doern on the language issue and comparing them with the facts. The article reported the "Kermit" comments and attributed them to Doern. The *Winnipeg Free Press* reported that Doern was spending $3,500. of his own money on an advertising campaign against the government's proposals.[1] The first ad appeared the following day: headed "Against Bilingualism", it covered a quarter of a page and included a mail-in ballot which read: "I am opposed to the extension of French-language services in Manitoba as outlined in the agreement between the federal and provincial governments, and the Franco-Manitoban Society." It also included a box to be checked which read: "Dollar enclosed". The ad read in part:

> Several provisions in the agreement are reasonable - such as the translation of some provincial statutes and the use of the French language in our courts and Legislature - however, one section will make *Manitoba officially bilingual, while another will introduce a considerable degree of bilingualism into the civil service.*
> As many as 400 to 4,000 positions could be designated as bilingual.
> (...)
> Should bilingualism become a fait accompli in both the federal and provincial governments, it will only be a matter of time before Manitoba's municipal governments are pressured into providing the same services.

[1] *Winnipeg Free Press*, July 22, 1983.

> Serge Joyal, Secretary of State for Canada has forcefully stated: *"Everyone always thinks of the province in terms of the provincial government but there is another level of government which is extremely important - the municipal government...This level of government is very important, because if we wish to develop a French life style, all the elected agencies representing us must reflect the concerns that we have as a linguistic community."*
> (...)
> Most Manitobans think that there is no need for the bilingualization of the Manitoba civil service - a costly and wasteful expenditure which we cannot afford - especially in view of the fact that there is a large, diverse ethnic population in the province.

The ad ended with the words, "You can send a message to the Pawley Administration by sending a ballot and a buck as soon as possible."[1] A similar ad appeared in the July 31 edition of the *Winnipeg Sun.*

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On July 26, Penner rose in the House to make a statement about a new government initiative to inform the population about the government's language proposals:

> Members will have before them a leaflet entitled 'The Facts About French Language Services'. I wish to inform the House that this is a household mailer being distributed to every home and business in the Province of Manitoba.[2]

Penner added that the mailer would cost 2.8 cents per Manitoba resident, "a method which is far less costly than television advertising". Sherman, on behalf of the opposition, said "it would not be our intention to take a critical position on the subject at this point in time", but added this initiative did not substitute for the need for intersessional public hearings.[3] Later, Doern asked, if

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[1] *Winnipeg Free Press*, July 23, 1983; emphasis in text.
[2] Debates, July 26, 1983, p. 4520.
[3] Ibid., p. 4521.

the cost of the mailer was 2.8 cents per Manitoba, "Does that mean that you multiply that figure times a million and get $280,000... is this $280,000. for printing costs, or is it a quarter of that? What is the amount?" Penner replied, "Even in this House, Mr. Speaker, 2.8 times one million is $28,000. The total cost is $28,000." After thanking Penner for that correction, Doern asked him "what his total budget is for printing and other costs to promote the government's bilingual policy"; Penner took the question as notice.[1]

Later in question period, Lyon quoted a statement from the leaflet to the effect that "Putting this agreement into the Constitution guarantees exactly what services are legal rights, and therefore is not the beginning of 'creeping bilingualism';" he asked how this squared with Twaddle's April 14, 1982 opinion that

> 'The difficulty with the suggested extension of constitutional rights is that the extent to which bilingual services must be made available is unknown. At present the government can itself decide, and alter, the provision of such services on grounds of cost, or lack of demand, as perceived by the government. If the obligation is constitutionally entrenched the courts will determine what 'significant demand' is and when 'it is reasonable due to the nature of the office'. If the obligation is contrued more widely than the government thought would be the case the government is nonetheless bound by the interpretation of the courts.'[2]

In his reply, Penner began by quoting again section 23.7 of the proposed amendment, and continued:

> (T)he point of the question and the specific answer is this -that by the opening words of 23.8(1) [the remedies clause] - and again this should not be lost sight of - anyone whose rights under Section 23.7 have been infringed - so only in case of an alleged infringement of those defined items relating to defined offices do the courts even have a window on the process, and then the

[1] Ibid., p. 4523.
[2] Ibid., pp. 4524-25.

> court can only say with respect to a government plan whether or not the government plan is adequate. That's all it can do, and in doing so it must do so in relationship to the defined offices so that the definition of the offices, as carefully and tightly as it is there - and it can be tighter - we're looking at tightening the definition of those offices - that is what makes it not creeping bilingualism because it can't get out of those doors. It can't get over those defined offices.[1]

Since, in his view, Penner "didn't answer the question", Lyon repeated it, adding that Penner had left out (in the leaflet) the first section of the amendment which read "English and French are the official languages of Manitoba". Penner replied, with respect to the last point, that

> (T)he purely declaratory statement at the beginning of the proposed amendment is not a matter that in any way affects the specific rights that are defined in S. 23.7, because the opening words of 23.8, which I emphasized, specifically confine the power of the courts to the named offices in 23.7.
> Secondly, with respect to the legal opinion... that legal opinion was given on the 14th of April, 1982, before these words were even written... These particular words did not come into existence until May of 1983, so there is no legal opinion of Mr. Twaddle on the significance of these words in the way in which it is suggested by the Leader of the Opposition.[2]

Lyon then quoted another excerpt from the leaflet, to the effect that

> '[The] 1983 Manitoba agreement for constitutional amendment is proposed to settle once and for all in a fair and practical way the status of the English and French languages. By doing so, we avoid further court cases.'

then asked,

> How does that statement square with the opinion of Mr. Twaddle, which says as follows on Page 6, 'Amendment before a Supreme Court ruling could presumably be made pursuant to Section 43 of The Constitution Act, 1981, although it would be open to someone to challenge the validity of such an amendment on the ground that the Legislative Assembly of Manitoba was not properly constituted? This would reintroduce the issue presently before the Supreme Court in Bilodeau

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[1] Ibid., p. 4525.
[2] Id.

> versus A.G., Manitoba. If however the amendments had the approval of the French-speaking population of Manitoba, perhaps the issue would never be raised. There would remain, however, the right for someone now or at a future date to challenge the authority of the Manitoba Legislature to act at all.' Mr. Speaker, how does that statement and the expense of the NDP brochure, paid for by the taxpayers, square with the good legal advice that this government is getting? One, Mr. Speaker, tells the facts. The brochure, Mr. Speaker, I suggest, does not tell the truth. What does the Attorney-General say about that?[1]

Penner replied, in part:

> Mr. Twaddle did not purport to say that we would be involved in an endless series of court battles. In fact - and this is tremendously important - the validation of our statutes is the key part of the agreement. What the thrust of the opinion and of my statement is, that is that the taking of our statute (sic) piecemeal, one after the other, all or some of them...taking them to court one after another and bleeding us to death in terms of court costs and the uncertainty as to where we stood with every piece of legislation that has been finalized, or will be, on the passage of this resolution. We will know that our laws are valid, despite the fact that they were improperly passed in one language only.[2]

Lyon again asked Penner how he would square Twaddle's opinion as to possible future challenges to the authority of the Manitoba legislature with the statement in the brochure; Penner replied, in part:

> The legal opinion of Mr. Twaddle was precisely that. It was guidelines for the province, and I pointed out, when it was given, under what circumstances it was given. It was not the only legal opinion obtained by the province. It was not the only legal opinion by which I developed with the rest of the government a course of action. We had the legal opinion of Professor Gibson; we had the legal opinion of legislative counsel...
> I say again...that the agreement...indeed is one which validates our statutes and makes it impossible to take a statute of the Province of Manitoba pursuant to someone who may be charged or which deals with the rights of a person, and say, no,

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[1] Ibid., p. 4526.
[2] Id.

> that statute does not apply because it is invalid on account of not being passed in both the languages of the Legislature.[1]

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In the end, the cost of the mailer was higher than Penner had estimated. A letter from the Post Office dated Nov. 10, 1983 indicates that the mailing costs alone incurred for distribution of the pamphlet from July 27 to 29 were $25,930.93.[2] There is some doubt as to the ultimate efficacy of the leaflet. One of Penner's files entitled "Synopsis of Response to FLS Pamphlet" contains 63 pamphlets returned to his office with assorted comments such as the following: "Garbage"; "Propaganda"; "Crap"; "Rubbish"; "Junk Mail"; "You have lost my vote."; "Metric and bilingualism is bad for your health."; "Stuff it"; "Would someone define what a 'French' Canadian is? They are all metric."; "Pea soup garbage"; "Bullshit"; "Go to Russia if you don't want freedom. Leave us alone."[3] The file also contains over 25 letters, the great majority of which were opposed to the government's proposals. Notes in the file indicate that over 1,000 telephone calls were received at the Attorney-General's office over three days, from July 27 to 29, most of which, again, were opposed to the proposals.

The file also contains a brief analysis of the usefulness of the pamphlet by one of Penner's assistants, Nancy Allen, who wrote:

> There is approximately a 12% base of the Manitoba population that is vehemently opposed to any mention of 'bilingualism'. Any attempt at educating the public on this issue is fruitless because it incites the immoral minority to riot.[4]

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[1] Ibid., pp. 4526-27.
[2] Letter from A. Komher, Post Office, Nov. 10, 1983; in ATG, Box 17, FLS - Correspondence - Oct. 1, 1983 - .
[3] ATG, Box 19, FLS - SFM.
[4] Id.; the 12% figure appears to be a "guesstimate" on Allen's part.

Later on July 26, 1983, as debate on the government's constitutional resolution continued, Gerry Mercier took up the attack on the government's information leaflet where Lyon had left off. The need for an intersessional committee was even more urgent, since "we have had put before us a document which is, to say the least, misleading". To be able to make a "properly informed decision", Manitobans would have to "become familiar with the true facts of the situation". Mercier continued:

> This document...starts off by saying: Today, Manitoba is able to fulfill its constitutional obligations. What obligation in the Constitution, Mr. Speaker, is there to the extension of French-speaking services in Manitoba? There is none whatsoever, Mr. Speaker. There never has been, there isn't, and there never will be under the Constitution as it exists now...
> (...)
> The document goes on to say, by 1987, people requesting service in French will be served in French by certain specified provincial departments and agencies. Well, that's true to a certain extent...but it does not clearly indicate to Manitobans that it is the court that is going to interpret the proposal put forward by the Attorney-General and the government; and it is the courts that are going to tell the taxpayers in Manitoba as to where and when the obligations under their proposal will have to be used and where the government will have to provide services in French. They are just not specified.
> (...)
> On the next page, the Attorney-General's pamphlet states that Manitoba intends to fulfill its legal obligations. What legal obligations, Mr. Speaker? This government seems intent on attempting to fool the people of Manitoba by saying that they have no alternative other than to do what they are proposing to do, and that is not the case. ... Don't tell them we are forced into it when they're not forced into it... There is no legal obligation in the Constitution to extend services in the way the government is proposing...
> The document goes on to say, 'Putting this agreement into the Constitution guarantees exactly what services are legal rights.' As my leader indicated...there is no exact guarantee as to what services are legal rights...
> (T)he pamphlet indicates that setting these language rights into our Constitution does not diminish the rights of others. The

> Attorney-General and the government cannot guarantee that statement...because it is the courts that are going to determine what the words mean that he is using. He goes on to state, 'to avoid the possibility of legal chaos,' but he doesn't include in the pamphlet the opinions of Mr. Twaddle, his legal advisor, to the effect that they said there remains an excellent chance of success in the courts...[1]

Mercier concluded this portion of his speech by stating that "in a number of very significant and very important areas the information contained in the pamphlet is not accurate and is likely to be misleading to the reader"[2]. He then identified other areas of government policy that required urgent action, such as the economy and unemployment, and again asked the House to support Sherman's amendment that the legislative committee meet intersessionally.

Penner then took the floor and began tackling some of the arguments the opposition had been making that were not related to the text of the proposed constitutional amendment. Saying Mercier had been advocating a consensus, Penner made the argument that, on the contrary, the opposition had no intention of arriving at a consensus with the government:

> Just take two issues. We have said with respect to minority rights that there is an important principle in terms of constitutional protection, namely, that they should be entrenched. That is a point of principle with us. They, through the mouth of the Leader of the Opposition, have said categorically, unequivocally, no entrenchment. Now, tell me, Mr. Deputy Speaker, where is the consensus possible between those points of principle...
> (...)
> Let's take another principle...whether or not there should be, with respect to a constitutional remedy, recourse to the courts. We say that...there must be some recourse to the courts. Tell me, Mr. Deputy Speaker, where is there a consensus obtainable between recourse to the courts and no recourse to the courts? It's smoke and mirrors. It sounds appealing, but when you get down to what the principles are...the dividing line is clear and

[1] Debates, July 26, 1983, p. 4528-29.
[2] Ibid., p. 4529.

> that dividing line will always be here as long at least as that Member for Charleswood is the Leader of the Opposition...
> So, too, with respect to the question of whether or not services to the citizens of Manitoba, where warranted, should be in both official languages, in both French and English. Now, we have said indeed that should be the case; that is in fact an historic obligation. (i)ndeed...a constitutional obligation... Where is the consensus between living up to our obligation and not living up to our obligation?[1]

"These are points of principle," Penner went on, "upon which...a government, indeed an opposition, must take a stand one way or another. We have taken our stand on both points of principle... They have said they will fight to the end those points of principle."[2] He then elaborated on another principle which he felt was at issue in the debate, that of minority rights:

> The principle of minority rights - surely one shouldn't have to explain it but apparently one does - means that there are some things we consider to be fundamental, so fundamental that they ought not to be subjected to the tyranny of the majority. They are so important in a civilized and democratic society that they ought not to be the subject of political football; that they ought not to be sacrificed on the altar of immediate political advantage.
> It doesn't matter in our view that the minority is more of a minority now than it was then if it is something that is part of the social contract, is part of the fabric of our society, is part of something that which we believe to be fundamental, must be entrenched, then it must be entrenched regardless of the numbers.[3]

Penner admitted what was already known within government, and what he had intimated to the press, that discussions were indeed going on to tighten aspects of the French-language services section of the amendment:

> [There] are things which can, in the course of the dealing of this resolution, be dealt with and can be altered. We have said this;

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[1] Ibid., pp. 4531-32.
[2] Ibid., p. 4532.
[3] Id.

> we can and indeed are benefiting from the ongoing discussion which is taking place...
> So there are ongoing discussions with the Civil Service, both individually and as represented by their certified bargaining agents. Those too are proving useful and productive and may well lead - indeed, I hope they do lead - to a consensus on sharpening the terminology in 23.7.
> There are discussions with the Franco-Manitoban community, both individually and collectively. There, too, I am heartened by what I sense is a real desire...to make sure that the terms used are the best possible terms, the most sharply defined terms.
> There are discussions with the appellant himself through his counsel. One must not forget at all times that there is still a case pending in the Supreme Court; so those discussions are ongoing...[1]
> (...)
> We are prepared... to bring in amendments on specific wordings re the services.[2]

Penner then tackled the "secrecy" argument which had been made repeatedly by Lyon and others along with the idea that the government was proceeding with undue haste in having the amendment adopted. Penner referred to the public discussion that had been ongoing in the press over the issue throughout the previous year, identifying 14 articles published in three newspapers between July 12, 1982 and April 8, 1983, including "a full analysis of what discussion was taking place leading to the proposal" by Terence Moore in the April 8, 1983 edition of the *Winnipeg Free Press*. Penner said all these articles indicated "the issue has been the subject of protracted, prolonged, in-depth, and on the whole responsible public debate by those who would treat this issue responsibly".[3] He went on:

> Now, Mr. Speaker, there has been since that time, as you well know, continued discussion, continued debate. Indeed, there have been several hundred people who have turned out, over 1,000 people to the public meetings; there have been Letters to

[1] Id.
[2] Ibid., p. 4533.
[3] Ibid., pp. 4533-34.

> the Editor; there have been editorial comments; there have been descriptive articles. To talk about indecent haste is to talk palpable nonsense. There is no other piece of legislation that has been as much...discussed and as much known as this.[1]

Penner explained again the reasons for the December 31 deadline:

> First of all, this idea of indecent haste is pure nonsense. There is not an element of haste, never mind indecent haste about it. Part of the agreement was for very good and sound reasons that the matter be determined in terms of the action of the respective Legislatures, our Legislature, the House of Commons, and the Senate by December the 31st. The reason for that is indeed that the appellant has his rights in court, and no one can take those rights in court away from him. Those rights spelled (sic) to be determined by a hearing on the 26th of May, 1983, and were as part of the package adjourned pending the dealing of this matter in the House. But although adjourned without a date being fixed were (sic) adjourned on the understanding - it was announced right at the beginning - that the matter would be determined one way or another by legislative action by December the 31st.[2]

Penner reasoned that if the legislative committee were to meet intersessionally, this meant that a new session would have to be called for the fall; he went on,

> To suggest that we could in any rational way prepare a Session of the Legislature, a Throne Speech Debate, or legislative program of the Estimates, the Budget, and do all of that so that we could come back on one issue, which is presently before the House is ridiculous. It is simply and palpably ridiculous.
> What's the rush, we're being asked? And I ask the question, what's the desire to cut off the debate in full stride, what's that all about?[3]

Penner then turned to the suggestion, made by Doern and others, that a referendum be held on the issue. First, he said, all dimensions of the agreement would have to be put before the people, including the matter of validation of

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[1] Ibid., p. 4534.
[2] Id.
[3] Id.

Manitoba's statutes and the fact that only 500 of 4,500 statutes would have to be translated under the agreement. Penner's main objection, however, was the principle involved:

> Now, government by referendum is wrong generally, Mr. Speaker. It is indeed a denial of political responsibility. It is a denial of parliamentary supremacy of which the Leader of the Opposition huffs and puffs so much. Mr. Speaker, when it comes to a question of minority rights, it is absolutely wrong in principle to say that whether or not these rights, or whether or not part of our social contract is to be fulfilled, that these should be a matter of numbers on a ballot.[1]

Finally, Penner asked, what would intersessional hearings change? Prophetically, he answered his own question:

> Certainly, it will not be those questions of principle. Certainly... it will not be that we'll find a consensus, a halfway house between entrenchment and non-entrenchment, between referral to the court and not referral to the court, between providing services and not providing services.[2]

Clayton Manness then rose to speak on behalf of the Opposition. "One underlying theme," Manness said of Penner's speech, was that "consensus should not apply in this case". Penner immediately replied, "No, I did not.," to which Manness replied, "I'm sorry, that was my interpretation." Penner explained that "What I did say was between these polarized positions of entrenchment and not entrenchment, I don't see where there is a consensus possible. Let the Member for Morris tell us, if he thinks...there is a consensus between those two, where it's at." Manness resumed:

> I guess, Mr. Speaker, it begs the question, when are the people right and when are the people wrong, or is it important? In my view...it is very important, and I think it's making comments like the tyranny of the majority that tend to confuse the whole issue and put out of focus whether people should be considered

[1] Ibid., p. 4535.
[2] Id.

> to be right or wrong. Well, Mr. Speaker, I think it's important to be with the people on all issues...[1]

Manness pointed out the contradiction he perceived between granting the right to municipalities to hold referenda, on one hand, as the government had done, and of not supporting their right to do so on this issue.[2] He told the House he had just received a resolution against "making bilingualism compulsory" in Manitoba adopted by the R.M. of Grey, since this "would have devastating financial implications" and would also be "contrary to what the majority of Manitobans want". The significance of this, in Manness's view, was that three of the four large towns making up the R.M. of Grey were French-Canadian.[3]

Manness didn't agree with Penner that the Opposition was attempting to stall debate; on the contrary, "the issue is one that can't be signed, sealed and delivered in the period of two or three more weeks. It's one that will take many more months". Indeed,

> [If] wrongdoing has been done to the French-Canadian community in this province for some 90, for some 113 years, and it can't last any longer...surely you can't believe that all those wrongs and all those ills can be patched up or fixed up in a period of five weeks, six weeks... It logically can't be done.[4]

There had to be an opportunity for people to express themselves on the issue, particularly municipal councillors, who have "a very very vital role" in this issue, and "they have to be listened to. If it's their consensus that the province not proceed with this, that has to be given close and heavy weight".[5] In conclusion, Manness repeated that "there should be intersessional hearings", and they "should be held this fall, in late fall", and that the main resolution

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[1] Ibid., p. 4536.
[2] Id.
[3] Ibid., p. 4537.
[4] Ibid., p. 4538.
[5] Ibid., p. 4539.

should be debated afterwards, when "we can determine whether we can reach and work towards a consensus."[1]

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The debate resumed the following day in the House, with a speech by Robert Banman for the Opposition. Banman basically added two ideas to the debate as it had proceeded to date. His first point was that the government had done a "real disservice" to Manitoba's francophone population in proceeding as it had: "they have created a gap between the Francophone community and other communities in this province, one which is going to be divisive in this province and will not serve in (sic) the best interests of the Francophone community or of the rest of the population". The SFM had done an "excellent" job of negotiating with the government, which "got negotiated out of their socks on this agreement". Why did the government give the Francophone community what it wanted?

> I believe that the government - and I would have to say that for political reasons - are trying to solidify the vote of a certain segment of our Manitoba population, be it 5, 6, 7 percent of the Manitoba population and they want to, next election, in some of the ridings where it's going to be quite close, be able to say, look what the New Democrats did, vote for us en masse.[2]

Don Orchard then repeatedly attacked the government's honesty and integrity in dealing with the language issue:

> Where is the honesty in this government when a letter goes out from the Pemier to every reeve and mayor in the Province of Manitoba with 'a typographical error' that substitutes the word 'those' and replaces it with 'official'. People in Manitoba ask where is the honesty in this government which would allow that kind of a major error to go out in an official letter from the

[1] Id.
[2] Ibid., p. 4557.

> Premier, explaining government policy on so important an issue?
> Where is the trust that the people of Manitoba can place in this government? Can they trust this government when they say that this is a limited agreement? How can they trust them when this government is placing the artificial time limits on the debate on the issue?[1]
> (...)
> Mr. Speaker, the Attorney-General says logic is not my strong point. I suggest to the Attorney-General that integrity is not one of his, because he is not taking this issue to the people of Manitoba. Honesty is not one of the fortes (sic) of the Attorney-General, because he won't take this issue honestly and openly to the people of Manitoba.[2]
> (...)
> There is no semblance of principle involved in the government's action in dealing with this bilingual amendment. There is no semblance of integrity with what they are doing. There is no semblance of honesty in what they are doing...[3]

Finally, Orchard said the government was "willing to hide from the people of Manitoba, by ramming this resolution through the House with their majority (and) to ram their Section 23 amendment through this House with their majority..."[4]

Orchard was followed by Wally McKenzie, who said "it's an insult to the people of this province, to see the manner - the selfish manner - with which this government has seen fit to deal with this matter..." In his view, the reason the government did not want to go to go "out to the country" on the issue was that "There's something (sic) hanky-panky going on. There's some kind of a deal they've made in a back room; there's something fishy about this whole thing..."[5] He denounced what the government was doing to "the fabric and the integrity and the honesty of this province and its people. They don't deserve

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[1] Ibid., p. 4559.
[2] Ibid., p. 4561.
[3] Ibid., p. 4562.
[4] Id.
[5] Ibid., p. 4563.

this kind of treatment, but of course I suppose that's the way socialists like to deal with matters such as this."[1]

Later in the day, Conservative MLA Harry Graham said changes to the Constitution should be made "in a matter (sic) of complete understanding, of absolute fairness and cooperation from all concerned", and cooperation was "a two-way street".[2] To his knowledge, no constitutional amendment had been brought forward in the past "because of a private agreement signed between the Attorney-General and a group purporting to represent a small segment of society". In addition, in bringing forward the amendment, the government "have gone wrong in every single step they have taken". He suggested to the Attorney-General that, "if he has any changes to propose to that agreement...they be heard before we go to the public, so the public will know what his proposed changes are and not bring them in through the backdoor after public representations have been cut off". In addition, if the government made any further changes after public representations had been heard, "then I think those changes again should go back to the public".[3]

Graham was followed by Albert Driedger, who asked, "Why is it so important to rush this bilingual resolution at this stage of the game?" "There has been reference made," he said, "to an agreement...between the Federal Government, the Provincial Government and SFM, but I haven't seen any portion of that agreement." He was concerned that "this country was built by people of ethnic backgrounds living together, working together... and I'm concerned with the process that we're going through right now that we can

[1] Ibid., p. 4564.
[2] Ibid., p. 4574.
[3] Ibid., p. 4576.

possibly destroy that, we'll be setting one person against the other..."[1] Driedger wanted an explanation about the deadline:

> I wish if there is a deadline that has to be met with the Federal Government, you know, in terms of changing this, I would like to know. Then we can understand it, but that has never been explained, it has never been brought forward that there is a deadline that has to be met.[2]

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The following day, Doern rose in the House during question period to ask whether the Attorney-General had received

> any information from the two largest German-Canadian associations in Manitoba, namely the German Society of Winnipeg and the German-Canadian Business and Professional Men's Club, who both have now formally indicated that they are not in favour of the government's bilingual program.[3]

Penner replied that indeed he had, and that the letters were "instructive indeed", since they indicated "the kind of information or one can imply, the kind of information that they are getting from Mr. Doern". Penner first quoted from the letter from the German Society of Winnipeg:

> First of all the German Society of Winnipeg says that it's a non-political organization and doesn't take political positions. 'As we understand it,' after listening to Mr. Doern, 'this amendment will eventually also include municipal services. We are sure that 90 percent of the population will resent this.' That, Sir, if told by Mr. Doern to that organization was a fraudulent misrepresentation and as such - (Interjection) - no. I said, if it was said by Mr. Doern to that organization, was a fraudulent misrepresentation.
> Indeed it was, because as the members of this House know or at least those who have taken the time to read the proposed

[1] Ibid., pp. 4577-78.
[2] Ibid., p. 4578.
[3] Ibid., p. 4598.

amendment, there is no way in which there is any burden on municipalities.[1]

Following a series of points of order, Penner then reread the passage without the reference to Doern and added:

> What I said, Sir, was that if they have been led by anyone to believe that, then they have based their opinion on a wrong assumption, because the agreement that is being proposed was specifically designed to exclude an obligation on municipalities... (B)ecause the word 'institutions' of government might include municipalities, we deliberately chose not to use that word.[2]

Doern retorted,

> Mr. Speaker, I would like to ask the Attorney-General whether he is familiar with the position of Serge Joyal, the Secretary of State, who has said repeatedly that he intends to encourage and finance groups of Canadians to press their governments for bilingualism at the municipal level, and he has told French Canadians from coast to coast that they are second-class citizens; even though they have federal bilingualism and even though they have provincial bilingualism, they must have municipal bilingualism. Is he familiar with those statements?[3]

After asking Doern to table the Joyal statements to which he was alluding, Penner replied:

> I will deal with what Mr. Joyal said on this issue in Winnipeg, speaking to the annual meeting of the Societe Franco-Manitobaine on about March 16th of this year. Mr. Joyal, in a wide-ranging speech, commenting on the discussions which were then taking place, expressed himself as desiring or hoping that any amendments would be within the Canadian Charter so that the language used would be the language similar to that used in New Brunswick and in Canada. I want to say, Mr. Speaker, that that was rejected by the Province of Manitoba.[4]

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[1] Ibid., p. 4598.
[2] Id.
[3] Ibid., p. 4599.
[4] Id.

Doern followed up with a question on the cost of the household mailer, saying that in his earlier statement to the House, Penner had tried to imply that the total cost of the mailer would be $28,000. Doern's information was that "it would cost $25,000 to $28,000 to mail it". Penner replied that he was "paraphrasing", but that Doern had asked him "What were the production costs of the pamphlet? I gave an answer which was true then and is true now that the production costs of the pamphlet were $28,000."[1] Doern asked, "Why didn't [Penner] mention the mailing costs at the time?" Penner replied that "I meant to say exactly what I did say".[2]

Gary Filmon contrasted two statements in the pamphlet, one to the effect that municipalities and school boards "are not affected in any way", the other that "Provision of French Language Services will be limited to communities which have significant numbers of French speaking Manitobans (about 30 out of the 202 municipalities).", and asked, "How does one square with the other?"[3] Penner replied:

> **Hon. R. Penner:** With respect to municipalities, there is a voluntary program that has nothing to do with the amendment...
> **Some Hon. Members:** Oh, oh!
> **Hon. R. Penner:** Well, that's perfectly clear. It's perfectly clear to everybody but apparently the Member for Roblin-Russell, so I'll try to make it clear even to him that there is a fund of money of $400,000; any municipality, where there are sufficient numbers of French speaking people who or which, as a municipality, wants to upgrade services that they're delivering in French as well as English, or to do so wher they haven't do so before, may if they wish, but it is entirely up to the municipality. There is no obligation whatsoever.[4]

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[1] Ibid., p. 4600.
[2] Id.
[3] Id.
[4] Id.

Filmon asked whether "that offer is available only to 30 municipalities and that if any other municipalities ask for financial assistance, they would not be granted it?" Penner replied,

> **Hon. R. Penner:** The number 30 is an approximation, trying to estimate out of the 208 municipalities...
> **Some Hon. Members:** Oh, oh!
> **Hon. R. Penner:** (...) (T)he program is entirely voluntary. In order to illustrate the scope of the program, we attempted - and when I say 'we' primarily, the coordinator of French Language Services, Mr. Turenne, hired by that bunch when they were the government, has attempted for purposes of illustration to indicate where the significant numbers of French municipalities...are in order to give some indication where the program might apply... If a municipality, which has fewer rather than more, comes to the Department of Municipal Affairs and says genuinely that they want to offer services...the government...will certainly be ready to listen to any case that be (sic) made for the need to provide such services.[1]

Later, Doern tabled two speeches by Serge Joyal, one "in which he says, it's difficult for people to accept the fact that this is a French state" made before the Acadian Federation, the other, Joyal's March 19 SFM speech.

Debate on the constitutional amendment then resumed. Speaking for the Opposition, Gerrie Hammond began by indicating her support for intersessional hearings by a joint parliamentary committee, since the people of the province "don't believe they're being told the whole story, and they are not";[2] "All we are asking," she added, "is for this government to swallow its pride a bit and give Manitobans a chance to express themselves".[3] She asked "why this government is not putting the proposed amendment into the brochure... (e)verything is in this pamphlet except the one thing that is really essential for people to read themselves."[4] The government didn't have a

[1] Ibid., pp. 4600-01.
[2] Ibid., p. 4607.
[3] Ibid., p. 4608.
[4] Ibid., p. 4609.

mandate on this particular issue when they went to the polls in 1981 and now, "They are trying to ram it through just as quickly as they can..."[1] The government had to listen to the people:

> When I was elected to this Legislature, and I said it time and time again, said it before I ever thought of running for any political office: A politician does not have a conscience of his own. His conscience is what the people think. If you don't believe that and if you don't follow that, you are not going to be in government very long. That's the secret to success of most successful politicians is they listen to their constituents.[2]

Hammond deplored a statement made on radio by the Minister of Government Services "saying that even if there is a referendum, it won't matter, we are carrying on, no matter what. I think this is what's making the people have so much despair about this particular issue..."[3] She quoted a *Free Press* report dated July 13 on the MGEA's press statement saying that "spokesmen for three other unions" at Manitoba Hydro and Manitoba Telephone System "have had no communication from the government about how the amendment would affect their members".[4] She quoted the press release issued by the UMM including the following excerpt:

> 'We agree that the minority groups in our province should be protected from injustices by the majority, but not to the point where it could and will give the minority the power to rule the majority through the courts, thus destroying the democratic rule.'[5]

Finally, Hammond quoted a statement in the government's brochure to the effect that "It is a good agreement for all the people of Manitoba and

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[1] Id.
[2] Id.
[3] Id.
[4] Ibid., p. 4610.
[5] Id.

Canada," and added: "But the people don't believe this; that's the problem, Mr. Speaker."[1]

Andy Anstett then took the floor for the first time in the debate on Sherman's amendment to the government's motion to refer the constitutional resolution to committee. "I'm beginning to think," Anstett began, "that [the Opposition] view this as something more than a procedural motion, almost like Custer's last stand. I'm beginning to think that what we're seeing here is a filibuster by the opposition on a procedural motion that asks that the people of Manitoba be heard on this issue."[2] He went on:

> Every member opposite and every member on this side have agreed they want the public to be heard. Absolutely. I don't think there's a member in this House who does not want the public to be heard on this issue. So what's at issue? Why the delay? Why the filibuster?[3]

Anstett answered his own question:

> What the members opposite want to do is postpone the intersessional hearings 'till after December 31st so that this constitutional amendment can't receive approval by the deadline date in Ottawa.
> (...)
> Now, Mr. Speaker, why would they want to do that?...I'd like to at least offer one possible interpretation....It will hurt the federal Tory Party if you people take a stand opposed to this constitutional amendment, so how do they fight this proposed constitutional amendment, which for some reason some of these members opposite seem to have great difficulty with?
> They say, we'll fight it on a procedural question. We'll fight it on the concept of whether or not the hearings should be sessional or intersessional.[4]

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[1] Ibid., p. 4611.
[2] Id.
[3] Id.
[4] Ibid., p. 4612.

Anstett reminded the opposition that it had supported an acceleration of House proceedings ("speed-up") the previous week, including consideration of the constitutional amendment;

> Well, Mr. Speaker, the opposition put themselves in that position. We want to hold hearings, we want to hear the public. All I can say to the opposition is the fact the Speed-up occurs will not prevent everybody who wants to be heard from being heard. The fact that Speed-up is in progress will not prevent this Session from lasting as long as is absolutely necessary for all the business of the House to be conducted.[1]

Anstett ended with a plea to the opposition "to reconsider the filibuster they've launched this week".[2]

Abe Kovnats then took the floor for the Conservatives. Kovnats recognized that "the Francophone has waited for over 100 years for what is considered an injustice - a little longer ain't going to hurt. It's like chicken soup, Mr. Speaker, it ain't going to hurt."[3] However,

> I condemn the NDP Government and I condemn the federal Liberal Government for this amendment because I believe it will lead to additional bigotry and prejudice; whereas these rights would have come in due course - not at the whim of any government - but as a legal right under our statutes.[4]

Kovnats acknowledged the interest the Anglophone population of Quebec had in the constitutional amendment, but

> my interests are towards the people of Manitoba first and foremost, and Canada second - Manitoba first, but Canada second.[5]

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[1] Ibid., p. 4613.
[2] Id.
[3] Ibid., p. 4614.
[4] Id.
[5] Id.

In a reference to his own Jewish background, Kovnats recalled that he had been through "the discrimination bit", but acknowledged that "I am somewhat protected by existing legislation"; he added,

> I'm endeavouring with all my heart to save the embarrassment and the prejudice against the French community and ultimately to other ethnic groups, so that their culture will be supported on a somewhat equal base.[1]
> (...)
> This amendment will not promote unity; but on the contrary, it will promote bigotry and prejudice...
> (...)
> The damage has not already been done, Mr. Speaker; it can be corrected. It can be corrected by withdrawing the amendment... There are all kinds of Manitobans who do not know what bigotry and prejudice mean, but we are going to teach them, Mr. Speaker, by bringing in this amendment; not because of the amendment, exactly, but because it'll bring people out who will show what bigotry and prejudice is, and I don't want that to happen. I've been through it, Mr. Speaker. Let's not teach them things that it took our forefathers many years to overcome.[2]

Gary Filmon followed, asking "What's the rush? Why are we driving through this proposed amendment in this Session?"[3] In his view, the business of the House should have been ordered in such a way that it could have been completed "much more speedily", adding that the Acting Government House Leader (Anstett) had done far worse than Penner, since "(h)e's disordered the process of business in this House and disrupted people whenever he's taken over"[4]. It was important to hear the people of Manitoba on the issue,

> Because, firstly, we have the evidence of the fact that more than half of the rural municipalities of this province have already passed amendments saying that they are opposed to this proposal being put forth by the Provincial Government. We had had the situation occur that many of the major centres of

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[1] Id.
[2] Ibid., p. 4614.
[3] Ibid., p. 4615.
[4] Ibid., p. 4616.

> proposal being put forth by the Provincial Government. We had had the situation occur that many of the major centres of population in Manitoba are seriously considering referenda which would put this question on the ballot at the municipal elections coming forth this fall in Manitoba...
> (...)
> The problem is that there's being proposed a fundamental change to the rights and responsibilities of Manitobans without the ability to define it in legal terms or in hard factual terms. What are those rights to be? How will they be interpreted and how will they be carried out in the future?[1]

The problem, in Filmon's view, was that

> "there's contradictory information, there is an unclear wording in every aspect of what has been put forward on this proposed resolution...there are half-truths; there are contradictions... (P)eople are saying it's a bad agreement, Mr. Speaker; that it has poor wording; that it is open to all sorts of misinterpretations. I agree."[2]

The proposed legislation might "bring the municipalities into that net"; to which Penner replied, "No way."[3] Penner, Filmon went on, had taken three steps towards the Opposition's view of public consultation, including referral to a legislative committee for public hearings and accepting the possibility of changes in wording; "So take it one step further. That's all we are asking, Mr. Speaker. Take it one little step further and let that committee sit intersessionally. That's all we are asking, Mr. Speaker."[4]

Finally, Filmon had spoken to some ethnic groups who have come out in favour of this and

> I'll tell you that their perception of of this whole issue is incorrect, because they are stating that they are in favour of protection of minority rights - and we are all in favour of protection of minority rights. However, what they don't understand was that this is not protection of minority rights.

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[1] Id.
[2] Ibid., p. 4617.
[3] Id.
[4] Ibid., p. 4618.

> This is an expansion of rights in a manner that was never contemplated, that was never announced or campaigned on by this government when they were running in 1981. This is an extension of rights into an area that it was never contemplated before in The Manitoba Act, and they didn't understand that because this government didn't tell them that. They told them a partial series of truths on the area, a little bit about it, but they didn't give them an opportunity to understand the issue and I suggest, Mr. Speaker, that that's the whole problem. That's the whole problem. Everything is going to be open to the courts and this government doesn't understand.[1]

That evening, it became increasingly obvious that the House was in danger of ceasing to function altogether, as the test of wills over the timing of the legislative committee sessions spilled over into the general organization of House business. The procedural debate began on a point of order by Brian Ransom, who said,

> A couple of days ago in discussions with the Government House Leader, we had come to an understanding that the House would not sit this weekend, that perhaps a committee would be sitting on Friday afternoon, a committee or committees. Can the Government House Leader confirm that that understanding is still in place?[2]

Penner replied:

> There was, Mr. Speaker, no such understanding and for the Opposition Leader to rise in his place in the position that they're now in, breaking the agreement with respect to Speed-up, shows how defensive they are. Mr. Speaker, there was an agreement that we entered into with some fear and trepidation that Speed-up would be entered into in order to expedite the business of the House. Now for their own as yet unrevealed tactical reasons, they're filibustering on a bill in the sense of grinding the wheels around and around and around and delaying the business of the House so that we must, in order to fulfill the expectations of the public, that the business of the House will be done now that we're in Speed-up in a rational way, he dares to stand up and

[1] Ibid., p. 4619.
[2] Ibid., pp. 4624-25.

make that kind of an assertion. He ought to be ashamed of himself.[1]

In fact, the debate revolved simultaneously around two agreements, the first on speed-up, which had been made the previous week and which, in the government's view, included a speed-up of debate on the constitutional amendment, and a second agreement, referred to by Ransom, regarding suspension of the work of the House over the August long week-end. In the government's view, the Opposition's filibustering meant that the first agreement had been broken; in the Opposition's view, filibustering was merely participation in the normal work of the House, and in any case the second agreement should stand independently of the first.

The Speaker rejected both points of order and others made subsequently. Finally, the Speaker gave the floor to the Member for Gladstone, Charlotte Oleson, who had said, at 5.30, that she "would be happy to speak" to the motion after the dinner hour.[2] In the evening, however, she was not in the House, which led to a heated exchange between Ransom and Wilson Parasiuk, with Lyon telling Parasiuk that he should "go back to the sewer in Transcona that you crawled out of".[3] As the exchange continued, Lyon revealed, for the first time on record, his party's intention regarding the government's constitutional amendment. The following exchange occurred when Deputy House Leader Al Mackling rose on a point of order:

> **Hon. A. Mackling:** Mr. Speaker, I rise on a point of order to draw to the attention of the House on this very question of this requested adjournment of the debate, that I had indicated to the House Leader of the opposition party that it was our concern to get this referral before the public as soon as possible...
> **Hon. S. Lyon:** It is our concern to stop it.[4]

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[1] Id., p. 4625.
[2] Id.
[3] Id.
[4] Ibid., p. 4626.

Given that Oleson was not in the House, a ruling was required from the Speaker regarding other speakers and to her own status in the debate if others spoke in her place. The ruling was as follows:

> A resolution has been called, standing in the name of the Honourable Member for Gladstone. Since that honourable member began her remarks just slightly before 5.30, she has begun her remarks. If someone else speaks in the meantime, then the honourable member would be speaking twice if she came back to resume her remarks on it. It is then a matter of leave of the House. Unanimous consent would be required to allow some other member to speak on the motion.[1]

Ransom said "we're quite prepared to grant leave to have someone speak on the motion if the Government House Leader will stick to the agreement which we arrived at two days ago"; the Speaker, over a chorus of boos from the Opposition, then recognized Mackling.[2]

Mackling repeated the view that "The people of Manitoba should be given the right, which we want to afford them, to come before a committee and make their views known..."; the Opposition, on the other hand, wanted the matter "adjourned to an intersessional committee when the matter is no longer uppermost in the minds of the people". Mackling speculated that the Opposition was divided on the issue, especially since Mulroney's election as national Conservative leader:

> Mr. Speaker, they have got a problem with it, because now they have a national leader who is looking...to provide their federal party with some basis in Quebec. Mr. Speaker, if this Conservative Party of Manitoba is shown to be as negative and as hostile to any further consideration of the historic wrong that was done to the French in Manitoba; if that significant fact is laid before the people of Quebec, then Mr. Mulroney has a big problem because the Anglophones in Quebec are going to say to Mr. Mulroney and his Conservative Party, how can we trust you

[1] Id.
[2] Id.

> when your party in Manitoba has no trust, no sense of justice. (...)
> But worse still, Mr. Mulroney...how can he assure the Francophones in Quebec that his party stands for a real consideration of the historic base of Canada, of the two founding nations?[1]

In Mackling's view, Lyon was an "albatross that will destroy the Conservative Party in Manitoba", and both Sherman and Enns knew it.[2]

Larry Desjardins followed Mackling, expressing the hope that "heckling will not be used tonight to prevent me from expressing my deepest and strongest feelings".[3] Speaking as a Francophone, Desjardins made the point that

> This is actually...what it's all about, the reinstatement of constitutional rights that were abrogated in 1870 (sic) and 1916. It is reasonable to assume, Sir, that all rights granted to Canadians were increased, were at least improved over a period of 75 years to 90 years. I am sad, and I am saddened by some of the words of our own people who seem to think, well, we had something, make darn sure we don't give them any more than that...
> You would think that any fair-minded Canadians and Manitobans would want to make amends for the irreparable damage that has been caused to this group of our Canadians and Manitobans, but instead...say what's the minimum we can get away with? What did we take away 90 years ago? Maybe we should give them that if they beg enough...[4]

Desjardins recalled words spoken by former Conservative Premier Duff Roblin on May 4, 1959 in the House: "'We know that Manitoba is a bilingual province since its creation."[5] Desjardins then responded to the Opposition's position on the entrenchment issue:

> We are told that it is the Legislature's responsibility to protect the rights of its citizens and not the courts. Do you think for a minute that had these rights not been guaranteed by The BNA Act, Sir, that we would be talking about reinstating them today?

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[1] Ibid., p. 4627.
[2] Id.
[3] Ibid., p. 4628.
[4] Id.
[5] Id.

> Who do you think abolished these rights? It wasn't the courts, it wasn't a dictator. No, it was a duly elected provincial government, a Legislature such as we have now.
> (...)
> Can you fault Franco-Manitobans for...insisting now that rights taken by politicians should be enshrined in the Constitution?[1]

In Desjardins's view, "It is...certainly false to claim that because a minority is being granted rights that the majority is automatically going to lose something."[2] He pointed out the inherent contradiction in two arguments being used against the government's proposals:

> (T)his is actually the most ridiculous statement that I've heard. The statement that Franco-Manitobans would take over the Province of Manitoba. We're told that we're not too many; why are you raising so much fuss; you're not worth it...but then in the same breath we're told we're going to take over Manitoba.[3]

Regarding Lyon's personal position, Desjardins said

> "I really refuse to believe that he's anti-French because I've heard him before...but I think that he owes it to the public of Manitoba to say what this is all about...
> If he wants to be consistent and if he wants to say, you know it, Larry, I've been aginst this business of enshrining rights, I was against the Bill of Rights, well, from his attitude people don't know where he comes from and they think that he's against French. If he stood up and said, yes, those rights were taken away, yes, that was unjust...(t)hen he can say, I'm consistent, I'm against it as a question of principle.[4]

In Desjardins' view, the objectives of people who were arguing in favour of a referendum were suspect:

> We're going backwards because some people are saying, have a referendum. They're not saying, we want to educate the people; they are saying the people won't want it, give them a chance to organize so they can fight it.[5]

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[1] Ibid., p. 4629.
[2] Ibid., p. 4630.
[3] Ibid., p. 4631.
[4] Id.
[5] Ibid., p. 4632.

He recalled the battles he had fought in the 1960's and how Roblin had partially restored the right to French-language education, with the unanimous approval of the House; however, it only took one person to raise fears, "one person to wave the flag and say these people are going to destroy your country, your province", and this was a "cowardly" way of doing it.[1] Doern assumed Desjardins was talking about him and said, on a matter of privilege, "I will not stand here and listen to that." Desjardins repeated, "I said he was cowardly and I think it is a cowardly act..." After some debate as to whether the expression was unparliamentary, Penner quoted Beauchesne to the effect that the expression was indeed parliamentary, and added, "if there was ever a time when it was parliamentary to use the word 'coward', this was it". Doern replied, referring to Desjardins, "The Minister may have a big gut, but he has no guts on this matter."[2]

After Desjardins's speech, the Deputy Speaker called the question; a disagreement arose between Penner and Ransom over the Speaker's ruling; in Penner's view, the Speaker had ruled that Oleson had begun her speech: "That being so, when it's called again it cannot be stood without unanimous consent and there is no unanimous consent." Lyon interjected, "Well then, you'll get some bells maybe ringing." Ransom pointed out that Oleson was otherwise occupied in a legislative committee, and for that reason was "unable to be present to participate in this item...and it would be entirely inappropriate and out of order for the government to force this resolution through at a time when the member is not here because she is participating in other business of the House." Lyon added, "Totalitarianism, it's called, behind the Iron Curtain."[3]

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[1] Id.
[2] Ibid., pp. 4632-33.
[3] Ibid., p. 4633.

Chapter X

The Lost Weekend

In the end, the bells rang in the Manitoba Legislature through the night of July 28 and the early morning of July 29, as the Government stumbled into a procedural morass which led the House to sit through the August long weekend.

Charlotte Oleson finally got to speak on the motion to refer the constitutional resolution July 29. She repeated arguments already made by the Opposition and quoted extensively from her leader's May 20 speech; finally she moved a subamendment to Sherman's amendment that the legislative committee, after meeting intersessionally, would report to the next Session "and in any case not later than December 31, 1983".[1]

Mackling responded by recalling that the deadline had been imposed by the Supreme Court; the government had asked the Court for "time in which the Government of Manitoba could relate to the people Manitoba the question of the further acknowledgement of French rights that the Supreme Court had recognized in an earlier decision...That time was not forthcoming." That decision was "a signal not only to our counsel", but

> it's a signal to the Government of Manitoba. It is a signal surely to the opposition party in the Province of Manitoba that the Supreme Court that had previously ruled against the Manitoba position carefully articulated by our best legal counsel; that is clearly a signal that that court felt that a decision in respect to a further acknowledgement of French language rights in this province was necessary.[2]

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[1] Debates, July 29, 1983, p. 4673.
[2] Id.

After pointing out that "(t)he Honourable Leader of the Opposition, when he left this Chamber...said, see you Tuesday...and he hasn't been back", Mackling denounced the Opposition's bell-ringing tactics:

> I can understand on a question of deep principle an opposition party fighting... But on a procedural matter, in order that we get on, after being cajoled, pleaded, get into Speed-up, and then being told, no, we want the weekend off, we don't want to let this go to committee. That is, in essence, Mr. Deputy Speaker, where this matter stands.[1]

To which Ransom replied, on a point of order:

> For this member to indicate that our side wanted the weekend off is simply false. There was mutual agreement between the House Leaders. Their House Leader has carried out his half of the agreement and has gone to the lake for the weekend.[2]

Mackling continued:

> (R)egardless of how the opposition party wants to interpret their conduct they...taunted us that we weren't moving the business of the House. They kept urging us to go into Speed-up... but then, once we get into Speed-up, they start to delay. Why do they start to delay? Because...then they could say, why the haste, why the undue haste?
> The matter of the resolution that we have to deal with before December 31st was on the Order Paper, so the haste that Speed-up provided was no longer acceptable to members of the opposition, so how can they have it both ways, Mr. Speaker? How can they be insisting and demanding that, for the efficient wind-up of the House we go into Speed-up, and then when we get there they say, no, we can't deal that way.[3]
> (...)
> I know I have exposed...their strategy, get us into Speed-up and then delay and then say to the people of Manitoba, well, on this issue, we are statesmen...
> No reference to the Supreme Court action, no reference to the fact that we had lost in the Supreme Court before and the Supreme Court wasn't going to be very charitable to the

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[1] Ibid., p. 4677.
[2] Id.
[3] Id.

> Province of Manitoba, wouldn't even allow an adjournment, no reference to that...[1]

Harry Enns then took the floor, informing the House he would be speaking under a House Rule allowing him unlimited time.[2] Enns spoke in support of Oleson's subamendment, arguing that by presenting it,

> we are acknowledging to meet the deadline that the government has laid down for the people of Manitoba and for this Chamber...this sub-amendment...commits us, in a responsible manner, to meet the deadline that the main motion calls for.[3]

Enns disputed Mackling's view that the Supreme Court would be intransigent with Manitoba; all Penner would have to do would be to send an emissary to the court saying

> look, this is what we are doing in Manitoba, we are referring this matter to a legislative committee that has a deadline to report back to the House, to meet with the kind of problems that are perceived in the minds of the government...[4]

Enns then recalled the Lyon government's handling of the *Forest* decision:

> (W)hen the Forest case was before the Supreme Court, and a decision was handed down, the reaction of the Conservative Government was prompt. There wasn't any foot-dragging on (sic) terms of recognizing that the Supreme Court of the land had spoken. We acknowledged that a number of things had to be done, and proceeded to do them.
> Mr. Speaker, it was generally acknowledged and applauded by this House, by the then NDP opposition, by the then Member for St. Boniface, by members of the Francophone community. Oh, they might have said, well you can do it a little faster but, by and large, the reception in this House, which can so often be divisive, was one of general accord and unanimity in accepting the actions and the reaction that the Sterling Lyon Government took to the Supreme Court's decision on the Forest case.

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[1] Ibid., p. 4678.
[2] Id.
[3] Id.
[4] Id.

> More important, Mr. Speaker, far more important, was that the people of Manitoba accepted the decision, by and large, and subsequent decisions and announcements that were made by the then government.
> (...)
> When the present government announced plans to somewhat accelerate some of the services, whether it's the provision of expensive translating booths in this Chamber, which rarely will be used in this Chamber; and provision for instant translation to all of us, although all of us can understand the English language but, nonetheless...there was no Conservative member that stood up and opposed that.
> (...)
> Mr. Speaker, we were succeeding in bringing about a better understanding, a better working relationship, and we were developing mechanical means to overcome some of the traditional concerns that the Francophone community had in Manitoba.
> Mr. Speaker, we were doing that without raising alarm in the general public, without turning loose emotions that on an issue like this can too often go out of control...[1]

Enns said the Pawley government had entered into the constitutional agreement "spurred on by their bed partners, the Liberal Government in Ottawa, by Mr. Trudeau and Mr. Serge Joyal, to enter into a secret agreement with the Franco-Manitoban Society and Mr. Bilodeau".[2] Picking up on Larry Desjardins's praise the previous evening for Duff Roblin, Enns quoted from an article published in the *Winnipeg Sun* that morning quoting Roblin as saying

> 'In the Manitoba context it would have been wiser to allow the Supreme Court of Canada to deal with the case of Mr. Bilodeau in order to set that issue at rest. The fear that the Supreme Court might invalidate all the laws of Manitoba since 1870 is an academic legalism that should have been put aside. It is not likely that the Supreme Court would lend itself to such a questionable conclusion.'[3]

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[1] Ibid., p. 4679.
[2] Ibid., p. 4680.
[3] Ibid., p. 4681.

In Enns's view, "(t)his whole situation is predicated on that fundamental error that this government has made".[1] He went on:

> I can believe, however, that they are prepared to use a given situation that the Bilodeau case presented them with to try to manufacture a situation where they could rush through, particularly if they thought initially that they could do it quietly, quickly and secretly, an agreement and therefore hope to cement a minority group's support electorally for all time coming. That is what the honourable members opposite thought they could do...[2]

After sitting to the early hours of July 30, the House adjourned to the following day, imprisoned in an imbroglio of its own making, forced to continue debating a motion even though all members wanted an end to the procedural debate, for different reasons. The government wanted the main resolution immediately referred to the standing committee; the opposition wanted the committee to sit intersessionally. Yet if the government called the question, the Opposition would walk out and let the bells ring, as they had done on July 28. Government members could not wander far from the House, not knowing whether or when the Opposition would return.

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The House resumed sitting at 2 p.m. Saturday, July 30. Penner and Lyon, among others, had returned to the House, perhaps stung by comments made the previous day about their absence.

Lécuyer led off, returning to the matter of defining what constitutes "official languages" and putting forth a view held by many Franco-Manitobans and by the government:

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[1] Id.
[2] Id.

> Now, to be forced to translate laws passed long ago which are no longer of value today is of no benefit to anybody and of no benefit to the Francophones of Manitoba. On the other hand, to have the right to use the language as we are entitled to, according to the law that was in the book (sic) in 1870, would have continued to mean that Manitobans could have used the official language, the two official languages. Let's not mince words, because that's what they were...what makes an official language is the languages which are recognized by the Legislatures, by the laws of that Legislature, and by the court system. Therefore, the provisions of the act, as it was passed in 1870, made or gave Manitoba two official languages.
> (...)
> So I don't accept it when they say that we are adding something new when we say, English and French are the two official languages of Manitoba, which is the first clause after Article 23. That is simply a declaratory statement of the facts.[1]
> (...)
> I am sure...that the intent then was that services would be provided in two languages. That was the intent. Legal counsel, federal constitutional counsel, has also interpreted it in that way.[2]

Lécuyer addressed the argument that the government had no mandate to present the constitutional resolution:

> The case was before the Supreme Court shortly before the members of the opposition left their term in government. We had no opportunity at that time to be a party to any negotiations of this Supreme Court case. We had no way of knowing at that time where or how far it would go, if it were to go anywhere. But...after this case was set back purposely to give an opportunity to the parties to this case to try and strike some kind of agreement, which we arrived at after one full year's negotiation...we have come to a resolution, or an agreement, which all parties at the federal level are supporting, an agreement which would be good for Canada, because I think that is what counts first...
> So we negotiated. We came to an agreement which saves Manitoba money, which does not go any further than what is happening now, and repeatedly the members of the opposition have agreed that that was the case...[3]

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[1] Debates, July 30, 1983, p. 4696.
[2] Ibid., p. 4697.
[3] Ibid., p. 4698.

Lécuyer returned to Enns's description the previous evening of the Lyon government's approach to the provision of French-language services:

> The Member for Lakeside last night said: Well we continued providing those services, we were going in a reasonable and a rational way. On that basis, perhaps it would mean that you add one little bit of a service every five years, every 10 years, every 20 years, and maybe we'd get back to the full intent of the law in 100 years' time, in 200 years' time.[1]

Lécuyer responded to Lyon's June 6 comments to the effect that entrenchment of language rights would create "a form of potential tyranny in the hands of a few people who can cause chaos":

> (W)e all know that the majority sometimes can forget the minority, and proofs of that can be given throughout the years. Proofs of that can be given in relation to the agreements and to what the provisions that were contained in The Manitoba Act in relation to the Metis. Proof of that can be given into (sic) the agreements that were entered into in the treaties in regard to the Native people of Canada.
> So that there has been, in the past, tyranny by the majority doesn't have to be proven. History proves that all along the way, but that there is tyranny of the minority, that you will have to be proven (sic) to me. That the Francophones being provided a few limited services would then exercise tyranny of the majority (sic), Mr. Speaker, has to be ridiculous.[2]

In response to Lyon's statement on the same day that entrenchment should be avoided "if we want domestic tranquility in this province", Lécuyer said,

> If we want domestic tranquility, but, Mr. Speaker, what if we want justice? What if we want more tolerance? What if we want better understanding? What if we want to make this a better province to live in? What if we want to make this a country that is more united? Shouldn't we think a little bit

[1] Id.
[2] Ibid., p. 4699.

> about justice? Shouldn't we think a little about the barebone minimum?[1]

Vic Schroeder followed Lécuyer; in response to a taunt by the Opposition ("gee, I thought you were in a rush to end this"), Schroeder made it clear he was willing to waive his remarks if the opposition was prepared to vote immediately to refer the resolution to committee; "if that offer is not accepted, that demonstrates...what the problem here is. It is very, very clear. It is pure Tory obstruction."[2]

Schroeder said the only issue before the House at that time was "getting this resolution before the people of Manitoba in order that they can be heard on it"; he went on:

> That is the issue we are dealing with here today, and that is the issue the Tories don't want to vote on because they like to give the public the impression - and this is the mystery of what is happening here in the last few days. They are trying to give the impression that we are the people who are trying to prevent the public from being heard; that's the impression they're trying to create out here; that is an absolute lie. We are asking this matter to come to committee.[3]

After being called to order for using unparliamentary language, Schroeder withdrew his last remark, saying "the impression created is very clearly unfactual".[4] He denounced the Opposition's tactics of refusing to pair the Premier and said they

> wanted to set up a situation this afternoon which would allow them to have the bells ringing all weekend...
> Your ruling, Mr. Speaker, thwarted his deliberate attempt to have the bells ringing all day today, all day tomorrow, all day Monday, Tuesday morning. That's what he was attempting to do...[5]

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[1] Id.
[2] Id.
[3] Ibid., p. 4700.
[4] Id.
[5] Ibid., p. 4701.

Eugene Kostyra added that "The Minister of Finance indicated that, for the first time in anyone's history (sic), pairs have not been allowed for the Premier and other Ministers on government business," adding that he was informed himself the previous evening that the Opposition would not honour his pair, even though he was to attend the National Ukrainian Festival in Dauphin as the government's official representative.[1]

Roland Penner spoke next, saying "some remarks of a personal nature were made about my absence from the House. I think that is absolutely wrong".[2] He then addressed the comment that had been made that there had been "some sort of deal" about the ordering of the affairs of the House over the weekend:

> The Opposition House Leader said to me yesterday in one of our discussions that he was prepared to admit that there may have been a misunderstanding. How can he admit to me that he's prepared to admit that there may have been a misunderstanding, and then tell [the] House that there was a deal; to tell this House, on the one hand, that there was a deal, and to tell me that there may have been misunderstanding? How do you characterize that in something that doesn't border on unparliamentary language?[3]

He denounced the Opposition's tactics, in the process putting them on the record:

> They yell there - the Member for Morris and others - put the question. Put the question. Why do they want the question put? Not, as challenged by the Minister of Finance, because they really want the issue to be dealt with. The moment the question is put, the bells will ring until they decide, lords and masters of this House...They will let the bells ring...a Tory tactic that is a discredited tactic.[4]

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[1] Ibid., pp. 4702-02.
[2] Ibid., p. 4703.
[3] Id.
[4] Ibid., pp. 4703-04.

What should the Opposition do?

> The one part that places some burden on government, and that's only the Government of Manitoba with respect to services, if they genuinely feel that is the problem and that there is the need to sharpen up the terms and it's not that complicated, then let them get into the debate and make constructive suggestions.[1]

Russell Doern, ignoring Penner's challenge, took the floor and returned to the matter of costs:

> (O)ne cannot ignore the costs, and the costs of this particular measure are very high indeed. The translation costs are high. The costs of providing hundreds of jobs in the Civil Service is very high, and no one can measure the damage in terms of our community that will result in this kind of a policy. So, when the Member for Radisson says, well, you shouldn't consider costs, it's an excuse, it's a subterfuge. I say that costs are as much a part of this debate as anything else.[2]

Doern told the House that to date he had received 7,000 letters in response to the newspaper advertisements with, he anticipated, over 10,000 names, and raised over $7,000.[3] Doern attacked articles written by Larry Hill of the *Winnipeg Free Press* and Richard Cleroux[4] of the *Globe and Mail* regarding ethnic group support for the government proposals, saying "they were very very misleading articles".[5] After a brief altercation with Kostyra, who called him a "fool", Doern read into the record portions of the two letters from the German groups quoted earlier in the House by Kostyra, making the point that the various representatives of ethnic groups interviewed were not representative, for example Harry Shellenberg, "who is in one little group...Is

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[1] Ibid., p. 4704.
[2] Ibid., p. 4706.
[3] Ibid., pp. 4707-08.
[4] Misspelled "Clereux" in Hansard.
[5] Id.

that the German community? Harry Shellenberg is 125,000 people all of a sudden?"[1] Doern then made his main point:

> (I)t is inaccurate and erroneous to suggest that the ethnic communities are behind the government. Some of their leaders are, and some of their groups are, but I think have (sic) made the case that the German community, for starters, isn't. I'm saying, Mr. Speaker that if you take the cross section of Ukrainian Canadians over 116,000, and take a poll, I say that they will be overwhelmingly against.[2]

Jerry Storie followed, making the point that the opposition was more interested in debating process rather than the "fundamental issue", which was that

> there was a tacit agreement, agreement in writing, a contract between the two people who, at that time, were cohabitants of this province, two major linguistic groups that were founding members of this particular province.[3]

Storie recalled that Lyon had used the word "courtesy" regarding the provision of French-language services to the francophone minority, and related this to Lyon's opposition to entrenchment of the Charter of Rights:

> Mr. Speaker, we can think of any number of countries in this world where human rights are a courtesy and not fundamental entrenched rights, and most of us here would not want to live in those countries because a courtesy can be taken away at any time.[4]

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The division bells rang again on the holiday Monday, August 1; the opposition refused to appear to vote on a motion to let a bill stand. Finally, at 3.30 p.m., the Speaker advised the House he had been informed in writing that

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[1] Ibid., p. 4709.
[2] Ibid., p. 4711.
[3] Ibid., p. 4716.
[4] Ibid., p. 4717.

the opposition would not be returning until the following morning, and had accordingly told Chamber staff their services would not be required beyond normal working hours; in addition, the sounding of the bells would be minimized to the greatest extent possible.[1] The division bells having rung until 10 a.m. the following morning, the House then voted second reading of Bill 95, a labour bill; to conform with House rules, the Speaker then declared that the House had reached 5.30 and the mandatory adjournment hour for the previous afternoon, adding that the House would stand adjourned until 10 a.m. the following morning "or as soon thereafter as is practicable".[2]

The next day, August 2, the House reconvened at 10.38 a.m.

In the afternoon, during question period, Doern asked Penner whether he had received a request from the SFM to have Hansard translated into French as stated by the president of the SFM on radio station CKSB the previous day; Penner replied he had received no such request, stating that the House Rules Committee decision on the matter, that French comments in the House would be published as soon as a translation was available, still stood. Doern persisted, asking whether it might not be possible for the SFM to challenge this decision in the courts, thereby contradicting a statement in the government's pamphlet to the effect that the constitutional agreement would ensure that further court cases would be avoided. Penner answered that the question was hypothetical, but that "The records and Journals of the House as they were in 1870 did not include Hansard... somebody may walk into court at any time, under the original Section 23, and make this claim or that claim, but it would have nothing to do with our proposed amendment which indeed will restrict the

[1] Debates, August 1, 1983, p. 4739.
[2] Id.

ambit of claims."[1] Doern continued, raising the possibility of "dozens and dozens of challenges"; Penner replied that "what is being avoided are tests on the validity of our statutes", since all statutes would be validated under the agreement despite having been adopted in English only.[2]

Debate later resumed on the Oleson subamendment to the Sherman amendment. Pete Adam continued his comments begun July 30, denouncing the fact that over the weekend, there was only "a spattering (sic), or a pepper (sic) of people here and there around the House...the idea was to try and hold down the government with 25 or 26 members on this side with half a dozen people or so. That was the strategy on that side of the House."[3] Yet it was the Opposition that had wanted to go into speed-up.

Several Opposition members speakers then spoke at length on the subamendment. Harry Graham raised the spectre of federal official bilingualism in Manitoba should the province be declared officially bilingual; that would affect "every single person in Manitoba, every single one - the private sector, the schools, business enterprises, transportation, communication". Companies might have to have quotas of bilingual employees. Would that mean, he asked, that

> if I, as a road contractor, entered into a contract to build 10 miles of road on any given highway on which the Minister of Highways wants construction, would it require me to have a certain percentage of bilingual employees working for me on that particular contract or else I wouldn't get the contract? Is that the intention of the government? We have seen that happening at the federal level.[4]

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[1] Debates, August 2, 1983, p. 4746.
[2] Id.
[3] Ibid., p. 4763.
[4] Ibid., p. 4767.

Graham quoted a report about a Mr. Earl Ricard who was losing his job at the Fredericton airport, "one of four commissioners (sic) who have been told they will not be able to continue working at the airport because of Transport Canada regulations that make bilingualism a requirement of employment".[1] With an official declaration of bilingualism, "you probably [would] have a direct interference by...the Commissioner of Official Languages. So you could have direct interference then in provincial affairs".[2] Graham ended his remarks by repeating that the Opposition was prepared to meet the December 31 deadline, "but we plead with the government to take time to do this with an intersessional committee", adding that the committee should hold hearings in every constituency of the province.[3]

Frank Johnston then took the floor, calling Deputy House Leader Al Mackling "an imbecilic madman" and Anstett "a disgrace to the people of Manitoba",[4] adding he was sure the members opposite "believe in a totalitarian government... where they don't want the opposition to have anything to say".[5] Johnston quoted David Harms of the UMM as saying "the government does not want to listen to the people of Manitoba". Johnston himself did not disagree with French-language services, "but you don't have to entrench it. You don't have to say English and French are the official languages of this province."[6] The possibility of legal chaos was "very unlikely" without the amendment; on the other hand, there was nothing to guarantee that official bilingualism would not be imposed upon the cities and municipalities; for anybody saying "that won't happen, I assure you there is nothing there that says

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[1] Id.
[2] Ibid., p. 4768.
[3] Id.
[4] Id.
[5] Ibid., p. 4769.
[6] Id.

it can't happen, and there can be court cases all over this province."[1] According to Johnston, "The official languages of this province are not French and English; there is no official language in the Province of Manitoba; there is no official language in the Province of Quebec..."[2]

Johnston told the House of his recent conversations with people in rural areas of Manitoba:

> I was in Swan River on Thursday, I didn't hear one person tell me not to fight it; they said, fight it. I moved down to a group of people, some from Camperville and some from Winnipegosis, in a coffee shop, when the bells were ringing on Friday and I was driving back to Winnipeg. Do you know what they said in the coffee shop? Let them ring and fight it.
> In Ethelbert, Manitoba, four people in a grocery store said, let them ring and fight it; in Sifton, Manitoba, as small as it is, two people in the store I was in, said fight it... in Dauphin... everybody said, fight it.[3]

Wally McKenzie then took the floor for the Opposition, moving that debate be adjourned; the motion was defeated, which prompted him to denounce the government for imposing closure: "We're facing closure in this House, where he [Pawley] refuses to allow me to adjourn the debate, so I can go home at suppertime and get my papers and properly prepare myself to speak on this matter."[4] Taking up a comment made previously by Doern, he told the House

> the Minister of Cultural Affairs is sending out letters to the arts and cultural groups in [the] province and telling them, in other words, if you don't toe the line on this issue you won't get any more grants. You won't get any more grant money from this government unless you march behind. Isn't that a wonderful way to amend the Constitution? Now, that's what the Honourable Member for Elmwood thinks is going on. I haven't

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[1] Ibid., p. 4770.
[2] Ibid., p. 4771.
[3] Ibid., p. 4772.
[4] Ibid., p. 4773.

> seen the letters yet. Maybe someone will surface one to us one of these days...[1]

McKenzie added that he wanted the people of Manitoba to be heard on the issue; in particular,

> I want the Metis communities of Camperville, who I represented for years, and San Clara and Boggy Creek to be heard. They are very very important. Those are some of the earliest people that came to this province and I want to hear what they have to say about this matter that's before us.[2]

Ric Nordman followed, making the point once again that "(t)he opposition side of the House is willing to extend the services but we oppose the entrenchment that is proposed".[3] He added:

> I don't think any one of the opposition side has denied that French linguistic rights were written into the bill when Manitoba entered Confederation. It must be remembered that there have been many changes since that time. The Francophone population at that point in time was probably the majority, they were predominant at that point, but times have changed. People from all parts of the world have come into Manitoba, immigrated here, and settled here and the French population is probably in a minority situation.
> The letter of the law, their rights under the Bill of 1870 have been agreed to by the official opposition and the opposition is supportive of the Supreme Court decision on the Forest case.[4]

Bud Sherman followed Nordman, speaking in support of Oleson's subamendment. In his view, the opposition had "tried to be reasonable on this matter throughout", waging a battle "for unity, for sympathy, for understanding, and a battle against divisiveness, and against extreme authoritarian legislation...";[5] its main argument was that "the public has a right to be consulted on this issue and to make its views known..."[6] He emphasized

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[1] Ibid., p. 4774.
[2] Ibid., p. 4775.
[3] Ibid., p. 4776.
[4] Ibid., p. 4777.
[5] Ibid., p. 4779.
[6] Ibid., p. 4780.

the need for a consensus, following the suggestions of his colleague Gerry Mercier. He denounced Penner's attitude in eliminating the possibility of such consensus; through debate, particularly in the House, "will emerge, hopefully, a sensible, reasoned consensus on the issues of the day".[1] He admitted however, on second thought, that the idea of the impossibility of a consensus might not be so far-fetched after all:

> To say that there's no possibility of consensus between the Government House Leader and my leader possibly has some scintilla of truth to it, Mr. Speaker, because I can't believe that my leader would ever be so obtuse and so confused in his thinking as to settle on consensus with the Government House Leader.[2]

The main thing, Sherman continued, was to pursue "a consensus of the people of Manitoba"; so what if a consensus could not be reached between Penner and Lyon? At which point Lyon interjected, "He doesn't reach consensus with 95 percent of the people. He's a former communist."[3] With that reminder from his leader, Sherman began arguing the opposite of his consensus thesis, stating:

> It's difficult, as I look over the field, to find persons on that side...who are so reasonable in their approach that I can even talk about consensus.[4]

To which Lyon added, "A collection of reds over there."[5]

Sherman reversed course again, arguing that a consensus was indeed possible; there was

> "a very legitimate and very sensible difference of opinion on most things between my Leader and the Government House Leader. Thank God, there is; God grant there will always be. But

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[1] Ibid., pp. 4781-82.
[2] Ibid., p. 4782.
[3] Id.
[4] Id.
[5] Id.

> that doesn't say that we, in this Chamber, can't generally come to a consensus, or that the people of Manitoba can (sic) come to a consensus."[1]

Again Lyon interjected, "Marxist totalitarians we don't agree with, that's all."[2]

Sherman soldiered on:

> A consensus, Sir, by definition of every dictionary that I've investigated means an agreement. It doesn't mean unanimity... it means an agreement.[3]

To which Lyon replied, "It's hard to agree with reds."[4]

Defeated, Sherman finally dropped his line of argument, focusing instead on the need for public hearings, and asking why the government did not want them:

> What are they afraid of? They don't want that question to go to the public in any meaningful way. They don't want public hearings.[5]

Pawley then rose to speak and in the process to bear the full brunt of Lyon's interruptions. Early in his speech, the following exchange occurred:

> **Hon. H. Pawley**: Mr. Speaker, why did not the former First Minister have the nerve to put to the people of this province his opposition to the entrenchment of a Charter of Rights? Why did the former First Minister indeed hide? One of the reasons probably for his defeat in November, 1981 that he doesn't want to acknowledge in this Chamber, is because most Manitobans disagreed emphatically with his chicken-like approach to the entrenchment of a Charter of Rights for Canadians and for minorities in this country.
> The honourable member wants to know one of the reasons...
> **Hon. S. Lyon**: You've lied in the campaign - you've lied throughout the campaign.

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[1] Id.
[2] Ibid., p. 4783.
[3] Id.
[4] Id.
[5] Id.

Hon. R. Penner: Mr. Speaker, on a point of order, this is disgraceful.
Mr. Speaker: Order please. Order please. The Honourable Attorney-General on a point of order.
Hon. R. Penner: On a point of order, the First Minister is addressing...
Hon. S. Lyon: Sit down, you communist.
(...)
Mr. Speaker: I would ask the right honourable gentleman to conduct himself in a right honourable manner. (...) Does the honourable member have a point of order?
Hon. S. Lyon: Yes, Mr. Speaker, if I were the First Minister of a government that had lied so openly to the people as this Minister did in 1981, I would never have a point of order, I would hide my head in shame.
(...)
Mr. Speaker: The Honourable Leader of the Opposition did not have a point of order. He is also well aware that he is not allowed to use the word 'lies' or 'lied' in this House. I would ask him would he please withdraw that word.
Hon. S. Lyon: Anytime, Mr. Speaker, to say that my honourable friend, the First Minister, his statements and the truth seldom coincide; seldom have, seldom will.[1]

Pawley attempted to go on, saying that the provision of French-language services he had announced in March, 1982 would involve approximately 400 public servants; Lyon interjected, "Entrench that figure then..."; Pawley replied, "Mr. Speaker, we are prepared to ensure that expressed intent on our part is reflected by way of wording," to which Lyon replied, "Good... Entrench the figure. Entrench 400."[2]

Later, Pawley listed various organizations which had expressed an interest in appearing at the public hearings; when he came to the Manitoba Association of Rights and Liberties, Lyon interjected, "Oh, great bunch, funded by the Attorney-General, a communist, yeah, great bunch!"[3] Pawley continued, saying he had noted a legislative committee had met in Thompson, Swan

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[1] Ibid., pp. 4784-85.
[2] Ibid., p. 4785.
[3] Ibid., p. 4786.

River, and Brandon in 1981 and that it would not be an "unreasonable expectation of this committee to decide to hold public hearings in three other centres outside of the City of Winnipeg".[1] Lyon interjected that "That will be up to the committee, not to you." Pawley agreed. Following a cryptic interjection by Lyon to the effect that "We agreed to a committee...", Pawley continued, "Let us get this matter to the committee. I would like to speak to the reasonable members across the way, because there are some reasonable members across the way."[2] Pawley attempted to continue, but was interrupted several times by Lyon, who finally told Pawley, "We'll read the record back and show you to be a liar in your mouth." The following exchange then occurred:

> **Mr. Speaker**: Order, please. Order please. I have told the Honourable Leader of the Opposition three times this evening and I have told him the last time that I would not tell him again. I am unfortunately compelled to name Sterling Lyon for defying the authority of the Chair.
> The Honourable Government House Leader.
> **Hon. R. Penner**: Mr. Speaker, pursuant to the Rules, I move, seconded by the Minister of Energy and Mines that the Leader of the Opposition be suspended from the services of this House until the end of the Thursday evening Session of this week.
> **Hon. S. Lyon**: Well, now we know the communists are really in charge.[3]

The Speaker declared the motion carried by voice vote; after a request for a division by Ransom, Lyon said, "You'll hear the bells for quite a long time, you bloody reds."[4] The results of the standing vote confirmed the voice vote, and Lyon was suspended. He left unrepentant, saying, "When I return, you'll still be speaking untruths."[5]

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[1] Ibid., pp. 4786-87.
[2] Ibid., p. 4787.
[3] Ibid., p. 4788.
[4] Id.
[5] Ibid., p. 4789.

After Lyon's ejection from the House, Pawley continued his speech virtually uninterrupted. He repeated the two points he had already made, that his government was willing to consider changes in wording of the constitutional resolution, "to ensure that wording reflects the stated-in-public intentions of this government".[1] Secondly, his government was not opposed to holding hearings in four Manitoba centers, Thompson, Brandon, Swan River, and Winnipeg, as they had been during the constitutional debate of 1981.

Pawley then launched into the gist of his speech, an impassioned appeal to the moderates in the Conservative caucus. He began by identifying the areas where there was substantial agreement between the Government and the Opposition. There was agreement, in Pawley's view, on both sides of the House that French-language services should be extended. This had indeed been the policy of the previous Lyon administration and it was his own. This, Pawley hoped, distinguished the Conservatives from groups such as the "separatist" Western Canada Concept, which was against bilingualism generally. Secondly, the Conservatives were not opposed to the translation of statutes, and Pawley again pointed out that the constitutional agreement provided for translation of only 400 out of 4,000 to 4,500 statutes going back to 1870.

The only major area of disagreement, in Pawley's view, was the entrenchment of these measures, and particularly entrenchment of French-language services. Pawley added that this disagreement "really does relate back to... a philosophical disagreement as to whether or not minority rights ought to be entrenched in the Constitution...;" therefore, "we're back to...the same sort of arguments that were dealt with in respect to the entrenchment of a Charter of Rights".[2] The problem was related to the fact that federal bilingualism had been

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[1] Id.
[2] Ibid., p. 4790.

"poorly administered" in many ways, that "we have been proceeded (sic) by years and years of poorly administered federal programming in respect to bilingualism in the Province of Manitoba..."[1] Indeed, Pawley had heard from Manitoba voters that "again and again...there's concern about crawling up too close to Mr. Trudeau".[2]

Finally, Pawley admitted there had been some "excellent speakers" on the other side, notably Bud Sherman, Harry Enns, and Wally McKenzie, though he hoped he was not, by so doing, giving them "the kiss of death" in any leadership aspirations they might be harbouring.[3]

Gerry Mercier was the first to reply to Pawley. He pointed out that only a few weeks previously, Penner had said the proposal had to be accepted or rejected in its entirety; Pawley's indication that changes in wording would now be considered was "certainly a step forward"; however, "it is all the more reason why we urge the government to take one further step and to appoint an intersessional committee".[4] Pawley had indicated he "is now prepared to allow the committee to meet in three places outside of...Winnipeg", and that he was willing to let the committee decide; yet the government held the majority on the committee, and "(w)e have no assurance that our views as to where those meetings are going to be held, are going to be respected",[5] or whether the public would not be "cut off".

Regarding entrenchment, Mercier said the Opposition had "no great argument" with entrenching the translation of statutes; even the French-speaking community, he added,

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[1] Id.
[2] Id.
[3] Ibid., p. 4791.
[4] Id.
[5] Ibid., p. 4792.

> recognizes that they don't need all of the statutes translated. If we could only come (sic) with a way, Mr. Speaker, a form of wording that would somehow guarantee to them, under Section 23, that they would be entitled to receive the statutes that they wanted without having to translate all of the statutes, then we would be doing the public and the taxpayer a great service.[1]

The trick, of course, was to come up with this wording, and this was another reason why interessional committee meetings should be held. Mercier referred to Penner's argument that Manitoba might lose its case before the Supreme Court, and then be required to "do a great deal more translation than we will have to do under this proposal". This, in Mercier's view, was a red herring, since the Freedman court had already found against Bilodeau, and that counsel for the Manitoba government "have told them that they have an excellent chance of success". It was "absolutely ridiculous" to expect the Supreme Court to throw Manitoba into "legal chaos" since "that simply would not happen".[2]

Referring to Desjardins's praise for Roblin, Mercier pointed out that the morning after his speech, Roblin was quoted as saying in the *Winnipeg Sun* that the government should have allowed the case to go to the Supreme Court and that, "on this kind of issue you have to go very slowly with people".[3] Mercier said the process initiated by the government on the issue "has caused such divisiveness in this province...that we will probably never see such similar divisiveness in our lifetime...We on this side don't have to say anything about it, it's out there in the community, and it's the process by which this government is bringing this forward that is causing it..."[4] He went on:

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[1] Id.
[2] Id.
[3] Ibid., p. 4793.
[4] Id.

> Mr. Speaker, I have a substantial number of French-speaking people in my constituency and I have French-speaking people coming to me and saying, we don't need this, because what this is doing is causing a very anti-French feeling in the community and I don't like it... it's going to make life much more difficult for us than it has been and things were okay before this.[1]

Finally, Mercier said the Opposition had asked for public hearings, and the government had finally agreed there would be public hearings; now the government should agree to hold intersessional hearings.

Dave Blake followed Mercier, quoting approvingly and at length from the UMM press release already partially read into the record by Opposition MLA's. Blake read from the list of boards and commissions which would be providing French-language services; this, Blake said, was "the thin edge of the wedge": these bodies "touch every municipality and rural hamlet in this province where there may be not one Francophone or French-speaking person".[2] Entrenchment would mean that to obtain contracts, for instance to supply meals to government institutions, "you will have to have a certain percentage of your staff bilingual or we won't be able to deal with you":

> There's where the danger comes, Mr. Speaker, and for those of us that had hoped to have a future in this province for our families, you start narrowing down job opportunities. Once you do that, you know, you can understand what that leads to.[3]

In addition, there was the "cumbersome" cost to the Manitoba taxpayer to be considered.

Finally, Blake read into the record extensive excerpts from a letter addressed to the Premier whose author Blake did not identify. Taking care to

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[1] Id.
[2] Ibid., p. 4796.
[3] Ibid., p. 4797.

say that "we don't agree with all of the sentiments expressed there", Blake nevertheless read portions of the letter into the record, including the following:

> The George Forest and Roger Bilodeau perpetration of the alleged injustice perpetrated upon the French Canadians is enraging to many people. Could neither of these men read or speak English; was there really a need there? These costly battles, abetted by Mr. Trudeau and company, and funded by taxpayers, were not needs; they were demands, for revenge by vindictive individuals.
> These fanatics, of course, consider all English-speaking people to be bigots and racists... If these types are attempting to create chaos in this country of ours they are doing just fine...
> It appears that all that English Canadians hold dear must be swept away. Our traditions don't count...[1]

Doug Gourlay spoke last that evening, going over well-worn arguments already made repeatedly by his colleagues, denouncing the fact that, through the "deal" made with Trudeau and the SFM, French-language services would be entrenched in Manitoba.

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The following day, August 3, Wilson Parasiuk led off debate for the Government. In his view, the Conservative Opposition had used "extraparliamentary means" to prevent the constitutional resolution from going to committee and public hearings. If the motion to refer had been passed three or four weeks earlier, the people of Manitoba could have been heard during that time. The Opposition had initiated a filibuster against the resolution; however, "we've heard about five or six different messages from the Conservatives as to what they think the substance of the resolution is".[2]

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[1] Ibid., pp. 4797-98.
[2] Debates, August 3, 1983, p. 4809.

Parasiuk pointed out what he believed to be a fundamental division within the Conservative caucus regarding the resolution:

> I've heard the Leader of the Opposition say that he is in favour of everything in this resolution in terms of its substance, except the entrenchment. I've heard a couple of other Conservative members say the same thing, and I see that the Member for Morris [Clayton Manness] is nodding his head in agreement.
> Well, if that is the case, why do we have the Member for Minnedosa [Dave Blake] getting up yesterday and making the following type of comments? He says - this resolution is the thin edge of the wedge. He said that we would really have people concerned about job retention, about job advancement. He says this is like the Federal Bilingualism Program. Well, if that's the case why doesn't he repudiate his leader because his leader has said that he agrees with all of this, with all of the substance except entrenchment....
> So they can't have it two ways. They can't say that we agree with the substance of this and then go out and try and foment fears amongst the population by misrepresenting what this resolution is about... (T)here have been others who have talked about the fears of creeping bilingualism when indeed the Leader of the Opposition; the Member for Lakeside [Enns]; the Member for Fort Garry [Sherman]; and the Member for St. Norbert [Mercier] have said that they agree with this resolution except for entrenchment.[1]

Albert Driedger followed Parasiuk with a heartfelt appeal to the government to compromise on the issue, since in pursuing its course it was generating acrimony in the province. Driedger did not want the province to become bilingual, since

> The fact that we state the province is bilingual; the impression that is left by that gives me concern. Because if my kids, my children, my grandchildren, my great-grandchildren do not want to speak French, they can be limited to certain positions that they can attain within government and government services. Those are rights...I don't want any of my rights taken away, or my children's rights in terms of the jobs that they can qualify for in the future.[2]

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[1] Id.
[2] Ibid., pp. 4812-13.

Driedger then told the House that, in attending week-end functions in the country he had been in contact with people, and he had noticed "this thing has gradually started building. The beginning of June nobody was asking me about the bilingual issue...Now the issue is there..."[1] He and his caucus felt they were right about the issue: "(W)e are not giving in and our members, our caucus, is getting stronger every time we get up and speak on this subject because the reaction is coming. The reaction is coming."[2] However, a compromise was necessary:

> So let us compromise; let's work this out. Let's work this out for the betterment of the province, for the betterment of people being able to live together in this province, so that we as a House, a legislative House, can work together.[3]

Clayton Manness took the floor next, accusing Pawley and Penner of having attended only a brief part of a recent meeting between the government and the UMM, an accusation that was repeatedly and forcefully denied by Pawley. Then, as other Conservative MLA's had done before him, Manness read extensive portions of the UMM press release into the record.[4]

Jim Downey followed Manness. Taking a different tack, Downey said the government's main problem on the issue was that the people of Manitoba did not trust it:

> The people of Manitoba, Mr. Speaker, have lost their trust in the government that has been given the job of administering the affairs of the Province of Manitoba over the last almost two years. The trust is gone...between the people of the Province of Manitoba and the government...
> Mr. Speaker, that has to be very plainly understood, that the people of Manitoba trusted Sterling Lyon; trusted him and his Attorney-General, Gerry Mercier, when it was negotiating on

[1] Ibid., p. 4813.
[2] Ibid., p. 4814.
[3] Id.
[4] Ibid., p. 4817.

> major constitutional changes. There was a bond of trust that isn't there today...[1]

He returned to this theme later, relating it to the plebiscites that various municipalities were planning and insinuating that the NDP was a marginal group that had somehow blundered into power:

> Mr. Speaker, why have all the municipalities, why have the Union of Municipalities come out so adamantly opposed to this particular issue? (...) Why are they talking about having plebiscites during this fall's election, Mr. Speaker? Is it because they are sure...that what the government is doing is correct?
> No, Mr. Speaker, it is because they do not like to see what the government is doing, and they don't trust the government.
> It's [the UMM] not, Mr. Speaker, a leftist fringe group in society. They are the mainstay of the province... They aren't a fringe group of people who are elected for four years to show how incompetent they are, such as we have governing the Province of Manitoba today.[2]

Elsewhere in his speech, Downey hit what must surely have been a sore point with the NDP caucus, the fact that throughout the negotiation of the agreement with the SFM, Penner had not brought the matter to caucus except in the final stages:

> Were they knowledgeable, Mr. Speaker, prior to the introduction of this constitutional change? Was the Attorney-General fully telling their caucus the route in which (sic) he was taking? Was he sitting down and going through it as was done during our term of office when our leader and our Attorney-General made sure that first of all, Mr. Speaker, it was the Cabinet and the caucus truly understood (sic) the direction that the government was going? I don't think so, Mr. Speaker. I don't think the New Democratic Party Cabinet or caucus had the handle on what the Attorney-General was doing in negotiating with the SFM and with Pierre Elliott Trudeau and the federal Liberals. I don't think they truly knew what was going on until all at once it was lying on their desks.[3]

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[1] Ibid., p. 4820.
[2] Ibid., p. 4822.
[3] Ibid., pp. 4820-21.

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During question period that afternoon of August 3, the Minister of Highways and MLA for Lac du Bonnet, Sam Uskiw, confirmed, following a question by Doern, having received a petition brought to him by "a lady from Beausejour" containing 320 names against the government's bilingualism proposals. Uskiw added that in his view, "she was not informed as to the substance of the resolve that is before this House".[1]

As debate on the subamendment resumed, Jim Downey recalled that at one time "half the people [of Manitoba] were Franco-Manitobans and half were Anglophones":

> Yes, that is true, our history tells us that it is so, but it isn't that way 100 years later... It isn't that way and they still have the right to the service that was given to them... (I)t has been pointed out in spades by our leader and by every speaker on this side of the House that those rights are there, they're preserved by us, the people of the Province of Manitoba.[2]

Downey then went on to make his main point:

> (W)hat they [the government] are doing is wrong, wrong, wrong! It will destroy the social fabric that ties this province of minority groups and majority groups together as one common force and one common group of people, and that's the destruction that they're doing...
> (...)
> We have a provincial government who have proceeded, first of all, in secret, negotiating with the minority group and with the Federal Government. We know what their objectives are. We don't need to be told that over and over again, what Pierre Elliott Trudeau is doing. Of course, he is using the present-day Premier as a puppet. That is all that he is doing. He knows that he has a weakling in place.
> (...)

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[1] Ibid., p. 4827.
[2] Ibid., p. 4831.

> (T)he people of Manitoba trusted Sterling Lyon. They definitely don't trust Howard Pawley. It is a matter of trust.[1]

Don Orchard followed, attacking the government for having "negotiated badly",

> particularly the Attorney-General who is a rather newcomer (sic) to this House and to the parliamentary process, set for himself and his colleagues an unrealistic time limit within which they must have this matter resolved in the Legislature...[2]

The government's attitude on the issue

> perfectly exemplifies the socialist philosophy and the ultra left-wing philosophy as espoused by the Attorney-General of the fact that we, the government, are the masters and the people shall be the slaves.
> (...)
> There are countries in this world where that political attitude works. In Russia, I believe there's one name on the ballot because the political masters dictate to the slaves, the people...[3]

Orchard derided "this majority temporary government" and recounted in detail the events of week-end, when the government had "filibustered their own resolution"; the government was "an incredible collection of individual incompetents, collectively administered by a leaderless, weak-kneed, unpopular First Minister who cannot control his backbench, his Cabinet or his caucus".[4]

Arnold Brown speculated on how the government's constitutional amendment might be interpreted by the courts and its ultimate effect on municipalities in particular:

> The Supreme Court of Canada is going to say the Government of Manitoba has agreed, along with the Federal Government, that Manitoba is going to be officially bilingual. It's entrenched into the Constitution. And how are they going to rule? They're going to rule that it's every person's right to have that particular

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[1] Ibid., pp. 4831-32.
[2] Ibid., p. 4833.
[3] Id.
[4] Ibid., p. 4837.

> ticket in both languages. You just wait and see, that is exactly what is going to happen; and when you say that these things are not going to happen in those municipalities, they will happen. We know it, because it has happened federally, where this has gone out of complete control and it is also going to out (sic) of complete control, as far as the municipalities are concerned, and we know full well that other areas are also going to be affected.[1]

Abe Kovnats recalled comments made earlier by Lécuyer to the effect that the goal of the Opposition in the debate was simply to "obstruct the process"; in his view, Lécuyer

> imputes motives that we have brought in these amendments and sub-amendments strictly to delay the process. Mr. Speaker, that is not so...
> I can't understand the government, Mr. Speaker, in the remarks imputing the motives to the opposition. We are all working towards the same goals, except that we do not want to enshrine those rights that we all agree that they have into the Constitution...[2]

Kovnats then contradicted the members of his caucus who had repeatedly insisted that S. 23 of The Manitoba Act did not give French the status of an official language in Manitoba:

> Is he imputing that we do not accept that Manitoba has two official languages? I agree that Manitoba has two official languages. Mr. Speaker, how can he impute such motives? Yes, to the Honourable Member for Radisson, that's what's imputed; that we do not accept that Manitoba has two official languages. I tell you, we do have two official languages.[3]

Later, Kovnats read into the record excerpts from the UMM news release, as had many of his colleagues before him.[4]

After a speech by Gary Filmon, who mainly dwelt upon the wording of the constitutional amendment itself in the area of French-language services

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[1] Ibid., p. 4842.
[2] Ibid., p. 4844.
[3] Id.
[4] Ibid., p. 4847.

and the need for proper wording, Gerrie Hammond took the floor, emphasizing that Franco-Manitobans had had their rights restored by the Supreme Court judgment in 1979, not by the constitutional amendment which was being proposed by Penner. Quoting extensively from Richard Cleroux's account of the SFM's May 26 general meeting, she referred repeatedly to a sentence in that account quoting Léo Robert as saying, "We got everything that any court could have given us and more."[1] Penner, in her view, was to blame for having given the francophone community so much:

> If anyone deserved his praises sung it was and is the Société Franco-Manitobaine President, Leo Robert. He managed, Mr. Speaker, something that no court could have applied to this government, to any government. He gave them more than, I think it said, they had a right to expect. Yes. 'We got everything that any court could have given us and more,' Mr. Robert said. Why wouldn't they cheer and applaud and sing his praises? Believe me, I would be singing his praises also.
> I would like instead to be singing the praises of the Premier and the Attorney-General for pulling back on a bad agreement, Mr. Speaker, an agreement that was made behind closed doors without the opportunity of Manitobans to get up and speak on this issue...[2]

Hammond pointed out the dangers in the constitutional amendment, particularly the sections relating to services. Robert had been quoted as saying that a St. Boniface woman could call the Manitoba Telephone System and receive information on her bill in French. "Now how," Hammond asked, "unless every person who answers the phone in the telephone system is bilingual, is this policy to be carried out? And carrying it a step further, Mr. Speaker, does that mean that every telephone operator will be bilingual?".[3] The same problem existed with the words "significant demand" in the amendment:

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[1] Ibid., pp. 4854 ff.
[2] Ibid., p. 4857.
[3] Ibid., p. 4856.

> What is a significant demand? Who's going to decide a significant demand, two? It might be two one place, one another, it might be15 in some places, a significant demand. But where will they go? Not to the government; not to the Premier... (T)hey'd go to the courts... We are putting the Province of Manitoba, we're putting their future in the hands of the courts.[1]

Lloyd Hyde took the floor next, quoting extensively from the UMM's press release and adding an example of his own of the dangers of the constitutional amendment:

> (T)his government has already announced that the agricultural representative of Portage la Prairie will be bilingual. Well, this is hard to understand, Mr. Speaker, when less than 1 percent of our population in the Municipality of Portage la Prairie is French or bilingual. Why is it that this government are insisting that our ag rep be bilingual?
> (...)
> What percentage of people are asking this or even needing it? Very very few. The people in my constituency who are of French nationality, when they phone up the agricultural department at Portage la Prairie, the ag rep, they don't talk to him in French. They can speak their English and get their points across even though they may come from down south there, in the St. Claude area, where there is a little heavier concentration of French speaking people. But, Mr. Speaker, this is just ridiculous to think that in a place like Portage la Prairie where they are going to insist that the agricultural representative will have to be bilingual.
> (...)
> You know, it struck my mind the other day as I was driving through Portage when I had to pull up at a stop sign, I wonder how long it's going to be, Mr. Speaker, before he'll have - Arret - across there instead of - Stop - like we in Portage la Prairie are accustomed to reading. I can just see this here mushroom to the point where it will just get out of hand entirely.[2]

Hyde gave his version of the events leading up to the constitutional amendment and of the effect it would have:

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[1] Ibid., p. 4857.
[2] Ibid., pp. 4858-60.

> We had a man who was charged on a traffic violation; he chose to make an issue of it. Today I say that this government has picked that up, they've picked it up and are determined that we as Manitobans are going to be bilingual - the Bilodeau case.[1]

He quoted extensively from several letters written to Pawley or Lyon. A Mrs. Les Bowes of Portage la Prairie had written to Pawley:

> Dear Sir: I am writing to express the thoughts of our family and many other citizens of our district regarding our concerns of (sic) the great expense in the enforcing of two languages in this province, and the consequences. We are definitely against the expense and the ridiculous translating of past laws into French... (A)t the same time, it is an offence to many very hard-working people of many other nationalities that have helped build this free country with the rights for all, and we hope to keep it that way.
> The ability to do a job properly is far more essential than the language people speak. Bilingualism should not be a priority which seems to be happening in many places.[2]

Joan Pearson, also of the Portage area, had written the following to Lyon:

> There are many nationalities other than French in Manitoba that wish to preserve their culture. I read in the paper recently that this will not affect jobs in the future; that is not true as it is already affecting people looking for work. I'm sure this will only cost a great deal of money and create a lot of unrest.[3]

Finally, Hyde quoted from a letter from one Jean S. Ross, adding "I don't know who Jean M. Ross is, but she certainly has some good points in this here letter that she wrote to... Pawley."[4] The excerpts Hyde read into the record include the following:

> 'Now the Georges Forest and the Roger Bilodeau perpetuation (sic) of the alleged injustice upon French Canadians is enraging to many people. Could neither of these men read or speak English?' she asks. 'Was there really a need there? Their cost battles ... and company (sic) and funded by taxpayers were not

[1] Ibid., p. 4858.
[2] Ibid., p. 4859.
[3] Ibid., p. 4860.
[4] Id.

> needed. They were demands for revenge by the vindictive individuals.'
> (...)
> 'I resent government having its hand in my pocket to pay for the demands of every ethnic culture. No culture should have special status.'[1]

Robert Banman followed, repeating the charge that "the general public out there really do not trust the government on this particular issue"[2] He then offered his own theory as to why the government had insisted on bringing the language issue to a head:

> I'm sure members opposite, when looking at their re-election prospects, decided to zero in on a number of ethnic groups, and I think this is the old divide-and-conquer theory. If we can make a deal with the Francophone community, which represents 6 percent or 7 percent of the electorate in Manitoba, we can then go to La Verendrye and say, during the next election, look, your member Banman, he's not representing you very well. Look what he said in the Legislature about the French resolution. Mr. Speaker, that's really what's at the heart of this matter.[3]

However, the strategy wasn't working; Banman knew about the "heat" the Member for Lac du Bonnet (Sam Uskiw) was getting, "the quiet coffee-shop heat", over the issue.[4]

Finally, the question was called on Oleson's subamendment, that intersessional hearings on the language issue be completed "in any case not later than December 31, 1983". The sub-amendment was defeated by a vote of 26 to 19.

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[1] Ibid., p. 4861.
[2] Ibid., p. 4863.
[3] Ibid., p. 4864.
[4] Ibid., p. 4865.

Jim Downey led off when debate resumed on the morning of August 4. Ostensibly speaking to Sherman's amendment to refer the constitutional amendment to intersessional legislative hearings, Downey said that

> I believe... as much as a lot of people think that we are here to obstruct what the government is doing, is not so. We are not here to obstruct the government. We are here as responsible legislators to protect and to use the democratic system in the best interests and the long-term advantage of this province.[1]

At the end of his 40-minute speech, Downey stunned the House by introducing another sub-amendment,

> that the amendment be further amended by adding after the words 'next Session of the Legislature' the following words, 'and in any case not later than December 30, 1983'.[2]

The effect of Downey's motion was to allow every Member of the House to speak once again for 40 minutes to the new sub-amendment. No one on the government side objected.

While the the impact of this tactic slowly sank in on the Government side, it was Charlotte Oleson, ironically, who took the floor first to speak in support of Downey's subamendment, saying,

> People are suspicious. They're very suspicious, and rightly so, that this government is not telling them everything. It is not coming clean; not telling them all the ramifications of this agreement.[3]

Clayton Manness took up the argument, asking the government to "lay [their amendments] before the people of the province now so that we can do away with some of the mistrust", and adding:

> I find it incomprehensible that the government really would ask people to come forward and make representation on their

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[1] Debates, August 4, 1983, p. 4874.
[2] Ibid., p. 4878.
[3] Id.

> own behalf without having before them two things: First of all, the specific agreement that has been struck with the Societe Franco-Manitobaine and the Federal Government; and, secondly, the latest government thinking on the issue by way of the amendments.[1]

The government was of course hard put to respond, since there was still no signed agreement between the provincial government and the other parties. Manness wondered,

> What is not being told to us and to the people of Manitoba? What agreements have been struck that we are not aware of, with Ottawa in particular?
> (...)
> We wonder what the hidden agenda is, we wonder what arrangement has been made with Ottawa...[2]

Later, Manness made a comment that opened the intriguing possibility that, although Lyon and Mercier had received the December, 1982 draft constitutional amendment, they may not have transmitted it to the members of their own caucus:

> (W)hy did the government not consult us before they struck the agreement? I know the Attorney-General did send correspondence over to us last December and then after that, but why didn't the government see fit to include members of the opposition; not only to (sic) this issue, Sir, I say on any issue dealing with constitutional change...[3]

Failing direct consultation of the opposition, the government, in Manness's view, could have floated a White Paper on the matter. Finally, Manness reiterated the now well-worn argument that

> The issue is entrenchment; the issue is who will have the ultimate say, and the issue, of course, in the minds of many rural people is municipal designation and what that really means and how it will impact upon, not only those of us who come into contact with provincial agencies and Crown

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[1] Ibid., p. 4882.
[2] Ibid., p. 4883.
[3] Ibid., p. 4884.

> corporations on a more frequent basis, but those in our midst who come in contact daily with their own local governments. Sir, that question has not been adequately answered, and until it is, I think the issue will always remain live and open.
> (...)
> (W)hat do we not know? What is being kept from us, because in our view our request is so pure that we can hardly believe that a government would not accept it.[1]

During Question Period that afternoon, Doern asked Penner whether, in view of the hundreds of persons that might eventually want to be heard by the legislative committee, the government was prepared to allocate "at least three to four weeks for public hearings?"[2] Penner replied,

> We are prepared to allocate, as was being made clear by myself and by the Premier, such time as is necessary to hear those of the public who want to make their representations. We, in fact, are most anxious that these people and the hundreds who will come after them and are waiting for the announcement have that opportunity. We, Mr. Speaker, are not the ones who are denying them that opportunity. It is the filibustering tactics of the opposition which is denying them that opportunity. A more shameful denial of the right of these people to make their representations has, I think, never been heard in the history of this Legislature.[3]

Ric Nordman followed for the Opposition, taking up the argument that after *Forest*, "Sterling Lyon and his government took the necessary action to restore rights of the Francophone minority that had been denied them since 1890".[4] Nordman conceded that Lyon had been the first to describe French as an "official language" in Manitoba, in his April 11, 1980 speech to the House; however, there were limits to the Conservatives' support of French-language services: "We are willing to extend French Language Services, but we are not willing to have those services entrenched in the Constitution."[5]

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[1] Ibid., p. 4885.
[2] Ibid., p. 4888.
[3] Ibid., p. 4889.
[4] Id.
[5] Ibid., p. 4894.

Andy Anstett then rose for the Government and formulated its first official reaction to the Opposition's latest tactic. The new sub-amendment "exposed the opposition's strategy and their immediate tactics for all to see". It was a "frivolous amendment" which proposed a change of only one digit from the sub-amendment that had been defeated the previous evening, a sub-amendment "meant to obstruct the business of this House and the mandate of this government".[1] It was a move that was "deliberately intended as a sustained filibuster against the will of the people of Manitoba, against the mandate of this government, to govern the province". Anstett implicitly acknowledged, however, that the Government might have made a tactical error in not immediately questioning whether the sub-amendment was in order at the time it was introduced:

> Mr. Speaker, although a point of order was not raised by anyone on this side regarding the admissibility of the proposed subamendment, that lack of objection by members on this side does not for one minute mean that we accept the propriety of such an amendment.[2]

Anstett pointed out what he believed were contradictions in the Opposition's position: on one hand, it maintained a position of support of the principle behind the government's resolution while opposing entrenchment; on the other hand, "there's less than one handful on that side who have not come up with statements which belie their support of this resolution in principle"[3] The Opposition's argument against entrenchment was itself fallacious:

> This argument against entrenchment is not an argument against entrenchment in the Charter of Rights, it's an argument

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[1] Ibid., p. 4895.
[2] Id.
[3] Ibid., p. 4897.

> to turn the clock back 116 years and remove something that was entrenched then as part of a compact, as a convention.[1]

Wally McKenzie followed Anstett, saying Anstett had only three choices:

> He can either get his Premier to call an election, they can withdraw the resolution, or they can accept our amendments. There are three choices he's got...[2]

McKenzie described how anger and opposition to the government's constitutional proposals were growing among constituents:

> As we stand here...and debate day after day, the heat of the subject matter grows, the number of phone calls grows (sic), and I know phone calls that are coming into our caucuses today from campaign managers of members opposite, telling us to hang in here...[3]

McKenzie asked who, at the outset, had called the first meeting to discuss a constitutional agreement:

> If Trudeau didn't call the first meeting, who did? Was it the Society of Franco-Manitoban? (sic) Did they call the first meeting or did the Attorney-General or the Premier call the first meeting that stated this thing on its way and the momentum?
> (...)
> We don't have basically any information. Very very little information has been offered.
> (...)
> (C)an I ask the Minister of Energy, why weren't some of our members invited to those so-called secret meetings when this deal was cooked up? Why was the opposition left out...until it arrived in this Chamber or the Honourable Member for St. Norbert got a note from the government?[4]

The government should be listening to the municipalities:

> Are we going to tell those municipalities that they're wrong; that they shouldn't be sending resolutions in some 120 strong in opposition to this subject? Should we walk away from our chairs in this place and leave those municipalities high and dry

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[1] Ibid., p. 4898.
[2] Ibid., p. 4899.
[3] Ibid., p. 4900.
[4] Ibid., pp. 4900-01.

> to those gangsters over there? No way, no way, am I going to let the municipalities down in this province and leave them to them wolves over there.[1]

Finally, McKenzie presented his solution to the impasse:

> Pull the resolution and let's try a Green Paper across the Province of Manitoba and see what their wishes are on this subject matter. Then after the Green Paper has been circulated around this province...let's produce a White Paper for the people to take a look at to see where we in this Legislature and the government is misguiding the destiny of our people for the next 100 years and more.[2]

Albert Driedger supported McKenzie's point that opposition to the government's proposals was growing among constituents:

> Every time after we've been through a day of debate on this issue her, and it gets tiring in this heat, we go back home and I check around with the prople, talk to various business people, constituents, people from other constituencies, and I ask are we on the right track? Are we doing the right thing? What is the message? And it comes back stronger and clearer all the time, stay in there and fight because what the government is doing or trying to do is not right.[3]

Starting from a statement in the government's brochure, Driedger raised the spectre of municipalities being forced, by court order, to provide French-language services, even in areas where virtually no Francophones resided:

> 'By 1987, French languages services will be provided in those areas of the province where there is significant demand.' Now how do we establish significant demand? I find it very interesting. I can see significant demand in some of my municipalities, some of my communities, but supposing in Dominion City. Let's suppose that an individual comes in there, talks to the secretary of the Franklin Municipality in French, and the poor secretary, man or woman, cannot respond in French. Does that then justify that individual to take that case to

[1] Ibid., p. 4901.
[2] Ibid., pp. 4902-03.
[3] Ibid., p. 4905.

> court to have his proper rights, or who would decide that question? See, this is the concern that is developing.[1]

Driedger accused the government of using scare tactics in the explanation it had put forth in its brochure of the constitutional agreement. Driedger began by quoting from the government's brochure:

> 'In 1983, the Supreme Court could have ruled all Manitoba laws invalid as they were passed and printed in English only. The agreement beween Manitoba and Canada avoids this risk and offers an acceptable and reasonable settlement for all.'[2]

"Mr. Speaker," Driedger went on,

> that borders on scare tactics, this kind of thing, to indicate if they had not settled under the agreement that they have, and they still haven't told us what it is, how it was arrived at. That, they keep behind the scenes. But they use this kind of scare tactic to say, if we hadn't settled with the SFM on that particular case there would have been chaos in the province; no laws have (sic) been valid.[3]

"This whole brochure," Driedger added, "is on the verge of being deceitful. If they had wanted to be sincere, why didn't they put the whole agreement in here and then let everybody interpret it..."[4]

Harry Graham followed, taking up a theme developed by several of his colleagues: "(T)his government cannot be trusted. You cannot believe anything that this government tells you and take it for gospel truth because it almost always ends up as something different occurring."[5] As evidence of this statement, Graham pointed to the inconsistency between Pawley's March 21, 1982 speech to the SFM where he had stated that "Manitoba is the only province that is officially bilingual and fully multicultural." and the Attorney-General's brochure containing the headline, "Manitoba is not becoming

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[1] Ibid., p. 4907.
[2] Id.
[3] Id.
[4] Id.
[5] Ibid., p. 4910.

bilingual." Graham asked, "Well, who do you believe?"[1] Later, he asked, "So what is the under-the-table deal from the Federal Government?", adding, "I would suspect that really the big money, the big ante, is in the federal-provincial sweetheart deal."[2]

Later in the debate, Arnold Brown said morale within his caucus was "building and building", since

> we are getting more phone calls from NDP members, from very influential members of your party who are phoning in. Keep that up, fellows, keep it up, we're on your side, they said...[3]

In his view, entrenchment was the issue: "There is no other issue as far as we're concerned." Entrenchment would give the Supreme Court ultimate authority in determining the extent of bilingualism in Manitoba; a person,

> wherever he went, whether it was Morden and a speeding ticket or whatever, wherever he went and it was not bilingual, that person should be entitled to have that bilingual. You know that. You all know that. That is exactly what's going to happen, because you said we were going to be bilingual.
> That is the reason why the municipalities are so upset. That is the reason why the school boards are becoming upset, because they know that they are going to be the next on the line. You are not going to say how far they're going to go. It's going to be the Supreme Court that's going to say how far they're going to go.[4]

Russell Doern said the government's proposal was "the thin edge of the wedge", adding:

> Does it make sense in Manitoba? No way. Are you kidding? This isn't the Red River Settlement. This isn't when half the people spoke French and the other half spoke English. This is now, where everybody speaks English...
> So there is no need for official bilingualism. There is no need to translate all these documents and set up hundreds of jobs in the

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[1] Id.
[2] Ibid., pp. 4911.
[3] Ibid., p. 4918.
[4] Id.

> Civil Service, so that once in a while, maybe in a blue moon, somebody will come who will prefer to speak French.[1]

Later Frank Johnston took the floor, saying

> I don't want to see the English language entrenched; I don't want to see the French language entrenched. I don't want to see any languages entrenched in this province because we are a great mosaic; we are a great province; we do have the multiculture that I mentioned previously...(W)e are not helping the other minorities in this province by entrenching two languages.[2]

On behalf of the government, Vic Schroeder recalled the reason why the SFM had been involved in the negotiations in the first place:

> The SFM was involved as a party to a court case. If somebody sues you and you're trying to settle a court case, you talk to the person who sues and not necessarily to someone else, and then you try, in a case such as this where we are a public body, we go to the public and discuss it with the public and the public will have input...[3]

Schroeder quoted from Lyon's September 4, 1981 memo to his ministers where he had described his policies as being designed to "provide at least some of their services to Manitobans in both official languages". Referring to Johnston's and other Conservatives' refusal to admit that French was already an official language in Manitoba, Schroeder added:

> What hypocrisy! We have heard 40 minutes from that gentleman telling us that he is concerned about the two official languages, and here his own Premier, who understood that ruling of the Supreme Court of Canada, was talking about the two official languages, was talking about the Supreme Court's Ruling on bilingualism in Manitoba. What hypocrisy on the part of the opposition! What total, pure hypocrisy![4]

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[1] Ibid., p. 4923.
[2] Ibid., p. 4928.
[3] Ibid., p. 4931.
[4] Ibid., p. 4931.

Abe Kovnats then took the floor for the Opposition, saying he did not support the constitutional amendment because it "is not to the best interests of the Francophone in Manitoba"[1]; furthermore, "there are many Francophones in the province who do not consider the SFM to be their spokesman".[2] He then continued to read excerpts from the Union of Manitoba Municipalities press release into the record, including the following passage:

> 'Section 23 of The Manitoba Act should be left intact and, if amended at all, it should be amended to include the 1890 Manitoba Provincial Languages Act (sic) that has formed and shaped our province into what it is today, over the last 93 years.'[3]

Gerry Mercier followed, stating again that the opposition had "very great concerns about the accuracy of the information that is being put out" by the government. Mercier took issue with the statement in the "Constitutionally Speaking" brochure that Manitoba entered Confederation as a bilingual province; in his view, it was "incorrect to make that statement":

> Manitoba entered Confederation in 1870, in The Manitoba Act, and French and English were specifically referred to as the languages that could be used in the Legislature, in the courts and were to be used for the publication of statutes. For only those limited purposes were French and English to be used, so Manitoba was not a bilingual province.[4]

A second statement in the brochure, to the effect that "'By 1986, new Manitoba laws and regulations are to be enacted in both languages'" and that "'Without this agreement, we would have to begin immediately'" was an "outright error", since it was known that

> Mr. Bilodeau did not succeed in the Manitoba Court of Appeal and the majority judgment of Chief Justice Freedman said that

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[1] Ibid., p. 4932.
[2] Ibid., p. 4935.
[3] Ibid., p. 4934.
[4] Ibid., p. 4937.

> the word 'shall' in Section 23 was to be interpreted as directory only and not mandatory and to state that, without this agreement, we would have to begin immediately, Mr. Speaker, is incorrect.[1]

Thirdly, the brochure said that "'Legal experts advise that if the Supreme Court ruled against Manitoba legal chaos might have fallen.'"; in Mercier's view,

> (T)o refer to the advice of legal experts without also saying to the people of Manitoba that the legal experts have said that it is unlikely that the province would lose and, for example, in the opinion of Mr. Twaddle that the province has an excellent chance of winning the case.[2]

Thus, the government was sending out information that was incomplete and inaccurate, and it was

> extremely disconcerting to me as a Manitoban and should be to any citizen of this province, that the perception certainly can be made that the government is trying in some way to hoodwink the citizens of this province by not giving them all of the information...Why not put out to them all of the correct information, Mr. Speaker, rather than trying to trick them as the Attorney-General tried to do in this first pamphlet?

Fourth, Mercier took issue with a statement in the brochure to the effect that "today Manitoba is able to fulfill its constitutional obligations"; he asked,

> What constitutional obligations, Mr. Speaker? We [Conservatives] were fulfilling - and still are I hope - our constitutional obligations imposed upon this province in the Forest case. We were embarked upon the translation of all of the statutes of this province...What other constitutional obligations have we?[3]

Mercier deplored the fact that the government had not placed before Manitobans the exact wording of the constitutional proposal, "at least...the parts of the wording that have caused concern", which people should be entitled to

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[1] Ibid., pp. 4937-38.
[2] Ibid., p. 4938.
[3] Id.

see and read for themselves..."[1] He took issue with the brochure for saying that "putting this agreement into the Constitution guarantees exactly what services are legal rights":

> That is not true, Mr. Speaker, it is the courts that will determine what services are legal rights...the interpretation of the [remedies] section by the courts may very well vary considerably from what the government has indicated and it cannot be said that these services will only be required by specified provincial departments and agencies.[2]

Mercier quoted another section of the brochure to the effect that "'Manitoba intends to fulfill its legal obligations in a practical, just and economical way,'" and took issue with two elements of the statement:

> The legal obligation, Mr. Speaker, is clear; it's only with respect to the Legislature, the courts and the statutes...Again, that is misleading to the people of Manitoba.
> The government has made great concern...out of saying that they're saving tax dollars...(U)nder this proposal there is no guarantee that they're saving any tax dollars, because we don't know what the future is going to hold. We don't know what the right to communicate will really mean and how it will be determined and whether it, as a result of that right to communicate, it can become, indeed, a language of work, which can mean that this whole area can be expanded considerably...[3]

Mercier ended with a tribute to the municipalities of Manitoba and with an appeal to the government to take their views into consideration:

> I had the privilege of being Municipal Affairs Minister under our government for a period of two years, and if I learned anything during that period of time, it was that we are favoured in Manitoba with municipal leaders who are extremely conscientious and who know the feelings and the views of the people that they represent. They are indeed...closest to the people, the level of government that is closest to the people.[4]

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[1] Id.
[2] Id.
[3] Ibid., pp. 4938-39.
[4] Ibid., p. 4940.

When the House resumed sitting the following morning, Friday, August 5, Sterling Lyon raised another potential problem the government's constitutional proposals might create; might not the constitutional amendment lead to French being defined as a language of work thus requiring bilingual work areas for federal civil servants working in Manitoba, "thereby increasing vastly the proportion of bilingual people who will have to be hired into the Federal Civil Service in Manitoba as a result of the action of this government?". An incredulous Roland Penner replied,

> The notion that a constitutional provision which speaks in virtually every line of an obligation of the Government of Manitoba, that somehow or other that can impose some requirement on the Federal Civil Service is astonishing... [It is] an astonishing leap of imagination that has no root in logic. It is simply not possible under our legal system and our division of powers for an obligation of the Government of Manitoba, imposed within its Constitution and its parts of the Canadian Constitution, to affect the Federal Civil Service. It is simply not possible.[1]

During this exchange, Penner again reiterated the government's reasoning behind the entrenchment of the words "official languages", recalling that Lyon himself had been the first to use them in 1981:

> (T)he opening statement in the proposed amendment is merely declaratory of what the law is. When Section 23 of The Manitoba Act was written, and it talked about the language of the Legislature, of the courts, and of the records of the Legislature, it was dealing with all of the official institutions of government as between the executive, the government and the judicial branches of government and was delineating therefore a language requirement with respect to all of the official institutions and therefore making these languages the official languages of the province.[2]

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[1] Debates, August 5, 1983, p. 4944.
[2] Id.

Later that morning, debate resumed on Downey's subamendment to Sherman's amendment to refer to the constitutional proposals to a legislative committee sitting intersessionally and report by December 30, 1983. Gerrie Hammond led off for the Opposition, quoting extensively and approvingly from an article published that morning in the *Winnipeg Free Press* by Fred Cleverley:

> Mr. Cleverley starts by saying, 'I would certainly like to know exactly what was agreed to among representatives of the province, the Federal Government and the Franco-Manitoban society. The way things are going at the Legislature, there must be something more than what has been on the table; otherwise the government appears to be risking too much in the way of political futures for too little.'"[1]

Cleverley had returned to the same theme later in his article, and again Hammond quoted him in full in her own speech:

> Mr. Speaker, the article goes on to say, 'There must be something else that we do not know about. The issue is growing by the day. Petitions against the government's resolution are being delivered to the Premier's Office, and the talk in the countryside would lead a disinterested observer to the conclusion that the government was so possessed of bilingualism that it was quite prepared to throw its political future into the garbage can.'[2]

And again:

> 'At the beginning, they had better be prepared to come clean on exactly what it was they agreed to around that negotiating table when they sat down with the federal representatives and the corporate voice for a bilingual Manitoba, which is how some French-speaking residents describe the Franco-Manitoban society.'[3]

To this Hammond added her own comment: "That must be so.".[4]

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[1] Ibid., p. 4949.
[2] Ibid., p. 4951.
[3] Ibid., p. 4952.
[4] Ibid., p. 4951.

The Opposition was trying to get at the same thing, Hammond said:

> We've asked for the agreement to be tabled, but we find now that there is nothing signed - I'm not sure if there's anything written down, or if it's written in blood, or where it's written - but we can't get a handle on what was signed, why they keep insisting on the December 31st deadline.[1]

Hammond quoted again from Cleverley:

> 'We can all appreciate the fact that there are some French-speaking Manitobans who are terribly terribly anxious to have their language rights expanded from what they were when the province joined Confederation and to have these rights written in stone in the Canadian constitution.'[2]

To achieve this goal, they were willing to go to almost any lengths, including the infliction of "chaos" upon the province, and, in Cleverley's words, "The only way out was to pay the ransom."

"'Ransom,' Mr. Speaker," Hammond continued,

> now there's a word I haven't really heard on this issue before but, of course that is exactly what has happened. Pay the ransom demanded by the Franco-Manitoban society. That ransom was to agree to expand the basic French language rights that were part of Manitoba's entrance to Confederation to the point where there was an increased obligation on the part of taxpayers of the province to provide provincial services in two languages instead of one.[3]

Cleverley's piece, in Hammond's view, was "a very good article; it's a very thoughtful article and it tells it the way we have been trying to tell it."[4] Hammond then quoted from an editorial in the *Winnipeg Sun* that day which said, "'Perhaps the Tories are right and the people of Manitoba don't want bilingualism, not matter how rationally it is approached.'" "Mr. Speaker," Hammond continued,

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[1] Ibid., p. 4949.
[2] Ibid., p. 4950.
[3] Ibid., p. 4950-51.
[4] Ibid., p. 4952.

> this is also something that we want the people of Manitoba, we're asking here for them to have a chance to give that opinion, to say what they think about this, to say if they want Manitoba's course to be changed as drastically as we feel will happen if this is amended and put into the Constitution.[1]

Finally, Hammond said, "That's what we're asking for the people of Manitoba, a chance for them to give constructive suggestions to this government, something they don't seem to want to hear."[2]

Bud Sherman took the floor next, passionately denouncing the position expressed earlier by Parasiuk that it was the NDP government that wanted to consult the people of Manitoba on the issue and the Conservatives who were preventing them from doing so. "[T]hat position," Sherman said,

> is one of the most perverse claims that I've ever heard in Manitoba public life and certainly the most perverse to be uttered in this Session of this Legislature and I repeat that... It is so cynical as to make Manitobans rear back in horror.[3]

The central issue, in his view, was, How did the government want to hear the people?

> In what way and in what form are you prepared to hear them? In two or three weeks, at harvest time, is that how you're going to hear from the people of Manitoba? In two or three weeks as the long, hot summer is moving into the hot, busy, intensive harvest season, in what is essentially an agrarian, agricultural-oriented province. Is that how they're going to hear the people? Three or four selected meetings in two or three selected weeks. What a sham, Mr. Speaker![4]

Sherman recalled how, a few weeks earlier,

> the Attorney-General indicated that there would be little, if any, consultation with the people on this proposed course of action

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[1] Id.
[2] Id.
[3] Ibid., p. 4953.
[4] Ibid., p. 4955.

> of this government's, and that's how this whole thing got started.[1]

Quoting extensively from Hansard of June 17, 1983, he recalled Penner's announcement of public information meetings and how his own leader had proposed full legislative hearings, held intersessionally, and how Pawley himself had rejected them. The government merely wanted to go to the people and

> get back here in three weeks with a report that is concocted and produced so quickly that most of the people of Manitoba have not even had a chance to digest the issue, to understand what it's all about.[2]

The government had to, in Winston Churchill's dictum, "Trust the people."[3]

Lloyd Hyde took the floor next, saying the government's proposals would "drive another wedge into the social structure of our society" and that it might "easily lead to a situation similar to what we see and is happening in Ireland". The majority of Manitobans were "very concerned", even though "there are small groups of people that probably are sympathetic with what the government is proposing to do, but it's (sic) very small". Hyde agreed that "the minority of groups in our province should be protected from injustices by the majority", but "not to the point where it could and will give the minority the power to rule the majority through the courts thus destroying the democratic rule".[4] Hyde pointed out in passing, as had several of his colleagues, that Penner, who "had admitted in this House...that he believes in the philosophy of the Communist party and he stated in this House that he once carried a Communist card", was "determined to press this resolution through this

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[1] Id.
[2] Ibid., p. 4957.
[3] Id.
[4] Ibid., p. 4958.

Assembly during this Session despite the fact that the vast majority of the people don't want it. He is denying the people out there their right."[1]

When he resumed his speech in the afternoon, Hyde quoted extensively from an article published in the July, 1983 issue of *Atlantic Insight* entitled "The Anglo Backlash", which began,

> 'It's getting tougher to get a job in New Brunswick if you're not bilingual. For some Anglophones that's causing resentment and fear...'[2]

In New Brunswick, people were losing their jobs because of bilingualism policies:

> 'Judy Martinson's staff, at an Avis car rental booth at Fredericton airport, she's been told to learn French or lose her job.'
> Mr. Speaker, that's one more thing that we can look forward to, those people who presently have jobs in such places as the airports and that, they'll very likely be asked to move on and make room for someone who is bilingual. Do we need that? Do we want that? I say, no, Mr. Speaker. The people of our province do not want that to happen.[3]

Hyde concluded that "if this here resolution is adopted and made part of our laws that it will just be like a cancer, it will be growing on us". Towards the end of his speech, he repeated the analogy, saying "As I said earlier, it [will] grow if this is made law, as a cancer grows in a human body..."[4]

Brian Ransom followed, denying the accusation made by the government that the Opposition was filibustering:

> Sir, what is actually happening here is not the destruction of the parliamentary process by any means, but the functioning of the parliamentary process, because what we have here is the opportunity and the demonstration of how an opposition party,

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[1] Ibid., p. 4959.
[2] Ibid., p. 4967.
[3] Ibid., p. 4968.
[4] Id.

> with a minority of elected members, can prevent the government from proceeding with an action that the majority of Manitobans do not want that government to proceed with.[1]

If the government did not agree, the government had a mechanism available to it: "that is the mechanism of closure".[2] Closure could be invoked as early as 5.30 p.m. that afternoon, and a vote would have to be held by 2 a.m. the following morning. Might not the Opposition refuse to attend the vote and let the bells ring, perhaps indefinitely? Surely, in Ransom's view,

> if the public is with the government, the public will also be against what the opposition is doing and they will make their views known immediately through the mechanisms that are available to them to contact us...

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There followed the strange public beginning of negotiations that were to bring the impasse to an end, at least temporarily. Andy Anstett asked Ransom whether

> he could give members on this side an assurance that on either the closure motion or on the substantive questions which would be put at 2:00 a.m. the bells would not ring longer than the 24-hour record which they approached earlier this week? If he would give us that assurance then we would be much more interested in listening to the suggestions that he has to make.[3]

Ransom replied that he was not prepared to give Anstett "any undertaking beyond that we will act in what we believe is a responsible fashion".[4] He then proceeded to recall once again the various stages of debate over the issue, starting with Penner's June 17 statement. The government was now beginning to change its position, to admit that amendments to the constitutional

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[1] Id.
[2] Id.
[3] Ibid., p. 4969.
[4] Id.

resolution might be possible; now, the public must be given an opportunity to make presentations "in an unhurried way" to a legislative committee, sitting intersessionally. "We will continue," he added,

> to extend debate and if the government wants to call it a filibuster, they want to call it obstructionism, that is their prerogative, but what we are going to do is extend debate on this issue until the government recognizes that it is essential to go to an intersessional committee, and to give the public the opportunity to be heard or the government will have to use the mechanism that's available to them to force it through.[1]

Ransom agreed to entertain a second question from Anstett, who asked whether, if all of the Opposition's concerns about the nature and timing of the hearings were met,

> the House Leader of the Official Opposition [is] suggesting in his comments that he would then be amenable to proceeding with some immediacy to committee hearings as long as he had that guarantee that there would be a full hearing under very firm rules?[2]

Ransom replied that "the government is moving toward what will be necessary for them to do; they are moving towards it. Their next relatively small step is to go to an intersessional committee"[3]. A recess, or some other formula was unacceptable, since "we are dealing here with a constitutional amendment" and that "there must be consensus, there must be a majority view in order to make an amendment to the Constitution".[4]

Ransom accepted a third question from Anstett, who asked:

> Following on the suggestions he's making which I believe have merit, could he explain to the House why he sees a difference between a completely open-ended series of standing commiittee meetings during a recess period sine die, without a date set, so

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[1] Ibid., p. 4970.
[2] Id.
[3] Id.
[4] Ibid., pp. 4970-71.

> that the committee is not under any pressure, and it can fully hear the public versus intersessional. If he sees no difference subject to those conditions on the recess, I'm wondering if there is much difference and if maybe we are reaching an understanding here.[1]

Ransom replied that there was other business before the House "which really should be concluded and remove the pressure for the House to get back and complete that business..."[2] Ransom then returned to his main theme, which was that the government had not properly explained its proposals. What, for example, did Section 23.1, the declaration of English and French as official languages, mean? His own leader had asked earlier whether the government's resolution would have an effect on the federal Official Languages Act, and "the Attorney-General simply assures us, it doesn't have any effect. Mr. Speaker, I don't believe that he can make that assurance."[3] The government had "done nothing to really explain to the public what these amendments truly mean".[4] He attacked the government's pamphlet containing a picture of a young girl in Ukrainian costume saying this was an

> appeal to the other ethnic minorities in the province saying, what we are doing with respect to the French language is somehow related to the rights of other minority groups in the province. Mr. Speaker, that is not true. If anyone in the Ukrainian community should think that two years from now, or a year from now, this government is going to bring in an amendment that says English and French and Ukrainian are the official languages of Manitoba, forget it; it's not going to happen.[5]

If, through the hearings process consensus could not be achieved,

> then the government is going to have to consider some other avenue. They're going to have to consider changes. They're

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[1] Ibid., p. 4971.
[2] Id.
[3] Id.
[4] Ibid., p. 4972.
[5] Id.

> going to have to consider withdrawing this and proceeeding to the court, as we had said they should, as we believe they should... My colleague from Roblin Russell [Wally McKenzie] says, call an election. That would be a good idea too...[1]

If the government proceeded with the constitutional amendment and there were court decisions based on the amendment,

> they are going to be decisions which the vast majority of the public are not going to accept; they are going to create frustration among the public, just as people are frustrated with the federal bilingualism program, just as people are frustrated with the metric program. People look around, the other people they talk to agree with them that some provision of metric or some provision of federal bilingualism doesn't make sense. They say why is it that this must be? We don't agree with it. Whatever happened to democracy when the majority of the public don't agree with something, but their government imposes it on them? That's what's happening here...[2]

When Ransom sat down, Anstett obtained House consent to ask him yet another question, describing the terms of a possible compromise and asking Ransom's reaction to it:

> Mr. Speaker, the member suggested that the House could wrap up in a week or so in terms of the other business that's before the House. He also expressed some concern about the harvest which we might be able to accommodate by doing the Winnipeg hearings first, because they might take a month alone, so we could be well into September.
> If that were the case then, if we could wrap up the House in a week or so, and I think the 'or so' might well be two or three weeks because there's some contentious business before the House, and if we could handle the Winnipeg hearings first... would the member not agree then that if we agreed to adjourn the House upon the completion of all that business, leaving the only item on the Order Paper, the French language services constitutional amendment, and then sit sine die with no date set for reconvening, that in effect that kind of recess would accommodate all of his goals and all of the government's goals, and allow the public to be heard?[3]

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[1] Ibid., p. 4973.
[2] Id.
[3] Ibid., p. 4974.

Ransom replied cautiously that he had made a comment that "I thought the other business of the House could be dealt with in a relatively short period of time"; if the government had some proposal to make regarding "the intersessional committees that would give full and adequate opportunity for public input", then "we would like to hear from some official spokesman on the side of the government".[1]

Bob Banman then took the floor, pointing out that, when the constitutional resolution had first been tabled, the news media and particularly the print media "lauded the government for taking such a bold initiative and such a bold step in providing this type of assurance to the Francophone community in this province"; now, however, the press were asking, what's the hurry? "A large part of...the credit" for this change in attitude, in Banman's view, "has to go to members of the opposition who are really doing their job in this Chamber".[2]

The reason people in Manitoba were so concerned about the resolution was that they had "felt the effects of the Federal bilingual program"; the majority of the people of Manitoba knew full well what Section 23.1 meant: "that means bilingualism - that means full-fledged bilingualism. That means that the authority of the Legislature will no longer have control of the rate in which we will move towards that end."[3]

Banman quoted excerpts of a letter he had sent some of his constituents:

> 'I am proud of having been involved in a government which moved on and expanded services to the Francophone community of Manitoba.

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[1] Id.
[2] Id.
[3] Ibid., p. 4975.

> I am, however, opposed to the entrenching of these services as I believe the responsibility for this should rest with the elected people and not with our courts.'[1]

Gary Filmon followed, recalling the words spoken on June 17 by Roland Penner that

> 'it is open for us to do one thing, but one thing only, that is to reject the agreement completely. It is not possible at this stage, it is not possible for us to take an agreement that involves four, five parties and unilaterally start playing around textually with the agreement. What we can do...is pull back from the agreement entirely.'[2]

This was a very different position from that being presented now in the House. However,

> anything that has occurred in the past six weeks since that statement was made was as a result of the tremendous debate and pressure that has been put on by this side of the House, to tell the government that what they are doing...is wrong.[3]

Filmon recalled the various stages the government had gone through over the course of the debate:

> [I]ts idea was initially just simply to put it forth as a resolution, to have it debated and to go to Ottawa. That was the first idea. The second idea was that it would have public informational hearings (sic), four of them, throughout the province in which they could present their position on the whole matter and have a little bit of opportunity for public representation... [I]n response to the debate, the discussion, the pressure that's been put on by our side of the House in response to the public reaction, finally they said, well, we'll refer it to a committee of this Session of the Legislature... That puts a very very narrow time frame on the whole matter.[4]

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[1] Ibid., p. 4976.
[2] Ibid., p. 4979.
[3] Ibid., p. 4980.
[4] Id.

Filmon implored the government to "take that simple, little step further and let it be in a situation in which there isn't a time constraint on the matter, there isn't a pressure to report back to this Session of the Legislature..."[1]

Filmon described what he believed to be a shift in the editorial stance of Winnipeg's two dailies on the issue:

> [T]he two newspapers editorially have now come about to saying the process is wrong, the process ought to be changed. If indeed the principal (sic) is correct it will stand the scrutiny of public debate, of public review, of public criticism, of public input; but if it is wrong it won't stand that test, and therefore it is wrong to proceed. That is the conclusion, and indeed it is being suggested and supported by the two newspapers.[2]

Filmon quoted and commented on a Winnipeg *Free Press* editorial:

> 'But the new constitutional provision (sic) will be empty, sterile, if they are not felt to reflect the beliefs of most Manitobans.' I suggest...that the government doesn't know what are the beliefs of most Manitobans at the present time. It has not taken the opportunity to listen to them. It has not taken the opportunity to provide a good mechanism by which they can be heard...[3]

Later that evening, as debate resumed, Harry Enns led off, summarizing the issue as he saw it:

> [T]he issue is the agreement that was worked out very privately by members of this government with a particular segment grouping several groups, Mr. Bilodeau and his lawyer, the Franco-Manitoban Society at the urging and pushing of Serge Joyal of the Federal Government, the Trudeau Liberals, promises of funding and dollars to cascade from heaven if only the agreement is reached...[4]

The Pawley government was acting like "the Norris government of 1890"[5], acting "in a wrong-headed way, to correct some of the wrongs that, in

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[1] Ibid., p. 4981.
[2] Ibid., p. 4982.
[3] Id.
[4] Ibid., p. 4986.
[5] The Premier of Manitoba in 1890 was of course the Liberal, Thomas Greenway; see Chap. 1.

my judgment, many of them have already been corrected by the actions taken in 1979".[1]

Enns then developed a theme that no member of the Conservative opposition had yet raised, the idea, fundamental to Manitoba history in the 20th century, that "progress in this area of race relationships has only really come when there was a fairly substantial degree of bipartisan support for it". Duff Roblin's 1967 reforms had been adopted with the support of the Liberals and the NDP; Lyon's legislative response to the *Forest* judgment in 1979 had been made possible with the support of the NDP under Pawley. "But, Mr. Speaker," Enns went on,

> the mistake that this government made was when they made that decision; I don't know exactly when they made that decision, in June or April of a year ago. We know that the Bilodeau case stood before them, but at the time that they finally said, okay, we're scared, the Supreme Court could create chaos in Manitoba, that's when the Premier should have asked the Leader of the Opposition[:]
> Now we're faced with this situation. We can only resolve this i[n] a bipartisan manner. I want you to appoint two members out of your caucus, perhaps the former Attorney-General, Mr. Mercier for St. Norbert, or somebody else, to sit down with three members of the government and to work on the agreement or work with the principles involved in the Bilodeau case with the Franco-Manitoban Society, and certainly to be there as watchdogs to make sure that Serge Joyal of the Liberal Party in Ottawa doesn't sell the province down the tube.
> Mr. Speaker, I'm not suggesting that a similar agreement would have been arrived at under those circumstances. But...I am suggesting that an agreement might have been arrived at that would have found acceptance in this Chamber, that would have been acceptable to this Legislature, and thus...would have avoided all this nonsense, all this problem that we're faced with right no[w] because I see no easy resolution to this problem on the course we're at.[2]

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[1] Debates, p. 4986.
[2] Ibid., pp. 4986-87.

Later in his speech, Enns returned to this theme of a possible bipartisan resolution of the issue:

> It grieves me that the government has chosen not to acknowledge that much headway has been made, in fact, during the intervening years. It grieves me...that they were not prepared to learn from how progress in race relations have (sic) in fact been achieved in this province when we've acted in harmony and with support from either side of the House that they would throw into jeopardy that harmonious relationship by making this a strictly partisan NDP sponsored resolution for small political gain which by now, I'm sure, most honourable members opposite recognize as dissipated with no gain at all for them. They can now only wonder how can they extract themselves from this mess.[1]

Even if the five-member bipartisan committee he was suggesting failed,

> the government would still be in a better position today because they at least could stand in this Chamber and say, well, we tried. We tried to do this in a bipartisan manner, but...they are not in a position to say that.
> All we were informed of late in December - it was later on in January, I believe, that we actually saw the first inklings of what really happened, was that the Attorney-General and the government were busy drawing up an agreement and that it would be an agreement that would require a resolution to be passed in this House and to be forwarded onto the Parliament of Canada and the Senate, to formally make the constitutional change.[2]

What the Conservative government had done after the 1979 *Forest* judgment was "a very major step forward that went a long way to eradicating 90 years of frustration, bitterness and resentment on the part of the Francophone commmunity"[3] Now, with the government's constitutional initiative,

> you've got an aroused and arousing public that is not going to stand for this. There is no resolution to the problem along the lines, along the path that they're proceeding (sic). Make the

[1] Ibid., p. 4987.
[2] Ibid., p. 4988.
[3] Id.

break; drop the resolution. Let Mr. Bilodeau go to the Supreme Court, and let's get on with the business of Manitoba.
Some Honourable Members: Hear, Hear!
Mr. H. Enns: That's what you are going to have to do, fellows. That's what you're going to have to do.
At best, and I am not in a position to say that, but I can certainly say it as a private member, come to our offices and tell the Franco-Manitoban Society that you are prepared to set up now a committee consisting of members from both sides of the House to work out agreements that may be acceptable to this Chamber in the future. They will not be the kind of agreements that you have worked out in secret thus far, under the Whip, under the lash of one Serge Joyal.[1]

There was more to the agreement than had yet been revealed:

> We can't help but wonder, we can't help but ponder the kind of arrangements that might have been made, likely involving the Federal Government, the Liberal Government, Mr. Trudeau, that we have yet no idea of.
> **Mr. H. Graham:** Under-the-table deal.
> **Mr. H. Enns:** I am talking the kind of under-the-table deals...that we know that the Liberal Party and this party are capable of.
> Mr. Speaker, what kind of money is really being passed under the table between the Liberal administration in Ottawa and this administration? Why else are they hanging in so tight on this issue?
> **A Member:** They're in bed with the Grits.
> **A Member:** Big dollars.
> (...)
> **Mr. H. Enns:** Mr. Speaker, if there is that kind of a payola being arranged, the people of Manitoba better know about it.
> Again...this is only conjecture on our part, because we begin to wonder why this government would hang so tenaciously to a resolution that has no hope of passing this Chamber and that has no hope of being acceptable to the people of Manitoba.[2]

Finally, although Enns recognized that the SFM spoke for French interests in Manitoba, "they do not represent the total French community in Manitoba".[3]

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[1] Ibid., p. 4989.
[2] Ibid., p. 4989.
[3] Id.

Dave Blake followed, taking up once again statements contained in the government's brochure:

> Another thing about the brochure...it says, 'Businesses, municipalities, non-governmental bodies and school boards and institutions are not affected in any way.' Well, what a lot of tommyrot that is, Mr. Speaker. If this comes into effect, what do you mean the municipalities and the school boards are not going to be affected in any way? Certainly they're going to be affected. There's just no other way that they can't be affected.[1]

The brochure was filled with "facts that aren't true facts"[2] A White Paper should have been published by the government to "let us have an idea what...they were negotiating with the Société Franco-Manitobaine", adding

> We have no idea what arrangement they've made with them. If we had known that and could have given them some indication that, well, we could accept part of it or this or that, then possibly we might have been able to proceed.[3]

The public knew better than to believe the government's statement that "bilingualism in Manitoba doesn't mean French will be rammed down their throats":

> They know. They've seen the federal program; they've seen metric. They saw how metric came in...
> (...)
> We went blindly ahead...with this metric that has cost us billions and billions of dollars for absolutely nothing. There was no reason for it; there was no demand for it.
> There is no demand for what we're faced with now in this resolution. There's no demand for it and there's no reason for it. The facilities that the Francos need is (sic) there, readily available to them, and what we're being asked to do now is utterly ridiculous.[4]

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[1] Ibid., p. 4990.
[2] Id.
[3] Ibid., p. 4991.
[4] Ibid., p. 4994.

He hoped the government had "got the message now" and that it was ready to "deal with some form of consultation with the House Leader on this side, and [appoint?] a House Leader that can be dealt with and trusted on that side of the House, and things will move along".[1]

Doug Gourlay followed, saying "it's important to put into the record once more, the news release of the Union of Manitoba Municipalities". He read several sections of it to the House, including the portions which denounced entrenchment and which made the point that minorities should not have "'the power to rule the majority through the courts, thus destroying the democratic rule'".[2] Gourlay argued against entrenchment, saying that the Lyon administration had reacted positively to the *Forest* judgment:

> [W]e did provide or commence the translation services as quickly as could be arranged and [the Lyon administration] was progressing quite favourably, as well as providing French language services to the areas of Manitoba where there was significant Franco populations to warrant the kind of services that they required.[3]

Later, he added that

> we've come a long way with respect to fulfilling some of the requirements that the Franco-Manitobans would like to see, maybe not to the full extent that the SFM would like to see, but certainly there has been pretty good advancement made over the last 90 years.[4]

It was important to hold legislative hearings intersessionally, since farmers were into harvest and would be at least until the end of October. Finally, Gourlay moved adjournment of the House, seconded by Kovnats, prompting a flurry of activity on the government side as it rounded up its

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[1] Id.
[2] Ibid., p. 4997.
[3] Id.
[4] Ibid., p. 4998.

members for the vote. After the motion was defeated, Don Orchard took the floor. He apologized to the House for "being slightly late for the vote and delayed it by about 35 seconds", but he had been "enjoying some entertainment that people have paid...to see at the Indianapolis Speedway and other daredevil racing shows." Orchard devoted the first portion of his speech to describing the scene as government MLAs scurried to the House for the vote:

> I was standing on the front steps watching frantic Cabinet Ministers and backbenchers round the corner into the Legislature on two wheels, tires screaming, great round eyes as big as saucers saying, how long have the bells been ringing, running up the stairs, charging in here. The delight of it all...was seeing the door close as the frantic Minister of Government Services was grasping for the knob, trying to get in and missing the vote.[1]

Orchard went on for some time regaling the House with his description of the scene, until Peter Fox rose on a point of order to ask "what motion we're debating that the honourable member is having so much fun with?" The Speaker allowed that he "was beginning to wonder the same thing".[2] Orchard eventually turned to his main theme, which was that the government's record "hardly warrants confidence from the people of Manitoba"[3]; indeed, it was a temporary government, "as temporary as the next election whenever it was called":

> This is truly a temporary government trying to wrack (sic) permanent damage on the people of Manitoba and the social fabric of this province. No temporary government should be able to do that. No temporary government should take it upon themselves to undertake this kind of a constitutional entrenchment of language rights without the consensus of the people of Manitoba.[4]

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[1] Ibid., p. 4999.
[2] Ibid., p. 5000.
[3] Ibid., p. 5001.
[4] Ibid., pp. 5001-02.

Orchard told the House of recent coffee-shop conversations he had had; one "68 or 69-year-old lady" had said that the government's pamphlet "'can't be the whole truth on the matter, because if it is so good, why are they entrenching language rights?'" The underlying message, in Orchard's view, was that "I don't trust these people."[1] Another fellow in the coffee-shop "offered a very very interesting perspective...this fellow said to me,

> 'It finally clicked on me that the government proudly announced some three or four months ago that the Federal Government was going to pay the payroll tax, and then it clicked with me, that probably was the quid pro quo, the trade-off that this government made to get the Federal Government to pay the payroll tax. For an $8 million payroll tax they had to agree to (sic) Trudeau and his Liberal majority. They had to agree to entrench bilingualism into Manitoba.' Wasn't that an interesting observation from an outsider who was wrestling with some semblance of sanity in the government as to why they were doing this? He didn't think that any government would have an obvious death wish, as this government appears to have, and he came up with the simpl[e] analogy, $8 million from the payroll tax with an under-the-table deal that they will entrench bilingualism and the French language in the Province of Manitoba for 5 per cent of the people.
>
> Only the government can answer that one. If they hold true to answers they've given us in the past on a number of subjects, we know we will never get that answer from them. We know they will never be forthright enough to tell us whether that was the trade-off that they negotiated to get the Federal Government to pay the payroll tax after only one year, where it took seven or eight years for the Federal Government to negotiate to pay that same tax in the Province of Quebec.[2]

Orchard had also talked to "another chap" who "was very much alarmed at the fact that this measure was to be entrenched in the Constitution". According to Orchard, he was a "typical Manitoban on this subject", who knew that "once it's entrenched by being passed in the federal Parliament...it is 99.9

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[1] Ibid., p. 5002.
[2] Ibid., pp. 5002-03.

percent assured that it will never be reversed and that sanity will not prevail from thereafter (sic) in the Province of Manitoba".[1] The government should

> Answer the question as to whether they have some kind of an unholy trade-off with the Federal Government that has stimulated this to be brought upon the people of Manitoba.[2]

Sterling Lyon followed Orchard, saying the subamendment was not "frivolous", but was meant to allow the government to meet its own deadline of December 31, 1983 for adoption of the constitutional proposals. Indeed, the government should consider voting in favour of the subamendment, since it would be "in their long-term interests" to do so; indeed, "there is one thing that I have found over the years that socialists pay attention to and that's their own self-interest"[3]. He then described this self-interest as "venal", attributing "venal self-interest" and "venality" a dozen times to the government before the Speaker read Oxford's definition of the word to the House and asked Lyon not to use it again.[4] Lyon didn't expect that "socialist parties" were

> overburdened ever with integrity, or overburdened with fidelity to the truth or anything of that nature at all. Through a long life, having no high expectations from socialist, I've never been disappointed...because the level of any degree of integrity has been so low that I, Sir, have had to live with that level of no expectation of anything terribly honourable ever coming forth from them.[5]

Lyon then moved on to the substance of his attack on the government:

> Why, said Mr. Twaddle, would you negotiate as a quid pro quo for Mr. Bilodeau dropping his case? Why would you negotiate the entrenchment of French language services into the Constitution when no court in the country could ever impose that condition upon you? Well, Mr. Speaker, that question

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[1] Ibid., p. 5003.
[2] Id.
[3] Ibid., p. 5005.
[4] Ibid., pp. 5005-5011.
[5] Ibid., p. 5005.

> remains unanswered. My honourable friends have never had the intellectual courage to answer it; they can't answer it because there is no answer to it. They were just outnegotiated.
> (...)
> I only wish that the Attorney-General, on behalf of the people of Manitoba, had been as shrewd a negotiator as the Franco-Manitoban Society, as the Government of Canada, as Mr. Bilodeau who came away with everything - came away with everything - from that negotiating table and went in with nothing; went in with nothing and came away with everything. Ah, the Attorney-General says, Bilodeau might have won in the Supreme Court and I say equally, Mr. Speaker, and there may be three moons in the sky tonight too - there may be but I don't think it will happen - and Mr. Bilodeau's chance of winning the case, there was about the same probability as there would be of having three moons appear in the sky.
> (...)
> [Bilodeau] lost his case in the trial division, in the Court of Appeal, and he was about to lose it in the Supreme Court if my honourable friends across the way hadn't had such craven fear of letting the case go to trial. What was wrong with letting the case go to trial? There is nothing the Supreme Court could have said that would have imposed the conditions that are in this agreement, nothing at all with respect to French language services and they were being accomplished in any event.[1]

The people of Manitoba had been "misled": "There has been misinformation fed to them on practically every topic."[2] The government should "(o)wn up to their mistake; own up to their ignorance." The only "honourable course" left for it would be to

> withdraw the agreement and the proposed amendments to Section 23 from the Legislature in toto - withdraw in toto - and refer this whole matter to a committee with no preconceived notions by the government as to what will emerge after that committee has tested opinion in Manitoba.
> (...)
> That's what a government of honour would do, but as I have said, Sir, my expectations from socialists are so low. I expect no

[1] Ibid., p. 5007.
[2] Id.

> honour; I expect no integrity; I expect nothing but misinformation...[1]

A second "honourable course" open to it would be to call a provincial general election; however, "that advice, too, is falling on the same, narrow, crude, venal ears that I have referred to earlier in my comments".[2] Lyon then repeated the allegation that had him expelled from the House for two days, that Pawley "wasn't telling the truth...the other night" in saying that "this government had always wanted to hear from the people of Manitoba"[3]; he quoted extensively from Hansard of June 17 previous, concluding that, for Pawley to stand in the House "and say that they always wanted to consult the people of Manitoba by way of a committee is a sheer, abject untruth", and he should admit it. The government was "forced, literally, into committee meetings by the opposition".[4]

Lyon speculated as to the government's motives in continuing on its course:

> (W)hen one looks at the whole gamut of reasoning surrounding my honourable friends' actions, one is left with the clear impression that they are motivated more by political, partisan desire to clean something off the slate that they know is going to be very uncomfortable for them as soon as they can...
> So...the only motivation that I can see for this government carrying on in this particular way is for their own narrow, partisan purposes. I, for the life of me, can't imagine how any group of people can be animated in such a way as to believe that the public can't see through that kind of base cynicism. Of course, the public can see through it. They see through it very clearly. (...) This government...is interested only in its own narrow, partisan advantage.[5]

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[1] Id.
[2] Ibid., p. 5008.
[3] Id.
[4] Ibid., p. 5010.
[5] Ibid., pp. 5011-12.

At the end of Lyon's speech, the subamendment was declared defeated by the Speaker on a voice vote. Ransom called for a standing vote, and the bells rang through the night of August 5 into the morning of August 6. Just after 10 a.m. on August 6, the subamendment was defeated in a standing vote. Frank Johnston then rose for the opposition, repeating arguments that had been made previously. According to Johnston,

> We do know that the Trudeau Liberals, working with this government and the Franco society, put a resolution together that only about 500 or 600 people in Manitoba, or maybe less, had any knowledge of before it was presented to this House. Mr. Speaker, that is a disgusting situation.[1]

Johnston, ignoring the fact that his own leader had received a copy of the draft resolution six months earlier, vented his ire on Penner, introducing at the same time a new theory as to why the NDP was holding its course on the issue:

> Mr. Speaker, the crap game would have been the way the Attorney-General likes it, with loaded dice on his side he would have won, and this great Attorney-General, theoretic (sic) professor of law, who comes into this House not knowing any common sense whatsoever, decided to sit down with one group of Manitobans and make this resolution so that he, not caring about the NDP Party or anything else, could go down in history, Sir, that's all he wants as a platform.[2]

Finally Johnston came to the point, which was to present a new subamendment, seconded by Ransom,

> That the amendment be further amended by adding after the words "next Session of the Legislature" the following words "and in any case not later than December 19, 1983".[3]

Al Mackling immediately rose to argue that the new subamendment was out of order, since it was "substantially the same; it deals with the same

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[1] Ibid., p. 5013.
[2] Ibid., p. 5015.
[3] Id.

principle"[1]. Ransom argued to the contrary, saying the most powerful argument in favour of the Speaker accepting the motion as being in order was that "this House itself, two days ago, accepted a sub-amendment which changed the date from December 31st to December 30th":

> Sir, at the time that the House accepted that motion and you accepted that motion, Sir, was because there was no objection to it at the time; no one in this House objected to that. A precedent has been established and a solid precedent, Sir has been established by the decision that this House made two days ago and I submit that the sub-amendment is entirely in order.[2]

The procedural wrangling continued as this time the government dug in its heels against the introduction of yet another subamendment. Anstett argued Johnston's motion was "really a facade to continue a charade and a filibuster designed to delay the right of the people of Manitoba to be heard on this issue".[3] After interventions by Johnston and Penner, Lyon rose, stating the government was "asking the Speaker to prostitute his office to save them from a political problem..."[4] Penner immediately rose on a point of privilege, saying that

> To attribute that kind of motive and intention to a member of the House, that we are asking the Speaker to prostitute his office is the most scandalous thing imaginable. Mr. Speaker, I would not ordinarily have arisen to the other kinds of innuendos and diatribes for which the Leader of the Opposition is so well noted, but that is too much and I must ask you, Sir, to ask him to withdraw that as unparliamentary . It is clearly unparliamentary in every word and in every syllable.[5]

The Speaker agreed, and Lyon complied. The Speaker then informed the House he would take the government's objection to introduction of the subamendment under advisement.

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[1] Ibid., p. 5016.
[2] Ibid., p. 5017.
[3] Ibid., p. 5018.
[4] Ibid., p. 5020.
[5] Ibid., pp. 5020-21.

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In the days that followed, as the House waited for the Speaker's ruling, the French-language issue came up intermittently. On August 8, Frank Johnston asked the Premier whether Manitobans could "have an input into the actual writing of the resolution". Howard Pawley angrily denounced the "duplicity" of Johnston and "other members across the way", recalling the manner in which the previous government had opposed entrenchment of the Charter of Rights[1].

On August 10, Speaker Jim Walding brought down his ruling, stating that

> "the proposed sub-amendment amounts to substantially the same proposition which has already been decided upon by the House. I must therefore conclude that the proposed sub-amendment is not in order."[2]

Ransom challenged the ruling, but it was sustained on a standing vote.

The next day, Dave Blake asked Penner whether his department had instructed towns and municipalities to have their parking tickets printed in both French and English. Penner replied it had not, and after three supplementary questions, Blake said he concluded from the Minister's answers that "this is not the thin edge of the wedge that we've referred to so often on the bilingual issue". Sarcastically, Penner agreed that "It is neither the thin edge of the wedge, nor the domino, nor the slippery slope, nor the morass, nor the swamp".[3]

The Speaker's ruling took some wind out of the Opposition's sails, and discussions between the two House leaders led to a cryptic announcement by

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[1] Ibid., p. 5101.
[2] Ibid., p. 5218.
[3] Ibid., pp. 5230-31.

Penner on Friday, August 12 that "There will be no sitting of the House this evening or tomorrow, nor will there be any committees this evening or tomorrow... I may have further announcements later in the day."[1] Later, there was indeed a dramatic development as the logjam was broken; Hansard's record of the event is anticlimactic: the Speaker recognized Penner, who said simply:

> Mr. Speaker, this will surprise some members. Would you please call the motion with respect to the referral of the proposed amendment to Section 23 of the Manitoba Act, a referral motion in my name on the Order Paper, as it appears on Page 10 of the Order Paper?
> **Mr. Speaker:** On the proposed motion of the Honourable Attorney-General, concerning the languages resolution and the amendment thereto proposed by the Honourable Member for Fort Garry.[2]

In a matter of minutes, Sherman's amendment requiring intersessional public hearings was defeated and Penner's main motion adopted. The Opposition had abandoned any further bell-ringing or stalling tactic. The House then adjourned for the week-end.

What had happened? Outside the House, negotiations had been on-going during the previous days between the government and the Opposition which led to a formal agreement on the future process to be followed. Mackintosh has summarized the agreement as follows:

> (T)he referral motion was passed after both sides of the House signed an agreement which guaranteed that up to three weeks would be allowed for Committee hearings throughout the province during a House recess, and that all subsequent bell-ringing would be limited to two weeks' duration.[3]

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[1] Ibid., p. 5274.
[2] Ibid., p. 5287.
[3] Mackintosh, G.H.A. Heading off *Bilodeau*: Attempting Constitutional Amendment. *Manitoba Law Journal*, Vol. 15, No. 3, 1986, pp. 271-93, at p. 279.

On Tuesday, August 16, Howard Pawley rose in the House to make a speech which in effect brought to a close the first series of legislative debates on the French-language constitutional amendment. Pawley recalled the main arguments in favour of the proposed amendment and the principles which had guided his government in developing it; he described the terms of the amendment and related them to the sorry history of French-language rights in the province. He told the House that

> [I]f we are unable to resolve this issue positively, the initiative will be lost. It will then be the Supreme Court of Canada that will impose a solution upon us, which may result in a settlement which far exceeds anything which any of us had contemplated or indeed desires.

To which one member interjected, "That's fiction."[1]

Pawley described the link he saw between bilingualism and multiculturalism in Manitoba society, quoting leaders of various ethnic groups who had come out publicly in support of the government's proposals, concluding that

> Our past clearly demonstrates, therefore, that the denial of rights to French-speaking Canadians and French-speaking Manitobans was a denial of rights to other minorities. The Supreme Court ruling of 1979, which overturned the 1890 Official Languages Act, restored the basic social contract upon which this province was founded.
> (...)
> We must continue to find through co-operation better alternatives and better solutions, rather than continuing the denial of minority rights which, one way or another, has plagued our province for far too long.... We have a collective responsibility to reassure Manitobans that we are committed to multiculturalism within a context that recognizes the rights of the founding peoples. Indeed the guaranteeing of rights of any minority must be seen as a protection, as a victory for the rights of all.[2]

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[1] Ibid., p. 5311.
[2] Ibid., p. 5312

Pawley indirectly recalled the negotiations which had led to the agreement on the constitutional amendment and some of the demands that had not been agreed to, saying the amendment was limited in scope:

> There are some who have called for virtually unlimited extension of the official use of the French language; calling, for example, for a constitutional provision requiring its use by municipalities and by school boards and by companies and by others. The population change in Manitoba since 1870 does not warrant such an extension, and we will not agree to any provision imposing such requirements. We have said from the beginning that the limited obligation we have in mind is the government's alone. It affect no other institution.[1]

Pawley responded directly to the criticisms the Opposition and others had voiced repeatedly over the previous weeks, recognizing for the first time in the House that they may have had some validity:

> One of these is that the delivery of French Language Services by the government is a good thing, but should not be constitutionally entrenched. The other is that all (sic) of the circumstances we have outlined, such services should be entrenched, but the limits that we propose with respect to such services must be more clearly defined.[2]

Pawley then made his first major announcement:

> I am pleased that both sides of the House have been able to negotiate a process that will soon permit a standing committe to take up that task that we've been seeking for weeks.
> The negotiated settlement which was struck last Friday stands as a responsible and democratic resolution of a legislative impasse that served no useful purpose for any Manitoban. The triumph of a cooperative, negotiated settlement, rather than the continuation of adversarial rancour now permits us to proceed one step further in dealing with this important constitutional matter. The terms of this agreement will permit the business of the House to be concluded in a few days. It will also permit the Standing Committee on Privileges and Elections, comprised of members from both sides of the Chamber, to proceed to hold

[1] Id.
[2] Ibid., pp. 5312-13.

public meetings and hearings on the question of French Language Services.[1]

The Premier surprised many in the House and most Manitobans by announcing his government's intention to propose a number of amendments to the original constitutional proposal. He began by outlining the process in which the amendments would be formulated:

> Let me outline briefly the major concerns and our general intention with respect to those. In doing so, I want to make it clear that it's only following public input at the meetings of the standing committee, and following discussions with all directly affected parties that actual amendments will be introduced when the Legislature finally debates this matter.[2]

Pawley outlined the nature of the amendments being considered:

> A large number of municipalities have already made their comments known. They are concerned that a court could interpret the present amendments so as to impose a legal obligation on them. This of course, was never our intention. The Attorney-General has stated on many occasions that the language of the proposed amendment was deliberately chosen to avoid such an outcome. Nevertheless, that concern still remains. Accordingly, let me say, unequivocally, we will be proposing an amendment which will specifically exclude municipalities and school boards from any constitutional obligation under The Manitoba Act, as amended.
>
> The public sector employees, through their unions, while supporting the principle - and they have supported the principle of French Language Services, and they have supported their entrenchment in the Constitution - are yet concerned that the terms are too broad, and could be so interpreted by the courts as to lead to the displacement of civil servants, or to reduce employment opportunities for those who speak English only. My Ministers have been discussing these concerns with the public sector employee unions. They advise me that these discussions have been most productive. Amendments will be proposed which will much more sharply define the government's obligation and we hope meet the major concern of the public sector employees.

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[1] Ibid., p. 5313.
[2] Id.

> Concerns which we hope to resolve include, for example, the reference in Section 27.1, "to head or central office, to administrative bodies, as well as to agencies of government"; and in Section 27.2, "to the meaning of the term significant demand". Although the further definition of that term presents great difficulty, I now expect that we'll be able to introduce amendments that will clarify these concerns as will be required.[1]

Immediately after stating his government's intention not to formulate specific amendments until the legislative committee had completed its hearings and reported back to the Legislature, Pawley began to backtrack under questioning by Lyon. After his speech, Lyon asked whether Pawley was "in a position to table those amendments, so that the members of the Legislature and the general public will have an ample opportunity to review them before public hearings commence in two or three weeks?"[2] Pawley replied that the amendments would only be tabled after the legislative committee had reported to the House:

> Mr. Speaker, what we will be doing is indicating, in general, general areas, as I have today, the nature of the areas that will be amended, and following public input - because it is important, Mr. Speaker, that we receive the public input - the amendments will be tabled.[3]

Lyon persisted:

> [W]ould [the Premier] now agree that it would be in the public interest for the public and the opposition to have these amendments in hand before we go to the committee?[4]

Pawley repeated his position, later adding,

> If the Leader of the Opposition is asking would we be prepared to work with committee members with draft amendments? Yes, of course, we'd be interested insofar as draft amendments are concerned. But I think it would be unfair to the public and to

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[1] Id.
[2] Ibid., p. 5314.
[3] Id.
[4] Id.

individuals and groups that would be providing input, if we provided those amendments with official status until such time as we've had public input.[1]

Finally, Lyon obtained a commitment from Pawley that draft amendments would indeed be tabled before the committee began its work or shortly thereafter:

> **Hon. S. Lyon:** Mr. Speaker, we're making some progress. Will the First Minister then agree to table, as soon as possible, proposed draft amendments that he and his government have apparently been working on to the amendments to Section 23? Will he do that as soon as possible?
> **Hon. H. Pawley:** Mr. Speaker, that certainly will be done by the Attorney-General. When he has the draft resolutions, he will share those draft resolutions with the committee.
> **Hon. S. Lyon:** Will that be done, Mr. Speaker, before the committee meets?
> **Hon. H. Pawley:** Mr. Speaker, the committee sits on September 6th. The Attorney-General is working with respect to draft resolutions. If they're available by that time, he will so table them. If they are not, it will be subsequent to September 6th.[2]

In this brief exchange, Pawley had effectively reversed himself, inadvertently giving the Conservative opposition more grist for its strategy mill. A few minutes later, the House adjourned for the day. On August 18, as part of the compromise worked out between the government and the Opposition, the work of the Second Session of the Thirty-Second Legislature of the Legislative Assembly of Manitoba was suspended indefinitely to allow the Standing Committee on Privileges and Elections to hold public hearings on the constitutional amendment in the fall. The Session resumed on Jan. 5, 1984.

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[1] Id.
[2] Ibid., p. 5314.

Chapter XI

Conclusion

The sheer volume and complexity of the events comprising the Manitoba French-language crisis, the intermingling of passion and rational debate over a prolonged period of time, the conflicting principles at play, and the numbers and varying motivations of the actors involved, render analysis of the crisis exceedingly difficult. We have attempted in the previous chapters to establish the chronology of events and the roles of the various actors as clearly and objectively as possible. Given the methodological limitations of the study and that only the first four months of the crisis itself (from May to August 1983) are described, any conclusions must of necessity be of a tentative nature.

Our analysis will proceed on two levels. First, we shall attempt to untangle the politics of the crisis with reference to the events that occurred through to August, 1983. Secondly, we shall attempt to formulate a few "explanatory hypotheses" to gain some understanding of the emotions and passions engendered by the crisis among the population of Manitoba.

I) The nature of the political debate

It was often said by the Conservative opposition in the early months of the debate that they were taking a firm stand against the proposed constitutional amendment because "the people" were opposed to it. There is much evidence to the contrary; it can be found in the polls that were conducted immediately before or during the early stages of the crisis and in October, 1983, at the height of the referendum fever that swept rural Manitoba and the city of Winnipeg.

There are four main sources of empirical data in the determination of attitudes of Manitobans toward French-language rights in late 1982 and 1983. These are the CROP survey (1982), the Wordsnorth survey (1983), the Institute for Social and Economic Research (ISER) survey (1983), and the results of province-wide plebiscites held by many municipalities in Manitoba in October, 1983.

i) The Wordsnorth survey

Wordsnorth Communication Services Ltd. was retained by the office of the Premier of Manitoba and by the Attorney-General of the province to complete an attitudinal survey of adult Manitobans in early July, 1983. Objectives of the survey were "to determine the awareness level" of Manitobans on the issue; "to determine attitudes towards bilingualism in general and French Language Services in specific (sic)"; "to determine Manitoba response towards a limited program"; and "to determine reasons for currently held positions on these issues". A total sample of 3,000 names was randomly selected from the Manitoba and Winnipeg directories to reflect the rural/urban distribution of the population; 606 useable interviews were completed between June 29 and July 2, 1983.

Early in the telephone interview, respondents were asked specifically, "do you think it is a good idea or a bad idea that Manitoba and the federal government sign an agreement to translate some Manitoba laws into French and that by 1987, the public will have a right to deal with the provincial government in either English or French". At this stage in the interview, 51.1%

of respondents thought it was a bad idea; 38.6% thought it was a good idea, and 10.1% said they didn't know.[1]

An interesting element of the Wordsnorth survey is that it asked the respondents to distinguish between "limited French language services in Manitoba" as opposed to "federal bilingualism":

> Respondents agreed that a French Language Service in Manitoba different from the Federal Government's and limited only to the legislature, courts, and some provincial government departments would be acceptable...This suggests that respondents disagree with an undefined, unknown program, but with appropriate definition, limits and understanding are more inclined to support French Language Services. A review of the comments noted from those who agree with this limited service suggest (sic) they support French Language Services where it is needed, and as long as it is not forced on anyone, (particularly them), where it is not needed.[2]

If an additional element was added, that is, that French-language services be provided "where there are substantial numbers of people whose mother tongue is French", 70.8% of respondents agreed strongly or somewhat that such additional, limited services should be offered.[3] Analysis of the data indicates that "almost all groups, whether by age, sex, occupation, education or region are much more supportive of this limited approach than undefined, general bilingualism".[4]

ii) The CROP survey

In November, 1982, a nation-wide federally-commissioned survey was conducted by CROP Inc. of Montreal. Results of the Manitoba sample were summarized as follows by Turenne:

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[1] Ibid., p. 17, Table A-7.
[2] Ibid., p. 44.
[3] Ibid., p. 53.
[4] Ibid., p. 54.

> To the CROP question 'Are you personally in favour or not in favour of bilingualism in your province?', 39% of Manitobans declared themselves in favour, and 52% against. This compares to 38.6% and 51.1% respectively for the equivalent question in the Woodsnorth (sic) survey. The CROP survey indicates that 40% of Manitobans support federal bilingualism, while the Woodsnorth (sic) survey gives this figure as 42.6%. Such strikingly similar results obtained from two survey firms, at different times, and using a different sampling, tend to confirm the reliability of the results and conclusions in each case.[1]

By October, 1983, the months of unremitting opposition to the constitutional amendment by the Conservatives and others such as Russell Doern, in the Legislature and elsewhere, had had a dramatic effect: support for bilingualism in Manitoba had fallent to 26%. Evidence for this is found in a poll conducted in October, 1983, a few days before the plebiscites, and in the results of the plebiscites themselves.

iii) The Institute for Social and Economic Research (ISER) survey

The Institute for Social and Economic Research of the University of Manitoba undertook an independent survey of the "attitudes of the Manitoba population toward bilingualism policies proposed by the provincial government" in October of 1983. Interviews were conducted between October 17 and October 21, 1983, that is, only a few days before plebiscites were held in Winnipeg and throughout the province on the issue. This was also a telephone survey; a simple random sampling procedure was used to obtain 1,500 residential telephone numbers from within Manitoba, and a total of 954 useable interviews were obtained. Tests were made to measure sample quality and the sample was "shown to be closely representative of the province as a whole".[2]

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[1] Turenne memo to Pawley et al., July 6, 1983; quoted above. (See Chap. 7)
[2] ISER, 1983, p. 11.

The basic issue was addressed by the following question: "In general, are you for or against the Manitoba government's proposal to secure French-language rights in this province?" Among Winnipeg respondents, 53.7% were opposed and 29.4% were in favour. Among non-Winnipeg respondents, 58.9% were opposed and 21.6% in favour. Among all respondents, 55.9% were opposed and 26.2% were in favour.[1] No attempt was made in this survey to explain the proposal to the respondent. The authors pointed out the fact that "there are statistically significant differences between Winnipeg and non-Winnipeg attitudes".[2] The ISER survey also found much more support for the provision of essential services in French rather than for the government proposal, which was evidently perceived as being more global: 61% of respondents agreed that "services like those provided by the police, the courts, hospitals, or Autopac should be available in French, when requested".[3] This finding also confirms the Wordsnorth findings.

iv) The plebiscites

Through the summer of 1983, momentum built at the municipal level for plebiscites on the French-language issue, and many municipalities, including the City of Winnipeg, held such plebiscites. The results were much closer to the later ISER poll than to the earlier CROP and Wordsnorth surveys; indeed support for the government was even lower than ISER had found. In Winnipeg, only 23.5% of voters supported the government's proposals as opposed to obtaining a Supreme Court ruling on the issue. In the rural areas, support occasionally fell below 10%.

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[1] Ibid., p. 1.
[2] Ibid., p. 4.
[3] Ibid., p. 5.

There are at least two possible explanations for the discrepancy between the actual vote and the ISER survey. It is possible that opponents of the proposal felt more strongly on the issue than supporters, and therefore voter turnout among this group was somewhat heavier; on the other hand, it is possible that opposition to the proposals hardened among the population generally in the last days of the plebiscite campaigns. In either case, it can be assumed that the Opposition played a major role in the shift.

v) The Canadian Facts survey, 1985

By 1985, support for bilingualism in Manitoba had returned to the 1982 levels. A Canadian Facts survey conducted on behalf of the Commissioner of Official Languages in the fall of 1985 among 4,000 Canadians[1] found that, on the Prairies, levels of support for bilingual provincial services were much as CROP and Wordsnorth had found in 1982 and early 1983. Fully 45% of Prairie respondents believed that provincial services should be offered in both English and French. 72% of respondents believed that minority-language residents were entitled to their own schools, and 56% believed that the minority was entitled to hospital services in its language. Manitoba results were not published separately, but it could be argued that such results could not be obtained in the three Prairie provinces if the levels of support registered in the fall of 1983 in Manitoba had remained stable through to1985.

The above data, notwithstanding the fact that the 1985 data are not strictly comparable with the three earlier polls, indicate strikingly that "something happened" to Manitoba public opinion between May and October, 1983. It is argued here that the "something", the major factor, was the uncompromising

[1] Churchill, S., & Smith, A.M., The Time Has Come; in *Language and Society*, No. 19, April, 1987, pp. 4-8.

and often intemperate opposition mounted against the government's proposals by political leaders such as Sterling Lyon and Russell Doern. The crisis was ignited by reckless rhetoric; it was not "the people" speaking, as the opposition often maintained during the legislative debates. The "people" in a real sense at the outset of the crisis had nothing to do with it. If the Conservative Opposition had behaved as opposition parties had done on previous occasions when language legislation had been presented in the House[1], the crisis simply would not have occurred. In breaking with the tradition of consensus on language issues that had existed in Manitoba since the 1950's, the Conservative opposition let loose a malevolent genie that in the end could not be contained.

On May 20, 1983, it is argued here, there was no more or no less opposition to the government's proposals among the Manitoba population than there had been towards French-language services in, say, 1982. If the Opposition had taken a critical stand, but both sides had indicated greater willingness to compromise, the province might well have been spared later excesses. Further, it is conceivable that if the Opposition had vocally supported the extension of French-language services, it could have actually increased public support for such services. At the same time it could have promoted what it evidently preferred: the extension of such services by legislation rather than by a constitutional amendment.

That at least some Conservative and other MLAs were arousing negative public opinion was suggested by three separate statements made in the House. On August 3, 1983, Albert Driedger said in the House that at the beginning of June, nobody among his constituents were asking him about the bilingualism

[1] See Chapters 1 and 2.

issue; by early August, however, thanks to the work of his caucus, "The reaction is coming." Not by chance was the reaction coming.[1] On Aug. 4, Wally McKenzie said, "As we stand here...and debate day after day, the heat of the subject matter grows, the number of phone calls grows..."[2] On Aug. 5, Bob Banman said opinion among the media was shifting, after their initial enthusiasm for the constitutional amendment. "A large part of the credit," Banman added, "has to go to members of the opposition who are really doing their job in this Chamber".[3]

Beyond the political parties, the behaviour of other actors with a leadership role in Manitoba's political system is also instructive. The Union of Manitoba Municipalities, for example, remained vociferously opposed to the government proposals throughout, even though it was repeatedly reassured that municipalities were specifically excluded from the draft constitutional amendment tabled by Penner from the outset. The UMM's own counsel effectively told[4] the organization's leadership that this was the case.

This behaviour can be contrasted with that of the Manitoba Government Employees' Association, representing thousands of provincial civil servants who had much more at stake in the constitutional amendment: rather than rejecting the amendment out of hand, and despite grassroots pressure to do so among its membership, the MGEA executive charted a critical yet constructive course. In July, 1983, it proposed several changes to the proposed amendment[5] and in so doing prompted the government to re-examine its provisions; indeed, it would seem that the MGEA's brief to the Premier in mid-July was the

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[1] See Chap. X, p. 473.
[2] Ibid., p. 486.
[3] Ibid., pp. 504.
[4] See Chap. VII, p. 344.
[5] See Chap. VIII, pp. 366-70.

point at which the government decided that changes would have to be made to the proposed amendment.[1]

The UMM's behaviour can also be contrasted with that of the Union of Urban Municipalities, a majority of whose membership (57%) was also opposed to the government's proposals but whose leadership decided that this was not sufficient for the organization's executive to "express with great vigor total opposition to the resolution".[2]

Given that the UMM's interests were not threatened in any significant way by the government's language proposals, its absolute, vociferous opposition to the amendment is difficult to understand without having recourse to explanations which have nothing to to with the content of the constitutional amendment; in other words, its opposition was literally inexplicable. "Second-level" analytical frameworks must be used to make some sense of its position and taking into account emotional dimensions such as status anxiety, symbolic incongruence, and even outright prejudice.

The UMM's position would only be of passing interest were it not for the fact that the Conservative Opposition repeatedly read into the record lengthy excerpts from its press releases and statements by its leadership. One would think, reading the Debates, that the UMM was of central importance to the language issue, whereas it represented one small group in society, the leadership of rural municipalities, a level of government which was explicitly excluded from the scope of the constitutional amendment from the start. Despite this obvious fact, a symbiotic relationship developed early on in the language debate between the UMM and the Conservative Opposition, with the UMM issuing often inaccurate statements on the scope of the amendment and

[1] See Chap. IX, p. 398.
[2] See Chap. VI, p. 287.

the Official Opposition repeatedly reading these statements into the record, thereby giving them a weight they did not inherently have. Again, the Opposition had a choice: it could adopt a critical yet constructive course (such as that taken, for instance, by the MGEA) or it could align itself with forces in Manitoba which were absolutely opposed to the amendment. It chose the latter course.

II) The arguments

Any analysis of the French-language crisis in Manitoba must deal at some point with the validity or otherwise of the Opposition's arguments, since the Opposition strove, throughout the crisis, to give itself substantive intellectual credibility. Most fundamentally, the Opposition argued that entrenchment constituted a "quantum leap" over anything that was required under S. 23, and that no court could have interpreted it as requiring the government to provide French-language services to the province's official language minority. On this point, Sterling Lyon was surely right, in terms of the "black letters" of the Constitution, and Joseph Magnet and Georges Forest were wrong.[1] In the broader context of Manitoba's history, particularly the context in which S. 23 came into being, the intent of the Manitoba Act was to provide linguistic guarantees in perpetuity to French-speaking Manitobans in the courts, in the Legislature, and in the texts of statutes, regulations, and other legislative records.[2]

One can argue, as the Opposition did repeatedly and vociferously, that bilingualism extended only to these institutions, and, on the basis of the words

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[1] See our analysis of Magnet's position in Chap. IV, pp. 189-90.

[2] The courts to this day are still in the process of determining the full extent of the guarantees provided by S. 23 at this level.

of S. 23, it was undoubtedly right. However it can also be argued that S. 23 covered all of the government's activities in 1870, since such activities were limited at that time to the courts and the Legislature. Secondly, had the structural guarantees enshrined in the *Manitoba Act* such as the Upper House not been systematically dismantled through the 1870's and 1880's, the French minority would probably have managed to ensure the provision of such services in the areas of the province where they lived and in the central agencies of government as they developed. In this broader context, and particularly in light of the unconstitutional behaviour of successive provincial governments after 1890 despite repeated court rulings, the Pawley government's proposals of 1983 would appear to have been modest indeed.

Yet this perspective was rejected out of hand by the Opposition, which focused only on the "black letters" of the law, precisely the approach Chief Justice Freedman had said should not be taken in defining the minority's rights.[1] Through the first legislative debates, the Opposition followed Lyon's lead when he stated, in his first major speech on the issue, that the Attorney-General's statement "of Manitoba being a bilingual province just isn't true; it's not true historically; it's not true politically; it's not true legally. It has never been true that Manitoba was conceived as a bilingual province."[2] He returned to this theme repeatedly that evening, in terms both more forceful and insistent.[3]

Here was a fundamental divergence between the Government and the Opposition: the constitutional amendment was seen by the government as a modern interpretation of obligations which Manitoba had always had towards

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[1] See Chap. II, p. 57. In his *Forest* judgment, Freedman also clearly established the link between S. 23 and the history of the province, something the Opposition steadfastly refused to do.
[2] See Chap. VIII, p. 378.
[3] Ibid., pp. 378-80.

its French-language minority since 1870; the Opposition insisted on a narrow reading of S. 23, abstracted from its historical context, which limited government's obligations to the provision of French-language court services and the translation of millions of words.

This led the Opposition to take positions which verged on intransigence. The refusal by some members to admit that Manitoba was a bilingual province flew in the face of established historiography and the Lyon government's own behaviour in office from 1977 to 1981.

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For most mainstream historians, Manitoba has always been a bilingual province. W.L. Morton, for example, whose definitive history of Manitoba was first published in 1957, wrote that the *Manitoba Act* provided for "the official use of the French language" which perpetuated in the new province "the old duality of Red River and the balance of English and French nationality on which Confederation rested".[1] The Manitoba historian Gerald Friesen, in a more recent work, wrote that "the official status of the French language in the province" went unchallenged for the first twenty years of Manitoba's existence.[2] In J.A. Lower's view, the Manitoba Act ensured that in the new province of Manitoba, "The French and English languages were to be officially equal."[3] Finally, that most conservative of historians, Donald Creighton, wrote, in 1970, that Manitoba entered Confederation as a province "with a top-heavy bicameral legislature, modelled on that of Quebec, two official languages, and confessional schools".[4] In addition, Conservative Premier Duff Roblin recognized as early as

[1] Morton, W.L., op. cit., pp. 141-2.
[2] Friesen, G., *The Canadian Prairies: A History*, 1984, p. 217.
[3] Lower, J.A., *Canada: An Outline History*, 1966, p. 125.
[4] Creighton, D., *Canada's First Century*, 1970, p. 19.

1959 that French was an official language of Manitoba.[1] In the heat of the first language debates in the Legislature, at least one Tory MLA recognized that under S. 23, Manitoba indeed had two official languages.[2]

Paradoxically the first legislative recognition of this fact occurred in 1890, with adoption of the *Official Language Act, 1890*. The title of the bill itself implies that previously there had been two official languages in Manitoba; henceforth, by unconstitutional decree, there was to be but one.

Restoration of French as an official language was to await the Lyon government, which adopted Bill 2 in 1980 following the *Forest* judgment. The Bill referred several times to "the official languages" or "the official language" (French or English).[3] A Conservative backbencher, Ric Nordman, also acknowledged that Lyon had earlier described French as an official language in Manitoba in the Legislature.[4]

French was also restored as an official language in the administration of the province through various policy directives issued by the Lyon government. The process started with the Jan. 19, 1981 Préfontaine submission to Treasury Board, which twice referred to "the official minority language".[5] The document, with this wording intact, became a Submission to Cabinet dated Feb. 6, 1981.[6]

In announcing establishment of the French Language Services Section on March 20, 1981 in the House, Sterling Lyon said French was the "official minority language" of the province, and referred twice to English and French as Manitoba's official languages. Lyon's directive to the civil service included his

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[1] See Chap. IX, p. 444.
[2] Abe Kovnats, on Aug. 3, 1983; see Chap. X, p. 477.
[3] See Chap. II, pp. 71-2.
[4] See Chap. X, p. 484. Nordman was probably referring to Lyon's April 7, 1980 speech or to the text of Bill 2 itself.
[5] See Chap. II, p. 115.
[6] Ibid., p. 116.

comments in the House, clearly sending the message to the entire provincial bureaucracy that henceforth the status of French as an official language had been fully restored. It should be pointed out, however, that Lyon took care at that time not to relate the provision of French-language services to Manitoba's obligations under S. 23 of the Manitoba Act.

Finally, the Civil Service Commission, in its document describing the new position of head of the French Language Services program, referred to "the two official languages of the Province of Manitoba".[1]

It is difficult to reconcile this repeated general acceptance of the "official languages" terminology when Sterling Lyon was in power with his repeated denunciation of the use of this terminology in the constitutional amendment. This is especially true in the latter stages of the crisis, when the provisions for French-language services were "disentrenched" and incorporated into an ordinary law, Bill 115, on Jan. 5, 1984.

It is particularly difficult to understand the vociferousness with which Donald Orchard and others attacked Pawley for a mistake he made, and acknowledged, in a letter to a municipality where he substituted the word "official" for the word "the" in the text of S. 23. All of the historians quoted above would have agreed that Pawley's use of the word "official" was entirely appropriate, though textually inexact. The reality described in S. 23 is that Manitoba is officially bilingual; the debate was over the <u>extent</u> to which Manitoba is bilingual, not over the <u>fact</u> that it is.[2]

This quarrel over the definition and usage of the word certainly helped arouse the passions of the people of Manitoba over the issue; better

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[1] Ibid., pp. 116-17.

[2] Turenne's analyis of the issue follows the same lines, though without the historiographical underpinning. See Chap. IX, pp. 406-7.

acquaintance with the province's constitutional and historical realities would have cooled frayed tempers and informed the decision the Legislature was taking over whether or not Manitoba was to be declared constitutionally bilingual. Instances of this conscious denial of constitutional and historical realities abound in the debates.

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The other arguments advanced by the Opposition in the early legislative debates are also questionable.

1) The "secrecy" argument

Rarely have "secret" deals received such detailed media coverage and analysis as did the tripartite agreement during the months preceding the tabling of the amendment by Penner. During the legislative debate, Penner identified 14 separate articles that had been published in three daily newspapers on the issue between July 12, 1982 and April 8, 1983. As early as July 13, 1982, almost a year before the text of the proposed constitutional amendment was tabled in the House, Gerry Mercier gave an interview that indicated he was aware of the negotiations that had been undertaken between the government and the SFM; his only comments were that the government did not have the authority to amend the Manitoba Act (by which it can be assumed he meant that Manitoba could not do it on its own without a federal resolution), and that Penner should wait until after the Supreme Court had ruled on the Bilodeau case before considering an amendment. He made no negative comment (at least none that was reported) about the process, i.e. the fact that the government was

negotiating with the SFM.[1] Lyon himself, in his first questions on the agreement in the House, acknowledged that "these negotiations have been in the public domain now for some several months".[2]

Most significant, however, was the fact that a draft text of the constitutional amendment had been transmitted by Penner to Mercier and Lyon on Dec. 17, 1982, five months before a final draft was tabled in the House. This was acknowledged several times by Lyon during the first legislative debates; Lyon also stated in the House that members of his caucus had met directly with the SFM after having received the government's draft.[3] However, both he and his caucus colleagues then proceeded to raise the secrecy issue as if they had never been informed of the content of the negotiations.

A striking example of this inconsistent attitude towards the secrecy issue is found in Lyon's July 12, 1983 speech. Lyon stated that Serge Joyal "knew that the Societe was in negotiation with this government...nobody else did, but Mr. Joyal knew that". (emphasis added) Later, in the same speech, Lyon again acknowledged Penner's courtesy of having notified him of the negotiations in December of 1982, and added that members of his caucus had met with the SFM thereafter.[4] A few weeks later, Harry Enns acknowledged, on one hand, that members of his caucus had been informed of the agreement the previous December; on the other hand, he stated repeatedly that this was a "secret", "under-the-table" deal, adding, for good measure, that it had been worked out "under the Whip, under the lash of one Serge Joyal".[5]

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[1] See Chap. IV, pp. 167-8.
[2] See Chap. VI, p. 262.
[3] See Chap. VIII, p. 380.
[4] Id.
[5] See Chap. X, pp. 509.

There is, however, the possibility that Mercier and Lyon did not inform their own caucus that they had received the draft amendment until very late in the game, perhaps even after the amendment was tabled by Penner in the House in May of 1983. This is the impression one gets in reading comments made by Clayton Manness, where he acknowledged that Penner had sent "correspondence over to us last December and then after that, but why didn't the government see fit to include members of the opposition[?]".[1]

Regardless of the validity of the "secrecy" argument, one thing is clear: the Opposition could have transmitted its opinions on the process at any time after mid-July, 1982, and on the substance of the constitutional amendment being negotiated at any time after December 17, 1982. It deliberately decided not to do so, choosing instead to "hide in the bushes", as some commentators put it at the time, waiting to ambush the government at the appropriate time, and in so doing put the province through one of the most divisive periods in its history. The opportunity was provided, perhaps inadvertently, by Pierre Trudeau himself on May 16, 1983.

2) The risk of chaos

Perhaps no element of the language debate is more difficult to unravel than the risk of "chaos" the province was facing should Bilodeau win in the Supreme Court. The Opposition steadfastly maintained that the risk of the Supreme Court handing down a judgment that would have thrown the province into chaos, by declaring unconstitutional all or many existing English-only laws, was negligible. The government maintained that the danger, while minimal, was real and an out-of-court settlement with Bilodeau and the SFM

[1] See Chap. X, p. 483.

was preferable, since it would redefine the French-language rights that had existed since 1870 in contemporary, twentieth-century terms while avoiding much unnecessary translation and giving the government time to complete the translation of statutes that was agreed upon.

The word "chaos" was first used by Justice Jewers on Feb. 5, 1980[1] and taken up later by Chief Justice Freedman in his *Bilodeau* judgment on July 7, 1981.[2] It was not, as the Opposition repeated, an invention of the Pawley government. Chief Justice Freedman had starkly defined the implications of *Bilodeau*: "Virtually every statute in Manitoba is invalid, if we give to s. 23 a mandatory effect. The result is indeed chaos." The Freedman court chose to give S. 23 merely a "directory" effect, meaning that "shall" does not really mean "shall", in certain circumstances. Whether this reasoning would stand up in the Supreme Court was another matter, and one which any responsible government had to weigh carefully.

There were certain judicial elements which the Opposition chose to ignore as the legislative debates unfolded. First, judicial interpretation of S. 133 of the *B.N.A. Act, 1867* (upon which S. 23 was closely patterned)[3] was proceeding at breathtaking speed, first with the *Forest* and *Blaikie I* decisions in 1979[4], then with *Blaikie II* in 1981[5], followed by the dramatic *Collier* decision handed down by the Quebec Superior Court on May 30, 1983. This last judgment implied (if upheld by the Supreme Court of Canada, which it eventually was), that documents deriving from legislation such as union

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[1] See Chap. II, p. 67.
[2] Ibid., p. 79.
[3] See Chap. III, pp. 151-2 and Chap. II, pp. 53-4.
[4] See Chap. II, p. 60.
[5] See Chap. III, p. 159.

contracts in Quebec would have to be in French and English.[1] By extension, this would apply to Manitoba via S. 23 of the *Manitoba Act*.

How did the Conservative Opposition react to these developments? It simply ignored them, preferring to repeat selected excerpts of the Freedman court's *Bilodeau* judgment in the House, ignoring the fact that the limited interpretation of the Freedman *Forest* judgment had not held up in the Supreme Court and that there was a real and growing risk at the judicial level that its more recent judgment would not be sustained. In addition, the Opposition repeatedly quoted selected excerpts of Twaddle's April 14, 1982 opinion, ignoring the fact that judicial interpretation of S. 133 had evolved dramatically since that time.

Most significantly, the Opposition ignored the fact that Twaddle's credibility before the highest court on language issues was seriously in doubt, since, by May of 1983, Twaddle's arguments had failed to sway the Supreme Court on all three major cases involving language heard by that Court between 1979 and 1981[2]. This was obviously one of the reasons why Penner requested a second legal opinion on *Bilodeau* in the spring of 1982.

As for the courts not being in the business of "creating chaos", Lyon's main argument, there was troubling recent evidence to the contrary. Justice Dureault, in his 1976 ruling which found the 1890 *Official Language Act* unconstitutional, had quoted Lord Mansfield in saying that "We must not consider the consequences, whatever they may be!"[3] Much more draconian, and therefore troubling for Manitoba, was the Supreme Court's *Blaikie I* ruling

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[1] See Chap. VI, pp. 289-90.

[2] Twaddle had been counsel for the Attorney-General of Manitoba on the *Forest*, *Blaikie I*, and *Blaikie II* cases, arguing in favour of the restrictive independentist interpretation in the latter two cases. Each time the Supreme Court rejected his main arguments.

[3] Transl. from French text; see Chap. I, p. 41.

had "unofficial" English versions of all of these laws ready for adoption; Manitoba might not have been so fortunate.

Though all of these facts were known but systematically ignored by the Opposition, they could not be by any government claiming to be "responsible". The "risk of chaos", seen from this perspective which includes all of the available judicial facts and not a dated, selective smattering of them, appears much greater.

3) The SFM was "not representative"

On several occasions, and increasingly as the first legislative debates wore on, the Conservative Opposition attacked the SFM as being unrepresentative of Manitoba Francophones, picking up a line first developed by Peter Warren in his *Winnipeg Sun* column and on his phone-in show and by Neil Fraser in a letter to the *Winnipeg Free Press*.[1] Lyon himself set the tone in his July 12, 1983 speech, saying the SFM could be compared with the St. Andrew's Society or the "Polish Competence Society".[2] Harry Enns, one of the more moderate Conservatives, questioned the SFM's credibility as a representative organization of Francophones, saying that, although it spoke for the French-language community's interests, it did not "represent the total French community in Manitoba".[3]

Lyon ignored the fact that his own government had held high-level meetings with the SFM on at least two occasions, in 1980 and 1981. On Dec. 5, 1980, Attorney-General Gerry Mercier and Cultural Affairs Minister Norma Price met with representatives of the SFM; this was followed, in September of

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[1] See Chap. VI, p. 281.
[2] See Chap. VIII, p. 383.
[3] See Chap. X, p. 509.

Lyon ignored the fact that his own government had held high-level meetings with the SFM on at least two occasions, in 1980 and 1981. On Dec. 5, 1980, Attorney-General Gerry Mercier and Cultural Affairs Minister Norma Price met with representatives of the SFM; this was followed, in September of 1981, by a top-level meeting with Premier Lyon himself and several of his ministers.[1] Lyon could not even argue that it was only as head of government that he had to extend such consideration to the SFM, since he acknowledged himself in the House having met with the SFM as Leader of the Opposition sometime after having received the draft constitutional amendment from Penner. This meeting, according to SFM records, was held on January 13, 1983.[2]

There is other evidence of the propriety of the government entering into negotiations with the SFM. The organization had been granted intervenor status in both the *Forest* and *Bilodeau* cases by the Supreme Court of Canada. It was in constant communication, and in obvious sympathy with, Bilodeau himself. It was meeting regularly with ministers of the federal government, who obviously recognized its legitimacy and representativeness. Its first public general meeting on the state of negotiations with the government attracted about 200 persons on a mid-winter Saturday afternoon.[3] Its May 24, 1983 public general meeting attracted about 600 persons. The greatest opponents of the SFM, Maurice Prince and Georges Forest, were both present at this meeting but could only muster 11 votes against the package that had been negotiated between the SFM and the Pawley government in 1982 and 1983.[4] In the

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[1] See Chap. II, p. 114 & 121. No record appears to exist of similar meetings between Lyon and either the St. Andrew's Society or the Polish Combatants' Association at that time.
[2] See Chap. V, p. 207.
[3] See Chap. V, p. 209.
[4] See Chap. VI, p. 279. As a point of reference, the number of Manitobans who spoke French at home in 1981 was about 31,000. To reach the same percentage, a general meeting of all Manitobans would have to attract 20,000 people.

aftermath of the torching of its offices, the SFM received the explicit support of 15 Franco-Manitoban organizations, with a total of thousands of members, as their representative organization in the negotiations with the provincial government.[1]

In short, the attacks on the SFM's representativeness were in reality attempts at destroying the organization's legitimacy as a negotiator with the government. They could not be sustained empirically and never were through the first phase of the debates, nor indeed through the entire French-language crisis, either by the Conservative Opposition or by anyone else, including Russell Doern and Peter Warren.

4) The Opposition's view of negotiations

Lyon's approach to the negotiations between the SFM and the government was ingenuous. In his view, the government should have negotiated one issue and one issue alone: translation.[2] This ignored the fact that translation of at least some statutes was already guaranteed by the *Forest* and *Blaikie* judgments, and that the aim of both Bilodeau and the SFM was to obtain at least what Francophones felt they were entitled to in the "black letters" of S. 23: application of its provisions to all statutes, spent and current, all regulations, all legislative records and documents, and even Hansard. The load was staggering, since statutes dating back to 1890 would have to be translated. But the government in 1982 was incapable even of translating current legislation, much less tackling the backlog. Clearly, in the government's view, there had to be a trade-off: expensive and useless translation would be exchanged for services. The SFM and Bilodeau would agree on a minimal

[1] See Chap. V, p. 220.
[2] See Chap. VI, p. 296.

package of laws and regulations to be translated, in return for constitutionally-guaranteed French-language services where numbers warranted.

The essence of negotiation is compromise, the definition of trade-offs to arrive at a settlement which is mutually advantageous. The Lyon view of negotiations was to take a position involving minimal change, then stonewalling. This is the approach he and the rest of the "Gang of Eight", including René Lévesque, took in the constitutional negotiations of 1981. Lyon advocated the same approach towards the SFM. The only issue, in his view, was "What are the statutes that Franco-Manitobans work with and want to have translated today...that's what reasonable negotiation is based upon."[1] This ignored the fact that, based on the recent Supreme Court judgments, Franco-Manitobans were likely to get much more.[2] In addition, Lyon's approach ignored the SFM's position and the interests of the Franco-Manitoban community following over 90 years of unconstitutional behaviour by successive governments as well as the sympathy and support the SFM's position received in Ottawa. In other words, Lyon's approach ignored the context in which the negotiations had unfolded over the previous year and the stakes involved for the parties. It was tantamount to saying that negotiations should not have occurred at all and that the matter should have gone to the Supreme Court at the outset. Indeed this was the position Mercier had first expressed in July of 1982, and it was a position the Opposition returned to repeatedly in the course of the first legislative debates. Lyon himself succinctly formulated his ultimate objective as early as July 26, 1983. When Deputy House Leader Al Mackling said "it was our concern to get this referral before the public

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[1] See Chap. VIII, p. 384.

[2] As mentioned in an earlier note, the extent of translation required under S. 23 is still, in 1991, in the process of being determined by the courts. Penner initially estimated the impact of the recent court judgments as implying 14,000 pages of translation. See Chap. VI, p. 266.

as soon as possible..", Lyon cut him off by interjecting, "It is our concern to stop it."[1] At that point it became clear that any advice he was offering regarding negotiations was spurious, since ultimately Lyon would reject any compromise. This indeed became the pattern, not only through the August filibuster.

5) Intemperate language

No objective observer can fail to be struck by the intemperate language used repeatedly by the Opposition in the course of the early legislative debates: expressions such as "language zealots", "zealot fool" (used repeatedly by Lyon to describe Lécuyer), "bloody reds" (used by Lyon to describe the government), "Kermit [the frog]" (used by members of the Opposition to describe Lécuyer), "venality" and "venal self-interest"[2], used by Lyon to describe the governing party's motivation in the language issue, "weaseling around" (applied by Lyon to the Premier), "craven fear" (applied by Lyon to the government), "imbecilic madman" (used by Frank Johnston to describe Mackling[3]), "you communist" (used by Lyon to describe Penner), "liar" (used by Lyon to describe Pawley[4]), and "gangsters" (used by Wally McKenzie to describe the government).[5] The debates also contain assorted attacks by the Opposition on the government's integrity and honesty on the issue. No such language was used on the government side through the first legislative debates except for the occasional use of the word "fool".

One might be tempted to attribute the use of such language to the "cut and thrust" of debate, to describe it as normal parliamentary behaviour. There

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[1] See Chap. IX, p. 442.
[2] After Lyon had used the words "venal", "venality", and "venal self-interest" a dozen times, the Speaker warned him not to use the expression again. See Chap. X, p. 514.
[3] See Chap. 10, p. 460.
[4] This led to Lyon's ejection from the House; see Chap. X, p. 464-6.
[5] See Chap. 10, p. 487.

are three problems with this explanation. First, it implies considerable cynicism about the nature of our parliamentary institutions: if this is "normal" parliamentary behaviour then our parliamentary institutions are in a sorry state indeed. Second, if this is normal parliamentary behaviour, why is it that only the Conservative party used such language consistently over the first four months of debate? Was it "normal" behaviour only for the Conservatives and not for the NDP?

Third, and most troubling, is the fact that such words were used during debate on one of the most explosive issues any society must deal with, that of the rights of a linguistic minority. One is reminded of Nancy Allen's words: if any attempt at educating the public on the issue of bilingualism "incites the immoral minority to riot"[1], how much more so would such intemperate language coming from political leaders of the society?

The depths of intemperate language were reached when Gerrie Hammond read into the record excerpts of a Fred Cleverley article published in the *Winnipeg Free Press*, which said in part that Manitoba had to "Pay the ransom demanded by the Franco-Manitoban society." Far from denouncing Cleverley's attack on the SFM, Hammond said the article was "very good" and "tells it the way we have been trying to tell it".[2] Thus a small linguistic minority attempting to restore century-old rights which had been systematically ignored by successive governments through the 20th century was, in the eyes of a Conservative member, guilty of blackmail. Blackmail, a criminal act, surely warranted action that was no less extreme by the people of Manitoba. Similar words had been published in the *Winnipeg Sun* just a few days before the SFM's offices were destroyed by arson.

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[1] See Chap. IX, p. 421.
[2] See Chap. X, p. 496.

II) The Pawley government and the French-language crisis: ineptitude and indecision

In the face of the obdurate and uncompromising attitude of the Opposition, the Pawley government appeared inept and indecisive, based on the record. Thrown off guard by Trudeau's premature announcement and by Lyon's initial aggressive opposition to the constitutional amendment, the Pawley government never regained the initiative. Despite its repeated attempts in the House at defending the amendment and the tripartite agreement, and its persistence in laying before the House all of the facts, constitutional, juridical, and historical, which led to the initiative, the government appeared defenceless in the face of the systematic denial of most of these facts by the Opposition. In particular, the government was blocked by the bell-ringing tactic.

Within this general context, the government made a number of errors. The first and perhaps greatest mistake was in not communicating with either Sterling Lyon or Gerry Mercier after having transmitted the draft constitutional amendment to them.[1] The government demonstrated great naivety in assuming the Opposition's acquiescence in the proposals, despite the fact that in recent Manitoba history legislative initiatives involving language had always been adopted unanimously in the House.

Secondly, it was an error not to have actually signed the tripartite agreement with the SFM and the federal government. This lent unwarranted credence to the Opposition's claim that the government was "hiding something", was not "coming clean". It could not come clean: it simply had no

[1] There is no indication in the record or in the legislative debates of any such communication having occurred. However, personal interviews would have to be conducted with the major actors to determine whether this was indeed the case.

signed document to table![1] Again, responsibility for this state of affairs can probably be laid as much at Trudeau's doorstep as at Pawley's or Penner's.

Tactical errors were made by the government in the course of the first legislative debates. The most obvious was in not immediately objecting when Jim Downey presented a second subamendment to Bud Sherman's main amendment to refer the constitutional amendment to a legislative committee meeting intersessionally,[2] even though Downey's subamendment differed from the previous one by only one digit.[3] The effect of the new subamendment was to allow dozens of hours of new debate on the same procedural issue. Another error occurred when the House blundered into sitting over the August, 1983 long week-end, one of the warmest in recent memory. This error was probably as much the result of the mistrust which existed between the parties at that time, for which both parties must assume responsibility, as of miscalculation on the part of the government.

Finally, a small but significant number of constructive proposals were made by the Conservative opposition during the first legislative debates; in retrospect, the government was mistaken in not responding to these proposals. Lyon, for example, suggested, on July 12, 1983, that a joint committee, with members from the federal Parliament as well as the Manitoba Legislature, could hold public hearings intersessionally.[4] This idea surely held some merit, in light of the fact that any constitutional resolution needed the approval of the federal Parliament. In addition, the input from the federal body might have given the legislative hearings a decorum and a discipline which the Manitoba legislative committee subsequently had great difficulty maintaining.

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[1] See, e.g., Chap. X, p. 482-3.
[2] See Chap. X, pp. 482.
[3] December 30, 1983 vs. December 31, 1983 in the first subamendment.
[4] See Chap. VIII, p. 385.

Towards the end of the first legislative debates, Harry Enns also proposed a way out of the impasse.[1] He suggested a joint committee be set up, made up of three government members and two Opposition members "to work on the agreement or work with the principles involved in the Bilodeau case with the Franco-Manitoban Society..."[2]

In retrospect these appear to have been potentially suggestions which would have had the effect of restoring bipartisanship on the language issue, as Enns pointed out. Due perhaps mainly to the deep mistrust between the parties which had set in by that time, the Pawley government did not respond to these proposals.

III) "What's really going on here?"

There is no doubt that the most serious error the Pawley government made during the early stages of the language crisis was to misjudge the force of the passions and the emotions that were about to be unleashed. In our view, the record suggests that Sterling Lyon bears primary responsibility for having initiated the crisis. At any point during 1982 or early 1983, he might have headed it off by indicating conclusively to the government that his party could not go along with the planned constitutional amendment. There is nothing in the record that indicates he did so. He obviously chose instead to use the issue to attempt to destroy the government, regardless of the conflict that resulted for the people of Manitoba themselves. The question, however, remains: why was Lyon so certain that he would be vindicated massively by the people of the province?

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[1] See Chap. X, pp. 507.
[2] Id.

At this point analysis can only be speculative; however, a number of explanatory hypotheses can be formulated.

The first has to do with the definition of what constitutes a "Canadian" or a "Manitoban". Clearly, in the view of a majority of residents of Manitoba, a "Manitoban" is one who has assimilated into the "mainstream", defined largely by Anglo-Saxon Protestants from Ontario between 1870 and 1890. According to Morton, the fall of the Norquay government in 1887 was the turning point: it "ended completely the Red River era in Manitoban politics"[1] and marked the confirmation of the new order: Ontario-style, majoritarian democracy, British in ethnicity and Protestant in religion. With the abolition of the language-based schools in 1916, the last remnants of the old order were overwhelmed, and the triumph of the Ontario immigrants was complete. Languages other than English virtually disappeared as the children of the successive waves of immigrants in the late nineteenth and early twentieth centuries assimilated into the dominant culture. Later in the twentieth century, this phenomenon was assisted immeasurably with the rise of the mass media, particularly American-based television.

There were pockets of resistance to this broad trend, notably in Mennonite and Hutterite communities, but one group alone systematically and structurally resisted these developments: the Franco-Manitobans. In addition, Francophones never forgot the constitutional origins of the province and the historical role the community had played in its creation.

In a real sense, the language crisis was history confronting sociology: by the late twentieth century, virtually everyone in the province spoke English (including Francophones). The common-sense question which came to many

[1] Morton, op. cit., p. 229.

minds was, Why do you want to maintain your language, and why are you insisting upon the maintenance of rights granted to you in another era? Can't we all live together in harmony, in English? The Francophones' answer was, We want to maintain our language and our culture. We were co-founders of this province, and as such we have entitlements that have nothing to do with numbers or with the rise of mass culture. We want to preserve these entitlements and redefine them in contemporary terms.

These radically different views of Manitoba reality were, in the final analysis, at the root of the language crisis. However, other explanations can be formulated.

In 1945, Louis Wirth developed a typology of strategies that can be adopted by minority groups towards the larger society. These include assimilationist strategies, where cultural distinctiveness is abandoned completely; pluralist strategies, which solicit tolerance from the majority; secessionist strategies, where the minority seeks to detach itself from the dominant society; and militant strategies, which aim at gaining control over the dominants.[1] It might generally be said that Francophones in Manitoba have historically adopted a combination of pluralist and secessionist strategies. During the language crisis, the Francophone community was occasionally accused of using militant strategies and was seen (by Peter Warren and MLA Gerrie Hammond, for example) as wanting to gain control over the majority through illegitimate use of the Constitution.

More significant, however, is the fact that through the twentieth century, the majority of ethnic groups in Manitoba had adopted assimilationist strategies over several generations. The potential for conflict, given these

[1] In Schermerhorn, R.A. (1970), p. 80.

underlying sociological realities, was great, given the constitutional rights which Francophones still enjoyed in Manitoba in the 1980's. Faced with demands from Francophones, many Manitobans said to themselves, "We assimilated in order to benefit from the good life this country and this province offer; why don't they?"

A second set of explanatory hypotheses can be drawn from the sociological literature on status and symbolism. The Manitoba government, with the tabling of the constitutional amendment, involved itself in what R. Y. Bourhis[1], among others, has called "status language planning", where one linguistic group is given special consideration over all the others. The linguistic "shape" of Manitoba, had the amendment been adopted, would have been altered by adding to the universal language English, a second "official" language, thereby raising the social and economic status of the Franco-Manitoban group. (Francophones, of course, counter that French has always had special status in Manitoba right from 1870.) Unfortunately, "Status language planning in favour of one language community which tends to exclude the recognition of other language communities has been found to foster intergroup tension and conflict"[2] in various countries such as Belgium and France as well as Canada. The Manitoba language crisis can be seen as a classic example of such conflict.

Symbolic analysis, in this context, is closely related to status considerations. The sociologist Raymond Breton, drawing on insights of symbolic interactionists, social anthropologists, and others has formulated a

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1 Bourhis, R.Y., The Charter of the French Language and cross-cultural communication in Montreal; in *Conflict and Language Planning in Quebec*, 1984.
2 Bourhis, R., op. cit., p. 174.

provocative approach in grasping the unease in Canadian society. Breton starts from a simple proposition:

> [I]ndividuals expect to recognize themselves in public institutions. They expect some consistency between their private identities and the symbolic contents upheld by public authorities, embedded in the societal institutions, and celebrated in public events. Otherwise, individuals feel like social strangers; they feel that the society is not *their* society. (emphasis in text).[1]

Historically, "nation-building in its symbolic-cultural dimension was oriented toward the construction of a British-type of society in Canada".[2] However, with the emergence of a strong sense of collective identity in Quebec, the federal government responded with a number of initiatives on the symbolic front: the creation of the notions of bilingualism and biculturalism, adoption of a Canadian flag, and the transformation and renaming of numerous other institutions (Trans-Canada became Air Canada, the Bureau of Statistics became Statistics Canada, etc.).[3] These have been seen by many as "disruptions of their symbolic universe".[4] More fundamentally, these changes were seen as having an impact upon the actual structure of Canadian society in terms of social status:

> I would hypothesize that if we carried out a systematic content analysis of the public debate on issues related to bilingualism and multiculturalism, we would observe that many of its themes and key words concerned relative status, the possible loss of status in the society, the fear of definition as 'second class citizens,' the disapproval of recognition given to groups out of proportion with

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[1] Breton, R., The production and allocation of symbolic resources: an analysis of the linguistic and ethnocultural fields in Canada; in *Canadian Review of Sociology and Anthropology*, 21 (2) 1984, pp. 123-44, at p. 125.
[2] Ibid., p. 127.
[3] Breton adds a laconic note which goes far to explain the link between metric and bilingualism several municipalities and others made during the language crisis: ""One could perhaps add the introduction of the metric system as another illustration, since I suspect it was perceived by many as part of the same movement away from a British-modelled symbolic order." (Ibid., p. 129.)
[4] Ibid., p. 129.

> their perceived importance, and the perception that one's culture or language is being degraded.[1]

All of these themes can be found in the public and legislative debates that occurred during the French-language crisis in Manitoba. Multiculturalism, which is seen by Breton as an attempt to restore status to all minority ethnic groups in terms of the Canadian identity, obviously had much less appeal in Manitoba than "equality", defined as the abolition of any special status for any group, linguistic or other.

In terms of politics, what was at work in the Manitoba French-language crisis? Obviously Sterling Lyon's feat in ultimately defeating the constitutional amendment must stand as a classic example of the "personality factor" at work in the political system. Without his forceful, uncompromising leadership, it is virtually certain that the outcome would have been different. The dynamics of the debate would have been radically different had anyone else, say a Duff Roblin or a Walter Weir, been Leader of the Opposition. The question remains, however: how did he do it?

The work of Richard Hofstadter is instructive here. In the 1960's in various works[2] Hofstadter developed the thesis that

> We have, at all times, two kinds of processes going on in inextricable connection with each other: *interest politics*, the clash of material aims and needs among various groups and blocs; and *status politics*, the clash of various projective rationalizations arising from status aspirations and other personal motives.[3]

However, there is a fundamental difference between the two:

> [T]he basic aspirations that underlie status discontent are only partially conscious; and, even so far as they are conscious, it is difficult to give them a programmatic expression... Therefore, it is

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[1] Ibid., p. 132.

[2] Hofstadter, R., *The Paranoid Style in American Politics and Other Essays*, 1964; *Anti-Intellectualism in American Life*, 1963.

[3] Hofstadter, R., (1964), p. 53. (Emphasis in text.)

> the tendency of status politics to be expressed more in vindictiveness, in sour memories, in the search for scapegoats, than in realistic proposals for positive action.[1]

If this is so, are some groups more inclined to practice status politics than others? According to Hofstadter,

> Paradoxically the intense status concerns of present-day politics are shared by two types of persons who arrive at them from opposite directions. The first are found among some types of old-family, Anglo-Saxon Protestants, and the second are found among many types of immigrant families, most notably among the Germans and Irish, who are very frequently Catholic. The Anglo-Saxons are most disposed toward pseudo-conservatism when they are losing caste, the immigrants when they are gaining.[2]

There is empirical evidence that members of these groups did indeed behave in this way during the Winnipeg plebiscite on the language issue in October of 1983. A microcosmic, neighbourhood analysis of voting patterns in the referendum revealed that the government's language proposals had the least appeal in German-Mennonite and low-to-moderate income Anglo-Saxon neighbourhoods, such as River East and St. James, where over 90% of voters rejected the government's proposals, as compared to a city-wide average of 76.5%.[3]

As a rule, Hofstadter points out,

> "status politics does more to express emotions than to formulate policies. It is in fact hard to translate the claims of status politics into programs or concrete objectives... The operative content of their demands is more likely to be negative: they call on us mainly to prohibit, to prevent, to censor and censure, to discredit, and to punish.[4]

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[1] Ibid., pp. 53-4.
[2] Ibid., p. 54.
[3] Hébert, R. M., *The Ethnicity Factor in the 1983 City of Winnipeg French-Language Plebiscite;* unpublished paper, 1988.
[4] Hofstadter, op. cit., p. 87.

The Conservative Opposition, throughout the first legislative debates, was nothing if not negative; it did nothing if not attempt to "prevent", to "censure", and to "discredit", and it did so with inflammatory themes such as the "secrecy" of the negotiations, the "illegitimacy" of the negotiators, and, above all, by arousing fears that the constitutional amendment would "prejudice" the lives of "generations yet unborn" of Manitobans, that it would force hundreds of municipalities to become bilingual, and so on. In this sense, the Manitoba language crisis, even in its early stages, can perhaps be seen as a classic case of Hofstadter's "status politics", even down to the ethnic groups that he defined as being most susceptible to practicing such politics. If there was an embryo of truth in the proposition that the constitutional amendment would change Manitoba irrevocably for the worse, it was drowned in a sea of venomous oratory and thunderous demagogy.

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There have rarely been episodes in Manitoba's history that have been so well-documented as the 1983-84 language crisis. The present work's main contribution is to provide a detailed chronology of events, in historical and juridical perspective, for all major actors over the first four months of the crisis.

Much work remains to be done. A first task is to complete the chronology, first to the formal end of the crisis on Feb. 27, 1984, then to the Supreme Court's *Reference* and *Bilodeau* judgments in 1986. Beyond this, the chronology should eventually extend to the subsequent warming of relations between the Franco-Manitoban community and the Filmon Conservatives after 1988.

Some methodological limitations of the present work were noted in the Introduction, the main one being the lack of personal interviews. Future work on the language crisis must include such interviews. In particular, it would be necessary to attempt to reconstruct the debate within the Conservative caucus, since it is doubtful much formal documentation exists on this. In addition, the role of the federal government should be explored much more thoroughly through the entire crisis, since several ministers were deeply involved in it over several months. This might serve as a case study of federal-provincial relations on language matters. It would also be interesting to analyze, perhaps in a comparative way, reactions and decision-making processes of the municipal officials and their organizations, both in Winnipeg and in the rural areas. Finally, at a more theoretical level, analysis of the values held by the main political actors in the debate might be undertaken in terms of Hofstadter's hypotheses: for example, the theme of "secrecy", an essential element of Hofstadter's "paranoid style", recurs often enough in the legislative debates to prompt the analyst to ask whether this was not an indication that the authoritarian "pseudo-conservatism" defined as early as 1950 by Adorno and his associates was a factor in Manitoba's language crisis.[1]

In other words, beyond research of a "documentary" type, much more thorough theoretical analysis should be undertaken in determining the social, psychological, and perhaps even economic factors that were at work in

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[1] T.W. Adorno et al. *The Authoritarian Personality*. New York: Harper & Row, 1950. Altemeyer, for example, found in a survey he conducted in the fall of 1984 that "there was some justification to the charge that opponents of the [Pawley] plan were, in general, prejudiced persons". (Altemeyer, Bob, *Enemies of Freedom: Understanding Right-Wing Authoritarianism*. San Francisco: Jossey-Bass, 1988, p. 197.) In addition, in November, 1983, Altemeyer surveyed the NDP and Conservative caucuses in Manitoba and found that "these NDP and PC politicians probably differed more, as people, in the level of their authoritarianism than in anything else". (Ibid., p. 244) The Conservative scores on Altemeyer's authoritarianism scale were nearly twice the NDP mean; in addition, "The least authoritarian Conservative respondent scored 15 points higher than the most authoritarian New Democrat." (Ibid., p. 243)

Manitoba's language crisis. The crisis is a gold mine of data on the values held by the people of Manitoba and the social and political dynamics of the province.

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Appendix I

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

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

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

PROCLAMATION AMENDING
THE CONSTITUTION OF CANADA

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

Official languages of Manitoba

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

Equality of both language versions

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

Definition of "Act"

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

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

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

Saving provision

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

Communications between public and certain institutions

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

(a) the head or central office of any department of the government of Manitoba;

(b) the head or central office of

(i) any court,
(ii) any quasi-judicial or administrative body of the government of Manitoba,
(iii) any Crown corporation, or
(iv) any agency of the government of Manitoba established by or pursuant to an Act of the legislature of Manitoba;

(c) the office of the Chief Electoral Officer; and

(d) the offices of the Ombudsman for the Province of Manitoba.

Idem

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

(a) there is a significant demand for communications with and services from that office in that language; or

(b) due to the nature of the office, it is reasonable that communication with and services from that office be available in both English and French

Section 23 not affected

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

Enforcement of rights under section 23.7

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

Appendix II

DRAFT

May 18, 1983

FOR DISCUSSION PURPOSES ONLY

1983 CONSTITUTIONAL ACCORD ON LANGUAGE RIGHTS IN MANITOBA

The Government of Canada and the Government of Manitoba hereby agree as follows:

1. The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the Premier of Manitoba will lay or cause to be laid before the Legislative Assembly of Manitoba, a resolution to authorize a proclamation to be issued by the Governor General under the Great Seal of Canada to amend the Manitoba Act, 1870, as specified in the Schedule hereto, with a view to adoption of the resolution on or before December 31, 1983.

2. The Government of Manitoba and the Société Franco-Manitobaine will use their best efforts to reach agreement on or before September 1, 1983 on a list of Acts to be re-enacted in both official languages pursuant to subsection 23.5(1) of the proposed amendments. Any dispute about the inclusion of any statute in such list will be resolved:

   (i) in the case of public municipal and public general statutes, by the Statute Revision Commission of Canada;

   (ii) in the case of private Acts, by a third party acceptable to Manitoba and the Société Franco-Manitobaine.

5. The Government of Canada will contribute until December 31, 1986 fifty (50%) percent of the expenditures incurred within the province to develop the provision of municipal services, as referred to in paragraph 4, up to an overall maximum federal contribution of $200,000 to be paid to the Government of Manitoba and to be adjusted for inflation in accordance with the "Industrial Composite".

Signed at this __th day of May, 1983 by the Government of Canada and the Government of Manitoba:

Canada

Manitoba

And with the participation of

Société Franco-Manitobaine

force or effect by reason only of its having been printed and published in only one official language.

Public general statutes to be in both official languages

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

General revision of public general statutes

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

Delay period for revision

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

Delay period for re-enactment of certain Acts

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

Delay for re-enactment

(/c/) the office of the Chief Electoral Officer; and

(/d/) the offices of the Ombudsman for the Province of Manitoba.

Idem

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

(/a/) there is a significant demand for communications with and services from that office in that language; or

(/b/) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

Section 23 not affected

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

Enforcement of rights under section 23.7

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

Declaration and court order for plan

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

Appendix III

MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, Hon. A.R. (Pete)	Ste. Rose	NDP
ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
BROWN, Arnold	Rhineland	PC
BUCKLASCHUK, Hon. John M.	Gimli	NDP
CARROLL, Q.C., Henry N.	Brandon West	IND
CORRIN, Brian	Ellice	NDP
COWAN, Hon. Jay	Churchill	NDP
DESJARDINS, Hon. Laurent	St. Boniface	NDP
DODICK, Doreen	Riel	NDP
DOERN, Russell	Elmwood	NDP
DOLIN, Hon. Mary Beth	Kildonan	NDP
DOWNEY, James E.	Arthur	PC
DRIEDGER, Albert	Emerson	PC
ENNS, Harry	Lakeside	PC
EVANS, Hon. Leonard S.	Brandon East	NDP
EYLER, Phil	River East	NDP
FILMON, Gary	Tuxedo	PC
FOX, Peter	Concordia	NDP
GOURLAY, D.M. (Doug)	Swan River	PC
GRAHAM, Harry	Virden	PC
HAMMOND, Gerrie	Kirkfield Park	PC
HARAPIAK, Harry M.	The Pas	NDP
HARPER, Elijah	Rupertsland	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
KOVNATS, Abe	Niakwa	PC
LECUYER, Gérard	Radisson	NDP
LYON, Q.C., Hon. Sterling	Charleswood	PC
MACKLING, Q.C., Hon. Al	St. James	NDP
MALINOWSKI, Donald M.	St. Johns	NDP
MANNESS, Clayton	Morris	PC
McKENZIE, J. Wally	Roblin-Russell	PC
MERCIER, Q.C., G.W.J. (Gerry)	St. Norbert	PC
NORDMAN, Rurik (Ric)	Assiniboia	PC
OLESON, Charlotte	Gladstone	PC
ORCHARD, Donald	Pembina	PC
PAWLEY, Q.C., Hon. Howard R.	Selkirk	NDP
PARASIUK, Hon. Wilson	Transcona	NDP
PENNER, Q.C., Hon. Roland	Fort Rouge	NDP
PHILLIPS, Myrna A.	Wolseley	NDP
PLOHMAN, Hon. John	Dauphin	NDP
RANSOM, A. Brian	Turtle Mountain	PC
SANTOS, Conrad	Burrows	NDP
SCHROEDER, Hon. Vic	Rossmere	NDP
SCOTT, Don	Inkster	NDP
SHERMAN, L.R. (Bud)	Fort Garry	PC
SMITH, Hon. Muriel	Osborne	NDP
STEEN, Warren	River Heights	PC
STORIE, Hon. Jerry T.	Flin Flon	NDP
URUSKI, Hon. Bill	Interlake	NDP
USKIW, Hon. Samuel	Lac du Bonnet	NDP
WALDING, Hon. D. James	St. Vital	NDP

APPENDIX IV

Excerpts from *La Gazette de Manitoba,* 1874
and *Les Statuts de Manitoba,* 1877 and 1889

Vol. III. No. 1.



LA GAZETTE DE MANITOBA.

PUBLIEE PAR AUTORITE.

WINNIPEG, MARDI, 27 JANVIER, 1874.

HÔTEL DU GOUVERNEMENT.

Fort Garry, 16 janvier, 1873.

Il a plu à Son Honneur, le lieutenant-gouverneur en conseil, révoquer les commissions des juges de paix pour le comté de Marquette, et nommer de nouveau les mêmes en vertu de la première section d'un acte intitulé "Acte pour diviser le comté de Marquette pour les fins Judiciaires et d'Enrégistrement," comme suit :

Pour être juge de paix pour Marquette Est.

Patrice Breland, écr., St. François Xavier.

Félix Chénier, écr., Baie St. Paul.

Maxime Lépine, écr., St. François Xavier.

Alphonse Thibert, écr., St. François Xavier.

Louison Laronde, écr., Lac Manitoba.

Urbain Delorme, St. François Xavier.

Michael Russell, St. Laurent, Lac Manitoba.

Pour être juge de paix pour Marquette Ouest.

Andrew Spence, écr., High Bluff.

George Gunn, écr., Poplar Point.

Charles Hay, écr., High Bluff.

Peter Garrioch, écr., White Mud.

Mathew Owens, écr., High Bluff.

Walter Lynch, écr., Portage la Praire.

Chas. Mair, écr., Portage la Prairie.

William Goulon, écr., White Mud River.

Kenneth McKenzie, écr., Rat Creek.

Pour être commissaire *per dedimus protestatum* pour administrer les serments d'allégéance et d'office aux juges de paix nommé pour Marquette Est :

Félix Chénier, écr., Baie St. Paul.

Pour être commissaire *per dedimus protestatum* pour administrer les serments d'allégeance et d'office aux juges de paix nommés pour Marquette Ouest :

L'Honorable François Ogletree, Portage la Prairie.

Par ordre,

JOSEPH ROYAL,

Secrétaire Provincial.

PROCLANATIOM.

CANADA—PROVINCE DE MANITOBA.

VICTORIA, par la Grâce de Dieu, Reine du Royaume Uni de la Grande-Bretagne et d'Irlande, Défenseur de la Foi, etc., etc., etc.

[L.S.]

(Signé) ALEXANDER MORRIS.

A tous nos bien-aimés Sujets dans Notre Province de Manitoba.

SALUT :

STATUTS DE MANITOBA

PASSES DURANT LA SESSION TENUE EN LA

QUARANTIEME ANNEE DU REGNE DE SA MAJESTE,

LA REINE VICTORIA.

Etant la troisième session du second Parlement de Manitoba, commencée et tenue à Winnipeg, Mardi, le trentième jour de Janvier, A. D., 1877 ; close et prorogée le vingt-huitième jour de Février, A. D. 1877.

L'HONORABLE ALEXANDER MORRIS,

LIEUTENANT-GOUVERNEUR.

WINNIPEG :

ALEXANDER BEGG, IMPRIMEUR DE LA REINE.

A. D. 1877.

LEGISLATIVE LIBRARY • MANITOBA •

dans toute la Province, et possédera tous les pouvoirs décernes à deux ou plusieurs juges de paix pour la Province de Manitoba; et le dit Magistrat de Police aura aussi juridiction pour connaître et décider toutes poursuites pour offenses commises contre les règlements de la cité de Winnipeg, et imposer les pénalités infligées pour refus d'accepter des charges ou de faire les déclarations nécessaires à l'égard de la qualification ou avant d'entrer en fonctions.

Devoirs du magistrat de police.

X. Le Magistrat de Police ainsi nommé devra se rendre tous les jours au bureau de police, à l'heure et pour le temps nécessaires à la dépêche des affaires qui lui seront soumises, en sa qualité de Magistrat de Police; mais sauf les cas urgents, il ne sera pas tenu d'y aller le dimanche, ni les jours de fête légale, ni les jours indiqués par une proclamation comme jours de pénitence ou d'actions de grâces.

Infractions aux règlements de la cité.

XI. Le Magistrat de Police ainsi nommé aura, à l'égard d'une poursuite intentée devant lui pour infraction aux règlements de la cité, tous les pouvoirs confiérés au Maire et aux échevins de la dite cité à ce sujet, par l'Acte amendé d'incorporation de la cité de Winnipeg.

Portée du présent Acte à certains égards.

XII. Rien de ce que contient le présent Acte, ne restreindra ni ne portera atteinte à la juridiction des juges de paix pour le comté de Selkirk ou la Province de Manitoba.

Amendes.

XIII. Toutes les amendes et pénalités imposes, prélevées et perçues par le Magistrat de Police nommé en vertu du présent Acte, seront versées dans le tréso de la cité à moins qu'il n'en soit autrement ordonné— et formeront un fonds pour le paiement du salaire du Magistrat de Police, et le maintien de la force de police de la dite cité.

Salaire du magistrat de police.

XIV. Le Magistrat de Police nommé en vertu du présent Acte, recevra du Maire et du Conseil de la cité de Winnipeg, un salaire qui sera fixé par le Lieutenant-Gouverneur en Conseil.

Révocation.

XV. Toutes les clauses et dispositions d'Actes, incompatibles avec le présent Acte, sont révoquées.

CAP.

CAP. XLIV.

Acte pour amender le chapitre 46, Victoria 38, intitulé "Acte pour incorporer la Compagnie du chemin de fer Occidental de Manitoba."

[*Sanctionné le* 28 *Février*, 1877.]

Préambule.

SA MAJESTE, de l'avis et du consentement de l'Assemblée Législative de la Province de Manitoba, décrète ce qui suit:

Nouveaux directeurs.

I. La première section du dit Acte est amendée, en ajoutant à la septième ligne, entre les mots "Kennedy et" les mots suivants: c'est-à-dire—

L'Hon. J. H. McTavish, l'Hon. Wm. Hespeler, Sedley Blanchard, James H. Ashdown, George Brown, Wm. H. Lyon et Thomas Scott, de la cité de Winnipeg: et Francis E. Cornish, M.P.P.; Joseph Ryan, M.P.; Felix Chenier, M.P.P.; Maxime Lepine, M.P.P.; John Taylor, M.P.P.; W. F. Luxton, M.P.P.; Alexander Murray, M.P.P.; Edwin Bourke, M.P.P.; W. R. Dick, M.P.P.; Charles Barron, Esq.; l'Hon. John Norquay.

Amendement.

II. La quatrième section du même Acte est amendée, en ajoutant entre les mots "Kennedy" et "seront" les mots suivants: c'est-à-dire—

L'Hon. J. H. McTavish, l'Hon. Wm. Hespeler, Sedley Blanchard, James H. Ashdown, George Brown, Wm. H. Lyon, et Thomas Scott, de la cité de Winnipeg; et Francis E. Cornish, M.P.P.; Joseph Ryan, M.P.; Felix Chenier, M.P.P.; Maxime Lepine, M.P.P.; John Taylor, M.P.P. W. F. Luxton, M.P.P.; Alexander Murray, M.P.P.; Edwin Bourke, M.P.P.; W. R. Dick, M.P.P.; Charles Barron, et l'Hon John Norquay.

Temps limité.

III. La section 34 du même Acte est amendée en lui substituant la section suivante:

"Le présent Acte, et l'Acte y amendé, ainsi que toutes leurs dispositions deviendront nuls et de nul effet,

6132

STATUTS

DE LA

PROVINCE DE MANITOBA,

PASSÉS EN LA

PREMIERE SESSION DE LA SEPTIEME LEGISLATURE DE MANITOBA,

COMMENCÉE ET TENUE A WINNIPEG, LE VINGT-HUITIÈME JOUR D'AOUT A.D. 1888, ET PROROGÉE LE SEIZIÈME JOUR D'OCTOBRE SUIVANT, ET ÉTANT LES CHAPITRES DE UN A QUATORZE INCLUSIVEMENT, ET LE CHAPITRE QUARANTE-NEUF,

ET CEUX PASSÉS EN LA

SECONDE SESSION DE LA SEPTIEME LEGISLATURE DE MANITOBA,

COMMENCÉE ET TENUE A WINNIPEG, LE TRENTE-UNIÈME JOUR DE JANVIER A.D. 1889, ET PROROGÉE LE CINQUIÈME JOUR DE MARS SUIVANT, ET ÉTANT LES

Chapitres de Quinze a Cinquante-quatre Inclusivement, Sauf le Chap. Quarante-neuf.

CES SESSIONS AYANT EU LIEU EN LA

CINQUANTE-DEUXIÈME ANNÉE DU RÈGNE DE SA MAJESTÉ,

LA REINE VICTORIA,

SON HONNEUR L'HONORABLE JOHN CHRISTIAN SCHULTZ,
LIEUTENANT-GOUVERNEUR.

VOLUMES I ET II.

ACTES PUBLICS ET PRIVES.

WINNIPEG, MANITOBA :
THEOPHANE BERTRAND, IMPRIMEUR DE LA REINE.

A.D. 1889.

sent acte en biffant le mot "enregistré" dans la quatrième ligne.

Proviso (a) ss. 48, s. 348, 52 V. am.

25. Le proviso (*a*) de la dite sous-section quarante-huit de la section trois cent quarante-huit du chapitre cinquante-deux de quarante-neuf Victoria est amendé en insérant après le dernier mot du dit proviso (*a*) les suivants "mais le dit proviso (*a*) ne s'appliquera pas à la municipalité rurale de St. Norbert.

Mise en force

26. Le présent acte deviendra en force immédiatement après sa sanction.

CHAPITRE XLVI.

Un Acte pour amender et Refondre "l'Acte de l'Asile des Aliénés 1886" et ses amendements.

[*Sanctionné le 5 Mars 1889.*]

Préambule.

ATTENDU qu'il est expédient de refondre, réviser et amender les actes en force en la Province de Manitoda, concernant l'internement dans l'Asile des Aliénés des lunatiques et personnes en démence,

A ces causes, Sa Majesté, par et de l'avis et du consentement de l'Assemblée Législative de Manitoba, décrète ce qui suit :

Sur déposition à l'effet qu'une personne est aliénée et dangereuse, un juge pourra émaner un mandat pour l'appréhender.

1. Lorsqu'il sera déposé une plainte qui pourra être selon la formule "A" devant un ou plusieurs juges de paix pour Manitoba, exposant qu'une personne se trouvant dans les limites de la juridiction de tel juge ou juges, est soupçonnée et crue par le déposant, être atteinte de folie, et qu'il serait dangereux de la laisser en liberté, parce qu'elle aurait manifesté le dessein de commettre quelque crime, pour lequel elle aurait à répondre devant la justice, ou parce qu'elle aurait manifesté le dessein de s'infliger des blessures corporelles graves, alors, tel juge ou juges de paix pourra ou pourront émaner son ou leurs mandats, pour appréhender telle personne, et la faire comparaitre devant tel juge ou juges ou tout autre juge ou juges.

Ce que contiendra le mandat.

2. Chaque tel mandat sera émané sous les seing et sceau des dits juge ou juges, et pourra être adressé à tous ou quelqu'un des constables ou autres officiers de la paix de la division territoriale relevant de la juridiction des dits juge ou juges, qui l'auront émané, et nommera ou décrira autrement la personne contre laquelle la plainte a été faite, et exposera qu'il a été allégué sous serment que telle personne est aliénée, et qu'il serait dangereux de la laisser en liberté ; et le mandat ordonnera à la personne ou aux personnes à laquelle ou auxquelles il est adressé, d'appréhender la personne contre laquelle telle plainte a été faite et de l'amener devant le ou les juges ayant émané le dit mandat, ou devant quelqu'autre juge ou juges de paix de la dite division territoriale, afin d'instituer une enquête sur la condition mentale de telle personne, et de pouvoir agir ensuite conformément à la loi. Tel mandat pourra être selon la formule "B" annexée au présent Acte.

La personne appréhendée sera traduite devant le juge, qui pourra l'envoyer en prison ou la confier à la garde du constable, etc.

3. Lorsque la personne prétendue aliénée aura été appréhendée en vertu d'un mandat, elle sera amenée devant le même ou les mêmes juges de paix, ou devant quelqu'autre juge ou juges de paix de la même division territoriale ; et le ou les juges pourra ou pourront, en vertu de son ou de leurs mandats (formule C) confiner la dite personne prétendue aliénée dans la prison commune ou autre prison ; ou si le ou les juges le croient convenable, ils pourront confier la dite personne aliénée à la garde du constable ou autre personne qui l'aura appréhendée ou à quelqu'autre personne capable d'en avoir soin, selon que le juge ou les juges le décideront, en attendant l'enquête sur l'état mental de cette personne ; et le ou ou les dits juges pourra ou pourront ordonner dans ce cas, que la personne ainsi arrêtée soit amenée devant lui ou eux, en un certain temps et lieu, et celui qui aura fait la déclaration devra recevoir avis de tel ordre ; ou bien, le ou les juges pourra ou pourront, s'il est jugé convenable, procéder de suite à l'instruction de l'affaire, tel que prescrit par la section suivante ; mais aucun emprisonnement opéré en vertu de la présente section, ne pourra se prolonger au-delà de trois jours.

Enquête auprès des parents et amis.

4. Le ou les juges procédera ou procéderont, au jour indiqué, à l'audition sous serment de la preuve qui pourrait être faite relativement à la prétendue folie du prisonnier ; et ordonnera ou ordonneront alors ou auparavant, l'institution d'une enquête auprès des amis et parents du prisonnier, afin d'avoir, si possible, le témoignage de quelque personne ou personnes connaissant la famille et les habitudes du prisonnier, avant de l'emprisonner pour raison de folie.

L'enquête pourra être ajournée.

5. Tel juge ou juges pourra ou pourront de temps à autre, ajourner l'enquête et ordonner de nouveau l'emprisonnement de la personne ainsi soupçonnée de folie, jusqu'à ce qu'il ait été fait une enquête convenable tel que prescrit dans le présent acte, mais tel ajournement ou tout emprisonnement ne pourra être pour plus de trois jours.