

THE UNIVERSITY OF MANITOBA

PERNISIE v. SWAN VALLEY SCHOOL DIVISION NO. 35:

A CASE STUDY IN
THE POLITICS OF SECOND LANGUAGE EDUCATION

by

JOHN VINCENT BRANDON

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES
IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF EDUCATION

DEPARTMENT OF EDUCATIONAL ADMINISTRATION AND FOUNDATIONS

WINNIPEG, MANITOBA

FALL, 1992



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file Votre référence

Our file Notre référence

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-315-81782-8

Canada

PERNISIE v. SWAN VALLEY SCHOOL DIVISION NO. 35:

A CASE STUDY IN THE POLITICS OF SECOND LANGUAGE EDUCATION

BY

JOHN VINCENT BRANDON

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

MASTER OF EDUCATION

© 1992

Permission has been granted to the LIBRARY OF THE UNIVERSITY OF MANITOBA to lend or sell copies of this thesis, to the NATIONAL LIBRARY OF CANADA to microfilm this thesis and to lend or sell copies of the film, and UNIVERSITY MICROFILMS to publish an abstract of this thesis.

The author reserves other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without the author's permission.

ACKNOWLEDGEMENTS

This thesis is dedicated to the memory of my father, Harry Brandon. It is also dedicated to the memory of aunts, uncles, cousins and friends who, in their own unique ways, imbued me with their enduring passions. Finally, this thesis is dedicated to my family, especially my mother, Leonora, who taught me to use those passions to achieve my ambitions.

I would like to express my thanks to my advisory committee, namely, Dr. John Long, Dr. Romulo Magsino and Dr. Paul Ruest. Their patience, insights and advice concerning the revision of the thesis will always be appreciated. In particular, I wish to thank my advisor, Dr. Long; he promised to deliver the "straight-goods". He did!

A special thanks must be extended to those who consented to be interviewed, especially, Sidney Green, Q.C. Mr. Green supplied the writer with a great deal of material that would have otherwise been inaccessible.

In addition, I would be remiss if I did not thank my fellow graduate students, namely, Donald Grant and Bob De Brouwere, for getting me to smell the burnt toast and coffee!

Lastly, to those who translated my scrawl into a legible text, I express my amazement and considerable thanks for labouring with the manuscript in its various stages.

ABSTRACT

The main purpose of this case study was to examine the political and legal situation that developed in Swan River, Manitoba in 1982, when a group of anglophone parents, headed by Lynn Pernisie, used s. 79(3) of The Public Schools Act to require the School Board of Swan Valley School Division No. 35 to provide a French immersion program. The investigation endeavoured to understand the decision-making which led the School Board to decide not to implement the French immersion program as requested and to reveal why the Government of Manitoba decided to "encourage" rather than to enforce its own language policy in the face of the parents' request.

A conceptual framework comprised of four major categories was used to guide the analysis and interpretation of the data relevant to the case. Those categories included: the interests and objectives of the actors in the case; the political and legal issues in the case; the political resources and constraints which had a bearing on the political situation and its outcome; and the political and legal consequences of the litigation in Pernisie v. Swan Valley School Division No. 35. The principal data sources used to construct the details of the case and to understand the political dynamics of the French immersion controversy were documents and structured interviews.

The investigation reveals that the fundamental issue that all the actors came to realize was whether or not the school Board could properly resist the request of Lynn Pernisie and her co-petitioners. The investigation also revealed that certain political considerations as well as personal interests determined the political posture of the Minister

of Education and, ultimately, the support that the Minister provided to Lynn Pernisie. Most importantly, it was readily apparent that the political resources of Pernisie's ally, the Canadian Parents for French, enabled her to contest, legally, the political decision of the Swan Valley School Board not to fulfil the duty which was imposed on it by the provisions of The Public Schools Act.

Finally, the study takes note of certain recent developments --political and legal-- in Manitoba related to the establishment of a system of francophone schools and the possible ways in which those developments will change the meaning and application of s. 79(3) of The Public Schools Act. Notably, to the extent that the new francophone school division draws any of its school clientele from among those who have "Section 23 rights" under the Canadian Charter of Rights and Freedoms, the numbers enroled in French immersion may be affected.

TABLE OF CONTENTS

CHAPTER	PAGE
1. NATURE OF THE STUDY	1
PURPOSE	1
SIGNIFICANCE	2
CONCEPTUAL FRAMEWORK	3
Key Concepts	4
Interest	4
Influence	4
Policy	6
Government	7
Analysis and Interpretation of the Case	8
The interests and objectives of the actors	8
The issues	9
The political resources of the actors	10
The outcome and its consequences	11
METHODOLOGY	11
The Case Study Approach	11
Data Sources	12
Documents	13
Interviews	13
Definition of Terms	15
LIMITATIONS	17

OUTLINE OF THE CHAPTERS	18
NOTES TO CHAPTER 1	19
2. THE HISTORICAL BACKGROUND OF THE CASE	23
THE FRENCH LANGUAGE IN MANITOBA: 1870-1980	24
The Arrangements for Schooling at Provincehood	24
The Abrogation of French as a Language of Instruction	25
A Significant Step Towards Language Equity: <u>Bill 59</u>	31
<u>Bill 113</u> : French Language Instruction in the Context of Bilingualism	34
Sacré-Coeur and the Expansion of French Immersion in Manitoba	37
Languages of Instruction: Section 79 of <u>The Public Schools Act</u>	39
NOTES TO CHAPTER 2	41
3. CASE HISTORY	44
THE REQUEST FOR A FRENCH IMMERSION PROGRAM	44
THE RESPONSE OF THE SCHOOL BOARD TO TO THE PARENTS' REQUEST	50
THE REQUEST FOR A FRENCH IMMERSION PROGRAM IN THE MANITOBA COURTS	57
The Ruling of the Court of Queen's Bench	58
The Ruling of the Manitoba Court of Appeal	59
NOTES TO CHAPTER 3	60
4. ANALYSIS AND INTERPRETATION OF THE CASE	63

THE INTERESTS AND OBJECTIVES OF THE ACTORS	63
The Interests and Objectives of Lynn Pernisie and her Co-Petitioners	63
The Interests and Objectives of Swan Valley School Division No. 35	66
The Interests and Objectives of the Minister of Education and Her Department	70
THE ISSUES	73
The Political Issues	73
The Legal Issue in Court of Queen's Bench	76
The Legal Issue in the Court of Appeal	78
POLITICAL RESOURCES AND CONSTRAINTS: THE DYNAMICS OF THE POLITICAL SITUATION	82
Existing Legislation	82
The State of Government Policy	84
Allies	88
THE OUTCOME AND ITS CONSEQUENCES	92
The Outcome of the Litigation	92
The Consequences of the Litigation	94
NOTES TO CHAPTER 4	101
5. CONCLUSIONS AND IMPLICATIONS	105
CONCLUSIONS	105
The Interests and Objectives of the Actors	105
The Political and Legal Issues in the Case	107

The Political Resources and Constraints of the Actors	108
Existing legislation	108
The state of government policy	109
Allies	110
The Political and Legal Consequences of the Litigation	111
Summary	114
IMPLICATIONS	115
NOTES TO CHAPTER 5	122
BIBLIOGRAPHY	124
APPENDICES	130
A. <u>PERNISIE v. SWAN VALLEY SCHOOL DIVISION NO. 35</u>	131
B. LETTER TO POTENTIAL INTERVIEWEES	138
C. LIST OF INTERVIEWEES AND INTERVIEW SCHEDULE	141
D. <u>BILL 59</u> (1967)	148
E. <u>BILL 113, AN ACT TO AMEND THE PUBLIC SCHOOLS ACT, 1970</u>	154
F. <u>BILL 31</u> (1980)	158
G. SECTION 79 OF <u>THE PUBLIC SCHOOLS ACT</u> (1987)	162
H. SECTION 23 OF <u>THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS</u>	166
I. REPORT OF THE MANITOBA TASK FORCE ON FRANCOPHONE SCHOOLS GOVERNANCE: SUMMARY OF RECOMMENDATIONS	168

CHAPTER 1
NATURE OF THE STUDY
PURPOSE

Miller states that "the essence of a political situation, as opposed to one of agreement and routine, is that someone is trying to do something about which there is not agreement; and is trying to use some form of government as a means and as protection".¹

Parents whose children are affected by school board policy-making may engage in political activity to achieve their ends. In so doing, they produce a "political situation."²

Such a situation is exemplified in a court case which occurred in Manitoba during the early 1980s. This case involved a group of parents in Swan River versus the Swan Valley School Division No. 35 (Appendix A, Pernisie v. Swan Valley School Division No. 35). The litigation commenced in August, 1982 and concluded in September of the same year. In this case, the disagreement concerned the nature and extent of the Board's obligation to provide French immersion education for the students in its jurisdiction.³

The essential purpose of this investigation was to examine the political situation in the case. A major aspect of the investigation was to examine the litigation which resulted from the political activity in Pernisie v. Swan Valley School Division No. 35.

As a case study, the investigation attempts to reveal:

1. The interests and objectives of the actors in the case.
2. The political and legal issues in the case.
3. The political resources and constraints which had a significant bearing on

the political situation and its outcome.

4. The political and legal consequences of the litigation in Pernisie v. Swan Valley School Division No. 35.

SIGNIFICANCE

In Manitoba, as in other Canadian provinces, school boards operate within the scope of powers ceded to them by provincial statute and regulations. Where a statute or its regulations are ambiguous or fail to adequately address specific issues, school boards are empowered to develop the necessary policy consistent with the intentions of the particular statute governing the administration of public schools in each province. Furthermore, within a school jurisdiction, school board policies have the force of law and constitute part of the legal framework within which schools operate.⁴ Therefore, the legislative and administrative function of school boards is of special interest because the litigation in this particular case concerned whether or not the school boards in question made decisions of local educational policy which were consistent with the intentions of The Public Schools Act in effect at the time. Therefore, the study will be significant for several reasons. First, this study provides some insight as to the extent to which educational policy-making and school administration are inextricably political matters. Second, this study examines the fundamental legal and administrative relationships which exists between a provincial government and the local school boards, and especially, the discretion, if any, available to school boards to interpret and apply the provisions of The Public Schools Act to suit local circumstances. To date, subsection 79(3) of the Act remains the cornerstone of bilingual education in Manitoba. Also, Pernisie v. Swan

Valley School Division No. 35 marked the first time that s. 79(3) of the Act was subject to judicial review in the Manitoba Courts. An examination of the outcome of this litigation will reveal the extent of its impact upon The Public Schools Act, in Manitoba, upon the policy-making discretion of local school boards in relation to this matter and, ultimately, upon the administration of French immersion in the province. Further, this study will also attempt to provide some additional understanding of the interpretive role of the judiciary when educational arrangements become controversial and the participants involved cannot, themselves, settle the controversy.

CONCEPTUAL FRAMEWORK

The essential purpose of this study is to understand the political circumstances and political activity in the school jurisdiction of Swan Valley School Division No. 35 which eventually led to litigation in the Manitoba courts concerning French language schooling for Anglophones. Miller explains what deserves special attention in any effort to understand "political activity" and "politics":

Political activity, then, arises out of disagreement, and it is concerned with the use of government to resolve conflict in the direction of change or in the prevention of change. It is about policy and position. I am not suggesting that agreement never appears in politics; indeed, the resolution of conflict into some kind of agreement...is one of the principal aims of political activity....Politics, to be distinguished as a recognizable activity, demands some initial disagreement between parties or persons, and the presence of government as a means of resolving the disagreement in some direction.⁵

Miller's discussion of the critical elements of a political situation suggests that certain additional key concepts deserve attention.

Key Concepts

The basic purpose of this case study is to understand the political situation in Swan River, that is, the efforts of individuals and groups with an interest to influence the policy and actions of the School Board, including the use of government to resolve the conflict in some direction. An explanation of the key concepts used in this study is offered below.

Interest. Miller states that "an interest exists when we see some body of persons showing a common concern about particular matters".⁶ According to Deutsch, "one of the fundamental truths about politics is that much of it occurs in the pursuit of the interests of particular individuals or groups".⁷ In politics and government, to say that an individual has an interest is to say that he or she has a certain attitude, opinion, or view about governmental action, thought, or policy. Thus, an interest exists when either a group of individuals share a common concern about governmental action or policy, or, on the other hand, when an individual holds a certain view, opinion, or attitude about the government's actions on policies. It is also customary to speak of interests in their organized form as interest groups or pressure groups, who employ various methods, strategies and tactics to influence other individuals or groups in society, especially government.⁸ Though Pernsie and her supporters did not constitute a formal interest group of longstanding duration and significance for partisan politics, they nevertheless did advance an interest---the establishment of a French immersion program. The advancement of that interest clearly involved an attempt to influence both a local and provincial government and this effort created the political situation which ensued.

Influence. The major idea here is the ability of an individual or group to get an

authority such as a school board or a provincial government or a department of education to grant their request(s); influence, then, is a causal relationship between what A wants and what B does. Nagel contends that influence is a relationship among actors such that the wants and intentions of one or more of the actors affect the actions, or predisposition to act, of one or several other actors; therefore, in this study, influence is seen as the specific ability of an individual or a group to get a school board to adopt a policy or to take an initiative which it would otherwise not have done.⁹

According to Presthus, the ability of A to influence B is necessarily dependent on A's and B's political resources.¹⁰ Since these resources are not equally distributed, we can assume that the ability of an individual or of a group to influence other political actors will also vary. Thus, Dahl contends that differences in the amount of influence that persons exercise can be attributed directly to three basic factors:

1. Differences in the distribution of political resources. A political resource is a method by which one individual or a group can influence the behaviour of others; political resources include information, reputation, expertise, intimidation and so on.

2. Variations in the skill or efficiency with which individuals use these political resources.

3. Variations in the extent to which individuals use their resources specifically for political purposes. These variations are themselves traceable to differences in motivations that arise out of variations in endowments and experiences.¹¹

Welsh observes that political resources are not the only factors which determine an individual's or group's influence but that it also depends upon the efficacy of the

techniques used in pursuing specific aims.¹² In some cases, diverse influence strategies or tactics can be employed to secure specific objectives. Further, where an individual's interests are relatively similar to those of a decision-making authority, the more successful should be the individual's attempts to influence the policy decisions of that authority. Finally, as will become evident in this study, an individual's or a group's influence may ultimately depend on its ability to select that part of the governmental system which has the power to resolve a particular issue....¹³

Policy. Public policy refers to the official course or method of action chosen by a governmental authority from among diverse alternatives, in light of certain conditions, to guide and determine present and future decisions. Thus, our primary focus here is the character of local and provincial policies regarding the provision of French language instruction and the general statutory regime during the early 1980s in Manitoba concerning this matter. In this case therefore, the stipulations of The Public Schools Act of 1980 concerning "Languages of Instruction" in Section 79 of the Act are of interest to us. Of special interest to us, of course, is s. 79(3), the provision of the Act which accords instruction in French or English.

In addition, we will need to understand the conceptual linkages between policy, government, and the political activity of individuals and groups in pursuit of their interests. This is because as Miller states, "politics is about policy, first and foremost; and policy is a matter of either the desire for change or the desire to protect something against change."¹⁴ Also, in order to take account of the demands of individuals or groups in public policy, government must sometimes arrange settlements and enforce these

settlements upon the various parties concerned. Thus, it is recognized that public policies may have a modifying effect on the general political environment and upon the demands arising from it. Similarly, existing or past policies can also have an impact upon the character and future direction of the political system, policy-making, and the activities of various individuals or groups.¹⁵ Therefore, special attention was paid to the outcome and consequences of the political contest in Swan River, including any changes in policy or legislation as a result of that contest.

Government. Miller argues that there is a relationship between politics and government but admonishes that "we must distinguish between the two, and recognize that each has its own sphere which intersects with that of the other, if we are to bring any understanding into the business of what is political and what is not".¹⁶ Politics emphasizes competing demands and the use of government, not only to resolve conflict in some direction, but also to secure certain results. In contrast, government consists of the formal institutions and offices involved in making authoritative decisions for a political system. According to Welsh, government "is a framework in which the executive, judicial, legislative and administrative business of a system is carried out".¹⁷ For Lasswell, government concerns the questions: "Who controls what, when and how?"¹⁸ On the other hand, politics concerns the questions: "Who gets what, when, how?"¹⁹ Although the major concern in this study is politics, we will need to know how government (and which levels of government) affected both the conduct and the outcome of politics.

Analysis and Interpretation of the Case

The common elements which characterized the political situation in Swan River have been identified and explained conceptually in the immediately preceding discussion. Now, we require a scheme with which to organize the analysis of the concept-related data. Simeon's study of public policy-making among governments in Canada, in particular, his framework for analysis, may be of assistance. Here it is:

The framework can be stated like this: there is a set of interdependent actors, or partisans; they operate within a certain social and institutional environment; they share some goals but differ on others...; they have an issue or set of issues on which they must negotiate;...they have varying political resources; they use these resources in certain strategies and tactics; they arrive at certain outcomes; and these outcomes have consequences for themselves, for other groups in the society, and for the system itself.²⁰

By adapting Simeon's scheme to our purpose, we can now describe the major categories for analysis and interpretation which will be used in this study.

The interests and objectives of the actors. The key or principal actors in this case were those who can be viewed as the major 'stakeholders' in the case, that is, they are those who had an interest to promote or advance which some other actor or actors, with different opposing interests. For the purposes of this study, the Government of Manitoba is considered a key actor and the following governmental officials will be considered representative of it: the Minister of Education, the Deputy Minister, and the Assistant Deputy Minister at that time. Similarly, by definition, the school board involved in this study also represents a form of government, and school trustees and other school officials, especially the superintendent, will be considered to be representatives of the local school board. Finally, Lynn Pernisie, the initiator of the litigation Pernisie v. Swan

Valley Division No. 35, must be seen as a key actor throughout the Swan Valley immersion controversy.

The fundamental research question which belongs under this category of analysis and interpretation is this: "What were the interests and objectives of the key actors in this case which gave rise to the political situation in Swan River?" Similarly, it will be equally useful, also, to ask: "What were the major factors or conditions which influenced the objectives of the actors in the case?"

The issues. In Simeon's view, issues are pivotal in understanding a political situation. He says:

Issues are seldom neat and clear cut; they seldom arise alone or spring full-blown into the political scene. But they represent the stakes in the negotiation process; their nature affects the way it works.²¹

By taking into account Simeon's advice regarding the pivotal role of issues in a controversy, there are several very important questions which must be asked in this study. First, "How did the actors perceive and define the issues in the case?" Second, "How did the actors perceive and define the stakes?" Third, "How did the Manitoba courts perceive the issues in this case?" In this study, the researcher is obliged to ask the actors themselves how they viewed the issues because each issue may also come to be defined as representing broader or ancillary issues such as the status of bilingual education in Anglophone Canada. Also, it will be important to see whether or not the issues developed with new intensity or in new directions. Furthermore, when political issues cannot be resolved through political activity, an actor can seek a resolution of these issues in the courts. Litigation however, does not ensure that all political issues will be considered

relevant. Accordingly, in this study, it will be important to see how the courts perceived the controversy in Swan River, and then, how the courts redefined the political issue or issues in the case as legal issues.

The political resources of the actors. Robert Dahl has observed that a resource is "anything that can be used to sway the specific choices or strategies of another individual".²² Thus, the distribution of political resources among the actors is a critical dimension of any negotiating process and its outcome. The important question here is this: "What political resources were available to the different actors in the case?" Furthermore, in view of this question, we must also identify the sources of political resources available to the actors in the case because the influence of a specific individual or a group is contingent on the availability, distribution and, inevitably, the skillful use of resources.²³

Since government policy and the political actions of government can condition the behaviour of groups and, ultimately, their influence, an important task will be to describe how "institutional arrangements shape the form the negotiation process takes"²⁴ and affects the use of certain political resources. For example, where a political stalemate between opposing actors has a significant legal dimension, a particular actor may seek to advance an objective in the courts. This case shows that, because the judiciary was called upon to resolve a political conflict which the actors themselves could not, the courts have an important strategic, though not necessarily partisan, role in political contests. In addition, we must also try to take into account certain factors which Simeon describes as "political constraints." As he explains:

[Political constraints] may be defined as those factors which serve directly to limit the ability of actors to persuade others and to engage in certain tactics and strategies. They are not merely the absence of sanctions, but positive deterrents.²⁵

Overall, though, we are interested in how both political resources and constraints affect the dynamics of a political contest and its outcome.

The outcome and its consequences. The result of political contest is what concerns us here and we are especially interested in what Simeon refers to as "the nature of the solutions produced by the process".²⁶ He elaborates:

The end point of the process may not be a decision at all--it may be simply an agreement to disagree. But whatever it is, the outcome has consequences. The simplest question is 'who won?' Which actors achieved their goals and which failed?²⁷

Obviously, we will also want to know why it was that certain actors succeeded or failed to advance their interests and objectives and what accounts for the specific outcome. In this case, the legal outcome is of special importance.

Under this category, we need also to determine the consequences and implications which flow from the outcome of the litigation. In particular, we need to determine the nature and extent of the implications for the stakeholders. We especially need to determine the implications of the judicial result for subsequent initiatives in policy and/or legislation which arose from Pernisie v. Swan Valley School Division No. 35.

METHODOLOGY

The Case Study Approach

The predominant concern in this investigation is to achieve an in-depth understanding of the political situation in this case. Thus, the case study approach has

been selected because it facilitates the collection of data related to areas of human motivation which are not substantively documented or available through observation.²⁸

According to Yin, a case study is a qualitative inquiry which

1. investigates a contemporary phenomenon within its real life context; when
 2. the boundaries between phenomenon and context are not clearly evident; and
- in which
3. multiple sources of evidence are used.²⁹

Best observes that case studies are usually prepared by means of the personal interview and supplemented by other types of data. Best also contends that the personal interview is a particularly effective data gathering device in areas where human motivation--feelings and attitudes are the catalyst for certain actions, including political activity.³⁰

However, the case study approach differs from the conventional method of social science research in that the former approach is characterized by:

1. a range of research which tends to be more intensive than extensive;
2. reports which generally emphasize narrative description, interpretation and synthesis, not analytic frameworks, relationships between variables, and research findings, and
3. objectives which stress the particular and unique rather than the generalizable.³¹

Therefore, the case study approach is not so concerned with testing hypotheses; it is more concerned with presenting a concrete picture of the set of phenomena and its uniqueness.³²

Data Sources

Considering the nature and purpose of the study, two primary data sources were

crucial. These were documents and the personal interviews conducted with the actors in each case. These sources constituted the data base from which the answers to the fundamental questions of the study were gleaned.

Documents. The following documents were used to trace the detail of the development of events in each case:

1. The Public Schools Act (1980).
2. Selected Minutes of School Board meetings of Swan Valley School Division No. 35 related to the issues in the case.
3. Swan Valley School Board policy or policies relating to the issues in the case, if any.
4. The Manitoba Gazette.
5. Articles from the Winnipeg daily newspapers related to the case.
6. Selected correspondence between the political actors in the case and selected correspondence between individuals or groups who had an interest in the case.
7. Ancillary reports, articles, memoranda or correspondence related to the issues in the case which came to light during the course of this study.
8. The Manitoba Reports regarding Pernisie v. Swan Valley School Division No. 35.

Interviews. The personal interviews were conducted with individuals who satisfied one or more of the following criteria:

1. The individual was involved in the case.
2. The individual had been an active participant in making certain requests

concerning French immersion to the school board in the case.

3. The individual was a government official who had been involved with the case at some point in time.

4. The individual was a member of a group involved with the case and was able and willing to speak for that group.

5. The individual was involved with the legal aspects of the case.

6. The individual was a school official or administrator familiar with the case.

Generally, the interviews were used to gather the personal opinions, insights, and observations of individuals involved with the issues in the case and to facilitate the examination of documents. More precisely, the interviews were intended to:

1. Establish or confirm particular events and happenings.
2. Gain interpretations of important events, including an estimate of their significance for the key actors in the case.
3. Clarify the interests of the individuals and groups involved in the case.
4. Determine from the point of view of the individuals or groups themselves the effect of their own and opponents' positions and actions.
5. Assess, from the view point of the interviewees, the implications of the litigation for the parents, the school boards, and the provincial government and, in general for the development and administration of French immersion in Manitoba.

All interviews were tape-recorded and then transcribed in note form by the researcher. The interviews were semi-structured with some questions common to all respondents. Similarly, the extent to which a respondent was involved with the case

determined the length of the interview. Some of those who were deeply involved with the case required more interview time, or a second interview (Appendix B, Letter to Potential Interviewees, and Appendix C, List of Interviewees and Interview Schedule).

Definition of Terms

1. Anglophone. In this study, the term Anglophone refers to a Canadian citizen belonging to an English-speaking population.

2. Bilingual education. This term refers to "schooling provided fully or partly in a second language with the goal of making students proficient in the second language while, at the same time, maintaining and developing their proficiency in their first language, and fully guaranteeing their educational development."³³

3. Core French program. In Manitoba, this term refers to a mandatory program in which anglophone pupils take a period of instruction in French as a second language for a minimum of twenty to forty minutes every day.

4. First language. This term refers to the first language learned or mother tongue.

5. Français program. This is the program of study designed and recommended by Manitoba Education for students whose first language is French and who want to develop a good working knowledge of both French and English so as to become functionally bilingual and who want to retain their Franco-Manitoban cultural identity.³⁴

6. Francophone. In this study, Francophone refers to a Canadian citizen belonging to a French-speaking population.

7. French immersion. In this study, French immersion refers to a program of schooling in the French language designed for anglophone students who have little or no

knowledge of French. The ultimate goal of the program is to make students functionally bilingual or able to use both languages with the fluency characteristic of a native speaker. There are two principal entry points in Manitoba's immersion program: early French immersion (E.F.I) and late French immersion (L.F.I.) In the E.F.I. program, students enter the immersion program in kindergarten or in grade one and usually continue their education in an immersion program until the end of grade twelve. In the L.F.I. program, students enter the immersion program in grade seven and usually continue their education in an immersion program until the end of grade twelve. A third entry point in Manitoba's immersion program is available to students in grade four. However, this entry point, called middle immersion is offered only by certain school divisions in Manitoba.³⁵

8. Language of instruction. In the context of Section 79 of the Manitoba Public Schools Act (1987), this term refers to the official language in which subjects may be taught in Manitoba public schools: French or English.

9. Minority language. In this study, 'minority language' refers to the language of the minority population of the province in which the minority group resides. The official minority language in Quebec is, therefore, English; in the provinces outside of Quebec it is French.

10. Minority language education. This refers to schooling designed to offer the official minority population formal schooling at the primary and secondary levels in their mother tongue such as is guaranteed in Section 23 of the Canadian Charter of Rights and Freedoms.

11. Official languages. In this study, 'official languages' refers to the fact that in

Canada, two languages (only) have official status: French and English. These languages are recognized (by statute and constitutional law) as languages that may or must be used in certain dealings between state bodies (typically, institutions of the Canadian federal government) and between the state bodies and individual Canadian citizens.

12. Second language. This term refers to the language learned after the acquisition of the first language or mother tongue.

13. Second language education. This term refers to programs which are designed to offer instruction in the minority language to children of the majority linguistic group.

LIMITATIONS

As a case study, this investigation is bound by several limitations. First, in the absence of an orthodoxy of political interpretation, researchers must be explicit when ideas about politics are to be communicated. Thus, the conceptual framework facilitates the purpose of the study but it should be recognized that there may be other explanatory or causal factors to consider. Second, the data collected during the interviews may be subject to errors of judgement, memory, perception, and unconscious bias with a tendency to overemphasize unusual events. Third, the possibility of missing or incomplete documentation is the constant companion of all researchers engaged in the kind of study proposed here. In addition, crucial data may be exceedingly difficult to locate. On the other hand, a political actor in the controversy may decide not to participate in the study.³⁶ Fourth, the data collected in the interviews with the participants in the study is perception-bound and it cannot be presented as indisputable facts. Subsequently, the conclusions derived from the data should not be construed as the singular truth, or automatically

generalizable to other jurisdictions, time periods, or contexts, although similar issues may be evident. Lastly, no attempt was made to probe, in depth, the actors' personal values and expectations or the extent to which their political actions were a specific expression of those values and expectations. Clearly, a case study cannot achieve certain objectives. It cannot profess to show everything about something and, yet, it can endeavour to know something about something!³⁷

OUTLINE OF THE CHAPTERS

The study consists of five chapters. Chapter one outlines the nature of the study and describes its conceptual framework and the scheme of analysis and interpretation. Chapter two provides the historical background of s. 79(3) of The Public Schools Act, the specific legislation which gave rise to the political situation in Swan River in 1982. This chapter reviews the changing political status of French as a language of instruction in the province from 1870-1980, and shows, in particular, the political decisions which established, in law, the right of French-speaking Manitobans and others to be instructed in the official language of their choice, French or English. Chapter three reveals the origin, development and outcome of the political controversy in Swan Valley School Division No. 35 in narrative and descriptive form. Chapter four provides a political and legal interpretation of the French immersion controversy in Swan River using the topical categories set out for that purpose, namely, the interests and objectives of the actors, the issues, the political resources of the actors, and, the outcome and its consequences. Finally, Chapter five presents the conclusions which emerge from the study, along with any implications which at this point in time seem evident.

NOTES TO CHAPTER 1

¹ Miller, J. D. B. (1962). The nature of politics. Harmondsworth: Penguin Books Ltd., p. 14.

² Miller, 14.

³ The particular legislation contested in the Pernisie case was subsection 79(3) of The Public Schools Act (1980). See Appendix F, Bill 31 for the full text of this subsection.

In addition to Pernisie v. Swan Valley School Division No. 35, there were two other noteworthy cases which were litigated in the Manitoba courts during the 1980's. Neither case involved the implementation of a French immersion program. Instead, the controversy in each had to do with the provision of transportation of children to a French immersion school. Additionally, the controversy in these cases arose from a single basic question: "Who pays for the cost of transportation?" In Bachmann v. the St. James-Assiniboia School Division No. 2 et al. (29 Man. R. (2d)), the School Division provided transportation for children to a French immersion school on a shared-cost basis with their parents pursuant to M.R. 166/81 of The Public Schools Act. As English classes were offered in all schools in the Division, no parents of children enrolled in English programs were required to pay for transportation. In Court of Queen's Bench on November 17, 1983, Justice Morse dismissed Bachmann's application requesting that the School Division provide education to her children in French without requiring her to pay a transportation fee and, instead, upheld the Division's right to levy a transportation fee on French language classes. Subsequently, on August 21, 1984, the Manitoba Court of Appeal ruled that the Government of Manitoba did not have the right under M.R. 166/81, to discriminate unjustly between children taking instruction in French or English. As a result of this case, M.R. 166/81 was amended by M.R. 64/85 to provide for a new definition of "transported pupil". In the next case, Chaddock et al. v. School District of Mystery Lake No. 2355 and Manitoba ((40 Man. R. (2d)), the Chaddocks sought a declaration that the School District was required to provide transportation for their children (to a French immersion school located over a mile from their residence), and that the School District was entitled to receive operating support from the Government pursuant to M.R. 1/86 (M.R. 64/85 was repealed and replaced by 1/86). On February 17, 1986, Justice Monnin ruled in favour of the Chaddocks and held that M.R. 1/86 was discriminatory, because the Regulation placed a fetter on the right accorded to individuals under subsection 79 (1) of The Public Schools Act, to follow a program of instruction in whichever language they choose: French or English. Later, however, on August 5, 1986, in the Manitoba Court of Appeal, Justice O'Sullivan held that Monnin had erred in deciding that pupils (and parents) had a right to have free transportation, that is, the Regulation dealing with government-assisted transportation did not negate language rights. In other words, the duty of a school board to provide education in French was one to be exercised reasonably and according to local circumstances.

Subsequently, Sidney Green, counsel for the Chaddocks, sought leave to appeal the judgement of the Manitoba Court of Appeal in the Supreme Court of Canada. On January 16, 1987, the Supreme Court of Canada refused to grant leave to appeal. Therefore, the judgement of the Manitoba Court of Appeal stood.

⁴ Mackay, W. A. (1984). Education law in Canada. Emond-Montgomery Publications Ltd.

⁵ Miller, 16.

⁶ Miller, 39.

⁷ Deutsch, K.W. (1974). Politics and government: How people decide their fate. Boston: Houghton-Mifflin Company, p. 11.

⁸ See Miller (1962), pp. 67-90 for a detailed discussion of "interests in action".

⁹ Nagel, J. H. (1975). The descriptive analysis of power. New Haven: Yale University Press.

¹⁰ Presthus, R. (1972). Elite accommodation in Canadian politics. Toronto: MacMillan of Canada Ltd.

¹¹ Dahl, R. A. (1976). Modern political analysis (3rd ed.). Englewood Cliffs, NJ: Prentice-Hall Inc., p. 37.

¹² Welsh, W.A. (1973). Studying politics. New York: Praeger Publishers.

¹³ Presthus, 147.

¹⁴ Miller, 14.

¹⁵ Easton, D., ed. (1965). A framework for political analysis. Englewood Cliffs, NJ: Prentice-Hall Inc.

¹⁶ Miller, 20.

¹⁷ Welsh, W. A. (1973). Studying politics. New York: Praeger Publishers, p. 12.

¹⁸ Lasswell, H. D. (1948). The analysis of political behavior. London: Routledge and Kegan Paul.

¹⁹ Lasswell, H. D. (1936). Who gets what, when, how. New York: McGraw-Hill Book Co. Inc.

²⁰ Simeon, R. (1973). Federal, provincial diplomacy: The making of recent policy in Canada. Toronto: University of Toronto Press., pp. 11-12.

²¹ Simeon, 13.

²² Dahl, R. (1961). Who governs? Democracy and power in an American city. New Haven: Yale University Press, p. 226.

²³ Dahl, R. (1976). Modern political analysis (3rd ed.). Englewood Cliffs NJ: Prentice-Hall Inc.

²⁴ Simeon, 15.

²⁵ Simeon, 12.

²⁶ Simeon, 15.

²⁷ Simeon, 16.

²⁸ Blau, P. M. (1955). The dynamics of bureaucracy. Chicago: The University of Chicago Press.

²⁹ Yin, R. K. (1984). Case study research: Design and methods. Beverly Hills, CA: Sage, p. 23.

³⁰ Best, J. W. (1977). Research in education. (3rd ed.). Englewood Cliffs, NJ: Prentice-Hall Inc.

³¹ Eckstein, H., ed. (1975). "Case study and theory in political science", Strategies of Inquiries, F. I. Greenstein. Massachusetts: Addison-Wesley.

³² Good, C. V. (1966). Essentials of educational research (2nd ed.). New York: Meredith Corporation.

³³ Stern, H. H. (1972). Bilingual schooling: Some experiences in Canada and the United States. Toronto: OISE., p.1.

³⁴ Manitoba Department of Education (1988). Working Papers, Le Bureau De L'Education Française, Winnipeg, Manitoba, p. 1.

³⁵ Working Papers, 1.

³⁶ Interestingly, ten years after the French immersion controversy in Swan River, Manitoba in 1982, Maureen Hemphill would not consent to be interviewed although she was the Minister of Education at the time.

³⁷ Fischer, D. H. (1970). Historians' fallacies: toward a logic of historical thought. New York: Harper and Row.

CHAPTER 2

THE HISTORICAL BACKGROUND OF THE CASE

This chapter presents the historical background of subsection 79 (3) of The Public Schools Act, the specific legislation which gave rise to the political situation in Swan River. Overall, this chapter surveys the status of French as a language of instruction in Manitoba from 1870 to 1980. The passage of Bill 113 by the Schreyer government in 1970 established the right of Manitobans to be schooled in the official language of their choice, French or English. This right was sustained in 1980 when Section 258 of The Public Schools Act was repealed and replaced by Section 79. When a group of anglophone parents used s. 79 (3) of the Act to require the School Board of Swan Valley School Division No. 35 to introduce a combined kindergarten and grade one French immersion class into the School Division, a substantial controversy ensued. To a significant extent, the controversy turned on the legal viability of the parents' request, given the prevailing statutory regime. What historical intentions were embodied in the legislation as it had evolved to 1980 and what political realities did the statute have to accommodate by the early 1980s? An investigation of these questions broadly shows that the French immersion controversy in Swan River was, in large part, an old quarrel in a new context.

THE FRENCH LANGUAGE IN

MANITOBA: 1870-1980

The Arrangements for Schooling at Provincehood

With the passage of the Manitoba Act in 1870, Manitoba entered Confederation as a province which was bicultural, bilingual and had a bicameral legislature.¹ Manitoba was also unique in that it was predominantly a Métis province comprised of two linguistic sectors: the Francophone Métis and the Anglophone Métis. Of these two groups, the French-speaking Métis were in the majority when Manitoba joined the newly-confederated Canada. Manitoba most closely resembled the province of Quebec demographically and, therefore, was given a constitution which was modelled on that of Quebec.

The first public school legislation in Manitoba in 1871 established a single board of education with two sections, Protestant and Catholic. Consistent with the provisions for denominational schools in Section 22 of the Act, the new Public Schools Act gave statutory validity to the denominational (and bilingual) system of education which had evolved, by practice, in Manitoba prior to Confederation.² These constitutionalized school arrangements protected the right of Francophones to send their children to a denominational school, which meant not only a Catholic education but, in practical effect, a French Catholic one for Francophones. The relevant section and subsections of the Manitoba Act (1870) read as follows:

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 of the Union;

(2) An appeal shall be 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; and

(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 on any appeal under this section is not duly executed by the proper Provincial Authority in that behalf, then, and in every such case, and as for 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....³

Furthermore, the Manitoba Act (1870) contained a clause similar to Section 133 of the British North America Act of 1867, which accorded French equal status with English.

This Section of the Manitoba Act declared that:

23. Either English or the French language may be used by any persons in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of the Houses; and either of those languages may be used by any person or in any pleading of Process, in or issuing from any Court of Canada established under the British North America Act, 1867, or in and from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both languages.⁴

The Abrogation of French as a Language of Instruction

From 1870-1890, Manitoba experienced marked demographic changes which had profound implications for the constitutional guarantees of the Manitoba Act (1870) and for one group in particular, namely, the Franco-Manitobans. Immigrants, primarily from Ontario, inundated Manitoba in such numbers that, by 1890, the demographic balance in the province shifted irrevocably from Francophone to Anglophone. Basically these immigrants were of the "Clear Grit Persuasion"⁵ or "Anglo-Nationalist Conformists"⁶ and adherents of the Presbyterian and Methodist churches, who regarded anything that was

French with mistrust. They also considered their schools to be common public schools, and consequently viewed the Catholic schools as separate. Increasingly, as more newcomers arrived in Manitoba, the demands for a fundamental shift away from the principles of duality and equality which characterized the province in 1870 became more frequent. By 1890, the Protestant and English majority from the eastern provinces, not the European immigrants, spearheaded the movement for constitutional changes in Manitoba.⁷ Nor could the Manitoba Liberal Government of Thomas Greenway long ignore the political activity of the majority group in the Province. As a result, the Greenway administration introduced legislation in 1890 intended to alter the educational and language guarantees of 1870. Catholic Francophones, now a minority in the province, saw these legislative initiatives as having a prejudicial effect upon the rights and privileges they thought they had secured in 1870.⁸

The provincial Government did not attempt to have the Manitoba Act amended. Instead, it legislated its own "Act to provide that the English language shall be the official language of the Province of Manitoba."⁹ Clearly, the Legislature was reluctant to abolish a fundamental constitutional provision in a federal statute which brought Manitoba into Confederation. The Official Language Act, which was assented to on March 31, 1890, read as follows:

1. Any statute of law to the contrary notwithstanding, the English language only shall be used in the records and journals of the House of Assembly for the Province of Manitoba, and in any pleadings or process in or issuing from any courts in the Province of Manitoba. The Acts of the Legislature of the Province of Manitoba need only to be printed and published in the English language.

And second:

2. This Act shall only apply so far as this Legislature has jurisdiction so to enact, and shall come into force on the day it is assented to.¹⁰

While English was to be the sole language of the legislature and courts, the law did not restrict the statutes to English only. Further, in March 1890, two amendments were made to the provincial school system. First, an "Act respecting the Department of Education" provided for the abolition of the Board of Education and Superintendents of Education and its replacement by a Department of Education comprised initially of the Executive Council or a committee appointed by the cabinet. The effect of this Act was to dismantle the dual confessional system. The second act, an "Act respecting Public Schools", made all Protestant and Catholic school districts subject to its provisions and established free public common schools. The crucial provision, as far as the Franco-Manitobans were concerned, was the abolition of the Catholic school districts which had been under their control. The Act stated:

179. In cases where, before the coming into force of this Act, Catholic school districts have been established...such Catholic school districts shall, upon the coming into force of this Act, cease to exist, and all assets of such Catholic school districts shall belong to, and all the liabilities thereof be paid by, the public school district...."¹¹

There was no mention of the abolition of the Protestant school districts, since it was assumed that they would become public districts. Nor was there any mention of languages of instruction in this legislation. From a legal standpoint, therefore, French could continue as a language of instruction and as a subject of study in public schools. According to Jaenan, it would appear that, instead of trying to obliterate French language instruction, efforts were being made to bring all the francophone Catholic schools into the

common public system.¹² However, in 1894, schools which continued to maintain the bilingual character of the now-dissolved Catholic public schools experienced renewed pressure to conform to all provincial legislation and Departmental regulations. The passage of The Public Schools Act in 1894 forbade municipal councils to grant money, levy or collect taxes for the support of such schools.¹³

Understandably, The Public Schools Act of 1894 was bitterly contested. Catholic French Manitobans had not only been denied official status for their language but, in addition, had also been denied the right of sending their children to a denominational school, a constitutional guarantee which they thought they had under Section 22 of the Manitoba Act of 1870 which had assured not only a Catholic education but a French Catholic one. Increasingly, it appeared to the minority that the very intent of the Act was at stake and, ultimately, the very principles on which the federal union was established.

In November 1896, Laurier's Liberals won the general election, and the federal government persuaded Manitoba to provide limited educational and religious instruction in French, which was incorporated into a new School Act in 1897. As a result of the so-called Laurier-Greenway Compromise, clause 10 of the Act stated that:

When ten of the pupils in any school speak the French language, or any language other than English, as their native tongue, the teaching of such pupils shall be conducted in French, or such other language, and English upon the bi-lingual system.¹⁴

Clause 10 enabled the Francophones to rebuild a network of French schools within the public school system. Soon afterwards, Franco-Manitobans had their own text-books, centralized examinations, school inspectors, trustees, teachers' associations, and a Normal

School for training local teachers in St. Boniface. Further, to avoid exacerbating anti-French prejudice in Ontario and elsewhere, the compromise regarding bilingual teaching was extended to all non-English residents in Manitoba with the expectation that it would be taken advantage of only by the Franco-Manitobans, and possibly, to a limited extent by a diminishing number of Mennonite communities. Unexpectedly, however, German, Ruthenian and Polish bilingual schools and programs also multiplied to the extent that the anglophone public school system in Manitoba seemed threatened by the unforeseen growth of bilingual schools throughout the province. At the same time, there was also wide-spread fear that the province was becoming balkanized, "so that in the wartime context of anti-German, anti-pacifist, and anti-alien feelings",¹⁵ it is not surprising that there were, increasingly, demands that the bilingual clause, which had become Section 258 in The Public Schools Act, (1913), should be repealed. Thus, "An Act to Further Amend the Public Schools Act", assented to on March 10, 1916, provided as follows:

1. Section 258 of "The Public Schools Act," being Chapter 166 of the Revised Statutes of Manitoba, is hereby repealed.¹⁶

In terms of the language of instruction in public schools, the province returned to a position which might be best described as a legal vacuum. Strictly speaking, it was not contrary to the law to teach in French because no language of instruction was set forth in the legislation. However, clearly, the general impression conveyed by the Government of Manitoba was that English was the sole language of instruction in all public schools of the province. Thus, the objective of the francophone community in Manitoba was to persuade the provincial Government to enact a law with respect to the language of instruction, in order to fill the legal vacuum created in 1916. To facilitate that objective,

the Association d'éducation des Canadiens Français du Manitoba (A.E.C.F.M.) was established in 1916. Fifty-two years later the A.E.C.F.M. fused with the Commission du Rallye in 1968 to become La Société Franco-Manitobaine (S.F.M.). The principal aim of the S.F.M. was "to promote the growth and development of economic, political, cultural, and educational values in the French population of Manitoba."¹⁷ Later in 1969, the S.F.M. would press the Schreyer government to recognize French as an official language of instruction equal with English. Meanwhile, the A.E.C.F.M. operated its own department of education responsible for the establishment of a French curriculum, the hiring of French teachers, and the preparing and correcting of a yearly examination for all students. Operating in a clandestine fashion, the A.E.C.F.M. saw to it that French was taught in primary and secondary public schools in various regions of Manitoba. As the same time, the A.E.C.F.M. provided the impetus to enact a law to establish French as a language of instruction in all public schools.

However, thirty-six years later in 1952, when the accumulated amendments of the frequently-altered Public Schools Act were re-enacted, the Liberal-Progressive government of Douglas Campbell inserted a new Section 240 into the Act which made English the only language of school instruction. This section read as follows:

240. (1) Subject to subsection (2), English shall be used as the language of instruction in all public schools.
- (2) When authorized by the board of trustees of a district, a language other than English may be used in any school in the district
- (a) during a period authorized herein for religious teaching;
- (b) during a period authorized in the program of studies for teaching of a language other than English; and

(c) before and after the school hours prescribed in the regulations and applicable to that school.¹⁸

While the legislation did permit a district board to authorize the use of another language, the other language could only be taught during a period of religious studies. In effect, the legislation treated French as just another language.

The Campbell Government also appointed its own Royal Commission to examine all aspects of Manitoba's school system. The chairman, Dr. R. O. MacFarlane, conducted hearings throughout the province and issued an interim report in 1959. The MacFarlane Report recommended, *inter alia*, that:

...permission be granted for the teaching of conversational French or German as a subject of instruction from Grade 1 in all schools in which a duly qualified instructor is available....This recommendation pertains to the teaching of French or German as a second language, and not as a language of instruction in place of English.¹⁹

Before the Campbell Government had an opportunity to consider MacFarlane's recommendations, it was defeated.

A Significant Step Towards Language Equity: Bill 59

The ascension of Roblin's Conservatives to power in 1958 (with a majority government in 1959) coincided with a burgeoning economy and wide-spread socio-economic development in the province. Manitoba experienced record growth and prosperity in agriculture, the manufacturing industry and mining, "a revitalization which projected it squarely into the twentieth century."²⁰ Elsewhere in the nation, discussions about the nature of Confederation, bilingualism, multiculturalism and human rights were occurring. At the same time, however, Quebec was experiencing its own demographic revolution because of immigration, out of which there emerged a challenge to the

permanence of the French language as the language of the majority. Many Canadians outside Quebec viewed their position in society as inferior because they spoke the language of the minority, namely, French. Consequently, the "Royal Commission on Bilingualism and Biculturalism" proposed a policy of equal treatment for each of Canada's two official language groups. The enactment of the Official Languages Act in 1969 gave partial effect to that proposal in that the Commission acknowledged the desirability of granting to the minority in each province the right to have their children educated in their own language. However, this right could not be incorporated in the Official Languages Act because education was a subject within the exclusive legislative jurisdiction of the provinces.

In addition, the dismantling of the Duplessis regime in Quebec gave rise to new legal, social, political, economic and educational issues. For example, between 1962-1965, in the context of the so-called Quiet Revolution, a concerned group of anglophone parents, residing in the Montreal suburb of St. Lambert, developed a radical second language teaching methodology called French immersion. The St. Lambert experiment was anchored in a concern for bilingualism on the part of Anglophones. They believed that if Quebec left Confederation, the anglophone community's survival and continued prosperity depended upon their children being able to communicate in English and French equally well, especially in light of the political rumblings in the province to make French the language of the working place.²¹ The St. Lambert experiment became the essential basis for French immersion programs elsewhere in Canada, including Manitoba. Further, as we shall see, in Manitoba's Bill 113, school language legislation necessarily had to

accommodate both the ambitions of the linguistic minority (Francophones) and the desires of those who favoured a form of bilingual schooling (Anglophones).

In Manitoba, the A.E.C.F.M. saw an opportunity to attempt to gain full recognition of French as an official language of instruction in all public schools. Accordingly, the A.E.C.F.M. pressed the Roblin Government for more Français time in public schools, and asked that French be recognized statutorily as a language of instruction in all public schools. The government agreed. Subsequently, as Canada celebrated its Centennial, Bill 59 received royal assent on April 27, 1967. In the Bill, Section 240 of The Public Schools Act was repealed and an amended Section 240 was substituted (Appendix D, Bill 59). Bill 59, which passed unanimously, marked a significant departure from any language legislation in Manitoba after 1890. French was officially recognized as one of the two languages to which reference is made in the British North America Act of 1867 and was authorized for use as a language of instruction in all public schools. French was allowed as a language of instruction in social studies and such other subjects as the Minister may, by regulation, stipulate, in a school in the district, area or division, as the case may be. In general, Bill 59 appeared to be a victory for the Franco-Manitoban community. However, Section 7 of the Bill placed an important time restriction on the use of French during the school day and, in addition, clearly indicated just how far the Franco-Manitoban community still had to go, in order to make French equal to English as a language of instruction in Manitoba. In part, Section 7 of Bill 59 read:

The total time in which a language other than English may be used as a language of instruction...shall not exceed one-half of the instructional time per day....²²

Although French was officially authorized as a language of instruction in public schools, its use was limited by subject and by the total time of use, but there can be no doubt that Bill 59 marked an important step towards achieving language equity in Manitoba. Further, Duff Roblin, himself bilingual, had considerable sympathy for Francophones in Manitoba and was perceived as the catalyst within his own party for the official recognition of French as a language of instruction in Manitoba; "his cabinet however, had been much divided on the issue."²³ Consequently, Bill 59 referred to Section 133, the bilingual clause in the British North America Act, (1867), but did not refer to Section 23, the bilingual clause in the Manitoba Act. In other words, while French was recognized statutorily as an official language of instruction in the province, English remained the official language of the legislature and of the courts in Manitoba. This situation was not addressed until the Forest case, when the Supreme Court of Canada on December 13, 1979, unanimously ruled, "that the abrogation of the rights of the French language in 1890 had been unconstitutional...."²⁴

Bill 113: French Language Instruction in the Context of Bilingualism

A further improvement in the rights of Francophones was assured when, on June 25, 1969, the New Democratic Party won power and Ed Schreyer became the premier of Manitoba's first "socialist" government. In accordance with its beliefs, the New Democratic Party had adopted a policy of increasing minority language rights within the framework of the Manitoba public school system. Schreyer's position in relation to the Franco-Manitoban community was, by extension, that of the federal government's expressed in the Official Languages Act (1969), namely, that in the federal domain,

French was equal with English as an official language of Canada. In broad outline, on matters of language and culture, the proposals of the Schreyer government were these:

The establishment of a French normal school next year; the founding of a Cultural Centre in St. Boniface; and...we intend to bring about the necessary changes so that your children will be given every opportunity to receive instruction in their maternal tongue first of all, and then in the second language....To this end, we intend introducing immediately at the next session, laws that will permit the teaching of French from K to Grade 12 and extending far beyond the 50 percent allowed....²⁵

Therefore, in terms of statutory reform, the NDP government introduced Bill 113 (Appendix E, Bill 113). The Bill received royal assent on July 16, 1970, and established French as an official language of instruction in Manitoba public schools equal with English. Saul Miller, Minister of Education explained to the Manitoba Legislature the purposes of Bill 113. The Minister said:

The Bill is a simple and straight forward attempt to provide French-speaking Manitobans, and others as the case may be, with their established right to be instructed in the official language of their choice within the framework of the public school system....We favour no melting pot philosophy.²⁶

Specifically, Bill 113 repealed Section 258 of The Public Schools Act, being Chapter P250 of the Revised Statutes of Manitoba, 1970, and a new Section 258 was enacted, which read, in part, as follows:

258 (1) Subject as otherwise provided in this, English and French being the two languages which reference is made in the British North America Act, 1867 are the languages of instruction in public schools.²⁷

In order to advise the Minister of Education, upon request, about matters related to French language instruction, a nine-member French Language Advisory Committee was established:

258 (5) The Minister shall establish a committee (hereinafter in this section referred to as the "French Language Advisory Committee") composed of nine persons to which he may refer matters, pertaining to the use of French as a language of instruction in public schools.²⁸

Most importantly, French language instruction could be established in any school division or district where a specified number of parents requested it on behalf of their children.

Subsection 258 (8) of the Act declared that:

258 (8) Where there are in any school district, school division or school area (a) twenty-eight or more pupils, in an elementary grade who may be grouped in a class for instruction; or (b) twenty-three or more pupils in a secondary grade who may be grouped in a class for instruction; and whose parents desire them to be instructed in a class in which English or French, as the case may be, is used as the language of instruction, the board of the school district, school division or school area may, and upon petition of the parents of those pupils requesting the use of English or French, as the case may be, as the language of instruction in respect of those pupils, shall group those pupils in a class for instruction and provide for the use of English or French as the case may be, as the language of instruction in the class.²⁹

Furthermore, s. 258(9) of the Act set out the provisions under which the Minister of Education could require a local school board to provide for the use of English or French, in classes where the number of students to be grouped for instruction was less than that specified in s. 258 (8). Accordingly s. 258 (9) of the Act read as follows:

258 (9) Where the number of pupils concerned is less than the numbers mentioned in subsection (8) as requirements for the application of that subsection, the minister, where he considers it practical and upon the advice of the English Language Advisory Committee or the French Language Advisory Committee, as the case may be, may require the board of a school district, school division or school area to make arrangements for the use of English or French as the language of instruction in any class.³⁰

Bill 113 "was not, however, as sweeping in its detailed provisions as in its statement of principle".³¹ Subsection 258(8) conferred a right to be taught in French,

provided there were enough pupils to satisfy the minimum number set out in s. 258(8) of the Act. Also, even if a sufficient number of pupils could be gathered to give force to this provision, the parents of the pupils had to petition the board to provide instruction in the desired language. A divisional board could, however, exercise its discretion under s. 258(9) and offer French language instruction to a class of the required number without petition. Similarly, under s. 258(9), the Minister of Education could reduce the minimum number of pupils required to form a class and require a divisional board to make instruction in the French language available to a smaller class. Therefore, the enactment of Bill 113 signified that "the legislature no longer thought it appropriate to "authorize" the use of French for school instruction";³² rather, the Schreyer government recognized French as one of the two official languages in which instruction might be given.³³

Ultimately, the purpose of Bill 113 was to provide French-speaking Manitobans with their established right to receive a French language education. Clearly, however, Bill 113 also provided Anglophones with a right to be instructed in the French language, provided the circumstances in which that right might be enjoyed, could be satisfied. In 1973, a group of anglophone parents in Winnipeg School Division No. 1 successfully used s. 258(8) of The Public Schools Act as the legal basis to claim a French immersion education for their children.

Sacré-Coeur and the Expansion of French Immersion in Manitoba

In September 1973, Sacré-Coeur, in Winnipeg School Division No. 1, became the first public school in Manitoba to offer French immersion. Like the immersion experiment in St. Lambert, the program implemented at Sacré-Coeur began as an initiative

of a group of anglophone parents. Increasingly, these parents saw that more jobs were available to the functionally bilingual Canadian than to those who were strictly monolingual. Accordingly, the parents wanted their children to acquire a working knowledge of French, utilizing a proven methodology, namely, French immersion.

Until 1973, Sacré-Coeur was a private Catholic school which offered French language programs. As a private school, parents were required to pay for their children's education. When Sacré-Coeur was taken over by School Division No. 1 in 1973, not only was a substantial cost to parents removed, but, in addition, they were afforded an opportunity to enrol their children in Winnipeg's first immersion school.

Sabourin and Taillefer believe that certain events occurring in Ontario concerning French immersion also provided the initiative for the immersion program at Sacré-Coeur. Of these events, the authors wrote:

En 1969, le gouvernement fédéral adopte la loi sur les langues officielles qui accorde statut légal au français et à l'anglais dans la fonction publique fédérale. L'entrée en vigueur de cette loi, voit des parents anglophones de la province de l'Ontario (surtout dans la ville d'Ottawa) demander à leurs commissions scolaires d'établir des programmes d'immersion française du genre de Saint-Lambert.³⁴

In 1973, Sacré-Coeur operated its immersion program with two hundred and fifteen elementary pupils. Two years later, School Division No. 1 was obliged to start-up another immersion school, Sacré-Coeur No. 2. According to Sabourin and Taillefer, "le succès de ces premières années a incité d'autres écoles de cette division à initier des programmes d'immersion".³⁵

On July 9, 1974, the Manitoba government approved the creation of the Bureau de l'éducation française (B.E.F.) within the Department of Education. The establishment

of the B.E.F. marked the fulfilment of the NDP's promise to establish an administrative infrastructure within the Department of Education for the promotion, implementation and administration of each and every provision of The Public Schools Act which authorized French as a language of instruction in the province. Further, as a result of Sacré-Coeur and, an increased demand by Anglophones for French immersion, and "realizing the two-dimensional aspect of Bill 113 and the necessity to provide Anglophones with an opportunity to become truly bilingual,"³⁶ Ben Hanuschak, Minister of Education requested in 1975 that the B.E.F. prepare a further five year plan for the development of French immersion programs. Additionally, in 1980, the Government of Manitoba enacted Bill 31 which amended Section 258 of The Public Schools Act. Section 258 became Section 79 of a new Public Schools Act (S.M., 1980, c.33--Cap. P250) and was entitled "Languages of Instruction" (Appendix F, Bill 31). It was s. 79(3) of the new Section 79 which became the subject of litigation in Pernisie v. Swan Valley School Division No. 35 in 1982.

Languages of Instruction: Section 79 of The Public Schools Act

Subsection 79 (3) differed from subsection 258 (8) in two important ways. First, the numbers of pupils who may be grouped in a class for instruction was lowered to 23 (from 28) for elementary pupils to correspond to the threshold for secondary pupils. Second, the phrase "the board of the school district, school division or school area may group those pupils" in s. 258(8), was replaced by the phrase "the school board shall group those pupils," in s.79(3) of the Act. The effect of this second change was to align a

school board's obligation with an explicitly expressed parental desire to group pupils for the purpose of initiating a "first" or "second" language program in schools. It would seem, therefore, that the primary intent of s. 79(3) as amended was to provide parents with a simple legal means--petition--to require a local school board to provide instruction for their children in the official language requested. In other words, when petitioned under s. 79(3) of the Act, school boards would have a duty to group pupils and to school them in a language of instruction consonant with parents' wishes. Or so it seemed to Lynn Pernisie when she moved into the Swan Valley School Division in the winter of 1981.

NOTES TO CHAPTER 2

¹ Manitoba had a brief experience with a legislative council which existed from 1870 to 1876. It was eliminated because the province could not afford to maintain it. The legislative assembly and the appropriate council took up 69.5% of the province's revenues. See "Provinces Scrapped Upper Houses" in the Winnipeg Free Press, dated April 27, 1992.

² Jaenen, C. (1984, Spring). "The history of French in Manitoba: Local initiative or external imposition". Language and Society.

³ Laxer, R. M. ed. (1979). Bilingual tensions in Canada. Toronto, Ontario: The Ontario Institute for Studies in Education, p. 61. The reader will note that the language of instruction in schools was not specifically guaranteed or protected. It is the denominational character of schools and the religious status of persons which is the subject of Section 22.

⁴ Jaenen, 6.

⁵ Jaenen, 9.

⁶ Letourneau, L. A. (1977). The development of a language policy in Manitoba: The genesis of Bill 113. Unpublished master's thesis, University of Manitoba.

⁷ Jaenen, 10.

⁸ Jaenen, 11.

⁹ Jaenen, 11.

¹⁰ Jaenen, 11-12.

¹¹ Jaenen, 12.

¹² Jaenen, 12.

¹³ Jaenen, 12.

¹⁴ Jaenen, 14.

¹⁵ Jaenen, 14.

¹⁶ Jaenen, 14.

- ¹⁷ Letourneau, 82.
- ¹⁸ Jaenen, 15.
- ¹⁹ MacFarlane, R. O. et al. (1959). Report of the Manitoba Royal Commission on Education. Winnipeg: Queen's Printer, p. 128.
- ²⁰ Letourneau, 46.
- ²¹ Lambert, W. E. & Tucker, G. R. (1972). Bilingual education of children: The St. Lambert experiment. Rowley, Massachusetts: Newbury House Publishers, Inc.
- ²² Province of Manitoba. Bill No. 59. An Act to Amend the Public Schools Act. (1967). Acts of the Legislature of the Province of Manitoba, Chapter 49. Winnipeg: Queen's Printers.
- ²³ Letourneau, 62.
- ²⁴ Jaenen, 15.
- ²⁵ Letourneau, 96.
- ²⁶ Debates, Legislature of Manitoba (1970) cited in Le Tourneau, L. A. (1977). The development of a language policy in Manitoba: The genesis of Bill 113. Unpublished master's thesis, University of Manitoba, p. 98.
- ²⁷ Province of Manitoba. Bill 113. An Act to Amend the Public Schools Act (2). (1970). Acts of the Legislature of the Province of Manitoba, Chapter 66. Winnipeg: Queen's Printer., pp. 597-599, 597.
- ²⁸ Province of Manitoba. Bill 113, An Act to Amend The Public Schools Act (2). (1970)., 598.
- ²⁹ Ibid.
- ³⁰ Ibid.
- ³¹ Reference Re The Constitution Act, 1982, (1988) and The Public Schools Act, Chapter 250, C. C. S. M., and subsections 79(3), 79(4) and 79(7) thereof., 1-45 at 14. (Man. C. A.). Twaddle, J. A.
- ³² Ibid.

³³ Ibid.

³⁴ Sabourin, G. & Taillefer, J. M. (1989). "L'immersion se développe au centre-ville." Education Manitoba, 17, (2), 42.

³⁵ In 1973, only Sacré-Coeur offered French immersion. By 1980-1981, however, 32 public schools in Manitoba offered French immersion programs, and this number jumped to 76 by 1987. In 1980-1981, the number of students enrolled in French immersion was 4,286. By 1986-1987, enrolment rose to 14,619 students. Accordingly, current forecasts by the Department of Education suggest an enrolment of 24,897 students in French immersion by 1993. Source: Manitoba Department of Education (1988). Working Paper. Le bureau de l'éducation française, Winnipeg, Manitoba.

³⁶ Hanuschak, B. "Promotion, Implementation and Administration of Bill 113." Speech delivered at the Federal-Provincial Press Conference. Winnipeg, 30 May, 1975.

CHAPTER 3

CASE HISTORY

The purpose of this chapter is to reveal, in chronological and narrative form, the origin, development and outcome of the French immersion controversy in Swan Valley School Division No. 35.

THE REQUEST FOR A FRENCH IMMERSION PROGRAM

On March 2, 1982, Lynn Pernisie advised J. Coulthart, Secretary-Treasurer of Swan Valley School Division No. 35, that she and a group of parents wished to attend the School Board meeting on March 8, 1982, in order to present two petitions requesting the implementation of a French immersion program, in accordance with s. 79(3) of The Public Schools Act.¹ Using s. 79(3) of the Act enabled Pernisie and her associates to legally petition the School Board for a French immersion program, giving additional force to that request. Prior to her relocation in Swan River, Lynn Pernisie had been advised by the Canadian Parents for French (C.P.F.) that, in Manitoba, s. 79(3) of The Public Schools Act could be used to require a school board to provide French immersion. Subsection 79(3) of the Act established the circumstances or conditions under which anglophone or francophone parents could request that a local school board provide instruction to their children in either of Canada's official languages, namely, English or French. The essential condition of s. 79(3) of the Act was that any petition presented to a local school board requesting instruction in either English or French for their children must bear the signatures of no less than twenty-three parents in order to legitimate that request. If the Swan Valley School Division approved the request of the parents, as the

parents believed the Board must, it would mark the introduction of French immersion into Swan Valley School Division's curriculum for the first time. Also, the implementation of French immersion in Swan River would lend additional impetus to the expansion of French immersion education in rural and northern areas of Manitoba.

In 1981, Lynn Pernisie's eldest daughter was enrolled in a French immersion kindergarten program at Ile des Chênes Elementary School in the Seine River School Division. Also in 1981, Lynn Pernisie's husband was notified that he would be transferred to Swan River, Manitoba. At the time, the Pernisies had no idea that Swan Valley School Division No. 35 did not offer French immersion. After all, French immersion seemed to be offered everywhere in Manitoba and, consequently, there was no reason to believe that such might not be the case in northern Manitoba.²

When Lynn Pernisie did call Swan Valley School Division No. 35 to enquire about enrolling her eldest daughter in a French immersion program, she was surprised to learn that the Division did not offer any immersion instruction. By that time however, it was already too late for the Pernisies to change their plans, which meant that their eldest daughter would not be able to continue her French immersion education in Swan River. Nevertheless, and with some disappointment in the schooling opportunities for their daughter, the Pernisies relocated in Swan River, Manitoba in December, 1981.

In Swan River, Lynn Pernisie soon learned that a number of parents had approached the local School Board on various occasions to request the implementation of a French immersion program. On each occasion however, the Board had found reasons not to do so. As a result, Pernisie and a group of interested parents began to consider

a different way to get the board to do something that it steadfastly refused to do, namely, to provide their children with a French immersion education.

On March 3, 1982, John Kastrukoff, Superintendent of Swan Valley School Division No. 35 advised Maureen Hemphill, Minister of Education, that the Board had received a petition requesting the teaching of French as required under s. 79(3) of The Public Schools Act. Kastrukoff further advised the Minister of Education that the request of the parents for a combined kindergarten and grade one class presented the Swan Valley School Board with a problem. In his letter to Maureen Hemphill, he suggested what the problem was and requested some advice. Said Kastrukoff:

A problem arises in that the petitioners have asked that Kindergarten and Grade 1 be combined into one class since there are not enough signatures for the establishment of separate grades....Since this combination provides a difficult educational situation, I would appreciate an assessment of the viability of such a proposal by Le Bureau de L'Education Francaise.³

From the outset, the request of Pernisie and the other parents appeared to present both legal and educational problems, at least in the opinion of the Swan Valley School Board. Initially, Pernisie and the other parents intended to present the School Board of Swan Valley School Division No. 35 with two separate petitions. One petition requesting the implementation of French immersion at the kindergarten level bore the signatures of fifteen parents. The other petition, which requested the implementation of French immersion at the grade one level, contained the signatures of fourteen parents. Individually, neither petition contained the minimum number of twenty-three signatures required to give force to s. 79(3) of The Public Schools Act. It was also Pernisie's opinion that there were other parents interested in the advantages of a French immersion

education for their children. However, these parents were not willing to sign a petition, a reticence which Pernisie attributed to "life in a small town":⁴ these parents were particularly concerned about causing a controversy and about being harassed if they supported the introduction of a French language program in a predominantly English-speaking community.⁵

On March 8, 1982, Pernisie and her supporters presented the Swan Valley School Board with a petition requesting the implementation of a combined kindergarten and grade one French immersion program. Though the decision whether or not to approve implementation was tabled until April 26, 1982,⁶ the meeting provided an opportunity for Pernisie to discuss the advantages of a French immersion education with the Trustees. In general, Pernisie was not encouraged by the responses of the Trustees who seemed to think that nobody in Swan River wanted the immersion program. Said Pernisie:

...they could see the merits of having a second language when you went further afield into cities like Winnipeg or any other cities in Canada, where the opportunities would avail themselves....They basically said "Nobody wants the program, so why would we have it?"⁷

At the Board meeting on March 22, 1982, Kastrukoff presented his first report, "Superintendent's Progress Report on French Immersion". In his Report, Kastrukoff informed the Trustees that he had contacted the Director of Administrative Support Services for the Department of Education earlier on March 17, 1982, in order to apprise him of the nature of the petition received by the Board, and to seek clarification of the word "class", as it was used in s. 79(3) of The Public Schools Act. Kastrukoff also informed the Trustees that he had pointed out to the Director that there was some concern on the part of the Swan Valley School Administration and Trustees about the educational

viability of a combined kindergarten and grade one class. Kastrukoff then advised the Trustees that, in his opinion, the Director "felt that class really was meant to be grade, but felt that the petition received by us would be supported in favour of the petitioners."⁸ In concluding his Report, Kastrukoff informed the Trustees that the Director had made a suggestion, which the Office of the Superintendent had acted upon:

The Director suggested that this concern be communicated to the Minister and that the Minister be requested to have the matter referred to Le Bureau de L'Education Francaise for its assessment and advice.⁹

On March 25, 1982, Guy Roy, Assistant Deputy Minister of Education, acting on behalf of the Minister of Education, articulated the position of the Government of Manitoba concerning the petition requesting the establishment of a French immersion program in Swan Valley School Division No. 35. Guy Roy's reply to John Kastrukoff was clear and unmistakable:

According to The Public Schools Act of Manitoba, you have the legal responsibility of responding to such a petition and implement [sic] a French immersion program....I urge you to avail yourself of the services available at our Bureau to help you implement the program.¹⁰

Guy Roy also offered this additional advice to Kastrukoff, intended to facilitate the implementation of the immersion program:

It would be my recommendation, however, that numbers being sufficient, the Kindergarten and grade one programs be taught in separate classes....Our experience has shown that while lead groups in French immersion may be small, enrolment in subsequent years increases and helps support the small lead group. Furthermore, it is our belief that "French grants" as they now exist, would help offset any additional costs which may be incurred because of a lower pupil/teacher ratio.¹¹

At the Board meeting on April 12, 1982, Kastrukoff presented a second "Superintendent's Report on French Immersion" (Report 1.10) to the Swan Valley Trustees. In it,

Kastrukoff included the recommendation of Guy Roy, Assistant Deputy Minister of Education, that upon receipt of the parents' petition, the Board had the "legal responsibility" of implementing the French immersion program as requested. In light of the Assistant Deputy Minister's recommendation, Kastrukoff advised the School Board that, "The Board faces two decision--(1) whether to have separate classes or combined classes, and, (2) space for instruction."¹² Kastrukoff then made the following recommendation:

It would be the recommendation of this office, to arrange a meeting with all the petitioners, to indicate the decision on the above two concerns and to discuss the program in general.¹³

Further, Kastrukoff suggested how the combination of kindergarten and grade one within one class could be effected:

Enrollments in kindergarten for Heyes and Taylor Schools...produces a total of 47 children which could be accommodated in two classes--one of 23 and one of 24. Since Taylor School has the classroom designed as a kindergarten classroom, students from Heyes could be transferred (possibly by bus to avoid danger of railroad tracks) to Taylor. This would then leave free a classroom in Heyes which could be used for French Immersion. Since there is only one classroom available, the Kindergarten and Grade One class would be combined.¹⁴

In concluding his Report, Kastrukoff pointed out that "the decisions to be made should be made soon so that necessary staff can be obtained."¹⁵ Kastrukoff had made the Board's choices very clear. Interestingly, the Superintendent's preparatory suggestions would seem to indicate that Kastrukoff thought that the immersion program would be approved and implemented as requested.

THE RESPONSE OF THE SCHOOL BOARD TO THE PARENTS' REQUEST

At the Board meeting on April 26, 1982, Kastrukoff presented yet another "Superintendent's Report on French Immersion". In this Report, Kastrukoff indicated that, "it now may be necessary for three sections of kindergarten in Swan River",¹⁶ and further, that this development "would eliminate the availability of a classroom at Heyes School as projected in Report 1.10 of the last meeting."¹⁷ Accordingly, Kastrukoff made a new suggestion. It would not preclude the implementation of French immersion in the town of Swan River:

If the decision is to proceed with implementing French immersion, and if it is to be located in Swan River, it will be necessary to request that the Public Schools Finance Board retain the temporary unit presently at Swan River Junior High School, to make the necessary repairs and to move it either to Taylor or Heyes School.¹⁸

In addition, Kastrukoff also informed the School Trustees, that the temporary unit located at Swan River Junior High School had no washroom facilities other than those in the school proper. Therefore, the Board would also need to consider the construction of a connecting link either at Heyes or Taylor School. However, in the event that these arrangements were not feasible, the Board might want to consider establishing the immersion program outside the town of Swan River. Kastrukoff concluded his Report by suggesting that the Board "authorize the advertising for a teacher pending the anticipated introduction of the program."¹⁹ Following the Superintendent's Report, Trustees Palmer and Robinson moved that the establishment of a French immersion class for a combined kindergarten and grade one class be approved for September 1, 1982. According to the Minutes of the Board meeting on April 26, 1982, the School Trustees voted four to two

against implementing the French immersion program as requested. By defeating the motion to implement the French immersion program, the Board eliminated any need to take into account the circumstances which Kastrukoff enumerated in his Report.

When the School Board voted not to implement the French immersion program on April 26, 1982, Trustee Art Bourgeault was absent. Though Bourgeault's additional vote in favor of the immersion program would not have altered the fate of the program in any event, he nevertheless decided to protest, in an unusual manner, the School Board's decision not to implement the French immersion program as requested. On April 28, 1982, in a letter addressed both to the Swan Valley Board of Trustees and to Maureen Hemphill, Minister of Education, Bourgeault condemned the Board's decision not to implement the French immersion program. In Bourgeault's opinion, the decision of the Board was essentially unethical. In addition to asking that his objection be entered into the Minutes of the next Board meeting on May 10, 1982, as a matter of public record, Bourgeault made the following requests:

1. that the Board retain a solicitor to act on his behalf, at the expense of the Board, in the event that any legal proceedings might occur as a consequence of the Board's actions;
2. that the Board reconsider the petition of the parents and approve the implementation of the French immersion program, requested as it was, in accordance with the provisions of s. 79(3) of The Public Schools Act;
3. that the Board petition the Minister of Education in order to amend The Public Schools Act, in a manner which would allow the Board of Trustees to discontinue the program for lack of support, lack of a teacher or for financial reasons should circumstances warrant in the future, and finally,
4. that the School Board a) remove the compulsory feature associated with the Grade 9 French program of study and b) implement a core French program to commence at the kindergarten level, which would improve the

level of education within the School Division, as opposed to, the welfare of a very small group of students interested in French immersion.²⁰

While Bourgeault favoured the implementation of the French immersion program in accordance with s. 79(3), of The Public Schools Act, he did not favour the mandatory aspect of the Act which seemed to compel a school board to implement an immersion program under difficult circumstances or alternatively, to break the law.²¹ This fact explains his first three requests of the Board. Bourgeault's fourth request was made because, in his opinion, the French language program in the Division was basically ineffectual:

...there was just compulsory French in Grade 9, which was considered to be kind of the worst of both worlds because by that time, the teenagers wouldn't feel comfortable with it, and it kind of turned them off, and then they would drop out of the program although it was available in Grade 10. By that time, you had it shoved down your throat in Grade 9; you didn't continue it.²²

Bourgeault's requests suggest that while he would not oppose the French immersion program requested by Pernisie and her supporters, his main objective was to maximize the learning of the French language for all students by placing them in a core French program at the earliest opportunity possible, that is, kindergarten.

On April 29, 1982, Lynn Pernisie wrote to Maureen Hemphill, Minister of Education, to inform her that the School Board of Swan Valley School Division No. 35 had voted not to grant the parents' request for a combined kindergarten and grade one French immersion class at the School Board meeting on April 26, 1982. Accordingly, Pernisie wanted to know what else, if anything, could be done in order to obtain the immersion program. Said Pernisie to Hemphill:

At the time the petition was presented, we asked for a combined Kindergarten and Grade 1 class but we are very hopeful we will have enough children for a full class of 23 each by fall. We are most anxious to have a French Immersion program in place in our school division before September 1982. Therefore, in view of the stand taken by our school board, we solicit your advice in further steps in this matter.... Your assistance will be appreciated.²³

On May 1, 1982, John Kastrukoff wrote to Ron Duhamel, Deputy Minister of Education to inform him that the Swan Valley School Board had not agreed to institute the French immersion program for the following reasons:

1. The Board feels the introduction of French immersion will be costly in the long run and because there is a great deal of violent opposition to the course in the community, the Board is reluctant to agree to the program's inception.
2. The Board feels there is an unequal opportunity for students in the rural setting of this Division. The program can be introduced in one centre only, which does not provide equal access to all students.
3. The Board does not feel the combination of Kindergarten and Grade 1 is an educationally viable situation. The petition representing thirty students does not warrant, in relation to English classes, the establishment of two classes of French. The Board is in fact questioning the interpretation of the word "class" in s. 79(3) of the Public Schools Act.²⁴

In the meantime, Trustee Bourgeault persisted. At the Board meeting on May 10, 1982, Art Bourgeault gave notice that he would move, or cause to be moved, that the matter of instituting a French immersion program be reconsidered at the next Board meeting on May 31, 1982.²⁵

On May 13, 1982, Ron Duhamel, Deputy Minister of Education responded to Pernisie's earlier request to the Minister on April 29, 1982, having already forwarded a copy of his reply to the School Board on May 11, 1982. Duhamel informed Pernisie that s. 79(3) and s. 79(4) of The Public Schools Act were relevant to the issue and he cited

them in full text. Also, on the advice of the departmental solicitor and his own staff, Duhamel assured Pernisie that s. 79(3) and s. 79(4) of the Act required Swan Valley School Division No. 35 to provide the French immersion program as requested. Duhamel offered Pernisie this explanation:

As you will note, these sections deal with implementation of the program. My staff and the departmental solicitor advise me that when a proper request is made, there is no uncertainty about a school board being required to provide a class for instruction at whatever grade level that is petitioned.²⁶

Duhamel also suggested that Pernisie find a way to resolve the political situation in Swan River at the local level. Significantly, however, Duhamel did not give any indication as to whether or not the Minister was inclined to use, if necessary, the discretionary power available in s. 79(4) of The Public Schools Act, to compel the School Board to implement the French immersion program requested.

On May 18, 1982, John Kastrukoff acknowledged receipt of a copy of Duhamel's reply to Lynn Pernisie (May 13, 1982) and informed the Deputy Minister of Education that his letter would be placed on the agenda of the next Board meeting, scheduled for May 31, 1982. Kastrukoff also advised the Deputy Minister that there was a notice of motion recorded in the Minutes of the Board meeting on May 10, 1982, calling for a reconsideration of the matter of the French immersion program.²⁷ On May 21, 1982, Lynn Pernisie contacted Jack Coulthart, Secretary-Treasurer of Swan Valley School Division No. 35, to ask that she be included on the agenda of the Board meeting scheduled for May 31, 1982, in order to discuss Duhamel's letter as well as the possibility of implementing the French immersion program as requested with the members

of the School Board.²⁸

On May 31, 1982, the Swan Valley School Board considered Duhamel's letter and discussed the immersion program with Lynn Pernisie. Further, Art Bourgeault moved that the Board reconsider its decision not to implement the French immersion program as requested. By vote, the board again refused and gave as its reason the concerns cited earlier by Kastrukoff in his letter to Duhamel on May 1, 1982.²⁹

On June 1, 1982, John Kastrukoff advised Ron Duhamel that a copy of the Deputy Minister's reply to Pernisie, dated May 13, 1982 had been brought to the attention of the Board of Trustees on May 31, 1982. Kastrukoff said that the Board had decided not to implement the French immersion program because its three main reasons for refusing to do so had not changed. Kastrukoff's comments to the Deputy Minister suggest that despite the Board's misgivings about the educational viability of a combined kindergarten and grade one French immersion class, he felt that the Board was, in fact, legally obligated to institute the French immersion program as requested:

Having pointed out my assessment of the reasons for the Board's actions to date, I feel also that the Board is aware of its legal obligations.³⁰

On June 7, 1982, at a Special Meeting of the Board of Trustees, Art Bourgeault moved to have the Minister of Education petitioned for a change in s. 79(3) of The Public Schools Act which would enable the Board to discontinue the French immersion program [subsequent to its implementation] "for lack of support, lack of a teacher or lack of financial resources should circumstances warrant such a move."³¹ The Board defeated this motion. Trustees Robinson and Thera then moved to have the Minister of Education petitioned in order to have the compulsory aspect of s. 79(3) of the Act removed. The

motion passed.³² The passage of this motion by all except Bourgeault would seem to suggest that the Board recognized that its decision not to implement the French immersion program was "illegal" but that the Board was prepared, nevertheless, to challenge the legislation in the Manitoba courts, if necessary.

On June 14, 1982, Maureen Hemphill, Minister of Education responded to a letter, dated June 1, 1982 from David Brown, Chairman of the Board of Trustees, which reiterated the Board's main reasons for deciding not to implement the French immersion program requested by Pernisie and her co-petitioners. The Minister cited s. 79(3) of The Public Schools Act and observed:

Your letter indicates that the petition represents 30 students. Therefore, I would encourage the Board to provide instruction in this particular case.³³

And:

I want to emphasize that the Bureau de l'Education française is presently available to assist you in the implementation of your immersion program. Please feel free to call upon them at any time for the assistance you require.³⁴

And further:

I have noted particularly your concerns about the combination of grades and I have instructed my staff to look into this matter further. I assure you that it will be examined carefully.³⁵

Hemphill's letter, encouraging the School Board to approve the implementation of the French immersion program in this particular case was placed on the agenda of the next Board meeting scheduled for June 28, 1982. On June 22, 1982, Lynn Pernisie informed Jack Coulthart, Secretary-Treasurer of Swan Valley School Division, that she and a group of supporters would like to be included on the agenda for the next Board meeting on June

28, 1982, in order to discuss Maureen Hemphill's reply to David Brown, Chairman of the Board of Trustees.³⁶ On June 28, 1982, at the scheduled meeting of the Board, Art Bourgeault and C. Robinson moved that the letter from the Minister of Education which outlined the requirements of s. 79(3) of The Public Schools Act, "as it relates to the receipt of a petition from the parents of twenty-three or more pupils for implementing a French immersion program and encouraging the Board of Trustees to provide instruction of French immersion in this particular case, be received and the immersion program be approved for implementation."³⁷ The Swan Valley Trustees voted six to four against the motion.

THE REQUEST FOR A FRENCH IMMERSION PROGRAM IN THE MANITOBA COURTS

On July 6, 1982, as a result of the School Board's intransigence, Lynn Pernisie asked attorney Sidney Green to initiate court action against Swan Valley School Division No. 35 in order to resolve the conflict in her favour. For Pernisie, the possibility of resolving the conflict without litigation was no longer an option:

...by the end of the school year the Board had absolutely refused, despite our many requests, petitions and presentations and even a letter from the Minister of Education's office and a visit from Ron Duhamel's Assistant. He came up there also, and spoke to the Board. Because they had simply refused to implement the program even after all of this, it was either we back down and admit a defeat, or we took court action. If there had been any other option, I would have taken it.³⁸

Sidney Green did not file a Notice of Motion in the Office of the Deputy Clerk of the Crown and Pleas in Dauphin, Manitoba until July 23, 1982. Up to this point, there was still time left for the parties involved to try to resolve the political situation in Swan River

without litigation, in the opinion of the Department of Education. Therefore, on July 13, 1982, Leonard Floyd, Director of Administration, Department of Education, met with the Swan Valley School Board to discuss the Board's reasons for not agreeing to the request of the Minister in her letter of June 14, 1982.³⁹ However, the meeting did not alter the School Board's position and, consequently, the court action against the School Division proceeded.

The Ruling of the Court of Queen's Bench

On July 23, 1982, Sidney Green filed an Originating Notice of Motion on behalf of Lynn Pernsie and on behalf of the parents who had petitioned the Board requesting the use of French as the language of instruction in respect of those pupils identified for the immersion program. Subsequently, On August 5, 1982, Pernsie made application to the Court of Queen's Bench for an order of mandamus, which would require Swan Valley School Division No. 35 to implement the French immersion program as requested.

Prior to the litigation in the Manitoba Court of Queen's Bench, counsel for both parties agreed that, to facilitate matters, viva voce (oral) evidence would be presented in order to allow the School Division to implement the French immersion program by September 1, 1982, if so ordered. Justice Hamilton gave his Oral Judgement in Pernsie v. Swan Valley School Division No. 35 on August 5, 1982. He dismissed the application against the School Division, and concluded that the decision of the Swan Valley Board of Trustees not to accede to the request of the parents was one taken within jurisdiction, and was made fairly, and in good faith with due regard to the provisions of The Public Schools Act.⁴⁰

The Ruling of the Manitoba Court of Appeal

On August 10, 1982, following the ruling of Justice Hamilton in the Court of Queen's Bench, Sidney Green submitted a Notice of Appeal to ask the Manitoba Court of Appeal to reverse the decision of Hamilton, on behalf of the appellant, Lynn Pernisie, on the grounds that the Judge had mistakenly decided that under s. 79(3) of The Public Schools Act, "the School Division has a non-reviewable authority to determine whether or not twenty-three or more pupils may be grouped in a class for instruction, and in failing to find that the said question is one upon which evidence may be received and the Court adjudicate",⁴¹ and additionally, on the grounds that the Judge "erred in failing to find, as the evidence disclosed, that the pupils involved were such as may be grouped in a class for instruction."⁴²

On August 27, 1982, the Court allowed the appeal and ordered Swan Valley School Division No. 35 to group the twenty-nine pupils in a class for instruction and to provide for the use of French as the language of instruction in the class. Further, the Court of Appeal ordered the School Division to pay Pernisie her costs of the court proceedings.

NOTES TO CHAPTER 3

- ¹ Lynn Pernisie, letter to Jack Coulthart, 2 March, 1982.
- ² Lynn Pernisie, telephone interview with author, 30 May, 1991.
- ³ John Kastrukoff, letter to Maureen Hemphill, 3 March, 1982.
- ⁴ Lynn Pernisie, telephone interview with author, 12 January, 1991.
- ⁵ Lynn Pernisie, telephone interview with author, 30 May, 1991.
- ⁶ Lynn Pernisie, letter to Maureen Hemphill, 29 April, 1982.
- ⁷ Lynn Pernisie, telephone interview with author, 12 January, 1991.
- ⁸ John Kastrukoff, "Superintendent's Progress Report on French Immersion, 17 March, 1982.
- ⁹ John Kastrukoff.
- ¹⁰ Guy Roy, letter to John Kastrukoff, 25 March, 1982.
- ¹¹ Guy Roy.
- ¹² John Kastrukoff, "Superintendent's Report on French Immersion", 7 April, 1982.
- ¹³ John Kastrukoff.
- ¹⁴ John Kastrukoff.
- ¹⁵ John Kastrukoff.
- ¹⁶ John Kastrukoff, "Superintendent's Report on French Immersion", 21 April, 1982.
- ¹⁷ John Kastrukoff.
- ¹⁸ John Kastrukoff.
- ¹⁹ John Kastrukoff.

²⁰ Art Bourgeault, letter to The Board of Trustees and to The Honourable Maureen Hemphill, Minister of Education, 28 April, 1982.

²¹ Art Bourgeault, telephone interview with author, 9 June, 1991.

²² Art Bourgeault.

²³ Lynn Pernisie, letter to Maureen Hemphill, 29 April, 1982.

²⁴ John Kastrukoff, letter to Ron Duhamel, 1 May, 1982.

²⁵ Swan Valley School Division No. 35. Minutes. Regular Meeting, The Board of Trustees, Swan River, Manitoba, 10 May, 1982.

²⁶ Ron Duhamel, letter to Lynn Pernisie, 13 May, 1982. For the full text of subsections 79(3) and 79(4) see Appendix F, Bill 31 (1980).

²⁷ John Kastrukoff, letter to Ron Duhamel, 18 May, 1982.

²⁸ Lynn Pernisie, letter to Jack Coulthart, 29 May, 1982.

²⁹ Swan Valley School Division No. 35. Minutes. Regular Meeting, The Board of Trustees, Swan River, Manitoba, 31 May, 1982.

³⁰ John Kastrukoff, letter to Ron Duhamel, 1 June, 1982.

³¹ Swan Valley School Division No. 35. Minutes. Special Meeting, The Board of Trustees, Swan River, Manitoba, 7 June, 1982.

³² Minutes., 7 June, 1982.

³³ Maureen Hemphill, letter to Lynn Pernisie, 14 June, 1982.

³⁴ Maureen Hemphill.

³⁵ Maureen Hemphill.

³⁶ Lynn Pernisie, letter to Jack Coulthart, 22 June, 1982.

³⁷ Swan Valley School Division No. 35. Minutes. Regular Meeting, The Board of Trustees, Swan River, Manitoba, 28 June, 1982.

³⁸ Lynn Pernisie, interview with author, 12 January, 1991.

³⁹ Winnipeg Free Press, 22 July, 1982.

⁴⁰ Pernisie v. Swan Valley School Division No. 35 (1982) 18 Man. R. (2d) 411.

⁴¹ Pernisie v. Swan Valley School Division No. 35 (1982), "Appeal Book of the Applicant," Suit No. 259, p. 2.

⁴² *Ibid.*

CHAPTER 4

ANALYSIS AND INTERPRETATION OF THE CASE

The purpose of this chapter is to explain the controversy in Swan River using the categories of analysis and interpretation identified earlier, namely, the interests and objectives of the actors, the issues, the political resources of the actors, and the outcome and its consequences. Unlike the preceding chapter which presented the origin, development and outcome of the case in essentially narrative form, this chapter attempts to provide an explanation of Pernisie v. Swan Valley School Division No. 35 in its political and legal aspects. Consequently, special attention will be given to the expressed perceptions, opinions and judgements of the actors involved in the controversy, to the legal arguments of the parties involved, and to the legal reasoning of the Manitoba courts.

THE INTERESTS AND OBJECTIVES OF THE ACTORS

In politics, to say that an individual or group of individuals has an interest or interests is to say that they have a particular view, attitude or opinion about what is to be won or lost through political activity. What interests, therefore, did each of the key actors bring to the French immersion controversy in Swan River?

The Interests and Objectives of Lynn Pernisie and her Co-Petitioners

Lynn Pernisie's immediate objective in Swan River was to secure a French immersion program in order to ensure the benefits of a French immersion education for her children.

...my concern was that our children would have the opportunity to take their education in French immersion as they had done in Winnipeg. This

was not an option in Swan River and it became my objective to try to get a French immersion program in Swan River.¹

Pernisie's desire to secure a French immersion program extended beyond the scope of her own family to include all Canadian children, in general.

I definitely was very interested in the opportunities down the road that hopefully would open up to bilingual Canadians--whether they would want to travel abroad, or whether they would want to work in Canada, or whether [they would be] employed in the Forces or the government. There's lots of private companies where a second language would be very beneficial.²

Furthermore, it was Pernisie's opinion that any French immersion program to be offered by the School Division must be equal in quality to that offered by school divisions in large urban centres like Winnipeg, to ensure that students would receive the same career opportunities.

I guess I just hoped that the School Division in Swan River would be better for having the French immersion program, and that people can look back, years down the road and feel that it was well worth the effort put into it, so that the children can have a second-language opportunity and, hopefully, the same opportunity students have in the larger centres.³

Lynn Pernisie was not the first parent in Swan River who wanted to see an improvement in the opportunity for second-language instruction provided by Swan Valley School Division No. 35. According to Art Bourgeault, a concerted effort by parents and teachers to get the School Board to improve the quality of French language instruction provided by the School Division actually began in 1979-1980. Each time however, the Board refused.

...I think it started back in 1979 or 1980. The Taylor School Parent - Teacher Council held some meetings, and they did a survey and communicated with the Board, and met with the Board, and tried to get the Board to look at a core French program or some hours of instruction in the

lower grades or some increase [in instruction time]. It [the response of the Board] was negative. The Board cited reasons of cost, lack of facilities like washrooms and problems with transportation.⁴

Bourgeault also thought that the initiative for French immersion came from parents within the School Division, not from parents outside the Division.

French immersion or the initiatives to put in French immersion may have resulted from decisions dating back further, when the request to expand French language instruction in the school division [1979-1980] and implement a core French program, or even something along that line was rejected [by the Board].... Parents in the school division wanted to see the level of French language instruction improved, and those were some of the people that got involved with French immersion, I believe, but they weren't all the same people.⁵

It was against this background of failed attempts that Lynn Pernisie launched a campaign to establish a French immersion program in Swan River.

Pernisie's initial objective was to require, through legal petition, the School Board of Swan Valley School Division No. 35 to implement a French immersion program at the grade one level by September 1, 1982. However, some of the parents associated with Pernisie wanted the Board to implement a French immersion program at the kindergarten level, also to commence on September 1, 1982. As noted earlier, neither of the petitions requesting French immersion at the kindergarten or grade one level bore a sufficient number of signatures to require the School Board to provide two separate classes of French immersion. Accordingly, the two groups of parents had agreed to combine their signatures and to request that the Board combine kindergarten and grade one in one class with French as the language of instruction, based on a total of twenty-nine signatures. Ultimately, however, Pernisie's main objective was to recruit "enough children for a full class of 23 each [a separate kindergarten class; a separate grade one class] by fall."⁶

Failing that, Pernisie's objective and that of the other petitioners was to require the School Board to implement a combined kindergarten and grade one class with French as the language of instruction. Finally, when the School Board of Swan Valley School Division No. 35 voted not to approve the implementation of the French immersion program as requested, Pernisie aimed to make the School Trustees aware that they could not ignore parental concerns. Inevitably, Pernisie came to realize that a local school board which refused to provide a French immersion program, when the parents concerned had satisfied the conditions set out in the relevant section of a provincial statute, had to be faced with strong pressure and, if necessary, legal imperatives:

...if parents really feel strongly about wanting something in their school division, then the Board can't simply refuse to do it, if the parents are within their right.... We were within our rights and the school board chose to deny that we were right.... Parents do have a voice and they shouldn't back down.⁷

The Interests and Objectives of Swan Valley School Division No. 35

The immediate objective of the School Board was to avoid having to implement a combined kindergarten and grade one class with French as the language of instruction. The Board's reasons for resisting the parents' request were several. The Board argued that the cost of implementing the immersion program was, "excessive"; that there was "violent opposition" to the introduction of the immersion program which threatened to divide the community and that students from the rural setting would not have "equal access" to a French immersion program located in the town of Swan River. Also, a combined kindergarten and grade one class was not "educationally viable", in the Board's view. Further, the Board believed that the word "class" in s. 79 (3) of The Public Schools Act

actually meant grade, in which case, the School Board thought that it did not, on the wording of the Act, have to implement the kindergarten program as requested.⁸

The School Board of Swan Valley School Division No. 35 had been asked to grant parents' requests before, most notably, in 1979-1980, when the Parent - Teacher Council of Taylor School requested that the Board provide more instruction time for French. The Board refused. When Lynn Pernisie and her co-petitioners requested that the Board combine kindergarten and grade one in one class with French as the language of instruction, the Board refused once again. In Bourgeault's opinion, the School Board should have approached the parents' request differently.

...the best course of action, I think, should have been to approach it from an objective basis and to try and meet the needs of the parents, and the needs of the school in terms of cost and scheduling and whatever. But, to try and make an honest effort at making it happen, rather than just coming up with the negative side of it.... Once they were petitioned duly in accordance with the legislation, in effect at that time, I think it was irresponsible of them not to respond appropriately....⁹

And further:

The Board cited reasons of cost, lack of facilities like classrooms; also talked about using temporary classrooms and having difficulty servicing them with washroom facilities or links to the rest of the facility.... The best course of action should have been to try and make an honest effort at making it happen.¹⁰

According to Bourgeault, the School Board purported to have an interest in improving the quality of education offered by the School Division. Yet the practice of the Board, at least in Bourgeault's opinion, did not support that claim. Bourgeault also described the Board as "a type of bureaucracy...."¹² This suggests that the Board not only had its own agenda but, as a bureaucracy, it's inclination was to resist the imposition of

any group or groups, including parents, because the Board was not willing to share the matter of educational programming with anyone. Nor was the Board willing to risk a diffusion of power by having certain groups participate in educational decision-making.¹³ Like Pernisie, Bourgeault believed that the majority of the School Trustees blocked every attempt to improve the level of French language instruction provided by the School Division because the Board operated under the assumption that it alone had an absolute discretion to determine what programs the School Division would or would not offer, even though, in the case of Pernisie and her co-petitioners, the conditions of s. 79(3) of the Act had been met in law. In this regard, the comments of Ed Hart, a Swan Valley School Trustee, concerning the unanimous decision of the Manitoba Court of Appeal are both interesting and enlightening. As the spokesperson for the Board, Hart's comments confirmed the accurate perception of Bourgeault and Pernisie: "It [the decision of the Court of Appeal] will allow the tail to wag the dog because a few people can dictate to a board what programs to offer."¹⁴ Also, the School Board's own motions reveal its enduring motivations. For example, on June 7, 1982, at a Special Meeting of the Board of Trustees, Swan Valley Trustees Robinson and Thera moved that the Minister of Education be petitioned in order to have the compulsory aspect of s. 79(3) of The Public Schools Act removed. As indicated previously, that motion was carried by all except Bourgeault, which would seem to suggest that the Board recognized that its decision not to implement the French immersion program was illegal, and that the Board preferred to challenge the legislation in the Manitoba courts rather than let a group of local parents "dictate" to the Board what programs it must offer. Furthermore, the following comments

made by John Kastrukoff, Superintendent of Swan Valley School Division No. 35 in his letter to Ron Duhamel, Deputy Minister of Education on May 1, 1982, clearly suggest that the Board was legally obligated to implement the French immersion program as requested:

It is my feeling that if a letter over the signature of the Minister of Education were sent to the Board stating simply that the Board was obligated legally to institute the program and there was no choice, the matter would be resolved.¹⁵

However, the Minister of Education did not order the School Board to implement the French immersion program, as she could have done under the provision of s. 79 (4) of The Public Schools Act. Instead of notifying the Board that it had "no choice" but to implement the French immersion program, as Kastrukoff had suggested, the Minister wrote to the Swan Valley School Board in order to "encourage" them to implement the French immersion program in this particular case. By adopting what Lynn Pernisie has described as a "passive approach" to resolving the political situation in Swan River, the Department of Education may have fostered the Board's intransigence and further strengthened its resolve not to implement the French immersion program as requested. The Minister's decision not to intervene in order to resolve the French immersion controversy, once and for all, undoubtedly served to reinforce the Board's perception that its intransigence might achieve a result which favoured its position. In some respects, it appears that the Board was advantaged politically (but, ultimately, disadvantaged legally) by the less-than-forceful stance of the Minister of Education and her Department. When Ron Duhamel, Deputy Minister of Education told John Kastrukoff, Superintendent of the School Division privately that "you know you [The Board of Trustees] are gonna spend a whole lot of money [and] you're gonna lose; I'm telling you that right now,"¹⁶ Maureen

Hemphill did not publicly reinforce the judgment of her Deputy Minister. It is, therefore, not entirely surprising that the School Board may have thought its case was stronger than it actually was. In reality, the Board's political perseverance proved to be insufficient in the face of legal adjudication in the Manitoba Court of Appeal. The ultimate political objective of the School Board to preserve its discretion was frustrated by the legal decision which Pernisie and her co-petitioners obtained in the Manitoba Court of Appeal.

The Interests and Objectives of the Minister of Education and her Department

The immediate objective of the Department of Education was to see that the parental request for a combined French immersion class, made in accordance with s. 79(3) of The Public Schools Act, was approved by the School Board of Swan Valley School Division No. 35 and implemented. However, from the outset, the School Board resisted the Department's efforts to obtain this objective and the Department was singularly ineffective as a provincial bureaucracy in the face of this resistance. Moreover, the Board appeared willing to resist the parents' request indefinitely. Increasingly, it became evident to the Department of Education that the Board was prepared to challenge s. 79(3) of the Act in the courts, if necessary.

It is entirely possible that the general political objectives of the Minister of Education and the Government of Manitoba largely determined the extent of the Department's "political" activity on behalf of Pernisie and her co-petitioners. Maureen Hemphill's interest in multiculturalism was a matter of public record in 1982. According to her Deputy Minister of Education, Ron Duhamel, the Minister "had a great deal of interest in this concept of multiculturalism and perhaps even saw French as part of the

multicultural group".¹⁷ As the Minister of Education, Hemphill pledged the Provincial Government's commitment to the expansion of second-language education, including French immersion in the public school system. During the early 1980s, the expansion of French immersion education in public school systems across Canada was widespread, particularly in large urban centres like Winnipeg. This was not the case in the rural and northern communities in Manitoba. The controversy in Swan River should have provided the opportunity to rectify that situation. However, as Henri Grimard, Director of Support Services Branch for the B.E.F. pointed out, "in Manitoba we probably have the most decentralized system in Canada. Local [school board] autonomy is a sacred cow".¹⁸ Consequently, while the immediate objective of the Department of Education was to get the Swan Valley School Board to implement the French immersion program, the Department was also interested in preserving the unique relationship which existed between itself and school boards throughout Manitoba. Therefore, the Minister of Education needed to determine carefully the consequences of her own and her Department's political activity on behalf of Pernsie and her co-petitioners. Henri Grimard's remarks strongly suggest that, if the Minister of Education decided to order the Swan Valley Board to implement the French immersion under the provisions of s. 79(4) of The Public Schools Act, other school boards watching would have perceived the Department's intervention as an abrogation of local school board autonomy. Despite the fact that s. 79(4) allowed for Ministerial intervention, such an initiative was to be guarded against. Ron Duhamel's suggestion to Pernsie that "...matters of this nature are best resolved at the local level"¹⁹ was, among other things, a way of protecting the partisan

political interests of the Minister in the French immersion controversy in Swan River. As

Duhamel has elaborated:

Remember this...our job is bureaucracy, including the deputy minister's, and to try to sense when the minister should be involved or should not be involved. Very often, you don't involve elected people when its not going to have a political payoff, you know, a benefit to their part....Then you're always wondering about the next election....²⁰

Finally, the Department of Education was interested in resolving the French immersion controversy quickly, albeit in Pernisie's favour, in order to lessen the impact of language conflict on the community. Language conflict, according to Ron Duhamel, "is to be avoided if you can, because it really rips communities apart. There is very little rationality in the debate -- it's emotional."²¹ It would appear, therefore, that the primary objective of the Department of Education in Swan River was to avoid engaging in any overt political activity on behalf of Pernisie and her co-petitioners and against the School Board. For this reason, the Department continued to encourage rather than require the School Board to implement the French immersion program as requested so that a resolution of the conflict could be achieved entirely at the local level.

In the event that Pernisie and her co-petitioners did decide to seek legal adjudication of the political conflict in the Manitoba courts, Ron Duhamel assured Pernisie on May 13, 1982, that, in the opinion of the Departmental lawyer, the parents' request for a combined French immersion program was proper, legal and obliged the School Board to implement the program. Thus, the Department of Education was confident that court adjudication would favour Pernisie, in which case the interests of Pernisie and her co-petitioners as well as those of the Minister of Education, her department and the

Government of Manitoba would be advanced. Further, in the unlikely event that court adjudication favoured Swan Valley School Division No. 35 instead, the political viability of the Minister and the Department of Education would not be seriously jeopardized. Clearly, the political judgment of Maureen Hemphill was one which favoured a departmental presence but not a heavy political hand in the French immersion controversy. Such a judgment was politically astute from the point of view of partisan and departmental interests.

THE ISSUES

Issues represent the stakes in the political situation, and they affect the way it evolves. It is fundamentally important to see how the opposing actors themselves perceive and define the stakes in order to better understand how the political situation in Swan River developed. Furthermore, when political issues are resolved through litigation, they are redefined as legal issues which affect the way they are resolved. Therefore, it will be important to see how the Manitoba courts viewed the controversy and, especially, to understand the legal reasoning which ultimately resolved the controversy.

The Political Issues

It was Lynn Pernisie's opinion that "French immersion program[s] should be available for students anywhere in Canada...and hopefully, the benefits it [French immersion] would bring them...."²² Consequently, what was at stake in Pernisie's view and that of her co-petitioners in Swan River were "the [career] opportunities down the road that hopefully would open up to bilingual Canadians...."²³ Pernisie was particularly concerned that the lack of a French immersion program in Swan River disadvantaged the

monolingual, English-speaking graduates of Swan Valley School Division No. 35 in terms of employment opportunities outside the community, elsewhere in Canada or abroad.

Also, at stake, in Pernisie's view was the legal right of parents to require a local school board to provide a French immersion program which they especially wanted for their children. Said Pernisie:

I guess...in terms of French immersion, for the School Board to just refuse to cooperate with parental requests, when they felt that they wanted this opportunity for their children to have French immersion...and for the School Board to be able to deny that, or not to have to comply with those wishes, I think that certainly would have been a very sad situation.²³

And further:

...if parents felt strongly about wanting something in their school division, that the board can't simply refuse to do it, if the parents are within their rights.²⁵

Thus, the political issue in the French immersion controversy, from Pernisie's viewpoint, was whether or not the School Board of Swan Valley School Division No. 35, or any school board for that matter, could obstruct the implementation of a French immersion program requested by parents in accordance with the provisions of s. 79(3) of The Public Schools Act.

From the School Board's viewpoint, the implementation of a combined kindergarten and grade one French immersion program in Swan River involved several issues. As noted earlier, these included: the "excessive" cost of implementing a French immersion program over the long term; the "violent" opposition to the introduction of French immersion in Swan River which threatened to divide the community; the "lack of equal access" of rural students to the French immersion program which could be

introduced in one location only; concern that the combination of kindergarten and grade one in one class was "not an educationally viable situation"; and, in general, the threat to School Board discretion in program implementation if petitions, in themselves, required the Board to act against its own reservations.

Neither Lynn Pernisie nor the Department of Education thought that the issues defined by the School Board were the real issues. In fact, it was Ron Duhamel's opinion that the issues defined by the Board "were attitudinal issues and they [the real issues] were camouflaged."²⁶ Similarly, Art Bourgeault strongly suggested that the issues defined by the Board were not "honest".²⁷ In Bourgeault's opinion, the real issues had to do with the School Board's unwillingness to provide quality education... "and [the Board's] resistance to change."²⁸

Whether or not the School Board could properly resist the request of Lynn Pernisie and her fellow-petitioners seems to have been the real and fundamental issue which all the key actors came to recognize when Pernisie initiated legal action and the School Division became the respondent in the Manitoba courts. In essence, the political contest between Pernisie and the School Board, a contest which the Minister and her officials had attempted to moderate and resolve locally, became a narrow legal issue: Did the School Board of Swan Valley School Division No. 35 have a duty under s. 79(3) of The Public Schools Act to implement the French immersion program as requested? In the Manitoba Court of Queen's Bench, the answer provided to this question favoured the School Division. However, on appeal, the Manitoba Court of Appeal ruled in favour of Pernisie. A careful look at each of these court rulings will show what legal considerations and what

legal reasoning ultimately decided the controversy in favour of Pernisie.

The Legal Issue in Court of Queen's Bench

Justice Hamilton prefaced his legal reasoning by observing that the jurisdiction of the court in Pernisie v. Swan Valley School Division No. 35 was restricted to a consideration of the provisions of the statute involved and the actions of the School Trustees related thereto. Therefore, Hamilton did not deal with the issues which the Board cited as its principal reasons for not granting the parents' request. In Hamilton's view, the legal issue in the case was defined by s. 79(3) of The Public Schools Act: Did the Act require the School Trustees to implement the parents' request or did they have the discretion to decline the parents' request as they did? In other words, Hamilton would need to determine whether the School Board had a duty rather than a discretion to implement the French immersion program before an order of mandamus could be issued against the School Division. To make that judgment would require an interpretation of s. 79(3) of the Act. In fact, Hamilton concluded that the meaning of the words "pupils who may be grouped in a class for instruction" was ambiguous and could be subject to one of two interpretations. Thus, if one took the broadest interpretation of the word "may" in s. 79(3), then the School Board would be required to establish a French immersion class whenever requested by the parents of twenty-three or more pupils. The other way of interpreting the words "pupils who may be grouped in a class for instruction" would be that the grouping of two different grade levels was entirely at the Board's discretion. Hamilton concluded, therefore, that s. 79(3) failed to provide any guidance regarding which of the two interpretations was intended to apply in the case

before the court. As a result, Hamilton sought the opinions of other judicial authorities involved in the adjudication of cases concerning the discretion accorded school boards by statute. Hamilton also examined the provisions of The Public Schools Act related to school board powers to see if additional guidance could be found there, as to how s. 79(3) should be interpreted. Hamilton referred to Patrick v. Yorkton School District Trustees in which Morse said:

...so long as the trustees act bona fide and to the best of their judgment for the purpose of securing the better conduct or more efficient management of the schools under their charge, their discretion in these respects...cannot be interfered with.²⁹

Hamilton also noted that s. 41 (1) (p) of The Public Schools Act stated:

Every school board shall a) provide adequate school accommodation for the resident persons who have the right to attend schools as provided in Section 259.³⁰

And further:

41 (4) Every school board shall provide or make provision for education in Grades I to XII inclusive for all resident persons who have the right to attend school.³¹

Hamilton decided, therefore, that the Swan Valley School Board had the right to determine what type of schools would be provided and what grades would be taught in the various schools under its jurisdiction. Hamilton did not deal with the question of whether or not kindergarten pupils were entitled to attend school. Instead, Hamilton ruled that:

...it would strain the wording and intent of Section 79(3) to hold that parents of twenty-three or more pupils could require the Board to make such a combination of grades or classes the parents thought appropriate to meet the number of students specified, for the use of a language other than the one selected by the Board.³²

And therefore:

...unless the parents can bring themselves clearly within the section [s. 79(3)], the School Board has the discretion to establish the use of whatever language of instruction it determines appropriate....In my opinion, there is nothing in The Public Schools Act that enables parents to require a board to combine grades. That matter, in my opinion, is totally within the discretion of the School Trustees.³³

In his concluding remarks, Hamilton said that, in his opinion, the School Board had an absolute discretion whether or not to grant the parents' request, and that the Board also possessed a non-reviewable authority in this matter. Hence, there was no need to examine the allegations that the Board had acted on irrelevant considerations. Nor could the Board have acted unfairly or in bad faith in this matter, because it had an absolute discretion to do what it did.³⁴

The Legal Issue in the Court of Appeal

Justice O'Sullivan explained that the task of the Court of Appeal was to determine whether or not Hamilton was wrong in concluding that the court should not review the evidence to see if the conditions of s. 79(3) of The Public Schools Act had been met in law. If it could be demonstrated that kindergarten and grade one pupils could be reasonably grouped in a class for the purpose of receiving their instruction (in French or English), then the School Board's decision that such a combination was impossible (not an educationally viable situation) was basically wrong. In that event, the evidence presented before the Court of Appeal would be reviewed. Further, if the court determined that the conditions of s. 79(3) of the Act had been met in law, then the court needed to decide whether or not the decision of the School board not to implement the French immersion program was one made within its jurisdiction.³⁵

John Kastrukoff, Superintendent of the School Division testified that, in the school year of 1980-81, the School Division attempted to implement a combined kindergarten and grade one class with English as the language of instruction (in Mafeking). Kastrukoff observed that "our experience wasn't too favourable in that the staff and parents felt that this was not a viable educational combination and insisted that the combination be split".³⁶

Kastrukoff further explained that:

Our experience has been in the attempt that we made to combine those two grades, that it just didn't work because the kindergarten student [s], being the age they are, are simply not capable of working on their own; that is, they need the full-time attention of the teacher.³⁷

And further:

The situation improves, as you can understand, as the children get older because you can give them instruction, give them an assignment, or a work-sheet, to keep...their attention span for five or ten minutes while you deal with the other group. This, in my opinion, is not possible with kindergarten and in the opinion of the staff that tried it....³⁸

When asked by Robert Simpson, the School Division's lawyer, to comment upon a combined kindergarten and grade one class in which French was the language of instruction, Kastrukoff remarked:

I haven't had experience with instructing kindergarten in French, but I have had experience in instructing in English, students who didn't understand English when they came to school...this was some years ago...and my experience had been that it took those children two years in it before they progressed to the next grade.³⁹

When asked by Sidney Green, counsel for Lynn Pernisie, what his recommendation to the Board was concerning the viability of a combined kindergarten and grade one class, Kastrukoff said that he had "suggested that it wasn't viable [or] educationally sound."⁴⁰

Earlier, the court heard evidence given by Ernest Molgat, Curriculum Consultant

in French immersion at the B.E.F., in support of a combined French immersion program. He testified that, it was, in fact, feasible to group kindergarten and grade one students in one class in order to receive instruction. Further, when Sidney Green asked Molgat whether it was just as feasible to group children in kindergarten and grade one in order to receive their instruction in French or English, Molgat replied that, "it's just as feasible in French as it is in English, yes."⁴¹ Under cross-examination by Robert Simpson, Molgat testified that there was at least one combined kindergarten and grade one French immersion class in operation and functioning at that time. Said Molgat:

I believe that the class has now reached five and six, so one part of the class will be going into grade seven next year, and that probably means that it will be regrouping with other students at the grade seven level so that particular class did go through with a program as a combined class.⁴²

Based primarily on the evidence presented by Molgat, the Court of Appeal ruled that, if combined classes were working in other school divisions, there was no reason to think that they would not work in Swan River. O'Sullivan concluded, therefore, that Hamilton was wrong in holding that the court should not review the evidence to see if the conditions of s. 79(3) were met in law. Clearly, if the court found that the conditions of s. 79(3) had, indeed, been met in law, then it was not within the jurisdiction of the Board to refuse to implement the French immersion program as requested.

The counsel for the School Board, Simpson, made a further submission with which Hamilton did not expressly deal. Simpson referred the Court to the decision of Kroft, J., in Winnipeg School Division No. 1 v. MacArthur (1982), 14 Man. R. (2d) 386. In this regard, the Court of Appeal agreed with Kroft's decision that a local school board did have an absolute discretion whether it would or would not provide a kindergarten

program. O'Sullivan concluded, therefore, that the School Board of Swan Valley School Division No. 35 had no duty to establish a kindergarten program and that, if the School Board had not already established a kindergarten program, the parents of twenty-three or more children could not require it to do so either in French or English. However, the School Division did have a kindergarten program in operation, and, consequently, it must be operated according to law. Counsel for the School Division submitted that s. 79(3) of the Act must be limited to resident pupils, that is, pupils who were in grades one to twelve, and to whom the School Board was obligated to provide an education. O'Sullivan disagreed. Instead, he reasoned that such an interpretation would have meant giving a restricted meaning to the word "pupils" in s. 79(3) of the Act. O'Sullivan further reasoned that a school board did not have a duty to establish a kindergarten program but, if it did establish such a program, then the children who were eligible for the program must be regarded as pupils. In O'Sullivan's opinion, Swan Valley School Division No. 35 had a duty to educate those whom it has accepted as pupils. Thus, "pupils" in s. 79(3) "must mean those who are eligible to attend programs offered by the School Division and the term is not restricted to those who had a right to attend grades I to XII."⁴³

The result of this reasoning was that O'Sullivan, Freedman and Matas, the Court of Appeal Justices, unanimously agreed that the conditions of s. 79(3) of The Public Schools Act had been met in law. As a consequence, the School Board of Swan Valley School Division No. 35 had a duty, under s. 79(3) of the Act, to implement the French immersion program as requested. Therefore, Lynn Pernisie's appeal was allowed and an order of mandamus was issued against the School Board of Swan Valley School Division

No. 35 requiring it to comply with s. 79(3) of The Public Schools Act. Lynn Pernisie's persistence was rewarded; she had won her case.⁴⁴

POLITICAL RESOURCES AND CONSTRAINTS:

THE DYNAMICS OF THE POLITICAL SITUATION

A political resource is quite literally anything that can be used to influence the choices or strategies of another political actor. Because the influence of a certain individual or group is contingent on the availability of political resources (and how skillfully they are exploited), the distribution of political resources among the actors is crucial. Significantly, political resources have a genuine double-edged aspect. Political resources for some actors are political constraints for others, that is, political resources may be viewed as one actor's advantage but another's disadvantage. Constraints impose limitations on the ability of certain actors to influence others and to engage in strategies of political interaction. Constraints therefore, will affect an actor's choice of strategies, including his/her approach to the issue as well as the moves and countermoves the actor will use with an opponent or opponents. Consequently, it is important to identify those political resources which facilitated an actor's interests as well as the political constraints which effectively limited an actor's ability to advance those same interests. In this case, the following constituted significant political resources or constraints for the actors: existing legislation, the state of government policy, and allies.

Existing Legislation

While legitimating an actor's right to action, legislation also imposes jurisdictional

constraints upon the actors which limit their activities in a political situation. In this case, The Public Schools Act, and in particular, s. 79(3) of the Act, was more a political resource than a political constraint for Lynn Pernisie and her co-petitioners in Swan River. Subsection 79(3) was critical because it enabled Pernisie and her supporters to request that Swan Valley School Division No. 35 implement a combined kindergarten and grade one class with French as the language of instruction, subject to certain conditions which had to be met to give force to this request. First, parents who wished their children to receive their instruction either in French or English must petition their local school board to provide such instruction. Secondly, the conditions of s. 79(3) required that a minimum number of twenty-three pupils could be grouped in a class for the purpose of receiving their instruction in French or English. To the extent that this grouping might be subject to the School Board's judgment of viability or appropriateness, this requirement was a constraint upon the interests of Pernisie and her supporters. Pernisie believed that s. 79(3) of the Act would sustain her objective because, in her view and that of her co-petitioners, it imposed a legal obligation on the School Division to implement the French immersion program as requested. However, the Swan Valley School Board interpreted s. 79(3) differently than either Pernisie or the Department of Education. Instead, the School Division interpreted s. 79(3) to mean if, in the Board's opinion, the kindergarten and grade one pupils could be reasonably grouped in one classroom, then the School Division would provide the French immersion program as requested. Since the Board was of the opinion that such a grouping of kindergarten and grade one pupils was not educationally viable, it rejected the request for the immersion program consistent with the discretion the Board

believed it possessed under s. 79(3) of the Act. In essence, Swan Valley School Division No. 35 took s. 79(3) of the Act to mean that a local school board alone had an absolute discretion whether it would or would not provide certain programs because it could make that decision in light of local circumstances. Since s. 79(3) of The Public Schools Act had never been subjected to legal contest before, Pernisie and the School Board could interpret s. 79(3) of the Act in a manner intended to further the particular interests of each. Which interpretation should prevail? And which actor's interests would that interpretation advance or limit? Clearly, the judicial interpretation to be given to the legislation became politically momentous to the opposing parties.

The State of Government Policy

In September, 1982, Maureen Hemphill, Minister of Education reminded the public of the Government of Manitoba's commitment to the expansion of second-language education in the public school system. Said Hemphill:

Governments can't do it as well as you can, but we can help and support you and put it into the schools.⁴⁵

The Minister explained that the Department of Education was responding to the public's demand for more second language education. At the same time, Maureen Hemphill was cautious to point out that the Department would not normally mandate or dictate language policies to local school boards. Yet, there can be little doubt that the Minister of Education possessed the means to force Swan Valley School Division No. 35 to implement an immersion program in that school jurisdiction when that controversy arose earlier. Instead, it was the Minister's political judgment, in that instance, that the Department of Education should not exercise its jurisdiction in a heavy-handed way, until

the matter was adjudicated by the courts. Throughout the French immersion controversy in Swan River, the Minister was reluctant to act vigorously in a manner consistent with the longstanding language policy of the NDP Government. The Deputy Minister of Education at the time of the controversy, Ron Duhamel, explained the political considerations which he believed were important to the Minister of Education:

First, governments don't like conflict. Secondly, language conflict is to be avoided if it can [be], because it really rips communities apart. There is very little rationality in the debate....Then you're always wondering about the next election because you know, the NDP have quite a lot of support or did have in the French language group....And thirdly, there was a question of, if it [French immersion] were to be implemented against this kind of attitude, that would seem to be fairly strong, would it be successful [or] would it be sabotaged?⁴⁶

And also:

In this particular case, she would have had to come down very strong on the Board, which would have negative ramifications, or she could have come down very, very softly which would have had equally destructive ramifications for those people who were interested in French language education....⁴⁷

The political considerations enumerated by Ron Duhamel effectively limited both the type and degree of support which the Department of Education provided to Pernisie and her co-petitioners in Swan River. It also seems reasonable to suggest that the Department of Education took into account, as a political constraint, the nature of the relationship which exists between itself and local school boards in Manitoba. Therefore, the Minister of Education was extremely reluctant to do anything which might antagonize the School Board. As a consequence, the Department would not ally itself with Pernisie and her co-petitioners. Nor could the Department afford to be viewed as an intervenor by other school boards watching the political situation develop in Swan River. The

Government, then, was not disposed to compel the Swan Valley School Board to implement the French immersion program. Instead, the Department of Education and its representatives, at different points in time, sought to encourage the School Board to reconsider its position, to be mindful of the Minister of Education's advice and to implement the immersion program on its own initiative.

The political posture of the Minister was a disadvantage to Pernisie and her co-petitioners. While Pernisie came to understand that certain political considerations prevented the Department of Education from enforcing s. 79(3) of The Public Schools Act, she and the other parents involved with the controversy were frustrated by the somewhat ambiguous support which the Minister did provide. Indeed, Pernisie and her co-petitioners became very frustrated because of their initial belief that the Government would willingly force, by legal means, the Swan Valley School Board to provide the French immersion program as requested:

Actually, the Government's position was fairly passive, I would have to say.... At the time, I didn't understand why an act administered by the Government wasn't being enforced by the Government. However, it was pointed out to me, and of course I realized when I thought a little about it at that time, that although the Minister's office sent a letter of direction or encouragement to the School Division to implement the program, they would not say "Do it", because the School Board of course, is an elected body. Most parents don't stop to consider that angle, and I know many of the parents were frustrated by the lack of support from the Government.⁴⁸

Yet, there was one person whose support Pernisie did value throughout the controversy:

Ron Duhamel, who was the assistant to the Minister at that time was very encouraging and he was very helpful to me and he was very supportive, as supportive as he could be in his position. Maureen Hemphill was the Minister at the time: she supported us and sent a letter, but would take no action, she simply would do nothing more than that.⁴⁹

As a former chief executive officer in Ontario's school system, Ron Duhamel had personally experienced the political and legal repercussions generated by the introduction of French immersion education. Duhamel described the situation in Swan River, "as a power struggle. It was a board versus a little 'pressure group'...."⁵⁰ As the Deputy Minister of Education, Duhamel sought to avoid creating additional conflict in Swan River. Yet, at the same time, Duhamel believed that "education would be terribly dull if we didn't have special interest groups pummelling the system to try to get it to change."⁵¹ Therefore, in his capacity as the Deputy Minister, Duhamel was confronted with a dilemma. On the one hand, his direct involvement in the controversy was restricted. On the other hand, in Duhamel's opinion, the political situation had to be resolved quickly but, in "a positive, forward and progressive kind of way."⁵² To this end, Duhamel volunteered advice to Lynn Pernisie which was intended to get the School Board to reconsider its decision to resist the parents' request, and thereby, to resolve the situation in Swan River entirely at the local school board level.

Pernisie readily admits that her experience with school board politics was limited. Duhamel's support, therefore, came in the form of advice as to how to proceed with the School Board in order to resolve the controversy at the local level. To that end, on May 13, 1982, in his capacity as the Deputy Minister of Education, Duhamel offered Pernisie this advice:

I would recommend that you discuss...your concerns openly with the senior staff and or trustees of the school division. My experience has almost always been that matters of this nature are best resolved at the local level. If you are unable to resolve this issue, I would be pleased to consider how else I might provide some assistance.⁵³

Lynn Pernisie did as the Deputy Minister suggested and met with the School Board on May 31, 1982, in order to discuss the contents of Duhamel's letter openly with the Board of Trustees. While some of the Trustees present at the meeting appeared to support the notion that being bilingual was a career asset, the implementation of a combined kindergarten and grade one French immersion class was not reconsidered.

That the parents' request was not reconsidered suggests that the School Board believed the Government would not force it to implement the immersion program as requested. In short, the Government favoured, as a matter of policy, the parents' request but would not act to enforce its own policy. It would appear that this reluctance on the part of the Minister and the Government was more a matter of political calculation than an insecurity about legal power. It seems that the support which the Minister gave to Pernisie was strictly regulated by the political consequences she foresaw as a result of ordering the School Board to do what it ought to do. The significant effect of the Minister's policy posture was to reinforce the School Board's position in the controversy while undermining that of Pernisie and her co-petitioners.

Allies

Allies are individuals, groups or organizations who support an interest which they share with a political actor. However, allies also have their own interests and objectives. Consequently, when allies support the political activity of an actor in order to advance a shared interest, they are also seeking to advance their own interests and objectives and in doing so they affect the outcome of a political situation. In particular, allies can affect the way an issue is defined or contested, the interactions between the actors, and the likely

success or failure of an actor's political activity. Allies support the political activity of a particular actor by contributing something tangible to the political situation which advances a common interest. The specific support or resources which allies bring to a political situation could include, for example, information, expertise or the monies required to resolve a political conflict in court. Thus, it is important to reveal whether allies played a significant part in the political situation in Swan River, and, also, to what extent the support of an ally affected the outcome of that situation.

As the immediately previous discussion suggests, the Department of Education was a weak ally of Pernisie and its cautious posture advantaged the School Board initially. However, the efforts of Swan Valley School Board No. 35 to avoid having to implement the French immersion program were not supported by any other readily identifiable ally or allies. In marked contrast, the attempt by Lynn Pernisie to secure a French immersion program was strongly supported by the Canadian Parents for French (C.P.F.), a national interest group in Canadian education.

The C.P.F. organization allied itself with Pernisie because it saw an opportunity to further the expansion of French immersion education into northern Manitoba. The alliance was entirely consistent with its organizational goals:

1. To assist in ensuring that each Canadian child has the opportunity to acquire as great a knowledge of the French language as he or she is willing and able to attain;
2. To promote the best possible types of French language learning opportunities; and
3. To establish and maintain effective communication between interested parents and governmental authorities concerned with the provision of French learning opportunities.⁵⁴

Pernisie's initial contact with the C.P.F. was indirect as opposed to direct. Pernisie had attended several C.P.F. meetings in Winnipeg, but was not a C.P.F. member when she and her family moved to Swan River in December of 1981. Still, it was through her C.P.F. contacts, prior to moving to Swan River, that Pernisie learned about using s. 79(3) of The Public Schools Act to petition a local school board to provide French immersion instruction. Later, when the School Board of Swan Valley School Division No. 35 refused to implement the French immersion program and the political situation in Swan River began to intensify, Pernisie's involvement with the C.P.F. deepened. Said Pernisie:

The [C.P.F.] sent a representative to speak to us. We had an information night on French immersion, and...they gave me support, but actually; again, when you're in a little community like that, outside people are often looked upon as intruders and they can support you morally, but their actual 'interference', which is maybe a strong word, can prove to be difficult. It has to be handled very carefully.⁵⁵

Working in concert, Pernisie and the C.P.F. set out to change people's minds in Swan River about French immersion, by disseminating literature and holding public meetings, intended to educate parents, in particular, about the benefits of an immersion education for their children. Most importantly, the C.P.F. shared a common goal with Pernisie in Swan River: to get the School Board to approve the implementation of the French immersion program as requested. Actually, the scope of the C.P.F. ambitions were national, according to Ron Duhamel:

If there is one organization of all the organizations who tried to be progressive and supportive and tried to resolve this conflict positively, it was the Canadian Parents for French group....The Canadian Parents for French organization, I believe, the Manitoba Chapter probably, but the umbrella organization as well.... They knew that if they could win a battle in one particular province, it makes it easier to fight other battles in the same province, and perhaps in other provinces as well, including the

territories.⁵⁶

At a certain point during the controversy in Swan River, the C.P.F. and Pernisie both realized that the School Board would not implement the French immersion program unless compelled to do so. And it was the C.P.F. who suggested to Pernisie that she initiate court action against Swan Valley School Division No. 35, as the only means available to resolve the political stalemate. Pernisie explained the decision to litigate this way:

...they [School Trustees] had simply refused to implement the program...it was either we back down and admit a defeat, or we take court action. The last thing I ever wanted to do was to go into court....I was quite horrified, and then it sort of sinks in, and you begin to think about it, and realize that it is the only option left.⁵⁷

But, Pernisie would need to hire legal counsel. Similarly, if the court found in favour of the Respondent School Division rather than Pernisie, the court would, in all probability, order Pernisie to pay the cost of legal proceedings. Also, the possibility of having to appeal an unfavourable court decision meant additional costs. Ultimately, the C.P.F. offered to pay all of Pernisie's legal fees.⁵⁸

In the event that the outcome of litigation required the Board to implement the French immersion program, the C.P.F. actually stood to gain the following: the introduction of French immersion in the northern community of Swan River; a political lever with which to further C.P.F. ambitions elsewhere in Manitoba, the provinces and territories; new C.P.F. members, including the creation of a C.P.F. Local Chapter in Swan River; and finally, greater recognition of the C.P.F. as a national interest group in Canadian education. Thus, it is easy to recognize the consonance of Pernisie's and the C.P.F.'s objectives and the extent to which broader national objectives of the C.P.F. were

served by giving full support to Pernisie as the applicant in Pernisie v. Swan Valley School Division No. 35.

THE OUTCOME AND ITS CONSEQUENCES

A primary question in this section is this: What was the outcome of the litigation in the Manitoba courts? In other words, whose interests did legal adjudication advance or fail to advance, and why? Also, in the opinion of the principal actors, was the key issue in this case resolved, once and for all? Furthermore, we will want to understand the consequences which flowed from the litigation, particularly for each of the principal actors. Finally, we will want to determine whether there were any implications of the litigation for subsequent initiatives in school board policy and in provincial legislation in relation to s. 79(3) of the Act.

The Outcome of the Litigation

The ruling of the Court of Appeal was a clear political and legal victory for Pernisie and, indeed, for the other parents who co-signed the petition. As to whether or not the key issue in the controversy was resolved, once and for all, Pernisie offered the following observations:

The program in Swan River was implemented and then my husband got transferred out of Swan River. So, our children, ironically enough never did go into the French immersion program there. Two of our children were pre-schoolers and one was in grade one. Whenever I have spoken to people who have their children in French immersion in Swan River, I have asked how things have been going and my impression is that things have continued very well. The program has expanded and grown and there will always be the little bumps and jars that any program, particularly [the] newer ones experience. But, I would say that, generally speaking, the initial problems have basically been resolved and the program is going

on.⁵⁹

The "loser" in this case was, of course, Swan Valley School Division No. 35. In the opinion of John Kastrukoff, Superintendent of the School Division, the court's decision in favour of Pernisie had a negative impact on the quality of education offered by the School Division, because valuable programs were sacrificed in order to facilitate the implementation of the French immersion program.⁶⁰

The outcome of the litigation in Pernisie v. Swan Valley School Division No. 35 also favoured the Department of Education, in that the decision of the Court of Appeal secured two of the Department's goals. First, the unique relationship which existed between the Department and local school boards throughout Manitoba, including the School Board of Swan Valley School Division No. 35, was preserved, that is, the Department of Education was not viewed as an intervenor by other school boards. Second, the decision of the Court of Appeal in favour of Pernisie secured the Department of Education's goal of expanding French immersion into the northern communities of Manitoba. In addition, the Department of Education also wanted to resolve the controversy in Swan River at the local level. However, that was not possible in this case and that fact has left a political residue, provincially, in the opinion of Ron Duhamel:

[The controversy in Swan River was] partially resolved. Greater acceptance of French but not completely so.... I think we've made some progress [provincially]. There's perhaps a greater acceptance, a little less fear of immersion, but there's still controversy [in] some of the city boards [and] some of the rural boards. If you want to get a big crowd at the local school, that's the one that will draw the largest. So, I guess, in summary, some progress, but still a long way to go. It [French immersion] continues to be a significant conflict.⁶¹

Following the order of the Court of appeal on August 27, 1982 to implement the

French immersion program as requested, the School Board of Swan Valley School Division No. 35 set November 1, 1982 as the target date for the combined immersion class to begin. However, by late October of 1982, the number of pupils enrolled in the immersion program had dropped below the minimum required number of twenty-three. Consequently, the School Board laid the decision to start the program before Maureen Hemphill, Minister of Education. Since the Court of Appeal had already ordered the School Board to implement the French immersion program, the Minister did not hesitate to intervene. Maureen Hemphill ordered the School Board to implement the immersion program under the provisions of s. 79(4) of the Act.

The Consequences of the Litigation

For Lynn Pernisie, the parents involved with the French immersion controversy and, for other parents in different school divisions throughout Manitoba who wanted their children to receive a French immersion education, the decision of the Court of Appeal afforded a political and legal lever with which to require local school boards to offer French immersion, provided the conditions of s. 79(3) of The Public Schools Act were first satisfied. As a case in point, on March 17, 1982, George Eakin, Chairman of the School Board of the St. James-Assiniboia School Division No.2 informed Maureen Hemphill, Minister of Education that the School Division had complied with subsections 79(1), (2) and (3) of The Public Schools Act, "in regards to petitions for instruction in the French language by purchasing such programs from other divisions and, more recently, by implementing French immersion programs within the Division."⁶² There can be no doubt that The St. James-Assiniboia School Division No. 2 was acutely aware of the

controversy in Swan River, if not through the media, then even more directly in the person of J. Coulthart, Business Administrator and Secretary-Treasurer of Swan Valley School Division No. 35. According to the Minutes of the St. James-Assiniboia School Board meeting on July 6, 1982, Coulthart informed the St. James-Assiniboia Trustees about specific concerns which the Swan Valley School Board had regarding s. 79(3) of the Act.⁶³ It would seem however, that, despite their own misgivings about implementing French immersion programs with the Division, the St. James-Assiniboia Trustees were not inclined to resist the same "advice" the Minister had given to the Swan Valley School Board, which was to implement the French immersion program as requested, in accordance with the provisions of s. 79(3) of the Act. But, it should also be pointed out here, that in his letter to the Minister on March 17, 1982, George Eakin expressed concern about the implementation of French immersion, if the petitions requesting such instruction were received late in the spring term and the programs were expected to be in place by the subsequent fall term. In closing, Eakin informed the Minister that the St. James-Assiniboia School Board "would welcome your expression of opinion regarding the advisability of setting a date after which petitions could not be entertained...in order to provide sufficient lead time to do the required preparation."⁶⁴ Later, in 1983, the Manitoba Association of School Trustees would petition Maureen Hemphill to address the problem Eakin identified, by amending s. 79(3) of The Public Schools Act.

As a consequence of Pernisie v. Swan Valley School Division No. 35, the decision of the Court of Appeal allowed the Department of Education, particularly, the B.E.F., to expand French languages services into the rural and northern communities of Manitoba.

According to Henri Grimard, Director of the Support Services Branch for the B.E.F., the Appeal Court's final decision in Pernisie v. Swan Valley School Division No. 35 had several important implications for the Government of Manitoba's commitment to second language education:

It meant projecting a future implementation of French immersion in outlying areas in the north or rural areas....It meant additional support too, to the school divisions either in the way of grant dollars or in the way of human resources...by curriculum consultants working with teachers or education officers, which is our branch; working with local school authorities to assist them in any way we can in implementing the program...through information sessions or sharing data or articles that have appeared in Manitoba or elsewhere, or discussing with them, how they can best utilize the French language grants. So, I think, it meant adding to the commitment to the Government of French language education....⁶⁵

Grimard's personal recollection of the Pernisie case, regarding its outcome and consequences, particularly for the expansion of French immersion, were reiterated in an article that appeared in the Winnipeg Free Press on August 28, 1982:

In a landmark decision, virtually certain to spur the growth of French immersion classes in rural Manitoba, the court rejected the division's position that because the Manitoba Public Schools Act does not require that kindergarten be offered, a board may provide it in one language only.⁶⁶

Pernisie v. Swan Valley School Division No. 35 was, indeed, a landmark case because a judicial decision in favour of the School Division would have significantly altered the original intent of the Schreyer government in 1970 with Bill 113 which was to provide French-speaking Manitobans, and others as the case may be, with their established right to be instructed in the official language of their choice, within the framework of the public school system. Instead of diminishing the intent of s. 79(3), the Pernisie case affirmed the legal right of anglophone parents to claim a French immersion

education for their children. Equally important, the decision of the Court of Appeal reinforced the established right of Franco-Manitobans to be instructed in the official language of their choice.

In 1983, as a direct consequence of Pernisie v. Swan Valley School Division No. 35, the Manitoba Association of School Trustees or M.A.S.T., at its annual convention moved to have Maureen Hemphill, Minister of Education petitioned in order to make changes to s. 79(3) and s. 79(4) of The Public Schools Act. In the first instance, M.A.S.T. believed that the wording of s. 79(3) and s. 79(4) created uncertainty for school trustees because, generally, the public did not know when to submit a petition to ensure that the language of instruction they wanted their school division to provide for their children would be implemented by a desired date. Nor did school trustees know what flexibility they had, if any, to set a date for implementation. Therefore, to remove the uncertainty for all concerned and in order to provide an adequate amount of time for a school board to carry out its responsibilities, M.A.S.T. proposed December 1st as the deadline to be established in s. 79(3) and s. 79(4) of the Act with implementation set to take place on September 1st of the following year. Secondly, although the Court of Appeal ruled that the word "class" in s. 79(3) of the Act could indeed mean a combination of kindergarten and grade one, M.A.S.T. wondered whether this in fact meant that any combination of grades could be considered a "class" for the purposes of the Act? Accordingly, M.A.S.T. proposed that the Minister review the provisions of s. 79(3) of the Act, in order to clarify the exact meaning of the word "class". Further, M.A.S.T. proposed that the Minister be requested to amend s. 79(3) of The Public Schools Act in

order "to indicate those grade levels at which instruction in French would be introduced on the petitions of the parents of at least 23 children."⁶⁷ Finally, from the viewpoint of M.A.S.T., the lack of clear guidance in s. 79(3) of the Act related to the introduction of French immersion programs at different grade levels meant that local school boards could receive requests for French immersion at several different grade levels, all in one year, a situation which could prove very awkward. As a comprehensive remedy to its several concerns, M.A.S.T. proposed that the Minister amend s. 79(3) of the Act with the addition of the underlined words, to read as follows:

Where in any school division or school district, there are 23 or more pupils who may be grouped initially in a class for instruction and whose parents desire them to be instructed in a class in which English or French is used as a language of instruction, the school board may group those students in a class according to division or district practice, and upon petition of the parents of those pupils requesting the use of English or French, as the case may be as a language of instruction in respect of those pupils, the school board shall group those pupils in a class of reasonable size according to division or district practice for instruction and provide for the use of English or French, as the case may be, as the language of instruction in the class.⁶⁸

The amendments to s. 79(3) of the Act proposed by M.A.S.T. were intended to facilitate the implementation of French immersion, particularly in regards to lead time and manageability. Nevertheless, the substitution of the underlined word "may" for "shall" would appear to grant local school boards an absolute discretion whether or not to group pupils in a class for instruction in the French language. In effect, the suggested changes to s. 79(3) of the Act would have provided the School Board of Swan Valley School Division No. 35 with the absolute discretion it argued it had under s. 79(3). Also, if the suggested changes to s. 79(3) were implemented by the Minister of Education, then local

school boards no longer had a duty to implement French immersion. Nor was it clear what was meant by the words "according to division or district practice" and "of reasonable size according to division or district practice". If a school division had never had to implement French immersion previously then, what was the practice of the division/district regarding the implementation of French immersion? Similarly, of "reasonable size" would seem to imply that the minimum number of twenty-three pupils required to give force to s. 79(3) of the Act was not a reasonable number to group in a classroom. In other words, the overall implication of the proposed changes to s. 79(3) of the Act was that the "practice" of implementing French immersion in Manitoba's public school system could vary significantly from school division to school division or district, provided that the local school boards did, in fact, approve parents' requests for French immersion.

All but one of the changes to s. 79(3) of the Manitoba Public Schools Act proposed by M.A.S.T. at its convention in 1983 were carried. Trustee Guay (St. Boniface) and Miniely (Portage) moved: "That the amendment be amended by substituting the word "shall" for the word "may" where it appears underlined in the amendment."⁶⁹ This amendment was carried, which had the effect of limiting a school board's discretion in essentially the same manner as the existing legislation had intended--and as the legislation does at present. (Appendix G, The Public Schools Act (1987)).

Normally, when a Minister of Education responds to M.A.S.T. resolutions, a record of that response is kept. However, no record of Maureen Hemphill's response to the 1983 M.A.S.T. Resolutions could be located because there was no official reply.⁷⁰ It was

Maureen Hemphill's political decision not to alter s. 79(3) of the Act which M.A.S.T. proposed in 1983. The inference is unmistakable. Maureen Hemphill did not respond to the 1983 M.A.S.T. proposals regarding s. 79(3) and s. 79(4), because she was satisfied with the legal outcome in Pernisie v. Swan Valley School Division No. 35 which had imposed a duty on the School Board to introduce French immersion as requested. In short, the ambitions of the Swan Valley Trustees were not consonant with either the political interests of the Minister or the legal ruling of the Court of Appeal.

NOTES TO CHAPTER 4

¹ Lynn Pernisie, telephone interview with author, 12 January, 1991.

² Lynn Pernisie.

³ Lynn Pernisie.

⁴ Art Bourgeault, telephone interview with author, 9 January, 1991.

⁵ Art Bourgeault.

⁶ Lynn Pernisie, letter to Maureen Hemphill, 29 April, 1982.

⁷ Lynn Pernisie, telephone interview with author, 12 January, 1991.

⁸ John Kastrukoff, letter to Ron Duhamel, 1 May, 1982.

⁹ Art Bourgeault.

¹⁰ Art Bourgeault.

¹¹ Art Bourgeault.

¹² Art Bourgeault.

¹³ Art Bourgeault.

¹⁴ Winnipeg Free Press, 28 August, 1982., p. 2.

¹⁵ John Kastrukoff, letter to Ron Duhamel, 1 May, 1982.

¹⁶ Ron Duhamel, interview with author, 18 December, 1990.

¹⁷ Ron Duhamel, interview with author, 18 December, 1990.

¹⁸ Henri Grimard, interview with author, 9 November, 1990.

¹⁹ Ron Duhamel, letter to Lynn Pernisie, 13 May, 1982.

²⁰ Ron Duhamel, interview with author, 18 December, 1990.

²¹ Ron Duhamel.

²² Lynn Pernisie, telephone interview with author, 12 January, 1991.

²³ Lynn Pernisie.

²⁴ Lynn Pernisie.

²⁵ Lynn Pernisie.

²⁶ Ron Duhamel, interview with author, 18 December, 1990.

²⁷ Art Bourgeault, telephone interview with author, 9 January, 1991.

²⁸ Art Bourgeault.

²⁹ Pernisie v. Swan Valley School Division No. 35 (1982), "Appeal Evidence", 55.

³⁰ Ibid at 56.

³¹ Ibid at 56-57.

³² Pernisie v. Swan Valley School Division No. 35 (1982). "Appeal Evidence", 57.

³³ Ibid at 58.

³⁴ Ibid.

³⁵ Pernisie v. Swan Valley School Division No. 35 (1982) 18 Man. R. (2d) 412.

³⁶ Pernisie v. Swan Valley School Division No. 35 (1982). "Appeal Evidence", 32.

³⁷ Ibid at 34.

³⁸ Ibid.

³⁹ Ibid at 35.

⁴⁰ Ibid at 37.

⁴¹ Ibid at 22.

⁴² Ibid at 24.

⁴³ Pernisie v. Swan Valley School Division No. 35 (1982) 18 Man. R. (2d) 413.

⁴⁴ Interestingly, ten years after the controversy in Swan River was resolved in the Manitoba courts, John Kastrukoff's assessment about the viability of a combined kindergarten and grade one class has not changed. Said Kastrukoff: "I forget who it was, who testified that really, it didn't matter how many grades you have in one classroom. The efficiency of the classroom was not jeopardized. Well, you know, you don't have to be an educator to know that's a bunch of baloney. You can't put a bunch of grades in one class and say its just as efficient as having one grade in the class. But, that was the testimony given under oath by an educator, if you will." (John Kastrukoff, telephone interview with author, 13 December, 1990).

⁴⁵ Winnipeg Free Press, 7 September, 1982.

⁴⁶ Ron Duhamel, interview with author, 18 December, 1990.

⁴⁷ Ron Duhamel.

⁴⁸ Lynn Pernisie, telephone interview with author, 12 January, 1991.

⁴⁹ Lynn Pernisie.

⁵⁰ Ron Duhamel.

⁵¹ Ron Duhamel.

⁵² Ron Duhamel.

⁵³ Ron Duhamel, letter to Lynn Pernisie, 13 May 1982.

⁵⁴ Canadian Parents for French Manitoba. (1985). Your Child in French Immersion. Winnipeg, Canadian Parents for French, p. 21.

⁵⁵ Lynn Pernisie.

⁵⁶ Ron Duhamel, interview with author, 18 December, 1990.

⁵⁷ Lynn Pernisie.

⁵⁸ C. Sarbit, letter to Sidney Green, 5 October, 1982.

⁵⁹ Lynn Pernisie, telephone interview with author, 12 January, 1991.

⁶⁰ John Kastrukoff, telephone interview with author, 14 December, 1991.

⁶¹ Ron Duhamel.

⁶² George Eakin, letter to Maureen Hemphill, 17 March, 1982. The French immersion program that Eakin referred to in his letter to Hemphill was implemented at Robert Browning School to commence on September 1, 1982.

⁶³ Minutes. Regular Meeting, the Board of Trustees, The St. James-Assiniboia School Division No. 2, July 6, 1982.

⁶⁴ George Eakin.

⁶⁵ Henri Grimard.

⁶⁶ Winnipeg Free Press. 28 August, 1982., 2.

⁶⁷ Manitoba Association of School Trustees Convention Resolution (1983), Winnipeg., 2.

⁶⁸ Manitoba Association of School Trustees Convention Resolution (1983), Winnipeg., 1.

⁶⁹ Manitoba Association of School Trustees Convention Resolution (1983), Winnipeg., 1.

⁷⁰ Leo Le Tourneau, letter to author, 10 January, 1992. Le Tourneau, Freedom of Information Access Officer confirmed, that a search of 1983 Ministerial records revealed that the Department of Education did, in fact, receive the 1983 M.A.S.T. Resolutions. Le Tourneau indicated that on several occasions John Johnson, M.A.S.T. President (former) requested that Maureen Hemphill respond to the 1983 resolutions. None was forthcoming. Le Tourneau further explained that: "Records of 1984 included a letter dated October 4, from M.A.S.T. President, John Johnson to the Minister of Education, Maureen Hemphill. In this letter Mr. Johnson requested a response to the 1983 resolutions and attached the 1984 resolutions. Ms. Maureen Hemphill responded October 22nd, indicating that a response was forthcoming. Records of 1985, included a second letter dated January 15, from Mr. Johnson requesting a reply to the 1983 & 1984 MAST resolutions. In a letter dated January 28, Ms. Maureen Hemphill provided a response to the 1984 resolutions but did not address the 1983 resolutions; therefore, I cannot provide access to the records you requested on the grounds that they do not exist."

CHAPTER 5

CONCLUSIONS AND IMPLICATIONS

This final chapter presents a number of conclusions which emerge from the French immersion controversy in Swan River. Further, in light of certain recent legal developments, the meaning and application of s. 79(3) of The Public Schools Act concerning the provision of minority language rights under Section 23 of the Canadian Charter of Rights and Freedoms necessarily will change. There is, therefore, a need to consider what implications these changes may have for French immersion in Manitoba.

CONCLUSIONS

The conclusions presented in this chapter are related to the interests and objectives of the actors in this case; the key political and legal issues in this case; the political resources and constraints which had a significant bearing on the political situation and its outcome; and the political and legal consequences of the litigation in Pernisie v. Swan Valley School Division No. 35.

The Interests and Objectives of the Actors

Lynn Pernisie's initial objective in Swan River was to require, through legal petition, the School Board of Swan Valley School Division No. 35 to implement French immersion programs at the kindergarten level and at the grade one level in accordance with s. 79(3) of The Public Schools Act. This objective was modified when it became apparent that neither petition contained the signatures of 23 parents, the minimum number required to give force to s. 79(3) of the Act. In order to circumvent the obvious shortfall

in signatures, the parents decided to combine the petitions requesting separate immersion programs, and to request instead, that the School Board group kindergarten and grade one pupils together in one class with French as the language of instruction, based on a combined total of 29 signatures. However, on April 26, 1982, the School Board voted not to approve the parents' request. As a result, Pernisie aimed to make the Trustees aware that, when parents have satisfied the conditions necessary to legally require a local school board to provide a program such as French immersion for their children, then the school board-in-question may not ignore those requests.

In contrast, the immediate objective of the School Board of Swan Valley School Division No. 35 was to avoid having to implement a combined kindergarten and grade one class requested by Lynn Pernisie and her co-petitioners. This was not the first time that the School Board had resisted the efforts of parents to improve the quality of French language instruction provided by the School Division. According to other actors involved in the French immersion controversy in Swan River, the School Board tended to oppose educational changes which others such as the Parent-Teacher Council at Taylor School in 1979-1980, attempted to impose on the political system. As a bureaucracy, the School Board was inclined to resist any changes which might diffuse the Board's absolute authority in educational matters, especially matters of school programming. Thus, it would appear that the main objective of the School Board in the French immersion controversy was to preserve its absolute discretion to determine what programs the School Division would or would not offer.

Finally, the immediate objective of the Minister of Education and her Department

was to see that the parents' request for a combined kindergarten and grade one French immersion class, made in accordance with s. 79(3) of The Public Schools Act was approved by the School Board of Swan Valley School Division No. 35. Clearly, the Department of Education was also interested in expanding French immersion in the rural and northern communities of Manitoba where, unlike the situation in urban centres, French immersion was not widespread. The situation in Swan River provided an opportunity to establish French immersion in a northern community. However, Maureen Hemphill, Minister of Education, would not intervene and order the School Board to implement the French immersion program as requested because to do so would explicitly politicize the working relationship between the Department of Education and local school boards throughout Manitoba. Rather, the Department was very interested in preserving the relatively non-controversial relationship which existed between itself and school boards in Manitoba, including the School Board of Swan Valley School Division No. 35. Further, the Department was also interested in resolving the political situation in Swan River quickly, albeit in Pernisie's favour, in order to minimize the impact of language conflict on the community and on the province. Ultimately, the primary objective of the Minister and her Department was to continue to encourage the School Board to implement the French immersion program as requested so that any conflict could be minimized and could be resolved in any case, entirely at the local level.

The Political and Legal Issues in the Case

The political issue, from the viewpoint of Lynn Pernisie and the Department of Education, was whether or not the School Board could obstruct the implementation of a

French immersion program requested by parents in accordance with the provisions of s. 79(3) of The Public Schools Act. The political issue, in the School Board's view, was the threat to the Board's absolute discretion in program implementation if petitions, in themselves, required a school board to act against its own reservations. The fundamental issue which all the key actors came to recognize was whether or not the School Board of Swan Valley School Division No. 35 could legally resist the request of Lynn Pernisie and her co-petitioners.

In the Manitoba courts, the political contest between Pernisie and the School Board became a narrow legal issue: Did the School Board of Swan Valley School Division No. 35 have a duty under s. 79(3) of The Public Schools Act to implement the French immersion program as requested? In the Manitoba Court of Queen's Bench, Justice Hamilton ruled that, in his opinion, the School Board did, in fact, have an absolute discretion whether or not to grant the parents' request. On appeal by Pernisie, the Court of Appeal Justices unanimously agreed that the conditions of s. 79(3) of the Act had been met in law. In their view, the School Board of Swan Valley School Division No. 35 did, in fact, have a duty to implement the French immersion program as requested. What is noteworthy in all of this is that a political contest was resolved by a judicial ruling.

The Political Resources and Constraints of the Actors

Existing legislation. Subsection 79(3) of The Public Schools Act was, at the very least, a significant resource for Pernisie and her co-petitioners because it provided the legal means by which anglophone parents could require a local school board to provide a French immersion education for their children. However, s. 79(3) of the Act also

proved to be a political resource for Swan Valley School Division No. 35 as well. It was Pernisie's view, and also that of her supporters, that s. 79(3) imposed a legal obligation upon the School Board to implement the French immersion program as requested. The School Board chose to interpret the meaning of s. 79(3) differently than either Pernisie or the Department of Education. In contrast, the School Division interpreted s. 79(3) to mean if, in the Board's opinion, the kindergarten and grade one pupils could be reasonably grouped in one classroom, then the French immersion program would be provided, as requested. Subsequently, the Board rejected the parents' request. Since nobody was forcing it to do otherwise, the School Board could afford to do this. Basically, s. 79(3) proved to be a double-edged sword because it appeared to legitimate the interests of both Pernisie and the School Board. Ironically, Pernisie thought that by using s. 79(3) of The Public Schools Act, the School Board could not resist the parents' request but Pernisie never counted on the School Board's use of s. 79(3) of the Act to achieve the opposite result.

The state of government policy. According to Henri Grimard, Director of Support Services Branch for the B.E.F., the early 1980s in particular were the "boom years" for the expansion of French immersion in Manitoba.¹ Moreover, the Department of Education was not at all opposed to the expansion of second-language education in the public school system, in fact, quite the opposite. Maureen Hemphill, Minister of Education was an advocate of multiculturalism. Consequently, it is not surprising that the Minister supported the aspirations of Pernisie and her co-petitioners up to a point. Subsection 79(3) of The Public Schools Act provided a legal means by which a group of anglophone

parents could require a school board to provide a French immersion education for their children. Yet, neither the Government of Manitoba nor the Minister of Education were willing to mandate or dictate language policy to local school boards. Despite the fact that departmental officials, including the departmental lawyer confirmed that the petition of Lynn Pernisie and her co-petitioners was valid and that there was no uncertainty about the School Board of Swan Valley School Division No. 35 being required to provide the French immersion program at whatever grade level was petitioned, it was Maureen Hemphill's political judgment that the Minister of Education should not compel the School Board to implement the French immersion program as requested. Therefore, in order to be seen as not interfering in local educational affairs, the Minister and the Department of Education resisted enforcing the statutory embodiment of a governmental policy which the Minister of Education and her Deputy Minister were otherwise obligated to support. This disposed the Minister and her officials to attempt an early resolution of the immersion controversy at the local level in favour of Pernisie. Clearly, the political consequences of ordering the School Board to implement the French immersion program as requested effectively stayed the Minister's hand.

Allies. Arguably, the most significant of political resources for Lynn Pernisie and her co-petitioners was the C.P.F., a national interest group in Canadian education. It was, in fact, the C.P.F. who suggested that Lynn Pernisie pursue a resolution of the French immersion controversy in the Manitoba courts. Most importantly, the C.P.F. offered to pay Pernisie's legal costs. In effect, the C.P.F. made it possible for Pernisie and her co-petitioners as well as the Department of Education to secure their common objective in

Swan River, where the Minister of Education and her Department were not willing to be publicly supportive. Of course, there was always a chance that litigation would favour the School Division but, when the situation in Swan River developed into a political stalemate, it was the C.P.F. who enabled Pernisie to pursue the only viable option left to her, namely, adjudication in the Manitoba courts.

In the event that the outcome of the litigation required Swan Valley School Division No. 35 to implement the French immersion program as requested, the C.P.F. stood to gain a number of favourable results: the introduction of French immersion in the northern community of Swan River and a political lever with which to further C.P.F. ambitions in Manitoba and elsewhere which would also bring greater recognition of the C.P.F. as a national interest group in Canadian education. Clearly, the mixture of self-interest and others' interests is the very "stuff" of political allegiances; the C.P.F., in this instance, certainly helped Pernisie's cause as well as its own.

The Political and Legal Consequences of the Litigation

The political consequences of the Appeal Court's ruling in favour of Lynn Pernisie were several. First, for Swan Valley School Division No. 35, the ruling of the Court of Appeal meant that the School Board had to implement the French immersion program as requested, regardless of any concerns that the Board still had about the impact of the French immersion program on the community of Swan River. Second, for the Department of Education, Pernisie's victory in the Court of Appeal meant a further expansion of French immersion education in the public school system, including northern Manitoba. Third, Pernisie's victory was also a clear signal to other anglophone parents who were

interested in a French immersion education for their own children that, when a local school board was properly petitioned by parents in accordance with the provisions of s. 79(3) of The Public Schools Act, school boards have a duty to provide the program as requested. Additionally, those parents interested in the expansion of heritage languages in the public school system may have been encouraged by the Court of Appeal's ruling in Pernisie v. Swan Valley School Division No. 35. In this regard, on September 7, 1982, an article appeared in the Winnipeg Free Press entitled, "Second Languages Termed Top Priority". In the article, Maureen Hemphill pointed out that, when school boards have been duly petitioned in accordance with the provisions of the Act, they must provide instruction in French or English. Undoubtedly, this statement was in reference to the very recent decision of the Court of Appeal in favour of Lynn Pernisie on August 27, 1982. In the same article, the Minister was reported to have said that the government would expand its commitment to second language education, in response to the public's growing demand for more instruction in the second languages including, for example, German or Ukrainian. Hemphill's comment regarding the "other" second languages was clearly intended to encourage interested parents to approach their own local school board to provide more instruction in heritage languages such as Ukrainian, German and Hebrew. At the same time, however, the Minister was cautious to point out that the implementation of a heritage language program was contingent on the discretion of local school boards since the statutory provisions regarding heritage language instruction contained in s. 79(2) of the Act do not impose a duty on school boards to provide such instruction. Consequently, the government would not dictate or mandate heritage language policies

to local school boards. Nevertheless, Maureen Hemphill encouraged parents to request that their local school board provide more instruction time in the heritage languages. As mentioned earlier, the Minister of Education had a "great deal" of interest in multiculturalism. It would appear, therefore, that the Court's decision in Pernisie v. Swan Valley School Division No. 35 provided Maureen Hemphill with an opportunity to advance her own political interest in multiculturalism. Fourth, in view of the outcome of Pernisie v. Swan Valley School Division No. 35, both urban and rural school boards could anticipate receiving petitions requesting the introduction of French immersion programs in their own district or division. Undoubtedly, these school boards also had certain reservations about implementing and operating a French immersion program within their particular division or district, since it was virtually impossible to foresee the entire range of effects or potential issues resulting from the introduction of a French immersion program in any given school jurisdiction. Consequently, while French immersion rapidly expanded in the public school system after 1982, the number of political issues surrounding French immersion education also increased. For example, in view of the concerns which school divisions like the St. James-Assiniboia School Division No. 2 had about implementing, managing and administering a French immersion program, the Manitoba Association of School Trustees or M.A.S.T. at their annual convention in 1983, voted to petition Maureen Hemphill, Minister of Education to amend the wording of s. 79(3) of The Public Schools Act in order to make the process of implementing French immersion more manageable. Needless to say, the specific amendments proposed by M.A.S.T. to s. 79(3) of the Act, threatened to undo the intent of the Schreyer

Government with Bill 113 in 1970. That intent was to make French equal with English as a language of instruction in all public schools and to provide a legal means by which francophone or anglophone parents could require a local school to provide their children with instruction in either language. Despite repeated efforts by M.A.S.T. to obtain a response from the Minister regarding the proposed changes to s. 79(3) of the Act, Maureen Hemphill would not respond. One can reasonably conclude that the Minister strongly agreed with Lynn Pernisie: if parents wish their children to be instructed in the official language of their choice, their right to do so under s. 79(3) should not be obstructed by the reservations of a local school board.

In Pernisie v. Swan Valley School Division No. 35, s. 79(3) of the Act was legally contested for the very first time. Thus, the Appeal Court's decision in favour of Pernisie not only sustained and reinforced s. 79(3) but, in addition, the Court's decision also gave judicial force to the spirit and letter of the law, that is, when a school board is duly petitioned by parents in accordance with the provisions of s. 79(3) of The Public Schools Act, "the school board shall group those pupils in a class for instruction and provide for the use of English or French, as the case may be, as the language of instruction in the class."⁴

Summary

The foregoing discussion suggests a few important generalizations regarding the political situation which developed in Swan River. First, the Canadian Parents for French organization was more effective than the Minister of Education and her Department in resolving the controversy in Swan River because, as an ally, the C.P.F. provided the

monies or key political resource which ultimately enabled Pernsie to seek a favourable resolution in the Manitoba courts. Second, political rather than legal considerations largely shaped Maureen Hemphill's decision not to force Swan Valley School Division No. 35 to implement the French immersion program as requested under s. 79(3) of The Public Schools Act. It is reasonably apparent that the Minister's concern that she not be seen in sharp conflict with the Swan Valley School Board effectively determined her stance in the controversy and limited the support which she and her department gave to Pernsie and her co-petitioners. Finally, the right of those who are entitled under s. 79(3) of The Public Schools Act to be instructed in French or English was accorded strong legal force by the decision of the Manitoba Court of Appeal in favour of Lynn Pernsie.

IMPLICATIONS

Recent legal developments with respect to the provision of minority language rights embodied in Section 23 of the Charter of Rights and Freedoms will alter the meaning and application of s. 79(3) of The Public Schools Act. The intentions of the Schreyer government with Bill 113 in 1970 was to make French equal with English as a language of instruction for Francophones and, additionally, to provide a means for Anglophones to obtain French immersion or bilingual schooling. Since Bill 113 preceded the Canadian Charter of Rights and Freedoms (1982), it would not be unreasonable to assume that the Government of Manitoba would take steps to ensure that Section 79 of the Act took proper cognizance of the provisions of Section 23 of the Charter regarding educational language rights to the francophone minority (Appendix H, Section 23 of the Canadian Charter of Rights and Freedoms). The response of the Government of

Manitoba, however, was not immediate. For this reason, the Fédération provinciale des comités de parents (F.P.C.P.) in November, 1988 initiated court action to determine if certain subsections of Section 79 of The Public Schools Act conformed with Section 23 of the Charter. Subsequently, on February 6, 1990, the Manitoba Court of Appeal ruled 4 to 1 that s. 79(3) of the Act outlining the circumstances in which French-language education must be made available in Manitoba was at odds with the provisions of Section 23 of the Charter. Specifically, Chief Justice Monnin and others, namely, O'Sullivan, Twaddle and Philp agreed that the number of students (23) required to give force to s. 79(3) of the Act should be lowered or dropped entirely, because Section 23 of the Charter made no provision for a fixed minimum number.⁵ In short, s. 79(3) did not conform with Section 23 of the Charter and changes in Manitoba's language legislation would be required. Significantly, Chief Justice Monnin recommended a separate school system for Francophones to address this difficulty and other inadequacies in the legislation governing French language instruction in schools.⁶ Shortly thereafter, Monnin's recommendation was strengthened by legal developments elsewhere. On March 15, 1990, the Supreme Court of Canada in Mahe et al. v. Alberta ruled that the right to management and control of minority language education by the minority was implicit in subsection 23(3) (b) of the Charter. It was this ruling of Canada's highest court which prompted the Government of Manitoba to establish the Manitoba Task Force on Francophone Schools Governance in the Autumn of 1990.⁷ The main purpose of the Task Force was this:

To advise the Minister of Education and Training and the Government of Manitoba on all matters related to the establishment of a school governance system for citizens of Manitoba eligible under Section 23 of the Canadian Charter of Rights and Freedoms and to provide recommendations to the

Minster in respect of all such matters.⁸

Clearly, the establishment of a school governance system for "Section 23" parents assumed the creation of a francophone school board in order to ensure the educational rights of the francophone minority in Manitoba, as guaranteed by the Canadian Charter of Rights and Freedoms and as interpreted by the Supreme Court of Canada.

On May 31, 1991, the Task Force tendered its recommendations to the Government of Manitoba (Appendix I, Summary of Recommendations). The major recommendation of the Task Force was that a francophone school division be established, encompassing all francophone school communities under the jurisdiction of a single school board responsible for the provision of French-language education in Manitoba. The obvious implication, therefore, is that Manitoba would have two separate school systems with separate legislation for each. The main objective of the francophone school board would be to secure the educational language rights of francophones in Manitoba, as provided for in Section 23 of the Charter. Presumably, anglophone "rights" to immersion schooling would be provided for by all other school divisions in the province. At present, there is no difference in the conditions regarding the provision of either English or French-language instruction contained in s. 79(3) of The Public Schools Act. Therefore, it appears that new legislative provisions to guarantee the educational language rights of the francophone minority in Manitoba, as outlined in Section 23 of the Charter, are required necessarily. How might the Government of Manitoba respond to this requirement and what might be the fate of French immersion "guarantees" in the existing legislation?

The Government of Manitoba could respond by replacing s. 79(3) of The Public Schools Act with provisions which give expression to the language rights of the minority guaranteed by Section 23 of the Charter. In that case, would the legal status of French immersion be preserved, eliminated or altered? For example, would French immersion be given the same legal status as heritage languages like German or Ukrainian? If the legal status of French immersion were to be eliminated or diluted, that decision would, in effect, abrogate the Appeal Court's decision in Pernisie v. Swan Valley School Division No. 35. If the Government decides not to revoke the right of Anglophones to a French immersion education, s. 79(3) of the Act could be amended in such a way as to make it applicable only to immersion programs for Anglophones and additional, separate legislation could be enacted to meet the requirements of Section 23 of the Charter. Whether or not the fixed number requirements for French immersion instruction will be amended is speculative but it stands to reason that the provision of French immersion could continue to be the responsibility of anglophone school boards because the recommendations of the Task Force regarding francophone schools governance do not contain a French immersion mandate.

Admittedly, any discussion about the implications of the Task Force recommendations for French immersion education in Manitoba is speculative. Edgar Gallant, chairperson of the Task Force has cautioned that: "We have to look at the implications of any mode adopted for the whole school system as well as for Franco-Manitobans."⁹ For example, Recommendation No. 15 was stated:

Because students who are not French speaking may have rights under the Charter, the francophone school board should have the responsibility to

provide special tutoring to students entering the system with a limited knowledge of French so that they will be able to participate fully in French language classes.¹⁰

Recommendation No. 15 refers to children who have a limited knowledge of French but who are entitled to a French language education because their parents qualify under Section 23 of the Charter. According to the Report of the Task Force, there are approximately 10,778 children who are entitled to participate in Français programs under the provisions of Section 23 of the Charter. Some of these children may already be enrolled in French immersion. Yet, if so desired, they could withdraw from French immersion in order to receive special tutoring so that they will be able to participate fully in Franco-Manitoban schools. However, the experience of the Task Force to date has been that this particular group has shown little interest in Français programs. Therefore, "it is considered unlikely that any significant number will seek admission to Franco-Manitoban schools in future"¹¹ In fact, many of these children "probably elect to join the French immersion program".¹² There is also another group of children whose mother tongue is French. This group consists of about 1500 school age children, none of whom are enrolled in Français programs at this time. About 1,000 of these children reside within the Winnipeg urban area and could be served, if they desired francophone schooling, with the appropriate transportation. The remaining 500 are dispersed throughout various rural communities in Manitoba. Several of these communities in the school divisions of Hanover, White Horse Plain, Brandon, Portage la Prairie and Mystery Lake seem to have sufficient potential francophone students to warrant consideration as possible sites for Français programs.¹³ Under a new governance system, particularly if a program of active

promotion were to be adopted, there might be some cases where children of French ethnic origin might decide to re-integrate with their cultural group in a minority language school, as opposed to a French immersion school. The implication for French immersion of such developments as these is indeterminate but to the extent that children who have language rights under Section 23 of the Charter move from immersion schools to the new francophone school division, French immersion enrolments could be affected.¹⁴ Clearly, however, recruitment for French immersion programs has not excluded Franco-Manitobans, as the Task Force has observed. Since a basic objective of the new francophone school board might be to actively recruit as many children as possible who are entitled to a French-language education, a potential conflict between the new francophone board and the predominantly anglophone school boards could materialize should the new francophone school division attempt to draw its clientele from the same recruitment pool, that is, Franco-Manitobans who would otherwise choose French immersion programs. If this recruitment is successful, French immersion enrolments could drop. A decline in French immersion enrolment also means a reduction in French immersion monies available to school divisions through the provincial government. In rural or northern communities, the loss of this source of revenue, or alternatively, the closure of an immersion school could affect the overall administration, operation and maintenance of the entire school division, creating a host of political issues for school officials or for the Manitoba Department of Education. Indeed, what will anglophone parents do when their children are affected by the possible closure of a French immersion school in their school division? Would they apply to another jurisdiction in order to enrol

their children in a French immersion program there? They might. However, if the French immersion programs operating within that particular division are already depleted because a substantial number of children of French ethnic origin had decided to enrol in Français programs instead of French immersion, what then? As a last resort, might not the parents of children who do not possess educational language rights under Section 23 of the Charter begin to seek special consideration from the new francophone school board in order to ensure that their children received a French- language education? The politics of that potential development could be very interesting!¹⁵

NOTES TO CHAPTER 5

¹ Henri Grimard, interview with author, 9 November, 1990.

² Ron Duhamel, interview with author, 18 December, 1990.

³ Ron Duhamel.

⁴ Province of Manitoba. The Public Schools Act. R.S.M. 1987, c. P250. Winnipeg: The Queen's Printer for the Province of Manitoba.

⁵ When the Manitoba Court of Appeal ruled 4 to 1 in favour of lowering or eliminating the minimum number of pupils required for a second language class (23), in s. 79(3) of The Public Schools Act, Justice Hall indicated that, in his view, no change to the Act was necessary.

⁶ Winnipeg Free Press, 7 February, 1990., p. 1 & 4. Interestingly, an article in The Winnipeg Sun, dated September 23, 1992 reported that former Chief Justice Monnin is to head the committee responsible for setting up a francophone school board.

⁷ Province of Manitoba. Report of the Manitoba Task Force of Francophone Schools Governance. (1991). Winnipeg: Manitoba Education and Training., p.4.

⁸ Ibid. at 1.

⁹ Winnipeg Free Press, 7 November, 1990, p. 9.

¹⁰ Province of Manitoba. Report of the Manitoba Task Force on Francophone Schools Governance. (1991). Winnipeg: Manitoba Education and Training., p. 35.

¹¹ Province of Manitoba. Report of the Manitoba Task Force on Francophone Schools Governance, p. 5.

¹² Ibid. at 5.

¹³ Ibid.

¹⁴ At present, total enrolment in French immersion schools in Manitoba has grown to about 20,000 students, or over 10% of the student population. In contrast, there are approximately 5,645 students currently enrolled in Français programs in Manitoba.

¹⁵ Elsewhere, the writer has noted that Anglophone parents are not entitled to minority language rights under Section 23 of the Charter. See Brandon, J. V. (1991). "Anglophone entitlement to French immersion." The Canadian School Executive, 10(10), 3-7.

BIBLIOGRAPHY

A. Public Documents

MacFarlane, R. O. et al. (1959). Report of the Manitoba Royal Commission on Education. Winnipeg: Queen's Printer.

Province of Manitoba. Bill No. 59. An Act to Amend The Public Schools Act. (1967). Acts of the Legislature of the Province of Manitoba, Chapter 49. Winnipeg: Queen's Printer.

Province of Manitoba. Bill 113. An Act to Amend The Public Schools Act (2). (1970). Acts of the Legislature of the Province of Manitoba, Chapter 66. Winnipeg: Queen's Printer.

Province of Manitoba. Debates, Legislature of Manitoba (2). (1970). 29th Legislature, No. 106-145.

Hanuschak, B. "Promotion, Implementation and Administration of Bill 113." Speech delivered at the Federal-Provincial Press Conference in Winnipeg, 30 May, 1975.

Province of Manitoba. The Public Schools Act. S.M. 1980, c.3--Cap. P250. Winnipeg: The Queen's Printer for the Province of Manitoba.

Manitoba Association of School Trustees Convention Resolution (1983). Winnipeg, Manitoba.

Department of Justice, Canada. (1986 0101). The Constitution Acts 1867 to 1982. Ottawa: Minister of Supply and Services.

Province of Manitoba. The Public Schools Act. R.S.M. 1987, c. P250. Winnipeg: The Queen's Printer for the Province of Manitoba.

Manitoba Department of Education (1988). Working Papers, Le Bureau De L'Education Française, Winnipeg, Manitoba.

Province of Manitoba. Report of the Manitoba Task Force on Francophone School Governance. (1991). Winnipeg: Manitoba Education and Training.

B. School Division Records

The St. James-Assiniboia School Division No. 2 Minutes. Regular Meeting, The Board of Trustees, Winnipeg, Manitoba, 25 March 1980.

John Kastrukoff, "Superintendent's Report on French Immersion". Swan Valley School Division No. 35, Swan River, Manitoba, 17 March, 1982.

John Kastrukoff, "Superintendent's Report on French Immersion". Swan Valley School Division No. 35, Swan River, Manitoba, 7 April, 1982.

John Kastrukoff, "Superintendent's Report on French Immersion". Swan Valley School Division No. 35, Swan River, Manitoba, 21 April, 1982.

Swan Valley School Division No. 35. Minutes. Regular Meeting, The Board of Trustees, Swan River, Manitoba, 10 May, 1982.

Swan Valley School Division No. 35. Minutes. Regular Meeting, the Board of Trustees, Swan River, Manitoba, 31 May, 1982.

Swan Valley School Division No. 35. Minutes. Special Meeting, The Board of Trustees, Swan River, Manitoba, 7 June, 1982.

Swan Valley School Division No. 35. Minutes. Regular Meeting, The Board of Trustees. Swan River, Manitoba, 28 June, 1982.

The St. James-Assiniboia School Division No. 2. Minutes. Regular Meeting, The Board of Trustees. Winnipeg, Manitoba, 6 July, 1982.

C. Legal Documents

Pernisie v. Swan Valley School Division No. 35. (1982) 18 Man. R. (2d).

Pernisie v. Swan Valley School Division No. 35. (1982) "Appeal Book of the Applicant", Lynn Pernisie, Suit No. 259.

Pernisie v. Swan Valley School Division No. 35. (1982) "Appeal Evidence", Suit No. 259.

Winnipeg School Division No. 1 v. MacArthur (1982) 14 Man. R. (2d).

Reference Re The Constitution Act, 1982 (1988) and The Public Schools Act, Chapter 250, C.C.S.M., and Subsections 79(3), 79 (4) and 79 (7) thereof. (Man. C.A.)

D. Newspapers

Winnipeg Free Press, 22 July, 1982.

Winnipeg Free Press, 28 August, 1982.

Winnipeg Free Press, 7 September, 1982.

Winnipeg Free Press, 7 November, 1990.

Winnipeg Free Press, 7 February, 1990.

E. Correspondence

Lynn Pernisie to Jack Coulthart, Secretary-Treasurer, Swan Valley School Division No. 35, 2 March, 1982.

John Kastrukoff, Superintendent of Swan Valley School Division No. 35, to Maureen Hemphill, Minister of Education, 3 March, 1982.

George Eakin, Chairman of the School Board, St. James-Assiniboia School Division No. 2 to Maureen Hemphill, Minister of Education, 17 March, 1982.

Guy Roy, Assistant Deputy Minister of Education to John Kastrukoff, Superintendent of Swan Valley School Division No. 35, 25 March, 1982.

Art Bourgeault, Swan Valley Trustee to the Swan Valley Board of Trustees, School Division No. 35 and to Maureen Hemphill, Minister of Education, 28 April, 1982.

Lynn Pernisie to Maureen Hemphill, Minister of Education, 29 April, 1982.

John Kastrukoff, Superintendent of Swan Valley School Division No. 35 to Dr. Ron Duhamel, Deputy Minister of Education, 1 May, 1982.

Dr. Ron Duhamel, Deputy Minister of Education to Lynn Pernisie, 13 May, 1982.

John Kastrukoff, Superintendent of Swan Valley School Division No. 35 to Dr. Ron Duhamel, Deputy Minister of Education, 18 May, 1982.

Lynn Pernisie to Jack Coulthart, Secretary-Treasurer, Swan Valley School Division No. 35, 29 May, 1982.

John Kastrukoff, Superintendent of Swan Valley School Division No. 35 to Dr. Ron Duhamel, Deputy Minister of Education, 1 June, 1982.

Maureen Hemphill, Minister of Education to Lynn Pernisie, 14 June, 1982.

Lynn Pernisie to Jack Coulthart, Secretary-Treasurer, Swan Valley School Division No. 35, 22 June, 1982.

C. Sarbit, Canadian Parents for French, Manitoba Chapter to Sidney Green, Q.C. Barrister and Solicitor, 5 October, 1982.

Leo Le Tourneau, Freedom of Information Access Officer to Author, 10 January, 1992.

F. Interviews

Art Bourgeault, Swan River, Manitoba, telephone interview with author, 9 January, 1991.

Art Bourgeault, Swan River, Manitoba, telephone interview with author, 9 June, 1991.

Dr. Ron Duhamel, Member of Parliament, St. Boniface, Manitoba, interview with author, 29 October, 1990.

Dr. Ron Duhamel, Member of Parliament, St.-Boniface, Manitoba, interview with author, 18 December, 1990.

Henri Grimard, Director of Support Services Branch, Le Bureau De L'Education Francaise, interview with author, 9 November, 1990.

John Kastrukoff, Swan River, Manitoba, telephone interview with author, 13 December, 1990.

John Kastrukoff, Swan River, Manitoba, telephone interview with author, 14 December, 1990.

Lynn Pernisie, Colona, B.C., telephone interview with author, 12 January, 1991.

Lynn Pernisie, Colona, B.C., telephone interview with author, 30 May, 1991.

Lauraine Steen, Swan River, Manitoba, telephone interview with author, 18 January, 1992.

G. Books

Best, J. W. (1977). Research in education (3rd ed.). Englewood Cliffs, NJ: Prentice-Hall Inc.

Blau, P.M. (1955). The dynamics of bureaucracy. Chicago: The University of Chicago Press.

- Dahl, R. (1961). Who governs? Democracy and Power in an American city. New Haven: Yale University Press.
- Dahl, R. (1976). Modern political analysis (3rd ed.) Englewood Cliffs, NJ: Prentice-Hall Inc.
- Deutsch, K. W. (1974). Politics and government: How people decide their fate. Boston: Houghton-Mifflin Company.
- Easton, D., ed. (1965). A framework for political analysis. Englewood Cliffs, NJ: Prentice-Hall Inc.
- Eckstein, H. ed. (1975). "Case study and theory in political science", Strategies of inquiries, F. I. Greenstein. Massachusetts: Addison-Wesley.
- Fischer, D. H. (1970). Historians, fallacies: Toward a logical of historical thought. New York: Harper and Row.
- Good, C. V. (1966). Essentials of educational research (2nd ed.). New York: Meredith Corporation.
- Lasswell, H. D. (1936). Who gets what, when, how? New York: McGraw-Hill Book Co. Inc.
- Lasswell, H. D. (1948). The analysis of political behaviour. London: Routledge and Kegan Paul.
- Laxer, R. M. ed. (1979). Bilingual tensions in Canada. Toronto, Ontario: The Institute for Studies in Education.
- Miller, J. D. B. (1962). The nature of politics. Hardmondsworth: Penguin Books Ltd.
- Nagel, J. H. (1975). The descriptive analysis of power. New Haven: Yale University Press.
- Presthus, R. (1972). Elite accomodation in Canadian politics. Toronto: MacMillan of Canada Ltd.
- Simeon, R. (1973). Federal provincial diplomacy: The making of recent policy in Canada. Toronto: University of Toronto Press.

Stern, H. H. (1972). Bilingual schooling: Some experiences in Canada and the United States.

Welsh, W. A. (1973). Studying politics. New York: Praeger Publishers.

Yin, R. K. (1983). Case study research: Design and methods. Beverly Hills, CA: Sage.

H. Theses

Le Tourneau, L. A. (1977). The development of a language policy in Manitoba: The genesis of Bill 113. Unpublished master's thesis, University of Manitoba.

Sotiriadis, C. M. (1981). The development of French second-language programs in Manitoba. Unpublished master's thesis, University of Manitoba.

I. Articles

Jaenen, C. (1984). "The history of French in Manitoba: Local initiative or external imposition?" Language and Society, No. 13.

Sabourin, G. & Taillefer, J. M. (1989). "L'immersion se développe au centre-ville." Education Manitoba, 17, (2).

APPENDICES

APPENDIX A

PERNISIE v. SWAN VALLEY SCHOOL DIVISION NO. 35

PERNISIE v. SWAN VALLEY SCHOOL
DIVISION No. 35
(Suit No. 259/82)

Manitoba Court of Appeal
Freedman, C.J.M., Monnin and O'Sullivan, JJ.A.
August 27, 1982.

Summary:

A group of parents petitioned a school board to have their children educated with French as the language of instruction. The school board denied the request. One parent applied on her own behalf and on behalf of the other parents for mandamus to require the school board to comply with s. 79(3) of the Public Schools Act. The Manitoba Court of Queen's Bench, in a decision unreported in this series of reports, dismissed the application. The parent appealed.

The Manitoba Court of Appeal allowed the appeal and granted mandamus.

ADMINISTRATIVE LAW - TOPIC 3210

Judicial review - Jurisdictional issues - The Manitoba Court of Appeal held that the court may not interfere with the decisions of statutory bodies, such as school boards, made within their jurisdiction - The court held that where a statutory body granted itself jurisdiction which it did not possess or declined to exercise jurisdiction which it held, its decision was reviewable by a superior court - See paragraphs 5 to 6.

ADMINISTRATIVE LAW - TOPIC 3754

Judicial review - Mandamus - Mandamus to public officials and boards - Respecting statutory duty - The Manitoba Court of Appeal granted mandamus to require a school board to group a number of pupils in a class with French as the language of instruction, pursuant to s. 79(3) of the Public Schools Act - See paragraphs 8 to 12.

ADMINISTRATIVE LAW - TOPIC 9061

Boards and tribunals - Jurisdiction - General - The Manitoba Court of Appeal stated that where a statute conferred a jurisdiction or duty on a body, provided that a certain condition existed, the jurisdiction or duty of that body could not depend on an erroneous decision that the condition did not exist - See paragraph 7.

EDUCATION - TOPIC 656

Education authorities - School commissions or boards - Powers respecting courses and instruction - Language - The parents of 29 children applied under s. 79(3) of the Public Schools Act to have their children grouped together with French as the language of instruction - Fifteen of the children were ready for kindergarten; 14 for grade one - The Manitoba Court of Appeal held that the children could be grouped together in one combined class and taught with French as the language of instruction - See paragraphs 8 to 12.

WORDS AND PHRASES

PUPILS - The Manitoba Court of Appeal held that the word "pupils" as found in s. 79(3) of the Public Schools Act included kindergarten pupils - See paragraphs 9 to 11.

CASES NOTICED:

Winnipeg School Division No. 1 v. MacArthur (1982), 14 Man. R.(2d) 386, appld. [para. 9].

STATUTES NOTICED:

Public Schools Act, R.S.M. 1970, c. P-250, s. 79(3) [paras. 2, 5, 8 to 12].

COUNSEL:

S. GREEN, Q.C., for the appellant;
R.A. SIMPSON, for the respondent.

This appeal was heard before FREEDMAN, C.J.M., MONNIN and O'SULLIVAN, J.J.A., of the Manitoba Court of Appeal on August 26, 1982. The decision of the Court of Appeal was delivered by O'SULLIVAN, J.A., on August 27, 1982:

1 O'SULLIVAN, J.A.: This is an appeal from an order of Hamilton, J., dismissing without costs an application for *mandamus* directed to Swan Valley School Division No. 35.

2 The application is based on s. 79(3) of the *Public Schools Act*, C.C.S.M. c.-P-250, which reads:

Where in any school division . . . there are 23 or more pupils who may be grouped in a class for instruction and whose parents desire them to be instructed in a class in which English or French is used as the language of instruction, the school board shall group those pupils, and upon petition of the parents of those pupils requesting the use of English or French,

as the case may be, as the language of instruction in respect of those pupils, the school board shall group those pupils in a class for instruction and provide for the use of English or French, as the case may be, as the language of instruction in the class.

3 There is no dispute in this case that the parents of 23 children want to have their children in Swan River District educated with French as the language of instruction. They made an appropriate petition and the School Board considered it. The School Board decided not to accede to the wishes of the parents.

4 The applicant appellant comes to court on her own behalf and on behalf of the other petitioners. In the course of submissions, counsel for the parents urged that the School Division acted on irrelevant considerations and in his written factum went so far as to suggest that the School Board intended to defy the mandatory requirements of legislation. The learned Queen's Bench judge did not accept these submissions; he held that the School Board acted fairly and in good faith. We agree with the learned Queen's Bench judge that there is nothing before us to warrant charges of unfairness or bad faith. The further suggestion that the board took into account irrelevant circumstances, while appearing to have some basis, has not been adequately substantiated.

5 The learned Queen's Bench judge thought his findings ended the matter since he construed s. 79(3) as giving to a School Board a discretion to decide whether the conditions of the section have been met or not. He cited authorities which affirm that courts do not interfere with decisions of statutory bodies made within their jurisdiction. Counsel for the School Division supported the judgment by referring us to a recent decision of this court: *Patterson Barker v. St. Boniface School Division No. 4 et al.*, unreported as yet, delivered June 21, 1982. The principle is clear that, regardless of what we think of the merits of a decision made by a School Board within its jurisdiction, we should not interfere with it.

6 But the law draws a distinction between a decision within jurisdiction and a decision upon which jurisdiction depends. In the case of the latter kind of decision, a statutory body must obviously determine if it has jurisdiction or not but if it makes an error so as to cloak itself with a jurisdiction which it does not possess or, as is alleged here,

it declines to exercise a jurisdiction it has, because of an error as to the existence of preliminary conditions requiring its exercise, then the decision of the statutory tribunal on that point is reviewable by a superior court which has a duty to come to its own conclusion as to whether or not the decision can stand.

7 When a statute confers on a body a jurisdiction or duty "if A exists", the jurisdiction or duty of that body cannot depend on an erroneous decision that A does not exist.

8 So, in the case before us, it is necessary to consider on the evidence presented by both sides whether the conditions of s. 79(3) are met in law. The evidence indicates that the superintendent of the School Division was of the opinion that the condition of the section was not met because the children whose parents petitioned could not reasonably be grouped in one class for instruction. Fifteen of the children are ready for kindergarten; fourteen for grade 1. He said there had been an attempt to mix kindergarten with grade 1 on a previous occasion and it had not worked. But Mr. Molgat's evidence was based not only on his opinion that a combined class is feasible but also on the fact that in other school divisions there are operating and functioning classes combining kindergarten and grade 1. If such combined classes are working in other districts, there is no reason to think that they could not be feasible in Swan River. Reviewing the evidence, I come to the conclusion that the children involved in the case before us may be grouped in a class for instruction; it follows that the basic decision of the School Board resting on the practical impossibility of such combination is wrong. The section of the Act does not read: "Where in the opinion of the school board there are 23 or more pupils who may be grouped in a class for instruction", but rather "Where there are 23 or more such pupils". I conclude, therefore, that Hamilton, J., was wrong in holding that the court should not review the evidence to see if the conditions of the section are met.

9 But counsel for the School Division made a further submission with which the learned Queen's Bench judge did not expressly deal. He submitted that the pupils referred to in s. 79(3) must be children who are entitled to attend public schools. He referred us to the decision of Kroft, J., in *Winnipeg School Division No. 1 v. MacArthur* (1982), 14 Man. R.(2d) 386. It was held in that case that a school board has an absolute discretion whether it will or will not provide a kindergarten program. That conclusion appears to me to be

sound. The Swan River School Board has no duty to establish a kindergarten program. If it had not done so, the parents of 23 children could not require it to do so either in French or English. But in fact the School Division has established a kindergarten program and it must operate it according to law.

- 10 Counsel for the School Division submits that s. 79(3) must be limited to pupils in Grades 1 to 12 where the school board is obligated to provide an education to its residents. But this would mean giving a restricted meaning to the term "pupils" in the section. It would involve reading the section as if it said:

Where in any school division . . . there are 23 or more resident pupils who have the right to attend school
. . .

- 11 I do not see any warrant for reading the section so restrictively. It is true that a school board need not establish a kindergarten program, but if it does then the children who are eligible for the program must be regarded as pupils. The school board certainly owes a duty to educate those whom it accepts as pupils. Pupils in the section must mean those who are eligible to attend programs offered by a school division and the term is not limited to those who have the right to attend Grades I to XII.

- 12 I would therefore allow the appeal and issue an order directed to the School Board of Swan Valley School Division No. 35 requiring it to comply with s. 79(3): The School Board shall group the pupils in a class for instruction and provide for the use of French as the language of instruction in the class. I would give costs to the applicant in this court and in the Court of Queen's Bench.

- 13 Following the completion of these reasons for judgment but before their delivery, we received from Mr. Green, counsel for the applicant, a letter notifying us that he had just been informed by Mrs. Pernisie that her husband had been re-assigned to Winnipeg. Hence, if a class should be instituted in the Swan Valley School Division No. 35 as requested, her child would not be able to take advantage of that class.

- 14 Mr. Green expressed the view that this development did not affect Mrs. Pernisie's status as one of the petitioners and as the named applicant.

- 15 We agree that this change should not affect our disposition of this appeal. But any further proceedings should reflect the change in the style of cause necessitated by the substitution of another applicant.

Appeal allowed.

Editor: Debra F. MacCausland
rmt

APPENDIX B

LETTER TO POTENTIAL INTERVIEWEES



THE UNIVERSITY OF MANITOBA

FACULTY OF EDUCATION
Department of Educational Administration and Foundations

Winnipeg, Manitoba
Canada R3T 2N2

Tel: (204) 474-9019
Fax: (204) 275-5962

Dear

I am a Master of Education student at the University of Manitoba engaged in research for my M.Ed. thesis. My study focuses on an examination of a case involving French immersion which arose in Swan Valley School Division No. 35 in Swan River, Manitoba during the early 1980s. I want to examine the controversy which arose in this division as a case study in the politics of second-language education. Therefore, I am especially interested in obtaining information about this case, including any personal insights, opinions, observations or documents which you may have and which would help provide me with a better understanding of the situation in this case.

If you are willing to participate in my study, I would like to arrange to have an interview with you at your convenience. Each interview will require approximately one-half hour of your time. At no time will an entire transcript of the interview be used in the study, but, as it is customary in a study of this nature, specific commentary may be attributed to you as an interviewee, unless you request that certain comments not be used. Further, you may refuse to participate in the study or elect to discontinue involvement at any point. Following the completion of the study, general results of the study will be available to those who agree to participate.

If you have any questions or concerns regarding the study, please phone me at (home), (office) or (messages). Alternatively, information concerning the study may be obtained from my thesis advisor, Dr. John C. Long, at the University of Manitoba ().

Sincerely,

John V. Brandon
M.Ed. Student

John C. Long, Ph.D
Associate Professor (Thesis Advisor)
Educational Administration and Foundations
University of Manitoba

REPLY TO THE REQUEST TO BE INTERVIEWED

I am _____
am not _____
willing to be interviewed for the proposed study.

If you are willing to be interviewed, I will contact you promptly upon return of this letter to arrange an interview at a place and time convenient to you. Would you please confirm these details:

Your Name _____
Phone Number _____ (residence)
_____ (work)
Address _____ Postal Code _____

Whether or not you are willing to be interviewed, would you please assist me in making other contacts who may be helpful to my study? Thank you.

(a) Their Name _____	(b) Their Name _____
Phone No. _____ (res.)	Phone No. _____ (res.)
_____ (work)	_____ (work)
Address _____	Address _____
_____	_____
Postal Code _____	Postal Code _____

Thank you for your attention to my request. Please return the reply in the self-addressed, stamped envelope to:

Mr. J. V. Brandon
c/o Department of Educational Administration and Foundations
Faculty of Education
University of Manitoba
Winnipeg, Manitoba
R3T 2N2

APPENDIX C
LIST OF INTERVIEWEES
AND
INTERVIEW SCHEDULE

LIST OF INTERVIEWEES

PARENTS

Mrs. Lynn Pernisie, Applicant and Appellant in the case, Swan River.

SCHOOL OFFICIALS

Swan River School Division No. 35., Swan River, Manitoba

Mr. A. Bourgeault, School Trustee (former).

Mr. J. Kastrukoff, Superintendent (former).

GOVERNMENT OFFICIALS

Dr. Ron Duhamel, Deputy Minister of Education (former).

Mr. Henri Grimard, Director of the Support Services Branch, the Bureau de L'éducation française (current).

LEGAL COUNSEL

Mr. Sidney Green, Counsel for the Applicant, Lynn Pernisie.

Mr. R. A. Simpson, Counsel for the Respondent, Swan Valley School Division. No. 35.

INTERVIEW SCHEDULE

Parents

1. In your opinion, what was the key issue or issues in this controversy? Why do you say that?
2. What were your concerns and objectives (interests) in this matter? Why did you have these concerns and objectives?
3. On which matters was there agreement and disagreement between yourself and the Board?
4. How did you attempt to influence the Board's decision-making?
5. How did the Board respond to your request(s)? What decisions did the Board make? Why? What alternative decision, if any, were available to the Board in this matter? What set of circumstances, in your view, may have influenced the Board's decision-making in this matter? Why do you say that?
6. In your opinion, what was at stake in this particular situation for you, for parents generally, the Board, and for second-language education, especially French immersion?
7. What specific set of circumstances necessitated the litigation in the Manitoba courts? In your view, was there any other recourse available at the point of deciding to litigate, other than the courts, to attempt to settle the matter?
8. What position did the Government of Manitoba take in this matter? Why did the Government take this position in your view?
9. Were there certain other individuals, groups, organizations or associations who became involved in this matter? How? What do you understand as their main concerns and interests? What influential role, if any, did they play in the matter?
10. What has been the significant consequences or implications of the litigation for the parents and the School Board? If specific Board policies have changed, how have they changed? Similarly, what impact, if any, did the litigation have on The Manitoba Public Schools Act including the policy of the Provincial Government concerning the administration of French language education in Manitoba?
11. Would you say that the key issue or issues in this matter have been resolved once and for all? Why do you say that?
12. Are you aware of any documents, correspondence or other written material related

to the concerns or interests of any of the individuals, groups, organizations or associations involved with this controversy? Where might I obtain them?

13. Is there anything that I have not asked you, but which, you would like to comment on specifically?

School Officials

1. At the time of this controversy, what was your position or title with the School Division?

2. In your opinion, what was the key issue or issues involved with the matter?

3. What important issues have arisen in your community with respect to French language education, and in particular, School Board policy related to French language instruction?

4. What were the concerns and objectives (interests) of the parents in this case which required decision-making by the Board? Why, in your view, did the parents have these concerns and interests? What strategies and tactics, if any, did the parents use in order to influence the decision-making of the Board?

5. What was the response of the Board to the request(s) of the parents? What reasons did the Board give for that response? Were the parents satisfied with the Board's decision-making? What specific alternatives were available to the Board in terms of resolving this controversy? On which matter(s) was there agreement and disagreement between the Board and the parents, if any?

6. In your opinion, was the decision-making of the Board in relation to the request of the parents consistent with the intentions of The Manitoba Public Schools Act? Why do you say that?

7. In view of the Board's decision-making, what additional strategies and tactics, if any, did the parents employ in order to further influence the Board's decision-making? Who was the catalyst for litigation in this controversy? In your opinion, what was at stake for the parents, the Board, the Government, second-language education, and especially for French immersion?

8. Were there certain other individuals, groups, organizations or associations involved in this matter? How did they become involved? What did you understand as their main concerns and objectives? What influential role, if any, did they play in this matter?

9. What position did the Government of Manitoba take in view of the Board's

response to the request of the parents, and in light of the mandatory provision of The Manitoba Public Schools Act?

10. What have been the consequences of the litigation for the Board's policy-making in this controversy? If specific policies have changed, how have they changed? What are the implications of these changes for second-language education and for the administration of French immersion?

11. What have been the consequences and implications of the outcome of the litigation for the Government's policy related to second-language education? What changes, if any, have been made or will be made to The Manitoba Public Schools Act?

12. Would you say that the key issue or issues in this matter have been resolved once and for all? Why do you say that?

13. Are you aware of any documents, correspondence or other written material related to the concerns or interests of any of the individuals, groups, organizations or associations involved with this controversy? Where might I obtain them?

14. Is there anything that I have not asked you, but which, you would like to comment on specifically?

Government Officials

1. At the time of this controversy, what was your position or title with the Government of Manitoba?

2. In your opinion what was the key issue or issues in the controversy? What other issues surfaced in this case, if any?

3. Were there certain developments or sets of circumstances which may have influenced the Government's position in this controversy? Why?

4. What was the Government's policy concerning the development and administration of second-language programs and French immersion in Manitoba at the time? What did the School Board parents and the Government hope to accomplish in the matter?

5. What was the purpose and intent of The Manitoba Public Schools Act concerning the provision of second-language instruction and local school boards?

6. In view of your position with the Government at the time, what initiatives, if any, did you take to resolve the controversy in this matter? Why?

7. In your opinion, could this controversy have been resolved without the use of the Manitoba courts? If so, then why did this matter go before the courts?
8. Are you aware of any other individuals, groups, organizations or associations who played an important role in this case? How did they seek recognition of their concerns and the realization of their interests? Were they successful? Why?
9. What were the significant consequences of the litigation for the parents, the Board and the Government of Manitoba?
10. What political implications came out of the litigation for second-language education, if any, in this case? What implications came out of the litigation for the administration of French immersion in Manitoba, including changes to The Manitoba Public Schools Act?
11. Has the key issue or issues in this case been resolved once and for all? Why do you say that?
12. Are you aware of any documents, correspondence or other written material related to the concerns and objectives of any of the individuals, groups, organizations, and associations involved with this controversy? Where might I obtain them?
13. Is there anything that I have not asked you, but which, you would like to comment on specifically?

Counsel

1. In your view, what was the key issue or issues in this case? What additional issue or issues, if any, surfaced in this case?
2. What were the strategic and tactical aspects involved in the court actions and representation in this case by the parents and the School Board?
3. Which participant/stakeholder won in this case, and who lost? What was the substantive ruling in this case? Was the key issue or issues resolved once and for all by the ruling of the Courts? Why do you say that?
4. What were the consequences and implications of the litigation for the stakeholder in this case? What were the results of the litigation for The Manitoba Public Schools Act (changes or not)? What were the results of the litigation for second-language education, including the administration of French immersion in the province?
5. Are you aware of any other documents, correspondence or other written material

related to the concerns and objectives of any of the individuals, groups, organizations, and associations involved in this controversy? Where might I obtain them?

6. Is there anything that I have not asked you, but which, you'd like to comment on specifically?

APPENDIX D

BILL 59 (1967)

CHAPTER 49

BILL No. 59

An Act to amend The Public Schools Act (2).

(Assented to April 27th, 1967)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

S. 240 rep.
& sub.

1. Section 240 of The Public Schools Act, being chapter 215 of the Revised Statutes, is repealed and the following section is substituted therefor:

English as
language of
instruction.

240. (1) Subject as in this section otherwise provided, English shall be used as the language of instruction in all public schools.

Use of other
languages at
certain times.

(2) When authorized by the board of trustees of a district, area or division, a language other than English may be used in any school in the district, area or division

(a) during a period authorized for religious teaching;

(b) during a period authorized by the minister for teaching a language other than English; and

(c) before and after the school hours prescribed in the regulations and applicable to that school.

Use of French
as language of
instruction.

(3) Subject as herein provided, the French language, being one of the two languages to which reference is made in the *British North America Act, 1867*, may be used in the public schools as a language of instruction.

Proposal to
instruct in
French.

(4) A board of a district, area or division may request the minister to approve a proposal to use, subject as herein provided, the French language in the instruction of social studies and such other subjects as the minister may, by regulation, stipulate, in a school in the district, area or division, as the case may be.

Form of
proposal.

(5) A proposal made under subsection (4) shall be in a form prescribed by the minister, and the minister may require such additional information as he considers necessary in respect of the proposal.

Contents of
proposal.

(6) A proposal made under subsection (4) shall set forth the subject or subjects in which it is proposed to offer instruction in the French language, subject to regulations made under subsection (11), and shall set out the duration of periods of time during which a language other than English will be used under clauses (a) and (b) of subsection (2), together with any other information required by the minister under subsection (5).

Maximum use
of languages
other than
English.

(7) The total time in which a language other than English may be used

(a) as the language of instruction under a proposal made under subsection (4) and approved by the minister under this section; and

(b) under clauses (a) and (b) of subsection (2);

shall not exceed one-half of the instructional time in any day.

Pupil not re-
quired to be
taught in
French.

(8) No pupil shall be required to receive instruction in the French language under a proposal made under subsection (4) if his parent or guardian makes written objection thereto.

Approval.

(9) The minister, in his absolute discretion, and having regard to pedagogical and administrative factors, may approve, reject or suspend all or any part of a proposal made under subsection (4); and, where he approves a proposal or a part thereof, he may approve it subject to such terms and conditions as he may deem necessary or advisable, and without limiting the generality of the foregoing he may, in connection with any such proposal,

(a) limit the use of the French language as a language of instruction under the proposal to certain subjects or to certain parts thereof;

(b) specify the grades in which the French language may be used as the language of instruction under the proposal;

(c) prescribe the qualifications for teachers who may use the French language as a language of instruction under the proposal; and

(d) require the board to make satisfactory provision for the instruction in English of any pupil whose parent or guardian makes an objection under subsection (8);

or do any one or more of the things mentioned in clauses (a), (b), (c) and (d).

Establishment
of committee.

(10) The minister may establish a committee to advise him on any matter arising under this section.

Regulations.

(11) The minister may make regulations and prescribe courses of study and textbooks that may be used in carrying into effect proposals, or parts of proposals, approved in accordance with this section.

Commencement
of Act.

2. This Act comes into force on the day it receives the royal assent.

MANITOBA REGULATION 79/67

being

A REGULATION UNDER THE PUBLIC SCHOOLS ACT

RESPECTING THE USE OF THE FRENCH LANGUAGE

IN THE INSTRUCTION OF SOCIAL STUDIES

(Filed July 6th, 1967)

Definitions

1. In this regulation,
 - (a) "Act" means The Public Schools Act;
 - (b) "bilingual teacher" means
 - (i) a teacher holding a valid and subsisting Collegiate Certificate issued under The Education Department Act and who has standing in Français 300, its equivalent or better; or
 - (ii) a teacher holding a valid and subsisting Collegiate Certificate issued under The Education Department Act and who has standing in French 300, its equivalent or better, and who has obtained a Certificate of Oral Proficiency in French from a University in Manitoba, or standing equivalent to such a certificate as determined by the minister; or
 - (iii) a teacher holding a valid and subsisting certificate issued under The Education Department Act which entitles the holder to teach in an elementary school and who has standing in Français 200, its equivalent or better; or
 - (iv) a teacher holding a valid and subsisting certificate issued under The Education Department Act which entitles the holder to teach in an elementary school, and who has standing in French 200, its equivalent or better, and who has obtained a Certificate of Oral Proficiency in French from a University in Manitoba, or standing equivalent to such a certificate as determined by the minister.
 - (c) "board" means the board of trustees of a school district, school division or school area;
 - (d) "department" means The Department of Education;
 - (e) "district" means a school district that is part of a division and a remote school district;
 - (f) "division" means a school division or a unitary school division established under Parts XVI, XIX or XIXA of the Act;

July 15, 1967

THE MANITOBA GAZETTE

Vol. 96, No. 28

(g) "elementary grades" means kindergarten and grades 1, 2, 3, 4, 5, 6, 7 and 8;

(h) "Inspector" has the same meaning as in the Act;

(i) "school" has the same meaning as in the Act;

(j) "secondary grades" means grades 9, 10, 11 and 12;

(k) "teacher" has the same meaning as in the Act.

Subjects

2. The French language may be used in the schools as a language of instruction in social studies, including history and geography, in those grades from kindergarten to grade 12 inclusive for which a proposal has been approved and a course has been duly prescribed by the minister.

Courses

3. Where the proposal has been approved and where the course has been prescribed by the minister, the instruction in social studies in the French language shall be as outlined in the curriculum guides issued under the authority of the minister.

Time
allotments

4. Subject to section 240 (7) of the Act, the instruction in social studies in the French language shall receive the same weekly time allotment in the different elementary and secondary grades as is recommended for the instruction in social studies in the English language in the comparable grades.

Textbooks

5. The textbooks to be used shall be those prescribed by the Minister of Education, including such supplementary and reference materials as may be approved from time to time for this instruction by the minister and listed in the Teacher's Guide, curriculum pamphlets, or other official publications of the department.

Permission
to offer

6. The use of the French language in the instruction in social studies in the schools shall be restricted to those schools the boards of which have submitted a proposal to the minister in the form and manner set out herein, which the minister has approved and shall be subject to such terms and conditions as the minister may impose.

Form of
proposal

7. A proposal for the instruction in social studies in the French language submitted by the board of a district, area or division shall be in the form prescribed by the minister.

Teacher
qualifications

8. The instruction in social studies in the French language in any of the elementary or secondary grades shall be conducted by a bilingual teacher.

Parental
concurrence

9. Where a proposal by a board for instruction in social studies in the French language in any school in its district, area or division has been approved by the minister, the board shall ascertain, in a manner satisfactory to the minister, that no pupil in the school is required to receive such instruction if his parent or guardian objects thereto.

Instruction
in English

10. Where a parent or guardian of a pupil objects to his receiving instruction in social studies in the French language, the board shall provide for that pupil instruction in social studies in English.

APPENDIX E

BILL 113

AN ACT TO AMEND THE PUBLIC SCHOOLS ACT, 1970

AN ACT TO AMEND THE PUBLIC SCHOOLS ACT (2).

(Assented to July 16, 1970)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Sec. 258 rep. and sub.

1 Section 258 of The Public Schools Act, being Chapter P250 of the Revised Statutes of Manitoba, 1970, is repealed and the following section is substituted therefor:

English and French as languages of instruction.

258 (1) Subject as otherwise provided in this section, English and French being the two languages to which reference is made in the British North America Act, 1867, are the languages of instruction in public schools.

Use of other languages.

258 (2) When authorized by the board of a school district, school division or school area, a language other than English or French may be used in any school in the school district, school division or school area

- (a) during a period authorized for religious teaching;
- (b) during a period authorized by the minister for teaching a language other than English or French; and
- (c) before and after the regular school hours prescribed in the regulations and applicable to that school.

Establishment of English Language Advisory Committee.

258 (3) The minister shall establish a committee (hereinafter in this section referred to as the "English Language Advisory Committee") composed of nine persons to which he may refer matters pertaining to the use of English as a language of instruction in public schools.

Membership of English Language Advisory Committee.

258 (4) The members of the English Language Advisory Committee, of whom

- (a) two shall be appointed from not less than four persons nominated by the Manitoba Association of School Trustees;
- (b) two shall be appointed from not less than four persons nominated by the Manitoba Teachers Society;
- (c) one shall be appointed from not less than two persons nominated by the Faculty of Education of the University of Manitoba; and
- (d) one shall be appointed from not less than two persons nominated by the Faculty of Education of the University of Brandon;

shall be appointed by the minister for such terms as he may determine.

S.M., 1970, c. 66

PUBLIC SCHOOLS

Establishment of French Language Advisory Committee.

258 (5) The minister shall establish a committee (hereinafter in this section referred to as the "French Language Advisory Committee") composed of nine persons to which he may refer matters pertaining to the use of French as a language of instruction in public schools.

Membership of French Language Advisory Committee.

258 (6) The members of the French Language Advisory Committee, of whom

- (a) two shall be appointed from not less than four persons nominated by l'Association des commissaires d'école de langue française du Manitoba;
- (b) two shall be appointed from not less than four persons nominated by les éducateurs franco-manitobains; and
- (c) two shall be appointed from not less than four persons nominated by Le Collège de Saint Boniface;

shall be appointed by the minister for such terms as he may determine.

Languages of Instruction Advisory Council.

258 (7) The English Language Advisory Committee and the French Language Advisory Committee together constitute a council to be known as: "Languages of Instruction Advisory Council", to which the minister may refer matters pertaining to the operation of this section.

Use of English or French as language of instruction.

258 (8) Where there are in any school district, school division or school area

- (a) twenty-eight or more pupils in an elementary grade who may be grouped in a class for instruction; or
- (b) twenty-three or more pupils in a secondary grade who may be grouped in a class for instruction;

and whose parents desire them to be instructed in a class in which English or French, as the case may be, is used as the language of instruction, the board of the school district, school division or school area may, and upon petition of the parents of those pupils requesting the use of English or French, as the case may be, as the language of instruction in respect of those pupils, shall group those pupils in a class for instruction and provide for the use of English or French, as the case may be, as the language of instruction in the class.

Minister's discretion for fewer pupils.

258 (9) Where the number of pupils concerned is less than the numbers mentioned in subsection (8) as requirements for the application of that subsection, the minister, where he considers it practical and upon the advice of the English Language Advisory Committee or the French Language Advisory Committee, as the case may be, may require the board of a school district, school division or school area to make arrangements for the use of English or French as the language of instruction in any class.

Language of administration.

258 (10) The administration and operation of a public school shall be carried out in the English language or the French language as the minister may, by regulation, provide.

PUBLIC SCHOOLS

S.M., 1970, c. 68

English as subject of instruction.**258 (11)** Notwithstanding any other provision of this Act, English

- (a) may be a subject of instruction in any grade; and
- (b) shall be a subject of instruction in every class in Grades IV, V, VI, VII, VIII, IX, X, XI, or XII where French is used as the language of instruction.

Agreements by boards.

258 (12) A board of a school district, school division or school area may enter into an agreement with the board of another school district, school division or school area for providing jointly, classes in which the language used for instruction is English or French as the case may be, and the pupils in those classes may be included in the numbers required to meet the requirements of any provision of this section or the regulations.

Regulations.

258 (13) The Minister may make regulations for carrying this section into effect.

Commencement of Act.

2 This Act comes into force on a day fixed by proclamation.

APPENDIX F

BILL 31 (1980)

THE PUBLIC SCHOOLS ACT.

(Assented to July 29, 1980)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

LANGUAGES OF INSTRUCTION

English and French as languages of instruction.

79 (1) Subject as otherwise provided in this section, English and French, being the two languages to which reference is made in the British North America Act, 1867, are the languages of instruction in public schools.

Use of other languages.

79 (2) When authorized by the school board, a language other than English or French may be used in any school in the school division or school district

- (a) for instruction in religion during a period authorized for such instruction;
- (b) during a period authorized by the minister for teaching the language;
- (c) before and after the regular school hours prescribed in the regulations and applicable to that school;
- (d) in compliance with the regulations as a language of instruction, for transitional purposes;
- (e) in compliance with the regulations, as a language of instruction for not more than 50 per cent of the regular school hours for pilot courses as determined by the minister.

Use of English or French as language of instruction.

79 (3) Where in any school division or school district, there are 23 or more pupils who may be grouped in a class for instruction and whose parents desire them to be instructed in a class in which English or French is used as the language of instruction, the school board shall group those pupils, and upon petition of the parents of those pupils requesting the use of English or French, as the case may be, as the language of instruction in respect of those pupils, the school board shall group those pupils in a class for instruction and provide for the use of English or French, as the case may be, as the language of instruction in the class.

Minister's discretion for fewer pupils.

79 (4) Where the number of pupils concerned is less than the numbers mentioned in subsection (3) as requirements for the application of that subsection, the minister may require the school board to make arrangements for the use of English or French as the language of instruction in any class.

Language of administration.

79 (5) The administration and operation of a public school shall be carried out in the English language or the French language as the minister may, by regulation, provide.

English as subject of instruction.

79 (6) Notwithstanding any other provision of this Act, English

- (a) may be a subject of instruction in any grade; and
- (b) shall be a subject of instruction in every class in Grade IV, V, VI, VII, VIII, IX, X, XI or XII where French is used as the language of instruction.

Agreements by boards.

79 (7) A school board may enter into an agreement with another school board for providing jointly classes in which the language used for instruction is English or French, as the case may be, and the pupils in those classes may be included in the numbers required to meet the requirements of any provision of this section or the regulations.

Establishment of Languages of Instruction Advisory Committee.

79 (8) The minister shall establish a committee (hereinafter referred to as the "Languages of Instruction Advisory Committee") composed of 9 persons, to which he may refer matters pertaining to the use of languages of instruction in public schools and which shall review those matters and make recommendations thereon to the minister.

Composition of Languages of Instruction Advisory Committee.

79 (9) Of the 9 members of the Languages of Instruction Advisory Committee -

- (a) 2 shall be appointed by the minister from not fewer than 4 persons who are members of l'association des commissaires d'école des langue française du Manitoba, nominated by the Manitoba Association of School Trustees;
 - (b) 2 shall be appointed by the minister from not fewer than 4 persons who are members of les éducateurs franco manitobaines, nominated by the Manitoba Teachers' Society; and
 - (c) 5 shall be appointed by the minister;
- for such term as the minister may determine.

Regulations.

79 (10) For the purpose of carrying out the provisions of this section according to their intent the minister may make such regulations and orders as he may deem necessary.

S.M. 1980, c. 33, s. 79.

APPENDIX G

SECTION 79 OF THE PUBLIC SCHOOLS ACT (1987)

LANGUAGES OF INSTRUCTION

Languages of instruction.

79(1) Subject as otherwise provided in this section, English and French are the languages of instruction in public schools.

Use of other languages.

79(2) When authorized by the school board, a language other than English or French may be used in any school in the school division or school district

- (a) for instruction in religion during a period authorized for such instruction;
- (b) during a period authorized by the minister for teaching the language;
- (c) before and after the regular school hours prescribed in the regulations and applicable to that school;
- (d) in compliance with the regulations as a language of instruction, for transitional purposes;
- (e) in compliance with the regulations, as a language of instruction for not more than 50% of the regular school hours as determined by the minister.

R.S.M. 1987 Supp., c. 26, s. 7.

LANGUES D'ENSEIGNEMENT

Langues d'enseignement

79(1) Sous réserve de ce qui est autrement prévu dans le présent article, l'anglais et le français sont les langues d'enseignement dans les écoles publiques.

Utilisation d'autres langues

79(2) Lorsqu'une commission scolaire l'autorise, une langue autre que l'anglais ou le français peut être utilisée dans une école d'une division ou d'un district scolaire :

- a) pour l'enseignement religieux durant la période autorisée pour cet enseignement;
- b) durant une période autorisée par le ministre pour l'enseignement de la langue;
- c) avant et après les heures de classe normales prescrites par règlement et applicables à cette école;
- d) en conformité avec les règlements, comme langue d'enseignement pour des fins de transition;
- e) en conformité avec les règlements, comme langue d'enseignement durant au plus 50 % des heures scolaires normales, tel que le ministre le détermine.

Suppl. L.R.M. 1987, c. 26, art. 7.

Use of English or French as language of instruction.

79(3) Where in any school division or school district, there are 23 or more pupils who may be grouped in a class for instruction and whose parents desire them to be instructed in a class in which English or French is used as the language of instruction, the school board shall group those pupils, and upon petition of the parents of those pupils requesting the use of English or French, as the case may be, as the language of instruction in respect of those pupils, the school board shall group those pupils in a class for instruction and provide for the use of English or French, as the case may be, as the language of instruction in the class.

Minister's discretion for fewer pupils.

79(4) Where the number of pupils concerned is less than the numbers mentioned in subsection (3) as requirements for the application of that subsection, the minister may require the school board to make arrangements for the use of English or French as the language of instruction in any class.

Language of administration.

79(5) The administration and operation of a public school shall be carried out in the English language or the French language as the minister may, by regulation, provide.

English as subject of instruction.

79(6) Notwithstanding any other provision of this Act, English

- (a) may be a subject of instruction in any grade; and
- (b) shall be a subject of instruction in every class in Grade IV, V, VI, VII, VIII, IX, X, XI or XII where French is used as the language of instruction.

Agreements by boards.

79(7) A school board may enter into an agreement with another school board for providing jointly classes in which the language used for instruction is English or French, as the case may be, and the pupils in those classes may be included in the numbers required to meet the requirements of any provision of this section or the regulations.

Utilisation de l'anglais ou du français comme langue d'enseignement

79(3) Lorsque dans une division ou un district scolaire, il y a 23 élèves ou plus qui peuvent être regroupés dans une classe et dont les parents veulent qu'ils reçoivent l'enseignement dans une classe où l'anglais ou le français est utilisé comme langue d'enseignement, la commission scolaire doit regrouper ces élèves. Sur requête des parents de ces élèves demandant l'usage de l'anglais ou du français, selon le cas, comme langue d'enseignement, la commission scolaire doit regrouper ces élèves dans une classe pour l'enseignement et pourvoir à l'usage de l'anglais ou du français, selon le cas, comme langue d'enseignement dans cette classe.

Discretion du ministre pour des élèves moins nombreux

79(4) Lorsque le nombre d'élèves impliqués est inférieur au minimum prévu par le paragraphe (3) pour que celui-ci s'applique, le ministre peut demander à la commission scolaire de prendre des mesures pour que l'anglais ou le français soit utilisé comme langue d'enseignement dans une classe.

Langue de l'administration

79(5) La langue de l'administration et du fonctionnement d'une école publique est l'anglais ou le français, selon ce que le ministre détermine par règlement.

L'anglais comme matière d'enseignement

79(6) Par dérogation à toute autre disposition de la présente loi :

- a) l'anglais peut être une matière d'enseignement à tous les niveaux;
- b) l'anglais doit être une matière d'enseignement dans chaque classe de la 4^e à la 12^e année lorsque le français est utilisé comme langue d'enseignement.

Ententes par les commissions

79(7) Une commission scolaire peut conclure une entente avec une autre commission scolaire pour fournir conjointement des classes où la langue utilisée pour l'enseignement est l'anglais ou le français, selon le cas, et les élèves de ces classes peuvent être compris dans le nombre requis pour rencontrer les exigences d'une disposition du présent article ou des règlements.

Establishment of Languages of Instruction Advisory Committee.

79(8) The minister shall establish a committee (hereinafter referred to as the "Languages of Instruction Advisory Committee") composed of nine persons, to which he may refer matters pertaining to the use of languages of instruction in public schools and which shall review those matters and make recommendations thereon to the minister.

Composition of Languages of Instruction Advisory Committee.

79(9) Of the nine members of the Languages of Instruction Advisory Committee

(a) two shall be appointed by the minister from not fewer than four persons who are members of les commissaires d'école franco-manitobains, nominated by the Manitoba Association of School Trustees;

(b) two shall be appointed by the minister from not fewer than four persons who are members of les éducateurs franco-manitobains, nominated by the Manitoba Teachers' Society; and

(c) five shall be appointed by the minister; for such term as the minister may determine.

Regulations.

79(10) For the purpose of carrying out the provisions of this section according to their intent the minister may make such regulations and orders as he may deem necessary.

Établissement d'un Conseil consultatif sur les langues d'enseignement

79(8) Le ministre doit constituer un conseil (ci-après désigné sous le nom de "Conseil consultatif sur les langues d'enseignement") formé de neuf personnes auxquelles il peut soumettre des questions pertinentes à l'utilisation des langues d'enseignement dans les écoles publiques. Le conseil doit examiner ces questions et faire ses recommandations au ministre.

Composition du Conseil consultatif sur les langues d'enseignement

79(9) Sur les neuf membres du Conseil consultatif sur les langues d'enseignement :

a) deux sont nommés par le ministre, parmi un minimum de quatre personnes membres des Commissaires d'école franco-manitobains, et désignées par l'Association des commissaires d'écoles du Manitoba;

b) deux sont nommés par le ministre, parmi un minimum de quatre personnes membres des Éducateurs franco-manitobains, et désignées par l'Association des enseignants du Manitoba;

c) cinq sont nommés par le ministre, pour la période que le ministre peut fixer

Règlements

79(10) Dans le but de mettre à exécution les dispositions du présent article conformément à son objet, le ministre peut prendre les règlements et les décrets qu'il juge nécessaires.

APPENDIX H

SECTION 23 OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Canadian Charter of Rights and Freedoms (1982)

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:

Guarantee of Rights and Freedoms

Rights and
freedoms in
Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
-

Minority Language Educational Rights

Language of
instruction

23. (1) Citizens of Canada

- (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, or
- (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,

have the right to have their children receive primary and secondary school instruction in that language in that province.

Continuity of
language instruction

- (2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.

Application where
numbers warrant

- (3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province
 - (a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and
 - (b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

APPENDIX I

REPORT OF THE MANITOBA TASK FORCE ON
FRANCOPHONE SCHOOLS GOVERNANCE: SUMMARY
OF RECOMMENDATIONS

Section 9

Summary of Recommendations

Basic Principles

1. The following basic principles should underlie the establishment of a system of francophone schools governance in Manitoba:
 1. To implement a system which will ensure, throughout Manitoba, the educational rights of the francophone minority, including governance of their schools by the Franco-Manitobans, as guaranteed by the *Canadian Charter of Rights and Freedoms* and as interpreted by the Supreme Court of Canada.
 2. To assist in preserving and promoting the French language and culture, thereby reversing the trend toward assimilation of the francophone minority in the Province.
 3. To provide Manitoba's eligible francophone students with a quality of education which is, in principle, on a basis of equality with that which is available to the majority.
 4. To provide financial arrangements which will ensure that predictable funds are available to enable effective operation and management of Franco-Manitoban schools.
 5. To implement a system which will be well adapted to the characteristics and unique needs of the Franco-Manitobans and have the flexibility to phase in over a reasonable period of time, thereby enabling proper recognition to be taken of the particular situations of local communities.
 6. To provide for appropriate participation by the francophone community in the decision-making processes at the different levels of government and organizations affecting French education.
 7. To ensure that the Franco-Manitoban school system will be operated and managed within the framework of the provincial public school system and be part of it.
 8. To ensure that the working language of the

Franco-Manitoban governance structure will be French.

9. To make provision for a progressive implementation of the new francophone system and for minimizing the consequential adjustments to the majority school system.
10. To ensure that the system of governance will have the capacity to promote the evolution of consistent programming, to facilitate the attainment of the objectives reflected in the Charter.

Governance

2. A francophone school division should be established encompassing all Franco-Manitoban school communities under the jurisdiction of a school board composed of eleven trustees. This board should be responsible for all schools providing francophone education in Manitoba. The territory covered by this division should expand in future as new Franco-Manitoban schools are established.
3. The francophone school board should also be responsible to provide educational services in French to students elsewhere in the Province when the Minister of Education and Training agrees that the provision of such service is warranted and that the board will be reimbursed for the full cost of the service.
4. The francophone school division should be divided into four regions, defined generally as follows:
 - a) Urban Region - Franco-Manitoban school communities in Metropolitan Winnipeg.
 - b) Eastern Region - francophone communities in the area comprising the Seine River Division.
 - c) Central Region - francophone communities in the area comprising the Red River Division.
 - d) Western Region - francophone communities in the area comprising these Divisions - Mountain, Turtle River, and Birdtail.
5. Each region should have a council composed of one or two representatives elected from each community or group of communities in the region with a francophone school. Elections of regional councillors should take place every three years, at the same time as provincial elections are held for school boards.

6. Each regional council should select from its membership the trustees to serve on the francophone school board. The council for the urban region should select five trustees, while the three rural councils should select two each.
7. Each community having a Franco-Manitoban school should elect, on an annual basis, a local school committee, which would be consulted on such issues as local educational program requirements, cultural programs, and budgets. To guarantee local involvement, such consultation should be required by legislation.
8. The regional councils should maintain close liaison with the local school committees in their regions, and be responsible for functions such as the following:
 - considering program requirements, establishing priorities and submitting recommended budgets for the schools in the region to the board;
 - expressing regional views and concerns to the board;
 - receiving board decisions and budget allocations and communicating these to the schools;
 - coordinating and supervising the provision of various services (program specialists, student counsellors, etc.) to the schools in the region;
 - making arrangements to meet particular needs (e.g.: transportation) where appropriate;
 - coordinating certain cultural activities on a regional basis;
 - monitoring developments and recommending program and budget adjustments where warranted.
9. The francophone school board should generally exercise the same powers and responsibilities as the other school divisions in the Province, with the following exceptions:
 - it should not have the power to levy local property taxation;
 - it should have an obligation to receive and consider annual program and budget submissions from regional councils before making its program and budgetary decisions, and to receive delegations from local communities and schools, on petition;
 - it should have responsibilities for remedial programs including an enhanced capacity to promote cultural activity throughout the division, to support pre-school programs and coordinate them with school programs;
 - it should be responsible to ensure that francophones throughout the Province are informed of the francophone education program, and to respond to enquiries for all areas.
10. The following definition of a Franco-Manitoban school should be adopted:

In furtherance of the goals of Section 23 of the Charter of Rights and Freedoms, and to meet the needs of children whose first language is French, the Franco-Manitoban school ensures the promotion of the language and culture of the linguistic minority. It offers an intensive program in French as a first language, in accordance with the requirements of the policies of the Department of Education and Training, and uses French as the language of internal and external communication.

In accordance with the provisions of the Charter, the Franco-Manitoban school is a facility created and financially supported under the Public Schools Act and the Education Administration Act, and is managed by the linguistic minority.
11. Consistent with this definition, Franco-Manitoban schools in future should be expected to deliver a "total français" program with at least 75% of instruction in the French language. Schools now offering a "partial français" program should be given a period not exceeding five years, two years in which to decide whether or not to join and three years in which to adjust gradually to the higher standard.
12. Children of parents who qualify under Section 23 of the Charter of Rights and Freedoms should have automatic right of access to Franco-Manitoban schools.
13. For purposes of determining whether or not the qualification of a bona fide French education has been met for establishing rights under the Charter, any school with characteristics similar to those of the Franco-Manitoban school, as defined above, should be accepted. As a minimum, the equivalent of four years of French education should be required to establish Section 23 rights. However, in cases where a child is currently receiving school

Access

instruction in French as a first language in Canada, this minimum cannot apply due to the specific wording of Section 23.

14. The francophone school board should have the power to admit certain other children to Franco-Manitoban schools — French speaking immigrants and other special cases — who do not have Section 23 rights. The francophone school board may wish to have an admissions committee to decide upon such cases, as well as to consider cases where Section 23 rights may not be clearly established.
15. Because students who are not French speaking may have rights under the Charter, the francophone school board should have the responsibility to provide special tutoring to students entering the system with a limited knowledge of French so that they will be able to participate fully in French language classes.

Eligibility

16. Section 23 parents — those who send their children to francophone schools — should also have the right to vote for and hold office in the school committees, regional councils, and school board. In addition, the same right should be available to any other person who would qualify under Section 23 if he or she had school-age children.
17. Notwithstanding the above recommendation, persons who declare themselves as supporters of one system should not be able to vote in the other system.
18. The francophone school board and the regional councils should have a rule that their internal operations will be exclusively in French.

Human Resources

19. All staff should adhere to the philosophy of French language education, as stated in the Task Force's basic principle #2:

The system should assist in preserving and promoting the French language and culture, thereby reversing the trend toward assimilation of the francophone minority in the Province.

20. Employee rights as defined in existing policies,

and benefits as set forth in current agreements or board policies should be maintained for a period of transition until new agreements are finalized between the new board and new collective bargaining units.

21. All staff (teaching and non-teaching) should have French language skills at a functional level.
22. All staff whose jobs are moved to the new francophone division should have the choice to transfer or to remain with the current employer, subject to the condition that, if they wish to transfer, they are able to function in French.
23. During the transition period, all staff transfers across current division boundaries should only be effected by mutual consent (employee-employer) until a new agreement is in place between the new school board and the bargaining units.
24. When a surplus staff situation occurs, consideration for assistance should be given to those affected to find new employment.
25. Whatever implementation team or board is established should be supported by sensitive personnel, including an interim superintendent, to work out personnel arrangements in advance.
26. The organization responsible for implementation should be empowered to enter into all necessary initial staffing arrangements to ensure staff are in place for the first school year of the new system.
27. The staff in the new francophone division should have access from the outset to such support systems (counsellors, etc.) as are normally available within the Manitoba school system.

Financial Arrangements

28. The following basic principles should underlie the financial arrangements for the new francophone component:

1. Financial arrangements must ensure that adequate funding is available to enable the effective operation and management of the francophone division on a basis of equality with that which is available to the majority.
2. The francophone school board would not be granted the power of property taxation due to the difficulties inherent in the enumeration pro-

cess and the definition of an appropriate tax base.

3. Anglophone taxpayers would not be expected to subsidize the francophone division on a local basis.
 4. Francophone taxpayers residing within an anglophone division and electing to send their children to the francophone division should not be expected to pay any more local taxes (special levy) than any other taxpayer.
 5. Given that education is exclusively a provincial jurisdiction, and to ensure adequate funding for a French education system on a long term basis, the francophone division must be guaranteed, by legislation, full support annually for legitimate additional expenditures for preservation and promotion of minority language and culture in line with Section 23 of the Charter.
9. The financial model under which the francophone school board receives its funds should consist of the following main elements:
- basic provincial grants calculated in the same way as for any other school division;
 - payments from each school division involved, equivalent to the local taxes (special levy) raised by the school division on a per student basis, multiplied by the number of students electing to attend a francophone school plus any equalization support incorporated in the formula;
 - full reimbursement from the Province of extra costs for French instruction provided to students resident outside of the francophone school division;
 - a special grant in recognition of the additional costs involved in providing minority language education in Manitoba.
0. The amount of the special grant should be determined annually in accordance with a process provided for by legislation under which the francophone school board, after regional and local consultations, submits proposals to the Department for assessment and decision. The special grant will recognize additional cost factors attributable to:
- lower economies of scale for the minority;
 - extra administrative costs related to the regional councils and other factors;
 - extra transportation costs;
 - more expensive books and other teaching aids;
 - the need for remedial programs including classes d'accueil, pre-school classes and enhanced cultural programs.
31. A special one-time provision should be made to cover the costs of implementing the new francophone school division.
32. With respect to capital costs, the following points should apply:
- Most existing Franco-Manitoban schools are homogeneous facilities and should be automatically transferred to the francophone school board; little equity transfer should be required since most of the assets involved have been funded provincially;
 - As a general principle, facilities, equipment and teaching materials currently used by français schools should serve as the foundation on which the new francophone school board begins operation;
 - The specific arrangements for the transfer of assets should be negotiated by a tripartite group representing the provider board, the francophone board and an independent chairperson provided by the Department of Education and Training.

Implementation

33. Implementation of the new governance structure should be targeted for September, 1992, and if that is not feasible, for September, 1993 at the latest.
34. The Government should announce a decision to implement as soon as possible and proceed with the development and passage of the necessary enabling legislation as soon as this can be achieved.
35. Immediately after the necessary legislation is in place, steps should be taken to elect regional councils which will select the school board to oversee the implementation process.

36. An Implementation Support Team should be appointed to assist the school board by advising on such matters as:

- information programs;
- consultations with communities to confirm decisions to opt into the division;
- arrangements for transfer of facilities;
- development of appropriate offices and systems;
- staffing;
- program arrangements, classes d'accueil, etc.;
- budget preparation.

(If necessary to meet the implementation deadline, the Support Team should be given decision-making authority until such time as the school board is in place.)

The Support Team should be composed of representatives of the major concerned organizations — the francophone associations, the Department of Education and Training, the teachers, the trustees, and the administrators, supported when necessary by specialized staff on a seconded or contractual basis.

37. There should be consultation with communities which currently have "total français" schools to determine whether or not they will join the francophone division. These communities should be asked to decide before the implementation target date. Communities which currently have "partial français" schools should be given up to two years after the implementation date to decide whether or not to join and an additional three years in which to adapt to the standards of the francophone division.