DEPARTMENT OF JUSTICE OF CANADA

AND

DEPARTMENT OF HERITAGE CANADA

ANNOTATED LANGUAGE LAWS OF CANADA

(Constitutional, Federal, Provincial and Territorial Laws)

(Second edition – revised, corrected and augmented)

2000-10-01

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The importance of language rights is grounded in the essential role that language plays in human existence, development and dignity. It is through language that we are able to form concepts; to structure and order the world around us. Language bridges the gap between isolation and community, allowing humans to delineate the rights and duties they hold in respect of one another, and thus to live in society.

Re Manitoba Language Rights, [1985] 1 S.C.R. 721, p. 744.

[A]*ny broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it. It is the means by which individuals understand themselves and the world around them.*

Mahe* v. *Alberta, [1990] 1 S.C.R. 342, p. 362.

1. AUTHORS OF THE BOOK

This book was prepared and written by the Official Languages Law Group of the Department of Justice of Canada. The members of the group are as follows:

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The choice of provisions and cases is personal to the authors and does not necessarily reflect any legal position taken by the Department of Justice of Canada. Moreover, legislative provisions are reproduced in the languages in which they were enacted whereas cases excerpts are reproduced in the language of the book.

For comments and suggestions, please send it to: alain.tremblay@justice.gc.ca.

2. PRESENTATION (First Edition)

1998 marks the tenth anniversary of the coming into force of the second *Official Languages Act* of Canada — the first *Act* came into force in 1969 and was repealed in 1988 — and the twentieth anniversary of the enactment of the main linguistic provisions of the *Criminal Code* (section. 530).

To underline these landmarks, the Department of Justice of Canada, in co-operation with the Department of Canadian Heritage, undertook to publish a book which would contain not only those two laws but also almost all Canadian linguistic legislation.

The present book consequently contains constitutional, federal, provincial and territorial legislation (398 in all) relating, in whole or in part, to the use of language within government institutions and in private activities. For each of these laws, the book reproduces the relevant case law excerpts and references (331 in all). However, for administrative and financial reasons, the book does not reproduce the regulations and other delegated legislation made pursuant to these laws, to the exception of a few texts, nor the laws related to education (however, cases related to section 23 of the *Canadian Charter of Rights and Freedoms* are reproduced).

Finally, the authors' only wish is that this book will enable jurists and non jurists to achieve a better understanding of the legal principles applicable to language issues in Canada.

PRESENTATION (Second Edition)

Readers will note that the second edition includes a revision of the significant cases to January 2000. However, for administrative and financial reasons, it was decided not to proceed with a revision of all laws contained in first edition.

3. ACKNOWLEDGMENTS

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4. BOOK UTILIZATION METHODOLOGY

Wherever possible, the authors have followed the *Canadian Style*, 2d ed. (Ottawa: Translation Bureau, Public Works and Government Services Canada, 1997) and the *Canadian Guide to Uniform Legal Citation*, 3d ed. (Toronto: Carswell, 1992).

Also, to reduce production costs, the editors have replaced carriage returns after each paragraph with the abbreviation **(NP)** indicating a new paragraph. For example, in ***R.* v. *Breton*** (July 9, 1995), Whitehorse TC-94-10538; 10005; 1005A, 100013 (T.C.Y.), the original text is as follows:

[TRANSLATION] *Since counsel for the accused understood English very well, it was possible for him to explain to his Francophone client the evidence he had just received. Consequently, he could inform him, assess the importance of the evidence, discuss with him the possibility of making a defence, and prepare a case and the trial.*

In fact, no evidence was adduced to the effect that the rights of the accused to defend himself adequately were violated because there was disclosure in the language in which the document was written. On the contrary, the Court is satisfied that counsel for the accused fully informed his client in such a way that the latter was able to defend himself adequately.

The Court might have reasoned differently if the accused had not been represented by counsel, had been communicated the evidence in a language with which he was not familiar, had not had an opportunity to review the evidence, so that it was clear that he could not have had a fair and equitable trial ***(p. 18)****.*

Once the paragraph breaks are replaced by the abbreviation **(NP)**, the text, in the current book, reads as follows:

[TRANSLATION] *Since counsel for the accused understood English very well, it was possible for him to explain to his Francophone client the evidence he had just received. Consequently, he could inform him, assess the importance of the evidence, discuss with him the possibility of making a defence, and prepare a case and the trial.* **(NP)** *In fact, no evidence was adduced to the effect that the rights of the accused to defend himself adequately were violated because there was disclosure in the language in which the document was written. On the contrary, the Court is satisfied that counsel for the accused fully informed his client in such a way that the latter was able to defend himself adequately.* **(NP)** *The Court might have reasoned differently if the accused had not been represented by counsel, had been communicated the evidence in a language with which he was not familiar, had not had an opportunity to review the evidence, so that it was clear that he could not have had a fair and equitable trial* ***(p. 18)****.*

5. ABREVIATIONS

1. PROVINCES AND TERRITORIES

Alberta	Alta.
British Columbia	B.C.
Canada	C.
Lower Canada	L.C.
Manitoba	Man.
New Brunswick	N.B.
Newfoundland	Nfld.
Northwest Territories	N.W.T.
Nova Scotia	N.S.
Ontario	Ont.
Prince Edward Island	P.E.I.
Province du Canada	Prov. Can.
Quebec	Que.
Saskatchewan	Sask.
Yukon	Y.

2. LAW REPORTERS

A.C.W.S.	All Canada Weekly Summaries
A.B.C.	Tax Appeal Board Cases
A.I.A.	Affaires d'immigration en appel
A.P.R.	Altantic Provinces Report
A.R.	Alberta Reports
Admin. L.R.	Administrative Law Reports
Alta. L.R.	Alberta Law Reports
B.C.L.R.	British Columbia Law Reports
B.C.L.R.B. Dec.	British Columbia Labour Relations Board Decision
B.C.R.	British Columbia Reports
B.L.R.	Business Law Reports
C.A.	Cour d'appel (1970-1985)
C.B.E.S.	Cour de Bien-être social (1975-1985)
C.C.C.	Canadian Criminal Cases
C.C.L.	Canadian Current Law
F.C.	Federal Court of Canada Reports
C.H.R.R.	Canadian Human Rights Reporter
C.L.L.C.	Canadian Labour Law Cases
C.L.L.R.	Canadian Labour Law Reporter
C.P.	Cour provinciale (1975-1985)
C.R.	Criminal reports
C.R.D.	Charter of Rights Decisions
C.R.R.	Canadian Rights Reporter

C.S.....…… Superior Court (Quebec) (1970-1985)
C.S.P..... Cour des Sessions de la paix (Quebec) (1975-1985)
C.S.R.P.R..... Real Property Reports
C.T.C..... Canada Tax Cases
Can. L.R.B.R..... Canadian labour Relations Boards Reports
D.L.R.....… Dominion Law Reports
D.T.C..... Dominion Tax Cases
E.L.R..... Eastern Law Reporter (1906-1914)
E.T.R..... Estates and Trusts Reports
Ex. C.R..... Exchequer Court of Canada Reports
F.C.....…..... Federal Court of Canada Reports
F.L.R.A.C..... Family Law Reform Act Cases
I.A.C..... Immigration Appeal Cases
J.E..... Jurisprudence Express
L.A.C..... Labour Arbitration Cases
L.C.R..... Land Compensation Reports
M.P.L.R..... Municipal and Planning Law Reports
M.P.R..... Maritime Provinces Reports
Man. R..... Manitoba Reports
N.B.R..... New Brunswick Reports
N.R..... National Reporter
N.S.R..... Nova Scotia Reports
N.W.T.R..... Northwest Territories Reports
Nfld. & P.E.I.R.....…..... Newfoundland & Rprince Edward Island Reports
Nfld. R.....…..... Newfoundland Reports
O.A.C..... Ontario Appeal Cases
O.L.R..... Ontario Law Reports
O.L.R.B. Rep..... Ontario Labour Relations Board Reports
O.M.B.R..... Ontario Municipal Board Reports
O.R..... Ontario Reports
O.W.N..... Ontario Weekly Notes
O.W.R..... Ontario Weekly Reporter
Q.A.C..... Quebec Appeal Cases
Que.P.R..... Quebec Practice Reports
R.D.F.Q..... Recueil de droit fiscal québécois
R.D.J..... Revue de droit judiciaire
R.D.T..... Revue de droit du travail
R.F.L.....… Reports of Family Law
R.J.Q..... Recueils de jurisprudence du Québec (1986 - to date)
R.L..... Revue légale
S.A.G..... Sentences arbitrales de griefs
S.C.R..... Supreme Court of Canada Reports
Sask. R..... Saskatchewan Reports
T.A……..... Tribunal d'arbitrage

T.J.....	Tribunal de la jeunesse (Quebec) (1975-1985)
T.T.....	Tribunal du travail (Quebec)
W.W.R.....	Western Weekly Reports
Y.R.....	Yukon Reports

3. JURISDICTIONS

Admiralty Court.....	Adm.Ct.
County Court.....	Co.Ct.
Circuit Court.....	Circ. Ct.
Canadian Tax Courtde l'impôt.....	C.T.C..
Court of Appeal.....	C.A.
Exchequer Court.....	Ex. C.
Cour des Sessions de la paix (Quebec).....	C.S.P.
Queen Bench Court.....	Q.B.
Court of Quebec.....	C.Q.
Federal Court of Appeal.....	F.C. A.
Federal Court (T.D.).....	F.C. (T.D.)
Municipal Court.....	Mun. C.
Provincial Court.....	P.C.
Civile Division.....	Civ. Div.
Criminal Division.....	Crim. Div
Family Division.....	Fam. Div.
Superior Court.....	S.C.
Supreme Court (provincial).....	S.C.
Supreme Court of Canada.....	S.C.C.

TABLE OF CONTENTS

1.	**CONSTITUTIONAL LAWS OF GENERAL APPLICATION**	**1**
2.	**CANADA**	**52**
3.	**ALBERTA**	**199**
4.	**BRITISH COLUMBIA**	**216**
5.	**PRINCE EDWARD ISLAND**	**230**
6.	**MANITOBA**	**234**
7.	**NEW BRUNSWICK**	**256**
8.	**NOVA SCOTIA**	**275**
9.	**NUNAVUT**	**285**
10.	**ONTARIO**	**287**
11.	**QUEBEC**	**334**
12.	**SASKATCHEWAN**	**425**
13.	**NEWFOUNDLAND**	**441**
14.	**NORTHWEST TERRITORIES**	**446**
15.	**YUKON**	**463**
16.	**SOURCES, NOTICES AND COPYRIGHTS**	**473**
17.	**TABLE OF STATUTES AND CASES**	**481**

1. CONSTITUTIONAL LAWS OF GENERAL APPLICATION

1.1 Constitution Act, 1867, (U.K.) 30 & 31 Victoria Vict. c. 3.

Powers of the Parliament

Legislative Authority of Parliament of Canada

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1A. The Public Debt and Property.

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance.

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

9. Beacons, Buoys, Lighthouses, and Sable Island.

10. Navigation and Shipping.

11. Quarantine and the Establishment and Maintenance of Marine Hospitals.

12. Sea Coast and Inland Fisheries.

13. Ferries between a Province and any British or Foreign Country or between Two Provinces.

14. Currency and Coinage.

15. Banking, Incorporation of Banks, and the Issue of Paper Money.

16. Savings Banks.

17. Weights and Measures.

18. Bills of Exchange and Promissory Notes.

19. Interest.

20. Legal Tender.

21. Bankruptcy and Insolvency.

22. Patents of Invention and Discovery.

23. Copyrights.

24. Indians, and Lands reserved for the Indians.

25. Naturalization and Aliens.

26. Marriage and Divorce.

27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.

28. The Establishment, Maintenance, and Management of Penitentiaries.

29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

…I am in no doubt that it was open to the Parliament of Canada to enact the Official Languages Act (limited as it is to the purposes of the Parliament and Government of Canada and to the institutions of that Parliament and Government) as being a law "for the peace, order and good government of Canada in relation to [a matter] not coming within the classes of subjects … assigned exclusively to the Legislatures of the Provinces". The quoted words are in the opening paragraph of s. 91 of the British North America Act; and, in relying on them as constitutional support for the Official Languages Act, I do so

on the basis of the purely residuary character of the legislative power thereby conferred. No authority need be cited for the exclusive power of the Parliament of Canada to legislate in relation to the operation and administration of the institutions and agencies of the Parliament and Government of Canada. Those institutions and agencies are clearly beyond provincial reach ***(p. 189)****. I point out, in addition, that it is within federal legislative competence to impose duties upon provincially-appointed judicial officers in respect of matters falling within federal legislative authority, as for example, the criminal law and its administration: see* In re Vancini [(1904), 34 S.C.R. 621]. *A fortiori, it is within federal competence to repose a discretion in such officers in relation to the administration of the federal criminal law, albeit in courts established under provincial legislation.* **(NP)** *It was the submission of counsel for the Attorney General of Canada, which I accept, that the language in which criminal proceedings are conducted, whether documents are involved or oral conduct only or both, may be brought within the legislative authority conferred by s. 91(27) of the British North America Act; and so far as s. 91(27) is alone the source of authority for the specification of language in which the criminal law is to be written or in which criminal proceedings thereunder are to be conducted, Parliament's authority is paramount* ***(pp. 191-192)****.* ***Jones* v. *A.G. of New Brunswick***, [1975] 2 S.C.R. 182.

As "procedure in criminal matters" is one of the classes of subjects assigned to the Parliament of Canada by s. 91(27) of the B.N.A. Act, the Legislature of a Province is without jurisdiction to enact legislation respecting the use of language in criminal proceedings ***(p. 532)****.* ***R.* v. *Murphy*** (1968), 69 D.L.R. (2d) 530 (N.B. C.A.).

Exclusive Powers of Provincial Legislatures

Subjects of exclusive Provincial Legislation

92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

1. Repealed.

2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.

3. The borrowing of Money on the sole Credit of the Province.

4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.

5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.

6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.

7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.

8. Municipal Institutions in the Province.

9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.

10. Local Works and Undertakings other than such as are of the following Classes:

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

(b) Lines of Steam Ships between the Province and any British or Foreign Country:

(c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

11. The Incorporation of Companies with Provincial Objects.

12. The Solemnization of Marriage in the Province.

13. Property and Civil Rights in the Province.

14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

I turn finally to the answers that I would give to the questions referred to the New Brunswick Supreme Court, Appeal Division. ….In my view, in the absence of federal legislation competently dealing with the language of proceedings or matters before provincial Courts which fall within exclusive federal legislative authority, it was open to the Legislature of New Brunswick to legislate respecting the languages in which proceedings in Courts established by that Legislature might be conducted. This includes the languages in which evidence in those Courts may be given. Section 92(14) of the <u>*British North America Act*</u>*, 1867 is ample authority for such legislation* ***(p. 197)***. ***Jones* v. *A.G. of New Brunswick***, [1975] 2 S.C.R. 182.

15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

It appears to have been accepted by all the members of the Court of Appeal, whether expressly or impliedly, that provincial legislative jurisdiction with respect to language is not an independent one but is rather "ancillary" to the exercise of jurisdiction with respect to some class of subject matter assigned to the province by s. 92 of the Constitution Act, 1867. That conclusion was based primarily on what was said by this Court in Jones v. *Attorney General of New Brunswick, [1975] 2 S.C.R. 182, and on the opinion of Professor Hogg in Constitutional Law of Canada (2nd ed. 1985), at pp. 804-806, which in turn is based on what was said in Jones. Since this Court agrees with that conclusion, substantially for the reasons given in the Court of Appeal in the judgments of Monet, Chouinard and Paré JJ.A., it would not serve a useful purpose to reproduce here the references to the authorities in support of that conclusion which are fully set out in their opinions, including a long extract from the opinion of Professor Hogg. We adopt the following passages of the opinion of Professor Hogg as a statement of the law on this question, i.e., that:* **(NP)** *...language is not an independent matter of legislation (or constitutional value); that there is therefore no single plenary power to enact laws in relation to language; and that the power to enact a law affecting language is divided between the two levels of government by reference to criteria other than the impact of law upon language. On this basis, a law prescribing that a particular language or languages must or may be used in certain situations will be classified for constitutional purposes not as a law in relation to language, but as a law in relation to the institutions or activities that the provision covers.* **(NP)** *...for constitutional purposes language is ancillary to the purpose for which it is used, and a language law is for constitutional purposes a law in relation to the institutions or activities to which the law applies.* **(NP)** *In order to be valid, provincial legislation with respect to language must be truly in relation to an institution or activity that is otherwise within provincial legislative jurisdiction* ***(p. 807-808)***. ***Devine* v. *Quebec (A.G.)***, [1988] 2 S.C.R. 790.

See also:

Devine* v. *Quebec (A.G.), [1987] R.J.Q. 50 (Que. C.A.).

A.G. of Quebec* v. *Blaikie et al, [1979] 2 S.C.R. 1016.

Re Manitoba Language Rights, [1985] 1 S.C.R. 721.

1.2 ***Canadian Charter of Rights and Freedoms***, Part I of the ***Constitution Act, 1982,*** being Schedule B to the ***Canada Act 1982*** (U.K.), 1982, c.11.

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.

The provisions of s. 73 of Bill 101 collide directly with those of s. 23 of the Charter, and are not limits which can be legitimized by s. 1 of the Charter. Such limits cannot be exceptions to the rights and freedoms guaranteed by the Charter nor amount to amendments of the Charter. An Act of Parliament or of a legislature which, for example, purported to impose the beliefs of a State religion would be in direct conflict with s. 2(a) of the Charter, which guarantees freedom of conscience and religion, and would have to be ruled of no force or effect without the necessity of even considering whether such legislation could be legitimized by s. 1. The same applies to Chapter VIII of Bill 101 in respect of s. 23 of the Charter ***(p.88)***. ***A.G. (Que.)*** **v.** ***Quebec Protestant School Boards***, [1984] 2 S.C.R. 66.

The section 1 and s. 9.1 materials establish that the aim of the language policy underlying the Charter of the French Language was a serious and legitimate one. They indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. Moreover, they indicate a rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the "visage linguistique". The section 1 and s. 9.1 materials do not, however, demonstrate that the requirement of the use of French only is either necessary for the achievement of the legislative objective or proportionate to it ***(pp. 778-779)***. *Thus, whereas requiring the predominant display of the French language, even its marked predominance, would be proportional to the goal of promoting and maintaining a French "visage linguistique" in Quebec and therefore justified under the Quebec Charter and the Canadian Charter, requiring the exclusive use of French has not been so justified. French could be required in addition to any other language or it could be required to have greater visibility than that accorded to other languages* ***(p. 780)***. ***Ford*** **v.** ***Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

The failure of the executive to proclaim [s. 530 of the Criminal Code] *in Saskatchewan, having regard for the circumstances which prevail in the*

province, is out of tune with the objective - indeed it stands in the way of attaining the objective in the province - and, in the language of Oakes can no longer be regarded as rationally connected to the objective. Nor, it might be added, does the executive action at issue impair "as little as possible" the equality rights of an accused in Saskatchewan whose language is French. Thus the Crown has failed, in our respectful opinion, to meet the onus upon it of showing that the limitation in question is both reasonable and demonstrably justified ***(p. 59)***. ***Re Use of French in Criminal Proceedings in Saskatchewan*** (1987), 44 D.L.R. (4th) 16 (Sask. C.A.).

Fundamental freedoms

2. Everyone has the following fundamental freedoms:...

b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the Charter of the French Language itself indicates, a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality. That the concept of "expression" in s. 2(b) of the Canadian Charter and s. 3 of the Quebec Charter goes beyond mere content is indicated by the specific protection accorded to "freedom of thought, belief [and] opinion" in s. 2 and to "freedom of conscience" and "freedom of opinion" in s. 3. That suggests that "freedom of expression" is intended to extend to more than the content of expression in its narrow sense ***(pp. 748-749)***. *These special guarantees of language rights* [section 133 of the Constitution Act, 1867, and sections 16 to 23 of the Canadian Charter] *do not, by implication, preclude a construction of freedom of expression that includes the freedom to express oneself in the language of one's choice. A general freedom to express oneself in the language of one's choice and the special guarantees of language rights in certain areas of governmental activity or jurisdiction -- the legislature and administration, the courts and education -- are quite different things* ***(p. 750)***. *In contrast, what the respondents seek in this case is a freedom as that term was explained by Dickson J. (as he then was) in R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, at p. 336: "Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the Charter is to protect, within reason, from compulsion or*

restraint." The respondents seek to be free of the state imposed requirement that their commercial signs and advertising be in French only, and seek the freedom, in the entirely private or non-governmental realm of commercial activity, to display signs and advertising in the language of their choice as well as that of French ***(p. 751)****. The recognition that freedom of expression includes the freedom to express oneself in the language of one's choice does not undermine or run counter to the special guarantees of official language rights in areas of governmental jurisdiction or responsibility. The legal structure, function and obligations of government institutions with respect to the English and French languages are in no way affected by the recognition that freedom of expression includes the freedom to express oneself in the language of one's choice in areas outside of those for which the special guarantees of language have been provided* ***(p. 752)****. It is apparent to this Court that the guarantee of freedom of expression in s. 2(b) of the Canadian Charter and s. 3 of the Quebec Charter cannot be confined to political expression, important as that form of expression is in a free and democratic society. The pre-Charter jurisprudence emphasized the importance of political expression because it was a challenge to that form of expression that most often arose under the division of powers and the "implied bill of rights", where freedom of political expression could be related to the maintenance and operation of the institutions of democratic government. But political expression is only one form of the great range of expression that is deserving of constitutional protection because it serves individual and societal values in a free and democratic society* ***(p. 764).*** *It is necessary only to decide if the respondents have a constitutionally protected right to use the English language in the signs they display, or more precisely, whether the fact that such signs have a commercial purpose removes the expression contained therein from the scope of protected freedom.* **(NP)** *In our view, the commercial element does not have this effect. Given the earlier pronouncements of this Court to the effect that the rights and freedoms guaranteed in the Canadian Charter should be given a large and liberal interpretation, there is no sound basis on which commercial expression can be excluded from the protection of s. 2(b) of the Charter* ***(pp. 766-767).*** ***Ford* v. *Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

There can be no doubt that under ss. 530 and 530.1 of the Criminal Code, the accused and his counsel effectively enjoy the right and the freedom to express themselves in their own official language. In fact, s. 530.1(a) specifies (in French) that "the accused and his counsel have the right to use either official language…during the preliminary inquiry and trial of the accused" (the English version specifies that this right can be exercised "for all purposes during the preliminary inquiry and trial of the accused.") **(NP)** *This being said, in view of the fact that the Supreme Court of Canada has indicated that there is a clear distinction between freedom of expression when exercised during private activity and linguistic rights which are exercised during the course of dealings with the*

state, it would be inappropriate, in my view, to transpose the analysis adopted by the Supreme Court concerning freedom of expression to the provisions regarding linguistic rights ***(p. 465)***. ***R.* v. *Rodrigue*** (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied, No. 24585, [1995] 3 S.C.R. vii.

Under article 19 of the [International] *Covenant* [on Civil and Political Rights], *everyone shall have the right to freedom of expression; this right may be subjected to restrictions, conditions for which are set out in article 19, paragraph 3. The Government of Quebec has asserted that commercial activity such as outdoor advertising does not fall within the ambit of article 19. The* [United Nations Human Rights] *Committee does not share this opinion. Article 19, paragraph 2, must be interpreted as encompassing every form of subjective ideas and opinions capable of transmission to others, which are compatible with article 20 of the Covenant, of news and information, of commercial expression and advertising, of works of art, etc.; it should not be confined to means of political, cultural or artistic expression. In the Committee's opinion, the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom. The Committee does not agree either that any of the above forms of expression can be subjected to varying degrees of limitation, with the result that some forms of expression may suffer broader restrictions than others.* **(NP)** *Any restriction of the freedom of expression must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3 (a) and (b) of article 19, and must be necessary to achieve the legitimate purpose. While the restrictions on outdoor advertising are indeed provided for by law, the issue to be addressed is whether they are necessary for the respect of the rights of others. The rights of others could only be the rights of the francophone minority within Canada under article 27. This is the right to use their own language, which is not jeopardized by the freedom of others to advertise in other than the French language. Nor does the Committee have reason to believe that public order would be jeopardized by commercial advertising outdoors in a language other than French. The Committee notes that the State party does not seek to defend Bill 178 on these grounds. Any constraints under paragraphs 3 (a) and 3 (b) of article 19 would in any event have to be shown to be necessary. The Committee believes that it is not necessary, in order to protect the vulnerable position in Canada of the francophone group, to prohibit commercial advertising in English. This protection may be achieved in other ways that do not preclude the freedom of expression, in a language of their choice, of those engaged in such fields as trade. For example, the law could have required that advertising be in both French and English. A State may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice. The Committee accordingly concludes that there has been a violation of article 19, paragraph 2* ***(pp. 102-103)***. ***Ballantyne et al* v.**

Canada, (March 31, 1993), Communications Nos. 359/1989 and 385/1989, in *Report of the Human Rights Committee,* Vol. II, Official Records, General Assembly, Forty-seventh Session, (A/48/40), United Nations, New York, 1993, p. 91.

See also:

Immeubles Claude Dupont Inc. (Les)* v. *Procureur général du Québec et Procureur général du Canada, [1994] R.J.Q. 1968 (Que. S.C.).

Les importations cachères Hahamovitch Inc. et le Procureur général du Canada et al. (October 24, 1995), Montreal T-1881-95 (F.C. T.D.) Teitlebaum J.

Ratelle* v. *R., [1992] R.J.Q. 791 (Que. S.C.).

R.* v. *Les équipements Grand Prix Inc. (September 15, 1992), Montreal 27-015499-900 (Que. C.) Dubreuil J.

Singer* v. *Canada, (July 26, 1994), Communication No. 455/1991, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly Fifty-first Session, United Nations, New York, 1994, p. 1.

Life, liberty and security of person

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

It would constitute an error either to import the requirements of natural justice into the language rights of s. 133 of the Constitution Act, 1867, or vice versa, or to relate one type of right to the other under the pretext of re-enforcing both or either of them. Both types of rights are conceptually different. Also, language rights such as those protected by s. 133, while constitutionally protected, remain peculiar to Canada. They are based on a political compromise rather than on principle and lack the universality, generality and fluidity of basic rights resulting from the rules of natural justice. They are expressed in more precise and less flexible language. To link these two types of rights is to risk distorting both rather than re-enforcing either ***(p. 500-501)***. ***MacDonald* v. *City of Montreal***, [1986] 1 S.C.R. 460.

It is my view that the rights guaranteed by s. 19(2) of the Charter are of the same nature and scope as those guaranteed by s. 133 of the Constitution Act, 1867 with respect to the courts of Canada and the courts of Quebec. As was held by the majority at pp. 498 to 501 in MacDonald, these are essentially language rights unrelated to and not to be confused with the requirements of natural justice. These language rights are the same as those which are guaranteed by s. 17 of the Charter with respect to parliamentary debates. They vest in the speaker or in the

writer or issuer of court processes and give the speaker or the writer the constitutionally protected power to speak or to write in the official language of his choice. And there is no language guarantee, either under s. 133 of the Constitution Act, 1867, or s. 19 of the Charter, any more than under s. 17 of the Charter, that the speaker will be heard or understood, or that he has the right to be heard or understood in the language of his choice ***(pp. 574-575). Société des Acadiens*** **v.** ***Association of parents***, [1986] 1 S.C.R. 549.

The right is a right to the disclosure of the evidence as it exists, not the right to have the assistance of the prosecution in the sense of enhancing the ability of counsel for the defence, or of the accused himself, to assess and evaluate the significance or the weight that could be attached to a certain item of evidence ***(p. 477)****. There may be circumstances where the court would, before the trial, make a ruling that without the translation of a document from a language other than an official language to an official language, or from one official language to the official language in which the accused has chosen to be tried, the right of the accused to "make full answer and defence" or to a fair hearing would be compromised. We will have to wait for another case to determine under what circumstances the court would come to such a conclusion. In the present circumstances, the accused and his counsel admit that they are both able to understand English and they do not allege that the accused would suffer any prejudice if the statements and documents disclosed by the prosecution before the trial were not accompanied by a French translation. The claim of the accused is founded exclusively on the principle that since French has been chosen as the official language of the trial, he has a right to obtain disclosure of the evidence accompanied by a French translation. I have rejected this argument* ***(p. 479)***. ***R.*** **v.** ***Rodrigue*** (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied, No. 24585, [1995] 3 S.C.R. vii.

[TRANSLATION] *Since counsel for the accused understood English very well, it was possible for him to explain to his Francophone client the evidence he had just received. Consequently, he could inform him, assess the importance of the evidence, discuss with him the possibility of making a defence, and prepare a case and the trial.* **(NP)** *In fact, no evidence was adduced to the effect that the rights of the accused to defend himself adequately were violated because there was disclosure in the language in which the document was written. On the contrary, the Court is satisfied that counsel for the accused fully informed his client in such a way that the latter was able to defend himself adequately.* **(NP)** *The Court might have reasoned differently if the accused had not been represented by counsel, had been communicated the evidence in a language with which he was not familiar, had not had an opportunity to review the evidence, so that it was clear that he could not have had a fair and equitable trial* ***(p. 18)***. ***R.***

v. *Breton* (July 9, 1995), Whitehorse TC-94-10538, 10005, 1005A, 100013 (Y. T.C.) Dutil J.

The [United Nations Human Rights] *Committee has noted the author's claim that the denial of an interpreter for himself and for a witness willing to testify on his behalf constituted a violation of article 14 of the* [International] *Covenant* [on Civil and Political Rights]. *The Committee observes, as it has done on previous occasions, that article 14 is concerned with procedural equality; it enshrines, -inter alia, the principle of equality of arms in criminal proceedings. The provision for the use of one official court language by State parties to the Covenant does not violate article 14 of the Covenant. Nor does the requirement of a fair hearing obligate States parties to make available to a person whose mother tongue differs from the official court language, the services of an interpreter, if that person is capable of understanding and expressing himself or herself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding, or in expressing themselves in the court language, is it obligatory that the services of an interpreter be made available.* **(NP)** *On the basis of the information before it, the Committee considers that the French courts complied with their obligations under article 14. The author has failed to show that he and the witness called on his behalf were unable to understand and to express themselves adequately in French before the Tribunal. In this context, the Committee notes that the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3 (f), does not imply that the accused be afforded the opportunity to express himself or herself in the language that he or she normally speaks or speaks with maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel of Rennes, that the accused is sufficiently proficient in the court language, it need not take into account whether it would be preferable for the accused to express himself in a language other than the court language* ***(p. 265-266)***. ***Barzhig* v. *France*** (April 11, 1991)**,** Communication No. 327/1988, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-ninth session, United Nations, New York, 1991, p. 262.

Article 14 of the [International] *Covenant* [on Civil and Political Rights] *protects the right to a fair trial. An essential element of this right is that an accused must have adequate time and facilities to prepare his defence, as is reflected in paragraph 3(b) of article 14. Article 14, however, does not contain an explicit right of an accused to have direct access to all documents used in the preparation of the trial against him in a language he can understand. The question before the Committee is whether, in the specific circumstances of the author's case, the failure of the State party to provide written translations of all the documents used in the preparation of the trial has violated Mr. Harward's right to a fair trial, more specifically his right under article 14, paragraph 3(b), to have adequate facilities to prepare his defence.* **(NP)** *In the opinion of the Committee, it is important for the guarantee of a fair trial that the defence have the*

opportunity to familiarize itself with the documentary evidence against an accused. However, this does not signify that an accused who does not understand the language used in court has the right to be furnished with translations of all relevant documents in a criminal investigation, provided that the relevant documents are made available to his counsel. The Committee notes that Mr. Harward was represented by a Norwegian lawyer of his choice, who had access to the entire file, and that the lawyer had the assistance of an interpreter in his meetings with Mr. Harward. Defence counsel therefore had opportunity to familiarize himself with the file and, if he thought it necessary, to read out Norwegian documents to Mr. Harward during their meetings, so that Mr. Harward could take note of their contents through interpretation. If counsel would have deemed the time available to prepare the defence (just over six weeks) inadequate to familiarize himself with the entire file, he could have requested a postponement of the trial, which he did not do. The Committee conclude that in the particular circumstances of the case, Mr. Harward's right to a fair trial, more specifically his right to have adequate facilities to prepare his defence, was not violated ***(pp. 153-154)***. ***Harward* v. *Norway*** (July 26, 1993), Communication No. 451/1991, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-eighth Session, No. 40 (A/48/40), United Nations, New York, 1994, p. 146.

Arrest or detention

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed of that right; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Unless they are clearly and fully informed of their rights at the outset, detainees cannot be expected to make informed choices and decisions about whether or not to contact counsel and, in turn, whether to exercise other rights, such as their right to silence: Hebert. Moreover, in light of the rule that, absent special circumstances indicating that a detainee may not understand the s. 10(b) caution, such as language difficulties or a known or obvious mental disability, police are not required to assure themselves that a detainee fully understands the s. 10(b) caution, it is important that the standard caution given to detainees be as instructive and clear as possible: R. v. Baig, [1987] 2 S.C.R. 537, at p. 540, and Evans, at p. 891 ***(p. 193)***. ***R.* v. *Bartle***, [1994] 3 S.C.R. 173.

The respondent was charged with impaired driving, failing the breathalyser and leaving the scene of an accident. At the conclusion of the evidence, his counsel

argued that the breathalyser readings were inadmissible by reason of the violation of the respondent's Charter rights to counsel. It was submitted that the failure to provide a French speaking lawyer on his request amounted to such a violation. ...The trial judge has erroneously placed the burden on the Crown to establish beyond a reasonable doubt that there was no breach of the Charter right to counsel. The burden was on the respondent to establish this breach. The decision to exclude the breathalyser readings must therefore be set aside ***(p. 113)***. ***R.* v. *Girard*** (1993), 119 N.S.R. (2d) 110; 330 A.P.R. 110 (N.S. C.A.).

In my view the failure of the officer to inform the respondent of his rights in a meaningful way, that is to say, in French, indicates in the circumstances of this case a regrettable disregard for the respondent's constitutional rights. The admission into evidence of the breath sample emanating from the respondent following this failure would, in my view, tend to bring the administration of justice into disrepute ***(p. 150)***. ***R.* v. *Vanstaceghem*** (1987), 36 C.C.C. (3d) 142 (Ont. C.A.).

See also:

R.* v. *Tanguay (1984), 27 M.V.R. 1 (Ont. Ct.C.).

R.* v. *Saini (May 4, 992), Doc. Vancouver CC911319 (B.C. S.C.).

Proceedings in criminal and penal matters

11. Any person charged with an offence has the right

(a) to be informed without unreasonable delay of the specific offence;

I agree with that submission; the golden rule is for the accused to be reasonably informed of the transaction alleged against him, thus giving him the possibility of a full defence and a fair trial ***(p. 13)***. ***The Queen* v. *Côté***, [1978] 1 S.C.R. 8.

The appellant has never claimed that he would suffer an irreparable prejudice as a result of the information being written in English. In the absence of an initially invalid information, the first judge, if requested by the appellant, should have exercised his power to order a written translation of the information and grant an adjournment if requested, I do not see how an order for a written translation could have caused such a prejudice that it would be necessary to declare the information a nullity… ***(p. 131).*** *I am of the opinion that the obligation of the agent for the Attorney General to supply, upon request by the accused, a written translation exists irrespective of the complexity of the information. Just as the accused in a proceeding by indictment is the one who decides whether or not he or she requires the assistance of an interpreter (R. v. Tran, supra), only the accused or his or her counsel, in a summary conviction proceedings, are in a*

position to decide whether or not it is necessary to obtain an information translated into the official language of the trial in order to inform them properly of the specific offence: s.11(a) of the Charter. While respecting the distinction that must be maintained between language rights and principles of fundamental justice (MacDonald, supra), I repeat that it is up to them alone to decide whether or not a written translation is necessary to understand the reach and scope of the information in order to make full answer and defence ***(pp. 132-133)***. ***Simard* v. *R.*** (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused, No 24408, [1995] 1 S.C.R. x.

We have considered the question and it would appear that the trial Judge acquitted the respondent because at the time of service of the notice upon him there was no evidence adduced by the Crown that the respondent had the capacity to understand the notice by reason of language and thus the notice did not constitute a reasonable notice as required by s. 237(5) of the Code. The Judge appeared to assume that, because the demand and the conversation with the police at the time of apprehension were in French and the notice and certificate of analysis were written in English, the respondent could not understand English. Without evidence to support it, the assumption is clearly wrong ***(p. 238)***. ***R.* v. *Saulnier (No. 2)*** (1980), 53 C.C.C. (2d) 237 (N.S. C.A.).

Interpreter

14. A party or witness in any proceedings who does not understand or speak the **language** in which the proceedings are conducted or who is deaf has the right to the assistance of an **interpreter**.

Another important consideration with regard to the interpretation of the "best interests of justice" is the complete distinctiveness of language rights and trial fairness. ***(p. 800)*** *[…] In the present instance, much discussion was centered on the ability of the accused to express himself in English. This ability is irrelevant because the choice of language is not meant to support the legal right to a fair trial, but to assist the accused in gaining equal access to a public service that is responsive to his linguistic and cultural identity. It would indeed be surprising if Parliament intended that the right of bilingual Canadians should be restricted when in fact official language minorities, who have the highest incidence of bilingualism (84 percent for francophones living outside Quebec compared to 7 percent for anglophones according to Statistics Canada 1996 Census), are the first persons that the section was designed to assist.* ***(p. 801)*** *[…] Language rights are not subsumed by the right to a fair trial. If the right of the accused to use his or her official language in court proceedings was limited because of language proficiency in the other official language, there would in effect be no distinct language right.* ***(p. 802)*** ***R.*** v. ***Beaulac,*** [1999] 1 S.C.R. 768.

At the outset, I would like to make it very clear that the discussion of s. 14 of the Charter which follows relates specifically to the right of an accused in criminal proceedings, and must not be taken as necessarily having any broader application. In other words, I leave open for future consideration the possibility that different rules may have to be developed and applied to other situations which properly arise under s. 14 of the Charter -- for instance, where the proceedings in question are civil or administrative in nature ***(p. 961).*** *It is clear that the right to the assistance of an interpreter of an accused who cannot communicate or be understood for language reasons is based on the fundamental notion that no person should be subject to a Kafkaesque trial which may result in loss of liberty. An accused has the right to know in full detail, and contemporaneously, what is taking place in the proceedings which will decide his or her fate. This is basic fairness. Even if a trial is objectively a model of fairness, if an accused operating under a language handicap is not given full and contemporaneous interpretation of the proceedings, he or she will not be able to assess this for him or herself. The very legitimacy of the justice system in the eyes of those who are subject to it is dependent on their being able to comprehend and communicate in the language in which the proceedings are taking place* ***(p. 975).*** *The right of an accused person who does not understand or speak the language of the proceedings to obtain the assistance of an interpreter serves several important purposes. First and foremost, the right ensures that a person charged with a criminal offence hears the case against him or her and is given a full opportunity to answer it. Second, the right is one which is intimately related to our basic notions of justice, including the appearance of fairness. As such, the right to interpreter assistance touches on the very integrity of the administration of criminal justice in this country. Third, the right is one which is intimately related to our society's claim to be multicultural, expressed in part through s. 27 of the Charter. The magnitude of these interests which are protected by the right to interpreter assistance favours a purposive and liberal interpretation of the right under s. 14 of the Charter, and a principled application of the right* ***(p. 977)****. The first step in the analysis as to whether a breach of s. 14 of the Charter has in fact occurred requires consideration of the need for interpreter assistance. That is, the claimant of the right must demonstrate that he or she satisfies (or satisfied) the conditions precedent to entitlement to the right. Section 14 of the Charter states clearly that, to benefit from the right, an accused must "not understand or speak the language in which the proceedings are conducted"* ***(p. 980)****. While the standard of interpretation under s. 14 will be high, it should not be one of perfection. In my view, it can be defined by reference to a number of criteria aimed at helping to ensure that persons with language difficulties have the same opportunity to understand and be understood as if they were conversant in the language being employed in the proceedings. These criteria include, and are not necessarily limited to, continuity, precision,*

impartiality, competency and contemporaneousness. I shall consider each one in turn ***(p. 985)***. ***R.* v. *Tran***, [1994] 2 S.C.R. 951.

In my opinion, the proper test to arrive at the determination whether the statements (otherwise held to be voluntary) were admissible, was whether the respondents' understanding and ability to communicate in the English language was so deficient that it was impossible for them to have understood the police or to have made any statements in English. Only then could it be said by the judge that the statements did not amount to their statements. This test, in my opinion, has nothing to do with mental condition or operating mind. It involves the judge on the voir dire applying a legal test to his findings of fact regarding the accused's ability to comprehend and communicate in the language of the statement. It is difficult to conceive of a situation where the prosecution would be tendering such a statement for, on a voir dire, the first prerequisite would be to adduce some evidence that the statement tendered is the accused's statement. The determination whether the suspect had the capacity to make a particular statement, by reason of language difficulties, is one for the trier of fact ***(p. 382)***. *Nothing which has been said in this judgment should be taken as an encouragement for the practice followed by the Metropolitan Toronto Police in the present case. On the contrary, the taking of the respondents' statements in the English language without requiring the presence of an interpreter seriously jeopardized the admissibility of statements deemed to be important for the administration of criminal justice. In every case where police officers deal with a suspect whose mother tongue is different, every effort should be made to obtain a qualified interpreter. Ideally, officers taking the statements should be familiar with the language of the suspect. This is, of course, not always possible even in a multi-cultural society. Where no such officer is present, an interpreter should be made available* ***(pp. 384-385)***. ***Lapointe and Sicotte* v. *Regina*** (1983), 9 C.C.C. (3d) 366 (Ont. C.A.). Confirmed on appeal by ***R.* v. *Lapointe and Sicotte***, [1987] 1 S.C.R. 1253.

In the interests of clarity, it might also be noted that it is incumbent upon the government, not by reason of s. 110 [of the North-West Territories Act], *but by virtue of the accused's right to a fair hearing, to ensure that he understands what is going on in court and is understood by all those whose understanding of him is essential to a fair hearing. This may be accomplished by such means of translation from French to English, and if need be from English to French, as are accurate and effective. It should not be thought, however, that the right to a fair hearing enjoyed by an accused, who, pursuant to s. 110, opts to use French, is any more extensive than is the right of an accused whose language, let us say, is Ukrainian; the scope of the right to a fair hearing, and the duty it imposes upon the state are the same for all accused, whatever their language* ***(p. 29)***. ***Re Use of French in Criminal Proceedings in Saskatchewan*** (1987), 44 D.L.R. (4th) 16 (Sask. C.A.).

[TRANSLATION] *As the Court of Appeal established in Ferncraft, supra, it is the judge's who decides in each case to decide whether an interpreter is necessary. The fact that costs will follow the case should prevent possible abuse since it is in the interest of each party to keep the costs of the litigation to a minimum since neither can be certain of its outcome* ***(p. 275)***. ***Labrie* v. *Les machineries Kraft et autres***, [1984] C.S. 263 (Que. S.C.).

Section 14 provides a right to an interpreter to witnesses and parties, and only in the circumstances mentioned. Here, according to the information I then had, the parties understood the language in which the proceedings were conducted. One must distinguish between the language of a party and that of a lawyer. Section 14 has no application to lawyers. **(NP)** *Undoubtedly, the court has the discretionary power to order that the services of an interpreter be provided for a lawyer. However, in the exercise of its discretionary power the court must insure that the rights of the parties to proceed in the language that they have chosen is not completely set aside* ***(p. 677)***. ***Cormier* v. *Fournier*** (1986), 29 D.L.R. (4th) 675 (N.B. Q.B.).

The jurisprudence which I cited this morning has led me to the conviction that, as interpreted by the Supreme Court of Canada, our Constitution permits that a fair trial, a fair hearing within the concepts of procedural fairness and fundamental or natural justice, in respect of the understanding by a party or an accused of the other official language and/or any other language used in Court, can be served through interpreters. **(NP)** *And a priori, in view of section 14 of the Charter, I must take it that an interpreter sufficiently satisfies the right to understand what is being said, subject always to any proof to the contrary in any particular situation. There have been cases where issues have arisen as to the competence or adequacy of the interpreter. However, even that being so, it is not a priori that one should determine that translation, be it simultaneous or consecutive, would not suitably protect the interests of the accused here.* **(NP)** *Our Canadian Charter of Rights and Freedoms, in section 14, which has been held to apply to both criminal and civil proceedings, clearly provides that in any proceedings, a party or witness who does not understand or speak the language in which they are being conducted has the right to the assistance of an interpreter* ***(p. 1451)***. ***Re Constitutionnal Challenge against s. 530.1 (e) of the Criminal Code***, [1991] R.J.Q. 1430 (Que. S.C.).

[TRANSLATION] *To summarize, the instant case is a grievance under a collective agreement between two private parties, and I must find that the provisions of the Charter and section 14 do not apply.* **(NP)** *However, this does not mean that witnesses or parties are not entitled to the assistance of an interpreter in a quasi-judicial proceeding such as the instant case. A party may request the assistance of an interpreter under natural justice principles* ***(p. 83)***. ***Syndicat des***

débardeurs, Section locale 375* v. *Association des employeurs maritimes, [1993] T.A. 79 (Que. A.T.).

The [United Nations Human Rights] *Committee has noted the author's claim that the denial of an interpreter for himself and for a witness willing to testify on his behalf constituted a violation of article 14 of the* [International] *Covenant* [on Civil and Political Rights]. *The Committee observes, as it has done on previous occasions, that article 14 is concerned with procedural equality; it enshrines, -inter alia, the principle of equality of arms in criminal proceedings. The provision for the use of one official court language by State parties to the Covenant does not violate article 14 of the Covenant. Nor does the requirement of a fair hearing obligate States parties to make available to a person whose mother tongue differs from the official court language, the services of an interpreter, if that person is capable of understanding and expressing himself or herself adequately in the official language. Only if the accused or the witnesses have difficulties in understanding, or in expressing themselves in the court language, is it obligatory that the services of an interpreter be made available.* **(NP)** *On the basis of the information before it, the Committee considers that the French courts complied with their obligations under article 14. The author has failed to show that he and the witness called on his behalf were unable to understand and to express themselves adequately in French before the Tribunal. In this context, the Committee notes that the notion of a fair trial in article 14, paragraph 1, juncto paragraph 3 (f), does not imply that the accused be afforded the opportunity to express himself or herself in the language that he or she normally speaks or speaks with maximum of ease. If the court is certain, as it follows from the decision of the Tribunal Correctionnel of Rennes, that the accused is sufficiently proficient in the court language, it need not take into account whether it would be preferable for the accused to express himself in a language other than the court language* ***(p. 265-266)***. ***Barzhig* v. *France*** (April 11, 1991)**,** Communication No. 327/1988, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-ninth session, United Nations, New York, 1991, p. 262.

Article 14 of the Covenant [International Covenant on Civil and Political Rights] *protects the right to a fair trial. An essential element of this right is that an accused must have adequate time and facilities to prepare his defence, as is reflected in paragraph 3(b) of article 14. Article 14, however, does not contain an explicit right of an accused to have direct access to all documents used in the preparation of the trial against him in a language he can understand. The question before the* [United States Human Rights] *Committee is whether, in the specific circumstances of the author's case, the failure of the State party to provide written translations of all the documents used in the preparation of the trial has violated Mr. Harward's right to a fair trial, more specifically his right under article 14, paragraph 3 (b), to have adequate facilities to prepare his defence.* **(NP)** *In the opinion of the Committee, it is important for the guarantee of a fair trial that the*

defence have the opportunity to familiarize itself with the documentary evidence against an accused. However, this does not signify that an accused who does not understand the language used in court has the right to be furnished with translations of all relevant documents in a criminal investigation, provided that the relevant documents are made available to his counsel. The Committee notes that Mr. Harward was represented by a Norwegian lawyer of his choice, who had access to the entire file, and that the lawyer had the assistance of an interpreter in his meetings with Mr. Harward. Defence counsel therefore had opportunity to familiarize himself with the file and, if he thought it necessary, to read out Norwegian documents to Mr. Harward during their meetings, so that Mr. Harward could take note of their contents through interpretation. If counsel would have deemed the time available to prepare the defence (just over six weeks) inadequate to familiarize himself with the entire file, he could have requested a postponement of the trial, which he did not do. The Committee conclude that in the particular circumstances of the case, Mr. Harward's right to a fair trial, more specifically his right to have adequate facilities to prepare his defence, was not violated ***(pp. 153-154)***. ***Harward* v. *Norway*** (July 26, 1993), Communication No. 451/1991, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-eighth Session, No. 40 (A/48/40), United Nations, New York, 1994, p. 146.

See also:

Chagnon* v. *L'honorable juge Claude Provost et Sa Majesté La Reine (February 24, 1995), Montreal 505-36-000160-947 (Que. S.C.) Zerbisias J.

Cadoret and Le Bihan* v. *France (July 25 and November 9, 1989)**,** Communications Nos. 221/1987 and 232/1988, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-first Session, United Nations, New York, 1991, p. 219.

Dehghani* v. *Canada (Minister of Employment and Immigration), [1993] 1 S.C.R. 1053.

DiMaulo et al.* v. *Regina (1973), 21 C.R.N.S. 195 (Que. Q.B.).

Dougall* v. *The Queen (1874), C.Q.B. 242 (Que. C.A.).

Garcia* v. *Canada (Minister of Employment and Immigration) (1993), 70 F.T.R. 211 (F.C. T.D.).

Gladyszewski* v. *R. (1979), 5 M.V.R. 7 (P.E.I. S.C.).

Ictensev* v. *Canada (Department of Employment and Immigration) (1988), 43 C.R.R. 147 (F.C. T.D.).

Jong* v. *Lavigne et al. (August 26, 1994), Montreal 500-09-001428-929 (Que. C.A.).

MacDonald* v. *City of Montreal, [1986] 1 S.C.R. 460.

Mitchell* v. *Regional Administrative Unit 3 (1986), 60 Nfld & P.E.I.R.1 (P.E.I. S.C.).

R.* v. *Boudreau (1990), 107 N.B.R. (2d) 298 (N.B. C.A.), reversing (1989) 103 N.B.R. (2d) 104 (N.B. Q.B.).

R.* v. *Butcher, (1990) R.L. 621 (Que. C.A.).

R.* v. *Guimond (1992), 106 Sask. R. 274 (Sask. Q.B.).

R.* v. *Hunlin (July 19, 1994), Doc. Williams Lake 16422 (B.C. P.C.).

***R.* v. *Karnakov* (**1996) 3 O.T.C. 212 (Ont. C. Gen. Div.).

R.* v. *LeCompte (March 12, 1997), Doc. CA C23900, M19873 (Ont. C.A.).

R.* v. *Melanson, (1992) 122 R.N.B. (2d) 358, 306 A.P.R. 358 (N.B. Q.B.).

R.* v. *Nguyen, (1996) 179 A.R. 306 (Alta. Q.B.).

R.* v. *Prince (1946), 1 D.L.R. 659 (Ont. C.A.).

R.* v. *Randall (1963), 1 C.C.C. 353 (N.B. C.A.).

R.* v. *Rodrigue (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied, No. 24585, [1995] 3 S.C.R. vii.

R.* v. *S. (1995), 87 O.A.C. 114 (Ont. C.A.).

R.* v. *Skin (February 22, 1988), Doc. CA007364 (B.C. C.A.).

R.* v. *Tsang (1985), 27 C.C.C. (3d) 365 (B.C. C.A.).

R.* v. *Zanella (1980), 55 C.C.C. (2d) 567 (B.C. C.A.).

R.* v. *Vanstaceghem (1988), 36 C.C.C. (3d) 142 (Ont. C.A.).

Roy et al. and Hackette et al. (1988), 62 O.R. (2d) 351. (Ont. C.A.).

Shaw* v. *Montreal (City) (1982), 70 C.C.C. (2d) 19 (Que. S.C.).

Simard* v. *R. (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 S.C.R. x.

Equality before and under law and equal protection and benefit of law

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on **race**, **national** or **ethnic origin**, colour, religion, sex, age or mental or physical disability.

While I agree that it is often useful to consider the relationship between different sections of the Charter, in the interpretation of s. 23 I do not think it helpful in the present context to refer to either s. 15 or s. 27. Section 23 provides a comprehensive code for minority language educational rights; it has its own internal qualifications and its own method of internal balancing. A notion of equality between Canada's official language groups is obviously present in s. 23. Beyond this, however, the section is, if anything, an exception to the provisions of ss. 15 and 27 in that it accords these groups, the English and the French, special status in comparison to all other linguistic groups in Canada. As the Attorney General for Ontario observes, it would be totally incongruous to invoke in aid of the interpretation of a provision which grants special rights to a select group of individuals, the principle of equality intended to be universally applicable to "every individual" ***(p. 369)***. ***Mahe* c. *Alberta***, [1990] 1 S.C.R. 342.

The respondents argue, however, that the situation of deaf persons cannot be meaningfully distinguished from that of other non-official language speakers. If they are compelled to provide interpreters for the former, they submit, they will also have to do so for the latter, thereby increasing the expense of the program dramatically and placing severe strain on the fiscal sustainability of the health care system. In this context, they contend, it was reasonable for the government to conclude that they impaired the rights of deaf persons as little as possible. **(NP)** *This argument, in my view, is purely speculative. It is by no means clear that deaf persons and non-official language speakers are in a similar position, either in terms of their constitutional status or their practical access to adequate health care. From the perspective of a patient, there is no real difference between sign language and oral language if there is no ability to communicate with a physician. But from the perspective of the state's obligations, there may very well be. In the present case, the only relevant constitutional provisions are ss. 15(1) and 1 of the Charter. In a case involving a claim for medical interpretation for hearing patients, in contrast, the analysis would be more complicated. In such a case, it would be necessary to consider the interaction between s. 15(1) and other provisions of the Constitution, specifically those related to the language obligations of governments. Moreover, the respondents have presented no evidence as to the potential scope or cost of an oral language medical interpretation program. It is possible that the nature and extent of any reasonable accommodation required for hearing persons under s. 1 would differ from that required for deaf persons. Thus, any claim for the provision of such a program, whether based on national origin or language as*

an analogous ground, would proceed on markedly different constitutional terrain than a claim grounded on disability ***(p. 687-688)***. ***Eldridge*** **v.** ***British Columbia (Attorney General)***, [1997] 3 S.C.R. 624.

The Supreme Court of Canada has held, in the context of section 15 of the Charter, that while there may not be a positive obligation upon government to take legislative action to remedy inequalities in society, once government does act to create a benefit it is obliged to do so in a non-discriminatory manner and should not be the source of further inequality in doing so: Eldridge v. B.C. (A.G.), supra, per La Forest J on behalf of the Court, citing L'Heureux-Dubé (dissenting) in Thibaudeau v. Canada [1995] 2 S.C.R. 627, at p. 655. The same reasoning may be applied to a consideration of the underlying constitutional principle of protection of the minority as expressed in the Quebec Secession Reference case, and as reinforced in R. v. Beaulac. ***(para. 82)*** *Even assuming the decisions of the Commission affecting Montfort reflect differential treatment between Franco-Ontarians and Anglo-Ontarians as comparable groups, we do not think it can be said the different treatment is based upon analogous grounds to those enumerated in section 15; accordingly we conclude that section 15 does not apply in the circumstances of this case.* ***(para. 91)*** *[…] To the extent the Applicants rely upon differential treatment based upon analogous grounds, they purport really to rely on the status of French as an official language to make their case. The Supreme Court of Canada has made it clear, however, that section 15 of the Charter may not be used as a back door to enhance language rights beyond what is specifically provided for elsewhere in the Charter (particularly in section 23, which provides for minority language educational rights):* ***(para. 92)*** ***Lalonde*** v. ***Ontario (Commission de Restructuration des Services de Santé),*** [1999] O.J. No. 4489, No. 98-DV-244, Ontario Superior Court of Justice, Divisionnal Court, Carnwath, Blair, Charbonneau JJ.

Certainly, in so far as the Province of Newfoundland is concerned, when one considers the findings of fact by the trial judge, already referred to, it cannot seriously be contended that the failure to proclaim Part X1V.1 [of the Criminal Code] *in effect in Newfoundland results in the infringement or abrogation of the constitutional rights of the appellant under the Constitution Act, 1982, and specifically s. 15 thereof* ***(pp. 520-521)***. ***Re Ringuette and The Queen*** (1987), 33 C.C.C. (3d) 509 (Nfld. C.A.).

The courts have held this Act [An Act that all proceedings in courts of justice within that part of Great Britain called England, and in the court of exchequer in Scotland, shall be in the English language, 1730-31, 4 Geo. 2, c. 26] *to be in force in British Columbia* ***(p. 131)***. *On the other hand, counsel for the Attorney-General, relying on the expressio unius maxim submits that ss. 16 to 22 are exhaustive of the subject of language rights, that there is nothing in any of these sections which would affect the power of B.C. to pass Rule 4(2) and that, therefore, the Federation cannot rely on s. 15. He contends, too, that the majority judgments of the Supreme Court in*

MacDonald and in Société des acadiens clearly refute counsel's submissions and contentions. **(NP)** *Generally, I agree with the submissions of the Attorney-General* ***(p. 132)****. Section 15 is a guarantee against discrimination and is a legal right. While discrimination based purely on language may be within s. 15, our concern is whether the concept of "official language" comes within it. Having regard to the provisions of ss. 16 to 22 and the other sections dealing with languages and the judgments of the majority in MacDonald and Société des Acadiens, I do not think that it does* ***(p. 135)****.* ***McDonnell* v. *Fédération des franco-colombiens*** (1986), 26 C.R.R. 128 (B.C. C.A.).

*The accused argues that there is discrimination based on "language". That argument would apply to any language, not only an official language, and the accused declined to argue that any accused can raise s. 15 when he or she does not speak the language of the tribunal. Indeed, the accused suggested that "language" (which is protected against discrimination in some international charters) should be taken here as meaning "official language", being the only language right to have historical constitutional protection. The accused urges that the purpose and effect of the section is impermissibly to discriminate on the basis of official language rights. That argument elevates official language rights into a position of equality in all cases. There would be no need for ss. 16 to 23 of the Charter. The argument makes the official languages sections redundant, as s. 15 would transform the use of one official language into the use of both. The discrimination is not based on language and the official languages are simply not accorded equality of status by the Charter. ...***(NP)*** This court has already addressed the question of geographic discrimination when, in common with other courts, we held that law relating to criminal procedure may be subject to geographically staged implementation: R. v. P.J.T.; R. v. A.A.H.; R. v. P.L.N., 41 Alta. L.R. (2d) 163, [1986] 1 W.W.R. 690, 22 C.C.C. (3d) 541, 65 A.R. 29, where the staged implementation of provisions of the Young Offenders Act was under attack. The staged implementation of official language rights into criminal procedure is no different and the legislation itself does not violate the emerging tests for the breach of s. 15 that I will discuss* ***(pp. 56-57)****.* ***Paquette* v. *R.***, [1988] 2 W.W.R. 44 (Alta. C.A.).

The appellant has limited his argument to s. 15(1) of the Charter and says that there was discrimination in serving him with a notice in English which he, as a francophone, could not read. This is not a language issue; it is an argument that such notices must be capable of being read and understood by all recipients. Persons who are illiterate or unilingual in any one of a multitude of languages, other than English, are put to more trouble than English-speaking persons when receiving such a document. However, this is a difference which falls short of s. 15 discrimination: Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143; 91 N.R. 255; [1989] 2 W.W.R. 289; 56 D.L.R. (4th) 1. All government documents will inevitably be unreadable by some group of persons. It would be trivializing

s. 15 to declare them all discriminatory and then, as the appellant would have it, turning to s. 1 to justify all except those affecting French-speaking unilinguals ***(p. 399)***. ***R.* v. *Crete*** (1993), 64 O.A.C. 399 (Ont. C.A.).

The allegation of discrimination is so tenuous that it does not merit close scrutiny. The respondent did not say what kind of discrimination was involved and submitted no evidence other than superficial and unsupported statistics. If it is discrimination based on language the claim would probably have to be dismissed as language is not one of the grounds described in section 15: it seems unlikely to me that a person could by means of so-called discrimination based on use of the official languages obtain more under subsection 15(1) of the Charter than what he would be entitled to under the language guarantee as defined in sections 16 to 22; and if there was discrimination it would not be discrimination based on language or, strictly speaking, national or ethnic origin, but discrimination based on the fact that bilingual employees perform administrative duties and other employees policing duties. That does not prima facie provide any basis for intervention under the Charter. In any case, the lack of serious evidence of discrimination is such that the claim based on the Charter is clearly frivolous in the case at bar ***(p. 764)***. ***Gingras* v. *Canada***, [1994] 2 F.C. 734 (F.C.A.).

I have already concluded that Part X1V.1 of the Criminal Code constitutes a legislative scheme which advances the equality of status or use of English or French in Canada and I have accordingly concluded that s. 16(3) of the Charter when read with the other language provisions of the Charter and the Constitution Act, 1982, preclude the application of s. 15 of the Charter in cases such as this. **(NP)** *I am supported in the conclusion that I have reached by the judgments of Beetz J. and Craig J.A. Their judgments make it clear that the advancement of language rights is best left to the legislators who are better suited to dealing with the development of political rights than are the courts. They specifically note that this principle is reflected in s. 16(3) which links the advancement of language rights to the legislative process. As such this reasoning indicates that once a legislative scheme has been properly characterized as legislation which advances the equality of status and use of the two official languages s. 16(3) should be interpreted as establishing that such a scheme cannot offend against the provisions of s. 15 of the Charter. If this is not so and s. 16(3) does not operate to guard such schemes against other provisions of the Charter the result would be to discourage Parliament from taking action to progressively implement language rights in Canada as a whole, an approach which appears to be a realistic one having regard to the nature of the rights and the distribution of members of minority language throughout the nation* ***(pp. 270-271)***. ***Pare* v. *Regina*** (1986), 31 C.C.C. (3d) 260 (B.C S.C.).

In my opinion, the fact that counsel for the accused cannot obtain a French language version of the disclosed evidence does not constitute a violation of s. 15. Section 15 should not be used to establish a legal right in judicial proceedings to favour the use of one or the other official language, particularly when one considers the specific and limited content of s. 19 of the Charter, which specifically addresses linguistic rights in legal proceedings ***(p. 472)***. ***R.* v. *Rodrigue*** (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied, No. 24585, [1995] 3 S.C.R. vii.

In his submission counsel for the Attorney General contended that the guarantees in s.15 do not extend to language rights. He pointed out that neither a linguistic group nor language are enumerated in the section and that language rights are specifically dealt with in ss.16 to 23 with s. 19 specifically dealing with the issue her — the use of English and French in the courts in Canada. He submits that since use of English and French in certain courts is specifically dealt with in s. 19, this is evidence of the clear intention of the framers of the Charter that no right to use French in British Columbia is guaranteed by s.15. If such is not the case, the argument goes, s. 19(2) would be unnecessary ***(p. 93)***. *These submissions of the Attorney General as to the inapplicability of s. 15 to the language rights issue are attractive and undoubtedly have merit. In view of the conclusion I have reached on the discrimination issue, I do not find it necessary to deal with them at this time. Were I to do so, I would be inclined to agree with these submissions made on behalf of the Attorney General* ***(p. 94)***. ***McDonnell* v. *Federation des Franco-Colombiens*** (1985), 69 B.C.L.R.87 (B.C. Co. Ct.).

The authors have claimed a violation of their right, under article 26 [of the International Covenant of Civil and Political Rights], *to equality before the law; the Government of Quebec has contended that Sections 1 and 6 of Bill 178 are general measures applicable to all those engaged in trade, regardless of their language. The* [United Nations] *Committee* [on Civil Rights] *notes that Sections 1 and 6 of Bill 178 operate to prohibit the use of commercial advertising outdoors in other than the French language. This prohibition applies to French speakers as well as English speakers, so that a French speaking person wishing to advertize in English, in order to reach those of his or her clientele who are English speaking, may not do so. Accordingly, the Committee finds that the authors have not been discriminated against on the ground of their language, and concludes that there has been no violation of article 26 of the Covenant* ***(p. 103).*** ***Ballantyne et al* v. *Canada,*** (March 31, 1993), Communications Nos. 359/1989 and 385/1989, in *Report of the Human Rights Committee,* Vol. II, Official Records, General Assembly, Forty-seventh Session, (A/48/40), United Nations, New York, 1993, p. 91.

See also in this book:

Quebec, *Charter of Human Rights and Freedoms*, s. 10.

British Columbia, *Law and Equity Act*.

See also:

Andrews* v. *Law Society of British Columbia, [1989] 1 S.C.R. 143.

B. (R.)* v. *Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315.

Ford* v. *Quebec (Attorney General), [1988] 2 S.C.R. 712.

Headley* v. *Canada (Public Service Commission Appeal Board) [1987], 2 F.C. 235 (F.C.A.).

Penikett et al.* v. *The Queen et al. (1988), 45 D.L.R. (4th) 108 (Y. C.A.).

Pare* v. *Regina (1986), 31 C.C.C. (3d) 260 (B.C S.C.).

R.* v. *Tremblay (1985), 20 C.C.C. (3d) 454 (Sask. Q.B.).

Reference re Public Schools Act (Man.), s. 79(3), (4) and (7), [1993] 1 S.C.R. 839.

R.* v. *Breton (July 9, 1995), Whitehorse TC-94-10538, 10005, 1005A, 100013 (Y. T.C.) Dutil J.

Re Use of French in Criminal Proceedings in Saskatchewan (1987), 44 D.L.R. (4th) 16 (Sask. C.A.).

Simard* v. *R. (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 S.C.R. x.

The Queen* v. *Sopko and Duncan (June 14, 1990), Winnipeg (Man. Q.B.) Kroft J.

Turpin* v. *The Queen, [1989] 1 R.C.S 1296.

Advancement of status and use

16. (3) Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of **English** and **French**.

This incomplete but precise scheme [section 133 of the Constitution Act, 1867] *is a constitutional minimum which resulted from a historical compromise arrived at by the founding people who agreed upon the terms of the federal union. ...It is a scheme which, being a constitutional minimum, not a maximum, can be complemented by federal and provincial legislation, as was held in the Jones case* ***(p. 496)***. ***MacDonald* v. *City of Montreal***, [1986] 1 S.C.R. 460.

I think it is accurate to say that s. 16 of the Charter does contain a principle of advancement or progress in the equality of status or use of the two official languages. I find it highly significant however that this principle of advancement is linked with the legislative process referred to in s. 16(3), which is a codification of the rule in Jones v. Attorney General of New Brunswick, [1975] 2 S.C.R. 182. The legislative process, unlike the judicial one, is a political process and hence particularly suited to the advancement of rights founded on political compromise ***(p. 579)***. ***Société des Acadiens* v. *Association of parents***, [1986] 1 S.C.R. 549.

I have already concluded that Part X1V.1 of the Criminal Code constitutes a legislative scheme which advances the equality of status or use of English or French in Canada and I have accordingly concluded that s. 16(3) of the Charter when read with the other language provisions of the Charter and the Constitution Act, 1982, preclude the application of s. 15 of the Charter in cases such as this. **(NP)** *I am supported in the conclusion that I have reached by the judgments of Beetz J. and Craig J.A. Their judgments make it clear that the advancement of language rights is best left to the legislators who are better suited to dealing with the development of political rights than are the courts. They specifically note that this principle is reflected in s. 16(3) which links the advancement of language rights to the legislative process. As such this reasoning indicates that once a legislative scheme has been properly characterized as legislation which advances the equality of status and use of the two official languages s. 16(3) should be interpreted as establishing that such a scheme cannot offend against the provisions of s. 15 of the Charter. If this is not so and s. 16(3) does not operate to guard such schemes against other provisions of the Charter the result would be to discourage Parliament from taking action to progressively implement language rights in Canada as a whole, an approach which appears to be a realistic one having regard to the nature of the rights and the distribution of members of minority language throughout the nation* ***(pp. 270-271)***. ***Pare* v. *Regina*** (1986), 31 C.C.C. (3d) 260 (B.C S.C.).

On the whole, therefore, the better view of the matter in our opinion is this: Parliament and the legislatures undoubtedly, by virtue of s. 16(3), possess the power to move official language rights beyond those entrenched in the Charter, but neither, when doing so, is relieved by s. 16(3) of having to respect the fundamental rights and freedoms found elsewhere in the Charter. Such relief as may be available to them under ss. 1 and 33, is, of course, another matter altogether, although one might add that the existence of these sections serves to remove some of the obstacles to official language advancement which, having regard particularly to s. 15, might otherwise be encountered ***(p. 34)***. ***Re Use of French in Criminal Proceedings in Saskatchewan*** (1987), 44 D.L.R. (4th) 16 (Sask. C.A.).

These sections illustrate the principle of advancement of the equality of status or use of the two official languages pursuant to s. 16(3) of the Charter according to which the Parliament and the legislatures have the authority to encourage such advancement. They go far beyond the minimum language requirements of the constitutional provisions by acknowledging the right of the accused to have a judge, a jury and a prosecutor who speak the official language of the accused ***(pp. 124-125).*** ***Simard*** **v.** ***R.*** (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 S.C.R. x.

See also:

Edwards et al. **v.** ***Honourable Yves Lagacé, j.c.q. es qualité and A.G. of Canada*** (March 24, 1998), Montreal 505-36-00327-983 (Que. S.C.) Béliveau J.

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.

The question is whether the provisions regarding instruction in English contained in Chapter VIII of the Charter of the French language, R.S.Q. 1977, c. C-11, and in the regulations adopted thereunder, are inconsistent with the Canadian Charter of Rights and Freedoms and of no force or effect to the extent of the inconsistency ***(pp. 68-69)****. Section 23 of the Charter is not, like other provisions in that constitutional document, of the kind generally found in such charters and declarations of fundamental rights. It is not a codification of essential, pre-existing and more or less universal rights that are being confirmed and perhaps clarified, extended or amended, and which, most importantly, are being given a new primacy and inviolability by their entrenchment in the supreme law of the land. The special provisions of s. 23 of the Charter make it a unique set of constitutional provisions, quite peculiar to Canada* ***(p. 79)****. The framers of the Constitution unquestionably intended by s. 23 to establish a general regime for the language of instruction, not a special regime for Quebec; but in view of the period when the Charter was enacted, and especially in light of the wording of s. 23 of the Charter as compared with that of ss. 72 and 73 of Bill 101, it is apparent that the combined effect of the latter two sections seemed to the framers like an archetype of the regimes needing reform, or which at least had to be affected, and the remedy prescribed for all of Canada by s. 23 of the Charter was in large part a response to these sections* ***(pp. 79-80)****. Although the fate reserved to the English language as a language of instruction had generally been more advantageous in Quebec than the fate reserved to the French language in the other provinces, Quebec seems nevertheless to have been the only province where there was then this tendency to limit the benefits conferred on the language of the minority* ***(p. 81)****. The rights stated in s. 23 of the Charter are guaranteed to very specific classes of persons. This specific classification lies at the very heart of the provision, since it is the means chosen by the framers to identify those entitled to the rights they intended to guarantee. In our opinion, a legislature cannot by an ordinary statute validly set aside the means so chosen by the framers and affect this classification. Still less can it remake the classification and redefine the classes* ***(p. 86)****. It goes without saying that in adopting s. 73 of Bill 101 the Quebec legislature did not intend, and could not have intended, to create an exception to s. 23 of the Charter or to amend it, since that section did not then exist; but its intent is not relevant. What matters is the effective nature and scope of s. 73 in light of the provisions of the Charter, whenever the section was enacted. If, because of the Charter, s. 73 could not be validly adopted today, it is clearly rendered of no force or effect by the Charter and this for the same reason, namely the direct conflict between s. 73 of Bill 101 and s. 23 of the Charter. The provisions of s. 73 of Bill 101 collide directly with those of s. 23 of the Charter, and are not limits which can be legitimized by s. 1 of the Charter. Such limits cannot be exceptions to the rights and freedoms*

guaranteed by the Charter nor amount to amendments of the Charter ***(p. 87-88).*** ***A.G. (Que.)*** **v.** ***Quebec Protestant School Boards***, [1984] 2 S.C.R. 66.

*In this appeal the Court is asked to determine whether the educational system in the city of Edmonton satisfies the demands of s. 23 of the Canadian Charter of Rights and Freedoms…****(p. 349)****, The general purpose of s. 23 is clear: it is to preserve and promote the two official languages of Canada, and their respective cultures, by ensuring that each language flourishes, as far as possible, in provinces where it is not spoken by the majority of the population. The section aims at achieving this goal by granting minority language educational rights to minority language parents throughout Canada.* **(NP)** *My reference to cultures is significant: it is based on the fact that any broad guarantee of language rights, especially in the context of education, cannot be separated from a concern for the culture associated with the language. Language is more than a mere means of communication, it is part and parcel of the identity and culture of the people speaking it* ***(p. 362)****. A further important aspect of the purpose of s. 23 is the role of the section as a remedial provision. It was designed to remedy an existing problem in Canada, and hence to alter the status quo* ***(p. 363)****. I agree. Beetz J.'s warning that courts should be careful in interpreting language rights is a sound one. Section 23 provides a perfect example of why such caution is advisable. The provision provides for a novel form of legal right, quite different from the type of legal rights which courts have traditionally dealt with. Both its genesis and its form are evidence of the unusual nature of s. 23. Section 23 confers upon a group a right which places positive obligations on government to alter or develop major institutional structures. Careful interpretation of such a section is wise: however, this does not mean that courts should not "breathe life" into the expressed purpose of the section, or avoid implementing the possibly novel remedies needed to achieve that purpose* ***(p. 365)****. The proper way of interpreting s. 23, in my opinion, is to view the section as providing a general right to minority language instruction. Paragraphs (a) and (b) of subs. (3) qualify this general right: para. (a) adds that the right to instruction is only guaranteed where the "number of children" warrants, while para. (b) further qualifies the general right to instruction by adding that where numbers warrant it includes a right to "minority language educational facilities". In my view, subs. (3)(b) is included in order to indicate the upper range of possible institutional requirements which may be mandated by s. 23 (the government may, of course, provide more than the minimum required by s. 23).* **(NP)** *Another way of expressing the above interpretation of s. 23 is to say that s. 23 should be viewed as encompassing a "sliding scale" of requirement, with subs. (3)(b) indicating the upper level of this range and the term "instruction" in subs. (3)(a) indicating the lower level. The idea of a sliding scale is simply that s. 23 guarantees whatever type and level of rights and services is appropriate in order to provide minority language instruction for the particular number of students involved.* **(NP)** *The sliding scale approach can be contrasted with that which views s. 23 as only*

encompassing two rights -- one with respect to instruction and one with respect to facilities -- each providing a certain level of services appropriate for one of two numerical thresholds. On this interpretation of s. 23, which could be called the "separate rights" approach, a specified number of s. 23 students would trigger a particular level of instruction, while a greater, specified number of students would require, in addition, a particular level of minority language educational facilities. Where the number of students fell between the two threshold numbers, only the lower level of instruction would be required. **(NP)** *The sliding scale approach is preferable to the separate rights approach, not only because it accords with the text of s. 23, but also because it is consistent with the purpose of s. 23. The sliding scale approach ensures that the minority group receives the full amount of protection that its numbers warrant.. ...In my view, it is more sensible, and consistent with the purpose of s. 23, to interpret s. 23 as requiring whatever minority language educational protection the number of students in any particular case warrants. Section 23 simply mandates that governments do whatever is practical in the situation to preserve and promote minority language education..* **(NP)** *There are outer limits to the sliding scale of s. 23. In general, s. 23 may not require that anything be done in situations where there are a small number of minority language students. There is little that governments can be required to do, for instance, in the case of a solitary, isolated minority language student. Section 23 requires, at a minimum, that "instruction" take place in the minority language: if there are too few students to justify a programme which qualifies as "minority language instruction", then s. 23 will not require any programmes be put in place* ***(pp. 365-368)****. In my view, the words of s. 23(3)(b) are consistent with and supportive of the conclusion that s. 23 mandates, where the numbers warrant, a measure of management and control* ***(p. 369)****. If the term "minority language educational facilities" is not viewed as encompassing a degree of management and control, then there would not appear to be any purpose in including it in s. 23. This common sense conclusion militates against interpreting "facilities" as a reference to physical structures. Indeed, once the sliding scale approach is accepted it becomes unnecessary to focus too intently upon the word "facilities". Rather, the text of s. 23 supports viewing the entire term "minority language educational facilities" as setting out an upper level of management and control* ***(p. 370)****. Thus, it would appear that where educational facilities are to be provided to assure the realization of the rights accorded by s. 23(3)(b), the facilities to be provided must appertain to or be those of the linguistic minority. Both the English and the French versions of s. 23(3)(b) must be read together and, in our opinion, they accord in their meaning to support that interpretation* ***(p. 371)****. In my view, it is essential, in order to further this purpose, that, where the numbers warrant, minority language parents possess a measure of management and control over the educational facilities in which their children are taught. Such management and control is vital to ensure that their language and culture flourish. It is necessary because a variety of management issues in education, e.g., curricula,*

hiring, expenditures, can affect linguistic and cultural concerns ***(pp. 371-372)****. In some circumstances an independent Francophone school board is necessary to meet the purpose of s. 23. However, where the number of students enrolled in minority schools is relatively small, the ability of an independent board to fulfill this purpose may be reduced and other approaches may be appropriate whereby the minority is able to identify with the school but has the benefit of participating in a larger organization through representation and a certain exclusive authority within the majority school board. Under these circumstances, such an arrangement avoids the isolation of an independent school district from the physical resources which the majority school district enjoys and facilitates the sharing of resources with the majority board, something which can be crucial for smaller minority schools. By virtue of having a larger student population, it can be expected that the majority board would have greater access to new educational developments and resources. Where the number of s. 23 students is not sufficiently large, a complete isolation of the minority schools would tend to frustrate the purpose of s. 23 because, in the long run, it would contribute to a decline in the status of the minority language group and its educational facilities. Graduates of the minority schools would be less well-prepared (thus hindering career opportunities for the minority) and potential students would be disinclined to enter minority language schools* ***(p. 374)****. Perhaps the most important point to stress is that completely separate school boards are not necessarily the best means of fulfilling the purpose of s. 23. What is essential, however, to satisfy that purpose is that the minority language group have control over those aspects of education which pertain to or have an effect upon their language and culture. This degree of control can be achieved to a substantial extent by guaranteeing representation of the minority on a shared school board and by giving these representatives exclusive control over 76 all of the aspects of minority education which pertain to linguistic and cultural concerns* ***(pp. 375-376)****. In my view, the measure of management and control required by s. 23 of the Charter may, depending on the numbers of students to be served, warrant an independent school board. Where numbers do not warrant granting this maximum level of management and control, however, they may nonetheless be sufficient to require linguistic minority representation on an existing school board. In this latter case:* **(NP)** *(1) The representation of the linguistic minority on local boards or other public authorities which administer minority language instruction or facilities should be guaranteed;* **(NP)** *(2) The number of minority language representatives on the board should be, at a minimum, proportional to the number of minority language students in the school district, i.e., the number of minority language students for whom the board is responsible;* **(NP)** *(3) The minority language representatives should have exclusive authority to make decisions relating to the minority language instruction and facilities, including: (a) expenditures of funds provided for such instruction and facilities; (b) appointment and direction of those responsible for the administration of such instruction and facilities; (c) establishment of*

programs of instruction; (d)recruitment and assignment of teachers and other personnel; and (e) making of agreements for education and services for minority language pupils ***(p. 377)****. I think it should be self-evident that in situations where the above degree of management and control is warranted the quality of education provided to the minority should in principle be on a basis of equality with the majority. This proposition follows directly from the purpose of s. 23. However, the specific form of educational system provided to the minority need not be identical to that provided to the majority. The different circumstances under which various schools find themselves, as well as the demands of a minority language education itself, make such a requirement impractical and undesirable. It should be stressed that the funds allocated for the minority language schools must be at least equivalent on a per student basis to the funds allocated to the majority schools. Special circumstances may warrant an allocation for minority language schools that exceeds the per capita allocation for majority schools. I am confident that this will be taken into account not only in the enabling legislation, but in budgetary discussions of the board.* **(NP)** *With respect to funding, the reference point for determining the number of students will normally be the pupils actually receiving minority language education. During the period in which a minority language education programme is getting started, however, it would seem reasonable to budget for the number of students who can realistically be seen as attending the school once operations are well established. This may be one example of a special circumstance which calls for a higher allocation of funds for minority education programmes. It could also be seen, however, as a consideration which would equally be extended to a majority language programme during its start-up period* ***(pp. 378-379)****. Section 23 does not, like some other provisions, create an absolute right. Rather, it grants a right which must be subject to financial constraints, for it is financially impractical to accord to every group of minority language students, no matter how small, the same services which a large group of s. 23 students are accorded. I note, however, that in most cases pedagogical requirements will prevent the imposition of unrealistic financial demands upon the state. Moreover, the remedial nature of s. 23 suggests that pedagogical considerations will have more weight than financial requirements in determining whether numbers warrant.* **(NP)** *In my view, the phrase "where numbers warrant" does not provide an explicit standard which courts can use to determine the appropriate instruction and facilities (in light of the aforementioned considerations) in every given situation. The standard will have to be worked out over time by examining the particular facts of each situation which comes before the courts, but, in general, the inquiry must be guided by the purpose of s. 23. In particular, the fact that s. 23 is a remedial section is significant, indicating that the section does not aim at merely guaranteeing the status quo* ***(p. 385)****. The second factor is that the right which the appellants possess under s. 23 is not a right to any particular legislative scheme, it is a right to a certain type of educational system. What is significant under s. 23 is that the appellants receive the appropriate services and powers; how they*

receive these services and powers is not directly at issue in determining if the appellants have been accorded their s. 23 rights. It is true that if the existing legislation has the effect, either directly or indirectly, of preventing the realization of a Charter right then, as this Court has stated on numerous occasions, the legislation should be invalidated....As the Attorney General for Ontario submits, the government should have the widest possible discretion in selecting the institutional means by which its s. 23 obligations are to be met; the courts should be loath to interfere and impose what will be necessarily procrustean standards, unless that discretion is not exercised at all, or is exercised in such a way as to deny a constitutional right ***(pp. 392-393)***. ***Mahe* c. *Alberta***, [1990] 1 S.C.R. 342.

The result is a "sliding scale" of requirements, depending on the number of students to be served. That is to say, what is required in any case will depend on what the numbers warrant; the relevant figure for the purposes of determining "what the numbers warrant" is the number of persons who can eventually be expected to take advantage of a given programme or facility. The factors to be considered in determining what s. 23 demands in a particular situation are (a) the pedagogical services which are appropriate for the number of students involved and (b) the cost of the contemplated services. However, as mentioned in Mahe (at p. 385): "... the remedial nature of s. 23 suggests that pedagogical considerations will have more weight than financial requirements in determining whether numbers warrant" ***(p. 850)***. *Several interpretative guidelines are endorsed in Mahe for the purposes of defining s. 23 rights. Firstly, courts should take a purposive approach to interpreting the rights. Therefore, in accordance with the purpose of the right as defined in Mahe, the answers to the questions should ideally be guided by that which will most effectively encourage the flourishing and preservation of the French- language minority in the province. Secondly, the right should be construed remedially, in recognition of previous injustices that have gone unredressed and which have required the entrenchment of protection for minority language rights* ***(p. 850)***. *The Court in Mahe, at p. 365, accepted the distinction between language and other legal rights and noted the difference in origin and form of the two rights, holding that while positive obligations were placed on governments to alter or develop major institutional structures, prudent interpretation of the section is wise* ***(p. 852)***. *While this Court in Mahe did not explicitly refer to distinct physical settings in its discussion on schools as cultural centres, it seems reasonable to infer that some distinctiveness in the physical setting is required to successfully fulfil this role. In my view, the overall objectives of s. 23 expressed in the reasons in Mahe as a whole support such a conclusion* ***(p. 855)***. *Therefore, while I endorse a general right to distinct physical settings as an integral aspect of the provision of educational services, it is not necessary to elaborate at this point what might satisfy this requirement in a given situation. Pedagogical and financial considerations would both play a role in determining what is required. Obviously the financial impact of the*

provision of specific facilities will vary from region to region. It follows that the assessment of what will constitute appropriate facilities should only be undertaken on the basis of a distinct geographic unit within the province ***(p. 856)****. The participation of minority language parents or their representatives in the assessment of educational needs and the setting up of structures and services which best respond to them is most important* ***(p. 862)****. Arrangements and structures which are prejudicial, hamper, or simply are not responsive to the needs of the minority, are to be avoided and measures which encourage the development and use of minority language facilities should be considered and implemented. For instance, if the province chooses to allow minority language parents a choice of school for instruction in the minority language, this should not be at the expense of the services provided by a French-language school board or hamper this board in its ability to provide services on a basis of equality as described above. Likewise, it would not be open to the Government of Manitoba to carve school districts which unduly hampered such a school board from attracting students* ***(p. 863)****.* ***Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)****,* [1993] 1 S.C.R. 839.

Bill 107 [Education Act,, S.Q. 1988, c. 84.] *also comprises a fundamental reform of the organization of school boards. The Quebec public school system would move from a system organized according to religion to one organized according to language. Thus, the new legislation divides the province into two groups of territories, one of territories for French-language school boards and the other of territories for English-language school boards* ***(p. 525)****. Like the Court of Appeal, I conclude that the provisions in question are constitutional. By legislating on education in this way, the Quebec government is pursuing a legitimate purpose which is in keeping with s. 23 of the Canadian Charter of Rights and Freedoms. Although the measures contemplated by the legislature will occasion a fundamental upheaval in the institutions to which the province has been accustomed for over a hundred years -- even though they have been altered on several occasions, as I noted, they have always focused on religion -- the legislature's power to create some other kind of school system, neutral or for denominations other than Catholics and Protestants, has been recognized since the Privy Council decision in Hirsch, supra* ***(p. 551).*** *It is natural and normal for the linguistic boards to be the successors of the boards for Catholics and the boards for Protestants. Like the latter, they are boards which are not the result of the exercise of a right of dissent and are therefore not protected by s. 93.* **(NP)** *The abolition of the existing boards is also not in itself an infringement of the rights guaranteed by the Constitution. Furthermore, if the province has the power to create linguistic school boards, it is proper that it should also have the power to determine their territories* ***(p. 552).*** ***Reference re Education Act (Que.),*** [1993] 2 S.C.R. 511.

*Historically, there is no doubt that Parliament intended to ensure that linguistic minority populations in any Canadian province were protected. These children were entitled to be educated in the minority language, i.e., an English minority in Quebec and a French minority in British Columbia, they did just that in s. 23. There are many more decisions that deal with the historical and social context and the mischief intended to be remedied... **(pp. 136-137)**.* ***Whittington* v. *Saanich Sch. Dist. 63*** (1987), 44 D.L.R. (4d) 128 (B.C S.C.).

*The important factor is that either the legislature or the Lieutenant-Governor in Council must be seen as acting fairly when determining a minimum number. Either the legislature or the Lieutenant-Governor in Council is in a position to determine what is best for the province, as a whole, and would not be influenced by regional biases as might individual school boards. For this reason, the authority to determine the minimum number may be delegated to the Lieutenant-Governor in Council but not to school boards **(p. 520)**. The discretion placed in the board to determine if a sufficient number of students can be assembled has no legal force. It is totally discretionary and without any definable limits. There are no rules or regulations by which the board is bound to follow in determining if a sufficient number of students can be assembled. Therefore, because the exercise of a discretion cannot qualify as law, the purported limitation cannot apply as a limitation under s. 1 of the Charter **(p. 522)**. In this context, as well, it must be remembered that the Charter, and in particular s. 23, was not drawn in a vacuum, but rather with regard to the exigencies of the local situation, and to the necessity of providing, generally, equality of opportunity and equality of education to both linguistic groups.* **(NP)** *Those opportunities available to the majority linguistic group are the criteria by which must be judged equivalent opportunities available to the minority linguistic group. This does not mean that all of the amenities which may be available to the majority group, where that group exist in large numbers, must all be made available to the minority group, where it exists in its own separate educational facility, having only a minimum number of pupils.* **(NP)** *What it does mean is that where there exists a comparable equivalency of numbers in separate educational facilities, there should exist a comparable equivalency of amenities and opportunities, regardless of the linguistic group involved.* **(NP)** *Section 23 of the Charter does not demand that all of the educational opportunities available to students in a large facility, including such things as libraries, laboratories, shops and similar amenities, in the case of an institution populated principally by students of the majority linguistic group, must necessarily be equally available in an educational facility entirely populated by a minimum number of students of the minority linguistic group **(p. 525)**. In other words, if the number of children are insufficient to warrant the provision of minority language instruction, then it would be acceptable for a school board to provide alternatives similar to what is set out in s. 5.32(3). It is correct to say that immersion programmes are not an authorized alternative to French language instruction under s. 23; however, if*

the right given by s. 23 does not apply, then the provision of an alternative French language programme is an acceptable alternative if the person does not wish to participate in the English programme ***(pp. 526-527)****. It is obvious from reading the School Act and regulations that no special provision has been made for the French language minority to actively participate in a dominantly English environment. There are no guarantees set forth for the French minority. They must depend on the goodwill of the English majority. Such a system cannot be said to be in compliance with s. 23* ***(pp. 532-533)****.* ***Re Minority Language Educational Rights*** (1988), 49 D.L.R. (4th) 499 (P.E.I. C.A.).

The foregoing judgments do not suggest that the rights granted by s. 23 to children of minority language parents should be interpreted as granting to such parents the right to require that the minority language educational facilities reflect and teach the religious belief of these parents. The right entrenched is that to receive instruction in minority language facilities, not in minority denominational facilities ***(p. 2757)****.* ***Griffin*** **v.** ***Commission scolaire régionale Blainville Deux-Montagnes***, [1989] R.J.Q. 2741 (Que. S.C.).

I agree with the submission of the appellants that s. 23 of the Charter was intended as a remedial provision and, in order to be effective as a remedy for past defects, it must be given a large and liberal interpretation. With the advent of s. 23, linguistic minorities have been granted a constitutionally guaranteed right and this right must not be restricted by a confirmed approach to its interpretation ***(p. 303)****. The framers of the Charter, by using a separate heading for s. 23, obviously wished to separate the rights in s. 23 from the other language rights in the Charter. The Societe des Acadiens decision did not address the interpretation of s. 23. Even though ss. 16 through 22 resulted from a political compromise emanating from Confederation, s. 23 is a unique and new remedial provision of the Charter. Its purpose is to give education rights to specified linguistic minorities. Such rights cannot be overridden by an Act of Parliament or of the legislature pursuant to s. 33 of the Charter. Section 23 should be given a large and liberal interpretation rather than a restrictive one resulting from a restrained approach* ***(p. 304-305)****.* ***Lavoie*** **v.** ***Nova Scotia*** (1989), 58 D.L.R. (4th) 293 (N.S. C.A.).

Is there anything in s. 93 to prevent s. 23 from being applied with equal force to denominational education? In our opinion, there is not. Language of instruction, as the cases establish, is a matter of linguistic and not denominational concern; its choice has not been judged a right or privilege within the purview of s. 93. Quite apart from the Charter, the province would be entitled, on the basis of Mackell, supra, to enact laws according a right to minority language instruction in denominational schools without violation of s. 93. By the same token, the conferral of such a right by force of the Charter does not constitute an abrogation or derogation of any of the constitutionally

protected rights or privileges ***(pp. 49-50)****. As we view the* Charter*, it grants supporters of denominational schools a right in addition to those granted them in 1867 by s.93. They are now entitled, by virtue of s.23, to have their children receive denominational education in either the minority or majority language. If, because of s.93, s.23 were treated as inapplicable to denominational schools, an anomalous and, indeed, patently unacceptable result would follow. French-speaking members of the Roman Catholic community would then be required to forgo their denominational education rights protected by s. 93 in order to avail themselves of the new minority language educational right conferred on them by s. 23 of the* Charter*. We see no conflict between the two provisions compelling that result. In our opinion, s. 23 and s. 93 are compatible and capable of living and operating in harmony with one another* ***(p. 50).*** *The judiciary is not the sole guardian of the constitutional rights of Canadians. Parliament and the provincial Legislatures are equally responsible to ensure that the rights conferred by the* Charter *are upheld. Legislative action in the important and complex field of education is much to be preferred to judicial intervention. Minority linguistic rights should be established by general legislation assuring equal and just treatment to all rather than by litigation* ***(p. 57).*** ***Reference Education Act of Ontario and Minority Language Education Rights*** (1984), 47 O.R. (2d) 1 (Ont. C.A.).

On March 6, 1996 the respondent imposed an across-the-board freeze on capital expenditures affecting Catholic and Public, Elementary and Secondary, Anglophone and Francophone schools except for those projects which had already received final approval and for which construction had actually begun ***(p. 706)****. The essence of the issue before me is succinctly expressed in the respondent's factum in these words:* **(NP)** *Does the delay in funding the construction of the École Secondaire Sainte-Famille resulting from the Ministry's moratorium on new capital projects constitute an infringement of the applicant's rights under s. 23 of the Charter?. . . While this expression of government intention is full of high resolve it* [funding for the construction of the École secondaire Sainte-Famille will be considered on a priority basis at the expiry of the moratorium] *is not one upon which concrete plan could be founded* ***(p. 707)****. I am of the view that the open-ended delay in funding the construction of École Secondaire Sainte-Famille after seven years of temporary and inadequate facilities does constitute an infringement of the applicant's rights under s. 23 of the* Charter ***(p. 708)****.* ***Conseil des Écoles Séparées Catholiques Romaines de Dufferin & Peel* v. *Ontario (Ministre de l'éducation et de la formation)*** (1996), 136 D.L.R. (4th) 704 (Ont. C. Gen. Div.).

The words of s. 7(1) of the Regulation [Regulation 475/95 The Francophone Education] *are that "the minister may provide to the Francophone Education Authority a grant."* ***(para. 28)*** *It is the use of the word "may", the discretion by itself, and not the manner in which the discretion is exercised which makes the choice of words*

inappropriate. I do not assume the minister would exercise his discretion in an unconstitutional manner. The plaintiffs do not complain that he has done so. However they should not have to wait for an inappropriate use of ministerial discretion to challenge a word that in and of itself makes the provision unconstitutional. In my view the use of the word "may" does not meet the constitutional obligation of the Province to provide funding to meet its s. 23 obligations ***(para. 32)****. The School Act, ss. 114-115, allows a school board to acquire and dispose of land and improvements, in its own name, with ministerial approval. Bearing in mind the need for funding equivalency, it is difficult to see how denying the Authority access to capital funds while allowing such access to the majority can fulfil the constitutional obligation of the Province. In addition, it seem to me that the fact the Authority may only use federal government money for capital expenditure is a clear attempt to shift that responsibility.* **(NP)** *The Authority is denied the opportunity to share in funds that might be allocated by the Province for education capital expenses and to that extent I conclude the Province has not met the responsibility imposed upon it by s. 23. That is particularly so when one takes into account the fact that the minority may only lease, unless federal funds are provided, while the majority may purchase as well as lease. It seems to me that this lack of flexibility goes to the heart of management and control. Restricting the measure of management and control of the minority fails to meet the obligation of equivalency and equality mandated by s. 23* ***(para. 36-37)****. The scheme envisioned by the Regulation is that the Authority would enter into leasing arrangements with the approval of the minister, to meet its accommodation needs: s. 11. The difficulty here lies in the absence of the opportunity to acquire land and improvements in its own name. The fact that it has the ability to enter into leases would not offend s. 23. It is the restriction to that form of tenure which sets it apart* ***(para. 38)****. In the absence of some mechanism to resolve an impasse in negotiations, the Authority is at the mercy of school boards. In my view, that does not afford the authority with the measure of management and control envisioned by s. 23 as explained in Mahe* ***(para. 40)****. In my view the legislature of British Columbia has failed to discharge the obligation imposed by s. 23 of the Charter. Section 5 of the School Act, which predates Mahe, is not a legislative scheme as contemplated by s. 23 and explained in Mahe and the Manitoba Reference. As was the case in Alberta and Manitoba, the Legislature of British Columbia can no longer delay putting in place an appropriate minority language education scheme.* **(NP)** *Apart from what has been said by the Supreme Court of Canada, it is my view that legislation, as opposed to regulation, is the manner in which this constitutional commitment should be met. Language rights are rights of a fundamentally different nature. Their realization may require creative or innovative measures. The burden of ensuring that the obligations imposed by s. 23 is a burden placed on both the government and the legislature of each province. Provincial legislation provides a measure of security beyond a regulatory scheme. Amending a statute is far more onerous than amending a set of regulations. As*

well, the presentation of legislation is more likely to ensure a better public understanding of this significant Canadian solution for the protection of language and culture, afforded to both French and English speaking Canadians. With debate in the Legislative Assembly comes the opportunity to advance a better understanding of our national heritage and the unique place it holds in the family of nations ***(para. 48-49)****. I believe the court must fashion a remedy that leaves the Legislative Assembly with the freedom it must have to create a comprehensive legislative scheme to meet the obligations imposed upon it by s. 23* ***(para. 53)****.* ***Association des Parents Francophones (Colombie-Britannique)*** **v.** ***British Columbia*** (August 19, 1996), Vancouver A890762 (B.C S.C.), Vickers J.

No constitutional question was adopted in the present appeal. The following issues were formulated for the direction of the parties: **(NP)** *1 Should para. 23(3)(a) of the Charter be interpreted to mean that when the numbers warrant the provision of minority language instruction in a specific area, the right automatically includes the right to instruction in an educational facility located in that area?* **(NP)** *2 Having regard to the appropriate considerations, including the number of students that could eventually be expected to take advantage of minority language instruction, will the sliding scale approach to the application of s. 23 of the Charter allow for minority language instruction in a facility located outside the area where the numbers warrant the provision of minority language instruction?* ***(para. 5)*** **(NP)** *After hearing the submissions of the parties and interveners, we are of the view that the main issue in this appeal is the delineation of the right of management and control exercised by the French Language Board with regard to the location of minority language schools and the discretion of the Minister to approve of the decisions of the Board in that regard.* ***(para. 6)*** *[…] As this Court recently observed in* R. v. Beaulac*, [1999] 1.S.C.R. 868, at para. 24, the fact that constitutional language rights resulted from a political compromise is not unique to language rights and does not affect their scope. Like other provisions of the* Charter*, s. 23 has a remedial aspect; see Mahe, supra, at p. 364. It is therefore important to understand the historical and social context of the situation to be redressed, including the reasons why the system of education was not responsive to the actual needs of the official language minority in 1982 and why it may still not be responsive today. It is clearly necessary to take into account the importance of language and culture in the context of instruction as well as the importance of official language minority schools to the development of the official language community when examining the actions of the government in dealing with the request for services in Summerside. As this Court recently explained in* Beaulac*, at para. 25, "[l]anguage rights must* in all cases *be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada" (emphasis in original). A purposive interpretation of s. 23 rights is based on the true purpose of redressing past injustices and providing the official language minority with equal access to high quality*

education in its own language, in circumstances where community development will be enhanced. ***(para. 27)*** *The historical and contextual analysis is important for courts in determining whether a government has failed to meet its s. 23 obligations. It should also guide governmental actors in reaching appropriate decisions to give effect to s. 23. In this case, the Minister was of the view that it would be more beneficial for the children to receive their instruction in a homogeneous school located at the heart of the Acadian community. Insisting on the individual right to instruction, the Minister appeared to ignore the linguistic and cultural assimilation of the Francophone community in Summerside, thereby restricting the collective right of the parents of the school children. […]* ***(para. 29)*** *The Minister has a duty to exercise his discretion in accordance with the dictates of the Charter;* ***(para. 30)*** *[…]As discussed above, the object of s. 23 is remedial. It is not meant to reinforce the status quo by adopting a formal vision of equality that would focus on treating the majority and minority official language groups alike; see Mahe, supra, at p. 378. The use of objective standards, which assess the needs of minority language children primarily by reference to the pedagogical needs of majority language children, does not take into account the special requirements of the s. 23 rights holders. The Minister and the Appeal Division inappropriately emphasized the impact of three elements on equality between the two linguistic communities: duration of the bus rides, size of schools and quality of education. Section 23 is premised on the fact that substantive equality requires that official language minorities be treated differently, if necessary, according to their particular circumstances and needs, in order to provide them with a standard of education equivalent to that of the official language majority.* ***(para. 31)*** *[…] The province has a duty to provide official minority language instruction where the numbers warrant. As Dickson C.J. pointed out in Mahe, supra, the "sliding scale" approach to s. 23 means that the numbers standard will have to be worked out by examining the particular facts of each case that comes before the courts. The relevant number is the number who will potentially take advantage of the service, which can be roughly estimated as being somewhere between the known demand and the total number of persons who could potentially take advantage of the service; see Mahe, at p. 384. Lamer C.J. defined the number in Reference re Public Schools Act (Man.) in this way, at p. 850: "the number of persons who can eventually be expected to take advantage of a given programme or facility".* ***(para. 32)*** *The Appeal Division erred in adopting a different and more restrictive standard. Instead of considering the demographic data to assess potential demand, McQuaid J.A. focussed solely on actual demand. . .* ***(para. 33)*** *The province cannot avoid its constitutional duty by citing insufficient proof of numbers, especially if it is not prepared to conduct its own studies or to obtain and present other evidence of known and potential demand.* ***(para. 34)*** *[…] Although the Minister is responsible for making educational policy, his discretion is subordinate to the Charter. As mentioned earlier, the Minister failed to give*

proper weight to the effect of his decision on the promotion and preservation of the minority language community in Summerside and did not give proper recognition to the role of the French Language Board in this regard. ***(para. 40)*** *The travel considerations should have been applied differently for minority language children for at least two reasons. First, unlike majority language children, s. 23 children were faced with a choice between a locally accessible school in the majority language and a less accessible school in the minority language. The decision of the Minister fostered an environment in which many of the s. 23 children were discouraged from attending the minority language school because of the long travel times. A similar disincentive would not arise in the circumstances of the majority. Second, the choice of travel would have an impact on the assimilation of the minority language children while travel arrangements had no cultural impact on majority language children. For the minority, travel arrangements were in large measure a cultural and linguistic issue; they involved not only travel times but also a consideration of distances because of the impact of having children sent outside their community and of not having an educational institution within the community itself. As just mentioned, travel arrangements are a possible method of providing services to official language minority students, but they have to be considered in the context of the pedagogical and cost requirements which pertain to the application of s. 23.* ***(para. 50)*** *In our view, the Appeal Division erred in deciding that the sliding scale approach was governed by the "reasonable accessibility" of services without considering which services would best encourage the flourishing and preservation of the French language minority;* ***(para. 51)*** ***Arsenault-Cameron*** **v. *Prince Edward Island*,** [2000] 1 S.C.R. 3.

[TRANSLATION] [T]*he appellant is not a member of Quebec's Anglophone minority. . .* ***(p. 8).*** *It is my view that the appellant does not have the required standing to rely on this provision of the Canadian Charter, which protects the rights of the province's linguistic minority community. [… It is not open to the appellant to assert rights of the linguistic minority community solely to advance his personal interests. The purpose of his action is not to protect the rights of the Anglophone minority but to obtain a French-language school in which all the rooms would be reserved exclusively for the school's use* ***(pp. 26-27)***. ***Szasz et al.*** **v. *Commission scolaire Lakeshore*** (May 27, 1998), Montreal 500-09-003117-967, (Que. C.A.).

See also:

Alberta, *School Act*, R.S.A. 1980, c. S-3.1;

British Columbia, *School Act*, R.S.B.C. 1996, c. 412;

Prince Edward Island, *School Act*, R.S.P.E.I. 1988, c. S-2;

Manitoba, *The Public Schools Act*, R.S.M. 1987, c. P250;

New Brunswick, *Education Act*, R.S.N.B., c. E-1.12;

Nova Scotia, *Education Act*, S.N.S., 1995-96, c. 1;

Ontario, *Education Act*, R.S.O. 1990, c. E.2;

Quebec, *Education Act*, R.S.Q., c. I-13.3;

Saskatchewan, *Education Act, The*, S.S 1995, c. E-0.2;

Newfoundland, *Schools Act, The, 1996*, S.N. 1996, c. S-12.1

Northwest Territories, *Education Act*, R.S.N.W.T. 1995, c. 28;

Yukon, *Education Act*, S.Y. 1989-90, c. 25.

Adler* v. *Ontario, [1996] 3 S.C.R. 609.

Association française des conseils scolaires de l'Ontario, Ginette Gratton and Jacques Marchand* v. *Her Majesty The Queen in Right of Ontario (1988), 66 O.R. (2d) 599 (Ont. C.A.)

Colin* v. *Commission d'appel sur la langue d'enseignement (1995), R.J.Q. 1478 (Que. S.C.).

Commission des écoles fransaskoises inc.* v. *Saskatchewan (1991), 81 D.L.R. (4th) 88 (Sask. C.A.).

Marchand* v. *Simcoe (1984), 10 C.R.R.169 (Ont. H.C.).

Marchand* v. *Simcoe, (1987) 61 O.R. (2d) 651 (Ont. H.C.).

Ontario Catholic Occasional Teachers' Assn.* v. *Frontenac-Lennox & Addington (County) Roman Catholic Separate School Board, [1988] O.L.R.B. Rep. 888 (B.R.T.Ont.).

Re Education Act (1986), 53 O.R. (2d) 513 (Ont. C.A.).

Re Education Act of Ontario and Minority Language Education Rights (1984), 47 O.R. (2d) 1 (Ont. C.A.).

Re Ottawa Board of Education et al. and Attorney General of Ontario (1987), 57 O.R. (2d) 722 (Ont. H.C.).

Sunshine Coast Parents for French et al.* v. *Board of School Trustees of School District No. 46 (1991), 44 Admin.L.R. 252 (B.C S.C.).

Toma* v. *Minister of Education (June 9, 1983), Montreal 500-09-001283-829 (Que. C.A.).

Trutschmann et Millette* v. *Procureur général du Québec (March 30 1995), Montreal 500-05-009387-943 (Que. S.C.).

Yeryk* v. *Yeryk and Rasmussen, [1985] W.W.R. 705 (Man. C.A.).

Enforcement of guaranteed rights and freedoms

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

While the practical effect may very well be the same, we do not regard the grant of a remedy of this nature to be beyond the authority of the court as tantamount to legislating Part XIV.1 of the Code into existence in Saskatchewan. The only adequate remedy for a s. 15(1) infringement (of the nature of that raised by this case) is to accord to a Saskatchewan accused the same rights as are enjoyed by his counterparts in each of Ontario, Manitoba, New Brunswick, and the two territories, and we see no reason why orders of the kind which Halvorson J. made in R. v. Tremblay, and which are suggested here, cannot be made under s. 24(1) of the Charter ***(p. 62)***. ***Re Use of French in Criminal Proceedings in Saskatchewan*** (1987), 44 D.L.R. (4th) 16 (Sask. C.A.).

Multicultural heritage

27. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.

. . . as was said in the Patriation Reference, supra, at p. 874, the Constitution of Canada includes the global system of rules and principles which govern the exercise of constitutional authority in the whole and in every part of the Canadian state. These supporting principles and rules, which include constitutional conventions and the workings of Parliament, are a necessary part of our Constitution because problems or situations may arise which are not expressly dealt with by the text of the Constitution. In order to endure over time, a constitution must contain a comprehensive set of rules and principles which are capable of providing an exhaustive legal framework for our system of government. Such principles and rules emerge from an understanding of the constitutional text itself, the historical context, and previous judicial interpretations of constitutional meaning. In our view, there are four fundamental and organizing principles of the Constitution which are relevant to

addressing the question before us (although this enumeration is by no means exhaustive): federalism; democracy; constitutionalism and the rule of law; and respect for minorities. ***(pp. 239-240)*** *Several matters remained to be resolved, and so the Charlottetown delegates agreed to meet again at Quebec in October, and to invite Newfoundland to send a delegation to join them. The Quebec Conference began on October 10, 1864. Thirty-three delegates (two from Newfoundland, seven from New Brunswick, five from Nova Scotia, seven from Prince Edward Island, and twelve from the Province of Canada) met over a two and a half week period. Precise consideration of each aspect of the federal structure preoccupied the political agenda. The delegates approved 72 resolutions, addressing almost all of what subsequently made its way into the final text of the Constitution Act, 1867. These included guarantees to protect French language and culture, both directly (by making French an official language in Quebec and Canada as a whole) and indirectly (by allocating jurisdiction over education and "Property and Civil Rights in the Province" to the provinces). The protection of minorities was thus reaffirmed.* ***(pp. 241-242)*** *Canada's evolution from colony to fully independent state was gradual. The Imperial Parliament's passage of the Statute of Westminster, 1931 (U.K.), 22 & 23 Geo. 5, c. 4, confirmed in law what had earlier been confirmed in fact by the Balfour Declaration of 1926, namely, that Canada was an independent country. Thereafter, Canadian law alone governed in Canada, except where Canada expressly consented to the continued application of Imperial legislation. Canada's independence from Britain was achieved through legal and political evolution with an adherence to the rule of law and stability. The proclamation of the Constitution Act, 1982 removed the last vestige of British authority over the Canadian Constitution and re-affirmed Canada's commitment to the protection of its minority, aboriginal, equality, legal and language rights, and fundamental freedoms as set out in the Canadian Charter of Rights and Freedoms.* ***(p. 246)*** *The principles assist in the interpretation of the text and the delineation of spheres of jurisdiction, the scope of rights and obligations, and the role of our political institutions. Equally important, observance of and respect for these principles is essential to the ongoing process of constitutional development and evolution of our Constitution as a "living tree", to invoke the famous description in Edwards v. Attorney-General for Canada, [1930] A.C. 124 (P.C.), at p. 136. As this Court indicated in New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly), [1993] 1 S.C.R. 319, Canadians have long recognized the existence and importance of unwritten constitutional principles in our system of government.* ***(pp. 248-249)*** *Underlying constitutional principles may in certain circumstances give rise to substantive legal obligations (have "full legal force", as we described it in the Patriation Reference, supra, at p. 845), which constitute substantive limitations upon government action. These principles may give rise to very abstract and general obligations, or they may be more specific and precise in nature. The principles are not merely descriptive, but are also invested with a powerful normative force, and are binding upon both courts and*

governments. "In other words", as this Court confirmed in the Manitoba Language Rights Reference, supra, at p. 752, "in the process of Constitutional adjudication, the Court may have regard to unwritten postulates which form the very foundation of the Constitution of Canada". It is to a discussion of those underlying constitutional principles that we now turn. ***(pp. 249-250)*** *The fourth underlying constitutional principle we address here concerns the protection of minorities. There are a number of specific constitutional provisions protecting minority language, religion and education rights. Some of those provisions are, as we have recognized on a number of occasions, the product of historical compromises. As this Court observed in Reference re Bill 30, An Act to amend the Education Act (Ont.), [1987] 1 S.C.R. 1148, at p. 1173, and in Reference re Education Act (Que.), [1993] 2 S.C.R. 511, at pp. 529-30, the protection of minority religious education rights was a central consideration in the negotiations leading to Confederation. In the absence of such protection, it was felt that the minorities in what was then Canada East and Canada West would be submerged and assimilated. See also Greater Montreal Protestant School Board v. Quebec (Attorney General), [1989] 1 S.C.R. 377, at pp. 401-2, and Adler v. Ontario, [1996] 3 S.C.R. 609. Similar concerns animated the provisions protecting minority language rights, as noted in Société des Acadiens du Nouveau-Brunswick Inc. v. Association of Parents for Fairness in Education, [1986] 1 S.C.R. 549, at p. 564.* **(NP)** *However, we highlight that even though those provisions were the product of negotiation and political compromise, that does not render them unprincipled. Rather, such a concern reflects a broader principle related to the protection of minority rights. Undoubtedly, the three other constitutional principles inform the scope and operation of the specific provisions that protect the rights of minorities. We emphasize that the protection of minority rights is itself an independent principle underlying our constitutional order. The principle is clearly reflected in the Charter's provisions for the protection of minority rights. See, e.g., Reference re Public Schools Act (Man.), s. 79(3), (4) and (7), [1993] 1 S.C.R. 839, and Mahe v. Alberta, [1990] 1 S.C.R. 342.* **(NP)** *The concern of our courts and governments to protect minorities has been prominent in recent years, particularly following the enactment of the Charter. Undoubtedly, one of the key considerations motivating the enactment of the Charter, and the process of constitutional judicial review that it entails, is the protection of minorities. However, it should not be forgotten that the protection of minority rights had a long history before the enactment of the Charter. Indeed, the protection of minority rights was clearly an essential consideration in the design of our constitutional structure even at the time of Confederation: Senate Reference, supra, at p. 71. Although Canada's record of upholding the rights of minorities is not a spotless one, that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes. The principle of protecting minority rights continues to exercise influence in the operation and interpretation of our Constitution.* **(NP)** *Consistent with this long tradition of respect for minorities, which is at least as*

old as Canada itself, the framers of the Constitution Act, 1982 included in s. 35 explicit protection for existing aboriginal and treaty rights, and in s. 25, a non-derogation clause in favour of the rights of aboriginal peoples. The "promise" of s. 35, as it was termed in R. v. Sparrow, [1990] 1 S.C.R. 1075, at p. 1083, recognized not only the ancient occupation of land by aboriginal peoples, but their contribution to the building of Canada, and the special commitments made to them by successive governments. The protection of these rights, so recently and arduously achieved, whether looked at in their own right or as part of the larger concern with minorities, reflects an important underlying constitutional value. ***(pp. 261-263) Reference re Secession of Quebec*** *[1998] 2 S.C.R. 217.*

While I agree that it is often useful to consider the relationship between different sections of the Charter, in the interpretation of s. 23 I do not think it helpful in the present context to refer to either s. 15 or s. 27. Section 23 provides a comprehensive code for minority language educational rights; it has its own internal qualifications and its own method of internal balancing. A notion of equality between Canada's official language groups is obviously present in s. 23. Beyond this, however, the section is, if anything, an exception to the provisions of ss. 15 and 27 in that it accords these groups, the English and the French, special status in comparison to all other linguistic groups in Canada. As the Attorney General for Ontario observes, it would be totally incongruous to invoke in aid of the interpretation of a provision which grants special rights to a select group of individuals, the principle of equality intended to be universally applicable to "every individual" ***(p. 369)***. ***Mahe* c. *Alberta***, [1990] 1 S.C.R. 342.

Sections 15 (equality rights), 25 (aboriginal rights) and 27 (multicultural heritage) of the Charter also speak to the importance of the right to interpreter assistance in Canadian society. Section 27, which mandates that the Charter be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians, is particularly germane. In so far as a multicultural heritage is necessarily a multilingual one, it follows that a multicultural society can only be preserved and fostered if those who speak languages other than English and French are given real and substantive access to the criminal justice system. Just as s. 27 has already been held to be relevant to the interpretation of freedom of religion under s. 2(a) of the Charter (R. v. Edwards Books and Art Ltd., [1986] 2 S.C.R. 713, at p. 752, and R. v. Gruenke, [1991] 3 S.C.R. 263), so too should it be a factor when considering how to define and apply s. 14 of the Charter ***(pp. 976-977)****. The right of an accused person who does not understand or speak the language of the proceedings to obtain the assistance of an interpreter serves several important purposes. First and foremost, the right ensures that a person charged with a criminal offence hears the case against him or her and is given a full opportunity to answer it. Second, the right is one which is intimately related to our basic notions of justice,*

including the appearance of fairness. As such, the right to interpreter assistance touches on the very integrity of the administration of criminal justice in this country. Third, the right is one which is intimately related to our society's claim to be multicultural, expressed in part through s. 27 of the Charter ***(p. 977)***. ***R.* v. *Tran***, [1994] 2 S.C.R. 951.

The decision of the Supreme Court of Canada in the Quebec Secession Reference declares that the Canadian constitution - and therefore Canada itself - is founded upon four fundamental organizing principles. These principles are not simply "descriptive" of rights. They "infuse our constitution and breathe life into it". Albeit they are unwritten, these underlying principles of the constitution may nonetheless give rise to substantive legal rights "which constitute substantive limitations upon government action"; moreover, they are "invested with a powerful normative force, and are binding upon both courts and governments": see Reference re Secession of Quebec [1998] 2 S.C.R. 217, at pp. 248 - 249. ***(para. 41)*** *One of those fundamental organizing principles is the protection of minority rights.. […]* ***(para. 42)*** *We start with two observations. First, the "minority protection" argument in this case is strengthened and fed by the reality that the minority in question is a francophone minority, whose culture and language hold a special place in the Canadian fabric as one of the founding cultural communities of Canada and as one of the two official language groups whose rights are entrenched in the Constitution. […]* ***(para. 44)*** *Thus, multiculturalism is in itself a value recognized and nurtured in the Constitution generally, as well as in the Charter which forms part of that Constitution. With its official language and founding culture status, the minority francophone culture occupies an enhanced multicultural status. English and French are accorded special status in comparison to other linguistic groups in Canada: see Mahe v. Alberta [1990] 1 S.C.R. 342, at p. 369.* ***(para. 46)*** *Given that the principle of minority protection - particularly, francophone minority protection - is an independent principle underlying the constitution, and one which has a powerful normative force which is binding upon governments, the Court must intervene, where necessary, to protect against government action which fails to recognize that principle.* ***(para. 53)*** ***Lalonde*** v. ***Ontario (Commission de Restructuration des Services de Santé),*** [1999] O.J. No. 4489, No. 98-DV-244, Ontario Superior Court of Justice, Divisionnal Court, Carnwath, Blair, Charbonneau JJ.

Amendment by unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province : . .

(c) subject to section 43, the use of the **English** or the **French language**;

Amendment of provisions relating to some but not all provinces

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including : . .

(b) any amendment to any provision that relates to the use of the **English** or the **French language** within a province,

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

French version of Constitution of Canada

55. A **French** version of the portions of the Constitution of Canada referred to in the schedule shall be prepared by the Minister of Justice of Canada as expeditiously as possible and, when any portion thereof sufficient to warrant action being taken has been so prepared, it shall be put forward for enactment by proclamation issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada.

One may, to be sure, wonder at the fact that 17 of the 24 Acts still in force in the schedules to the Constitution Act, 1982 have not yet been enacted, and speculate on the reasons why. Nevertheless, some important questions of fact should be assessed by a judge who is hearing the substantive case. For example: what is the explanation for the fact that more than eight years elapsed before the final version of the Acts had been prepared? Did the legal editors, constitutional lawyers and translators responsible for preparing the French version of these Acts encounter more than the ordinary problems? Why did the provinces, upon receiving the final version of the Acts, not take the necessary steps to ensure their adoption? Was it necessary to consult the provinces concerning their adoption, as the intervener contends? If so, why did these consultations not take place? **(NP)** *I am unable to declare, on a motion to dismiss, that the Minister of Justice of Canada has breached his constitutional obligations without giving him an opportunity to make full answer and defence concerning the circumstances surrounding these events. What is certain is that I cannot dispose of this important issue on the basis of the facts set out by the Attorney General of Canada in his factum, without prejudice to the case proceeding on the main action.* **(NP)** *Moreover, if I adopted the defendant's argument concerning the failure of the Minister of Justice of Canada to fulfil his obligations under section 55 of the Constitution Act, 1982, but concluded that this should not result in the invalidity of the Acts in question, some remedies would then have to be contemplated. What would they be? Again, this is a substantive issue. A motion to dismiss is not an appropriate framework within which to determine such*

measures ***(pp. 511-512)***. ***Bertrand* v. *Quebec (Attorney General)*** (1996), 138 D.L.R. (4th) 481 (Que. S.C.).

[TRANSLATION] *The procedure called for by section 55 of the Constitution Act, 1982 subjects the Minister of Justice to a mandatory co-operation in which the ultimate outcome depends on a will over which he never has any control.* **(NP)** *The defendant made no argument challenging the effectiveness or efficiency of the measures that were implemented.* **(NP)** *And as the Crown noted, there is no legal consequence in the Act for failure to comply with the requirement of section 55.* ***A.G. (Quebec)* v. *Langlois*** (December 5, 1997), Quebec 200-73-000514-979, decision on a motion (Que. C.) Vallières J. Affirmed on appeal by: ***A.G. (Quebec)* v. *Langlois*** (April 21, 1998), Quebec 36-511-972, (Que. S.C.) Tremblay J. Leave for appeal dismissed by the Quebec C.A. on July 6, 1998, Montreal 200-10-000685-987.

English and French versions of certain constitutional texts

56. Where any portion of the Constitution of Canada has been or is enacted in **English** and **French** or where a **French** version of any portion of the Constitution is enacted pursuant to section 55, the **English** and French versions of that portion of the Constitution are equally authoritative.

English and French versions of this Act

57. The **English** and **French** versions of this Act are equally authoritative.

2. CANADA

2.1 Constitution Act, 1867, (U.K.) 30 & 31 Victoria Vict. c. 3.

Use of English and French Languages

133. Either the **English** or the **French Language** may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those **Languages** shall be used in the respective Records and Journals of those Houses; and either of those **Languages** may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those **Languages**.

At the trial, counsel for the accused sought to use the French language in the examination of French-speaking witnesses. The judge refused to allow him to do so considering that the two accused were English-speaking, that they had elected to be tried by a jury made up entirely of jurors speaking that language, that such was effectively the actual composition of the jury and that, in addition, counsel for the accused, although French-speaking, was perfectly familiar with the English language. **(NP)** *There is nothing to indicate, nor has it been contended before us, that the request made by counsel for the accused was intended to obstruct the regular course of the proceedings. It should therefore be said that, in view of the provisions of s. 133 of the British North America Act, the refusal by the presiding judge to accede to the request is an error on a question of law. . . . However, we agree with the unanimous opinion of the Court of Appeal, that no wrong or miscarriage of justice has resulted from that error or from the grievances raised in support of the motion. It follows that the appeal was properly dismissed under the provisions of section 592(1)(b)(iii) of the Criminal Code* ***(p. 216)***. ***Miller and Kyling* v. *La Reine***, [1970] S.C.R. 214.

Certainly, what s. 133 itself gives may not be diminished by the Parliament of Canada, but if its provisions are respected there is nothing in it or in any other parts of the British North America Act (reserving for later consideration s. 91(1)) that precludes the conferring of additional rights or privileges or the imposing of additional obligations respecting the use of English and French, if done in relation to matters within the competence of the enacting Legislature ***(pp. 192-193)***. *Section 91(1) aside, there are no express limitations on federal legislative authority to add to the range of privileged or obligatory use of English and French in institutions or activities that are subject to federal legislative control.*

Necessary implication of a limitation is likewise absent because there would be nothing inconsistent or incompatible with s. 133, as it relates to the Parliament of Canada and to federal Courts, if the position of the two languages was enhanced beyond their privileged and obligatory use under s. 133. It is one thing for Parliament to lessen the protection given by s. 133; that would require a constitutional amendment. It is a different thing to extend that protection beyond its present limits ***(p. 195)***. ***Jones* v. *A.G. of New Brunswick***, [1975] 2 S.C.R. 182.

The question we must answer is whether the right to choose which language to use in court includes the right to be understood by the judge or judges hearing the case ***(p. 559)***. *In my opinion, "all institutions of ... government" includes judicial bodies or courts* ***(p. 565).*** *It is my view that the rights guaranteed by s. 19(2) of the Charter are of the same nature and scope as those guaranteed by s. 133 of the Constitution Act, 1867 with respect to the courts of Canada and the courts of Quebec. As was held by the majority at pp. 498 to 501 in MacDonald, these are essentially language rights unrelated to and not to be confused with the requirements of natural justice. These language rights are the same as those which are guaranteed by s. 17 of the Charter with respect to parliamentary debates. They vest in the speaker or in the writer or issuer of court processes and give the speaker or the writer the constitutionally protected power to speak or to write in the official language of his choice. And there is no language guarantee, either under s. 133 of the Constitution Act, 1867, or s. 19 of the Charter, any more than under s. 17 of the Charter, that the speaker will be heard or understood, or that he has the right to be heard or understood in the language of his choice* ***(pp. 574-575)***. ***Société des Acadiens* v. *Association of parents***, [1986] 1 S.C.R. 549.

[TRANSLATION] *It is my opinion that under the circumstances, when exercising its powers under the Cree-Naskapi (of Quebec) Act, the band council is an autonomous level of government. As long as it is acting within the powers conferred upon it, the band council is a level of government that is independent of the Parliament of Canada and the Quebec legislature. Its members are elected representatives of the community which, when entrusting them with their office, it is also giving them the powers conferred upon the band by the Agreement, the treaties and, in particular, the Cree-Naskapi (of Quebec) Act. They are accountable to the band members for their administration and the way they discharge their powers, not to a Parliament of which they are not delegates....Thus, if one has regard to the principles enunciated in Blaikie No. 1 and Blaikie No. 2, one must conclude that section 133 of the BNA Act does not apply to the "Acts" of the Waskaganish band council, and that section 32 of the Cree-Naskapi (of Quebec) Act is valid.* **(NP)** *For the same reasons, I am of the opinion that section 18(1) of the Canadian Charter of Rights and Freedoms admits of no other conclusion. Indeed, I do not believe the wording should be given any broader ambit than the wording of section 133 of the BNA Act as*

interpreted in Blaikie No. 1 and Blaikie No. 2 ***(p. 28-29)***. ***Waskaganish Band* v. *Blackned*** (September 28, 1984), Abitibi District, 640-27-000013-850 (Que P.C.) Ouellet J.

[Section] *133 applies to the incorporated material if the incorporated material has no independent legal validity apart from the legislation adopting it. The second principle is that the essence and substance of the legislation, that is, the implementation of the legislative objective, must be enacted in both languages* ***(p. 735)***. *In terrorem arguments have no place in the interpretation of the Constitution. Nevertheless, I am unable to close my eyes to the fact that holding the incorporation by the federal government of valid provincial laws to be offensive to s. 133 would cause difficulty and uncertainty in the law in many fields from one end of the country to the other. Canada is not an easy country to govern, and it is appropriate to interpret the Constitution, where it can properly be done, in a way which does not make it more difficult to govern than need be* ***(p. 738)***. *The legislative device of legislation by reference or adoption has a long, legitimate and constitutionally valid history in Canada. It has been used effectively for many years. It has the benefits of maintaining the diversity found in different parts of Canada and of facilitating co-operation in areas of joint federal and provincial concern. Moreover, by its use, federal legislators acknowledge the wisdom of the provincial governments to deal appropriately with matters which are really more local than national in scope* ***(p. 739)***. ***Massia* v. *R***. (1991), 4 O.R. (3d) 705 (Ont. C.A.). Leave to appeal refused, No 22733, [1992] 1 S.C.R. ix.

What is the effect of the phrase "being the two languages to which reference is made in the British North America Act, 1867"? The British North America Act, 1867 does not deal with language in schools. Under s. 133 of that Act the use of French and English is guaranteed in legislatures and courts; schools are not mentioned. I assume that the phrase in the Public Schools Act is not mere surplusage but has meaning in the context of the statutory basis for the functioning of the public school system ***(pp. 612-613)***. *In my view, by referring to the British North America Act, 1867 the Legislature has indicated that French has a special historical status and has provided guidance for interpreting the declaration of linguistic rights in the Act. Thus, the right granted in s. 79(1) for the use of French is to be treated differently than the right which has been granted for the use of "other languages". This view is borne out by the different treatment accorded to French on the one hand and to "other languages" on the other hand in s. 79(2) and (3) and the special provision for the use of French in the administration and operation of a public school (s-s. (5))* ***(p. 613)***. ***Re Bachman and St. James Assiniboia School Division No. 2 et al.*** (1984), 13 D.L.R. (4th) 606 (Man. C.A.).

[TRANSLATION] *The Court must concede that the Proclamation of 1921 was published in English and in French and section 4 of the Act referred to* [An Act respecting the office of Queen's Printer and the Public Printing, S.C. 1869, c. 7] *was complied with, as was the this part of section 133, which deals specifically with the publication of the Acts of the Parliament of Canada and the Legislature of Quebec. It is true that, publication in both languages in the Gazette officielle creates a presumption that the original of the instrument thus published was also drafted in both languages. However, this presumption is not absolute.* **(NP)** *To use expressions taken from another area of the law, this presumption is "juris tantum" and not "juris et de jure".* **(NP)** *Notwithstanding this publication and the resulting presumption, one fact is incontrovertible and completely proved: the enactment of this instrument was only done in the English language* ***(pp. 32-33)****. In Reference re Manitoba Language Rights, the Supreme Court clearly indicated the consequence of fialing to enact legislation in both official languages. Such an omission results in its "inconsistency and hence invalidity"* ***(p. 34)****.* ***Alcan Aluminium Limitée*** **v.** ***La Reine*** (June 15, 1995), Chicoutimi 150-27-001626-908 (Que. C.), Tremblay J.

See also in this book:

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 19(2);

See also:

Lajoie **v.** ***Regina*** (1971), 2 C.C.C. (2d) 89 (B.C S.C.).

McKenzie **v.** ***Canadian Human Rights Commission*** (1985), 6 C.H.R.R. 2929 (F.C. T.D.).

2.2 *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11.

Official languages of Canada

16. (1) **English** and **French** are the **official languages** of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

These special guarantees of language rights [section 133 of the Constitution Act, 1867, and sections 16 to 23 of the Canadian Charter] *do not, by implication, preclude a construction of freedom of expression that includes the freedom to express oneself in the language of one's choice. A general freedom to express oneself in the language of one's choice and the special guarantees of language rights in certain areas of governmental activity or jurisdiction -- the legislature and administration, the courts and education -- are quite different things* ***(p. 750)***. ***Ford* v. *Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

[Judgment on s. 2 of the Official Languages Act of 1969] *To say that French and English are official languages is simply to stare that these two languages are those which are normally used in communications between the government and its citizens. In my view the impugned Order does not contradict the first part of section 2 of the Official Languages Act because, as I have already said, a language may be an official language in a country even though, for safety reasons, its use is prohibited in certain exceptional circumstances.* **(NP)** *. . .* [I]*t should be noted that the equality proclaimed by section 2 cannot be an absolute equality, since this would imply, among other things, that the two languages were used with equal frequency. The equality referred to is, as I understand it, a relative equality requiring only that in identical circumstances the two languages receive the same treatment* ***(p. 376)***. *The fact that it was more dangerous to speak French in the air than English would be a circumstance that would justify treating the two languages differently. . . . I would add that in my opinion even if the Order conflicted with section 2 it would not necessarily follow that it was illegal. ...I cannot believe that in proclaiming the equality of French and English "in all the institutions of the Parliament and Government of Canada" Parliament intended to limit the power of the Minister of Transport to issue regulations that he deemed necessary to ensure the safety of air navigation* ***(p. 377)***. *As I read section 2 it is more than a mere statement of principle or the expression of a general objective or ideal. . . .*[B]*ut rather the legal foundation of the right to use French, as well as English, in the public service of Canada, whether as a member of the service or a member of the public who has dealings with it* ***(p. 379)***. *It is obvious that the power to determine the language or languages of aeronautical communications in the interest of air safety must extend to such communications anywhere in Canada and to any language that might be used, having regard to the international character of aeronautics. Given the necessary scope of this power under the Aeronautics Act it cannot be inferred from the language of the Official Languages Act that Parliament intended that this power should be subordinated to the provisions of the latter Act* ***(p. 383-384)***. ***Association des gens de l'air du Québec* v. *Hon. Otto Lang***, [1978] 2 F.C. 371 (F.C.A.).

Still, the general principles enunciated lead me to conclude that the Yukon territory and its Government and Legislature are not the kind of bodies which the Supreme Court contemplated in Blaikie (No.2) as coming necessarily within the

ambit of s. 133, in order not to truncate it and frustrate the intentions of the Fathers of Confederation ***(pp. 6-7)****. The framers of s. 16(1) and s. 18(1) of the Charter, as well as s. 19(1), cannot have contemplated the inclusion of the Yukon Territory, or its government or legislature, in these sections, and the purposeful silence of the Charter must be respected. Moreover, the Charter goes so far as to equate the Yukon Territory with the other provinces of Canada in s. 30, in order to specifically make operative, in the Yukon Territory, those Charter sections which apply in all provinces of Canada, even where linguistic rights do not apply* ***(p. 17)****.* ***St-Jean*** **v.** ***The Queen and The Commissioner of the Yukon*** (September 26, 1986), Whitehorse, 545.83 (Y. S.C.) Meyer J.

The Supreme Court of Canada canvassed the law relating to language rights in Canada in two recent cases, MacDonald v. City of Montreal (1986), 25 C.C.C. (3d) 481, 27 D.L.R. (4th) 321, [1986] 1 S.C.R. 460, and Societe des Acadiens du Nouveau-Brunswick Inc, et al. and Ass'n of Parents for Fairness in Education, Grand Falls District 50 Branch (1986), 27 D.L.R. (4th) 406, [1986] 1 S.C.R. 549, 66 N.R. 173. Though these cases did not specifically deal with the implementation of Part XIV.1, the judgments are important in that they discuss and set out principles to be followed by the courts in dealing with language rights ***(pp. 518-519)****. There can be no doubt as to the importance of English and French language rights in Canada. The legislative scheme for the progressive implementation of English and French language rights in criminal proceedings in the provinces of Canada, as set out in Part X1V.1 of the Criminal Code and s. 6 of the Criminal Law Amendment Act, 1985 advances the equality of status or use of English and French in Canada and is the type of program contemplated, and one might say, encouraged by s. 16(3) of the Charter* ***(p. 520)****.* ***Re Ringuette and The Queen*** (1987), 33 C.C.C. (3d) 509 (Nfld. C.A.).

As to article 27 [of the International Covenant on Civil and Political Rights], *the* [United Nations] *Committee* [of Human Rights] *observes that this provision refers to minorities in States; this refers, as do all references to the "State" or to "States" in the provisions of the Covenant, to ratifying States. Further, article 50 of the Covenant provides that its provisions extend to all parts of Federal States without any limitations or exceptions. Accordingly, the minorities referred to in article 27 are minorities within such a State, and not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27. English speaking citizens of Canada cannot be considered a linguistic minority. The authors therefore have no claim under article 27 of the Covenant* ***(p. 102)****.* ***Ballantyne et al*** **v.** ***Canada,*** (March 31, 1993), Communications Nos. 359/1989 and 385/1989, in *Report of the Human Rights Committee,* Vol. II, Official Records, General Assembly, Forty-seventh Session, (A/48/40), United Nations, New York, 1993, p. 91.

See also in this book:

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 16(2);

See also:

MacDonald* v. *City of Montreal, [1986] 1 S.C.R. 460.

Proceedings of Parliament

17. (1) Everyone has the right to use **English** or **French** in any debates and other proceedings of Parliament.

These language rights are the same as those which are guaranteed by s. 17 of the Charter with respect to parliamentary debates. They vest in the speaker or in the writer or issuer of court processes and give the speaker or the writer the constitutionally protected power to speak or to write in the official language of his choice. And there is no language guarantee, either under s. 133 of the Constitution Act, 1867, or s. 19 of the Charter, any more than under s. 17 of the Charter, that the speaker will be heard or understood, or that he has the right to be heard or understood in the language of his choice ***(pp. 574-575)***. ***Société des Acadiens* v. *Association of parents***, [1986] 1 S.C.R. 549.

See also in this book:

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 17(2);

See also:

MacDonald* v. *City of Montreal, [1986] 1 S.C.R. 460.

Parliamentary statutes and records

18. (1) The statutes, records and journals of Parliament shall be printed and published in **English** and **French** and both **language** versions are equally authoritative.

[TRANSLATION] *Thus, where, as in the instant case, the two versions of an Act, both being equally official and binding, are inconsistent one ith the other and one is contrary to a right guaranteed by the Charter, a claim by the court that it is applying the version that better reflects the purpose and the object sought by Parliament could create a double standard in the application of this Act, and this would clearly be contrary to the letter and spirit of the Charter. In the Court's judgment, any inconsistency between the two official versions must necessarily be resolved in favour of the right protected by the Charter* ***(p. 371)***. ***Goguen* v. *Revenue Canada***, [1991] R.J.Q. 363 (Que. S.C.).

See also in this book:

Canada, *Official Languages Act*, s. 13;

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 18(2);

See also:

Aquarius Computer and Pheripherals Limited* v. *The Queen (September 21 and 22, 1989), Toronto RE 973/89 (Ont. S.C.) Maloney J.

***Dans l'affaire de la faillite de : Nolisair International* v. *Richter et Ass et al.*,** [1994] R.J.Q. 733 (Que. S.C.).

Goguen* c. *Shannon (1989), 50 C.C.C. (3d) 45 (N.B. C.A.).

MacDonald* v. *City of Montreal, [1986] 1 S.C.R. 460.

Massia* v. *R. (1991), 4 O.R. (3d) 705 (Ont. C.A.). Leave to appeal refused, No 22733, [1992] 1 S.C.R. ix.

Nima* v. *McInnes (1988), 32 B.C.L.R. (2d) 197 (B.C S.C.).

Nordlandsbanken* v. *Ship Nor-Fisk I et al. (1993), 62 F.T.R. 103 (F.C. T.D.).

Proceedings in courts established by Parliament

19. (1) (1) Either **English** or **French** may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament.

See also in this book:

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 19(2).

See also:

Bilodeau* v. *A.G. (Man.), [1986] 1 S.C.R. 449.

Société des Acadiens* v. *Association of parents, [1986] 1 S.C.R. 549.

MacDonald* v. *City of Montreal, [1986] 1 S.C.R. 460.

Communications by public with federal institutions

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in **English** or **French**, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such **language**; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both **English** and **French**.

The census form which, by virtue of s. 29(1)(b) of the Statistics Act, the accused was required to complete, sign and furnish to the appropriate authority is partly in the French language. The accused's language of choice is English. It may be that really he does not understand the notice printed in French, that in his mind, his signature beneath the French words may commit him to something more than he can appreciate. I dismiss the charge by reason that s. 29(1)(b) of the Statistics Act which requires the accused to provide census information upon a form delivered to him which is not printed entirely in the language of his choice, is to the extent of that requirement of no force or effect ***(p. 43)***. ***Holman* v. *R.,*** (1983) 28 Alta L.R.(2d) 35 (Alta. P.C.).

Given the applicable presumption to the creation of such statutory rights and the legislative indication set forth in s. 1 of the Canada Act and s. 58 of the Constitution Act, 1982 endorsing a prospective application to s. 20 of the Charter, the learned provincial court judge erred in giving retrospective effect thereto and applying the same to an offence which arose prior to the enactment

of the Constitution Act, 1982 ***(p. 380)***. ***R.* v. *Jervis*** (1984), 11 C.R.R. 373 (Man. Ct.C.).

[E]*ven if the Charter did apply I do not believe it was the intention of the framers of s. 20(1) of the Charter, to include a ticket or summons, for having committed a traffic violation, within the ambit of the rights therein described, namely, the right of any person to communicate with or receive services from an institution of the government or Parliament of Canada. I think that what was contemplated was the provision of services to a person, at his request, or desired by him, or to his advantage, and that communications were not intended to cover pleadings or processes in or issuing from a Court, since these were already contemplated by s. 19 of the Charter, and by s. 133 of the Constitution Act 1867* ***(p. 20)***. ***St-Jean* v. *The Queen and The Commissioner of the Yukon*** (September 26, 1986), Whitehorse, 545.83 (Y. S.C.) Meyer J.

I have been referred by the Crown to the Statutory Instruments Act, which governs the publication of statutory instruments in both languages. I do not find that variation orders, and in particular, notices of variation orders, are statutory instruments. They are administrative measures taken in response to changing, and sometimes rapidly changing, conditions in the fishery. They take effect on short notice, or even immediately. They can change fishing quotas between the time a vessel leaves the wharf and when it returns. Fishermen or other persons affected are notified of the variation orders by broadcast. I am aware of nothing to justify notice of variation orders being broadcast in English for the benefit of English-language fishermen while significant numbers of French-language fishermen, fishing beside them, are denied notice in French ***(p. 81)***. *The promulgation of an official measure of the federal government, disobedience to which has penal consequences, should not be in English alone where it can be shown that a significant number of the persons affected by it not only speak French as their first language but reside and work in sizeable Francophone communities.* **(NP)** *It is immaterial that the appellant understands English or that his trial was conducted in English. His first language, the language of his choice, the language in which he communicates with other fishermen, is the French language. It is his mother tongue as defined in the Official Languages Act. His right to use that language is guaranteed under the Charter* ***(p. 82)***. *Under s. 5 of the Altantic Fishery Regulations the Regional Director General is required to give notice of any variation to the persons affected. It is an appropriate remedy to find, as I do, that by causing it to be broadcast in English only he did not give notice to the appellant as an affected person. At the time of the alleged offence, the appellant was neither subjectively nor objectively notified of the variation order and accordingly not bound by it.* **(NP)** *I allow the appeal with costs to the appellant, which I fix at $500. The conviction, the fine and the order for forfeiture are quashed* ***(p. 83)***. ***Saulnier* v. *R.*** (1989), 90 N.S.R. (2d) 77 (N.S. Ct.C.).

There is nothing in the trial proceedings or on appeal to suggest that there was any lack of comprehension or understanding on the part of the appellant. In simplest terms the appellant's position is that the first thing a police officer must do in an investigation is to enquire as to language choice. **(NP)** *In effect this would mean that every police officer in New Brunswick must be bilingual or accompanied by another officer so that all necessary questions can be asked in either language. In some circumstances a police officer is required by statute to make inquiries and demands "forthwith". Surely all that is required is an understanding or comprehension and there is no indication here that the appellant could not or did not understand or comprehend the demand.* **(NP)** *I am not of the opinion that either the meaning or the intention of the language provisions of the Charter can be stretched to the extent expounded by the appellant* ***(p. 6)***. ***Robinson* v. *The Queen*** (10 février 1992), Moncton, M/M/197/91 (N.B. Q.B.) Miller J.

That section deals with the right to choose to receive services in English or French and gives no right to services not otherwise being provided in either language and certainly does not compel the filing of a defence ***(p. 4)***. ***Tucker* v. *Canada (Supreme Court of Canada)*** (1992), 12 C.R.R. (2d) 295 (F.C. T.D.) Giles A.S.P.

Consequently, s. 20(1) of the Charter and Part IV of the Official Languages Act and the regulations made under this Act do not apply to disclosure of evidence in judicial cases, since the very structure of ss. 16 to 20 of the Charter illustrates that each of these sections covers a different, watertight subject-matter, distinct from parliamentary, governmental and judicial activities. It would, therefore, be inappropriate to install communicating tubes between these provisions. Indeed, if s. 20(1) were to apply to communications in a judicial context, then the Supreme Court would have come to a very different conclusion in Societe des Acadiens ***(p. 468)***. *In cases where the evidence actually does come from a federal institution, such as the R.C.M.P., strictly speaking the documents are not specifically intended for the public, since they are prepared and compiled for internal use (i.e., to prepare the Crown's case). The fact that the Crown has an obligation to disclose these documents to the accused, under R. v. Stinchcombe (1991), 68 C.C.C. (3d) 1, [1991] 3 S.C.R. 326, 9 C.R. (4th) 277, does not mean that these documents are specifically intended for the public as understood from s. 20(1) of the Charter. An appropriate analogy to illustrate my point would be the fact that citizens can obtain information under the Access to Information Act, R.S.C. 1985, c. A-1, but this information does not have to be made available in both official languages simply because it is made available to the public; once again, the documents in question are generally prepared for internal use and are not mainly intended for the public.* **(NP)** *There is no doubt, however, that the oral and written correspondence of the Whitehorse office of the Department of Justice must be prepared in the official language preferred by the accused or his*

counsel, since in this situation this is truly communication specifically intended for a member of the public as understood under s. 20(1) of the Charter, Part IV of the Official Languages Act, and s. 9(d) of the Official Languages Regulations. But once again, the right of counsel for the accused or his counsel to communicate in French with the Whitehorse office is not in dispute ***(p. 469)***. ***R.* v. *Rodrigue*** (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied, No. 24585, [1995] 3 S.C.R. vii.

I agree with McDonald J. in R. v. Rodrigue, supra, that ss. 16(1) to 20(1) of the Charter pertain to the general principle of equality of status of the official languages applicable to federal institutions and non-judicial communications. These sections cover distinct and water-tight compartments of parliamentary, judicial and governmental activities of the federal state. The same can be said of the Official Languages Act of 1988, R.S.C. 1985, c. 31 (4th Supp.), Parts III and IV, applicable to federal courts. The information in the present case is of a judicial nature and s. 20(1) has no application to it since it is not an activity of the federal state ***(p. 126)***. ***Simard* v. *R.*** (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 S.C.R. x.

[T]*he evidence before me does not establish, in any event, a breach of the accused's rights pursuant to Section 20(1), Section 7 or any other Charter right. There is no evidence that the accused did not understand the communication directed to him by the peace officer, or that his right to a fair trail was prejudiced* ***(p. 43)***. ***The Queen* v. *Desgagne*** (January 20, 1997), Peace River Alberta No. A 06115443 T (Alta. P.C.) McIntosh J.

[TRANSLATION] *There are four bases, in fact, for the motion* [by the defence]. **(NP)** *The first is that the rights of the accused, . . . under section 10(b) were violated because neither the police officer . . . nor anyone else explained his rights to him in French.* **(NP)** *Second, his rights under section 20 (1)(b) of the Charter were violated because the R.C.M.P. officers did not communicate with Mr. Beaupré in French* ***(p. 1)***. *The only issue to be answered in this case is whether the accused understood what was said to him. I am convinced that he did understand. . . .* **(NP)** *Second, I am not satisfied . . . that the police station in New Hazelton meets the criteria set out in section 20(1)(b) of the Constitution Act, 1982* ***(p. 2)***. ***R.* v. *Beaupré*** (January 7, 1998), Smithers, B.C. 14311C (B.C. P.C.) Paradis J.

See also in this book:

Canada, *Official Languages Act*, s. 21 and following;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 20(2).

Continuation of existing constitutional provisions

21. Nothing in sections 16 to 20 abrogates or derogates from any right, privilege or obligation with respect to the **English** and **French languages**, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.

Rights and privileges preserved

22 Nothing in sections 16 to 20 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any **language** that is not **English** or **French**.

2.3 Access to Information Act, R.S.C. 1985, c. A-1**.**

Language of access

12. (2) Where access to a record or a part thereof is to be given under this Act and the person to whom access is to be given requests that access be given in a particular **official language**, a copy of the record or part thereof shall be given to the person in that **language**

(a) forthwith, if the record or part thereof already exists under the control of a government institution in that **language**; or

(b) within a reasonable period of time, if the head of the government institution that has control of the record considers it to be in the public interest to cause a **translation** to be prepared. R.S. 1985, c. A-1, s. 12; R.S. 1985, c. 31 (4th Supp.), s. 100(E); 1992, c. 21, s. 3.

In cases where the evidence actually does come from a federal institution, such as the R.C.M.P., strictly speaking the documents are not specifically intended for the public, since they are prepared and compiled for internal use (i.e., to prepare the Crown's case). The fact that the Crown has an obligation to disclose these documents to the accused, under R. v. Stinchcombe (1991), 68 C.C.C. (3d) 1, [1991] 3 S.C.R. 326, 9 C.R. (4th) 277, does not mean that these documents are specifically intended for the public as understood from s. 20(1) of the Charter. An appropriate analogy to illustrate my point would be the fact that citizens can obtain information under the Access to Information Act, R.S.C. 1985, c. A-1, but this information does not have to be made available in both official languages simply because it is made available to the public; once again, the documents in question are generally prepared for internal use and are not mainly intended for the public ***(p. 469)***. ***R.* v. *Rodrigue*** (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied, No. 24585, [1995] 3 S.C.R. vii.

Receipt and investigation of complaints

30. (1) Subject to this Act, the Information Commissioner shall receive and investigate complaints . . .

(d) from persons who have not been given access to a record or a part thereof in the **official language** requested by the person under subsection 12(2), or have not been given access in that **language** within a period of time that they consider appropriate;

2.4 Aeronautics Act, R.S.C. 1985, c. A-2.

Operator of aerodrome to post notice

4.7. (9) Where security measures are instituted under this section to observe and inspect persons at an aerodrome or on aircraft at an aerodrome, the operator of the aerodrome shall post in prominent places, where persons are observed or inspected under those measures, a notice, in at least the **official languages** of Canada, stating that security measures are being taken to observe and inspect passengers and that no passenger is obliged to submit to a search of his person and goods if the passenger chooses not to board an aircraft.

Idem

(10) Where security measures are instituted under this section at an aerodrome to observe and inspect goods being placed on board an aircraft, the operator of the aerodrome shall post in prominent places, where goods are received at the aerodrome, a notice, in at least the **official languages** of Canada, stating that security measures are being taken to observe and inspect goods and that no person intending to place any goods on board an aircraft is obliged to permit a search to be carried out of the goods if the person chooses not to have them placed on the aircraft. R.S. 1985, c. 33 (1st Supp.), s. 1; 1992, c. 4, s. 5.

2.5 Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.) [A-10.1].

Official languages Act

10. The ***Official languages Act*** applies to the Corporation.

2.6 Airport Transfer (Miscellaneous Matters) Act, S.C. 1992, c. 5 [A-10.4].

Application of Official languages Act

4. (1) Where the Minister has leased an airport to a designated airport authority, on and after the transfer date Parts IV, V, VI, VIII, IX and X of the **Official languages** Act apply, with such modifications as the circumstances require, to the authority in relation to the airport as if

(a) the authority were a federal institution; and

(b) the airport were an office or facility of that institution, other than its head or central office.

Idem

(1.1) Where the Minister has sold or otherwise transferred an airport to a designated airport authority, on and after the transfer date Parts IV, VIII, IX and X of the **Official languages** Act apply, with such modifications as the circumstances require, to the authority in relation to the airport as if

(a) the authority were a federal institution; and

(b) the airport were an office or facility of that institution, other than its head or central office.

Construction

(2) Nothing in subsection 23(2) of the **Official languages** Act shall, in relation to an airport transferred to a designated airport authority by the Minister, be construed or applied so as to impose a duty on any institution other than that authority. 1992, c. 5, s. 4, c. 42, s. 2.

See also in this book:

Canada, *Official Languages Act*.

2.7 Bank Act, S.C. 1991, c. 46 [B-1.01].

Definitions

"foreign bank" « banque étrangère »

2. "foreign bank", subject to section 12, means an entity incorporated or formed by or under the laws of a country other than Canada that . . .

(c) engages, directly or indirectly, in the business of providing financial services and employs, to identify or describe its business, a name that includes the word "bank", "banque", "banking" or "bancaire", either alone or in combination with other words, or any word or words in any **language** other than **English** or **French** corresponding generally thereto,

French or English form of name

42. (1) The name of a bank may be set out in its letters patent in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form, and the bank may use and be legally designated by any such form. 1991, c. 46, s. 42; 1996, c. 6, s. 2.

2.8 Bank of Canada Act, R.S.C. 1985, c. B-2.

Form and material

25. (4) The form and material of the notes shall be subject to approval by the Minister, but each note shall be printed in both the **English** and **French languages**. R.S. c. B-2, s. 21; 1980-81-82-83, c. 40, s. 49.

2.9 Broadcasting Act, S.C. 1991, c. 11 [B-9.01].

Declaration

3. (1) It is hereby declared as the broadcasting policy for Canada that. . .

(b) the Canadian broadcasting system, operating primarily in the **English** and **French languages** and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

(c) **English** and **French language** broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;. . .

(f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of **languages** other than **French** and **English**, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;. . .

(k) a range of broadcasting services in **English** and in **French** shall be extended to all Canadians as resources become available;. . .

(m) the programming provided by the Corporation should. . .

(iv) be in **English** and in **French**, reflecting the different needs and circumstances of each **official language** community, including the particular needs and circumstances of **English** and **French linguistic** minorities,

(v) strive to be of equivalent quality in **English** and in **French**,. . .

(q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in **English** and in **French** should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

Regulatory policy

5. (2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(a) is readily adaptable to the different characteristics of **English** and **French language** broadcasting and to the different conditions under which broadcasting undertakings that provide **English** or **French language** programming operate;

English and French language broadcasting committees

45. (1) The Board shall establish a standing committee of directors on **English language** broadcasting and a standing committee of directors on **French language** broadcasting, each consisting of the Chairperson, the President and such other directors as the Board may appoint.

Duties of committees

(4) The standing committee on **English language** broadcasting shall perform such duties in relation to **English language** broadcasting, and the standing committee on **French language** broadcasting shall perform such duties in relation to **French language** broadcasting, as are delegated to the committee by the by-laws of the Corporation.

Extension of services

46. (4) In planning extensions of broadcasting services, the Corporation shall have regard to the principles and purposes of the **Official languages** Act.

2.10 Canada Business Corporations Act, R.S.C. 1985, c. C-44.

Name of corporation

10. (1) The word or expression "Limited", "Limitée", "Incorporated", "Incorporée", "Corporation" or "Société par actions de régime fédéral" or the corresponding abbreviation

"Ltd.", "Ltée", "Inc.", "Corp." or "S.A.R.F." shall be part, other than only in a figurative or descriptive sense, of the name of every corporation, but a corporation may use and be legally designated by either the full or the corresponding abbreviated form.

Alternate name

(3) Subject to subsection 12(1), a corporation may set out its name in its articles in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form and it may use and may be legally designated by any such form.

Alternative name outside Canada

(4) Subject to subsection 12(1), a corporation may, for use outside Canada, set out its name in its articles in any **language** form and it may use and may be legally designated by any such form outside Canada. R.S. 1985, c. C-44, s. 10; 1992, c. 1, s. 53; 1994, c. 24, s. 5.

2.11 Canada Cooperative Credit Associations Act, R.S.C. 1985, c. C-40.

Use of French or English form of corporate name

36. (3) If an association has a name consisting of a separated or combined **French** and **English** form, it may use, and it may be legally designated by, either the **French** or **English** form of its name or both forms.

Publishing name of association

(4) An association shall . . .

(b) keep its name engraved in legible characters on its seal and, if the association has a name consisting of a **French** and **English** form, whether separated or combined, the association shall show on its seal both the **French** and **English** forms of its name or shall have two seals, each of which shall be equally valid, one showing the **French** and the other the **English** form of its name; and 1970-71-72, c. 6, s. 32.

2.12 Canada Elections Act, R.S.C. 1985, c. E-2.

Proclamation by returning officer

73. (1) Within four days after the date of issue of a writ of election, a returning officer shall issue a proclamation in Form 2 under his or her hand, in the **English** and **French languages**, indicating . . . R.S. 1985, c. E-2, s. 73; 1992, c. 21, s. 14; 1993, c. 19, s. 32.

Interpreter to be sworn

136. Where a deputy returning officer does not understand the **language** spoken by an elector or wishes to communicate with an elector who has a disability but finds it difficult to do so by reason of the elector's disability, that officer shall, wherever possible, appoint and swear an **interpreter** or other person to assist that officer in communicating with the elector, and that **interpreter** or other person shall be the means of communication between that officer and the elector with reference to all matters required to enable the elector to vote. R.S. 1985, c. E-2, s. 136; 1992, c. 21, s. 26., 1993, c. 19, s. 43.

2.13 Canada Shipping Act, R.S.C. 1985, c. S-9.

Schedule V - INTERNATIONAL CONVENTION ON SALVAGE, 1989

Languages

Article 34. This Convention is established in a single original in the Arabic, Chinese, **English**, **French**, Russian and Spanish **languages**, each text being equally authentic.

2.14 Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, S.C. 1988, c. 28 [C-7.8].

Annual report

30. (1) The Board shall, in respect of each fiscal year, prepare a report in both **official languages** of Canada and submit it to the Federal Minister and the Provincial Minister not later than ninety days after the expiration of that fiscal year.

2.15 Canada-United Kingdom Civil and Commercial Judgments Convention Act, R.S.C. 1985, c. C-30.

Schedule

Article VI

4. The registering court may require that an application for registration be accompanied by . . .

(b) a certified **translation** of the judgment, if given in a **language** other than the **language** of the territory of the registering court;

2.16 Canadian Bill of Rights 1960, S.C. c. 44, [C-12.3].

Recognition and declaration of rights and freedoms

1. It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of **race**, **national origin**, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(b) the right of the individual to equality before the law and the protection of the law;

(d) freedom of speech;

Construction of law

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the Canadian Bill of Rights, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

(g) deprive a person of the right to the assistance of an **interpreter** in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the **language** in which such proceedings are conducted.

The language of paragraph 2(g) is, in its ordinary meaning, very broad. When, as here, someone is entitled by law to be represented by counsel at a hearing, that counsel is "a person...involved...before a court, commission, board or other tribunal". The paragraph is express that "person" is not limited to a party or witness. Excepting them, who could be more involved than counsel, assuming the tribunal would not deprive itself of needed assistance and has, therefore, no real need to be protected from itself? Canadian Javelin's counsel has a right to the assistance of an interpreter at any interrogation conducted in a language he does not understand. To cloak that right with substance he also has the right to reasonable notice that the interrogation will be conducted in that language or to a reasonable adjournment to permit him to get an interpreter if the notice is not forthcoming ***(p. 84)***. ***Canadian Javelin Lim.* v. *Restrictive Trade Practices Commission***, [1981] 2 F.C. 82 (F.C. T.D.).

Let me say at the outset that s. 2(g) of the Bill - as, indeed, all other sections - must be given effect by the courts, not grudgingly, but rather in the spirit of the Bill's preamble. Of course, to do so may, at times, impose hardships, but that is the price a free society must be prepared to pay to safeguard human dignity and worth. **(NP)** *And so it is with s. 2(g); the cost of compliance may be high, but so are the returns - to understand and be understood. The Criminal Code, in proceedings by indictment (s. 577), requires the presence of the accused. In summary convictions, the judge may (and usually does) insist that the defendant appear in person (s. 735). As counsel pointed out, and I agree, this presence must be a meaningful presence, and not a mere ritual. And what would be the meaning if the accused could not comprehend what was said* ***(p. 607)****?* ***R.* v. *Sadjade*** (1982), 136 D.L.R. (3d) 605 (Que. C.A.). A new trial was ordered by the S.C.C. *Appellant's request to be provided with the services of an interpreter was categorically rejected, which amounted to an error of law* ***(p. 361)***. [1983] 2 S.C.R. 361.

2.17 Canadian Environmental Protection Act, R.S.C. 1985, c. 16 (4th Supp.) [C-15.3].

Interim orders

35. (1) Where

(a) a substance

(i) is not specified on the List of Toxic Substances in Schedule I and the Ministers believe that it is toxic, or

(ii) is specified on that List and the Ministers believe that it is not adequately regulated, and

(b) the Ministers believe that immediate action is required to deal with a significant danger to the environment or to human life or health,

the Minister may make an interim order in respect of the substance and the order may contain any provision that may be contained in a regulation made under subsection 34(1) or (2).

Contravention of unpublished order

(7) No person shall be convicted of an offence consisting of a contravention of an interim order that, at the time of the alleged contravention, was not published in the Canada Gazette in both **official languages** unless it is proved that at the date of the alleged contravention reasonable steps had been taken to bring the purport of the order to the notice of those persons likely to be affected by it.

2.18 Canadian Human Rights Act, R.S.C. 1985, c. H-6.

Purpose

2. The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an equal opportunity to make for themselves the lives that they are able and wish to have, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on **race**, **national** or **ethnic origin**, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted. R.S. 1985, c. H-6, s. 2; 1996, c. 14, s. 1.

Prohibited grounds of discrimination

3. (1) For all purposes of this Act, the prohibited grounds of discrimination are **race**, **national** or **ethnic origin**, colour, religion, age, sex, sexual orientation, marital status, family status, disability and conviction for which a pardon has been granted. R.S. 1985, c. H-6, s. 3; 1996, c. 14, s. 2.

McKenzie* v. *Canadian Human Rights Commission (1985), 6 C.H.R.R. 2929 (F.C. T.D.).

Special programs

16. (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the **race**, **national** or **ethnic origin**, colour, religion, age, sex, marital status, family status or disability of members of that group, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group. 1976-77, c. 33, s. 15; 1980-81-82-83, c. 143, s. 8.

2.19 *Canadian Multiculturalism Act*, R.S.C. 1985, c. 24 (4th Supp.) [C-18.7].

Preamble

WHEREAS the Constitution of Canada provides that every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination and that everyone has the freedom of conscience, religion, thought, belief, opinion, expression, peaceful assembly and association and guarantees those rights and freedoms equally to male and female persons;

AND WHEREAS the Constitution of Canada recognizes the importance of preserving and enhancing the multicultural heritage of Canadians;

AND WHEREAS the Constitution of Canada recognizes rights of the aboriginal peoples of Canada;

AND WHEREAS the Constitution of Canada and the **Official languages** Act provide that **English** and **French** are the **official languages** of Canada and neither abrogates nor derogates from any rights or privileges acquired or enjoyed with respect to any other **language**;
. . .

AND WHEREAS the *Canadian Human Rights Act* provides that every individual should have an equal opportunity with other individuals to make the life that the individual is able and wishes to have, consistent with the duties and obligations of that individual as a member of society, and, in order to secure that opportunity, establishes the Canadian Human Rights Commission to redress any proscribed discrimination, including discrimination on the basis of **race**, **national** or **ethnic origin** or colour;

AND WHEREAS Canada is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, which Convention recognizes that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination, and to the International Covenant on Civil and Political Rights, which Covenant provides that persons belonging to **ethnic**, religious or **linguistic** minorities shall not be denied the right to enjoy their own culture, to profess and practise their own religion or to use their own **language**;

Multiculturalism policy

3. (1) It is hereby declared to be the policy of the Government of Canada to. . .

(i) preserve and enhance the use of **languages** other than **English** and **French**, while strengthening the status and use of the **official languages** of Canada; and

(j) advance multiculturalism throughout Canada in harmony with the national commitment to the **official languages** of Canada.

Federal institutions

(2) It is further declared to be the policy of the Government of Canada that all federal institutions shall. . .

(e) make use, as appropriate, of the **language** skills and cultural understanding of individuals of all origins; and

Specific mandate

5. (1) The Minister shall take such measures as the Minister considers appropriate to implement the multiculturalism policy of Canada and, without limiting the generality of the foregoing, may. . .

(f) facilitate the acquisition, retention and use of all **languages** that contribute to the multicultural heritage of Canada;

2.20 Carriage by Air Act, R.S.C. 1985, c. C-26.

SCHEDULE III

Article XXVII.

Done at The Hague on the twenty-eighth day of the month of September of the year One Thousand Nine Hundred and Fifty-five, in three authentic texts in the **English**, **French** and Spanish **languages**. In the case of any inconsistency, the text in the **French language**, in which **language** the Convention was drawn up, shall prevail. R.S. c. C-14, Sch. III.

2.21 Carriage of Goods by Water Act, S.C. 1993, c. 21 [C-27.01].

SCHEDULE II

HAMBURG RULES UNITED NATIONS CONVENTION ON THE CARRIAGE OF GOODS BY SEA, 1978

Article 34....

DONE at Hamburg, this thirty-first day of March one thousand nine hundred and seventy-eight, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic.

2.22 Citizenship Act, R.S.C. 1985, c. C-29.

Grant of citizenship

5. (1) The Minister shall grant citizenship to any person who . . .

(d) has an adequate knowledge of one of the **official languages** of Canada;

See:

Azzi, Re (1992), 52 F.T.R. 159 (F.C. T.D.).

Chiu, Re (1996), 112 F.T.R. 27 (F.C. T.D.).

Dia, Re (1992), 53 F.T.R. 75 (F.C. T.D.).

Regulations

27. The Governor in Council may make regulations . . .

(d) providing for various criteria that may be applied to determine whether a person

(i) has an adequate knowledge of one of the **official languages** of Canada, 1974-75-76, c. 108, s. 26.

2.23 Civil Air Navigation Services Commercialization Act, S.C. 1996, c. 20 [C-29.7]**.**

Official languages Act applies

96. The **Official languages** Act applies to the Corporation as if it were a federal institution.

2.24 CN Commercialization Act, S.C. 1995, c. 24.

Application of Official languages Act

15. The **Official languages** Act continues to apply to CN as if it continued to be a federal institution within the meaning of that Act.

2.25 ***Commercial Arbitration Act***, (1985) R.S.C., c. 17 (2nd Supp.) [C-34.6].

Article 22

Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

Article 35

Recognition and Enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an **official language** of Canada, the party shall supply a duly certified translation thereof into such **language**.

2.26 Consumer packaging and Labelling Act, R.S.C. 1985, c. C-38.

Regulations

18. (1) The Governor in Council may make regulations . . .

(f) prescribing the form and manner in which, including the **language** or **languages** in which, any information or representation required to be declared or shown in any label, on any container or in any advertisement shall be declared or shown; 1970-71-72, c. 41, s. 18.

2.27 Copyright Act, R.S.C. 1985, c. C-42.

Filing of statements of royalties

67. (2) Each society, association or corporation referred to in subsection (1) shall, on or before the first day of September next preceding the date when its last statement approved pursuant to subsection 67.2(1) expires, file with the Board a statement in both **official languages** of all royalties that the society, association or corporation proposes to collect for the grant of the licences referred to in subsection (1). R.S. 1985, c. C-42, s. 67; R.S. 1985, c. 10 (1st Supp.), s. 1, c. 10 (4th Supp.), s. 12; 1993, c. 23, s. 3.

Where no previous statement

(3) Each society, association or corporation referred to in subsection (1) in respect of which no statement of royalties has been approved pursuant to subsection 67.2(1) shall, on or before the first day of September next preceding their proposed effective date, file with the Board a statement in both **official languages** of all royalties that the society, association or corporation proposes to collect for the grant of the licences referred to in subsection (1).

Times for filing

70.61. (2) Statements of royalties must be in both **official languages** and must be filed before the March 31 immediately before the date when the approved statement ceases to be effective. 1988, c. 65, s. 65; 1993, c. 15, s. 11.

THE ROME COPYRIGHT CONVENTION, 1928

Article 21.

(1) The International Office established under the name of the "Office of the International Union for the Protection of Literary and Artistic Works" shall be maintained.

(2) That Office is placed under the high authority of the Government of the Swiss Confederation, which regulates its organization and supervises its working.

(3) The **official language** of the Office shall be **French.**

Article 22. (1) The International Office collects every kind of information relative to the protection of the rights of authors over their literary and artistic works. It arranges and publishes such information. It undertakes the study of questions of general interest concerning the Union, and, by the aid of documents placed at its disposal by the different Administrations, edits a periodical publication in the **French language** on the questions which concern the objects of the Union. The Governments of the countries of the Union reserve to themselves the power to authorize by common accord the publication by the Office of an edition in one or more other **languages**, if experience should show this to be requisite.

Article 25. (3) Such accession shall imply full adhesion to all the clauses and admission to all the advantages provided by the present Convention, and shall take effect one month after the date of the notification made by the Government of the Swiss Confederation to the other unionist countries, unless some later date has been indicated by the adhering country. It may nevertheless, contain an indication that the adhering country wishes to substitute, provisionally at least, for Article 8, which relates to **translations**, the provisions of Article 5 of the Convention of 1886 revised at Paris in 1896, on the understanding that those provisions shall apply only to **translations** into the **language** or **languages** of that country.

2.28 Corrections And Conditional Release Act, S.C. 1992, c. 20 [C-44.6].

Right to interpreter

27. (4) An offender who does not have an adequate understanding of at least one of Canada's **official languages** is entitled to the assistance of an **interpreter**

(a) at any hearing provided for by this Part or the regulations; and

(b) for the purposes of understanding materials provided to the offender pursuant to this section. 1992, c. 20, s. 27; 1995, c. 42, s. 10(F).

Right to interpreter

140. (1) The Board shall conduct the review of the case of an offender by way of a hearing, conducted in whichever of the two **official languages** of Canada is requested by the offender, unless the offender waives the right to a hearing in writing or refuses to attend the hearing, in the following classes of cases:...

(9) An offender who does not have an adequate understanding of at least one of Canada's **official languages** is entitled to the assistance of an **interpreter** at the hearing and for the purpose of understanding materials provided to the offender pursuant to subsection 141(1) and paragraph 143(2)(b). 1992, c. 20, s. 140; 1995, c. 42, ss. 55, 69(E).

Disclosure to offender

141. (1) At least fifteen days before the day set for the review of the case of an offender, the Board shall provide or cause to be provided to the offender, in writing, in whichever of the two **official languages** of Canada is requested by the offender, the information that is to be considered in the review of the case or a summary of that information. 1992, c. 20, s. 141; 1995, c. 42, s. 56(F).

Decisions to be recorded and communicated

143. (2) Where the Board renders a decision with respect to an offender following a review of the offender's case, it shall**...**

(b) provide the offender with a copy of the decision and the reasons for the decision, in whichever of the two **official languages** of Canada is requested by the offender, within the period prescribed by the regulations.

2.29 Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18 [C-45.7].

Names of incorporated Cree bands

12. (2) The bands incorporated by subsection (1) may, respectively, be legally designated by any of their **English**, **French** or Cree names, as follows:

Change of band name

16. (1) A band may, by by-law approved by the electors of the band at a special band meeting or referendum at which at least five per cent of the electors voted on the matter, change its **English**, **French** or Cree or Naskapi name, but no such by-law is valid unless approved by the Governor in Council.

Use of Cree or Naskapi language at council meetings

31. In addition to any other rights relating to the use of the Cree or Naskapi **language**, a Cree band may conduct its council meetings in the Cree **language** and the Naskapi band may conduct its council meetings in the Naskapi **language**.

Language of by-laws and resolutions

32. (1) A by-law or resolution of a Cree band or the Naskapi band shall be enacted or adopted in either the **English** or the **French language**, and may also be enacted or adopted in the Cree **language** or the Naskapi **language**, as the case may be.

Where versions two or more languages

(2) Where a by-law is enacted or a resolution is adopted in more than one of the **English**, **French**, Cree or Naskapi **languages**, all versions in which it is enacted or adopted are equally authoritative and, where there is any inconsistency between the different versions, subsection 8(2) of the **Official languages** Act applies, with such modifications as the circumstances require.

Chisasibi Band* v. *Chewanish (1984), Amos 640-27-000099-842 (Que. P.C.) Ouellet J.

Use of Cree or Naskapi language

80. In addition to any other rights relating to the use of the Cree or Naskapi **language**, a Cree band may conduct ordinary band meetings, special band meetings and referenda in the Cree **language** and the Naskapi band may conduct ordinary band meetings, special band meetings and referenda in the Naskapi **language**.

Commission's biennial report to Parliament

171. (1) Within two years after the coming into force of this Part and thereafter within six months of every second anniversary of the coming into force of this Part, the Commission shall prepare and submit to the Minister a report, in **English**, **French**, Cree and Naskapi, on the implementation of this Act, and the Minister shall cause the report to be laid before each House of Parliament on any of the first ten days on which that House is sitting after the day the Minister receives it.

2.30 Criminal Code, R.S.C. 1985, c. C-46.

Notice of intention to produce evidence

189. (5) The contents of a private communication that is obtained from an interception of the private communication pursuant to any provision of, or pursuant to an authorization given under, this Part shall not be received in evidence unless the party intending to adduce it has given to the accused reasonable notice of the intention together with

(a) a transcript of the private communication, where it will be adduced in the form of a recording, or a statement setting out full particulars of the private communication, where evidence of the private communication will be given viva voce; and

(b) a statement respecting the time, place and date of the private communication and the parties thereto, if known.

Privileged evidence

(6) Any information obtained by an interception that, but for the interception, would have been privileged remains privileged and inadmissible as evidence without the consent of the person enjoying the privilege. R.S. 1985, c. C-46, s. 189; 1993, c. 40, s. 10.

Therefore, I do not agree that the purpose of s. 189(5) can be met by the delivery of a translation alone. While the Official Languages Act and s. 530 of the Criminal Code require that the proceedings at trial be recorded in one of the official languages and that all evidence given in another language be translated into the language of the trial, it does not mean that the translation can become a copy of the original private communication where the primary evidence to be adduced at trial is the original recording and not the translation of it. **(NP)** *When the intercepted communication is in the English language and the trial will be conducted in English, compliance with s. 189(5) is quite straight forward and will be met by delivery of the notice together with a copy of the tape or a written transcript in English. However, when the private communication intercepted is in another language and where the recording will be adduced in evidence, the delivery of a "transcript" will be satisfied by delivery of a copy of the audiotape or a written version in the language spoken. If the trial is held in English the original recording will be the primary evidence. A written translation will be provided to comply with the Official Languages Act and s. 530 of the Code and to enable the English speaking tribunal to understand the evidence. The translation will be part of the record just as the translation of the testimony of a witness is the official record. It is in this sense that the Official Language Act and s. 530 apply, not to the notice and disclosure required by s. 189(5)* ***(para. 29-30)***. ***R.* v. *Ng*** (February 26, 1996), O.J. No. 666, DRS 96-0635, F1504/95 et T0219220 (Ont. C.) Keenan J. (QL).

See also:

R.* v. *Biasi (1981), 62 C.C.C. (2d) 304 (B.C. S.C.).

R.* v. *Biasi (No. 2) (1981), 66 C.C.C. (2d) 563 (B.C. S.C.).

R.* v. *Li (No. 1) (1976), 6 W.W.R. 128 (B.C. Co. Ct.).

R.* v. *Ouellet (1977), 33 C.C.C. (2d) 417 (B.C. P.C.).

R.* v. *Rowbotham (No. 4) (1977), 33 C.C.C. (2d) 411 (Ont. G.S.P.).

R.* v. *Shayesteh (November 8, 1996), Doc. CA C20184 (Ont. C.A.).

Language of accused

530. (1) On application by an accused whose **language** is one of the **official languages** of Canada, made not later than

(a) the time of the appearance of the accused at which his trial date is set, if

(i) he is accused of an offence mentioned in section 553 or punishable on summary conviction, or

(ii) the accused is to be tried on an indictment preferred under section 577,

(b) the time of his election, if the accused elects under section 536 to be tried by a provincial court judge, or

(c) the time when the accused is ordered to stand trial, if the accused

(i) is charged with an offence listed in section 469,

(ii) has elected to be tried by a court composed of a judge or a judge and jury, or

(iii) is deemed to have elected to be tried by a court composed of a judge and jury, a justice of the peace or provincial court judge shall grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the **official language** of Canada that is the **language** of the accused or, if the circumstances warrant, who speak both **official languages** of Canada.

Idem

(2) On application by an accused whose **language** is not one of the **official languages** of Canada, made not later than whichever of the times referred to in paragraphs (1)(a) to (c) is applicable, a justice of the peace or provincial court judge may grant an order directing that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak the **official language** of Canada in which the accused, in the opinion of the justice or provincial court judge, can best give testimony or, if the circumstances warrant, who speak both **official languages** of Canada.

Accused to be advised of right

(3) The justice of the peace or provincial court judge before whom an accused first appears shall, if the accused is not represented by counsel, advise the accused of his right to apply for an order under subsection (1) or (2) and of the time before which such an application must be made.

Remand

(4) Where an accused fails to apply for an order under subsection (1) or (2) and the justice of the peace, provincial court judge or judge before whom the accused is to be tried, in this Part referred to as "the court", is satisfied that it is in the best interests of justice that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the **official language** of Canada that is the **language** of the accused or, if the **language** of the accused is not one of the **official languages** of Canada, the **official language** of Canada in which the accused, in the opinion of the court, can best give testimony, the court may, if it does not speak that **language**, by order remand the accused to be tried by a justice of the peace, provincial court judge, judge or judge and jury, as the case may be, who speak that **language** or, if the circumstances warrant, who speak both **official languages** of Canada.

Variation of order

(5) An order under this section that an accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the **official language** of Canada that is the **language** of the accused or the **official language** of Canada in which the accused can best give testimony may, if the circumstances warrant, be varied by the court to require that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak both **official languages** of Canada. R.S. 1985, c. C-46, s. 530; R.S. 1985, c. 27 (1st Supp.), ss. 94, 203.

The Court of Appeal applied the wrong criteria. In this case, the Crown adduced no specific evidence showing that the appellant's application would adversely affect the trial process. Furthermore, Mr. Beaulac was not responsible for any delay in the initial application, given the date of implementation of s. 530 in British Columbia. Following the first denial, the accused diligently re-applied for a trial in both official languages at every opportunity in the subsequent judicial process. The application under s. 530(4) should have been accepted since no valid reason for refusing the application was raised. ***(p. 803)*** *Given the nature of language rights, the requirement of substantive equality, the purpose of s. 530, as described here, and the objective of s. 686, I believe that the violation of s. 530 constitutes a substantial wrong and not a procedural irregularity. Accordingly, s. 686(1)(b) has no application in this case and a new trial must be ordered. Clearly, there must be an effective remedy available for breach of s. 530 rights. The application of the s. 686 proviso would make it illusory.* **(p. 805)** ***R.*** v. ***Beaulac,*** [1999] 1 S.C.R. 768.

Where order granted under section 530

530.1 Where an order is granted under section 530 directing that an accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the **official language** that is the **language** of the accused or in which the accused can best give testimony,

(a) the accused and his counsel have the right to use either **official language** for all purposes during the preliminary inquiry and trial of the accused;

(b) the accused and his counsel may use either **official language** in written pleadings or other documents used in any proceedings relating to the preliminary inquiry or trial of the accused;

(c) any witness may give evidence in either **official language** during the preliminary inquiry or trial;

(d) the accused has a right to have a justice presiding over the preliminary inquiry who speaks the **official language** that is the **language** of the accused;

(e) except where the prosecutor is a private prosecutor, the accused has a right to have a prosecutor who speaks the **official language** that is the **language** of the accused;

(f) the court shall make **interpreter**s available to assist the accused, his counsel or any witness during the preliminary inquiry or trial;

(g) the record of proceedings during the preliminary inquiry or trial shall include (i) a transcript of everything that was said during those proceedings in the **official language** in which it was said, (ii) a transcript of any **interpretation** into the other **official language** of what was said, and (iii) any documentary evidence that was tendered during those proceedings in the **official language** in which it was tendered; and

(h) any trial judgment, including any reasons given therefor, issued in writing in either **official language**, shall be made available by the court in the **official language** that is the **language** of the accused. R.S. 1985, c. 31 (4th Supp.), s. 94.

The general rule, therefore, is that the respective rights of the co-accused must be resolved on the basis that the trial will be a joint trial. This does not mean, however, that the trial judge has been stripped of his discretion to sever. That discretion remains and can be exercised if it appears that the attempt to reconcile the respective rights of the co-accused results in an injustice to one of the accused ***(p. 881)***. ***R.*** **v.** ***Crawford***, [1995] 1 S.C.R. 858.

In my view, the section is mandatory and requires the Judge to bring home to the accused his right to be tried in the language of the accused by a Court "... who speak[s] the official language of Canada that is the language of the accused...". When this is done, it should be done so that his choice can be clearly understood by an accused person. This may mean that the Provincial Court Judge should put his election to the accused in the language of the accused himself or through an interpreter or through a written form setting out these sections. **(NP)** *In my view, this provision of the Code was not complied with and, on that basis, I am prepared to allow the application and order that this appeal be heard by holding*

a trial de novo ***(pp. 411-412)***. ***Lapierre* v. *Regina*** (1980), 54 C.C.C. (2d) 408 (Ont. Dist.C.).

In my judgment, Parliament has recognized the possibility of joint trials wherein one accused speaks French and the other English, or any other language for that matter. This is clear from the language of s. 462.1(1), (2), (4) and (5), namely, that in the circumstances delineated in each subsection the Court may, if the circumstances warrant, order that the accused be tried by a Justice of the Peace, Magistrate, Judge or Judge and jury who speak both official languages - French and English. **(NP)** *It seems to me that Parliament clearly contemplated that in circumstances such as exist in the present case the trial should be bilingual in the interests of the accused themselves, and in the interests of the administration of justice* ***(pp. 574-575)***. ***Lapointe and Sicotte* v. *Regina*** (1981), 64 C.C.C. (2d) 562 (Ont. Ct.C.).

The legal issue may be summarized by the question: are the provisions of s. 33 of the Young Offenders Act inoperative and of no force or effect in light of the provisions of s. 11(h) of the Canadian Charter of Rights and Freedoms ***(p. 290)****? If I were to accept defence counsel's position, . . . I would then have to accept Mr. Biss' submissions that the young offender in a s. 33 proceeding would not have the benefit of such basic procedural sections as the Charter, s. 11, the Criminal Code, ss. 457 (judicial interim release), 459 (review of detention where trial delayed), 462.1 (trial in either official language) . . .* ***(p. 296)***. *I also find that the young person has available his constitutional rights such as those afforded to him by ss. 11(g) and (h) and 15(1) as well as the rights preserved to him under the Criminal Code such as the right to a judicial interim release, review of detention where trial is delayed, trial in either official language . . .* ***(p. 297)***. ***R.* v. *G.M.*** (1985), 24 C.C.C. (3d) 288 (Ont. P.C.).

The Supreme Court of Canada canvassed the law relating to language rights in Canada in two recent cases, MacDonald v. City of Montreal (1986), 25 C.C.C. (3d) 481, 27 D.L.R. (4th) 321, [1986] 1 S.C.R. 460, and Societe des Acadiens du Nouveau-Brunswick Inc, et al. and Ass'n of Parents for Fairness in Education, Grand Falls District 50 Branch (1986), 27 D.L.R. (4th) 406, [1986] 1 S.C.R. 549, 66 N.R. 173. Though these cases did not specifically deal with the implementation of Part XIV.1 [of the Criminal Code], *the judgments are important in that they discuss and set out principles to be followed by the courts in dealing with language rights* ***(pp. 518-519).*** *There can be no doubt as to the importance of English and French language rights in Canada. The legislative scheme for the progressive implementation of English and French language rights in criminal proceedings in the provinces of Canada, as set out in Part X1V.1 of the Criminal Code and s. 6 of the Criminal Law Amendment Act, 1985 advances the equality of status or use of English and French in Canada and is the type of program*

contemplated, and one might say, encouraged by s. 16(3) of the Charter ***(p. 520)***. ***Re Ringuette and The Queen*** (1987), 33 C.C.C. (3d) 509 (Nfld. C.A.).

The obvious purpose of Part XIV.1 was to expand existing language rights in criminal proceedings in two ways. First, the right to use English and French would be increased by providing the accused with the rights to be tried by a judge and jury who speak the official language of the accused. Secondly, these rights would be expanded geographically by extending the right to use English and French in criminal proceedings where such a right did not previously exist ***(p. 265)***. ***Pare* v. *Regina*** (1986), 31 C.C.C. (3d) 260 (B.C S.C.).

Whatever the limitations of these notions, this much seems clear: equality is by definition essentially comparative. In this case, the comparison is between a francophone accused in Saskatchewan and his counterpart in those areas of the country in which Part XIV.1 of the Code has been brought into force ***(p. 46)***. *We have no difficulty, therefore, in concluding that the s. 15(1) rights of an accused in Saskatchewan whose language is French are, in the circumstances, infringed, and that he is entitled, unless justification for this state of affairs can be found in s. 1, to apply for and obtain an appropriate and just remedy pursuant to s. 24(1) of the Charter* ***(p. 47)***. ***Re Use of French in Criminal Proceedings in Saskatchewan*** (1987), 44 D.L.R. (4th) 16 (Sask. C.A.).

I have already indicated in the matter of Sa Majesté la Reine et Joseph Denis Boudreau, a decision rendered on December 1, 1989 and filed in the Judicial District of Moncton under number M/M/73/88, the reasons why, in my view, a certificate of analysis can be tendered in evidence in either of the two official languages despite the choice made by the accused pursuant to s. 462.1 of the Code (as it was then). . . . It seems to me that Mr. Maxwell's intervention should have indicated to the Judge and the prosecutor that the Respondent's right to a fair hearing was being jeopardized by reason of the fact that his lawyer could not understand the contents of the document being tendered as an Exhibit. This being so, it also appears to me that common sense (as well as common law and s. 7 of the Charter) would dictate that the Court, to ensure a fair hearing, would simply call upon the interpreter to translate the contents of the document for Mr. Maxwell's benefit prior to admitting it as an Exhibit, absent any other compelling reasons justifying its rejection ***(p. 5)***. ***R.* v. *Leblanc*** (December 20, 1988), Moncton M/M/29/88 (N.B. Q.B.) Deschênes J.

The general rule in matters of conspiracy is that accused persons charged with a conspiracy must have a joint trial ***(p. 45)***. *. . . I add that the wish of the accused to be heard directly, by the jury without the wall of interpretation however thin it may be, would thus be granted. Furthermore, but this is not a major factor, a bilingual jury would be most apt to weigh the evidence as given by the witnesses both for the Crown and the defence in the two official languages of Canada, if*

they choose to testify in either language. **(NP)** *Having weighed all the arguments of the parties and using the discretion given to me by s. 530(4) I conclude that the circumstances warrant a joint trial to be held before a judge and a jury who speak both official languages of Canada* ***(p. 46)***. ***Garcia* v. *R.*** (1990), 58 C.C.C. (3d) 43 (Que. S.C.).

In my opinion, it would be contrary to the principle of a fair trial to receive, without the consent of the accused, evidence in a language other than that chosen for the trial without translating it into the language of the trial. In the implementation of the principle of a fair trial, the common law offers numerous examples over the centuries of how interpretation services have been used for the benefit of and to ensure the understanding of an accused who speaks a foreign language. I do not believe that the requirements are any less when one or the other official languages is in issue ***(p. 304-305)***. ***R.* v. *Boudreau*** (1990), 107 N.B.R. (2d) 298; 267 A.P.R. (N.B. C.A.).

[TRANSLATION] *I accept the proposal according to which once the trial begin, the judge cannot, without infringing s. 133, forbid an Attorney General's prosecutor who wishes to do it, means of speaking French, even though the accused whose official language is English got an order to the effect that he may proceed its trial before a judge and a jury whom speaks the official language which is his own. With respect for the opposite view, I consider that the issue is still not then settled. Indeed, I am of the opinion that the issue of the language that will speak the prosecutor has to be settled in a prior step, as the time of the choice of which prosecutor will lead the procedures.* **(NP)** *I accept the proposal of the Attorney General of Canada that the effect of section 530.1 imposes, in a case as the one under consideration, the obligation for the Attorney General of Quebec to choose a prosecutor who is competent and who accepts to lead the procedures in the official language of the accused. Nevertheless I do not accept the appellant proposal that the fairness requires it. Section 14 of the Charter, which gives right to the assistance of an interpreter when the party could not follow the procedures because it does not understand or does not speak the language used, provides it, as the Beetz J. affirms it in the Macdonald case, in the name of the Court for the majority, at pp. 499 and 500.* **(NP)** *[…] It is not disputed that the adoption of the s. 530.1 is within the power of jurisdiction of the Parliament of Canada. Its validity does not make any doubt throughout Canada except in Quebec because of s. 133, in Manitoba because of s. 21 of the Manitoba Act of 1870, and in New Brunswick because of s. 19 of the Charter. […]* **(NP)** *When an order made under s. 530 was pronounced, a prosecutor whose mother tongue is different of the one of the accused may very well accept it, and it is standard of pleading a case through using the language of the accused. Normally we should expect that the prosecutor will respect its commitment. If it happened during the trial that the prosecutor feels incapable of doing justice to its mandate by using another language that its own and requested to speak*

French or English as he is authorized by s. 133, the judge would not be able to forced him to speak the official language which is not its own. In such an event, the judge should stay the hearing in order to allow the Attorney General to find a prosecutor who is ready to proceed with the trial in the language of the accused. If it turned out to be impossible in a reasonable time, the judge who presides a trial before jury should decree a mistrial. **(NP)** *Section. 530.1 does not aim a private litigant,* ***(pp. 2593-2594)*** *I suggest therefore of receiving the motion, and of declaring that section 530.1 of Criminal Code is valid and generates its impacts in Quebec.* ***(p. 2595)*** ***R.*** **v.** ***Cross***, [1998] R.J.Q. 2587 (Que. C.A.). ***R.*** v. ***Cross***, [1998] C.S.C.R. no 526. Supreme Court of Canada, 26944, Leave to appeal granted March 25, 1999. Discontinuance notice produced on September 1st, 1999.

This section [subs. 530(4)] *does not bestow a political right on the accused. It grants a discretion on the court to be exercised in all the circumstances to allow a trial in French if the court is satisfied that it is in the best interests of justice to do so.* **(NP)** *The proper administration of justice can best be served if the accused has a fair trial and the Crown has an opportunity to fairly present its case.* **(NP)** *A second consideration is that the administration of justice should not be unreasonably or unnecessarily burdensome to the public purse.* **(NP)** *Money spent on the prosecution (which includes matters relating to the defence) of a case are not then available for the prosecution of another.* **(NP)** *I must balance against these considerations and expense the needs of the accused and the Crown for a fair trial which is the primary consideration* ***(p. 3)***. [T]*he accused speaks and understands English. This is not a case where he must give his evidence through an interpreter or a case where without assistance he cannot understand the judge, witnesses or counsel. If he chooses he can testify to the jury in English.* **(NP)** *He may well have difficulty with some technical terms, especially as it relates to the hair and fibre testimony and the autopsy evidence.* **(NP)** *But there is no suggestion that his difficulty in this regard is any different from many other English speaking Canadians. This is an area where his counsel based on his training and experience will be able to explain technical evidence.* **(NP)** *Accordingly in all the circumstances I am not satisfied that the best interests of justice would be served in this case by allowing the application* ***(p. 4)***. ***R.*** **v.** ***Rivest*** (April 23, 1991), Quesnel, B.C. No. 14481 (B.C S.C.) Braidwood J.

Now, in each case when the application is made under ss. 4 to the presiding judge, who is referred to as, "the judge before whom the accused is to be tried," he must make his decision in light of all of the circumstances, and one of the circumstances that I as presiding judge must be careful to guard against is that the system, criminal justice system, not be used to tactical advantage by the accused person or to score debating points or make statements ***(pp. 3-4)***. *There is noting in the record to indicate that it* [s. 530] *was ever brought to Mr. St. Pierre's attention and the record clearly shows that he chose to have and did have at his preliminary hearing a translator and had all of the language*

translated ***(p. 4).*** *So, technically it could be argued that I have already commenced the trial of this accused and that I can't be considered a judge before whom the accused is to be tried. Well, I am not overly impressed with that technical argument . . .* ***(p. 9).*** *It seems to me ss. 4 of s. 530 is a remedial section and that I should construe it liberally and find that I am indeed a judge before whom this accused is to be tried. The trial has never really started. Under that section it seems to me, particularly where the opening by the Crown has not taken place, nor any witnesses sworn, I am still the judge before whom the accused is to be tried* ***(pp. 9-10).*** *The merits of Mr. St. Pierre's case here, I think are to be found in some of the facts that appeared at the preliminary hearing which you would have heard if the trial commenced, that he came only on the 21st of December, 1991 from the Province of Quebec, Baie-Comeau, that he is charged by a complainant who is bilingual but that she and he carried on all their communications in French and therefore the primary issue here is the interpretation of conversation which took place in French. It seems to me that if the primary issue before a jury is the interpretation of pillow talk and the pillow talk was in French then the triers of fact should understand French. And in those peculiar circumstances I think I can find that it is in the best interests of justice that he be tried by those who understand French and it is on those peculiar facts that I find justice dictates that it is in the best interests of this accused that he be tried in the language that is the official language of himself. Obviously the section contemplates what we often say that justice must not only be done but it should be seen to be done and might not be seen to be done in the peculiar circumstances of a relationship which was conducted in French if the trial of the complainant's allegations was not in French* ***(pp. 11-12).*** *I also am comforted to some extent by the fact that we happen to be able to in this case to very economically conduct a new trial in French in New Westminster, relatively quickly and relatively inexpensively* ***(p. 12).*** ***R.*** **v.** ***St. Pierre*** (May 14, 1991), Victoria, B.C. No. 60466 (B.C. S.C.) Hutchison J.

[TRANSLATION] [The] *indictment was drafted in English, whereas he was entitled to a document, a written pleading, in French under paragraph (b) of section 530.1* ***(p. 45)***. ***Belleus*** **v.** ***R.*** (May 3, 1991), in Télé-Clef #3, p. 43 (Ont. C. Gen. Div.) Soublière J.

It is apparent s. 530.1 refers only to the first two manners of proceeding previously mentioned; one, being where the accused is to be tried before a judge and jury who speak the official language of Canada that is the language of the accused; the other, being in the official language in which the accused can best give testimony. The section does not go on to refer to the third manner of proceeding, that is before a judge and jury who speak both official languages of Canada. **(NP)** *Nevertheless, it seems clear that the purpose of ss. 530 and 530.1 are to ensure that accused of all languages have a fair trial and an opportunity to make full answer and defence. Therefore, in the third situation where the trial*

proceeds in both official languages, as in all trials, the purposes just mentioned must be achieved. The court should then apply s. 530.1, with such modifications as may be required, in a trial before a judge and jury who speak both official languages of Canada, to ensure that these objectives are met. **(NP)** *With regard to the right to have every document or writing that goes through the court translated in an official and certified form, in my view that is not a requirement of s. 530.1 and is not necessary in this situation. We have a trial before a judge and jury who speak both official languages of Canada and we have simultaneous translation interpreting all the evidence that is being presented in court into the other of the two official languages. In this situation, either of the two official languages may be used at any time, providing the simultaneous translation is being used.* **(NP)** *With regard specifically to the transcripts of intercepted communications, these are being tendered in the official language in which the conversations occurred, which is English. In my opinion, that is consistent with s. 530.1(g)(iii) of the Criminal Code; however, the circumstances may require that a different procedure be followed to ensure that the accused have a fair trial and an opportunity to make full answer and defence. . . . Referring to s. 530.1(e) of the Criminal Code regarding the language of the prosecutor; again, while it may not apply to a bilingual trial, the court must ensure the accused have a fair trial and an opportunity to make full answer and defence. Considering this is a bilingual trial with simultaneous translation, either of the two official languages may be used at any time. If communication with prosecutorial staff by non-English speaking accused becomes problematic, then I would certainly address the issue at the time* ***(pp. 319-320).*** ***Mills et al.*** **v.** ***The Queen*** (1993), 124 N.S.R. (2d) 317 (N.S. S.C.).

Section 530.1 also stipulates that the record of the preliminary inquiry and the trial must include all the proceedings in the original official language, a transcript of everything that was interpreted, as well as documentary evidence in the language in which it was presented at the hearing. These provisions do not therefore generate a necessity for the translation of the evidence which is disclosed, since in fact the only requirement is that the evidence be incorporated in the record in the language in which it was presented in court. These provisions must be distinguished from s. 530.1(h) which requires that written judgments be made available in the official language of the accused ***(p. 461)***. ***R.*** **v.** ***Rodrigue*** (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied , No. 24585, [1995] 3 S.C.R. vii.

On May 5, 1994, Mr. Justice D.C. McDonald handed down reasons for denying the application for a stay of proceedings and for disclosure of the evidence in French [91 C.C.C. (3d) 455, 24 W.C.B. (2d) 18] ***(p. 130)***. *I am of the view, therefore, that there is no jurisdiction to appeal from an order made in the midst of, and as part of, the trial process unless that order is made without jurisdiction,*

or is unrelated to the trial process, or amounts to an acquittal. It is unnecessary for me to decide whether any appeal jurisdiction exists in those three exceptional cases ***(p. 138)***. ***R.*** **v.** ***Rodrigue*** (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal denied, No. 24585, [1995] 3 S.C.R. vii.

[TRANSLATION] *In the absence of an order under s. 530 of the Criminal Code directing that the accused be tried before a judge and jury who speak the official language of Canada that is the language of the accused, or the official language in which the accused can best give testimony, s. 530.1 did not apply. It seems the learned judge concluded instead that the circumstances warranted a trial before a judge and jury who speak both official languages of Canada. The judge therefore did not have to interpret section 530.1 and more particularly, paragraph 530.1(e)* ***(p. 2)***. ***R.*** **v.** ***Beaulieu*** (October 5,), Toronto C9210, C8948 Lacoursière, Arbour et Labrosse JJ.A. (Ont. C.A.).

In the case of R. v. Cross, supra, my colleague Greenberg J., albeit in an obiter dictum, chose to consider briefly the scope of the foregoing sections. He suggested that s. 530, among its other possibilities, contemplated the ordering of a "bilingual" trial and further that in the event of such an order being made, s. 530.1 would be inappliclable. I concede that wording of s. 530.1, strictly construed, may admit of that interpretation but, with the greatest of respect, I do not think that that was the intent of the legislator at all. Indeed, after considerable reflection I am unable to come to the same conclusion as my brother ***(p. 358)***. *Given, however, the inherent difficulties which accompany the use of interpretation, can it be said that an accused whose language is either English or French is nevertheless obliged to forfeit his right to a trial in his language because he happens to be jointly indicted with others who speak the other official language of Canada? I hardly think so. It may be that the words "if the circumstances warrant" in s. 530(4) of the Criminal Code are arguably sufficiently wide to encompass a situation involving jointly indicted accused, some speaking French and others English. However, I am of the view that these words were never intended to sanction the watering-down or dilution of the accused's rights in order to sanctify the principle that persons engaged in a common enterprise should invariably be jointly tried. It is in the end of a question of balance and discretion. Given the complexity of the charges set out in the indictment, the number of accused involved and the difficulties which are always inherent in policing the interpretation of legal proceedings in the best of circumstances, it appears to me clear that Forsey's right to a fair trial risks being compromised unless he is tried in the English language* ***(p. 364)***. ***R.*** **v.** ***Forsey*** (1995), C.C.C. (3d) 354 (Que. S.C.).

It is a matter of whether the Crown should be asked to provide a translation of the Affidavit which is -- the Affidavit, of course, formed the basis of the obtention of the order and was signed by an Officer of the Royal Canadian Mounted Police.

That Officer had written, or dictated, his Affidavit in French, and the original application was made to a Justice in the Province of Quebec. It was later authorized by a Justice in Ontario ***(p. 2-3)****. That being so, then, it is my view that, in this limited circumstance, and limited situation, the translation of the Affidavit that did accompany the Constable when an application was made to obtain that wire tap application, would be required in Court. Where the Judge is not bilingual, but, is dealing with the matter only in English he would certainly be one of the first persons to require the translation of the Affidavit in order for him to judge properly whether the Affidavit was a proper basis for allowing the wire tap order to go forward* ***(p. 4)****.* ***R.* v. *Landry*** (March 29, 1995), Ottawa-Carleton (Ont. C. Gen.Div) Doyle J.

If I order trial by a judge and jury who speak French, evidence given in English would have to be translated on the record. This would double the time required for trial. If I order trial by a bilingual court the judge and jury will have the advantage of weighing evidence in the language in which it is given, rather than as translated, while the accused would have the benefit of simultaneous translation of evidence given in English. I see no prejudice to the accused in the latter situation, but perhaps an advantage ***(p. 2)****.* ***R.* v. *Robin*** (November 28, 1995), New Westminster, C.B. No. 36499C (B.C. P.C.) Routhwaite J.

[TRANSLATION] *These notes are provided solely for reasons of convenience. ... I am concerned that a decision I rendered last week may have been misinterpreted* ***(p. 1).*** *Section 530.1 sets out certain procedural rules that apply to the first type of trial — a trial in which the judge speaks French. By way of example, if a "French trial" is ordered under the provision, the accused and his counsel may use English or French for any purpose during the trial or the preliminary inquiry, and witnesses may use either language; the justice presiding over the preliminary inquiry prior to the trial must speak French, and so must the Crown prosecutor. The section also provides for interpreters and transcripts, including translation of testimony.* **(NP)** *The Criminal Code does not lay down any procedural rules for "bilingual trials" (the second type of trial). "Bilingual trials" must be conducted in accordance with the general procedural rules, with such modifications as become necessary to ensure a fair hearing. Judges have used section 530.1 as a guide for "bilingual trials"* ***(p. 2)****. The circumstances of the case are as follows. A French-speaking accused retained a lawyer who does not speak French, the witnesses are English-speaking, and the accused will obtain English and French transcripts of testimony that is of greatest relevance to him. For these reasons, I decided that the circumstances warranted a trial by a judge and jury who speak French and English.* **(NP)** *My order did not address the matter of the preliminary inquiry, because section 530 of the Criminal Code deals only with language rights at trial. However, since 1990 when the provisions concerning "bilingual" and "French" trials came into force in British Columbia, it has been common practice to hold the preliminary*

inquiry in the language ordered in respect of the trial. Because I ordered a "bilingual trial", I am now presiding over a "bilingual preliminary inquiry" even though there is no provision in the Criminal Code for it. A few "French" and "bilingual" preliminary inquiries have been held in the British Columbia Provincial Court ***(p. 3).*** ***R.* v. *Robin : Note concerning comments of the Honourable A.E. Rounthwaite regarding a decision held on November 28, in the Provincial Court of British Columbia*** (December 4, 1995), New Westminster, B.C. No. 36499C (B.C. P.C.) Routhwaite J.

There are probably many other reasons why Parliament has given a judge before whom an accused is to stand trial, the power to order that he be tried before a judge and jury who speak the two official languages of Canada. One thing is certain, the possibility of a joint trial of several accused who speak only one of the official languages, the right of the accused to choose a solicitor who does not speak his language, the possibility of the accused to waive his right to interpretation or translation of testimony or of a document from one official language to the other, are certainly reasons which led Parliament to grant this power under ss. 530(4) and 530(5) of the Criminal Code ***(pp. 172-173)***. ***R.* v. *Gauvin*** (1995), 169 R.N.B. (2d) 161 (N.B. Q.B.).

[TRANSLATION] *Section 530.1 cannot be interpreted in such a manner as to require that an information be sworn in the official language that is the language of the accused, and in this regard, I agree with the conclusion of Morin J. in R. v. Simard, Ontario Court (General Division), Windsor, March 30, 1994* ***(p. 4)***. ***R.* v. *St.Pierre*** (March 21 1995, Sault-Ste-Marie (Ont. C.J. Gen.Div.) Pardu J.

This is the first time this Court has been called upon to interpret the language rights afforded by s. 530 of the Criminal Code, R.S.C., 1985, c. C-46. This case concerns the right to be heard by a judge or a judge and jury who speak the official language of Canada that is the language of the accused, or both official languages of Canada. The unique circumstances of the accused provide an opportunity to clarify the scope of the right in ss. 530(1) and 530(4) of the Code and to determine the proper scheme of the legislation in cases where a new trial is ordered. For the purposes of this introduction, I will only mention that s. 530(1) creates an absolute right, while s. 530(4) subjects that right to the discretion of the trial judge. ***(p. 777)*** *[…] These pronouncements are a reflection of the fact that there is no contradiction between protecting individual liberty and personal dignity and the wider objective of recognizing the rights of official language communities. The objective of protecting official language minorities, as set out in s. 2 of the Official Languages Act, is realized by the possibility for all members of the minority to exercise independent, individual rights which are justified by the existence of the community. Language rights are not negative rights, or passive rights; they can only be enjoyed if the means are provided.*

This is consistent with the notion favoured in the area of international law that the freedom to choose is meaningless in the absence of a duty of the State to take positive steps to implement language guarantees; ***(p. 788)*** *[…] Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada; see Reference re Public Schools Act (Man.), supra, at p. 850. To the extent that Société des Acadiens du Nouveau-Brunswick, supra, at pp. 579-80, stands for a restrictive interpretation of language rights, it is to be rejected. The fear that a liberal interpretation of language rights will make provinces less willing to become involved in the geographical extension of those rights is inconsistent with the requirement that language rights be interpreted as a fundamental tool for the preservation and protection of official language communities where they do apply. It is also useful to re-affirm here that language rights are a particular kind of right, distinct from the principles of fundamental justice. They have a different purpose and a different origin. I will return to this point later.* ***(p. 791)*** *[…] The object of s. 530(1) is to provide an absolute right to a trial in one's official language, providing the application is timely. As mentioned earlier, when a new trial is ordered, conceptually and practically, the situation is almost the same as if the parties were at the beginning of the original trial process. But, there are some differences. One can imagine, for example, the situation of an accused who made no s. 530 application at a first trial on a particular charge, and then requested a second trial in the other official language. In such an eventuality, the Crown prosecutor, who would have gone through the first trial, might have to be replaced for the retrial. The same might be true for a complainant's counsel when dealing with an application under ss. 278.1-278.9 of the Criminal Code and for the co-accused's, if applicable. Thus, in my view, it is possible that some circumstances will have to be considered when a new trial is ordered. That is the main reason why s. 530(4) must apply to this situation rather than s. 530(1). That said, I will now examine the question of the proper application of this provision in general and in the case of a retried accused.* ***(p. 795)*** *[…] The solution to the problem, in my view, is to look at the purpose of s. 530. It is, as mentioned earlier, to provide equal access to the courts to accused persons speaking one of the official languages of Canada in order to assist official language minorities in preserving their cultural identity; Ford, supra, at p. 749. The language of the accused is very personal in nature; it is an important part of his or her cultural identity. The accused must therefore be afforded the right to make a choice between the two official languages based on his or her subjective ties with the language itself. The principles upon which the language right is founded, the fact that the basic right is absolute, the requirement of equality with regard to the provision of services in both official languages of Canada and the substantive nature of the right all point to the freedom of Canadians to freely assert which official language is their own language. I note that s. 530(2) will apply to individuals who do not speak either of the two official languages. An accused's own language, for the purposes of s. 530(1) and (4), is*

either official language to which that person has a sufficient connection. It does not have to be the dominant language. If the accused has sufficient knowledge of an official language to instruct counsel, he or she will be able to assert that that language is his or her language, regardless of his or her ability to speak the other official language. The Crown may challenge the assertion made, but it will have the onus of showing that the assertion is unfounded. The court, in such a case, will not inquire into specific criteria to determine a dominant cultural identity, nor into the personal language preferences of the accused. It will only satisfy itself that the accused is able to instruct counsel and follow the proceedings in the chosen language. ***(p. 796)*** *[…] Once the reason for the delay has been examined, the trial judge must consider a number of factors that relate to the conduct of the trial. Among these factors are whether the accused is represented by counsel, the language in which the evidence is available, the language of witnesses, whether a jury has been empanelled, whether witnesses have already testified, whether they are still available, whether proceedings can continue in a different language without the need to start the trial afresh, the fact that there may be co-accuseds (which would indicate the need for separate trials), changes of counsel by the accused, the need for the Crown to change counsel and the language ability of the presiding judge. In fact, a consideration of the requirements of s. 530.1(a) to (h) will provide a good indication of relevant matters.* **(NP)** *I wish to emphasize that mere administrative inconvenience is not a relevant factor. The availability of court stenographers and court reporters, the workload of bilingual prosecutors or judges, the additional financial costs of rescheduling are not to be considered because the existence of language rights requires that the government comply with the provisions of the Act by maintaining a proper institutional infrastructure and providing services in both official languages on an equal basis. As mentioned earlier, in the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.* ***(pp. 798-799)*** ***R.*** v. ***Beaulac,*** [1999] 1 S.C.R. 768.

[TRANSLATION] *This Court therefore concludes that the interpretation of sections 530 and 530.1 raises a jurisdictional issue and that as such, an error on this matter by the justice of the peace goes to his jurisdiction. However, I believe it is important to mention that this obviously does not apply to a decision of a justice of the peace, based on proper legal considerations, as to whether to order in one or the official language a trial or preliminary inquiry in one or the other official language or before a Court that speak both official languages* ***(p. 20)****. The third situation* [justifying a judge, or a judge and a jury, who speak both official languages] *is where the official language of the accused is not the same as that of most witnesses, who, as we have seen, have a legal right (and in some provinces a constitutional right) to give testimony in the official language of their choice.*

(NP) *The fourth situation is where co-accused speak different official languages; as in most of the case law. Whithout actually making such a submission, counsel for the petitioners impliedly challenged this interpretation on the ground that it would deprive accused of their right to be tried in their language. The most obvious answer to this is that there is no such right* ***(pp. 31-32)****. Since the joint trial principle has led to adjustments to the constitutionally-guaranteed right to remain silent, it is difficult to imagine why the same would not apply in the case of the trial in the language of the accused, which is not even legally guaranteed.* **(NP)** *This obviously does not mean that judges are barred from holding — as this Court held in R. v. Forsey and R v. Bouchard — that a "bilingual" trial would be unfair under the circumstances and that separate trials should therefore be ordered. But separate trials should not be ordered for the sole purpose of granting every group of accused a trial in their language; the principle that parties to a common enterprise must be tried jointly takes precedence in such cases* ***(p. 33)****. Although this court is not accepting the interpretation of section 530.1 suggested by counsel for the mise en cause, this Court, based on principles of fundamental justice, is in agreement with their conclusion: In "bilingual trials", the judge and prosecutor must alternate between each official languages, so as to use them both in a balanced fashions accordind to the circumstances.* **(NP)** *This being said, this Court is neither subscribing to nor rejecting the view that in cases where a trial in only one official language has been ordered, the judge and prosecutor are not held to strict compliance with their language obligations* ***(p. 38)****. Consequently, if the judge did not make order pursuant to subsection 530(1) that the accused be tried in his official language, the accused has no statutory language right under subsection 530(1). And since he has no further constitutional rights either (except the right to give testimony in his language before the courts of Quebec, Manitoba and New Brunswick) must therefore be relied on section 14 of the Charter and the principles of fundamental justice* ***(p. 39)****. If the justice of the peace orders that each co-accused be tried in his mother tongue, he is indirectly ordering separate preliminary inquiries, which he is normally not entitled to do. It must therefore be asked whether the justice of the peace can make such an order* ***(p. 42)****. Finally, the Court acknowledges that the accused, in principle, is entitled to a trial and therefore a preliminary inquiry in his language, and as such, finds that the justice of the peace may make an order that each accused be tried in his official language* ***(pp. 42-43)****.* ***Edwards et al.* v. *Honourable Yves Lagacé, j.c.q. es qualité and A.G. of Canada*** (March 24, 1998), Montreal 505-36-00327-983 (Que. S.C.) Béliveau J.

See also:

Jones* v. *A.G. of New Brunswick, [1975] 2 S.C.R. 182.

The Information Commissioner of Canada* v. *Public Works (June 23, 1995), Ottawa T-426-95 (F.C. T.D.) Rouleau J.

DiMaulo* v. *R. (September 13, 1995), Montreal 500-01-001861-951 (Que. S.C.) Pinard J.

Fournier* v. *R. (July 9, 1995), Whitehorse, TC-94-01371 (Y. T.C.).

R.* v. *Allain (1991) 70 Man. R. (2d) 161 (Man. Q.B.).

R.* v. *Breton (July 9, 1995), Whitehorse TC-94-10538, 10005, 1005A, 100013 (Y. T.C.) Dutil J.

R.* v. *Duchesneau (1991), 90 Nfld & P.E.I.R. 231 (P.E.I. S.C.).

Simard* v. *R. (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 S.C.R. x.

Under former ss. 923 and 555 of the *Criminal Code*

The privilege of having six jurors of the one or of the other language [under the former s. 555 of the Criminal Code] *cannot be exercised as a matter of choice, but the manner in which it is to be exercised depends on a matter of fact, and that fact is the language of the prosecuted party. The privilege does not depend upon the language of the prosecuted party's counsel, but is altogether personal to the prosecuted party himself; and the manner of its exercise — that is, whether there should be six jurors speaking the English language or six jurors speaking the French language — depends upon a fact, and not upon the option of the prosecuted party* ***(p. 323)***. ***The Queen* v. *Yancey*** (1899), 2 C.C.C. 320 (Que. Q.B.).

[TRANSLATION] *What the law provides is that an accused in the province of Quebec may ask to be tried by a jury familiar with his language (provided it is either French or English) in which case, if it appears to the judge or justice in his discretion that it is in the best interests of justice to grant that request, he is entitled, at the very least, to a mixed jury. It is clear that the purpose of these provisions, which ensure that the accused, upon request, is tried by twelve (or at least six) jurors who know his language, is to enable the accused to understand the proceedings easily so that he is in a better position to exercise his rights* ***(p. 295)***. ***Piperno* v. *The Queen***, [1953] 2 S.C.R. 292. [Under former 923 of the *Criminal Code*]

[TRANSLATION] *I am firmly of the opinion that the judge did not err in ordering a mixed jury* [under the former section 555 of the Criminal Code]. *When an accused requests that a jury consisting exclusively of individuals who speak his language be empanelled, as in this case, the judge has discretion to accede to this request but if the judge refuses, he or she must allow a mixed jury. The right of an*

accused to twelve jurors who speak his or her language is not absolute and the judge must consider what will best serve the ends of justice. Despite the fact that in a criminal trial the interest of the accused is paramount, the interests of society must not be ignored ***(p. 207)***. ***Reference : Re Regina* v. *Coffin***, [1956] R.C.S 191.

[TRANSLATION] *Assuming a theoretically unilingual jury* [under former section 555 of the Criminal Code], *if everything were allowed to be in either language because French to English translation is involved, serious harm could result because, depending on whether or not they understand one language or the other, some jurors might tend to accept certain evidence that other jurors either did not understand or, based on factors particular to them, understood differently. This problem will almost inevitably arise whenever the language used by the witness is the juror's second language, whether it be French for an anglophone or English for a francophone. But such a situation cannot be countenanced by the statute or by the case law.* **(NP)** *Jurors must, in fact, be instructed that the only evidence on which they may base their verdict is the text of the translations or interpretations that have been prepared in the language of the jury* ***(pp. 197-198)***. ***DiMaulo et al.* v. *R.*** (1973), 21 C.R.N.S. 195 (Que. Q.B.).

[TRANSLATION] *So, in accordance with section 574(5) of the Criminal Code, Ms. Liliane Lorentz-Aflalo has filed a motion under section 555 of the Criminal Code and is requesting that she be tried by a jury made up exclusively of English-speakers because, she claims, "her language" is English* ***(p. 1).*** *And as we said earlier, the accused's mother tongue is the reference point. In addition, barring a preponderance of evidence to the contrary, the language of the accused is his or her mother tongue. And his or her language is the language of the defence* ***(p. 19).*** *Essentially, since her mother tongue is French, the accused, Liliane Lorentz-Aflalo, has not shown on a preponderance of evidence that "her language" is now a language other than French.* **(NP)** *I should add that as a general rule, it is in the interests of justice that two or more persons accused of a joint criminal enterprise be tried and judged together* ***(p. 20)***. ***R.* v. *Lorentz-Aflalo*** (October 8, 1987), Montreal 500-01-006114-877 (Que. S.C.) Greenberg J.

His language, as a starting point then, is his mother tongue, or put another way, his first language learned and still spoken. That was as Madam Justice Joncas put it in BROWN, on the 23rd of March 1985, number 700-01-3172-840 of the records of this Court. I personally have no difficulty with the characterization "first language learned and still spoken" provided that it be nuanced with regard to the words "still spoken". The words "still spoken" do not imply to me simply a continuing capacity to speak his first language. Rather the words imply that the first language is still employed habitually by him as his preferred medium of communication ***(p. 3)***. ***Saraga* v. *The Queen*** (November 18, 1988), Montreal 500-01-01624L-876 (Que. S.C.) Martin J.

See also:

Alexander* v. *R. (1930), 49 Que. K.B. 215 (Que. C.A.). [Under former s. 923 of the *Criminal Code*.]

Duval et al* v. *Regina (1938), 64 R.J.Q. 270. (K.B.C.). [Under former s. 923 of the *Criminal Code*.]

Gouin* v. *R. (1936), 43 R.L.N.S. 149 (Que. C.A.). [Under former s. 923 of the *Criminal Code*.]

The Queen* v. *Castillo Gardia et al, [1990] R.J.Q. 2312 (Que. S.C.). [Under former s. 555 of the *Criminal Code*.]

Lacasse* v. *R. (1938), 66 Que. K.B. 74, 72 C.C.C. 168 (B.R. Qué.). [Under former s. 923 of the *Criminal Code*.]

Mount* v. *R. (1931), 51 R.J.Q. 482 (K.B.C.). [Under former s. 923 of the *Criminal Code*.]

Sheehan* v. *The Queen, [1897] C.C.C. 402. [Under former s. 923 of the *Criminal Code*.]

R.* v. *Brown (March 28, 1985), Quebec, 36-494-842 / 700-01-3172-840 (Que. S.C.) Barette-Joncas J. [Under former s. 555 of the *Criminal Code*.]

R.* v. *Henni (1970), 2 C.C.C. (2d) 575 (Que. S.C.). [Under former s. 555 of the *Criminal Code*.]

Change of venue

531. Notwithstanding any other provision of this Act but subject to any regulations made pursuant to section 533, the court shall order that the trial of an accused be held in a territorial division in the same province other than that in which the offence would otherwise be tried if an order has been made that the accused be tried before a justice of the peace, provincial court judge, judge or judge and jury who speak the **official language** of Canada that is the **language** of the accused or the **official language** of Canada in which the accused can best give testimony or both **official languages** of Canada and such order cannot be conveniently complied with in the territorial division in which the offence would otherwise be tried. R.S. 1985, c. C-46, s. 531; R.S. 1985, c. 27 (1st Supp.), s. 203.

Saving

532. Nothing in this Part or the **Official languages** Act derogates from or otherwise adversely affects any right afforded by a law of a province in force on the coming into force of this Part in that province or thereafter coming into force relating to the **language** of proceedings or testimony in criminal matters that is not inconsistent with this Part or that Act. 1977-78, c. 36, s. 1.

Regulations

533. The Lieutenant Governor in Council of a province may make regulations generally for carrying into effect the purposes and provisions of this Part in the province and the Commissioner of the Yukon Territory and the Commissioner of the Northwest Territories may make regulations generally for carrying into effect the purposes and provisions of this Part in the Yukon Territory and the Northwest Territories, respectively. 1977-78, c. 36, s. 1.

Coming into force

534. (1) Sections 530 and 531 to 533 shall come into force in any of the Provinces of Quebec, Nova Scotia, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, in respect of

(a) offences punishable on summary conviction, or

(b) indictable offences, on a day fixed by a proclamation declaring those sections to be in force in that Province with respect to those offences.

Idem

(2) Section 530.1 shall come into force in a province

(a) in respect of offences punishable on summary conviction,

(i) on the day the **Official languages** Act is assented to, in the case of a province in which sections 530 and 531 to 533 and paragraph 638(1)(f) are in force on that day in respect of offences punishable on summary conviction, or

(ii) on the day on which those sections and that paragraph come into force in respect of offences punishable on summary conviction, in the case of a province in which they are not in force in respect of offences punishable on summary conviction on the day this Act is assented to; and

(b) in respect of indictable offences,

(i) on the day the **Official languages** Act is assented to, in the case of a province in which those sections and that paragraph are in force in respect of indictable offences on that day, or

(ii) on the day on which those sections and that paragraph come into force in respect of indictable offences, in the case of a province in which they are not in force in respect of indictable offences on the day this Act is assented to.

Idem

(3) Notwithstanding any other provision in this section, sections 530 and 531 to 533 shall come into force on January 1, 1990 a) in respect of offences punishable on summary conviction, in any province in which those sections are not in force in respect of offences punishable on summary conviction immediately prior to that date; and (b) in respect of indictable offences, in any province in which those sections are not in force in respect of indictable offences immediately prior to that date. R.S. 1985, c. C-46, s. 534; R.S. 1985, c. 27 (1st Supp.), s. 95, c. 31 (4th Supp.), s. 95.

Challenge for cause

638. (1) A prosecutor or an accused is entitled to any number of challenges on the ground that...

(f) a juror does not speak the **official language** of Canada that is the **language** of the accused or the **official language** of Canada in which the accused can best give testimony or both **official languages** of Canada, where the accused is required by reason of an order under section 530 to be tried before a judge and jury who speak the **official language** of Canada that is the **language** of the accused or the **official language** of Canada in which the accused can best give testimony or who speak both **official languages** of Canada, as the case may be. R.S. 1985, c. C-46, s. 638; R.S. 1985, c. 27 (1st Supp.), s. 132, c. 31 (4th Supp.), s. 96.

Jurors should not only be representative and impartial, they should also be able to understand the trial, their role in the trial, the evidence that is presented, the principles they have to apply, among other things. This requirement of competence is not mentioned in relevant legislation, aside from general requirements of mental health and linguistic capability, but it is implicit. Most trials require the same competence as is involved in the daily pursuit of one's affairs, and the ability to speak and understand one of the official languages will suffice. Some trials are more complex and complicated, however, especially in the area of economic crimes, to name only one, and then a tampering with randomness may be appropriate to achieve a minimal ability to understand the evidence and issues ***(p. 114)***. ***R.*** **v.** ***Bain***, [1992] 1 S.C.R. 91.

Coming into force

(3) Paragraph (1)(f) shall come into force in any of the Provinces of Quebec, Nova Scotia, British Columbia, Prince Edward Island, Saskatchewan, Alberta and Newfoundland, in respect of

(a) offences punishable on summary conviction, or

(b) indictable offences, only on a day to be fixed in a proclamation declaring that paragraph to be in force in that Province with respect to those offences.

Idem

(4) Notwithstanding any other provision in this section, paragraph 638(1)(f) shall come into force on January 1, 1990 (a) in respect of offences punishable on summary conviction, in any province in which that paragraph is not in force in respect of offences punishable on summary conviction immediately prior to that date; and (b) in respect of indictable offences, in any province in which that paragraph is not in force in respect of indictable offences immediately prior to that date. R.S. 1985, c. C-46, s. 638; R.S. 1985, c. 27 (1st Supp.), s. 132, c. 31 (4th Supp.), s. 96.

Sentencing Principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(i) evidence that the offence was motivated by bias, prejudice or hate based on **race**, **national** or **ethnic origin**, **language**, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,... 1995, c. 22, s. 6.

Official languages

841. (3) Any pre-printed portions of a form set out in this Part varied to suit the case or of a form to the like effect shall be printed in both **official languages**. R.S. 1985, c. C-46, s. 841; R.S. 1985, c. 31 (4th Supp.), s. 97.

Since the enactment of our Code in 1892 there has been, through case law and punctual amendments to s. 529 and its predecessor sections, a gradual shift from requiring judges to quash to requiring them to amend in the stead; in fact, there remains little discretion to quash. . . . My understanding of s. 529, when read in its entirety, is that it commands the following to the trial judge: absent absolute nullity and subject to certain limits set out in subs. (9), the judge has very wide powers to cure any defect in a charge by amending it; if the mischief to be cured by amendment has misled or prejudiced the accused in his defence, the judge must then determine whether the misleading or prejudice may be removed by an adjournment. If so, he must amend, adjourn and thereafter proceed ***(p. 1128)***. ***R.*** **v.** ***Moore***, [1988] 1 S.C.R. 1097.

Here, I do not regard either the inability of the informant to fully understand the French portions of the form or the translation error as matters of substance. The accused has not been mislead or prejudiced thereby. The English words of the form and the particulars of the two counts typed thereon in that language, which he understands, comply with the requirements of the Criminal Code and inform him fully of the case he must meet. **(NP)** *I hold, as did the Provincial Court Judge, that it was reasonable and proper for the informant to rely upon the English language portion of the bilingual form. The fact that the French translation was inaccurate did not mislead or prejudice the accused. That defect may be cured by amendment when the matter comes again before the Provincial Court. . . . I find that an English-speaking informant is entitled to disregard the French portions of the form of information. I hold further that if the omission of the French version of the words "and does believe" from this particular form are perceived to be a defect therein, then that defect may be cured by amendment in the case of an English-speaking accused* ***(p. 8)***. ***Perry* v. *R.*** (August 24, 1989), Vancouver, No. CC891337, B.C.J. nº 1616 (B.C. S.C.) Macdonald J. (QL).

[TRANSLATION] *It is true that s. 841(3) (Cr.C.) provides that any pre-printed portions of a form set out in Part XXVIII must be printed in both official languages. Although the French version of the provision might suggest that it is enough to have separate English and French forms, I believe the English version removes any ambiguity:* **(NP)** *"Any pre-printed portions of a form set out in this Part varied to suit the case or of a form to the like effect shall be printed in both official languages."* **(NP)** *Irrespective of the suspect's last name or the language generally spoken by him, the pre-printed portion of the promise to appear under ss. 498 and 501 (Cr.C.) must be bilingual, and the blanks must be filled in by the police officer on duty* ***(pp.4-5)***. *Just like a subpoena and a summons, a promise to appear is merely a way to ensure that a citizen will appear before the Court. Barring a jurisdictional defect (such as where a person is ordered to appear before a court that has no jurisdiction) or some prejudice to the offender (such as where the person, by reason of his language, was unable to understand the obligations he had subscribed to), it is my opinion that the defects in this procedural document do not affect the jurisdiction acquired by the Court before which the accused (or counsel on his behalf) appears* ***(pp. 5-6)***. ***Lavoie et al.* v. *Masse*** (March 23, 1990), Montreal 500-36-000010-903 (Que. S.C.) Boilard J.

I am therefore holding that Mr. Long is correct in that position and I am finding that this particular Information against Mr. Douglas Brian Tripp is a nullity because it does not comply with the language of section 841(3) of Criminal Code ***(p. 14)***. ***R.* v. *Tripp*** (9 mai 1990), Barrie, Ont. (Ont P.C.) Silverman J.

While the information before me may not strictly comply with the requirements of the Criminal Code, I am satisfied, in the absence of any suggestion of prejudice

to the accused, it is not a nullity ***(p. 8)***. ***R.*** **v.** ***Young*** (April 17, 1990), Scarborough, Ont. (Ont. P.C.) MacDonnell J.

In my view the legislation is plain. In this case the Information was not in both official languages. It therefore is void. I allow the appeal and quash the conviction. If the fine imposed has been paid it is to be reimbursed to the appellant ***(pp. 2-3)***. ***Shields*** **v.** ***The Queen*** (July 20, 1990), Belleville A 768/90 (Ont. Dist.C.) Byers J.

Parliament in its wisdom has mandated the use of bilingual forms in matters pertaining to criminal law by the promulgation of s. 841(3) of the Criminal Code. This requirement cannot be ignored or circumvented by the use of other forms which have been varied to suit the case or are to the like effect as those forms which are set out in Part XXVIII of the Criminal Code. **(NP)** *I find that the use of the word "shall" in s. 841(3) of the Criminal Code indicates that the provision is mandatory and not directory. Section 28 of the Interpretation Act, I.A., R.S.C. 1970, c. I-23 provides: "28. 'Shall' is to be construed as imperative."* **(NP)** *In the result, I conclude that the search warrant in question is subject to the wording "to the like effect". As it is a form to the like effect as Form 5 and as it was issued in contravention of the mandatory provisions of s. 841(3), it is therefore invalid* ***(p. 7)***. ***R.*** **v.** ***Keenan*** (1990), 84 Man.R. (2d) 1 (Man. P.C.).

In my view, given that s. 841(3) does not require that the substance of the charge against the accused be sets out in the information in both official languages but requires only a bilingual translation of the pre-printed aspects of the information, I cannot accept that the information in this case which set out in substance an allegation that an offence has been committed and which further complies in all respects to all the formal requirements save for that contained in s. 841(3) is a nullity when the omission has not prejudiced the accused. In my view, the defect in the information in the present case is one of form within s. 601(3)(c) of the Code and does not constitute a nullity. Once it is determined that the defect does not constitute an absolute nullity, the characterization of the defect as one of form or substance appears to be largely immaterial. Accordingly even if I am incorrect in my characterization of the defect, Lamer J. teaches us in Moore, supra, that the trial judge must amend the defect, whether of form or substance, by virtue of s. 601(3) of the Code. Moreover, in neither case will the trial judge quash the information unless the accused has been irreparably prejudiced ***(pp. 667-668)***. ***Sorensen*** **v.** ***Regina*** (1990), 75 O.R. (2d) 659 (Ont. C. Gen Div.).

*This appeal concerns a matter of statutory interpretation, and not of linguistic rights or constitutional values****. (p. 707)*** *In my view, subs. 841(3) of the Code does not conflict with section 133 of the Constitution Act, since it imposes an obligation on the state to print bilingual forms, while permitting individuals to choose either language when using them.* **(NP)** *It does not in any way diminish the*

right of any person to use either English or French in any process or pleading of any court in Canada or in Quebec. **(NP)** *Moreover, the evident objective of subs. 841(3) is to facilitate the comprehension, through bilingual forms, of criminal proceedings by the persons concerned. There is no contradiction between this disposition and section 133 of the Constitution Act. Since section 133 provides that either French or English may be used in the proceedings, subs. 841(3) does not impose any restriction on this constitutionally protected right.* ***(p. 709)*** *For the reasons stated, I believe, with respect for the contrary opinion of Justice Otis, that the unilingual informations in this case do not comply with the mandatory requirements of subs. 841(3) of the Criminal Code.* **(NP)** *This does not mean, however, that informations with pre-printed portions in only one of Canada's two official languages are absolute nullities.* **(NP)** *Neither the informant nor the defendant was prejudiced by the use in this case of an information in which the pre-printed portion was in French only. Like the justice who received the information, they are both French-speaking.* **(NP)** *Moreover, the matter has not previously been considered by this Court.* **(NP)** *In these circumstances, I believe the defect in the informations - their unilingual pre-printed text - can be cured by appending to them what they should have contained in the first place: pre-printed portions in the other official language.* **(NP)** *I would so order, allow the appeals for that sole purpose, and, as proposed by Justice Otis, return the files to the trial courts to be proceeded with according to law.* ***(p. 710)*** ***R*** v. ***Noiseux*** (1999), R.J.Q. 704 (QUE.C.A.). Leave to appeal at the Supreme Court dismissed (no reasons for judgment) October 21,1999. [1999] S.C.R.. No 193. 27212.

In my opinion, the learned summary conviction appeal court judge failed to properly balance the interests s. 841(3) was enacted to promote with Parliament's intention, as expressed in s. 601 of the Code, to give the courts extremely broad powers of amendment respecting indictments, counts therein and informations ***(p. 153)***. *Furthermore, the summary conviction appeal court judge failed to properly consider the statements of the Supreme Court of Canada on the subject of defects in form or substance of informations and indictments in the cases have mentioned. The information was not defective other than its failure to comply with s. 841(3) of the Code.* **(NP)** *Notwithstanding the mandatory language in s. 841(3) of the Code, s. 32 of the Interpretation Act provides that deviations from a prescribed form, not affecting substance or calculated to mislead, do not invalidate the form used. Form 2, as provided in the Code, is just that - a form. The defect was one of form, not substance. With respect, the learned summary conviction appeal court judge did not correctly interpret or apply s. 32 of the Interpretation Act.* **(NP)** *The fact that s. 841(3) is expressed in mandatory terms does not lead to the conclusion that an information that fails to comply with the section is a nullity. If the use of mandatory language led to such a conclusion, then the amending powers of s. 601 of the Code would be meaningless. Section 581 mandates that a count in an indictment contain sufficient detail of the circumstances of the offence to give the accused*

reasonable notice of the act or omission to be proven against him. Yet when a count is poorly worded it can, generally, be amended as provided by s. 601. Given the broad power of amendment that had been conferred on judges by s. 601, had Parliament intended, when it enacted s. 841(3), that the failure to use the bilingual forms would result in an information being a nullity, it would have said so in the clearest of language. **(NP)** *For theses reasons I have concluded that the information was not a nullity; it was capable of being amended by the Provincial Court judge* ***(p. 154)****. Crown counsel stapled a blank bilingual form to the information. Section 601(7) does not prescribe how an amendment is to be endorsed on an information or indictment. The method chosen by Crown counsel to amend the information was sloppy but pragmatic under the circumstances as the amendment had been granted by Judge Stroud. As the respondent's mother tongue is English, there was no prejudice to the respondent as a result of the manner in which the amendment was purportedly endorsed on the information. The Crown could have followed the usual practice of filing an amended information retyped on the bilingual form. Another appropriate method would be to type or write upon the information in the proper place the French version of the pre-printed portion of the form so that the information would comply with the requirement of s. 841(3) of the Code* ***(pp. 154-155)****. In excising the power to amend informations, the issue of prejudice to the accused must be considered by the trial judge as required by s. 601(4). As previously noted, pursuant to s. 795 the provisions of s. 601 apply to summary conviction proceedings. The information on the unilingual form did not prejudice the accused whose mother tongue was English****(p. 155)****. In summary, the information as initially drafted was not invalid and there was no need to amend it. As a consequence, it was not fatal that the method used by the Crown was less than perfect. Use of unilingual forms more than two years after s. 841(3) amendment is a sloppy practice which should not be continued in the future. However, the respondent was fully informed of the charge against him* ***(pp. 155-156.)****.* ***Goodine*** **v.** ***Regina*** (1992), 71 C.C.C. (3d) 146 (N.S. C.A.).

[TRANSLATION] *The recognition that failure to comply with the provisions of section 841(3) of the Criminal Code will make a unilingual information absolutely null and void involves a misunderstanding of the informant's right to express him or herself in the language of his or her choice.* ***Alcan Aluminium Limitée*** **v.** ***The Queen*** (February 10, 1994), Chicoutimi 150-27-001626-908 (Que. C.) Tremblay J.

In his written brief, Crown counsel makes reference to the Official languages Act and to the intention of Parliament relevant to the passing of s. 841(3) of the Criminal Code. He concludes that s. 841(3) created a procedural requirement of symbolic significance only and that non-compliance with that section without more does not justify the quashing of a warrant or the exclusion of evidence. Defence counsel does not in his brief take the position that s. 841(3) does

anything more than set out a procedural requirement. In any event, I agree with the Crown's submissions in that regard and therefore defence counsel's arguments based on non-compliance with s. 841(3) fails ***(pp. 376-377)***. ***R.*** **v.** ***Diep*** (1991), 122 A.R. 374.(Alta. P.C.)

Section 841(3), which requires that forms provided for in Part XXVII of the Criminal Code shall be printed in both official languages, applies to the pre-printed and general portions of the information forms. This obligation was complied with in the present case. However, the section does not mention any obligation to supply or to translate into the official language of the accused, the specific contents of an information. I recognize that one must exercise restraint when interpreting language rights in order not to include the word "information" in the text of s. 530.1 where it does not appear ***(p. 125)***. ***Simard*** **v.** ***R.*** (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 S.C.R. x.

See also:

Brisebois **v.** ***R.*** (September 25, 1992), Montreal 505-36-000051-922 (Que. S.C.) Greenberg J.

Cotton **v.** ***La Reine*** (March 13, 1991), Hull 550-36-000038-909 (Que. S.C.) Landry J.

Davies **v.** ***R.*** (1991) O.J No. 40 action No 300/89 (Ont. C. Gen.Div.) Borins J. (QL).

R. **v.** ***Langlois*** (1991), 67 C.C.C. (3d) 375 (B.C S.C.).

R. **v.** ***Murphy*** (1995), 137 N.S.R. (2d) 236) (N.S. C.A.).

R. **v.** ***Robinson*** (September 18, 1992), Doc. S.C.C. 02657, 02658, 02659 (N.S. C.A.).

2.31 Customs Tariff, R.S.C. 1985, c. 41 (3rd Supp.) [C-54.01].

Manner in which goods are to be marked, etc.

64. The Governor in Council may, by order, direct that imported goods of any description or class specified in the order, be marked, stamped, branded or labelled in accordance with the regulations made pursuant to subsection (5) so as to indicate the country **origin....**

(2) Where an order is made pursuant to subsection (1), the goods to which the order applies shall be marked, stamped, branded or labelled

(a) in legible **English** or **French** words;

2.32 Department of Canadian Heritage Act, S.C. 1995, c. 11 [C-17.3].

Minister's powers, duties and functions

4. (1) The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not by law assigned to any other department, board or agency of the Government of Canada, relating to Canadian identity and values, cultural development, heritage and areas of natural or historical significance to the nation.

Idem

(2) The Minister's jurisdiction referred to in subsection (1) encompasses, but is not limited to, jurisdiction over. . .

(g) the advancement of the equality of status and use of **English** and **French** and the enhancement and development of the **English** and **French linguistic** minority communities in Canada;

2.33 Employment Insurance Act, S.C. 1996, c. 23 [E-5.6].

Guidelines

57. (1) Employment benefits and support measures under this Part shall be established in accordance with the following guidelines: . . .

(d.1) availability of assistance under the benefits and measures in either **official language** where there is significant demand for that assistance in that **language**;

2.34 European Bank for Reconstruction and Development Agreement Act, S.C. 1991, c. 12 [E-13.5].

Done at Paris on 29 May 1990 in a single original, whose **English**, **French**, German and Russian texts are equally authentic, which shall be deposited in the archives of the Depository which shall transmit a duly certified copy to each of the other prospective members whose names are set forth in Annex A.

2.35 Excise Tax Act, R.S.C. 1985, c. E-15.

Language of editorial material

41. (1) Editorial material in a **language** that contains the same information as, and can reasonably be considered to be merely a **translation** of, editorial material in another **language** shall, for the purposes of this Part, be deemed to be the same as the editorial material in the other **language**.

Language of ads

(2) An advertisement in a **language** shall, for the purposes of this Part, be deemed not to be identical to an advertisement in another **language**, notwithstanding that they contain the same information and one can reasonably be considered to be a **translation** of the other. R.S. 1985, c. E-15, s. 41; R.S. 1985, c. 7 (2nd Supp.), s. 12; 1995, c. 46, s. 1.

Goods exempted

51. (1) The tax imposed by section 50 does not apply to the sale or importation of the goods mentioned in Schedule III, other than those goods mentioned in Part XIII of that Schedule that are sold to or imported by persons exempt from consumption or sales tax under subsection 54(2).

Books and records

98. (1) Every person who

(a) is required, by or pursuant to this Act, to pay or collect taxes or other sums or to affix or cancel stamps, or

(b) makes an application under any of sections 68 to 70,

shall keep records and books of account in **English** or **French** at that person's place of business in Canada in such form and containing such information as will enable the amount of taxes or other sums that should have been paid or collected, the amount of stamps that should have been affixed or cancelled or the amount, if any, of any drawback, payment or deduction that has been made or that may be made to or by that person, to be determined. R.S. 1985, c. E-15, s. 98; R.S. 1985, c. 15 (1st Supp.), s. 36, c. 7 (2nd Supp.), s. 45.

Keeping books and records

286. (1) Every person who carries on a business or is engaged in a commercial activity in Canada, every person who is required under this Part to file a return and every person who makes an application for a rebate or refund shall keep records in **English** or in **French** in Canada, or at such other place and on such terms and conditions as the Minister may specify in writing, in such form and containing such information as will enable the determination of the person's liabilities and obligations under this Part or the amount of any rebate or refund to which the person is entitled. 1990, c. 45, s. 12.

SCHEDULE III

PART III

EDUCATIONAL, TECHNICAL, CULTURAL, RELIGIOUS AND LITERARY

4. Phonograph records and audio tapes authorized by the Department of Education of any province for instruction in the **English** or **French language**, and materials for use exclusively in the manufacture thereof.

11. A supply of a service of instructing individuals in, or administering examinations in respect of, **language** courses that form part of a program of second-**language** instruction in either **English** or **French**, where the supply is made by a school authority, public college or university or an organization that is established and operated primarily to provide instruction in **languages**.

2.36 Federal Court Act, R.S.C 1985, c. F-7.

Official languages

58. (4) Each decision reported in the official reports shall be published therein in both **official languages.**

Jonik Hospitality Group Ltd.* v. *Atlas Conti Travel & Tourism Inc. (1996), 68 C.P.R. (3d) 99 (F.C. T.D.).

2.37 Food and Agriculture Organization of the United Nations Act, R.S.C. 1985, c. F-26.

Article XXIII. Languages

Pending the adoption by the Conference of any rules regarding **languages**, the business of the Conference shall be transacted in **English**.

ANNEX II

Done at Quebec, Canada, this sixteenth day of October, one thousand nine hundred and forty-five, in the **English language**, in a single copy which will be deposited in the archives of the Food and Agriculture Organization of the United Nations and of which authenticated copies will be transmitted by the Director-General to the governments of the nations enumerated in Annex I to this Constitution and of Members admitted to the Organization by the Conference in accordance with the provisions of Article II.

2.38 Foreign Missions and International Organizations Act, S.C. 1991, c. 41 [F-29.4].

Schedule I. Article 53

The original of the present Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 48.

Schedule II. Article 79

Authentic texts

The original of the present Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

2.39 Geneva Conventions Act, R.S.C. 1985, c. G-3.

SCHEDULE I

FINAL PROVISIONS

Article 55. The present Convention is established in **English** and in **French**. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official **translations** of the Convention to be made in the Russian and Spanish **languages**.

Article 64. Done at Geneva this twelfth day of August 1949, in the **English** and **French languages**. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

SCHEDULE II

Article 31. As far as possible, the Parties to the conflict shall enter in the log of the hospital ship, in a **language** he can understand, the orders they have given the captain of the vessel.

Article 42....Such personnel, in addition to wearing the identity disc mentioned in Article 19, shall also carry a special identity card bearing the distinctive emblem. This card shall be water-resistant and of such size that it can be carried in the pocket. It shall be worded in the national **language**, shall mention at least the surname and first names, the date of birth, the rank and the service number of the bearer, and shall state in what capacity he is entitled to the protection of the present Convention. The card shall bear the photograph of the owner and also either his signature or his fingerprints or both. It shall be embossed with the stamp of the military authority.

Article 54. The present Convention is established in **English** and in **French**. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official **translations** of the Convention to be made in the Russian and Spanish **languages**.

Article 63. Done at Geneva this twelfth day of August 1949, in the **English** and **French languages**. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

SCHEDULE III

Article 17.... The questioning of prisoners of war shall be carried out in a **language** which they understand.

Article 22.... The Detaining Power shall assemble prisoners of war in camps or camp compounds according to their nationality, **language** and customs, provided that such prisoners shall not be separated from prisoners of war belonging to the armed forces with which they were serving at the time of their capture, except with their consent.

Article 35. Chaplains who fall into the hands of the enemy Power and who remain or are retained with a view to assisting prisoners of war, shall be allowed to minister to them and to exercise freely their ministry amongst prisoners of war of the same religion, in accordance with their religious conscience. They shall be allocated among the various camps and labour detachments containing prisoners of war belonging to the same forces, speaking the same **language** or practising the same religion. They shall enjoy the necessary facilities, including the means of transport provided for in Article 33, for visiting the prisoners of war outside their camp. They shall be free to correspond, subject to censorship, on matters concerning their religious duties with the ecclesiastical authorities in the country of detention and with international religious organizations. Letters and cards which they may send for this purpose shall be in addition to the quota provided for in Article 71.

Article 41. In every camp the text of the present Convention and its Annexes and the contents of any special agreement provided for in Article 6, shall be posted, in the prisoners' own **language**, in places where all may read them. Copies shall be supplied, on request, to the prisoners who cannot have access to the copy which has been posted.

Regulations, orders, notices and publications of every kind relating to the conduct of prisoners of war shall be issued to them in a **language** which they understand. Such regulations, orders and publications shall be posted in the manner described above and copies shall be handed to the prisoners' representative. Every order and command addressed to prisoners of war individually must likewise be given in a **language** which they understand.

Article 44. Officers and prisoners of equivalent status shall be treated with the regard due to their rank and age.

In order to ensure service in officers' camps, other ranks of the same armed forces who, as far as possible, speak the same **language**, shall be assigned in sufficient numbers, account being taken of the rank of officers and prisoners of equivalent status. Such orderlies shall not be required to perform any other work.

Supervision of the mess by the officers themselves shall be facilitated in every way.

Article 71. Prisoners of war shall be allowed to send and receive letters and cards. If the Detaining Power deems it necessary to limit the number of letters and cards sent by each prisoner of war, the said number shall not be less than two letters and four cards monthly, exclusive of the capture cards provided for in Article 70, and conforming as closely as possible to the models annexed to the present Convention. Further limitations may be imposed only if the Protecting Power is satisfied that it would be in the interests of the prisoners of war concerned to do so owing to difficulties of **translation** caused by the Detaining Power's inability to find sufficient qualified linguists to carry out the necessary censorship. If limitations must be placed on the correspondence addressed to prisoners of war, they may be ordered only by the Power on which the prisoners depend, possibly at the request of the Detaining Power. Such letters and cards must be conveyed by the most rapid method at the disposal of the Detaining Power; they may not be delayed or retained for disciplinary reasons. . . .

As a general rule, the correspondence of prisoners of war shall be written in their native **language**. The Parties to the conflict may allow correspondence in other **languages**.

Article 79. . . . In all cases the prisoners' representative must have the same nationality, **language** and customs as the prisoners of war whom he represents. Thus, prisoners of war distributed in different sections of a camp, according to their nationality, **language** or customs, shall have for each section their own prisoners' representative, in accordance with the foregoing paragraphs.

Article 96....Before any disciplinary award is pronounced, the accused shall be given precise information regarding the offences of which he is accused, and given an opportunity of

explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified **interpreter**. The decision shall be announced to the accused prisoner of war and to the prisoners' representative.

Article 105. The prisoner of war shall be entitled to assistance by one of his prisoner comrades, to defence by a qualified advocate or counsel of his own choice, to the calling of witnesses and, if he deems necessary, to the services of a competent **interpreter**. He shall be advised of these rights by the Detaining Power in due time before the trial. . . .

Particulars of the charge or charges on which the prisoner of war is to be arraigned, as well as the documents which are generally communicated to the accused by virtue of the laws in force in the armed forces of the Detaining Power, shall be communicated to the accused prisoner of war in a **language** which he understands, and in good time before the opening of the trial. The same communication in the same circumstances shall be made to the advocate or counsel conducting the defence on behalf of the prisoner of war.

Article 107. Any judgment and sentence pronounced upon a prisoner of war shall be immediately reported to the Protecting Power in the form of a summary communication, which shall also indicate whether he has the right of appeal with a view to the quashing of the sentence or the reopening of the trial. This communication shall likewise be sent to the prisoners' representative concerned. It shall also be sent to the accused prisoner of war in a **language** he understands, if the sentence was not pronounced in his presence. The Detaining Power shall also immediately communicate to the Protecting Power the decision of the prisoner of war to use or to waive his right of appeal.

Article 126. Representatives or delegates of the Protecting Powers shall have permission to go to all places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to all premises occupied by prisoners of war; they shall also be allowed to go to the places of departure, passage and arrival of prisoners who are being transferred. They shall be able to interview the prisoners, and in particular the prisoners' representatives, without witnesses, either personally or through an **interpreter**.

FINAL PROVISIONS

Article 133. The present Convention is established in **English** and in **French**. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official **translations** of the Convention to be made in the Russian and Spanish **languages**.

Article 143. Done at Geneva this twelfth day of August 1949, in the **English** and **French languages**. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

ANNEXE IV

Article 50. . . . Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, **language** and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.

Article 65. The penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own **language**. The effect of these penal provisions shall not be retroactive.

Article 71. No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.

Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a **language** which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. The Protecting Power shall be informed of all proceedings instituted by the Occupying Power against protected persons in respect of charges involving the death penalty or imprisonment for two years or more; it shall be enabled, at any time, to obtain information regarding the state of such proceedings. Furthermore, the Protecting Power shall be entitled, on request, to be furnished with all particulars of these and of any other proceedings instituted by the Occupying Power against protected persons.

Article 72. . . . Accused persons shall, unless they freely waive such assistance, be aided by an **interpreter**, both during preliminary investigation and during the hearing in court. They shall have the right at any time to object to the **interpreter** and to ask for his replacement.

Article 82. The Detaining Power shall, as far as possible, accommodate the internees according to their nationality, **language** and customs. Internees who are nationals of the same country shall not be separated merely because they have different **languages**.

Article 93. . . . Ministers of religion who are interned shall be allowed to minister freely to the members of their community. For this purpose, the Detaining Power shall ensure their equitable allocation amongst the various places of internment in which there are internees speaking the same **language** and belonging to the same religion. Should such ministers be too few in number, the Detaining Power shall provide them with the necessary facilities, including means of transport, for moving from one place to another, and they shall be authorized to visit any internees who are in hospital. Ministers of religion shall be at liberty to correspond on matters concerning their ministry with the religious authorities in the country of detention and, as far as possible, with the international religious organizations of their faith. Such correspondence shall not be considered as forming a part of the quota mentioned in Article 107. It shall, however, be subject to the provisions of Article 112.

Article 99. Every place of internment shall be put under the authority of a responsible officer, chosen from the regular military forces or the regular civil administration of the Detaining Power. The officer in charge of the place of internment must have in his possession a copy of the

present Convention in the **official language**, or one of the **official languages**, of his country and shall be responsible for its application. The staff in control of internees shall be instructed in the provisions of the present Convention and of the administrative measures adopted to ensure its application.

The text of the present Convention and the texts of special agreements concluded under the said Convention shall be posted inside the place of internment, in a **language** which the internees understand, or shall be in the possession of the Internee Committee.

Regulations, orders, notices and publications of every kind shall be communicated to the internees and posted inside the places of internment, in a **language** which they understand.

Every order and command addressed to internees individually, must likewise, be given in a **language** which they understand.

Article 107. . . . As a rule, internees' mail shall be written in their own **language**. The Parties to the conflict may authorize correspondence in other **languages**.

Article 123. . . . Before any disciplinary punishment is awarded, the accused internee shall be given precise information regarding the offences of which he is accused, and given an opportunity of explaining his conduct and of defending himself. He shall be permitted, in particular, to call witnesses and to have recourse, if necessary, to the services of a qualified **interpreter**. The decision shall be announced in the presence of the accused and of a member of the Internee Committee.

Article 143. . . . They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an **interpreter**.

Article 150. The present Convention is established in **English** and in **French**. Both texts are equally authentic.

The Swiss Federal Council shall arrange for official **translations** of the Convention to be made in the Russian and Spanish **languages**.

Article 159. Done at Geneva this twelfth day of August, 1949, in the **English** and **French languages**. The original shall be deposited in the Archives of the Swiss Confederation. The Swiss Federal Council shall transmit certified copies thereof to each of the signatory and acceding States.

SCHEDULE V

Article 9 — Field of application

1. This Part, the provisions of which are intended to ameliorate the condition of the wounded, sick and shipwrecked, shall apply to all those affected by a situation referred to in Article 1, without any adverse distinction founded on **race**, colour, sex, **language**, religion or belief,

political or other opinion, **national** or social **origin**, wealth, birth or other status, or on any other similar criteria.

Article 75 — Fundamental guarantees

1. In so far as they are affected by a situation referred to in Article 1 of this Protocol, persons who are in the power of a Party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this Article without any adverse distinction based upon **race**, colour, sex, **language**, religion or belief, political or other opinion, **national** or social **origin**, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a **language** he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

Article 78 — Evacuation of children

3. With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross. Each card shall bear, whenever possible, and whenever it involves no risk of harm to the child, the following information: . . .

(i) the child's native **language**, and any other **languages** he speaks;

Article 102 — Authentic texts

The original of this Protocol, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.

SCHEDULE VI

PROTOCOL II

Article 2 — Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on **race**, colour, sex, **language**, religion or belief, political or other opinion, **national** or social **origin**, wealth, birth or

other status, or on any other similar criteria (hereinafter referred to as "adverse distinction") to all persons affected by an armed conflict as defined in Article 1.

Article 28 — Authentic texts

The original of this Protocol, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions. 1990, c. 14, s. 6.

2.40 Immigration, Act, R.S.C. 1985, c. I-2.

Regulations

114. (1) The Governor in Council may make regulations...

(a) prescribing classes of immigrants and providing for the establishment, and the application to such classes, of selection standards based on such factors as family relationships, education, **language**, skill, occupational or business experience and other personal attributes and attainments, together with demographic considerations and labour market conditions in Canada, for the purpose of determining whether or not and the degree to which an immigrant will be able to become successfully established in Canada; . . . R.S. 1985, c. I-2, s. 114; R.S. 1985, c. 28 (4th Supp.), s. 29, c. 29 (4th Supp.), s. 14; 1990, c. 38, s. 1; 1992, c. 49, s. 102; 1994, c. 26, s. 36(A).

A person who can barely, if at all, speak and converse in an official language, and who reads it aloud but without comprehension can surely be found to be unable to initiate any written expression, even if he could perhaps (not so found) copy some passage. Such a poor, if not nonexistent, command of an official language of Canada surely does not merit even 2 points, absent the visa officer's apparent generosity ***(p. 145)***. ***Saggu* v. *Canada (Minister of Citizenship and Immigration)*** (1994), 87 F.T.R. 137 (F.C. T.D.).

See also:

Covrig* c. *Canada (Minister of Citizenship and Immigration) (1995), 104 F.T.R. 41 (F.C. T.D.).

Lin* c. *Canada (Minister of Citizenship and Immigration) (1996), 107 F.T.R. 225 (F.C. T.D.).

Nassrat* c. *Canada (Minister of Citizenship and Immigration) (1995), 30 Imm. L.R. (2d) 1 (F.C. T.D.).

Ting* c. *Canada (Minister of Citizenship and Immigration) (October 30, 1996), Doc. IMM-556-96 (F.C. T.D.).

2.41 Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.).

Amounts to be included as income from office or employment

6. (1) There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:...

Personal or living expenses...

(b) all amounts received for personal or living expenses or as an allowance for any other purpose, except...

(ix) allowances (not in excess of reasonable amounts) received by an employee from the employee's employer in respect of any child of the employee living away from the employee's domestic establishment in the place where the employee is required by reason of the employee's employment to live in full-time attendance at a school in which the **language** primarily used for instruction is the **official language** of Canada primarily used by the employee if :

(A) a school suitable for that child primarily using that **language** of instruction is not available in the place where the employee is so required to live, and

(B) the school the child attends primarily uses that **language** for instruction and is not farther from that place than the community nearest to that place in which there is such a school having suitable boarding facilities

and, for the purposes of subparagraph (v), (vi) and (vii.1), an allowance received in a taxation year by a taxpayer for the use of a motor vehicule in connection with or in the course of the taxpayer's office or employment shall deemed not to be a reasonable allowance...

(x) where the measurement of the use of the vehicule for the purpose of the allowance is not based solely of the number of kilometres for which the vehicule is used in connection with or in the course of the office or employment, or

(xi) where the taxpayer both receives an allowance in respect of that use and is reimbursed in whole or in part for expenses in respect of that use (except where the reimbursement is in respect of supplementary business insurance or toll or ferry charges and the amount of the allowance was determined without reference to those reimbursed expenses);

The official reason for the plaintiff's transfer was stated to be accelerated implementation of bilingualization in the air traffic control towers in Quebec where, until then, the official working language had been English. The issue to be determined concerns the tax liability of a payment made by the employer to the taxpayer termed "Air Traffic Control Linguistic Relocation Allowance" ***(p. 122)****. I therefore allow this appeal and declare that the*

Accommodation Differential Allowance in the amount of $15,571 paid to the plaintiff by Her Majesty the Queen in the Right of Canada is not taxable; but the Social Disruption Allowance in the amount of $2,155.41 is to be included in computing the taxpayer's income for 1976 ***(p. 138)***. ***McNeill* v. *Canada***, [1987] 1 F.C. 119 (F.C. T.D.).

See also:

Guay* v. *R. (1996), 3 C.T.C. 2384.

2.42 Income Tax Conventions Implementation Act, S.C. 1995, c. 37 [I-3.5].

Schedule I. Article 30 Termination

DONE in duplicate at Ottawa, this 26th day of April 1995, in the **English**, **French** and Latvian **languages**, each version being equally authentic.

Schedule II. Article 30 Termination

DONE in duplicate at Tallinn, this 2nd day of June 1995, in the **English**, **French** and Estonian **languages**, each version being equally authentic.

Schedule III. Article 29 Termination

DONE in duplicate at Toronto, this 11th day of September 1995, in the **English** and **French languages**, each version being equally authentic.

2.43 Insurance Companies Act, S.C. 1991, c. 47 [I-11.8].

French or English form of name

44. (1) The name of a company or society may be set out in its letters patent in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form, and the company or society may use and be legally designated by any such form.

Alternate name

(2) A company or society may identify itself outside Canada by its name in any **language** and the company or society may use and be legally designated by any such form of its name outside Canada. 1991, c. 47, s. 44; 1996, c. 6, s. 69.

French, English or foreign form of name

578. (1) The name under which a foreign company is to insure risks may be set out in the order approving the insuring in Canada of risks by the foreign company in an **English** form, a **French** form, an **English** form and a **French** form, a combined **English** and **French** form or a form combining words in a **language** other than **English** or **French** with one of the forms specified in this subsection.

2.44 International Sale of Goods Contracts Convention Act, S.C. 1991, c. 13 [I-20.4].

Article 101 DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic.

2.45 Interpretation Act, R.S.C. 1985 c. I-21.

Powers vested in corporations

21. (1) Words establishing a corporation shall be construed

(b) in the case of a corporation having a name consisting of an **English** and a **French** form or a combined **English** and **French** form, as vesting in the corporation power to use either the **English** or the **French** form of its name or both forms and to show on its seal both the **English** and **French** forms of its name or have two seals, one showing the **English** and the other showing the **French** form of its name;

Corporate name

(2) Where an enactment establishes a corporation and in each of the **English** and **French** versions of the enactment the name of the corporation is in the form only of the **language** of that version, the name of the corporation shall consist of the form of its name in each of the versions of the enactment. R.S. c. I-23, s. 20.

2.46 Marine Transportation Security Act, S.C. 1994, c. 40 [M-0.8].

Placement and languages of notices

21. (2) The notices must be posted in prominent places where authorized screening is carried out and they must be written in both of the **official languages** of Canada and may, in addition, be written in any other **language**.

2.47 Motor Vehicle Safety Act, S.C. 1993, c. 16 [M-10.01].

Definition of "technical standards document"

12. (1) In this section, "technical standards document" means a document, published in the prescribed manner by authority of the Minister, that reproduces in the **official languages** of Canada an enactment of a foreign government with such adaptations of form and reference as will facilitate the incorporation of the enactment under this section.

2.48 Museums Act, S.C. 1990, c. 3 [M-13.4].

Declaration

3. It is hereby declared that the heritage of Canada and all its peoples is an important part of the world heritage and must be preserved for present and future generations and that each museum established by this Act. . .

(b) is a source of inspiration, research, learning and entertainment that belongs to all Canadians and provides, in both **official languages**, a service that is essential to Canadian culture and available to all.

2.49 National Capital Act, R.S.C. 1985, c. N-4.

Objects and purposes of Commission

10. (1) The objects and purposes of the Commission are to . . .

(b) organize, sponsor or promote such public activities and events in the National Capital Region as will enrich the cultural and social fabric of Canada, taking into account the federal character of Canada, the equality of status of the **official languages** of Canada and the heritage of the people of Canada. R.S. 1985, c. N-4, s. 10; R.S. 1985, c. 45 (4th Supp.), s. 3.

2.50 National Park Act, R.S.C. 1985, N-14.

Governor in Council may add lands to existing parks

3. (2) Subject to subsections (3) to (6), the Governor in Council may, by proclamation, amend Schedule I by adding to any park described therein lands described in the proclamation where the Governor in Council is satisfied that. . .

(c) notice of intention to issue a proclamation under this section, together with a description of the lands proposed to be described in the proclamation, has been published in the Canada Gazette at least ninety days before the day on which the Governor in Council proposes to issue the proclamation and, where the area of the lands described in the proclamation is significant in relation to the park, has been published, during that period of at least ninety days, in a newspaper or alternative medium serving the area in which the lands are situated and in two major daily newspapers in each of the five regions of Canada, namely, the Atlantic provinces, Quebec, Ontario, the Prairie provinces and British Columbia, at least once a week for a period of four consecutive weeks in both **official languages** and in any other **language** that, in the opinion of the Minister, is appropriate. R.S. 1985, c. N-14, s. 3; R.S. 1985, c. 39 (4th Supp.), s. 2.

2.51 Northern Pipeline Act, R.S.C. 1985, c. N-26.

ANNEX I

DONE in duplicate at Ottawa in the **English** and **French languages**, both versions being equally authentic, this twentieth day of September 1977.

2.52 Oceans Act, S.C. 1996, c. 31 [O-2.4].

Contravention of unpublished order

38. No person may be convicted of an offence consisting of a contravention of an order made under subsection 36(1) in the exercise of a power under paragraph 35(3)(b) that, at the time of the alleged contravention, had not been published in the Canada Gazette in both **official languages** unless it is proved that reasonable steps had been taken before that time to bring the purport of the order to the attention of those persons likely to be affected by it.

2.53 Official languages of Canada, An Act Respecting the Status and Use of the, R.S.C. 1985, c. O-3.01.

Preamble

WHEREAS the Constitution of Canada provides that **English** and **French** are the **official languages** of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada;

AND WHEREAS the Constitution of Canada provides for full and equal access to Parliament, to the laws of Canada and to courts established by Parliament in both **official languages**;

AND WHEREAS the Constitution of Canada also provides for guarantees relating to the right of any member of the public to communicate with, and to receive available services from, any institution of the Parliament or government of Canada in either **official language**;

AND WHEREAS officers and employees of institutions of the Parliament or government of Canada should have equal opportunities to use the **official language** of their choice while working together in pursuing the goals of those institutions;

AND WHEREAS **English-speaking** Canadians and **French-speaking** Canadians should, without regard to their **ethnic origin** or first **language** learned, have equal opportunities to obtain employment in the institutions of the Parliament or government of Canada;

AND WHEREAS the Government of Canada is committed to achieving, with due regard to the principle of selection of personnel according to merit, full participation of **English-speaking** Canadians and **French-speaking** Canadians in its institutions;

AND WHEREAS the Government of Canada is committed to enhancing the vitality and supporting the development of **English** and **French linguistic** minority communities, as an integral part of the two **official language** communities of Canada, and to fostering full recognition and use of **English** and **French** in Canadian society;

AND WHEREAS the Government of Canada is committed to cooperating with provincial governments and their institutions to support the development of **English** and **French linguistic** minority communities, to provide services in both **English** and **French**, to respect the constitutional guarantees of minority **language** educational rights and to enhance opportunities for all to learn both **English** and **French**;

AND WHEREAS the Government of Canada is committed to enhancing the bilingual character of the National Capital Region and to encouraging the business community, labour organizations and voluntary organizations in Canada to foster the recognition and use of **English** and **French**;

AND WHEREAS the Government of Canada recognizes the importance of preserving and enhancing the use of **languages** other than **English** and **French** while strengthening the status and use of the **official languages**;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title

1. This Act may be cited as the ***Official languages Act***.

Purpose

2. The purpose of this Act is to

(a) ensure respect for **English** and **French** as the **official languages** of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions, in particular with respect to their use in parliamentary proceedings, in legislative and other instruments, in the administration of justice, in communicating with or providing services to the public and in carrying out the work of federal institutions;

(b) support the development of **English** and **French linguistic** minority communities and generally advance the equality of status and use of the **English** and **French languages** within Canadian society; and

(c) set out the powers, duties and functions of federal institutions with respect to the **official languages** of Canada.

It [the Official Languages Act of 1969] *is both declaratory and directory in respect of the use of English and French by and in federal authorities and agencies . . .* ***(p. 151)***. ***Thorson* v. *A.G. of Canada***, [1975] 1 S.C.R. 138.

The 1988 Official Languages Act is not an ordinary statute. It reflects both the Constitution of the country and the social and political compromise out of which it arose. To the extent that it is the exact reflection of the recognition of the official languages contained in subsections 16(1) and (3) of the Canadian Charter Rights and Freedoms, it follows the rules of interpretation of that Charter as they have been defined by the Supreme Court of Canada. To the extent also that it is an extension of the rights and guarantees recognized in the Charter, and by virtue of its preamble, its purpose as defined in section 2 and its taking precedence over other statutes in accordance with subsection 82(1), it belongs to that privileged category of quasi-constitutional legislation which reflects "certain basic goals of our society" and must be so interpreted "as to advance the broad policy considerations underlying it." To the extent, finally, that it is legislation regarding language rights, which have assumed the position of fundamental rights in Canada but are nonetheless the result of a delicate social and political compromise, it requires the courts to exercise caution and to "pause before they decide to act as instruments of change", as Beetz J. observed in Société des Acadiens du Nouveau-Brunswick Inc. et al. v. Association of Parents for Fairness in Education et al ***(pp. 386-387)***. ***Canada (A. G.)* v. *Viola***, [1991] 1 F.C. 373 (F.C.A.).

See also:

St-Onge* v. *Canada, [1992] 3 F.C. 287 (F.C.A.).

INTERPRETATION

Definitions

3. (1) In this Act,

"Commissioner" «commissaire»

"Commissioner" means the Commissioner of **Official languages** for Canada appointed under section 49;

"Crown corporation" «sociétés d'État»

"Crown corporation" means

(a) a corporation that is ultimately accountable, through a Minister, to Parliament for the conduct of its affairs, and

(b) a parent Crown corporation or a wholly-owned subsidiary, within the meaning of section 83 of the Financial Administration Act;

"department" «ministère»

"department" means a department as defined in section 2 of the Financial Administration Act;

"federal institution" «institutions fédérales»

"federal institution" includes any of the following institutions of the Parliament or government of Canada:

(a) the Senate,

(b) the House of Commons,

(c) the Library of Parliament,

(d) any federal court,

(e) any board, commission or council, or other body or office, established to perform a governmental function by or pursuant to an Act of Parliament or by or under the authority of the Governor in Council,

(f) a department of the Government of Canada,

(g) a Crown corporation established by or pursuant to an Act of Parliament, and

(i) any institution of the Council or government of the Northwest Territories or the Yukon Territory, or

(h) any other body that is specified by an Act of Parliament to be an agent of Her Majesty in right of Canada or to be subject to the direction of the Governor in Council or a minister of the Crown,

but does not include

(j) any Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people;

"National Capital Region" «région de la capitale nationale»

"National Capital Region" means the National Capital Region described in the schedule to the National Capital Act.

Definition of "federal court"

(2) In this section and in Parts II and III, "federal court" means any court, tribunal or other body that carries out adjudicative functions and is established by or pursuant to an Act of Parliament.

[TRANSLATION] *I agree with the employer's submission that the adjudicator appointed pursuant to the collective agreement between the employer and the union is not a "federal court" within the meaning of the Official Languages Act because it is not a court "established by or pursuant to an Act of Parliament"* ***(p. 90)***. ***Syndicat des débardeurs, Section locale 375* v. *Association des employeurs maritimes***, [1993] T.A. 79 (Que. A.T.).

PART I

PROCEEDINGS OF PARLIAMENT

Official languages of Parliament

4. (1) **English** and **French** are the **official languages** of Parliament, and everyone has the right to use either of those **languages** in any debates and other proceedings of Parliament.

Simultaneous interpretation

(2) Facilities shall be made available for the simultaneous **interpretation** of the debates and other proceedings of Parliament from one **official language** into the other.

Official reports

(3) Everything reported in official reports of debates or other proceedings of Parliament shall be reported in the **official language** in which it was said and a **translation** thereof into the other **official language** shall be included therewith.

PART II

LEGISLATIVE AND OTHER INSTRUMENTS

Journals and other records

5. The journals and other records of Parliament shall be made and kept, and shall be printed and published, in both **official languages**.

Acts of Parliament

6. All Acts of Parliament shall be enacted, printed and published in both **official languages**.

Legislative instruments

7. (1) Any instrument made in the execution of a legislative power conferred by or under an Act of Parliament that

(a) is made by, or with the approval of, the Governor in Council or one or more ministers of the Crown,

(b) is required by or pursuant to an Act of Parliament to be published in the Canada Gazette, or

(c) is of a public and general nature shall be made in both **official languages** and, if printed and published, shall be printed and published in both **official languages**.

Instruments under prerogative or other executive power

(2) All instruments made in the exercise of a prerogative or other executive power that are of a public and general nature shall be made in both **official languages** and, if printed and published, shall be printed and published in both **official languages**.

Exceptions

(3) Subsection (1) does not apply to

(a) an ordinance of the Northwest Territories or the Yukon Territory, or any instrument made thereunder, or

(b) a by-law, law or other instrument of an Indian band, band council or other body established to perform a governmental function in relation to an Indian band or other group of aboriginal people, by reason only that the ordinance, by-law, law or other instrument is of a public and general nature.

Documents in Parliament

8. Any document made by or under the authority of a federal institution that is tabled in the Senate or the House of Commons by the Government of Canada shall be tabled in both **official languages**.

Rules, etc., governing practice and procedure

9. All rules, orders and regulations governing the practice or procedure in any proceedings before a federal court shall be made, printed and published in both **official languages**.

International treaties

10. (1) The Government of Canada shall take all possible measures to ensure that any treaty or convention between Canada and one or more other states is authenticated in both **official languages**.

Federal-provincial agreements

(2) The Government of Canada has the duty to ensure that the following classes of agreements between Canada and one or more provinces are made in both **official languages** and that both versions are equally authoritative:

(a) agreements that require the authorization of Parliament or the Governor in Council to be effective;

In other words, apart from these transitional measures, the Agreement was not intended to have any effect as a contract. What was intended was that it should be legislated into effect: "the Agreement shall come into force and shall bind the Parties on the date when both the federal and provincial laws respectively approving, giving effect to and declaring valid the Agreement are in force" (emphasis added). In other words it is to be a legislated contract, one that derives all of its legal force even as a contract from the laws which are to given it effect and validity ***(pp. 551-552)***. ***Administration régionale Crie*** **v.** ***Canada***, [1991] 3 F.C. 533 (F.C. T.D.).

(b) agreements entered into with one or more provinces where **English** and **French** are declared to be the **official languages** of any of those provinces or where any of those provinces requests that the agreement be made in **English** and **French**; and

(c) agreements entered into with two or more provinces where the governments of those provinces do not use the same **official language**.

Regulations

(3) The Governor in Council may make regulations prescribing the circumstances in which any class, specified in the regulations, of agreements that are made between Canada and one or more other states or between Canada and one or more provinces

(a) must be made in both **official languages**;

(b) must be made available in both **official languages** at the time of signing or publication; or

(c) must, on request, be translated.

Notices, advertisements and other matters that are published

11. (1) A notice, advertisement or other matter that is required or authorized by or pursuant to an Act of Parliament to be published by or under the authority of a federal institution primarily for the information of members of the public shall,

(a) wherever possible, be printed in one of the **official languages** in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that **language** and in the other **official language** in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that other **language**; and

(b) where there is no publication in general circulation within a region where the matter applies that appears wholly or mainly in **English** or no such publication that appears wholly or mainly in **French**, be printed in both **official languages** in at least one publication in general circulation within that region.

Equal prominence

(2) Where a notice, advertisement or other matter is printed in one or more publications pursuant to subsection (1), it shall be given equal prominence in each **official language**.

Saulnier* v. *R. (1989), 90 N.S.R. (2d) 77 (N.S. Ct.C.).

Instruments directed to the public

12. All instruments directed to or intended for the notice of the public, purporting to be made or issued by or under the authority of a federal institution, shall be made or issued in both **official languages**.

We are of the opinion that s. 3 of the Official Languages Act [of 1969] *has no application to a certificate under s. 237(5) of the Criminal Code. The notice*

required under s. 237(5) of the Code is "to the accused" and is not intended "for the notice of the public". Under the Official Languages Act it is completely in accord with the objects of that Act that official notices "directed to or intended for the notice of the public" should be promulgated in both official languages. **(NP)** *The term "promulgated" as used in that Act is completely inappropriate to describe service of a personal notice under s. 237 of the Criminal Code. Obviously, Parliament did not intend that s. 3 of the Official Languages Act would apply to all notices issued under the authority of Parliament otherwise the words "directed to or intended for the notice of the public" would have been omitted from the section. The use of those words proscribes the circumstances in which bilingual instruments are required by the Act* ***(p. 352)***. ***R.* v. *Saulnier***, (1979), 50 C.C.C. (2d) 350 (N.S. C.A.).

See also:

Stauffer* v. *R. (1981), 22 C.R. (3d) 336 (Alta. C.A.). Pourvoi refusé par (1981), 39 N.R. 539 (C.S.C.)

Both versions simultaneous and equally authoritative

13. Any journal, record, Act of Parliament, instrument, document, rule, order, regulation, treaty, convention, agreement, notice, advertisement or other matter referred to in this Part that is made, enacted, printed, published or tabled in both **official languages** shall be made, enacted, printed, published or tabled simultaneously in both **languages**, and both **language** versions are equally authoritative.

I do not believe that s. 8(2)(b) of the Official Languages Act is of much assistance to respondent. The rule therein expressed is a guide; it is one of several aids to be used in the construction of a statute so as to arrive at the meaning which, "according to the true spirit, intent and meaning of an enactment, best ensures the attainment of its objects" (s. 8(2)(b)). The rule of s. 8(2)(b) should not be given such an absolute effect that it would necessarily override all other canons of construction ***(pp.871- 872)***. ***Cie Imm. BCN Ltée* v. *The Queen***, [1979]1 R.C.S 865.

In our view, the ambiguity, if any, is found in the French version alone. In the event of conflict between English and French versions, resort may be had to the true spirit, intent and meaning of the provision so as to construe the provision in a manner consistent with its objectives: Official Languages Act, R.S.C. 1970, c. O-2, s. 8(2)(d) ***(p. 693)***. ***Clarck* v. *Canadian National Railway Company***, [1988] 2 S.C.R. 680.

Application of the principle in the Klippert case necessarily leads to the conclusion that s. 111(1) of the Customs Act must be declared inconsistent with s. 8 of the Charter and therefore of no force or effect. That is so notwithstanding

the fact that its French language version is cast in language which conforms to the constitutional requirements of s. 8 of the Charter. Such result flows from the fact that given the incompatibility of the English and French versions of the section, preference must be given to that version which exhibits the most recent manifestation of Parliament's intent ***(p. 210)***. ***Nima* v. *McInnes*** (1988), 32 B.C.L.R. (2d) 197 (B.C S.C.).

It will be seen that although the French version continues the requirement that there be reasonable grounds to believe things are in place, the English version introduces as a threshold for the first time, that the goods may be found in place. Thus the English and French versions of the Act set different standards to obtain a search warrant. Both versions, pursuant to s. 18(1) of the Charter and s. 13 of the Official Languages Act, S.C. 1988, c. 38 are "equally authoritative" ***(p. 52)***. *The appellants point out that the informations used here and the search warrants obtained conform to the test required in the French version in that they say that the things, or some part of them, "are in the places or premises described below". Thus, they submit, the higher standard for prior authorization required by the French version was used in these particular searches. In my view that submission begs the question of whether the entire provision from which search warrants derive their authority is constitutionally valid. That must be determined by an examination of the provision itself. Having thus concluded that the French version of s. 111(1) complies with Hunter while the English version does not, we must consider whether the section as a whole can remain constitutionally valid* ***(pp. 53-54)***. *Here it is the English version of s. 111 of the Customs Act which appears to give expression to the last intent of Parliament, namely, to lower the threshold for officers to obtain search warrants, because it altered the existing provision, whereas the French version maintained the status quo.* **(NP)** *To conclude, it is my opinion that the English version of s. 111(1) of the Customs Act expresses the intention of Parliament. Since it does not comply with s. 8 of the Charter, the entire subsection must be declared unconstitutional and, in accordance with s. 52(1) of the Constitution Act, 1982, the subsection has no force or effect* ***(p. 56)***. ***Goguen* v. *Shannon*** (1989), 50 C.C.C. (3d) 45 (N.B. C.A.).

Even if there had been ambiguity in the English text, and in my view there is none, I would give preference to the French text for it best reflects the intention of Parliament ***(p. 704)***. ***Glynos* v. *Canada***, [1992] 3 F.C. 691 (F.C.A.).

The superseded Official Languages Act, [of 1969] *R.S.C., 1970, c. O-2, required in paragraph 8(2)(d) that where there are two different versions of the same provision preference should be given to the version that "according to the true spirit, intent and meaning of the enactment, best ensures the attainment of its objects". It is well settled that though the new Official Languages Act, R.S.C., 1985(4th Supp.), c. 31, did not reproduce this rule of interpretation, it is only a*

codification of an unwritten law which thus resumes its rightful place ***(p. 806).*** ***Eastmain Indian Band*** **v.** ***Robinson,*** [1992] 3 F.C. 800 (F.C.A.).

I would also add that unlike the case in English, it is a principle of legislative drafting in the French language that specific fore-references are the exception, rather than the rule and are only used when absolutely necessary. For example the guide canadien de réduction législative française (permanent edition), section "Références législatives", updated January, 1993 and published by the federal Department of Justice states at page 1: **(NP)** *[Translation] To refer in legislation to all or part of some other provision, the Francophone drafter uses techniques quite different from those employed by the anglophone drafter, and generally more indirect than the latter.* **(NP)** *The tendency in English drafting, even in short sections, to multiply references whether internal or otherwise may be explained by the way in which drafting techniques originating in Britain have evolved. In French drafting, references are reserved only for cases in which it is important to avoid any ambiguity* ***(p. 21)****. It is true that section 13 of the Official Languages Act provides that both versions of the Act are equally authoritative. But this provision co-exists with section 12 of the Interpretation Act which commands that a legislative enactment must be construed in a manner "as best ensures the attainment of its objects", and also with common law rule that "when construing the terms of any provision found in a statute [courts are bound] to consider any other parts of the Act which throw light upon the intention of the legislature and which may serve to show that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act."* ***(p. 22)***. ***Frankie*** **v.** ***Canada***, [1993] 3 F.C. 3 (F.C.A.).

See also:

Dans l'affaire de la faillite de : Nolisair International **v.** ***Richter et Ass et al.,*** [1994] R.J.Q. 733 (Que. S.C.).

Daycal Publishing Inc. **v.** ***Canada Post*** (1993), N.R. 318 (F.C.A.).

Deltonic Trading Corp. **v.** ***Minister of National Revenue (Custom and Excise)*** (1990), 113 N.R. 7 (F.C.A.).

Goguen **v.** ***Revenue Canada***, [1991] R.J.Q. 363 (Que. S.C.).

Gravel **v.** ***Cité de St-Léonard***, [1978] 1 S.C.R. 660.

Gulf Oil Canada Ltd. **v.** ***C.P. Ltée***, [1979] C.S. 72 (Que. S.C.).

Nitrochem Inc. **v.** ***Deputy Minister of National Revenue (Custom and Excise)***, [1983] C.T.C. 608 (F.C.A.).

Nordlandsbanken* v. *Ship Nor-Fisk I et al. (1993), 62 F.T.R. 103 (F.C. T.D.).

Laclede Chain Manufacturing Co.* v. *Deputy Minister of National Revenue (1992), 10 T.T.R. 339 (C.I.T.T.).

Muffin House Bakery Ltd.* v. *Deputy Minister of National Revenue (Custom and Excise) (1986), 12 C.E.R. 43 (F.C. T.D.).

R.* v. *Boucher (1991), 65 C.C.C. (3d) 446 (Que. C.A.).

R.* v. *Cohen, [1984] C.A. 408 (Que. C.A.).

R.* v. *Dollan (1980), 53 C.C.C. (2d) 146 (Ont. H.C.). Aff'd by: ***R.* v. *Dollan*** (1980), 65 C.C.C. (2d) 240 (Ont. C.A.). Appeal dismissed by S.C.C. or leave to appeal refused (1982), 42 N.R. 351.

R.* v. *Dubois, [1935] S.C.R. 378.

R.* v. *Govedarov (1975), 3 O.R. (2d) 23 (Ont. C.A.). Aff'd on other grounds: ***R.* v. *Popovic***, [1976] 2 S.C.R. 308.

R.* v. *O'Donnell, [1979] 1 W.W.R. 385 (B.C. Co. Ct.).

Deputy Minister of National Revenue* v. *Film Technique Ltd., [1973] F.C. 75 (F.C.A.).

PART III

ADMINISTRATION OF JUSTICE

Official languages of federal courts

14. **English** and **French** are the **official languages** of the federal courts, and either of those **languages** may be used by any person in, or in any pleading in or process issuing from, any federal court.

The documents in the disputed portfolio are in one or other of the official languages of this country. The applicant is represented by counsel acting on her behalf. It is for him to look at the evidence for or against which is available or submitted to the tribunal, to assess its impact and evidentiary force and to discuss it with his client. In this connection the rule that should be applied to the evidence contained in the portfolio is no different from that governing any other documentary evidence which counsel for the applicant may wish to present at the hearing: it will suffice if the document is in one or other of the two official languages of the country in accordance with s. 14 of the Official Languages Act, R.S.C. 1985, c. O-3. **(NP)** *When during a hearing the tribunal or hearing officer refers to certain extracts or passages from a document, either for clarification or to confront a claimant with them, however, it will be necessary to have them translated by the interpreter so the claimant can participate fully in the discussions and assert his or her rights. ...However, one certainly could not frame a rule that in order to avoid a breach of the rules of natural justice any document entered in evidence at the hearing, including information portfolios on a country, must necessarily be translated into the language of the claimant* ***(pp. 61-62). Szczecka* v. *Canada (Minister of Employment and Immigration)*** (1994), 170 N.R.58 (F.C.A.).

An unrepresented party's bona fide request, on notice, for a hearing in the other official language must always be respected in full, and its denial amounts to a denial of natural justice, since it fetters the requesting party's ability to present a case in his or her own way ***(p. 526)***. ***Beaudoin* v. *The Minister of National Health and Welfare and Jacinthe Smades***, [1993] 3 F.C. 518 (F.C.A.).

See also:

Jonik Hospitality Group Ltd.* v. *Voyages et circuits touristiques Atlas Conti Inc. (1996), 68 C.P.R. (3d) 99 (F.C. T.D.).

Hearing of witnesses in official language of choice

15. (1) Every federal court has, in any proceedings before it, the duty to ensure that any person giving evidence before it may be heard in the **official language** of his choice, and that in being so heard the person will not be placed at a disadvantage by not being heard in the other **official language**.

Duty to provide simultaneous interpretation

(2) Every federal court has, in any proceedings conducted before it, the duty to ensure that, at the request of any party to the proceedings, facilities are made available for the simultaneous

interpretation of the proceedings, including the evidence given and taken, from one **official language** into the other.

Federal Court Rule 302.1 deals with the language of documents for Court purposes. It states that no document shall be used for court purposes unless it is in French or English or it has been translated and is accompanied by an affidavit attesting to the accuracy of the translation. This rule applies to pleadings, applications, affidavits, and documents introduced into evidence. Federal Court Rule 356 provides for simultaneous translation of hearings in Court. This is in accordance with subsection 15(2) of the Official Languages Act which imposes a duty to provide simultaneous translation at the request of a party. The simultaneous interpretation from one official language to the other of hearings in Court, includes evidence given or taken or arguments presented at such hearing. The principle underlying the interests protected by the right to interpreter assistance is that of linguistic understanding. **(NP)** *The Official Languages Act and the Rules do not require that this Court provide translations of documents in either official language used for court purposes. The applicant will be entitled to simultaneous interpretation of the hearing of his application for judicial review on filing a written request with the administrator of the Court* ***(p. 4)***. ***Lavigne* v. *Canada (Human Resources Development)*** (December 6, 1995), Ottawa T-1977-94 (F.C. T.D.) Richard J.

Federal court may provide simultaneous interpretation

(3) A federal court may, in any proceedings conducted before it, cause facilities to be made available for the simultaneous **interpretation** of the proceedings, including evidence given and taken, from one **official language** into the other where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings.

Duty to ensure understanding without an interpreter

16. (1) Every federal court, other than the Supreme Court of Canada, has the duty to ensure that

(a) if **English** is the **language** chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand **English** without the assistance of an **interpreter**;

(b) if **French** is the **language** chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand **French** without the assistance of an **interpreter**; and

(c) if both **English** and **French** are the **languages** chosen by the parties for proceedings conducted before it in any particular case, every judge or other officer who hears those proceedings is able to understand both **languages** without the assistance of an **interpreter**.

Adjudicative functions

(2) For greater certainty, subsection (1) applies to a federal court only in relation to its adjudicative functions.

Limitation

(3) No federal court, other than the Federal Court of Canada or the Tax Court of Canada, is required to comply with subsection (1) until five years after that subsection comes into force.

Authority to make implementing rules

17. (1) The Governor in Council may make such rules governing the procedure in proceedings before any federal court, other than the Supreme Court of Canada, the Federal Court or the Tax Court of Canada, including rules respecting the giving of notice, as the Governor in Council deems necessary to enable that federal court to comply with sections 15 and 16 in the exercise of any of its powers or duties.

Supreme Court, Federal Court and Tax Court

(2) Subject to the approval of the Governor in Council, the Supreme Court of Canada, the Federal Court and the Tax Court of Canada may make such rules governing the procedure in their own proceedings, including rules respecting the giving of notice, as they deem necessary to enable themselves to comply with sections 15 and 16 in the exercise of any of their powers or duties.

Language of civil proceedings where Her Majesty is a party

18. Where Her Majesty in right of Canada or a federal institution is a party to civil proceedings before a federal court,

(a) Her Majesty or the institution concerned shall use, in any oral or written pleadings in the proceedings, the **official language** chosen by the other parties unless it is established by Her Majesty or the institution that reasonable notice of the **language** chosen has not been given; and

(b) if the other parties fail to choose or agree on the **official language** to be used in those pleadings, Her Majesty or the institution concerned shall use such **official language** as is reasonable, having regard to the circumstances.

I advised Mr. Brunet when he appeared before me that he was abusing his position and he replied that he relied on section 133 of the Constitution Act, 1867 (British North America Act, 1867) R.S.C. 1985, No. 5. There is no doubt that both French and English are official languages of this country but the provisions

of the Official Languages Act should prevail in circumstances such as these ***(p. 3)****. It is clear to me that Her Majesty's institutions are to be considered bilingual. In this particular case the official language chosen by the complainant was English. The Information Commissioner as well as ministerial departments from which information was being sought had already chosen English to be the language of pleadings as well, I assume the language of as debate in these matters. May I underline most forcefully subsection 18(b) of the Act where it is written "the institution concerned shall use such official language as is reasonable having regard to the circumstances".* **(NP)** *The Information Commissioner should be represented by counsel competent in the language chosen by the other party and in this case English would have been reasonable having regard to the circumstances* ***(p. 4)****.* ***The Information Commissioner of Canada*** **v.** ***Public Works*** (June 23, 1995), Ottawa T-426-95 (F.C. T.D.) Rouleau J.

This provision is not ambiguous insofar as its application to the present matter is concerned. The respondent is required to use the official language used by the other party in oral or written pleadings in the proceedings; or in les plaidoires ou les actes de la procédure, as is stated in the French text of s. 18. Whatever construction one may wish to give to the term "pleadings" or "plaidoiries", it does not include evidence tendered in the course of a proceeding ***(pp. 71-72)****. It follows that testimony by way of affidavit does not form part of the "pleadings" or "les plaidoiries" or "les actes de procédure" within the meaning of s. 18 of the Official Languages Act and hence the respondents are subjected to no linguistic obligations with regard thereto. By parity of reasoning, the same extends to the documents annexed to these affidavits by way of exhibits* ***(p. 72)****. Section 18 of the Official Languages Act enhances this constitutionally enshrined right to express oneself in the official language of one's choice in court proceedings by casting upon federal institutions the further obligation to use, in oral or written pleadings, the official language chosen by the other party, thereby creating a right for the opposing party not only to speak or write in the official language of his choice, but to hear and read the pleadings emanating from the governmental party in that language. While this enhancement is substantial, it does not go beyond what is stated in s. 18, and there is no constitutional basis upon which the term "pleadings" or its French equivalents could be given a meaning contrary to what is commonly and juridically understood* ***(pp. 72-73)****.* ***Lavigne*** **v.** ***Canada (Minister of Human Resources Development)*** (1995), 96 F.T.R. 68 (F.C. T.D.).

Bilingual forms

19. (1) The pre-printed portion of any form that is used in proceedings before a federal court and is required to be served by any federal institution that is a party to the proceedings on any other party shall be in both **official languages**.

Particular details

(2) The particular details that are added to a form referred to in subsection (1) may be set out in either **official language** but, where the details are set out in only one **official language**, it shall be clearly indicated on the form that a **translation** of the details into the other **official language** may be obtained, and, if a request for a **translation** is made, a **translation** shall be made available forthwith by the party that served the form.

Decisions, orders and judgments that must be made available simultaneously

20. (1) Any final decision, order or judgment, including any reasons given therefor, issued by any federal court shall be made available simultaneously in both **official languages** where

(a) the decision, order or judgment determines a question of law of general public interest or importance; or

(b) the proceedings leading to its issuance were conducted in whole or in part in both **official languages**.

Other decisions, orders and judgments

(2) Where

(a) any final decision, order or judgment issued by a federal court is not required by subsection (1) to be made available simultaneously in both **official languages**, or

(b) the decision, order or judgment is required by paragraph (1)(a) to be made available simultaneously in both **official languages** but the court is of the opinion that to make the decision, order or judgment, including any reasons given therefor, available simultaneously in both **official languages** would occasion a delay prejudicial to the public interest or resulting in injustice or hardship to any party to the proceedings leading to its issuance, the decision, order or judgment, including any reasons given therefor, shall be issued in the first instance in one of the **official languages** and thereafter, at the earliest possible time, in the other **official language**, each version to be effective from the time the first version is effective.

Oral rendition of decisions not affected

(3) Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in only one of the **official languages**, of any decision, order or judgment or any reasons given therefor.

Decisions not invalidated

(4) No decision, order or judgment issued by a federal court is invalid by reason only that it was not made or issued in both **official languages**.

This appeal from a judgment of the Trial Division has to do with the scope of the duty imposed on a "federal board, commission or other tribunal", such as the

Immigration Appeal Board (the Board or the respondent) to translate its decisions into either of Canada's two official languages. ***(para. 1)*** *The analysis of section 20 of the OLA and the conclusion reached by it appear to the Court to be beyond question.* ***(para. 59)*** *The difficulty in the case at bar is to determine which of the decisions rendered by the respondent have value as precedents and to ensure that those which do are available to researchers and the public in both official languages. That is the true purpose of the proceedings at bar, and this can ultimately only be achieved if the respondent develops relevant administrative standards, subject to approval by the intervener, to resolve this dispute in keeping with the aims of the OLA.* **(NP)** *In the circumstances, in view of the practical effect which the granting of a mandamus would have, especially on the thousands of decisions which there is no interest in translating, and bearing in mind the balance of convenience, we feel that it would not be advisable to make a mandamus order for the past.* ***(para. 72-73-74) Devinat v. Canada (Immigration and Refugee Board)*** **.** (November 29,1999), Ottawa (F.C. A) A-336-98 , Desjardins, Linden, Létourneau J.J. A..

[TRANSLATION] *Since my decision may be appealed, I would like, nonetheless, to add a few comments concerning the interpretation and application of section 20 of the OLA* ***(p. 27).*** *The general rule in regard to the language in which decisions are to be issued contained in subsection 20(2) of the OLA. The rule is that decisions, including any reasons therefor, may be issued in one of the official languages and thereafter, at the earliest possible time, in the other official language.* **(NP)** *This general rule is tempered by three considerations. First, subsection 20(2) also states that decisions are effective from the time the first version is effective. By virtue of subsection 20(3), the decision and reasons therefor may be orally rendered or delivered in only one official language. Finally, as stated in subsection 20(4), the mere fact that a decision is made or issued in only one official language will not cause it to be invalid.* **(NP)** *Subsection 20(1) provides for two exceptions to this general rule: Where the question of law is of public interest or importance (paragraph 20(1)(a)), or where the proceedings leading to its issuance were conducted in whole or in part in both official languages, (paragraph 20(1)(b)) the decisions must be made available simultaneously to the public in both official languages.* **(NP)** *There is an exception to the first exception: where the court is of the opinion that to make the decision available in bilingual form would occasion a delay prejudicial to the public interest or result in an injustice or hardship to any party to the proceedings, the general rule, i.e. the "earliest possible time," applies.* **(NP)** *The intervener also added the following caveat: section 20 refers to decisions "issued" in the other official languages and not issued in one language and then "translated" into the other. This means that both versions are equally authoritative* ***(pp. 29-31****). In my view, the respondent is not complying with the duty set out in section 20 of the OLA. The policy of translating upon request does not satisfy the "earliest possible time" requirement because the result is that*

most decisions will never be issued in the other official language. If Parliament had wanted federal courts to have a policy of translation upon request, it could have said so in specific terms ***(p. 33-34).*** ***Devinat* v. *Canada (Immigration and Refugee Board)*** (May 1st, 1998), Ottawa T-2062-96 (F.C. T.D.) Nadon J.

PART IV

COMMUNICATIONS WITH AND SERVICES TO THE PUBLIC

Communications and Services

Rights relating to language of communication

21. Any member of the public in Canada has the right to communicate with and to receive available services from federal institutions in accordance with this Part.

The learned counsel for the respondent submits that in prescribing an English census form containing untranslated French text, the minister was acting in violation of the Official Languages Act ***(p. 380)****. The impugned form violates neither the Official Languages Act* [of 1969] *nor the Statistics Act. Neither Act prohibits, per se or by necessary implication, the inclusion of untranslated portions of text in either official languages in such a form* ***(p. 381)****. Considering the equality of status and equal rights of both official languages, that the opening untranslated paragraph was an inseparable part of the impugned form, that the ensuing paragraph in English captioned "legal requirement" noted that everyone was required to provide the information requested, that the paragraph immediately preceding the required certification stipulated that "the form be answered" and that it be "properly certified as accurate", the exculpatory reasons advanced by the respondent are not so ill-founded as to be entirely devoid of all merit. Being inextricably interwoven, these exculpatory reasons would apply to the offence with which he is charged as well as an offence of failing to certify the particular form.* **(NP)** *All the circumstances herein, taken in conjunction, sustain a finding of lawful excuse* ***(p. 384)****.* ***R.* v. *Jervis*** (1984), 11 C.R.R. 373 (Man. Ct.C.).

See also in this book:

Canada, *Canadian Charter of Rights and Freedoms*, s. 20 (1);

See also:

R.* v. *Rodrigue (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal refused 24585, [1995] 3 S.C.R. vii.

Simard* v. *R. (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 S.C.R. x.

Where communications and services must be in both official languages

22. Every federal institution has the duty to ensure that any member of the public can communicate with and obtain available services from its head or central office in either **official language**, and has the same duty with respect to any of its other offices or facilities

(a) within the National Capital Region; or

(b) in Canada or elsewhere, where there is significant demand for communications with and services from that office or facility in that **language**.

Further, it appears from section 31 of the Act that the provisions of Part IV, dealing with the language of communications with and services to the public (including sections 22 and 27), prevail over inconsistent provisions of Part V, dealing with the language of work ***(p. 299)***. ***St-Onge* v. *Canada***, [1992] 3 F.C. 287 (F.C.A.).

Travelling public

23. (1) For greater certainty, every federal institution that provides services or makes them available to the travelling public has the duty to ensure that any member of the travelling public can communicate with and obtain those services in either **official language** from any office or facility of the institution in Canada or elsewhere where there is significant demand for those services in that **language**.

Services provided pursuant to a contract

(2) Every federal institution has the duty to ensure that such services to the travelling public as may be prescribed by regulation of the Governor in Council that are provided or made available by another person or organization pursuant to a contract with the federal institution for the provision of those services at an office or facility referred to in subsection (1) are provided or made available, in both **official languages**, in the manner prescribed by regulation of the Governor in Council.

[E]*even though subsection 7(3) was not in force before December 16, 1992, subsection 23(1), which was in force before that date, states that every federal institution that provides services or makes them available to the travelling public has the duty to do so in the official language requested where "there is significant demand for those services in that language"...***(NP)** *The Act itself dates back to 1988. The Regulations in question merely establish standards to ensure that the administration of the Act is sound, so Air Canada had a duty to provide French-language services to the travelling public, where there was a significant demand for those services in French even before the Regulations came into force* ***(p. 13)***. ***Commissioner of Official Languages of Canada* v. *Air Canada and***

National Automobile, Aerospace, Transportation and General Workers Union of Canada, (December 31, 1997), Ottawa T-1989-96 (F.C. T.D.) Dubé J.

Nature of the office

24. (1) Every federal institution has the duty to ensure that any member of the public can communicate in either **official language** with, and obtain available services in either **official language** from, any of its offices or facilities in Canada or elsewhere

(a) in any circumstances prescribed by regulation of the Governor in Council that relate to any of the following:

(i) the health, safety or security of members of the public,

(ii) the location of the office or facility, or

(iii) the national or international mandate of the office; or

(b) in any other circumstances prescribed by regulation of the Governor in Council where, due to the nature of the office or facility, it is reasonable that communications with and services from that office or facility be available in both **official languages**.

R.* v. *Rodrigue (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (Y. C.A.). Leave to appeal refused, No. 24585, [1995] 3 S.C.R. vii.

Institutions reporting directly to Parliament

(2) Any federal institution that reports directly to Parliament on any of its activities has the duty to ensure that any member of the public can communicate with and obtain available services from all of its offices or facilities in Canada or elsewhere in either **official language**.

Idem

(3) Without restricting the generality of subsection (2), the duty set out in that subsection applies in respect of

(a) the Office of the Commissioner of **Official languages**;

(b) the Office of the Chief Electoral Officer;

(c) the Office of the Auditor General;

(d) the Office of the Information Commissioner; and

(e) the Office of the Privacy Commissioner.

Services Provided on behalf of Federal Institutions

Where services provided on behalf of federal institutions

25. Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either **official language** in any case where those services, if provided by the institution, would be required under this Part to be provided in either **official language**.

Regulatory Activities of Federal Institutions

Regulatory activities relating to health, safety and security of public

26. Every federal institution that regulates persons or organizations with respect to any of their activities that relate to the health, safety or security of members of the public has the duty to ensure, through its regulation of those persons or organizations, wherever it is reasonable to do so in the circumstances, that members of the public can communicate with and obtain available services from those persons or organizations in relation to those activities in both **official languages**.

General

Obligations relating to communications and services

27. Wherever in this Part there is a duty in respect of communications and services in both **official languages**, the duty applies in respect of oral and written communications and in respect of any documents or activities that relate to those communications or services.

Active offer

28. Every federal institution that is required under this Part to ensure that any member of the public can communicate with and obtain available services from an office or facility of that institution, or of another person or organization on behalf of that institution, in either **official language** shall ensure that appropriate measures are taken, including the provision of signs, notices and other information on services and the initiation of communication with the public, to make it known to members of the public that those services are available in either **official language** at the choice of any member of the public.

Signs identifying offices

29. Where a federal institution identifies any of its offices or facilities with signs, each sign shall include both **official languages** or be placed together with a similar sign of equal prominence in the other **official language**.

Manner of communicating

30. Subject to Part II, where a federal institution is engaged in communications with members of the public in both **official languages** as required in this Part, it shall communicate by using such media of communication as will reach members of the public in the **official language** of their choice in an effective and efficient manner that is consistent with the purposes of this Act.

Relationship to Part V

31. In the event of any inconsistency between this Part and Part V, this Part prevails to the extent of the inconsistency.

Regulations

32. (1) The Governor in Council may make regulations

(a) prescribing the circumstances in which there is significant demand for the purpose of paragraph 22(b) or subsection 23(1);

(b) prescribing circumstances not otherwise provided for under this Part in which federal institutions have the duty to ensure that any member of the public can communicate with and obtain available services from offices of the institution in either **official language**;

(c) prescribing services, and the manner in which those services are to be provided or made available, for the purpose of subsection 23(2);

(d) prescribing circumstances, in relation to the public or the travelling public, for the purpose of paragraph 24(1)(a) or (b); and

(e) defining the expression "**English** or **French linguistic** minority population" for the purpose of paragraph (2)(a).

Where circumstances prescribed under paragraph (1)(a) or (b)

(2) In prescribing circumstances under paragraph (1)(a) or (b), the Governor in Council may have regard to

(a) the number of persons composing the **English** or **French linguistic** minority population of the area served by an office or facility, the particular characteristics of that population and the proportion of that population to the total population of that area;

(b) the volume of communications or services between an office or facility and members of the public using each **official language**; and

(c) any other factors that the Governor in Council considers appropriate.

Regulations

33. The Governor in Council may make such regulations as the Governor in Council deems necessary to foster actively communications with and services from offices or facilities of federal institutions, other than the Senate, the House of Commons or the Library of Parliament, in both **official languages**, where those communications and services are required under this Part to be provided in both **official languages**.

PART V

LANGUAGE OF WORK

Rights relating to language of work

34. English and **French** are the **languages** of work in all federal institutions, and officers and employees of all federal institutions have the right to use either **official language** in accordance with this Part.

The Official Languages Act of 1969 and 1988 contain no provision regarding the introduction of a bilinguism bonus plan. In other words, there was nothing in those Acts to require the Government to set up such a plan, if it did so there was nothing to require it to make the plan applicable to all eligible employees in the federal Public Service and nothing prevented it from abolishing or modifying any plan it created, which the Official Languages Commissioner in fact urged it to do year after year in his annual report ***(p. 741)***. ***Gingras* v. *Canada***, [1994] 2 F.C. 734 (F.C.A.).

See also:

Lavigne* v. *Canada (Human Resources Development), [1997] 1 F.C. 305 (F.C. T.D.).

Association des gens de l'air du Québec* v. *Hon. Otto Lang, [1978] 2 F.C. 371 (F.C.A.).

Joyal* v. *Air Canada, [1982] C.A. 39 (Que. C.A.).

McNeill* v. *Canada, [1987] 1 F.C. 119 (F.C. T.D.).

Duties of government

35. (1) Every federal institution has the duty to ensure that

(a) within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed, work environments of the institution are conducive to the effective use of both **official languages** and accommodate the use of either **official language** by its officers and employees; and

(b) in all parts or regions of Canada not prescribed for the purpose of paragraph (a), the treatment of both **official languages** in the work environments of the institution in parts or regions of Canada where one **official language** predominates is reasonably comparable to the treatment of both **official languages** in the work environments of the institution in parts or regions of Canada where the other **official language** predominates.

Regions of Canada prescribed

(2) The regions of Canada set out in Annex B of the part of the Treasury Board and Public Service Commission Circular No. 1977-46 of September 30, 1977 that is entitled "**Official languages** in the Public Service of Canada: A Statement of Policies" are prescribed for the purpose of paragraph (1)(a).

Minimum duties in relation to prescribed regions

36. (1) Every federal institution has the duty, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), to

(a) make available in both **official languages** to officers and employees of the institution

(i) services that are provided to officers and employees, including services that are provided to them as individuals and services that are centrally provided by the institution to support them in the performance of their duties, and

(ii) regularly and widely used work instruments produced by or on behalf of that or any other federal institution;

(b) ensure that regularly and widely used automated systems for the processing and communication of data acquired or produced by the institution on or after January 1, 1991 can be used in either **official language**; and

(c) ensure that,

(i) where it is appropriate or necessary in order to create a work environment that is conducive to the effective use of both **official languages**, supervisors are able to communicate in both **official languages** with officers and employees of the institution in carrying out their supervisory responsibility, and

(ii) any management group that is responsible for the general direction of the institution as a whole has the capacity to function in both **official languages**.

Additional duties in prescribed regions

(2) Every federal institution has the duty to ensure that, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the

purpose of paragraph 35(1)(a), such measures are taken in addition to those required under subsection (1) as can reasonably be taken to establish and maintain work environments of the institution that are conducive to the effective use of both **official languages** and accommodate the use of either **official language** by its officers and employees.

Special duties for institutions directing or providing services to others

37. Every federal institution that has authority to direct, or provides services to, other federal institutions has the duty to ensure that it exercises its powers and carries out its duties in relation to those other institutions in a manner that accommodates the use of either **official language** by officers and employees of those institutions.

Regulations

38. (1) The Governor in Council may make regulations in respect of federal institutions, other than the Senate, the House of Commons or the Library of Parliament,

(a) prescribing, in respect of any part or region of Canada or any place outside Canada,

(i) any services or work instruments that are to be made available by those institutions in both **official languages** to officers or employees of those institutions,

(ii) any automated systems for the processing and communication of data that must be available for use in both **official languages**, and

(iii) any supervisory or management functions that are to be carried out by those institutions in both **official languages**;

(b) prescribing any other measures that are to be taken, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), to establish and maintain work environments of those institutions that are conducive to the effective use of both **official languages** and accommodate the use of either **official language** by their officers and employees;

(c) requiring that either or both **official languages** be used in communications with offices of those institutions that are located in any part or region of Canada, or any place outside Canada, specified in the regulations;

(d) prescribing the manner in which any duties of those institutions under this Part or the regulations made under this Part in relation to the use of both **official languages** are to be carried out; and

(e) prescribing obligations of those institutions in relation to the use of the **official languages** of Canada by the institutions in respect of offices in parts or regions of Canada not prescribed for the purpose of paragraph 35(1)(a), having regard to the equality of status of both **official languages**.

Idem

(2) The Governor in Council may make regulations

(a) adding to or deleting from the regions of Canada prescribed by subsection 35(2) or prescribing any other part or region of Canada, or any place outside Canada, for the purpose of paragraph 35(1)(a), having regard to

(i) the number and proportion of **English-speaking** and **French-speaking** officers and employees who constitute the work force of federal institutions based in the parts, regions or places prescribed,

(ii) the number and proportion of **English-speaking** and **French-speaking** persons resident in the parts or regions prescribed, and

(iii) any other factors that the Governor in Council considers appropriate; and

(b) substituting, with respect to any federal institution other than the Senate, the House of Commons or the Library of Parliament, a duty in relation to the use of the **official languages** of Canada in place of a duty under section 36 or the regulations made under subsection (1), having regard to the equality of status of both **official languages**, where there is a demonstrable conflict between the duty under section 36 or the regulations and the mandate of the institution.

PART VI

PARTICIPATION OF ENGLISH-SPEAKING AND FRENCH-SPEAKING CANADIANS

Commitment to equal opportunities and equitable participation

39. (1) The Government of Canada is committed to ensuring that

(a) **English-speaking** Canadians and **French-speaking** Canadians, without regard to their **ethnic origin** or first **language** learned, have equal opportunities to obtain employment and advancement in federal institutions; and

(b) the composition of the work-force of federal institutions tends to reflect the presence of both the **official language** communities of Canada, taking into account the characteristics of individual institutions, including their mandates, the public they serve and their location.

Employment opportunities

(2) In carrying out the commitment of the Government of Canada under subsection (1), federal institutions shall ensure that employment opportunities are open to both **English-speaking** Canadians and **French-speaking** Canadians, taking due account of the purposes and provisions of Parts IV and V in relation to the appointment and advancement of officers and employees by those institutions and the determination of the terms and conditions of their employment.

Merit principle

(3) Nothing in this section shall be construed as abrogating or derogating from the principle of selection of personnel according to merit.

Essentially, these provisions are but a revised statement of the duty already imposed by section 40 of the 1969 Official Languages Act to maintain the principle of selection based on merit. By stating that language requirements must be imposed "objectively", section 91 expressly confirms what has always been implicit, namely that language requirements cannot be imposed frivolously or arbitrarily. The purpose of this section is to provide comfort and reassurance, rather than create new law, and it would be vain to seek in it for any new jurisdiction of any kind for the appeal board, especially as subsection 77(1) expressly authorizes a complaint under section 91 to be brought before the Commissioner, not the appeal board, and it appears from section 35 and subsection 39(2) that the department concerned, not the Public Service Commission, is responsible for ensuring compliance with the 1988 Official Languages Act in the establishment of languages of work ***(pp. 388-389)***. ***Canada (A. G.)* v. *Viola***, [1991] 1 F.C. 373 (F.C.A.).

Regulations

40. The Governor in Council may make such regulations as the Governor in Council deems necessary to carry out the purposes and provisions of this Part.

PART VII

ADVANCEMENT OF ENGLISH AND FRENCH

Government policy

41. The Government of Canada is committed to

(a) enhancing the vitality of the **English** and **French linguistic** minority communities in Canada and supporting and assisting their development; and

(b) fostering the full recognition and use of both **English** and **French** in Canadian society.

In the case before me, it is obvious that there exists under the Official Languages Act a broad picture and a narrower one. The object of the Act is not only to permit the use of our official languages and give citizens the right to deal with federal institutions in the language of their choice. It is more than that. It is to promote the use of both languages or, as expressed in the Act's preamble, "enhancing the vitality and supporting the development of English and French linguistic minority communities". Such a policy commitment by the Government of Canada imposes a double duty which must sooner or later be exercised in concrete terms ***(p. 107)****. This brings me to comment on what I view is the second duty which the statute imposes on federal institutions. If there is imposed a tight line in designations of individual positions to protect the majority language group in the Public Service, the other duty is reflected in the preamble to the Act and in section 41 of the Act. My interpretation of section 41 gives credence to the proposition that policy requires the respondent not only to react or respond to pressures for more or better bilingual services, but to initiate programmes to offer these services where there is a perceived need for them, a need which might not be fully reflected in a statistical analysis of the number of enquiries, the number of files, or the current incidence of French and English cases in any particular public office* ***(pp. 108-109)****.* ***Professional Institute of Public Service*** **v.** ***Canada****,* [1993] 2 F.C. 90 (F.C. T.D.).

Coordination

42. The Minister of Canadian Heritage, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41. R.S. 1985, c. 31 (4th Supp.), s. 42; 1995, c. 11, s. 27.

Specific mandate of Minister of Canadian Heritage

43. (1) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to advance the equality of status and use of **English** and **French** in Canadian society and, without restricting the generality of the foregoing, may take measures to

(a) enhance the vitality of the **English** and **French linguistic** minority communities in Canada and support and assist their development;

(b) encourage and support the learning of **English** and **French** in Canada;

(c) foster an acceptance and appreciation of both **English** and **French** by members of the public;

(d) encourage and assist provincial governments to support the development of **English** and **French linguistic** minority communities generally and, in particular, to offer provincial and

municipal services in both **English** and **French** and to provide opportunities for members of **English** or **French linguistic** minority communities to be educated in their own **language**;

(e) encourage and assist provincial governments to provide opportunities for everyone in Canada to learn both **English** and **French**;

(f) encourage and cooperate with the business community, labour organizations, voluntary organizations and other organizations or institutions to provide services in both **English** and **French** and to foster the recognition and use of those **languages**;

(g) encourage and assist organizations and institutions to project the bilingual character of Canada in their activities in Canada or elsewhere; and

(h) with the approval of the Governor in Council, enter into agreements or arrangements that recognize and advance the bilingual character of Canada with the governments of foreign states.

Public consultation

(2) The Minister of Canadian Heritage shall take such measures as that Minister considers appropriate to ensure public consultation in the development of policies and review of programs relating to the advancement and the equality of status and use of **English** and **French** in Canadian society. R.S. 1985, c. 31 (4th Supp.), s. 43; 1995, c. 11, s. 28.

Annual report to Parliament

44. The Minister of Canadian Heritage shall, within such time as is reasonably practicable after the termination of each financial year, submit an annual report to Parliament on the matters relating to **official languages** for which that Minister is responsible. R.S. 1985, c. 31 (4th Supp.), s. 44; 1995, c. 11, s. 29.

Consultation and negotiation with the provinces

45. Any minister of the Crown designated by the Governor in Council may consult and may negotiate agreements with the provincial governments to ensure, to the greatest practical extent but subject to Part IV, that the provision of federal, provincial, municipal and education services in both **official languages** is coordinated and that regard is had to the needs of the recipients of those services.

PART VIII

RESPONSIBILITIES AND DUTIES OF TREASURY BOARD IN RELATION TO THE OFFICIAL LANGUAGES OF CANADA

Responsibilities of Treasury Board

46. (1) The Treasury Board has responsibility for the general direction and coordination of the policies and programs of the Government of Canada relating to the implementation of Parts IV, V and VI in all federal institutions other than the Senate, the House of Commons and the Library of Parliament.

Powers of Treasury Board

(2) In carrying out its responsibilities under subsection (1), the Treasury Board may

(a) establish policies, or recommend policies to the Governor in Council, to give effect to Parts IV, V and VI;

(b) recommend regulations to the Governor in Council to give effect to Parts IV, V and VI;

(c) issue directives to give effect to Parts IV, V and VI;

(d) monitor and audit federal institutions in respect of which it has responsibility for their compliance with policies, directives and regulations of Treasury Board or the Governor in Council relating to the **official languages** of Canada;

(e) evaluate the effectiveness and efficiency of policies and programs of federal institutions relating to the **official languages** of Canada;

(f) provide information to the public and to officers and employees of federal institutions relating to the policies and programs that give effect to Parts IV, V and VI; and

(g) delegate any of its powers under this section to the deputy heads or other administrative heads of other federal institutions.

Audit reports to be made available to Commissioner

47. The Secretary of the Treasury Board shall provide the Commissioner with any audit reports that are prepared pursuant to paragraph 46(2)(d).

Annual report to Parliament

48. The President of the Treasury Board shall, within such time as is reasonably practicable after the termination of each financial year, submit an annual report to Parliament on the status of programs relating to the **official languages** of Canada in the various federal institutions in respect of which it has responsibility under section 46.

PART IX

COMMISSIONER OF OFFICIAL LANGUAGES

Office of the Commissioner

Commissioner of Official languages, and appointment

49. (1) There shall be a Commissioner of **Official languages** for Canada who shall be appointed by commission under the Great Seal after approval of the appointment by resolution of the Senate and House of Commons.

Tenure of office and removal

(2) Subject to this section, the Commissioner holds office during good behaviour for a term of seven years, but may be removed by the Governor in Council at any time on address of the Senate and House of Commons.

Further terms

(3) The Commissioner, on the expiration of a first or any subsequent term of office, is eligible to be re-appointed for a further term not exceeding seven years.

Absence or incapacity

(4) In the event of the absence or incapacity of the Commissioner, or if the office of Commissioner of **Official languages** for Canada is vacant, the Governor in Council, after consultation by the Prime Minister with the Speaker of the Senate and the Speaker of the House of Commons, may appoint another qualified person to hold office during the absence or incapacity of the Commissioner or while the office is vacant for a term not exceeding six months, and that person shall, while holding office, have all of the powers, duties and functions of the Commissioner under this Act and be paid such salary or other remuneration and expenses as may be fixed by the Governor in Council.

Rank, powers and duties generally

50. (1) The Commissioner shall rank as and have all the powers of a deputy head of a department, shall engage exclusively in the duties of the office of the Commissioner and shall not hold any other office under Her Majesty or engage in any other employment.

Salary and expenses

(2) The Commissioner shall be paid a salary equal to the salary of a judge of the Federal Court, other than the Chief Justice or the Associate Chief Justice of that Court, and is entitled to be paid reasonable travel and living expenses while absent from his ordinary place of residence in the course of his duties.

Staff

51. Such officers and employees as are necessary for the proper conduct of the work of the office of the Commissioner shall be appointed in the manner authorized by law.

Technical assistance

52. The Commissioner may engage, on a temporary basis, the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties of his office and, with the approval of the Treasury Board, may fix and pay the remuneration and expenses of those persons.

Public Service Superannuation Act

53. The Commissioner and the officers and employees of the office of the Commissioner appointed under section 51 shall be deemed to be persons employed in the Public Service for the purposes of the Public Service Superannuation Act.

Order exempting Commissioner from directives

54. The Governor in Council, on the recommendation of the Treasury Board, may by order exempt the Commissioner from any directives of the Treasury Board or the Governor in Council made under the Financial Administration Act that apply to deputy heads or other administrative heads in relation to the administration of federal institutions.

Duties and Functions of Commissioner

Duties and functions

55. The Commissioner shall carry out such duties and functions as are assigned to the Commissioner by this Act or any other Act of Parliament, and may carry out or engage in such other related assignments or activities as may be authorized by the Governor in Council.

Duty of Commissioner under Act

56. (1) It is the duty of the Commissioner to take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the **official languages** and compliance with the spirit and intent of this Act in the administration of the affairs of federal institutions, including any of their activities relating to the advancement of **English** and **French** in Canadian society.

The expression "the spirit and intent of this Act", noted in subsection 58(4) of the Act, is also found in subsection 56(1) of the Act which gives the Commissioner the duty to take all action and measures within his authority to ensure recognition of the status of each of the official languages and compliance with the spirit and intent of the Act in the administration of the affairs of federal institutions ***(p. 299)***. ***St-Onge*** **v.** ***Canada***, [1992] 3 F.C. 287 (F.C.A.).

The Official Languages Act creates a set of language rights based on the duties imposed on the federal government by the Constitution. It is quasi-constitutional legislation which reflects asocial and political compromise, gives the Commissioner the powers of a true language ombudsman and establishes an

administrative process for securing relief. In addition, that Act provides for judicial review, empowering the Federal Court to hear complaints relating to language requirements that are applied to staffing actions in the Public Service. Only persons who have complained to the Commissioner may bring proceedings in the Federal Court, and only the Commissioner, not appeal boards, has the power to investigate that issue ***(p. 314)****. Section 91 of the Official Languages Act, together with ss. 56 and 58 et seq. of the Act, provide a legal framework for examining the language requirements of positions in the Public Service, prior to the enactment of s. 12.1 of the Act. That section does not limit the powers of the Commissioner, in the absence of clear wording to that effect.* **(NP)** *What we must take from this is that Parliament decided to confer the power to administer the language guarantees set out in the Canadian Charter of Rights and Freedoms on the Commissioner, and not on the Commission's appeal boards* ***(pp. 315-316)***. ***Canada (A.G.)* v. *Asselin*** (1995), 100 F.T.R. 309 (F.C. T.D.).

[The Commissioner of Official Languages] *noted that he apparently could not make recommendations in respect of the language-related duties set out in the O.L.A. for as long as Air Canada continued to deny that its regional carriers were subject to that Act. He accordingly concluded that a question had to be referred to the Federal Court of Canada, Trial Division, under subsection 18.3(1) of the Federal Court Act, which he did on March 26, 1997* ***(pp. 2-3)****. ... the new section 18.3 applies ... to any body that meets the definition of "federal board, commission or other tribunal". That expression is defined very broadly in section 2 of the Federal Court Act. Thus a reference under section 18.3 may be validly filed by a body that exercises administrative power* ***(p. 6)****. Accordingly, I cannot conclude that this reference is plainly and obviously irregular. I do not believe that this is an exceptional situation in which I might be justified in summarily dismissing the application brought by the Commissioner. The motion is therefore dismissed* ***(p. 8)****.* ***Reference by the Commissioner of Official Languages concerning Air Canada's regional carriers*** (July 9, 1997), Ottawa T-541-97 (F.C. T.D.) Tremblay-Lamer J. Appeal dismissed, (F.C. A) A-520-97, May 5, 1999.

Idem

(2) It is the duty of the Commissioner, for the purpose set out in subsection (1), to conduct and carry out investigations either on his own initiative or pursuant to any complaint made to the Commissioner and to report and make recommendations with respect thereto as provided in this Act.

Review of regulations and directives

57. The Commissioner may initiate a review of (a) any regulations or directives made under this Act, and (b) any other regulations or directives that affect or may affect the status or use of the

official languages, and may refer to and comment on any findings on the review in a report made to Parliament pursuant to section 66 or 67.

Investigations

Investigation of complaints

58. (1) Subject to this Act, the Commissioner shall investigate any complaint made to the Commissioner arising from any act or omission to the effect that, in any particular instance or case, (a) the status of an **official language** was not or is not being recognized, (b) any provision of any Act of Parliament or regulation relating to the status or use of the **official languages** was not or is not being complied with, or (c) the spirit and intent of this Act was not or is not being complied within the administration of the affairs of any federal institution.

Who may make complaint

(2) A complaint may be made to the Commissioner by any person or group of persons, whether or not they speak, or represent a group **speaking**, the **official language** the status or use of which is at issue.

Discontinuance of investigation

(3) If in the course of investigating any complaint it appears to the Commissioner that, having regard to all the circumstances of the case, any further investigation is unnecessary, the Commissioner may refuse to investigate the matter further.

Right of Commissioner to refuse or cease investigation

(4) The Commissioner may refuse to investigate or cease to investigate any complaint if in the opinion of the Commissioner

(a) the subject-matter of the complaint is trivial;

(b) the complaint is frivolous or vexatious or is not made in good faith; or

(c) the subject-matter of the complaint does not involve a contravention or failure to comply with the spirit and intent of this Act, or does not for any other reason come within the authority of the Commissioner under this Act.

[T]h*e commissioner did not take the spirit and intent of the Act into account. In accordance with his duty as stated in subsection 56(1) of the Act and the power of investigation conferred on him by subsection 58(4) of the Act, the Commissioner should have determined whether the Public Service of Canada office in Toronto, as a federal institution in a place where there was a significant demand for the use of French, had complied with the spirit and intent of the Act in its*

communication with and service to the appellant ***(p. 300)***. ***St-Onge*** **v.** ***Canada***, [1992] 3 F.C. 287 (F.C.A.).

Complainant to be notified

(5) Where the Commissioner decides to refuse to investigate or cease to investigate any complaint, the Commissioner shall inform the complainant of that decision and shall give the reasons therefor.

Notice of intention to investigate

59. Before carrying out an investigation under this Act, the Commissioner shall inform the deputy head or other administrative head of any federal institution concerned of his intention to carry out the investigation.

Investigation to be conducted in private

60. (1) Every investigation by the Commissioner under this Act shall be conducted in private.

Opportunity to answer allegations and criticisms

(2) It is not necessary for the Commissioner to hold any hearing and no person is entitled as of right to be heard by the Commissioner, but if at any time during the course of an investigation it appears to the Commissioner that there may be sufficient grounds to make a report or recommendation that may adversely affect any individual or any federal institution, the Commissioner shall, before completing the investigation, take every reasonable measure to give to that individual or institution a full and ample opportunity to answer any adverse allegation or criticism, and to be assisted or represented by counsel for that purpose.

Procedure

61. (1) Subject to this Act, the Commissioner may determine the procedure to be followed in carrying out any investigation under this Act.

Receiving and obtaining of information by officer designated

(2) The Commissioner may direct that information relating to any investigation under this Act be received or obtained, in whole or in part, by any officer of the office of the Commissioner appointed under section 51 and that officer shall, subject to such restrictions or limitations as the Commissioner may specify, have all the powers and duties of the Commissioner under this Act in relation to the receiving or obtaining of that information.

Powers of Commissioner in carrying out investigations

62. (1) The Commissioner has, in relation to the carrying out of any investigation under this Act, other than an investigation in relation to Part III, power

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the Commissioner deems requisite to the full investigation and consideration of any matter within his authority under this Act, in the same manner and to the same extent as a superior court of record;

(b) to administer oaths;

(c) to receive and accept such evidence and other information, whether on oath or by affidavit or otherwise, as in his discretion the Commissioner sees fit, whether or not the evidence or information is or would be admissible in a court of law; and

(d) subject to such limitation as may in the interests of defence or security be prescribed by regulation of the Governor in Council, to enter any premises occupied by any federal institution and carry out therein such inquiries within his authority under this Act as the Commissioner sees fit.

Threats, intimidation, discrimination or obstruction to be reported

(2) Where the Commissioner believes on reasonable grounds that

(a) an individual has been threatened, intimidated or made the object of discrimination because that individual has made a complaint under this Act or has given evidence or assisted in any way in respect of an investigation under this Act, or proposes to do so, or

(b) the Commissioner, or any person acting on behalf or under the direction of the Commissioner, has been obstructed in the performance of the Commissioner's duties or functions under this Act, the Commissioner may report that belief and the grounds therefor to the President of the Treasury Board and the deputy head or other administrative head of any institution concerned.

Conclusion of investigation

63. (1) If, after carrying out an investigation under this Act, the Commissioner is of the opinion that

(a) the act or omission that was the subject of the investigation should be referred to any federal institution concerned for consideration and action if necessary,

(b) any Act or regulations thereunder, or any directive of the Governor in Council or the Treasury Board, should be reconsidered or any practice that leads or is likely to lead to a contravention of this Act should be altered or discontinued, or

(c) any other action should be taken, the Commissioner shall report that opinion and the reasons therefor to the President of the Treasury Board and the deputy head or other administrative head of any institution concerned.

Other policies to be taken into account

(2) In making a report under subsection (1) that relates to any federal institution, the Commissioner shall have regard to any policies that apply to that institution that are set out in any Act of Parliament or regulation thereunder or in any directive of the Governor in Council or the Treasury Board.

Recommendations

(3) The Commissioner may (a) in a report under subsection (1) make such recommendations as he thinks fit; and (b) request the deputy head or other administrative head of the federal institution concerned to notify the Commissioner within a specified time of the action, if any, that the institution proposes to take to give effect to those recommendations.

Where investigation carried out pursuant to complaint

64. (1) Where the Commissioner carries out an investigation pursuant to a complaint, the Commissioner shall inform the complainant and any individual by whom or on behalf of whom, or the deputy head or other administrative head of any federal institution by which or on behalf of which, an answer relating to the complaint has been made pursuant to subsection 60(2), in such manner and at such time as the Commissioner thinks proper, of the results of the investigation.

Where recommendations made

(2) Where recommendations have been made by the Commissioner under subsection 63(3) but adequate and appropriate action has not, in the opinion of the Commissioner, been taken thereon within a reasonable time after the recommendations are made, the Commissioner may inform the complainant of those recommendations and make such comments thereon as he thinks proper, and shall provide a copy of the recommendations and comments to any individual, deputy head or administrative head whom the Commissioner is required under subsection (1) to inform of the results of the investigation.

Report to Governor in Council where appropriate action not taken

65. (1) If, within a reasonable time after a report containing recommendations under subsection 63(3) is made, adequate and appropriate action has not, in the opinion of the Commissioner, been taken thereon, the Commissioner, in his discretion and after considering any reply made by or on behalf of any federal institution concerned, may transmit a copy of the report and recommendations to the Governor in Council.

Action by Governor in Council

(2) The Governor in Council may take such action as the Governor in Council considers appropriate in relation to any report transmitted under subsection (1) and the recommendations therein.

Report to Parliament

(3) If, within a reasonable time after a copy of a report is transmitted to the Governor in Council under subsection (1), adequate and appropriate action has not, in the opinion of the Commissioner, been taken thereon, the Commissioner may make such report thereon to Parliament as he considers appropriate.

Reply to be attached to report

(4) The Commissioner shall attach to every report made under subsection (3) a copy of any reply made by or on behalf of any federal institution concerned.

Reports to Parliament

Annual report

66. The Commissioner shall, within such time as is reasonably practicable after the termination of each year, prepare and submit to Parliament a report relating to the conduct of his office and the discharge of his duties under this Act during the preceding year including his recommendations, if any, for proposed changes to this Act that the Commissioner deems necessary or desirable in order that effect may be given to it according to its spirit and intent.

Special reports

67. (1) The Commissioner may, at any time, make a special report to Parliament referring to and commenting on any matter within the scope of the powers, duties and functions of the Commissioner where, in the opinion of the Commissioner, the matter is of such urgency or importance that a report thereon should not be deferred until the time provided for transmission of the next annual report of the Commissioner under section 66.

Reply to be attached to report

(2) The Commissioner shall attach to every report made under this section a copy of any reply made by or on behalf of any federal institution concerned.

Contents of report

68. The Commissioner may disclose in any report made under subsection 65(3) or section 66 or 67 such matters as in his opinion ought to be disclosed in order to establish the grounds for any conclusions and recommendations contained therein, but in so doing shall take every

reasonable precaution to avoid disclosing any matter the disclosure of which would or might be prejudicial to the defence or security of Canada or any state allied or associated with Canada.

Transmission of report

69. (1) Every report to Parliament made by the Commissioner under subsection 65(3) or section 66 or 67 shall be made by being transmitted to the Speaker of the Senate and to the Speaker of the House of Commons for tabling respectively in those Houses.

Reference to parliamentary committee

(2) Every report referred to in subsection (1) shall, after it is transmitted for tabling pursuant to that subsection, be referred to the committee designated or established by Parliament for the purpose of section 88.

Delegation

Delegation by Commissioner

70. The Commissioner may authorize any person to exercise or perform, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Commissioner under this or any other Act of Parliament except

(a) the power to delegate under this section; and

(b) the powers, duties or functions set out in sections 63, 65 to 69 and 78.

General

Security requirements

71. The Commissioner and every person acting on behalf or under the direction of the Commissioner who receives or obtains information relating to any investigation under this Act shall, with respect to access to and the use of such information, satisfy any security requirements applicable to, and take any oath of secrecy required to be taken by, persons who normally have access to and use of such information.

Confidentiality

72. Subject to this Act, the Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act.

Disclosure authorized

73. The Commissioner may disclose or may authorize any person acting on behalf or under the direction of the Commissioner to disclose information

(a) that, in the opinion of the Commissioner, is necessary to carry out an investigation under this Act; or

(b) in the course of proceedings before the Federal Court under Part X or an appeal therefrom.

No summons

74. The Commissioner or any person acting on behalf or under the direction of the Commissioner is not a compellable witness, in respect of any matter coming to the knowledge of the Commissioner or that person as a result of performing any duties or functions under this Act during an investigation, in any proceedings other than proceedings before the Federal Court under Part X or an appeal therefrom.

Protection of Commissioner

75. (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the Commissioner under this Act.

Libel or slander

(2) For the purposes of any law relating to libel or slander, (a) anything said, any information supplied or any document or thing produced in good faith in the course of an investigation by or on behalf of the Commissioner under this Act is privileged; and (b) any report made in good faith by the Commissioner under this Act and any fair and accurate account of the report made in good faith in a newspaper or any other periodical publication or in a broadcast is privileged.

PART X

COURT REMEDY

Definition of "Court"

76. In this Part, "Court" means the Federal Court - Trial Division.

Application for remedy

77. (1) Any person who has made a complaint to the Commissioner in respect of a right or duty under sections 4 to 7, sections 10 to 13 or Part IV or V, or in respect of section 91, may apply to the Court for a remedy under this Part.

*The complaint made by the appellant falls under Part III of the OLA, which contains section 20. Subsection 77(5) is linked to section 77, as the first words in that subsection indicate. In the respondent's submission, section 77 does not preclude any other right of action in respect of complaints relating to sections 4 to 7 and 10 to 13 or Parts IV or V, or based on section 91. However, the situation is different with complaints coming under Part III of the OLA. In the respondent's submission, subsection 77(5) is of no assistance to the appellant and complaints covered by Part III may only be dealt with in accordance with the investigation procedure laid down in section 56 et seq. of the OLA. The Commissioner of Official Languages may, after investigation, report to the President of the Treasury Board (subsections 62(2) and 63(1)) at the same time as he communicates his conclusions to the complainant (section 64). He may also elect to inform the Governor in Council (subsection 65(1)) or Parliament, either in his annual report or in a special report (sections 66 and 67). However, in the respondent's submission, a court action may not be brought by the appellant. (**para. 25)** The respondent said that the OLA contains a complete code. In the cases mentioned in Part X of the OLA, a complainant may bring an action in the courts. In other cases, it is for the Treasury Board, the Governor in Council or Parliament to take action on the report by the Commissioner of Official Languages. In the case at bar, the respondent submitted, the complainant does not have the right to go to the courts **(para. 26)** The appellant submitted, for his part, that the application of subsection 77(5) is not limited to section 77 and he retains his right to bring a court action for any other complaint not covered by the procedure laid down in section 77. **(para. 27)** Regardless of the meaning to be given to subsection 77(5), on which it is not necessary for the Court to rule, the respondent's argument in my opinion is not justified. For such a strict interpretation to be accepted, the exclusion would have to be made expressly. It clearly cannot be presumed. **(para. 28)** We accordingly conclude that, with respect, the Motions Judge wrongly concluded that the OLA did not allow the appellant to bring the action covered by section 18.1 of the FCA for an alleged breach of section 20 of the OLA. **(p. 38) Devinat v. Canada (Immigration and Refugee Board).** (November 29,1999), Ottawa (F.C. A) A-336-98 , Desjardins, Linden, Létourneau J.J. A..*

The constitutional entrenchment of language rights and their quasi-constitutional extension, qualified by the appeal for caution made to the courts by the Supreme Court, do not however imply, in the absence of specific indications to this effect, an alteration of the powers of the courts which have to interpret and apply these rights. Just as the Canadian Charter of Rights and Freedoms is not in itself a source of new jurisdictions, so the 1988 Official Languages Act does not create new jurisdictions other than those, vested in the

Commissioner of Official Languages and the Federal Court Trial Division, which it creates expressly ***(p. 387)***. ***Canada (A. G.)*** **v.** ***Viola***, [1991] 1 F.C. 373 (F.C.A.).

[TRANSLATION] *The respondent submits that Parliament expressly excluded some sections from the scope of section 77 of the OLA, and that it is not open to the petitioner to do indirectly that which he cannot do directly.* **(NP)** *The respondent's main contention is that the OLA is a "complete code" of remedies, and that each provision must be interpreted in light of the others. The respondent argues that since subsection 77(1) provides for a remedy in the Federal Court in connection with only some provisions of the OLA it excludes this such remedy in respect of the others.* ***(p. 13).*** *For the following reasons, I agree with respondent's position that in the case at bar, the petitioner is not entitled to exercise the remedy set out in section 18.1 of the Federal Court Act with a view to obtaining a writ of mandamus against the IRB.* **(NP)** *As I stated earlier, Part III of the OLA, which includes section 20, is not actionable in this Court under subsection 77(1).* **(NP)** *In my opinion, no new right of action is conferred upon the petitioner by virtue of subsection 77(5) of the OLA. Rather, the provision enables the petitioner to preserve or exercise any language-related right of action or remedy exercised in proceedings other than under the OLA. In other words, only OLA remedies (i.e. the s. 77(1) Federal Court remedy and the complaint procedure before the Commissioner) are available in respect of violations of provisions of the OLA* ***(pp. 24-25)***. ***Devinat*** **v.** ***Canada (Immigration and Refugee Board)*** (May 1st, 1998), Ottawa T-2062-96 (F.C. T.D.) Nadon J.

Limitation period

(2) An application may be made under subsection (1) within sixty days after (a) the results of an investigation of the complaint by the Commissioner are reported to the complainant under subsection 64(1), (b) the complainant is informed of the recommendations of the Commissioner under subsection 64(2), or (c) the complainant is informed of the Commissioner's decision to refuse or cease to investigate the complaint under subsection 58(5), or within such further time as the Court may, either before or after the expiration of those sixty days, fix or allow.

The issue is to decide what meaning is to be ascribed to the words contained in s. 77 of the Act. Is the court, for no matter what reason, or for that matter even when no reason is given, to simply extend the delays in which to allow a person to commence proceedings? I think not. What would be the purpose of stipulating a delay in the statute if for any reason or for no reason the court extends the delays in which to commence legal proceedings? **(NP)** *The court has been given the discretion to extend the delay to commence proceedings but the court can only exercise this discretion in a judicious manner, that is to say, if the plaintiff submits an acceptable reason. I say an acceptable reason to indicate that the*

court should attempt not to deprive one of a judicial right because of delay but one must have some valid reason for failing to commence legal proceedings within the legal delays stipulated in a statute ***(p. 258)***. ***Étienne* v. *Canada*** (1992), 54 F.T.R. 253 (F.C. T.D.). Aff'd by (1994), 165 N.R. 315 (F.C.A.)

I am satisfied I do not have the jurisdiction to amend or vary my order of May 19, 1992 in that the matter is now before the Appeal Division. My order follows from my reasons and the question of whether "it in the interest of justice" as in the Metaxas case (supra) is not in issue before me. Nor do I believe it proper for me to vary or amend my order while the matter is before the Appeal Division ***(p. 563)***. ***Étienne* v. *Canada***, [1992] 3 F.C. 557 (F.C. T.D.).

See also:

Montreuil* v. *Air Canada (1996), 121 F.T.R. 17 (F.C. T.D.).

Application six months after complaint

(3) Where a complaint is made to the Commissioner under this Act but the complainant is not informed of the results of the investigation of the complaint under subsection 64(1), of the recommendations of the Commissioner under subsection 64(2) or of a decision under subsection 58(5) within six months after the complaint is made, the complainant may make an application under subsection (1) at any time thereafter.

Order of Court

(4) Where, in proceedings under subsection (1), the Court concludes that a federal institution has failed to comply with this Act, the Court may grant such remedy as it considers appropriate and just in the circumstances.

In my opinion the exercise of this ancillary power does not depend on what was alleged in the originating motion. This Court has jurisdiction to grant relief in every case where it finds that an institution has failed to comply with the Act, so long as it considers doing so is appropriate and just in the circumstances ***(p. 4)***. ***Côté and The Queen and The Commissioner of Official Languages*** (March 28, 1994), Ottawa T-1051-92 (F.C. T.D.) Noël J.

Subsection 77(4) of the Act is a restatement of subsection 24(1) of the Charter which allows anyone whose rights or freedoms under the Charter have been infringed or denied to apply to a court of competent jurisdiction to "obtain such remedy as the court considers appropriate and just in the circumstances". Just as subsection 24(1) of the Charter gives the Court a broad discretion to grant a remedy for a Charter violation, subsection 77(4) of the Act gives the Court an equally broad discretion to grant a remedy for a violation of the language rights protected under it ***(p. 319)***. *Finally, the 1988 Official Languages Act is a statute*

designed to create practical and effective legal rights and obligations. To accomplish this objective, and to ensure that the Act is indeed an effective instrument for the protection of the language rights of Canadians, damages must be included among the realm of remedies available to the Court under subsection 77(4). The ability of the Court to award damages is, in my view, essential to the enforcement of guaranteed quasi-constitutional rights ***(p. 321)****.* ***Lavigne*** **v.** ***Canada (Human Resources Development)****,* [1997] 1 F.C. 305 (F.C. T.D.). Aff'd on appeal (May 11, 1998), *Montreal* A-913-96 (F.C.A.), Denault, Desjardins, Décary JJA.

Other rights of action

(5) Nothing in this section abrogates or derogates from any right of action a person might have other than the right of action set out in this section.

In my opinion, no new right of action is conferred upon the petitioner by virtue of subsection 77(5) of the OLA. Rather, the provision enables the petitioner to preserve or exercise any language-related right of action or remedy exercised in proceedings other than under the OLA. In other words, only OLA remedies (i.e. the s. 77(1) Federal Court remedy and the complaint procedure before the Commissioner) are available in respect of violations provisions of the OLA provision ***(pp. 24-25)****.* ***Devinat*** **v.** ***Canada (Immigration and Refugee Board)*** (May 1st, 1998), Ottawa T-2062-96 (F.C. T.D.) Nadon J.

See also:

Townsend **v.** ***Canada*** (1994), F.T.R. 21 (F.C. T.D.).

Commissioner may apply or appear

78. (1) The Commissioner may

(a) within the time limits prescribed by paragraph 77(2)(a) or (b), apply to the Court for a remedy under this Part in relation to a complaint investigated by the Commissioner if the Commissioner has the consent of the complainant;

(b) appear before the Court on behalf of any person who has applied under section 77 for a remedy under this Part; or

(c) with leave of the Court, appear as a party to any proceedings under this Part.

Complainant may appear as party

(2) Where the Commissioner makes an application under paragraph (1)(a), the complainant may appear as a party to any proceedings resulting from the application.

Capacity to intervene

(3) Nothing in this section abrogates or derogates from the capacity of the Commissioner to seek leave to intervene in any adjudicative proceedings relating to the status or use of **English** or **French**.

Headley* v. *Canada (Public Service Commission Appeal Board) [1987], 2 F.C. 235 (F.C.A.).

Evidence relating to similar complaint

79. In proceedings under this Part relating to a complaint against a federal institution, the Court may admit as evidence information relating to any similar complaint under this Act in respect of the same federal institution.

Air Canada's position is therefore that the Commissioner may only apply for a remedy limited to facts relating to a specific complaint, the investigation of that complaint and the resulting reports and recommendations. In my view, this interpretation is too narrow and is inconsistent with the general objectives of the Act and its remedial and quasi-constitutional nature. The filing of a complaint and the complainant's consent are preconditions for a remedy. On the other hand, the following provision, section 79, states that information relating to any "similar" complaint in respect of "the same federal institution" may be admitted as evidence. . . . This section is one of a kind and does not appear in other similar legislation. Parliament's intention is clearly to present the courts with a full context. I therefore agree with the Commissioner's position that the remedy is not limited to certain types of ground services listed in Paul Comeau's two specific complaints but may apply to all ground services provided by Air Canada at the Halifax airport. **(NP)** *In my view, the purpose of section 79 is to enable the Commissioner to prove to the Court that there is a systemic problem and that it has existed for a number of years. Unless all similar complaints are filed in evidence, the Court cannot assess the scope of the problem and the circumstances of the application.* **(NP)** *It is up to the judge presiding at the hearing on the merits of the motion to assess the probative force of all these facts or all this information in the context of more general considerations* ***(p. 8-9)***. *Nothing in the Act indicates that information in closed files, namely files already considered by the Commissioner, cannot be reconsidered in reviewing similar complaints in respect of the same federal institution. The closed files in question in the case at bar were apparently not closed to the satisfaction of the complainants. The fact that those complainants did not avail themselves of the court remedy available to them under Part X of the Act does not render the material information contained in their files irrelevant or inadmissible. The Act draws no distinction between complaints that are "open" and those that are "closed"* ***(p. 11-12)***. ***Commissioner of Official Languages of Canada* v. *Air Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada***, (December 31, 1997), Ottawa T-1989-96 (F.C. T.D.) Dubé J.

Hearing in summary manner

80. An application made under section 77 shall be heard and determined in a summary manner in accordance with any special rules made in respect of such applications pursuant to section 46 of the Federal Court Act.

As to the question of damages, I would like to deal first with the respondent's submission that no damages ought to be awarded because this proceeding was brought by notice of motion ***(p. 316)****. [T]he legislator has specified that the application under section 77 of the Act brought by the applicant shall be heard and determined in a summary manner in accordance with any special rules made in respect of such applications pursuant to section 46 of the Federal Court Act. [...] [C]onsidering the proceedings herein, the documentary evidence, and the arguments made on behalf of all the parties with respect to the applicant's claim for damages, and taking into account that the respondents have not shown nor even complained of any prejudice resulting from the procedure used by the applicant, I conclude that the right of the respondents to raise all their possible defences with respect to the applicant's claim for damages has not been prejudiced at all* ***(pp. 317-318)****.* ***Lavigne*** **v.** ***Canada (Human Resources Development)****,* [1997] 1 F.C. 305 (F.C. T.D.). Aff'd on appeal on other grounds: (May 11, 1998), *Montreal* A-913-96 (F.C.A.), Denault, Desjardins, Décary JJA.

Costs

81. (1) Subject to subsection (2), the costs of and incidental to all proceedings in the Court under this Act shall be in the discretion of the Court and shall follow the event unless the Court orders otherwise.

Idem

(2) Where the Court is of the opinion that an application under section 77 has raised an important new principle in relation to this Act, the Court shall order that costs be awarded to the applicant even if the applicant has not been successful in the result.

PART XI

GENERAL

Primacy of Parts I to V

82. (1) In the event of any inconsistency between the following Parts and any other Act of Parliament or regulation thereunder, the following Parts prevail to the extent of the inconsistency:

(a) Part I (Proceedings of Parliament);

(b) Part II (Legislative and other Instruments);

(c) Part III (Administration of Justice);

(d) Part IV (Communications with and Services to the Public); and

(e) Part V (**Language** of Work).

Canada (A. G.)* v. *Viola, [1991] 1 F.C. 373 (F.C.A.).

Canadian Human Rights Act excepted

(2) Subsection (1) does not apply to the Canadian Human Rights Act or any regulation made thereunder.

Rights relating to other languages

83. (1) Nothing in this Act abrogates or derogates from any legal or customary right acquired or enjoyed either before or after the coming into force of this Act with respect to any **language** that is not **English** or **French**.

Canada Post* v. *P.S.A.C. (1996), 58 L.A.C. (4th) 377.

Preservation and enhancement of other languages

(2) Nothing in this Act shall be interpreted in a manner that is inconsistent with the preservation and enhancement of **languages** other than **English** or **French**.

Consultations

84. The President of the Treasury Board, or such other minister of the Crown as may be designated by the Governor in Council, shall, at a time and in a manner appropriate to the circumstances, seek the views of members of the **English** and **French linguistic** minority communities and, where appropriate, members of the public generally on proposed regulations to be made under this Act.

Draft of proposed regulation to be tabled

85. (1) The President of the Treasury Board, or such other minister of the Crown as may be designated by the Governor in Council, shall, where the Governor in Council proposes to make any regulation under this Act, lay a draft of the proposed regulation before the House of Commons at least thirty days before a copy of that regulation is published in the Canada Gazette under section 86.

Calculation of thirty day period

(2) In calculating the thirty day period referred to in subsection (1), there shall not be counted any day on which the House of Commons does not sit.

Publication of proposed regulation

86. (1) Subject to subsection (2), a copy of each regulation that the Governor in Council proposes to make under this Act shall be published in the Canada Gazette at least thirty days before the proposed effective date thereof, and a reasonable opportunity shall be afforded to interested persons to make representations to the President of the Treasury Board with respect thereto.

Exception

(2) No proposed regulation need be published under subsection (1) if it has previously been published pursuant to that subsection, whether or not it has been amended as a result of representations made pursuant to that subsection.

Calculation of thirty day period

(3) In calculating the thirty day period referred to in subsection (1), there shall not be counted any day on which neither House of Parliament sits.

Tabling of regulation

87. (1) A regulation that is proposed to be made under paragraph 38(2)(a) and prescribes any part or region of Canada for the purpose of paragraph 35(1)(a) shall be laid before each House of Parliament at least thirty sitting days before the proposed effective date thereof.

Motion to disapprove proposed regulation

(2) Where, within twenty-five sitting days after a proposed regulation is laid before either House of Parliament under subsection (1), a motion for the consideration of that House to the effect that the proposed regulation not be approved, signed by no fewer than fifteen Senators or thirty Members of the House of Commons, as the case may be, is filed with the Speaker of that House, the Speaker shall, within five sitting days after the filing of the motion, without debate or amendment, put every question necessary for the disposition of the motion.

Where motion adopted

(3) Where a motion referred to in subsection (2) is adopted by both Houses of Parliament, the proposed regulation to which the motion relates may not be made.

Prorogation or dissolution of Parliament

(4) Where Parliament dissolves or prorogues earlier than twenty-five sitting days after a proposed regulation is laid before both Houses of Parliament under subsection (1) and a motion has not been disposed of under subsection (2) in relation to the proposed regulation in both Houses of Parliament, the proposed regulation may not be made.

Definition of "sitting day"

(5) For the purposes of this section, "sitting day" means, in respect of either House of Parliament, a day on which that House sits.

Permanent review of Act, etc., by parliamentary committee

88. The administration of this Act, any regulations and directives made under this Act and the reports of the Commissioner, the President of the Treasury Board and the Minister of Canadian Heritage made under this Act shall be reviewed on a permanent basis by such committee of the Senate, of the House of Commons or of both Houses of Parliament as may be designated or established for that purpose. R.S. 1985, c. 31 (4th Supp.), s. 88; 1995, c. 11, s. 30.

Section 126 of Criminal Code not applicable

89. For greater certainty, it is hereby declared that section 126 of the Criminal Code does not apply to or in respect of any contravention or alleged contravention of any provision of this Act.

Parliamentary and judicial powers, privileges and immunities saved

90. Nothing in this Act abrogates or derogates from any powers, privileges or immunities of members of the Senate or the House of Commons in respect of their personal offices and staff or of judges of any Court.

Staffing generally

91. Nothing in Part IV or V authorizes the application of **official language** requirements to a particular staffing action unless those requirements are objectively required to perform the functions for which the staffing action is undertaken.

Essentially, these provisions are but a revised statement of the duty already imposed by section 40 of the 1969 Official Languages Act to maintain the principle of selection based on merit. By stating that language requirements must be imposed "objectively", section 91 expressly confirms what has always been implicit, namely that language requirements cannot be imposed frivolously or arbitrarily. The purpose of this section is to provide comfort and reassurance, rather than create new law, and it would be vain to seek in it for any new jurisdiction of any kind for the appeal board, especially as subsection 77(1) expressly authorizes a complaint under section 91 to be brought before the Commissioner, not the appeal board, and it appears from section 35 and subsection 39(2) that the department concerned, not the Public Service

Commission, is responsible for ensuring compliance with the 1988 Official Languages Act in the establishment of languages of work ***(pp. 388-389)***. ***Canada (A. G.)*** **v.** ***Viola***, [1991] 1 F.C. 373 (F.C.A.).

The reality of the two language groups in Canada is that bilingual proficiency is a more inherent feature of French language groups than English language groups. So too in the federal Public Service, where the same inherent feature applies. To foster bilingualism or to meet its statutory duties, the government, through its Public Service Commission, had to designate any number of positions as bilingual, but in so doing, assure that non-bilingual candidates for appointment would not be prejudiced. **(NP)** *Maintaining equilibrium or balance between the tenets of statutory policy and the realities of people in the public sector obviously demanded a particularly deft and delicate touch. I need not comment in detail on how balance was achieved, except to note the provisions in statutes and regulations respecting "grand-father" rights, exclusion orders, language training at public expense, security of position if language proficiency is not achieved within prescribed delays, and other measures of similar nature* ***(pp. 108)***. ***Professional Institute of Public Service*** **v.** ***Canada***, [1993] 2 F.C. 90 (F.C. T.D.).

It was already settled law, before s. 12.1 [of the Public Service Employment Act] *was added, that appeal boards may not decide on the level of language skills required* ***(p. 314)***. *In the case at bar, the Appeal Board did not assess the merit of the appointment made; rather, it assessed the validity of the language requirements of the position to be filled. In order to examine the validity of those requirements properly, it would have had to consider the other obligations and requirements in respect of language to which the employer is subject under the Official Languages Act, and this aspect of the analysis is well beyond its jurisdiction.* **(NP)** *In conclusion, jurisdiction to determine whether there has been a breach of the principle of objectivity in the language requirements of a position, having regard to the duties to be performed and to the requirements of the Official Languages Act is given exclusively to the Commission, with the exception of the Federal Court. The function of the Appeal Board is to ensure that appointments made under the Act comply with the merit principle. ...I shall simply say that the effect of the objective criterion imposed by s. 91 of the Official Languages Act requires that the applicant had to satisfy the Appeal Board that the staffing action was "patently unreasonable"* ***(pp. 316-317)*** ***Canada (A.G.)*** **v.** ***Asselin*** (1995), 100 F.T.R. 309 (F.C. T.D.).

See also:

Gariepy **v.** ***Canada*** (1987), 14 F.T.R. 58 (F.C. T.D.).

Headley* v. *Canada (Public Service Commission Appeal Board) [1987], 2 F.C. 235 (F.C.A.).

The Canadian Union of Postal Workers and Canada Post Corporation Re: National Grievance Imperative Staffing of Bilingual Wicket Positions (November 22, 1994), C.U.P.W. Grievance No. N00-91-001, Innis Christie, arbitrator.

References in Acts of Parliament to the "official languages"

92. In every Act of Parliament, a reference to the "**official languages**" or the "**official languages** of Canada" shall be construed as a reference to the **languages** declared by subsection 16(1) of the Canadian Charter of Rights and Freedoms to be the **official languages** of Canada.

Regulations

93. The Governor in Council may make regulations (a) prescribing anything that the Governor in Council considers necessary to effect compliance with this Act in the conduct of the affairs of federal institutions other than the Senate, the House of Commons or the Library of Parliament; and (b) prescribing anything that is by this Act to be prescribed by regulation of the Governor in Council.

PART XII

RELATED AMENDMENTS

94 to 99. [Amendments]

PART XIII

CONSEQUENTIAL AMENDMENT

100 to 103. [Amendments]

PART XIV

TRANSITIONAL PROVISIONS, REPEAL AND COMING INTO FORCE

Commissioner remains in office

107. The person holding office as Commissioner on the coming into force of Part IX shall continue in office as Commissioner and shall be deemed to have been appointed under this Act but to have been appointed at the time he was appointed under the **Official languages** Act, being chapter O-2 of the Revised Statutes of Canada, 1970.

Payments to Crown corporations

108. (1) In respect of the four fiscal years immediately following the date this section comes into force, the President of the Treasury Board may make payments to Crown corporations to assist them in the timely implementation of this Act.

Appropriation

(2) Any sums required for the purpose referred to in subsection (1) shall be paid out of such moneys as may be appropriated by Parliament for that purpose.

Coming into force

110. This Act or any provision thereof shall come into force on a day or days to be fixed by proclamation.

2.53.1 Official Languages (Communications With And services To The Public) Regulations, SOR/92-48.

Official Languages *(Communications with and Services to the Public) Regulations*.

Whereas, pursuant to section 84 of the ***Official Languages Act***, the President of the Treasury Board has sought the views of members of the **English** and **French linguistic** minority communities and members of the public generally on the proposed Regulations concerning communications with and services to the public in either **official language**;

Whereas, pursuant to section 85 of the said Act, the President of the Treasury Board has laid a draft of the proposed Regulations before the House of Commons on November 8, 1990, which date is at least thirty days before a copy of the proposed Regulations was published in the *Canada Gazette* under section 86 of the said Act;

And Whereas, pursuant to section 86 of the said Act, the proposed Regulations were published in the *Canada Gazette* on March 23, 1991, which date is at least thirty days before the proposed effective date thereof, and a reasonable opportunity was thereby afforded to interested persons to make representations to the President of the Treasury Board with respect thereto;

Therefore, His Excellency the Governor General in Council, on the recommendation of the Treasury Board, pursuant to section 32 of the ***Official languages Act***, is pleased hereby to make the annexed Regulations respecting communications with and services to the public in either **official language**. R.S. c. 31 (4th Supp.)

SHORT TITLE

1. These Regulations may be cited as the ***Official Languages*** *(Communications with and Services to the Public) Regulations*.

INTERPRETATION

2. In these Regulations,

"Act" means the ***Official Languages Act***; (*Loi*)

"CMA" means a census metropolitan area, excluding Ottawa-Hull, as used by Statistics Canada for the purposes of the census referred to in section 3; (*région métropolitaine de recensement*)

"CSD" means a census subdivision, excluding any CSD or any part thereof within the National Capital Region, as used by Statistics Canada for the purposes of the census referred to in section 3; (*subdivision de recensement*)

"immigration services" means services that are provided, powers that are exercised and duties and functions that are performed by an immigration officer under the *Immigration Act*, other than services provided, powers exercised or duties or functions performed under that Act by an officer as defined in section 2 of the *Customs Act*; (*services d'immigration*)

"Method I" means the method of estimating first **official language** spoken that is described as Method I in *Population Estimates by First* ***Official language*** *Spoken*, published by Statistics Canada in September 1989, which method gives consideration, firstly, to knowledge of the **official languages**, secondly, to mother tongue, and thirdly, to **language** spoken in the home, with any cases in which the available information is not sufficient for Statistics Canada to decide between **English** and **French** as the first **official language** spoken being distributed equally between **English** and **French**; (*méthode I*)

"route" means

(*a*) for the purposes of paragraphs 7(4)(*c*) and (*d*), a route on which a federal institution provides the travelling public with a transportation service by aircraft or train that is carried out by a single conveyance, and

(*b*) for the purposes of subsection 7(2) and paragraph 7(4)(*e*), a route on which a federal institution provides the travelling public with a two-way transportation service by aircraft, train or ferry between the starting and finishing points of a flight, train run or ferry crossing that is carried out by a single conveyance between those two points, with or without intermediate stops. (*trajet*)

PART I SIGNIFICANT DEMAND

Definition of English or French Linguistic Minority Population

3. "**English** or **French linguistic** minority population" means that portion of the population in a province in which an office or facility of a federal institution is located that is the numerically lower **official language** population in the province, as determined by Statistics Canada under Method I on the basis of

(*a*) for the purposes of paragraphs 5(1)(*a*), (*b*) and (*d*) to (*r*), subsection 5(2) and paragraph 7(4)(*a*),

(i) before the results of the 1991 census of population are published, the 1986 census of population taken pursuant to the *Statistics Act*, and

(ii) after the results of the 1991 census of population are published, the most recent decennial census of population for which results are published; and

(*b*) for the purposes of paragraphs 5(1)(*c*) and 6(1)(*d*) and (2)(*c*), subparagraphs 6(2)(*d*)(i) and 7(4)(*c*)(ii) and (iii) and paragraph 7(4)(*d*), the 1986 census of population taken pursuant to the *Statistics Act*.

Calculation of Population Numbers

4. (1) For the purposes of this Part, the number of persons of the **English** or **French linguistic** minority population in a province, CMA, CSD or service area is equal to the estimated number of persons of that population in that province, CMA, CSD or service area as determined by Statistics Canada under Method I on the basis of the census referred to in section 3.

(2) For the purposes of this Part, the total population in a province, CMA, CSD or service area is equal to the estimated total population, excluding institutional residents as defined in *Population Estimates by First* ***Official language*** *Spoken*, published by Statistics Canada in September 1989, in that province, CMA, CSD or service area as determined by Statistics Canada on the basis of the census referred to in section 3.

General Circumstances

5. (1) For the purposes of paragraph 22(*b*) of the Act, there is significant demand for communications with and services from an office or facility of a federal institution in both **official languages** where

(*a*) the office or facility is located in a CMA that has at least 5,000 persons of the **English** or **French linguistic** minority population and is the only office or facility of the institution in the CMA that provides a certain service;

(*b*) the office or facility is located in a CMA that has at least 5,000 persons of the **English** or **French linguistic** minority population, the office or facility is one of two or more offices or facilities of the institution in the CMA that provide the same services and those services are not available in both **official languages** at a proportion of those offices or facilities that is at least equal to the proportion of that population in the CMA to the total population in the CMA or, if the number representing that proportion of offices is equal to less than one, at at least one of those offices or facilities, the choice of which depends on

(i) the distribution of the **linguistic** minority population within the CMA, and

(ii) the function of the offices or facilities that provide those services, their clientele and their location within the CMA;

(*c*) the office or facility is located in a province in which the **English** or **French linguistic** minority population is equal to at least 5 per cent of the total population in the province and is located in a CMA that has a population of at least 1,000,000 persons, the office or facility is one of two or more offices or facilities of the institution in the CMA that provide any of the services referred to in subparagraphs (*f*)(i) to (vi) and those services are not available in both **official languages** at one office plus at a proportion of those offices or facilities that is at least equal to the proportion of that population in the CMA to the total population in the CMA or, if the number representing that proportion of offices is equal to less than one, at at least two of those offices or facilities, the choice of which depends on

(i) the distribution of the **linguistic** minority population within the CMA, and

(ii) the function of the offices or facilities that provide those services, their clientele and their location within the CMA;

(*d*) the office or facility is located in a CMA that has fewer than 5,000 persons of the **English** or **French linguistic** minority population and does not provide any of the services referred to in subparagraphs (*f*)(i) to (vi), and at that office or facility over a year at least 5 per cent of the demand from the public for services is in the **official language** of that population;

(*e*) the office or facility is located in a CMA that has fewer than 5,000 persons of the **English** or **French linguistic** minority population and the service area of the office or facility has at least 5,000 persons of the **linguistic** minority population;

(*f*) the office or facility is located in a CMA that has fewer than 5,000 persons of the **English** or **French linguistic** minority population and is the only office or facility of the institution in the CMA that provides

(i) services related to income security programs of the Department of National Health and Welfare,

(ii) services of a post office,

(iii) services of an employment centre of the Department of Employment and Immigration,

(iv) services of an office of the Department of National Revenue (Taxation),

(v) services of an office of the Department of the Secretary of State of Canada, or

(vi) services of an office of the Public Service Commission;

(*g*) the office or facility is located in a CMA that has fewer than 5,000 persons of the **English** or **French linguistic** minority population, the office or facility is one of two or more offices or facilities of the institution in the CMA that provide any of the services referred to in subparagraphs (*f*)(i) to (vi) and those services are not available in both **official languages** at a proportion of those offices or facilities that is at least equal to the proportion of that population in the CMA to the total population in the CMA or, if the number representing that proportion of offices is equal to less than one, at at least one of those offices or facilities, the choice of which depends on

(i) the distribution of the **linguistic** minority population within the CMA, and

(ii) the function of the offices or facilities that provide those services, their clientele and their location within the CMA;

(*h*) the office or facility is located outside a CMA and within a CSD and

(i) the service area of the office or facility has at least 500 persons of the **English** or **French linguistic** minority population and the number of those persons is equal to at least 5 per cent of the total population of that service area,

(ii) the service area of the office or facility has at least 5,000 persons of the **English** or **French linguistic** minority population,

(iii) the office or facility serves the CSD and is the only office or facility of the institution in the CSD that provides a certain service, the CSD has at least 500 persons of the **English** or **French linguistic** minority population and the number of those persons is equal to at least 5 per cent of the total population in the CSD, or

(iv) the service area of the office or facility includes all or part of two or more provinces in which the **languages** of the **English** or **French linguistic** minority populations are not the same;

(*i*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has at least 500 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to at least 5 per cent and less than 30 per cent of the total population in the CSD, the office or facility is one of two or more offices or facilities of the institution in the CSD that provide the same services and those services are not available in both **official languages** at a proportion of those offices or facilities that is at least equal to the proportion of

that population in the CSD to the total population in the CSD or, if the number representing that proportion of offices is equal to less than one, at at least one of those offices or facilities, the choice of which depends on

(i) the distribution of the **linguistic** minority population within the CSD, and

(ii) the function of the offices or facilities that provide those services, their clientele and their location within the CSD;

(*j*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has at least 500 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to at least 30 per cent of the total population in the CSD and the office or facility is one of two or more offices or facilities of the institution in the CSD that provide the same services;

(*k*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has at least 500 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to less than 5 per cent of the total population in the CSD, the office or facility does not provide any of the services referred to in subparagraphs (*l*)(i) to (vii) and at that office or facility over a year at least 5 per cent of the demand from the public for services is in the **official language** of the **linguistic** minority population;

(*l*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has at least 500 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to less than 5 per cent of the total population in the CSD and the office or facility is the only office or facility of the institution in the CSD that provides

(i) services related to income security programs of the Department of National Health and Welfare,

(ii) services of a post office,

(iii) services of an employment centre of the Department of Employment and Immigration,

(iv) services of an office of the Department of National Revenue (Taxation),

(v) services of an office of the Department of the Secretary of State of Canada,

(vi) services of a detachment of the Royal Canadian Mounted Police, or

(vii) services of an office of the Public Service Commission;

(*m*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has at least 500 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to less than 5 per cent of the total population in the CSD, the office or facility is one of two or more offices or facilities of the institution in the CSD that provide any of

the services referred to in subparagraphs (*l*)(i) to (vii) and those services are not available in both **official languages** at a proportion of those offices or facilities that is at least equal to the proportion of that population in the CSD to the total population in the CSD or, if the number representing that proportion of offices is equal to less than one, at at least one of those offices or facilities, the choice of which depends on

(i) the distribution of the **linguistic** minority population within the CSD, and

(ii) the function of the offices or facilities that provide those services, their clientele and their location within the CSD;

(*n*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has at least 200 and fewer than 500 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to at least 5 per cent of the total population in the CSD, the office or facility does not provide any of the services referred to in subparagraphs (*l*)(i) to (vii) and at that office or facility over a year at least 5 per cent of the demand from the public for services is in the **official language** of the **linguistic** minority population;

(*o*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has at least 200 and fewer than 500 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to at least 5 per cent of the total population in the CSD, the office or facility provides any of the services referred to in subparagraphs (*l*)(i) to (vii) and those services are not available in both **official languages** at at least one office or facility of the institution in the CSD;

(*p*) the office or facility is located outside a CMA and within a CSD that it serves, the CSD has fewer than 200 persons of the **English** or **French linguistic** minority population, the number of those persons is equal to at least 30 per cent of the total population in the CSD and the office or facility provides any of the services referred to in subparagraphs (*l*)(i) to (vii);

(*q*) the office or facility is located outside a CMA and within a CSD that it serves, the number of persons of the **English** or **French linguistic** minority population in the CSD has not been determined by Statistics Canada under Method I on the basis of the census referred to in section 3, or cannot be disclosed by Statistics Canada for reasons of confidentiality, and at that office or facility over a year at least 5 per cent of the demand from the public for services is in the **official language** of that population; or

(*r*) the office or facility is located outside a CMA and within a CSD, the number of persons of the **English** or **French linguistic** minority population in the service area of the office or facility cannot be determined by Statistics Canada under Method I on the basis of the census referred to in section 3 because of the nature of the service area or cannot be disclosed by Statistics Canada for reasons of confidentiality, and at that office or facility over a year at least 5 per cent of the demand from the public for services is in the **official language** of that population.

(2) For the purposes of paragraph 22(*b*) of the Act, there is significant demand for communications with and services from an office or facility of a federal institution in the **official language** that is not the **official language** of the **English** or **French linguistic** minority population where the office or facility is located in Canada and is not an office or facility at which there is significant demand in both **official languages** under subsection (1).

(3) For the purposes of paragraph 22(*b*) of the Act, there is significant demand for communications with and services from an office or facility of a federal institution in an **official language** where the office or facility is located outside Canada and at that office or facility over a year at least 5 per cent of the demand from the public for services is in that **language**.

(4) Subsections (1) to (3) do not apply in respect of

(*a*) services described in paragraph 6(1)(*a*); or

(*b*) an office or facility described in any of paragraphs 6(1)(*b*) to (*e*), subsection 6(2) or section 7.

Specific Circumstances

6. (1) For the purposes of paragraph 22(*b*) of the Act, there is significant demand for communications with and services from an office or facility of a federal institution in an **official language** where

(*a*) the services provided by the office or facility are provided to a restricted clientele, the members of which are identifiable, those services are specifically intended for that clientele and at that office or facility over a year at least 5 per cent of the demand from that clientele for those services is in that **language**;

(*b*) the office or facility provides ship-to-shore communications services, including coast radio station services and vessel traffic services, and at that office or facility over a year at least 5 per cent of the demand from the public for those services is in that **language**;

(*c*) the office or facility provides immigration services and is located at a place of entry into Canada, and at that office or facility over a year at least 5 per cent of the demand from the public for those services is in that **language**;

(*d*) the office or facility provides services other than immigration services and is located at a place of entry into Canada, other than an airport or a ferry terminal, in a province in which the **English** or **French linguistic** minority population is equal to at least 5 per cent of the total population in the province, and at that office or facility over a year at least 5 per cent of the demand from the public for services is in that **language**; or

(*e*) the office or facility provides search and rescue services from a vessel that has long-range capabilities or from an aircraft, the vessel or aircraft from which the service is provided is distinctively marked by the Department of National Defence or the Canadian Coast Guard as a

search and rescue vessel or aircraft or is crewed by the Department of National Defence with personnel specially trained for search and rescue operations, and at that office or facility over a year at least 5 per cent of the demand from the public for those services is in that **language**.

(2) For the purposes of paragraph 22(*b*) of the Act, there is significant demand for communications with and services from an office or facility of a federal institution in both **official languages** where

(*a*) the office or facility provides ship-to-shore communications services, including coast radio station services and vessel traffic services, and the service area of the office or facility includes all or a portion of the Bay of Fundy, the St. Lawrence River or the Gulf of St. Lawrence up to the innermost limit of Cabot Strait, but not including Cabot Strait, and up to the southern limit of the Strait of Belle Isle, but not including the Strait of Belle Isle;

(*b*) the office or facility provides air traffic control services and related advisory services in circumstances in which either **official language** may be used pursuant to the *Aeronautical Communications Standards and Procedures Order*;

(*c*) the office or facility provides services other than immigration services and is located at a place of entry into Canada, other than an airport or ferry terminal, in a province in which the **English** or **French linguistic** minority population is equal to at least 5 per cent of the total population in the province, and at that place of entry at least 500,000 persons come into Canada in a year; or

(*d*) the office or facility provides search and rescue services from a vessel that has long-range capabilities or from an aircraft, the vessel or aircraft from which the service is provided is distinctively marked by the Department of National Defence or the Canadian Coast Guard as a search and rescue vessel or aircraft or is crewed by the Department of National Defence with personnel specially trained for search and rescue operations, and the office or facility provides those services

(i) in or over a province in which the **English** or **French linguistic** minority population is equal to at least 5 per cent of the total population in the province,

(ii) in or over Hudson Bay, Hudson Strait or James Bay, or

(iii) in or over an area that falls within the boundaries of the Halifax Search and Rescue Region as set out in Annex 3B of the *National Search and Rescue Manual*, published by the Department of National Defence and the Canadian Coast Guard, as amended from time to time.

7. (1) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public, other than air traffic control services and related advisory services, from an office or facility of a federal institution in an **official language** where the facility is an airport, railway station or ferry terminal or the office is located at an airport, railway station or ferry

terminal and at that airport, railway station or ferry terminal over a year at least 5 per cent of the demand from the public for services is in that **language**.

(2) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public from an office or facility of a federal institution in an **official language** where the office or facility provides those services on a route and on that route over a year at least 5 per cent of the demand from the travelling public for services is in that **language**.

(3) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public, other than air traffic control services and related advisory services, from an office or facility of a federal institution in both **official languages** where the facility is an airport or the office is located in an airport and over a year the total number of emplaned and deplaned passengers at that airport is at least 1,000,000.

(4) For the purposes of subsection 23(1) of the Act, there is significant demand for services to the travelling public from an office or facility of a federal institution in both **official languages** where

(*a*) the facility is a railway station that serves the travelling public and

(i) is located in a CMA that has at least 5,000 persons of the **English** or **French linguistic** minority population, or

(ii) is located outside a CMA and within a CSD that has at least 500 persons of the **English** or **French linguistic** minority population and the number of those persons is equal to at least 5 per cent of the total population of the CSD;

(*b*) the facility is a ferry terminal located in Canada and over a year the total number of arriving and departing passengers at that ferry terminal is at least 100,000;

(*c*) the office or facility provides those services on board an aircraft

(i) on a route that starts, has an intermediate stop or finishes at an airport located in the National Capital Region, the CMA of Montreal or the City of Moncton or in such proximity to that Region, CMA or City that it primarily serves that Region, CMA or City,

(ii) on a route that starts and finishes at airports located in the same province and that province has an **English** or **French linguistic** minority population that is equal to at least 5 per cent of the total population in the province, or

(iii) on a route that starts and finishes at airports located in different provinces and each province has an **English** or **French linguistic** minority population that is equal to at least 5 per cent of the total population in the province;

(*d*) the office or facility provides those services on board a train

(i) on an interprovincial route that starts in, finishes in or passes through a province that has an **English** or **French linguistic** minority population that is equal to at least 5 per cent of the total population in the province, or

(ii) on a route that starts and finishes at railway stations located in the same province and that province has an **English** or **French linguistic** minority population that is equal to at least 5 per cent of the total population in the province; or

(*e*) the office or facility provides those services on board a ferry on a route on which over a year there are at least 100,000 passengers.

PART II NATURE OF THE OFFICE

Health, Safety and Security of the Public

8. For the purposes of paragraph 24(1)(*a*) of the Act, the circumstances that relate to the health, safety or security of members of the public are the following:

(*a*) where an office or facility of a federal institution provides emergency services, including first aid services, in a clinic or health care unit at an airport, railway station or ferry terminal;

(*b*) where an office or facility of a federal institution uses signage that includes words or standardized public announcements regarding health, safety or security in respect of

(i) passengers on aircraft, trains or ferries,

(ii) members of the public at airports, railway stations or ferry terminals, or

(iii) members of the public in or on the grounds of federal buildings; and

(*c*) where an office or facility of a federal institution uses written notices or signage that includes words for alerting the public to hazards of a radioactive, explosive, chemical, biological or environmental nature or to other hazards of a similar nature.

Location of the Office

9. For the purposes of paragraph 24(1)(*a*) of the Act, the circumstances that relate to the location of an office or facility of a federal institution are the following:

(*a*) where the office or facility is located in a park as defined in the *National Parks Act* or on land set aside as a National Historic Park in accordance with Part II of that Act and the office or facility does not provide the services referred to in paragraph (*b*);

(*b*) where the office or facility is located in a park or on land referred to in paragraph (*a*), the office or facility is one of two or more offices or facilities in the park or on the land that provide the services of a post office and those services are not available in both **official languages** at at least one of those offices or facilities;

(*c*) where the office or facility is located in such proximity to a park or land referred to in paragraph (*a*) that it provides specific services for visitors to the park or land and those services are not available in that park or on that land;

(*d*) where the office or facility is located in the Yukon Territory, serves the public generally and, of all offices or facilities of the institution in the Yukon Territory, is the office or facility at which over a year there is the greatest number of persons using the **French language** to request services; and

R.* v. *Rodrigue (1994), 91 C.C.C. (3d) 455 (S.C.Y.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 129 (C.A.Y.). Leave to appeal refused No 24585, [1995] 3 S.C.C. vii.

(*e*) where the office or facility is located in the Northwest Territories, serves the public generally and, of all offices or facilities of the institution in the Northwest Territories, is the office or facility at which over a year there is the greatest number of persons using the **French language** to request services.

National or International Mandate of the Office

10. For the purposes of paragraph 24(1)(*a*) of the Act, the circumstances that relate to the national or international mandate of an office of a federal institution are the following:

(*a*) where the office is a diplomatic mission or consular post;

(*b*) where the office is responsible for organizing or hosting an exposition, fair, exhibition, competition or game of national or international scope that is open to the public;

(*c*) where the office participates in an event referred to in paragraph (*b*);

(*d*) where the office is located in a province at a place of entry into Canada and is, of all offices located at a place of entry in that province, the office that in a year provides immigration services to the greatest number of persons seeking to come into Canada; and

(*e*) where the office provides services other than immigration services and is located in a province at a place of entry into Canada, other than an airport, that is the place of entry, other than an airport, where in that province the greatest number of persons come into Canada in a year.

Other Circumstances

11. For the purposes of paragraph 24(1)(*b*) of the Act, the circumstances in which it is reasonable that communications with and services from an office or facility of a federal institution be available in both **official languages** are the following:

(*a*) where the office or facility serves one or more entire provinces and those services are

(i) correspondence services,

(ii) toll-free long-distance telephone services, or

(iii) local telephone services, if the office or facility provides the same services by toll-free long-distance telephone;

(*b*) where those communications and services are made available by the office or facility through an automated system accessible to the public and the communications and services are directly related to the operation of the system or consist of providing material or information that originated with the institution; and

(*c*) where those communications and services are the provision in an airport, railway station or ferry terminal of signage, including information display systems with respect to aircraft, train or ferry transportation services or baggage pick-up.

PART III CONTRACT FOR SERVICES TO THE TRAVELLING PUBLIC

12. (1) For the purposes of subsection 23(2) of the Act, services to the travelling public are the following:

(*a*) restaurant, cafeteria, car rental, travel insurance, ground transportation dispatch, foreign exchange, duty free shop and hotel services;

(*b*) self-service equipment, including automated banking machines and vending machines, and the provision of instructions for the use of public telephones and electronic games; and

(*c*) passenger screening and boarding services, public announcements and the provision of other information to the public, and carrier services, including counter services for tickets and check-in but excluding carrier services in respect of buses provided at railway stations or ferry terminals.

(2) Where a service referred to in subsection (1) is provided by means of printed or pre-recorded material, such as signs, notices and menus, car rental contracts and travel insurance policies for the travelling public, the material shall be provided in both **official languages**.

(3) Where a service referred to in subsection (1) is provided by means other than those referred to in subsection (2), the service shall be offered to the travelling public by such means as will enable any member of that public to obtain those services in the **official language** of his or her choice.

PART IV EFFECTIVE DATE

13. (1) Sections 1 to 4, paragraphs 5(1)(*a*) to (*c*), (*e*) to (*j*), (*l*), (*m*), (*o*) and (*p*), subsections 5(2) and (4), paragraphs 6(2)(*b*) and (*c*), subsections 7(3) and (4), section 8, paragraphs 9(*a*)

to (*c*) and sections 10 and 11 shall come into force one year after the date of registration of these Regulations by the Clerk of the Privy Council.

(2) Paragraphs 5(1)(*d*), (*k*), (*n*), (*q*) and (*r*), subsection 5(3), paragraphs 6(1)(*a*), (*c*) and (*d*), subsections 7(1) and (2) and paragraphs 9(*d*) and (*e*) shall come into force two years after the date of registration of these Regulations by the Clerk of the Privy Council.

(3) Paragraphs 6(1)(*b*) and (*e*) and (2)(*a*) and (*d*) and section 12 shall come into force three years after the date of registration of these Regulations by the Clerk of the Privy Council.

2.54 Petro-Canada Public Participation Act, S.C. 1991, c. 10 [P-11.1].

Mandatory provisions in articles of amendment

9. (1) The articles of amendment for Petro-Canada shall contain. . .

(e) provisions requiring Petro-Canada to ensure that any member of the public can, in either **official language**, communicate with and obtain available services from

(i) its head office, and

(ii) any of its other offices or facilities, and the head office and any other office or facility of any of its wholly-owned subsidiaries, where Petro-Canada determines that there is significant demand for communications with and services from that office or facility in that **language** having regard to the public served and the location of the office or facility; 1991, c. 10, s. 9; 1993, c. 34, s. 101; 1994, c. 47, s. 220.

2.55 Pilotage Act, R.S.C. 1985, c. P-14.

Regulations

20. (1) An Authority may, with the approval of the Governor in Council, make regulations necessary for the attainment of its objects, including, without restricting the generality of the foregoing, regulations. . .

(f) prescribing the qualifications that a holder of any class of licence or any class of pilotage certificate shall meet, including the degree of local knowledge, skill, experience and proficiency in one or both of the **official languages** of Canada required, in addition to the minimum qualifications prescribed by the Governor in Council under section 52; 1970-71-72, c. 52, s. 14.

2.56 Plant Breeders' Rights Act, S.C. 1990, c. 20 [P-14.6].

Confirmation of claim to priority

11. (2) A claim respecting priority based on a preceding application made in a country of the Union or an agreement country shall not be allowed unless, within three months after the date on which the claim is submitted to the Commissioner, it is confirmed by filing with the Commissioner a copy, certified as correct by the appropriate authority in that country and accompanied by an **English** or **French translation** of the certified copy, if made in any other **language**, of each document that constituted the preceding application.

2.57 Privacy Act, R.S.C. 1985, c. P-21.

Extension of time limits

15. The head of a government institution may extend the time limit set out in section 14 in respect of a request for

(a) a maximum of thirty days if

(i) meeting the original time limit would unreasonably interfere with the operations of the government institution, or

(ii) consultations are necessary to comply with the request that cannot reasonably be completed within the original time limit, or

(b) such period of time as is reasonable, if additional time is necessary for **translation** purposes or for the purposes of converting the personal information into an alternative format,

Language of access

17. (2) Where access to personal information is to be given under this Act and the individual to whom access is to be given requests that access be given in a particular one of the **official languages** of Canada,

(a) access shall be given in that **language**, if the personal information already exists under the control of a government institution in that **language**; and

(b) where the personal information does not exist in that **language**, the head of the government institution that has control of the personal information shall cause it to be translated or interpreted for the individual if the head of the institution considers a **translation** or interpretation to be necessary to enable the individual to understand the information. R.S. 1985, c. P-21, s. 17; 1992, c. 21, s. 36.

Receipt and investigation of complaints

29. (1) Subject to this Act, the Privacy Commissioner shall receive and investigate complaints. . .

(e) from individuals who have not been given access to personal information in the **official language** requested by the individuals under subsection 17(2); R.S. 1985, c. P-21, s. 29; 1992, c. 21, s. 37.

2.58 Privileges and Immunities (North Atlantic Treaty Organisation) Act, R.S.C. 1985, c. P-24.

ANNEX

Article 27. Done in Ottawa this twentieth day of September, 1951, in **French** and in **English**, both texts being equally authoritative, in a single copy which shall be deposited in the archives of the Government of the United States of America which will transmit a certified copy to each of the signatory States.

2.59 Public Service Employment Act, R.S.C. 1985, c. P-32.

Standards

12. (1) For the purpose of establishing the basis for selection according to merit under section 10, the Commission may prescribe standards for selection and assessment as to education, knowledge, experience, **language**, residence or any other matters that, in the opinion of the Commission, are necessary or desirable having regard to the nature of the duties to be performed and the present and future needs of the Public Service. R.S. 1985, c. P-33, s. 12; 1992, c. 54, s. 11.

The applicant alleges that she has been deprived of equality before and under the law and that she has been deprived for her right to the equal protection and equal benefit of the law under section 15 by being subject to a language requirement in her application for the CR-4 position where the two incumbents presently holding that position were not subject to that requirement and are not now subject to it ***(p. 241)****. The applicant was therefore left with the necessity of proving discrimination on the basis of language without the benefit of an enumerated ground of discrimination. This was a burden she was not able to*

meet ***(p. 246)***. ***Headley*** **v.** ***Canada (Public Service Commission Appeal Board)*** [1987], 2 F.C. 235 (F.C.A.).

As in the case at bar, the fact that the Department might be subject to more specific legal duties than in the past when it comes time to determine the language requirements of a position does not mean that an appeal board thereby acquires a jurisdiction which was heretofore beyond it. Unless the Act itself contains some indication that Parliament intended to give an appeal board a new jurisdiction affecting the department's managerial rights, the appeal board will have to resign itself to continuing to perform the function it has until now exercised, and to leave to other jurisdictions the responsibility for deciding whether a department has complied with the provisions of the 1988 Official Languages Act in a given case ***(pp. 387-388)***. ***Canada (A. G.)*** **v.** ***Viola***, [1991] 1 F.C. 373 (F.C.A.).

See also in this book:

Canada, *Official Languages Act*, s. 91;

Constitution Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 15.

See also:

Canada (A.G.) **v.** ***Asselin*** (1995), 100 F.T.R. 309 (F.C. T.D.).

Notice

14. (2) A notice under subsection (1) shall be given in both the **English** and **French languages** together, unless the Commission otherwise directs in any case or class of cases. R.S. c. P-32, s. 14.

Languages in which examination to be conducted

16. (2) An examination, test or interview under this section, when conducted for the purpose of determining the education, knowledge and experience of the candidate or any other matter referred to in section 12, except **language**, shall be conducted in the **English** or **French language** or both, at the option of the candidate.

Idem

(3) An examination, test or interview under this section, when conducted for the purpose of determining the qualifications of the candidate in the knowledge and use of the **English** or **French language** or both, or of a third **language**, shall be conducted in the **language** or **languages** in the knowledge and use of which the qualifications of the candidate are to be determined. Ch. P33, s. 16. . . .

To support the decision of the appeal board, it is enough to find that her determination with regard to the linguistic qualifications of one of the members of the selection board was well founded. The board was composed of three members. The only evidence of the linguistic qualifications of two of them was their "linguistic profiles", which showed them to be rated at levels A and B respectively for ability in the French languages ***(p. 2)****. Whether or not the appeal board was right in her finding that level B was not an adequate qualification for "effective communication' as required by paragraph 13(1), (supra), there can simply be no doubt that level A is inadequate. That being so, the members of the selection board were not all properly qualified and the appeal board committed no error in her conclusion that the selection process was flawed* ***(p. 3).*** ***McKinnon and Public Service Commission*** (May 23, 1990), Ottawa, Ontario, A-316-89 (F.C.A.) Hugessen J.A.

Language

20. Employees appointed to serve in any department or other portion of the Public Service, or part thereof, shall be qualified in the knowledge and use of the **English** or **French language** or both, to the extent that the Commission deems necessary in order that the functions of the department, portion or part can be performed adequately and effective service can be provided to the public. R.S. c. P-32, s. 20.

. . . there is no vested right in any particular position in the Public service; the tenure is in the Service rather than to a position within that Service. No one is challenging the general right of the Government to allocate resources and manpower as it sees fit But this right is not unlimited. It must be exercised according to law. The government's right to allocate resources cannot override a statute such as the Canadian Human Rights Act, S.C. 1976-77, c. 33, or a regulation such as the Exclusion Order. In my view, the meaning and intent of this Order is such as to entitle an employee to remain in a position even though he does not meet the language requirements of the position. **(NP)** *Although the Joint Resolution of the House of Commons and the Senate of Canada passed in June 1973 may not be legally binding, in the sense of creating enforceable legal rights and obligations, it is, nonetheless, indicative of legislative intention. The resolution explicitly provided that unilingual incumbents of bilingual positions are entitled to "remain in their positions even though the posts have been designated as bilingual". Treasury Board Circular 1973-88 reinforces this view* ***(pp. 207-208)****.* ***Kelso*** **v.** ***The Queen****,* [1981] 1 S.C.R. 199.

In determining the applicability of paragraph 6(a) of the Official Languages Exclusion Approval Order to the rather unique facts of this case, the interpretation to be accorded to the word "position" is critical. A plain reading of the Order itself does not assist in interpreting the word. However, the legislative intention expressed in the Joint Resolution and adopted as government policy in the Treasury Board Circular indicates that unilingual

incumbents may choose "...to remain in their positions even though the posts have been designated as bilingual". This compels me to conclude that unilingual incumbents were to be permitted to continue working at their jobs or "positions" without disruption, despite their failure to meet the new language requirements applicable to their "posts" or locations of work ***(p.12)***. ***Pfahl et al.*** **v.** ***The Queen*** (December 9, 1993), Ottawa T-2971-89 (F.C. T.D.) McGillis J..

See also:

Guy **v.** ***Canada (Public Service Commission – Appeal Board)***, [1984] 2 F.C. 369 (F.C.A.).

Bauer **v.** ***Canada (Public Service Commission – Appeal Board)***, [1991] 1 F.C. 373 (F.C.A.).

2.60 Publication of Statutes Act, R.S.C. 1985, c. S-21.

Copies for Registrar General

6. As soon as practicable after the end of every calendar year, or other period prescribed by the Governor in Council, the Clerk of the Parliaments shall obtain from the Queen's Printer bound copies of the Statutes of Canada passed during that year or period, and shall deliver one copy of those Acts in the **English** and **French languages**, duly certified, to the Registrar General of Canada. R.S. c. P-40, s. 6; 1984, c. 40, s. 62.

Printing of Statutes

11. The Statutes of Canada shall be printed in the **English** and **French languages** in such form, on such paper and in such type and shall be bound in such manner as the Governor in Council may prescribe by regulation. R.S. c. P-40, s. 11.

2.61 Referendum Act, S.C. 1992, c. 30 [R-4.7].

Language

3. (5) The Chief Electoral Officer shall ensure that the text of a referendum question is available in such aboriginal **languages** and in such places in those **languages**, as the Chief Electoral Officer, after consultation with representatives of aboriginal groups, may determine.

2.62 Safe Containers Convention Act, R.S.C. 1985, c. S-1.

Regulations

3. (1) Subject to subsection (2), the Governor in Council may make regulations for carrying out and giving effect to the provisions of the Convention, and, without restricting the generality of the foregoing, may make regulations . . .

(e) requiring that the Safety Approval Plate affixed to any or all containers approved under the authority of the Government of Canada be in both **English** and **French**; and 1980-81-82-83, c. 9, s. 3.

INTERNATIONAL CONVENTION FOR SAFE CONTAINERS (CSC)

ARTICLE XV

Authentic texts

The original of the present Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General, who shall communicate certified true copies to all States referred to in article VII.

Schedule I

Chapter I

2. (a) The Plate shall contain the following information in at least the **English** or **French language**:...

2.63 Statistics Act, R.S.C. 1985, c. S-19.

Exception to prohibition

17. (2) The Chief Statistician may, by order, authorize the following information to be disclosed:...

(f) information in the form of an index or list of individual establishments, firms or businesses, showing any, some or all of the following in relation to them:...

(iii) the **official language** in which they prefer to be addressed in relation to statistical matters, R.S. 1985, c. S-19, s. 17; 1992, c. 1, s. 131.

2.64 Statute Revision Act, R.S.C. 1985, c. S-20.

Powers of Commission

6. In preparing a revision, the Commission may:...

(f) make such minor improvements in the **language** of the statutes as may be required to bring out more clearly the intention of Parliament, or make the form of expression of the statute in one of the **official languages** more compatible with its expression in the other **official language**, without changing the substance of any enactment; 1974-75-76, c. 20, s. 6.

2.65 Statutory Instrument Act, R.S.C. 1985, c. S-22.

Proposed regulations sent to Clerk of Privy Council

3. (1) Subject to any regulations made pursuant to paragraph 20(a), where a regulation-making authority proposes to make a regulation, it shall cause to be forwarded to the Clerk of the Privy Council three copies of the proposed regulation in both **official languages**. R.S. 1985, c. S-22, s. 3; R.S. 1985, c. 31 (1st Supp.), s. 94, c. 51 (4th Supp.), s. 22.

Transmission of regulations to Clerk of Privy Council

5. (1) Subject to any regulations made pursuant to paragraph 20(b), every regulation-making authority shall, within seven days after making a regulation, transmit copies of the regulation in both **official languages** to the Clerk of the Privy Council for registration pursuant to section 6. R.S. 1985, c. S-22, s. 5; R.S. 1985, c. 31 (4th Supp.), s. 102.

I have been referred by the Crown to the Statutory Instruments Act, which governs the publication of statutory instruments in both languages. I do not find that variation orders, and in particular, notices of variation orders, are statutory instruments. They are administrative measures taken in response to changing, and sometimes rapidly changing, conditions in the fishery. They take effect on short notice, or even immediately. They can change fishing quotas between the time a vessel leaves the wharf and when it returns. Fishermen or other persons affected are notified of the variation orders by broadcast. I am aware of nothing to justify notice of variation orders being broadcast in English for the benefit of English-language fishermen while significant numbers of French-language fishermen, fishing beside them, are denied notice in French ***(p. 81)***. ***Saulnier* v. *R.*** (1989), 90 N.S.R. (2d) 77 (N.S. Ct.C.).

2.66 Trade-marks Act, R.S.C. 1985, c. T-13.

Prohibited adoption of indication for wines

11.14. (1) No person shall adopt in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication; or

(b) a **translation** in any **language** of the geographical indication in respect of that wine.

Prohibited use

(2) No person shall use in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication or adopted contrary to subsection (1); or

(b) a **translation** in any **language** of the geographical indication in respect of that wine. 1994, c. 47, s. 192.

Prohibited adoption of indication for spirits

11.15. (1) No person shall adopt in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication; or

(b) a **translation** in any **language** of the geographical indication in respect of that spirit.

Prohibited use

(2) No person shall use in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication or adopted contrary to subsection (1); or

(b) a **translation** in any **language** of the geographical indication in respect of that spirit. 1994, c. 47, s. 192.

When trade-mark registrable

12. (1) Subject to section 13, a trade-mark is registrable if it is not. . .

(b) whether depicted, written or sounded, either clearly descriptive or deceptively misdescriptive in the **English** or **French language** of the character or quality of the wares or services in association with which it is used or proposed to be used or of the conditions of or the persons employed in their production or of their place of **origin**;

(c) the name in any **language** of any of the wares or services in connection with which it is used or proposed to be used; R.S. 1985, c. T-13, s. 12; 1990, c. 20, s. 81; 1993, c. 15, s. 59(F); 1994, c. 47, s. 193.

Choices Hotels International Inc.* v. *Hotels Confortel Inc. (1996), 112 F.T.R.39 (F.C. T.D.).

Leroy S.A.* v. *Alberta Distillers Ltd. (1994), 53 C.P.R. (3d) 97 (T.M.Opp.Bd.).

Applications based on registration abroad

31. (1) An applicant whose right to registration of a trade-mark is based on a registration of the trade-mark in another country of the Union shall, before the date of advertisement of his application in accordance with section 37, furnish a copy of the registration certified by the office in which it was made, together with a **translation** thereof into **English** or **French** if it is in any other **language**, and such other evidence as the Registrar may require to establish fully his right to registration under this Act. R.S. c. T-10, s. 30.

2.67 Trust And Loan Companies Act, S.C. 1991, c. 45 [T-19.8].

French or English form of name

44. (1) The name of a company may be set out in its letters patent in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form, and the company may use and be legally designated by any such form.

Alternate name

(2) A company may identify itself outside Canada by its name in any **language** and the company may use and be legally designated by any such form of its name outside Canada.

Other name

(3) Subject to subsection (4) and section 260, a company may carry on business under or identify itself by a name other than its corporate name. 1991, c. 45, s. 44; 1996, c. 6, s. 114.

2.68 United Nations Foreign Arbitral Awards Convention Act, R.S.C, 1985, c. 16 (2nd Supp.) [U-2.4].

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an **official language** of the country in which the award is relied upon, the party applying for the recognition and enforcement of the award shall produce a **translation** of these documents into such **language**. The **translation** shall be certified by an **official** or sworn translator or by a diplomatic or consular agent.

Article XVI

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2.69 Yukon First Nations Self-Government Act, L.C. 1994, c. 35.

Legislative powers

11. (1) A first nation named in Schedule II has, to the extent provided by its self-government agreement, . . .

(b) the power to enact laws applicable in the Yukon Territory in relation to the matters enumerated in Part II of Schedule III;

SCHEDULE III LEGISLATIVE POWERS

PART II

2. Provision of programs and services for citizens of the first nation in relation to their aboriginal **languages**.

3. ALBERTA

3.1 Business Corporation Act, R.S.A. 1980, c. B-15.

Corporate name

10. (1) The word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." shall be the last word of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form.

(2) Notwithstanding subsection (1), the words "Professional Corporation" shall be the last words of the name of every corporation whose incorporation is approved in accordance with section 7(2).

(6) Subject to section 12(1), the name of the corporation or an additional form of its name in a notice filed under subsection (5) may be in an **English** form or a **French** form or in a combined **English** and **French** form and the corporation may use and may be legally designated by any of those forms. 1981 cB-15 s.10; 1984 c12 s.1

267. (3) If all or any part of the charter is not in the **English language**, the Registrar may require the submission to him of a **translation** of the charter or that part of the charter, verified in a manner satisfactory to him, before he registers the extra-provincial corporation. 1981 cB-15 s.267; 1984 c12 s.1

3.2 Certified General Accountants Act, R.S.A. 1980, c. C-3.6.

Name protection

3. (1) Subject to the regulations, no person except a certified general accountant shall

(a) use the name Certified General Accountant, Fellow of the Certified General Accountants, comptables generaux agréés, Fellow de les comptables generaux agréés or any other name or any abbreviation of those words alone or in any combination with any other word, or

(b) use the initials C.G.A. or F.C.G.A. or any other initials, either alone or in combination with any other word, letter, symbol, initial or abbreviation, to represent expressly or by implication that he is a certified general accountant or use any title, name, description, abbreviation, letter or symbol representing the name Certified General Accountant, Fellow of the Certified General Accountants, comptables generaux agréés or Fellow de les comptables generaux agréés or the letters C.G.A. or F.C.G.A.

(2) No person shall use the name Accredited Public Accountant or the initials A.P.A. or any title, name, description, abbreviation, letter or symbol representing that name or those initials, alone or in combination with any other name, title, description, abbreviation, letter, symbol or initials, that represents expressly or by implication that he is an accredited public accountant. 1987 cC-3.6 s3;1997 c18 s2

3.3 Chartered Accountants Act, R.S.A. 1980, c. C-5.1.

Name protection

3. (1) Subject to the regulations, no person except a chartered accountant shall

(a) use the name Chartered Accountant, Fellow of the Chartered Accountants, Associate of the Chartered Accountants, comptables agréés, Fellow de les comptables agréés, Associate de les comptables agréés or any other name or any abbreviation of those words alone or in any combination with any other word, or

(b) use the initials C.A., F.C.A. or A.C.A. or any other initials, either alone or in combination with any other word, letter, symbol, initial or abbreviation, to represent expressly or by implication that he is a chartered accountant or use any title, name, description, abbreviation, letter or symbol representing the name Chartered Accountant, Fellow of the Chartered Accountants, Associate of the Chartered Accountants, comptables agréés, Fellow de les comptables agréés or Associate de les comptables agréés or the letters C.A., F.C.A. or A.C.A.

(2) No person shall use the name Chartered Public Accountant or Certified Public Accountant or the initials C.P.A. or any title, name, description, abbreviation, letter or symbol representing that name or those initials, alone or in combination with any other name, title, description, abbreviation, letter, symbol or initials, that represents expressly or by implication that he is a chartered public accountant or certified public accountant. 1987 cC-5.1 s3;1996 c28 s6

3.4 Colleges Act, R.S.A. 1980, c. C-18.

Vocational college courses

7.01. The college board of a vocational college must provide programs of instruction or training that assist adult learners to acquire foundations of basic skills through the development of their communication skills, living skills and production skills, including

(a) academic upgrading programs,

(b) career entry programs with a duration of one year or less, and

(c) to the extent that demand so warrants, **English** as a second **language** programs. 1997 c7 s4

3.5 Companies Act, R.S.A. 1980, c. C-20.

Annual report

162. (3) Except when the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet that has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon, certified as aforesaid, and if a balance sheet is not in **English**, there shall also be annexed to it a **translation** thereof in **English**, certified in the prescribed manner to be a correct **translation**. RSA 1980 c.C-20 s.162;1994 c.23 s.50

3.6 Court of Appeal Act, R.S.A. 1980, c. C-28.

Rules of Court

15. The Lieutenant Governor in Council

(a) may make rules governing

(v) the rates of fees and expenses payable to witnesses and **interpreters**, RSA 1980 cC-28 s15;1994 cG-8.5 s89

3.7 Court of Queen's Bench Act, R.S.A. 1980, c. C-29.

Rules of Court

18. (1) The Lieutenant Governor in Council by regulation

(a) may make rules governing

(v) the rates of fees and expenses payable to witnesses and **interpreters**, RSA 1980 cC-29 s18;1987 c17 s2;1994 cG-8.5 s89 RSA 1980 cC-28 s15;1994 cG-8.5 s89

3.8 Elections Act, R.S.A. 1980, c E-2.

Interpreters

72. A deputy returning officer may appoint in the prescribed form an **interpreter** at a polling place to translate questions and answers concerning voting procedures for persons not conversant in the **English language**. RSA 1980 c.E-2 s.72

Persons entitled to remain in polling place

88. (1) Only the following persons may remain in a polling place during polling hours:

(g) the **interpreters**; RSA 1980 cE-Z s88;1992 c12 sZ5

Vote by Special Ballot

113. (1) An elector whose name is included on the list of electors for the polling subdivision in which he ordinarily resides and who is unable to vote at an advance poll or at the poll on polling day on account of […]

113. (d) being a supervisory deputy returning officer, deputy returning officer, poll clerk, **interpreter**, special constable, candidate, official agent or scrutineer who may be located on polling day at a polling place in a polling subdivision within the electoral division other than that in which he is ordinarily resident, RSA 1980 cE-Z s113;1983 c75 s14;1992 c12 s32;1996 c15 s9

Persons entitled to remain in polling place

119. (1) Subject to subsection (2), only the following persons may remain at a mobile poll during polling hours: …

(d) an **interpreter**;

(2) If in the opinion of a member of the staff of a treatment centre it is advisable to do so, the deputy returning officer may limit the persons present at a mobile poll to …

(c) an **interpreter**, and … RSA 1980 cE-2 s119;1992 c12 s34

Rules of Court apply

191. The petition and all proceedings under it shall be deemed to be a cause in the Court and all the provisions of the Alberta Rules of Court in so far as they are applicable and not inconsistent with the provisions of this Part, including the tariff of costs for clerks, sheriffs, civil enforcement agencies, civil enforcement bailiffs, solicitors and counsel and **interpreter**s, apply to the petition and proceedings. RSA 1980 cE-2 s191;1994 cC-10.5 s124

3.9 Fatality Inquiries Act, R.S.A. 1980, c. F-6.

Regulations

49. The Lieutenant Governor in Council may make regulations

(a) governing fees payable under this Act

(i) to witnesses, jurors, court reporters and **interpreter**s, and …. RSA 1980 cF-6 s49;1983 c18 s4

3.10 International Child Abduction Act, R.S.A. 1980, c. I-6.5.

SCHEDULE

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

CHAPTER V

GENERAL PROVISIONS

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority.

Article 45

Done at The Hague, on the 25th day of October 1980 in the **English** and **French languages**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

3.11 International Commercial Arbitration Act, R.S.A. 1980, c. I-6.6.

SCHEDULE 1

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

a) The duly authenticated original award or a duly certified copy thereof;

b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an **official language** of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a **translation** of these documents into such **language**. The **translation** shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article 22. Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an **official language** of this State, the party shall supply a duly certified **translation** thereof into such **language**.

Article XVI.

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

3.12 International Conventions Implementation Act, R.S.A. 1980, c. I-6.8.

SCHEDULE 1

CONVENTION ON THE LAW APPLICABLE TO TRUSTS AND ON THEIR RECOGNITION

Article 32

Done at The Hague, on the ..... day of ....., 19....., in **English** and **French**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

SCHEDULE 2

UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

PART IV

Article 101

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic.

SCHEDULE 3

CONVENTION BETWEEN CANADA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND PROVIDING FOR THE RECIPROCAL

RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

PART IV

PROCEDURES

Article VI

4. The registering court may require that an application for registration be accompanied by

(a) the judgment of the original court or a certified copy thereof;

(b) a certified **translation** of the judgment, if given in a **language** other than the **language** of the territory of the registering court;

(c) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and

(d) particulars of such other matters as may be required by the rules of the registering court.

PART VII FINAL PROVISIONS

DONE in duplicate at Ottawa this 24th day of April 1984, in the **English** and **French languages**, each version being equally authentic.

3.13 Interpretation Act, R.S.A. 1980, c. I-7.

Words in an enactment establishing or continuing a corporation

16. (e) in the case of a corporation having a name consisting of an **English** and a **French** form or a combined **English** and **French** form, vest in the corporation power to use either the **English** or **French** form of its name or both forms and to show on its seal both the **English** and **French** forms of its name or to have 2 seals, one showing the **English** and the other showing the **French** form of its name. RSA 1980 c. I-7 s.16; 1991 c.21 s.14.

3.14 **Languages *Act***, S.A. 1988, c. L-7.5.

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

Definitions

1. In this Act,

"Act" means an Act of the Legislature;

"Assembly" means the Legislative Assembly of Alberta;

"Ordinance" means an Ordinance of the North-West Territories that is or was at any time in force in Alberta or that part of the North-West Territories that formed Alberta;

"regulation" means a regulation, order, by-law or rule that is enacted under an Act or an Ordinance;

"Standing Orders" means the document of the Assembly entitled the "Standing Orders of the Legislative Assembly of Alberta".

Validation of Acts and other matters

2. (1) All Acts, Ordinances and regulations enacted prior to the coming into force of this Act are declared valid notwithstanding that they were enacted, printed and published in **English** only.

(2) All

(a) actions, proceedings, transactions or other matters taken, done or arising by or under an Act, Ordinance or regulation validated under subsection (1) are declared not to be invalid,

(b) rights, obligations, duties, powers and other effects created, limited, revoked or otherwise dealt with by or under an Act, Ordinance or regulation validated under subsection (1) are declared not to have been invalidly created, limited, revoked or otherwise dealt with, and

(c) matters or things, in addition to those referred to in clauses (a) and (b), done by, in, in reliance on or under an Act, Ordinance or regulation validated under subsection (1) are declared not to have been invalidly done, solely by reason of the fact that the Act, Ordinance or regulation was enacted, printed and published in **English** only.

Language of Acts and regulations

3. All Acts and regulations may be enacted, printed and published in **English**.

Language in the courts

4. (1) Any person may use **English** or **French** in oral communication in proceedings before the following courts:

(a) the Court of Appeal of Alberta;

(b) the Court of Queen's Bench of Alberta;

(c) The Surrogate Court of Alberta;

(d) The Provincial Court of Alberta.

(2) The Lieutenant Governor in Council may make regulations for the purpose of carrying into effect the provisions of this section, or for any matters not fully or sufficiently provided for in this section or in the rules of those courts already in force.

With respect, you can do all the talking in French that you like but in Alberta, with respect, Provincial matters are conducted in English, so if you're going to communicate with me you'll have to do it in English, or you will have to have somebody here that can assist you in English. But this trial is conducted in English. That's the law in Alberta, for Provincial Statutes ***(p. 3)***. ***The Queen* v. *Desgagne*** (June 13, 1996), Peace River Alberta No. A 06115443 T (Alta. P.C.) McIntosh J.

Language in the Assembly

5. (1) Members of the Assembly may use **English** and **French** in the Assembly.

(2) The Standing Orders and the records and journals of the Assembly, within the meaning of section 110 of The North-West Territories Act (Canada) as it applied to Alberta, made before the coming into force of this section are declared valid notwithstanding that they were made, printed and published in **English** only.

(3) The Standing Orders and records and journals of the Assembly may be made, printed and published in **English**.

(4) The Assembly may, by resolution, direct that all or part of the Standing Orders or the records and journals of the Assembly shall be made, printed and published in **English** or **French** or both.

Effect of validation

6. The declaration of validity of Acts, Ordinances, regulations and the Standing Orders under this Act does not revive any Act, Ordinance, regulation and Standing Order that has been repealed, substituted or superseded or that has otherwise ceased to be in force on or before the day this Act comes into force.

Non-application Acts, records and journals

7. Section 110 of The North-West Territories Act, chapter 50 of the Revised Statutes of Canada, 1886, as it existed on September 1, 1905, does not apply to Alberta with respect to matters within the legislative authority of Alberta.

English and French versions

8. The **English** version and the **French** version of this Act are equally authoritative.

3.15 Loan and Trust Corporations Act, R.S.A. 1980, c. L-26.5.

Names

20. (2) Subject to this Act and the regulations, a provincial corporation may have a name in an **English** form, a **French** form, an **English** form and a **French** form or a combined **English** and **French** form, and it may be legally designated by any such name.

Names

34. (1) Subject to the regulations, no corporation shall be registered with a name that does not meet the requirements of section 20(1).

(1.1) The Minister may exempt a corporation from the operation of subsection (1) if the Minister is satisfied that the name of the corporation will not mislead the general public into believing that the corporation is of a kind other than that for which the application for registration was made.

(2) Subject to this Act and the regulations, a corporation may be registered that has a name in an **English** form, a **French** form, an **English** form and a **French** form or a combined **English** and **French** form, and it may be legally designated in Alberta by any such name.

(3) Where a corporation has a name that contravenes subsection (1), the Minister may register the corporation if it undertakes either to change its name to a name that does not contravene subsection (1) or to carry on business in Alberta under a name that does not contravene subsection (1).

(4) Where, through inadvertence or otherwise, a corporation becomes registered with a name that contravenes subsection (1), the Minister may order as a condition of registration that the corporation carry on business under a name specified in the order. 1991 cL-26.5 s34;1992 c21 s24

3.16 Local Authorithies Election Act, R.S.A. 1980, c. L-27.5.

Interpreter

72. (1) If an elector does not understand the **English language**, the deputy may allow an **interpreter** to translate the statement as well as any question necessary for the proper purposes of the election put to the elector, and the elector's answers.

(2) Before acting as an **interpreter**, the **interpreter** shall make a statement in the prescribed form. 1983 cL-27.5 s.72; 1991 c.23 s.2(34)

3.17 Marriage Act, R.S.A. 1980, c. M-6.

Witnesses to marriage

9. (1) No person shall solemnize a marriage without the presence of the parties and at least 2 credible witnesses who are adults.

(2) No person shall solemnize a marriage when one or both of the parties do not understand the **language** in which the marriage ceremony is to be performed unless an **interpreter** is present to interpret and explain clearly to the party or parties the meaning of the ceremony. RSA 1980 cM-6 s9;1983 c86 s4

3.18 Mental Health Act, R.S.A. 1980, c. M-13.1.

Duties toward patients

14. (2) In the event of **language** difficulty, the board shall obtain a suitable **interpreter** and provide the information and the written statement referred to in subsection (1) in the **language** spoken by the formal patient or his guardian.

3.19 Municipal Government Act, R.S.A. 1980, c. M-26.1.

Performance of major administrative duties

208. (1) The chief administrative officer must ensure that

(a) all minutes of council meetings are recorded in the **English language**, without note or comment;

3.20 Northland School Division Act, R.S.A. 1980, c. N-10.1.

Powers of local committee

9. (1) A local school board committee has the following powers:

(a) to request the board to institute religious instruction or instruction in a **language** other than **English** in accordance with the School Act;

(2) If a local school board committee passes a resolution requesting that the board institute instruction in a **language** other than **English** in a school in the subdivision for which the local school board committee was elected and sends the resolution to the board, the board shall institute instruction in that **language** as soon as it is practical to do so.

3.21 NorthWest Territories Act, The, S.C. 1886, c. 50, s. 110 amended by S.C. 1891, c. 22.

110. Either the **English** or the **French language** may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those **languages** shall be used in the records and journals of such Assembly; and all ordinances made under this Act shall be printed in both those **languages**: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law, and thereafter shall have full force and effect.

Question: Is s. 110 of The North-West Territories Act, R.S.C. 1886, c. 50, as amended by S.C. 1891, c. 22, s. 18, in force in Alberta in relation to proceedings commenced under federal legislation which are criminal in nature or which involve penal consequences? **(NP)** *Answer:Yes.* **(NP)** *The real issue that arises in this appeal is stated by the appellant in his factum as follows: does [TRANSLATION] "s. 110, in the context of a criminal proceeding, require that the court, either the judge or the judge and jury, understand the accused in his official language without the assistance of an interpreter or of simultaneous translation and require that the judge and the Crown attorney address the court in the accused's official language at all stages in a criminal prosecution"?* **(NP)** *We are all of the view that R. v. Mercure, [1988] 1 S.C.R. 234, a recent decision of our Court, disposes of this question.* ***(p. 1104)***. ***R.* v. *Paquette***, [1990] 2 S.C.R. 1103.

The chambers judge, in his first judgment, held that s. 110 applied and interpreted s. 110 as giving the accused these rights. **(NP)** *The accused appeals the order, claiming that the proceedings must be conducted in the French language and heard by a jury who understands the French language. Canada attacks that part of the order requiring that the judges be able to understand both French and English. Alberta takes the position that s. 110 is not applicable to the proceedings and, further, urges that if it is in force it ensures the right of the accused to use the French language but that the right may be fulfilled by the use of an interpreter* ***(p. 5)***. *The right to use the language does not imply the right here sought. Comprehension by the listener, without translation, is not required and we are bound to so conclude from the judgment of Beetz J. in*

MacDonald. Moreover, it does not embrace the right to require others to use the language: an extravagant interpretation of the right to "use". As Belzil J.A. notes in his dissent in Lefebvre, it will be for the court hearing the matter to determine the most effective means of proceeding ***(p. 14)***. ***Paquette* v. *R.*** (1988), 55 Alta.L.R. (2d) 1 (Alta. C.A.).

The life of s. 110 depended upon the continuance of the courts of the North-West Territories. When the transition period in relation to the courts of the North-West Territories came to an end with the enactments by the province setting up its own courts, s. 110 ceased to have any application in the province. **(NP)** *With the passing of the Acts setting up the "Alberta Courts", the province occupied its field of power in relation to courts and all purposes affecting or extending them the transitional period came to an end. Section 110 was not enacted for the purpose of extending language rights into the Alberta Courts after the courts of the North-West Territories ceased to have any jurisdiction in the province upon being superseded by the Supreme Court of Alberta* ***(p. 318)***. ***Re Lefebvre and The Queen*** (1988), 41 D.L.R. (4th) 311 (Alta. C.A.).

The answer is that s. 133 was in a statute enacted by the Parliament at Westminster, and which therefore could not be amended by the Parliament at Ottawa. But s. 110 was enacted by the Parliament at Ottawa and therefore could be amended by it because nothing in the Constitution Act, 1867 deprived it of the power to do so. Moreover, it had the power, under the statute of Westminster, to create new provinces. When the Parliament of Canada created Alberta, it clearly gave it the power, under the Alberta Act, S.C. 1905, c. 3, to repeal s. 110 despite the fact that Canada made it temporarily applicable in the new province. (Mr. Lefebvre did not argue that the Constitution Act, 1982 diminished this power in any way and we need not deal with that question.) **(NP)** *The simple answer, then, to all the arguments of Mr. Lefebvre is that, even if in some sense s. 110 might fairly be called a law about the constitution of the North-West Territories, it remained nevertheless a law that Canada could repeal or amend and, in light of the express power of amendment granted Alberta in the Alberta Act, the same law when made applicable to Alberta could be repealed or varied by Alberta.* **(NP)** *As Mr. Lefebvre expressly acknowledged that his appeal was limited to the one issue, we dismiss the appeal. We emphasize that it is, as a result, not necessary for us to deal with other issues that might arise in a case like this and were sometimes discussed in this case. We include complaints based upon the Canadian Charter of Rights and Freedoms, problems of interpretation of the Alberta Languages Act, whether the procedures about language spelled out in the Criminal Code, R.S.C. 1985, c. C-46, have been incorporated by way of reference into the Alberta law about the prosecution of provincial offences, and what procedures about language a court might or should adopt in exercise of its power to govern its own process, assuming a problem exists in an area where the*

court lacks legislative guidance ***(pp. 594-595)***. ***Lefebvre* v. *R.*** (1993), 100 D.L.R. (4th) 591 (Alta. C.A.). Leave for appeal refused, 105 D.L.R. (4th) (note).

3.22 Provincial Court Act, R.S.A. 1980, c. P-20.

Regulations

21. (1) The Lieutenant Governor in Council may make regulations

(h) governing the rates of fees and expenses payable to witnesses and **interpreters**;RSA 1980 cP-20 s21;1981 cP-20.1 s21;1989 c18 s3;1994 cG-8.5 s89;1997 c13 24

3.23 Reciprocal Enforcement of Judgments Act, R.S.A. 1980, c. R-6.

Translation

4. When a judgment sought to be registered under this Act is in a **language** other than the **English language**, the judgment or the exemplification or certified copy of it, as the case may be, shall have attached to it for all purposes of this Act a **translation** in the **English language** approved by the Court, and on the approval being given the judgment shall be deemed to be in the **English language**. RSA 1980 c.R-6

3.24 Reciprocal Enforcement of Maintenance Orders Act, R.S.A. 1980, c. R-7.1.

Translation of documents

14. If an order or other document received by a court in Alberta is not in the **English language**, the order or other document shall have attached to it from the other jurisdiction a **translation** into the **English language** approved by the court in Alberta, and the order or other document shall be deemed to be in the **English language** for the purposes of this Act. 1980 c. 44 s.14

3.25 School Act, R.S.A. 1980, c. S-3.1.

See: Constitution Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

3.26 Wills Act, R.S.A. 1980, c. W-11.

SCHEDULE

CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Article I

1. Each Contracting Party undertakes that not later than 6 months after the date of entry into force of this Convention in respect of that Party it shall introduce into its law the rules regarding an international will set out in the Annex to this Convention.

2. Each Contracting Party may introduce the provisions of the Annex into its law either by reproducing the actual text, or by translating it into its **official language** or **languages**.

Article V

1 The conditions requisite to acting as a witness of an international will shall be governed by the law under which the authorized person was designated. The same rule shall apply as regards an **interpreter** who is called upon to act.

SCHEDULE

UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Article 1

1 A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

2 The invalidity of the will as an international will shall not affect its formal validity as a will of another kind.

Article 2

This law shall not apply to the form of testamentary dispositions made by 2 or more persons in one instrument.

Article 3

1. The will shall be made in writing.

2. It need not be written by the testator himself.

3. It may be written in any **language**, by hand or by any other means.

INTERNATIONAL CONVENTIONS

Article VI

4. The registering court may require that an application for registration be accompanied by

(a) the judgment of the original court or a certified copy thereof;

(b) a certified **translation** of the judgment, if given in a **language** other than the **language** of the territory of the registering court;

(c) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and

(d) particulars of such other matters as may be required by the rules of the registering court.

Article XVI

1. The original of the present Convention, in the **English**, **French**, Russian and Spanish **languages**, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

4. BRITISH COLUMBIA

4.1 An Act that All Proceedings in Courts of Justice within that Part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language*, 1730-31, 4 Geo. 2, c. 26.* [Incorporated by reference under the ***Law and Equity Act,*** R.S.B.C. 1996, c. 253, s. 2.]

. . . [A]ll Writs, Process and returns thereof, and Proceedings thereon, and all Pleadings, . . . shall be in the **English** tongue and **Language** only, and not in **Latin** or **French**, or any other tongue or **language** whatsoever,. . .

In holding that a notice in plain, unambiguous English is sufficient I am applying what I conceive to be the law in British Columbia with reference to the use of the English language in our Courts and in their process. As part of the English law, as it existed on November 19, 1858, which [is in force in] this province by the English Law Act, R.S.B.C. 1960, c. 129, was a statute originally introduced by Sir Robert Walpole in 1731, 4 Geo.II, C.26 [Statutes at large, vol. 6, p. 65], and reading in part as follows: **(NP)** *"...all Pleadings, Rules, Orders, Indictments, Informations...and all Proceedings relating thereunto...and all Proceedings whatsoever, in any Courts of Justice...and which concern the Law and the Administration of Justice, shall be in the English tongue and Language only, and not in Latin or French, or any other tongue or language whatsoever..."* **(NP)** *This appears to be unaffected up to the present time by any enactment, Dominion or provincial* ***(p. 384).*** ***Keller* v. *Regina,*** [1966] 2 C.C.C. 380 (B.C. S.C.).

The courts have held this Act [An Act that All Proceedings in courts of justice within that part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language, 1730-31, 4 Geo. 2, c. 26] *to be in force in British Columbia…* ***(p. 131).*** *On the other hand, counsel for the Attorney-General, relying on the expressio unius maxim submits that ss. 16 to 22* [of the Charter] *are exhaustive of the subject of language rights, that there is nothing in any of these sections which would affect the power of B.C. to pass Rule 4(2) and that, therefore, the Federation cannot rely on s. 15. He contends, too, that the majority judgments of the Supreme Court in MacDonald and in Société des Acadiens clearly refute counsel's submissions and contentions.* **(NP)** *Generally, I agree with the submissions of the Attorney-General* ***(p. 132)****. Section 15 is a guarantee against discrimination and is a legal right. While discrimination based purely on language may be within s. 15, our concern is whether the concept of "official language" comes within it. Having regard to the provisions of ss. 16 to 22 and the other sections dealing with languages and the judgments of the majority in*

*MacDonald and Société des Acadiens, I do not think that it does 0**(p. 135)**.* ***McDonnell* v. *Fédération des franco-colombiens*** (1986), 26 C.R.R. 128 (B.C. C.A.).

See also:

MacMillan Bloedel Ltd.* v. *Rheaume, [1994] B.C.J. 296 (B.C S.C.) (QL).

Watts* v. *Regina (1968), 69 D.L.R. (2d) 526 (B.C S.C.).

4.2 Child, Family And Community Service Act, R.S.B.C. 1996, c. 46.

Rights of children in care

70. (1) Children in care have the following rights: …

(k) to be provided with an **interpreter** if **language** or disability is a barrier to consulting with them on decisions affecting their custody or care;

4.3 Children's Commission Act, S.B.C. 1997, c. 11.

Guiding principles

3. In investigating children's deaths and critical injuries, setting standards under section 4 (1) (d), making reports and providing public education and information under this Act, the Commission should take the following principles into account:

(a) the need of children for services that are …

(iv) inclusive of gender, **culture** and **language**,…

4.4 Company Act, R.S.B.C. 1996, c. 62.

Form of name

16. (1) A company other than a specially limited company must have the word "Limited" or "Limitée" or "Incorporated" or "Incorporée" or "Corporation" or the abbreviation "Ltd." or "Ltée" or "Inc." or "Corp." as part of and at the end of its name.

(4) Subject to section 17, a company may set out its name in its memorandum in an **English** form, a **French** form, an **English** form and a **French** form, or in a combined **English** and **French** form, and it may use and may be legally designated by any of these forms.

(5) A company may, for use outside Canada, set out its name in its memorandum in any **language** form and it may be designated in that form outside Canada.

Requirement as to documents filed

338. (1) Subject to subsection (2), every document required by this Act to be filed or registered with the registrar must…

(c) be in the **English language** or be accompanied by a notarially certified **English translation**.

(3) If the registrar considers it necessary in the public interest, the registrar may

(a) refuse to accept for filing or registration by an extraprovincial company a document that is not in the **English language** unless it is accompanied by a notarially certified **English translation**, or

(b) require a company or extraprovincial company that has filed or registered a document that is not in the **English language** to file or register a notarially certified copy of the document.

4.5 Coroners Act, R.S.B.C. 1996, c. 72.

Disqualification of jurors

30. (4) A person who is unable to understand, speak or read the **language** in which the inquest is to be conducted is disqualified from serving as a juror in the inquest.

4.6 Court Order Enforcement Act, R.S.B.C. 1996, c. 78.

If judgment is in language other than English

32. (1) If a judgment sought to be registered under this Part is in a **language** other than the **English language**, the judgment or the exemplification or certified copy of it, as the case may be, must have attached to it for this Part a **translation** in the **English language** approved by the court.

(2) On approval being given under subsection (1), the judgment is deemed to be in the **English language**.

Part 4 -- Canada -- United Kingdom Convention

Definition for Part

41. In this Part, "convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters, the **English language** version of which is set out in Schedule 4.

Schedule 4

Convention Between Canada and the United Kingdom of Great Britain and Northern Ireland Providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters

ARTICLE VI

4. The registering court may require that an application for registration be accompanied by […]

(b) a certified **translation** of the judgment, if given in a **language** other than the **language** of the territory of the registering court;

ARTICLE XIV

DONE in duplicate at Ottawa, this 24th day of April, 1984 in the **English** and **French languages**, each version being equally authentic.

4.7 Election Act, R.S.B.C. 1996, c. 106.

Exceptional assistance for signature or translation

269. (1) The provisions of this section are exceptions for allowing individuals to exercise their rights and fulfill their obligations under this Act in circumstances where they would otherwise be unable to do so.

(2) If an individual is required by this Act to sign a document and is unable to do so, the election or voter registration official responsible may either sign on behalf of the individual or have the individual make his or her mark and witness that mark.

(3) If an individual requires the assistance of a **translator**, the election official or voter registration official responsible must permit the individual to be assisted by a **translator**.

(4) Before acting as **translator** under subsection (3), an individual must make a solemn declaration that he or she is able to make the **translation** and will do so to the best of his or her abilities.

(5) For certainty, an individual may act as **translator** for more than one other individual.

(6) The obligation to provide a **translator** rests with the individual who is required to make the solemn declaration or provide the information and, if no **translator** is available to act, that individual must be considered to have refused to make the solemn declaration or provide the information.

4.8 Employment Standards Act, R.S.B.C. 1996, c. 113.

28. (2) Payroll records must:

(a) be in **English**,

4.9 Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127.

Notice of attachment from outside British Columbia

17. (1) The director may serve a notice of attachment in accordance with section 15 (1) if both of the following are filed with the director:…

(b) a document that…

(iv) is written in or accompanied by a sworn or certified **translation** into **English**.

4.10 Family Relations Act, R.S.B.C. 1996, c. 128.

Translation

114. If an order or other document received by a court is not in **English**, the order or other document must have attached to it from the other jurisdiction a **translation** in **English** approved by the court, and the order or other document is deemed to be in **English** for the purposes of this Part and the Family Maintenance Enforcement Act.

4.11 First Peoples' Heritage, Language and Culture Act, R.S.B.C. 1996, c. 147.

Purposes and powers

6. (1) The purposes of the corporation are as follows:…

(c) to support and advise ministries of government on initiatives, programs and services related to Native heritage, **language** and culture;

4.12 Foreign Arbitral Awards Act, R.S.B.C. 1996, c. 154.

Schedule

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Article I

1 This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

Article XVI

1 This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

4.13 Human Rights Code, R.S.B.C. 1996, c. 210.

Discrimination in accommodation, service and facility

8. (1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public,

or

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the **race**, **colour**, **ancestry**, **place of origin**, religion, marital status, family status, physical or mental disability, sex or sexual orientation of that person or class of persons.

(2) A person does not contravene this section by discriminating

(a) on the basis of sex, if the discrimination relates to the maintenance of public decency or to the determination of premiums or benefits under contracts of life or health insurance, or

(b) on the basis of physical or mental disability, if the discrimination relates to the determination of premiums or benefits under contracts of life or health insurance.

As I have tried to illustrate, a rule requiring proficiency in a language is not necessarily one which generalizes about a person's ability to perform a job

based on membership in a group. **(NP)** *I am of the view, then, that because of the dual characteristic of language it is not included as a prohibited ground per se in s. 8 of the Human Rights Act. Applying the principles set out earlier, I find that the interpretation given to s. 8 of the Act is not one which the words can reasonably bear.* **(NP)** *This is not to say however, that discrimination on the basis of language may not in some cases, when scrutinized, be found to actually be based on race, colour, ancestry or place of origin....For a tribunal hearing such as case it will be a matter of examining the evidence to determine whether a language requirement is legitimate, that is, whether it is rationally connected to the performance of the job, or whether it is merely an attempt to discriminate on a prohibited ground* ***(p. 35)***. ***Fletcher Challenge Canada Limited* v. *B.C. Council of Human Rights and Grewal*** (1992), 18 C.H.R.R. D/422 (B.C. S.C.).

See also:

Herold* v. *Wiggins Adjustments Ltd. (1985), 6 C.H.R.R. D/2714 (H.R.C. B.C.).

Cornejo* v. *Opus Building Corp. (1991), 14 C.H.R.R. D/167 (H.R.C. B.C.).

Jacques Clau* v. *Uniglobe Pacific Travel Limited (1995), 23 C.H.R.R. D/515 (H.R.C. B.C.).

4.14 Independent School Act, R.S.B.C. 1996, c. 216.

Definitions

1. (1) In this Act:

"*independent school"* means a school that is, or is to be, maintained and operated in British Columbia by an authority

and

(a) that offers an educational program to 10 or more school age students,

(b) that meets the requirements of section 2 (e) of the Schedule and otherwise qualifies for a certificate of group classification, or

(c) for which an authority holds a subsisting interim certificate issued under section 4 (2),

but does not include. . .

(e) a school that. . .

(ii) solely offers **language** instruction,

Offence

19 (1) A person must not provide or purport to provide schooling to persons of school age other than in. . . .

(f) a school that. . .

(ii) solely offers **language** instruction,

4.15 Indian Self Government Enabling Act, R.S.B.C. 1996, c. 219.

Access to education not affected

12. (1) The existence or absence of a contract between a band and a school district for the provision of school services does not affect the entitlement or the obligation under the School Act of a person who is of school age and is a resident in the school district to enroll in an educational program provided by the board of school trustees of that school district.

(2) The existence or absence of a contract between a band and a **francophone** education authority as defined in the School Act for the provision of school services does not affect the entitlement or the obligation under the School Act of a person to enroll in a **francophone** educational program provided by the **francophone** education authority if

(a) the person is of school age,

(b) one or both of the person's parents have the right to have their children receive primary and secondary instruction in **French** in British Columbia, and

(c) the person is a resident in the **francophone** school district over which the **francophone** education authority has jurisdiction under the School Act.

Access to education not affected

22. (1) The existence or absence of a contract between an Indian district and a school district for the provision of school services does not affect the entitlement or the obligation under the School Act of a person who is of school age and is a resident in the school district to enroll in an educational program provided by the board of school trustees of that school district.

(2) The existence or absence of a contract between an Indian district and a **francophone** education authority as defined in the School Act for the provision of school services does not affect the entitlement or the obligation under the School Act of a person to enroll in a **francophone** educational program provided by the **francophone** education authority if

(a) the person is of school age,

(b) one or both of the person's parents have the right to have their children receive primary and secondary instruction in **French** in British Columbia, and

(c) the person is a resident in the **francophone** school district over which the **francophone** education authority has jurisdiction under the School Act.

4.16 International Commercial Arbitration Act, R.S.B.C. 1996, c. 233.

Language

22. (1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings.

(2) Failing any agreement referred to in subsection (1), the arbitral tribunal must determine the **language** or **languages** to be used in the arbitral proceedings.

(4) The arbitral tribunal may order that any documentary evidence must be accompanied by a **translation** into the **language** or **languages** agreed on by the parties or determined by the arbitral tribunal.

Recognition and enforcement

35. (3) If the arbitral award or arbitration agreement is not made in an **official language** of Canada, the party must supply a duly certified **translation** of it into an **official language**.

Article XVI.

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

4.17 International Sale of Goods Act, R.S.B.C. 1996, c. 236.

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic.

4.18 International Trusts Act, R.S.B.C. 1996, c. 237.

Done at The Hague, on the..... day of ....., 19 ....., in **English** and **French**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy

shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

4.19 Interpretation Act, R.S.B.C. 1996, c. 238.

Corporate rights and powers

17. (1) A corporation has perpetual succession and may do the following:…

(f) in the case of a corporation with a name consisting of an **English** and a **French** form or a combined **English** and **French** form, use either the **English** or **French** form of its name or both forms and show on its seal both the **English** and **French** forms of its name or have 2 seals, one showing the **English** and the other showing the **French** form of its name.

4.20 Jury Act, R.S.B.C. 1996, c. 242.

Disqualification because of language difficulty

4. If the **language** in which a trial is to be conducted is one that a person is unable to understand, speak or read, the person is disqualified from serving as a juror in the trial.

Interpreters and interpretative devices

5. Section 4 does not apply to a person who

(a) would be unable, if unaided, to see or hear adequately for the purpose of serving as a juror, and

(b) will as a juror receive the assistance of a person or device that the court considers adequate to enable the juror to serve.

4.21 Land Title Act, R.S.B.C. 1996, c. 250.

Definitions

41. "signature" includes the mark of an individual who cannot sign his or her name in **English** characters;

Witnessing -- persons not fluent in English

47. In the case of an instrument that is executed by an individual who appears to the officer to be unable to read **English** or sign his or her name in **English** characters, the signature of the officer is, in addition to the certification in section 43, a certification by the officer that the

individual appeared before and acknowledged to the officer that the contents and effect of the instrument were sufficiently communicated to the individual and that the individual fully understood the contents of the instrument.

4.22 Multiculturalism Act, R.S.B.C. 1996, c. 321.

Purposes of the Act

2. The following are the purposes of this Act:

(a) to recognize that the diversity of British Columbians as regards **race**, **cultural heritage**, religion, **ethnicity**, **ancestry** and **place of origin** is a fundamental characteristic of the society of British Columbia that enriches the lives of all British Columbians;

(b) to encourage respect for the multicultural heritage of British Columbia;

(c) to promote racial harmony, cross cultural understanding and respect and the development of a community that is united and at peace with itself;

(d) to foster the creation of a society in British Columbia in which there are no impediments to the full and free participation of all British Columbians in the economic, social, cultural and political life of British Columbia.

Multiculturalism policy

3. It is the policy of the government to

(a) recognize and promote the understanding that multiculturalism reflects the racial and cultural diversity of British Columbians,

(b) promote cross cultural understanding and respect and attitudes and perceptions that lead to harmony among British Columbians of every **race**, **cultural heritage**, religion, **ethnicity**, **ancestry** and **place of origin**,

(c) promote the full and free participation of all individuals in the society of British Columbia,

(d) foster the ability of each British Columbian, regardless of **race**, **cultural heritage**, religion, **ethnicity**, **ancestry** or **place of origin**, to share in the economic, social, **cultural** and political life of British Columbia in a manner that is consistent with the rights and responsibilities of that individual as a member of the society of British Columbia,

(e) reaffirm that violence, hatred and discrimination on the basis of **race**, cultural heritage, religion, **ethnicity**, **ancestry** or **place of origin** have no place in the society of British Columbia,

(f) work towards building a society in British Columbia free from all forms of racism and from conflict and discrimination based on **race**, **cultural heritage**, religion, **ethnicity**, **ancestry** and **place of origin**,

(g) recognize the inherent right of each British Columbian, regardless of **race**, **cultural heritage**, religion, **ethnicity**, **ancestry** or **place of origin**, to be treated with dignity, and

(h) generally, carry on government services and programs in a manner that is sensitive and responsive to the multicultural reality of British Columbia.

4.23 Partnership Act, R.S.B.C. 1996, c. 348.

Name of partnership

53. (1) The business name of each limited partnership must end with the words "Limited Partnership" in full or the **French language** equivalent.

4.24 School Act, R.S.B.C. 1996, c. 412.

See: Constitution Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

4.25 Securities Act, R.S.B.C. 1996, c. 418.

Extrajurisdictional evidence

175. (6) The letter of request must have attached to it…

(c) a **translation** of the letter of request and any interrogatories into the appropriate **official language** of the jurisdiction where the examination is to take place, along with a certificate of the **translator**, bearing the full name and address of the **translator**, that the **translation** is a true and complete **translation**.

4.26 Trade Practice Act, R.S.B.C. 1996, c. 457.

Unconscionable acts or practices

4. (1) An unconscionable act or practice by a supplier in relation to a consumer transaction may occur before, during or after the consumer transaction.

(2) In determining whether an act or practice is unconscionable, a court must consider all the surrounding circumstances that the supplier knew or ought to have known.

(3) Without limiting subsection (2), the circumstances that the court must consider include the following:…

(b) that the consumer was taken advantage of by the consumer's inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to understand the character, nature or **language** of the consumer transaction, or any other matter related to it;

4.27 Vancouver Charter, R.S.B.C. 1996, c. 478.

Exceptional assistance in election proceedings

21. (1) The provisions of this section are exceptions for allowing persons to exercise their rights under this Part in circumstances where they would otherwise be unable to do so.

(2) If a person is required by this Part to sign a document and is unable to do so, the presiding election official or an election official authorized by the presiding election official may either sign on behalf of the person or have the person make his or her mark and witness that mark.

(3) If a person is required by this Part to make a solemn declaration or to provide information to an election official and requires the assistance of a **translator** to do this, the presiding election official must permit another person to act as **translator** so long as that person first makes a solemn declaration that he or she is able to make the **translation** and will do so to the best of his or her abilities.

(4) The obligation to provide a **translator** rests with the person who is required to make the solemn declaration or provide the information and, if that person does not provide a **translator**, that person must be considered to have refused to make the solemn declaration or provide the information. 1993-54-61.

4.28 Veterinarians Act, R.S.B.C. 1996, c. 476.

Application for registration

11. (5) A person is not eligible for registration as a member unless…

(b) the council is satisfied that the person

(i) has knowledge of the **English language** sufficient to enable the person to carry on adequately the practice of veterinary medicine in British Columbia, and

4.29 Victims of Crime Act, R.S.B.C. 1996, c. 478.

Goals

8. To the extent that it is practicable, the government must promote the following goals:…

(g) to afford victims throughout British Columbia equal access to…

(ii) **interpreter**s for speakers of any **language**, and

5. PRINCE EDWARD ISLAND

5.1 Co-operative Associations Act, R.S.P.E.I. 1988, c. C-23.

Co-operative, coopérative, Limitée, Ltd., Ltée.

10. (1) Notwithstanding sections 6 and 7, an association

(a) may have the word "Co-opérative" or "Coopérative" as part of its name in place of the word "Co-operative";

(b) may have the word "Limitée" or the contraction "Ltd" or the contraction "Ltée" as the last word of its name in place of the word "Limited". 1976,c.7,s.10.

5.2 Credit Unions Act, R.S.P.E.I. 1988, c. C-29.1.

Name

7. (2) A credit union shall include at the end of its name the word "Limited" or "Limitée" or the abbreviation "Ltd" or "Ltée", and the credit union may use and may be legally designated by either the full or the abbreviated form.

Alternative form of name

(3) Subject to subsection (1), a credit union may set out its name in its memorandum of association in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form and it may be legally designated by any such form. 1992,c.14,s.7.

5.3 Human Rights Act, R.S.P.E.I 1988, c. H-12.

Definitions

1. (1) In this Act...

(d) “discrimination” means discrimination in relation to **race**, religion, creed, **colour**, sex, marital status, **ethnic** or **national origin**, age, physical or mental handicap or political belief as registered under section 24 of the *Election Act*, R.S.P.E.I. 1988, Cap. E-1 of any individual or class of individuals; 1975,c.72,s.1; 1980,c.26.s.1; 1985,c.23,s.1.

5.4 International Commercial Arbitration Act, R.S.P.E.I 1988, c. I-5.

SCHEDULE A

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

a) The duly authenticated original award or a duly certified copy thereof;

b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an **official language** of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a **translation** of these documents into such **language**. The **translation** shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article 22. Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an **official language** of this State, the party shall supply a duly certified **translation** thereof into such **language**.

Article XVI.

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

5.5 International Sale of Goods Act, R.S.P.E.I 1988, c. I-6.

Schedule

Article 101

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic. 1988 c. 13, Sch.

5.6 International Trusts Act, R.S.P.E.I, 1988, c. I-7.

CHAPTER V - FINAL CLAUSES

Done at The Hague, on the _____day of _____, 19____, in **English** and **French**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

5.7 Interpretation Act, R.S.P.E.I. 1988, c. I-8.

Corporations

16. Words in an enactment establishing a corporation shall be construed...

e) in the case of a corporation having a name consisting of an **English** and a **French** form or a combined **English** and **French** form, to vest in the corporation power to use either the **English** or **French** form of its name or both forms of its name or to have two seals, one showing the **English** and the other showing the **French** form of its name. 1981, c.18, s.16.

5.8 Jury Act, R.S.P.E.I, 1988, c. J-5.

Language disqualification

5. Where the **language** in which a trial is to be conducted is one that a person is unable to understand, speak or read, he is disqualified from serving as a juror in the trial. 1980, c.30, s.3.

5.9 Marriage Act, R.S.P.E.I. 1988, c. M-3.

Interpreter Required where

9. (2) No registered member of the clergy or judge of the Supreme Court shall solemnize a marriage where one or both of the parties do not understand the **language** in which the marriage ceremony is to be performed unless an **interpreter** is present to interpret and explain clearly to such parties the meaning of the ceremony. R.S.P.E.I. 1974, Cap., M-5, s. 9; 1975, c.27, s.3.

5.10 Reciprocal Enforcement of Judgments, R.S.P.E.I. 1988, c. R-7.

Translation

14. (3) Where an order or other document received by a court is not in **English** or **French**, the order or other document shall have attached to it from the other jurisdiction a **translation** in **English** or **French** approved by the court and the order or other document shall be deemed to be in **English** or **French** for the purposes or this Act. 1983, c.39, s.14.

5.11 School Act, R.S.P.E.I. 1988, c. S-2.

Constitution Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

5.12 Supreme Court Act, R.S.P.E.I. 1988, c. S-10.

Court staff and facilities

27. (1) There shall be provided by the Minister of Justice such staff and facilities for each division of the court as the Minister considers necessary for the administration of the court.

Idem

(2) Court administrators, court reporters, **interpreters**, **translators** and such other employees as are necessary for the administration of the court may be appointed under the *Civil Service Act*. 1987, c. 66, s. 27.

6. MANITOBA

6.1 Manitoba Act, 1870, The, S.C. 1870, c. 3.

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

[TRANSLATION] *I am therefore of the opinion that 53 Vict., c. 14 is ultra vires the Manitoba legislature and that section 23 of the Manitoba Act cannot be amended, let alone repealed, by the legislature of this Province.* **(NP)** *Consequently, the petitioner had the choice to draft his petition in either English or French as a matter of right.* **(NP)** *I can see no objection to the petition being drafted in French and the bond being drafted in English.* **(NP)** *Section 23 of the Manitoba Act provides that the petitioner is entitled to use French and English in any pleading. I should think that a person is entitled to choose the language of each of his pleadings and that he may alternate languages from one pleading to the next. Each pleading must be written in a single language. He could not draft a single pleading part in a language and part in an the other, but he could prepare one in French and another in English, if he wishes. However, this would be both inconvenient and inappropriate, and a person who insisted on doing it might be required to pay the costs of translating the document into only one language. Suffice it to say that this petition, the two exhibits, the French petition and the English bond cannot be objected to on the ground that they are drafted in different languages* ***(p. 244)***. ***Pellant* v. *Hébert*** (March 19, 1892), Manitoba, reproduced in (1981) 12 R.G.D. 237.

It is unnecessary to consider in the present case whether this enactment implies a restriction of the amending power derived from s. 92(1) by virtue of s. 2 of The Manitoba Act. It is enough to note that on any view it certainly cannot result in Manitoba's Legislature having towards s. 23 of The Manitoba Act an amending power which Quebec does not have towards s. 133 [of the Constitution Act, 1867] ***(p. 1039)***. ***Forest* v. A.G. (Man.)**, [1979] 2 S.C.R. 1032.

There is nothing in the history or the language of s. 23 of the Manitoba Act, 1870 or s. 133 of the Constitution Act, 1867 to indicate that "shall" was not used in its normal imperative sense. On the contrary, the evidence points ineluctably to the conclusion that the word "shall" was deliberately and carefully chosen by Parliament for the express purpose of making the bilingual record-keeping and

printing and publication requirements of those sections obligatory. In particular, Parliament's use of the presumptively imperative word "shall" twice in s. 23 of the Manitoba Act, 1870 and twice in s. 133 of the Constitution Act, 1867 contrasts starkly with its use of the presumptively permissive word "may" twice in the same sections. Section 23 provides that either English or French "may be used" by anyone in the debates of the Manitoba Legislature and that either language "may be used" by anyone in the Manitoba courts. Similarly, s. 133 provides that either English or French "may be used" by anyone in the debates of Parliament and the Legislature of Quebec, and in the courts of Canada and Quebec ***(pp. 737-738)****. The requirements of s. 23 of the Manitoba Act, 1870 pertain to "Acts of the Legislature". These words are, in all material respects, identical to those found in s. 133 of the Constitution Act, 1867. As we have already indicated, in Blaikie No. 2, supra, this Court held that s. 133 applied to regulations enacted by the Government of Quebec, a Minister of the Government or a group of Ministers and to regulations of the civil administration and of semi-public agencies which required the approval of that Government, a Minister or group of Ministers for their legal effect. It was emphasized that only those regulations which could properly be called "delegated legislation" fell within the scope of s. 133; rules or directives of internal management did not. It was also held that s. 133 applied to rules of practice enacted by courts and quasi-judicial tribunals, but that it did not apply to the by-laws of municipal bodies or the regulations of school bodies* ***(p. 743)****. Similar considerations would apply to the six Manitoba citizen interveners' contention that the federal power of disallowance in the Constitution Act, 1867 could be used as an alternative to judicial invalidation. This is not an appropriate alternative solution because it asks the Court to abdicate its responsibility to enforce the dictates of the Constitution..* **(NP)** *The only appropriate resolution to this Reference is for the Court to fulfill its duty under s. 52 of the Constitution Act, 1982 and declare all the unilingual Acts of the Legislature of Manitoba to be invalid and of no force and effect and then to take such steps as will ensure the rule of law in the Province of Manitoba.* **(NP)** *There is no question that it would be impossible for all the Acts of the Manitoba Legislature to be translated, re-enacted, printed and published overnight. There will necessarily be a period of time during which it would not be possible for the Manitoba Legislature to comply with its constitutional duty under s. 23 of the Manitoba Act, 1870* ***(p. 754)****. Nor will the constitutional guarantee of rule of law tolerate the Province of Manitoba being without a valid and effectual legal system for the present and future. Thus, it will be necessary to deem temporarily valid and effective the unilingual Acts of the Legislature of Manitoba which would be currently in force, were it not for their constitutional defect, for the period of time during which it would be impossible for the Manitoba Legislature to fulfil its constitutional duty. Since this temporary validation will include the legislation under which the Manitoba Legislature is presently constituted, it will be legally able to re-enact, print and publish its laws in conformity with the*

dictates of the Constitution once they have been translated ***(p. 758)****. As presently equipped the Court is incapable of determining the period of time during which it would not be possible for the Manitoba Legislature to comply with its constitutional duty. The Court will, however, at the request of either the Attorney General of Canada, or the Attorney General of Manitoba, made within one hundred and twenty days of the date of this judgment, make such a determination* ***(p. 769)****.* ***Re Manitoba Language Rights***, [1985] 1 S.C.R. 721.

THE COURT **(NP)** *1. GIVES EFFECT to the commitment of the Province of Manitoba that the Continuing Consolidation of the Statutes of Manitoba, and Regulations, and Rules of Court and Administrative Tribunals will appear in bilingual, parallel column format when printed and published.* **(NP)** *2. ORDERS THAT the period of temporary validity for the laws of Manitoba will continue as follows:* **(NP)** *a) to December 31, 1988 for: (i) the Continuing Consolidation of the Statutes of Manitoba; and (ii) the Regulations of Manitoba; and (iii) Rules of Court and Administrative Tribunals;* **(NP)** *b) to December 31, 1990 for all other laws of Manitoba* ***(pp. 348-349)****.* ***Ordonnance relative aux droits linguistiques au Manitoba,*** [1985] 2 S.C.R. 347.

Section 23 of the Manitoba Act, 1870 does not require a summons for a Manitoba court to be bilingual or printed in the language of choice of its recipient ***(p. 457)****.* ***Bilodeau*** **v.** ***A.G. (Man.)***, [1986] 1 S.C.R. 449.

A determination that the scope of s. 23 is limited to application to instruments of a legislative nature does not, however, end the inquiry. It is necessary to propose some criteria by which legislative instruments can be distinguished from other types of instruments. It is neither possible nor desirable to propose an ironclad test given the proliferation of instruments generated by contemporary governments. But it is both possible and necessary to provide governments with general criteria which will be indicative of whether or not an instrument must comply with the section. These criteria can be roughly divided into the headings of form, content and effect. It should be noted here, however, that these criteria do not operate cumulatively. An instrument may be determined to be legislative in form, though not in content, and under the following criteria it would nonetheless be determined to be of a legislative nature ***(p. 223)****. With respect to content and effect, the Attorney General of Manitoba proposed as a starting point the following definition of regulation taken from the MacGuigan Committee in its report on Statutory Instruments (1969), at p. 14:* **(NP)** *[A] regulation is a rule of conduct, enacted by a regulation-making authority pursuant to an Act of Parliament, which has the force of law for an undetermined number of persons;* **(NP)** *In its original context the definition relates specifically to regulations, but it provides assistance in developing a general definition of the phrase "of a legislative nature".* **(NP)** *The phrases from the above quotation which require elaboration in relation to the content and effect of orders in council are "rule of*

conduct", "force of law" and "an undetermined number of persons". A "rule of conduct" can be described as a rule which sets norms or standards of conduct, which determine the manner in which rights are exercised and responsibilities are fulfilled. Pairing this with the phrase "force of law", the rule must be unilateral and have binding legal effect. Finally, it must also apply to "an undetermined number of persons", that is, it must be of general application rather than directed at specific individuals or situations ***(pp. 224-225)****. Some documents are simply mentioned in legislative instruments; they need not be consulted before the operation of the instrument in question can be understood. Others are "incorporated by reference" in the sense that they are an integral part of the primary instrument as if reproduced therein. It is this latter type of incorporation that can be termed "true incorporation" and that potentially attracts translation obligations under s. 23* ***(p. 228)***. [T]*he central issue becomes whether or not there is a bona fide reason for incorporation without translation. To make this determination, the origin of the document and the purpose of its incorporation must be examined. If the document originates from the legislature which has incorporated it, it is clear that that document must be translated in accordance with the requirements of s. 23. It will be a rare occasion when a legislature can justify the incorporation of a document effectively generated by itself without translation* ***(p. 229)***. *The issue is more complex when the document in question originates from an independent body. There are a number of legitimate reasons why a legislature would choose to incorporate outside documents. If a legislature incorporated wholesale the legislation of another jurisdiction which it could just as easily enact for itself, the action would clearly not meet the bona fide test. For example, it would not be acceptable for Manitoba to incorporate Saskatchewan's Personal Property Security Act by reference instead of enacting its own version of the legislation and to thereby avoid the requirements of s. 23. However, one jurisdiction sometimes incorporates the legislation of another by reference to allow for inter-governmental cooperation on particular issues. A good example of this practice is legislation providing for the reciprocal enforcement of orders made under the family law acts of different provinces* ***(pp. 229-230)***. *Another situation where incorporation without translation is likely to be bona fide is one which involves the incorporation of standards set by a non-governmental standard setting body, for example, safety standards developed by a national or international body. Here it is usually legitimate for the legislature to rely on the technical expertise of such bodies* ***(p. 230)***. ***Reference re Manitoba Language Rights,*** [1992] 1 S.C.R. 212.

There is a clear difference between the constitutional position of French and English in Manitoba and the constitutional position of other languages. What is said by a witness in court in another language is not evidence. It is testimony given in English or French through an interpreter that is to be considered by the court. What is said in another language is not considered by the court; it is not transcribed. **(NP)** *When a witness speaks French in court, what he says in*

French is evidence. What he says in French must be recorded so that on an appeal this court can consider his evidence in French. This may be difficult to do with simultaneous translation; nevertheless the French must be recorded and the evidence given in French must be considered. **(NP)** *In my opinion, it is essential that a judge who hears a case where French is used must be able to understand the French evidence. To give a fair hearing in accordance with the constitutional rights of a francophone he must put himself into a position of being able to understand what is said in French. But he need not himself speak French and he need not understand French unaided by a translator. If a judge can understand what is said in French with the help of a translator, I see no reason to think he cannot fairly hear witnesses who speak French* ***(p. 217)***. ***Robin* v. *College de Saint-Boniface*** (1984), 15 D.L.R. (4th) 199 (Man. C.A.). Leave to appeal refused, No 19720, [1986] 1 S.C.R. xii.

I am of the view that Dureault J., reached the proper conclusion. Seven and fifteen days after June 13, 1985, the Legislative Assembly of Manitoba attempted with the means at its disposal to comply with the requirements of the Supreme Court decision. There was compliance, although there were some shortcomings in the process; but the main and essential requirement, namely that laws be enacted and printed in both English and French, was met ***(p. 253)***. ***Waite* v. *The Queen*** (1987), 47 Man.R. (2d) 247 (Man. C.A.).

The "Acts of the Legislature," as used in s. 23 of the Manitoba Act, 1870, was intended to apply to all legislative enactments by the Manitoba Legislature following incorporation in accordance with the existing practice and the constitutional language guarantees negotiated in 1870. Those words were not intended to apply to the provision in a valid statute enacted for constitutional purposes to provide continuity and certainty of the laws in accordance with the principle of the rule of law. To find s. 23 of the Manitoba Act, 1870 applicable to the words, "the laws existing, or established and being in England", as used in s. 1 of the Q.B. Act, would, in the words of Beetz J., be an attempt to improve upon "an historical constitutional compromise". I would suggest that to accept the appellant's submission on the application of s. 23 of the Manitoba Act, 1870 would stretch the meaning "beyond what is necessary to accomplish this purpose" (Blaikie No. 1, supra). It is unrealistic to extend the standards enunciated in 1985 and 1992 for the purpose of protecting constitutionally guaranteed language rights to valid enactments drafted in accordance with the principles of the rule of law and necessitated by the incorporation of Manitoba into Canada in 1870 ***(pp. 709-710)***. ***Red River Forest Products Inc.* v. *Ferguson*** (1992), 98 D.L.R. (4th) 697 (Man. C.A.).

Section 23 does not give the right to the applicant to impose on the agency the obligation to use French in its process. The applicant is only entitled to understand the process. There are two distinct dimensions in these proceedings:

the constitutional right of the agency to use either French or English and the common law right of the applicant to have explained to her the nature of the proceedings in whatever language the applicant understands ***(pp. 234-235)****. However, the applicant, it is conceded by all the parties before me, has the right to invoke the rules of natural justice and the right to insist on the obligation of the agency to act fairly and equitably, but I do not consider the unilateral act of instituting the proceedings in English as being in violation of those rights* ***(p. 236)****. There is inherent discrimination in our constitution when s. 23 of the Manitoba Act, 1870, and s. 133 of the Constitution Act, 1867 and s. 23 of the Charter confer a special status on English and French* ***(p. 237)****.* ***Northwest Child and Family Services Agency*** **v.** ***Lavoie et al.*** (1992), 88 D.L.R. (4th) 230 (Man. Q.B.).

See also in this book:

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 17(2), 18(2) and 19(2);

See also:

Allain **v.** ***R***. (1991), 70 Man.R. (2d) 161 (Man. Q.B.).

Bertrand **v.** ***Dussault and Lavoie*** (30 janvier 1909), Saint-Boniface, reproduced in ***Re Forest and Court of Appeal of Manitoba*** (1977), 77 D.L.R. (3d) 445 Ont. C.A.).

Brophy **v.** ***Man.*** (1893), 22 S.C.R. 577.

R. **v.** ***Guay*** (1980), 10 Man. R. (2d) 322 (Man. Ct. C.).

Order: Manitoba Language Rights, [1990] 3 S.C.R. 1417.

Robin **v.** ***College de St-Boniface*** (1985), 15 D.L.R. (4th) 198 (Man. Q.B.).

6.2 Intercountry Adoption Act, The, S.M. 1985, c. 22.

DONE at The Hague, on the 29th of May, 1993 in the **English** and **French languages**, both texts being equally **authentic**, . . . S.M. 1997, c. 52, s. 1.

6.3 Northern Affairs Act, The, S.R.M. 1988, c. N100.

Translation of council debates

54. Any member of an incorporated community council at any regular or special meeting, may require that the motion, debate resolution, or by-law be translated into a **language** which he declares that he understands; but the chairman of the meeting may require him to make his declaration under oath.

6.4 International Commercial Arbitration Act, The, S.M. 1986-87, c. 32 [C151].

(Assented to September 10, 1986)

SCHEDULE A

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application supply:

(a) The duly authenticated original award or a duly certified copy thereof.

(b) The original agreement referred to in article II or a duly certified copy thereof;

2. If the said award or agreement is not made in an **official language** of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a **translation** of these documents into such **language**. The **translation** shall be certified by an **official** or sworn **translator** or by a diplomatic or consular agent.

Article XVI

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

SCHEDULE B

Article 22 Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise

specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

Article 35 Recognition and Enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an **official language** of this State, the party shall supply a duly certified **translation** thereof into such **language**.

6.5 Teachers' Association Act, The, R.S.M. 1987, c. T30.

Agency or Society

15. (1) Les Éducatrices et Éducateurs Francophones du Manitoba shall act as an agency of The Manitoba Teachers' Society on all matters related to education in the **French language**.

6.6 Credit Unions and Caisses Populaires Act, The, S.M. 1986-87, c. 5 [C301].

Name of credit union

10. (1) Every credit union which is a member of CCSM and assigned to The Credit Union Deposit Guarantee Corporation shall include the words "credit union" as part of its name and the word "Limited" or the abbreviation "Ltd." shall be the last word of the name of such credit union.

Name of caisse populaire

(2) Every caisse populaire which is a member of the Fédération and assigned to the Société d'assurance-dépôts des caisses populaires shall include the words "caisse populaire" as part of its name and the word "Limitée" or the abbreviation "Ltée" shall be the last word of the name of such caisse populaire.

Name in any language form

(3) Subject to subsections (1) and (2), and section 12, a credit union may set out its name in its articles in any **language** form and may be legally designated by that form.

6.7 Centre Culturel Franco-Manitobain Act, Le, R.S.M. 1987, c. C45.

Objects

6. The objects of the corporation are to maintain, encourage, foster and sponsor by all means available all types of cultural activities, in the **French language**, and to make available Franco-Canadian culture to all residents of the province.

6.8 Human Rights Code, The, S.M. 1987-88, c. 45.

PART II

PROHIBITED CONDUCT AND SPECIAL PROGRAMS

"Discrimination" defined

9. (1) In this Code, "discrimination" means

(a) differential treatment of an individual on the basis of the individual's actual or presumed membership in or association with some class or group of persons, rather than on the basis of personal merit; or...¦

(b) differential treatment of an individual or group on the basis of any characteristic referred to in subsection (2); or

(c) differential treatment of an individual or group on the basis of the individual's or group's actual or presumed association with another individual or group whose identity or membership is determined by any characteristic referred to in subsection (2); or

(d) failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon any characteristic referred to in subsection (2).

Applicable characteristics

9 (2) The applicable characteristics for the purposes of clauses (1)(b) to (d) are . . .

(c) **ethnic** background or **origin**;

6.9 Canada - United Kingdom Judgments Enforcement Act, The, R.S.M. 1987, c. J21.

Definition of "convention"

1. In this Act, "convention" means the Convention for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters set out in the Schedule hereto.

Convention law in Manitoba

2. From and after January 1, 1987, the convention is in force in the province and the provisions thereof are law in the province.

DONE in duplicate at Ottawa, this 24th day of April, 1984, in the **English** and **French languages**, each version being equally authentic.

6.10 Cooperatives Act, The, R.S.M. 1987, c. C223.

Name of cooperative

10. (1) The corporate name of every cooperative shall include the word "Cooperative" or the abbreviation "Co-op", or the word "Pool", as part thereof: and the word "Limited" or the abbreviation "Ltd." shall be the last word of the corporate name of every cooperative with share capital, and the word "Incorporated" or the abbreviation "Inc." shall be the last word of the corporate name of every cooperative without share capital but a cooperative may use and may be legally designated by either the full or the abbreviated form.

Alternative name

(2) Subject to section 12, a cooperative may set out its name in its articles in an **English** form or a **French** form or a combined **English** and **French** form and may be legally designated by that form.

Name in any language form

(3) Subject to section 12, a cooperative may set out its name in its articles in any **language** form and may be legally designated by that form.

6.11 Corporations Act, The, R.S.M. 1987, c. C225.

Name of corporation

10. (1) The word "Limited", Limitee", "Incorporated", "Incorporee" or "Corporation", or the abbreviation "Ltd.", "Ltee.", "Inc.", or "Corp.", shall be part, other than only in a figurative or descriptive sense, of the name of every corporation, but a corporation may use and may be legally designated by either the full or the abbreviated form.

Alternative name

(2) Subject to subsection 12(2), a corporation may set out its name in its articles in an **English** form or a **French** form, an **English** form and a **French** form, or in a combined **English** and **French** form and it may be legally designated by any such form.

Name in any language form

(3) Subject to subsection 12(2), a corporation may set out its name in its articles in any **language** form and it may be legally designated by any such form.

6.12 Court of Appeal Act, The, R.S.M. 1987, c. C240.

Extension of time for translations

32. Notwithstanding this or any other Act of the Legislature, for the purpose of allowing time for obtaining a **translation** from **French** into **English** or **English** into **French** of any document filed in the court or served on a party in an action or proceeding in the court, a judge of the court may extend the time within which, or postpone the day before or by which, any further document is required to be filed in response or any proceeding is required to be taken under any Act of the Legislature.

6.13 Court of Queen's Bench Act, The, S.M. 1988-89, c. 4 [C280].

Extension of time for translation

98. Notwithstanding a time limitation contained in this Act or another Act, a judge may, for the purpose of allowing sufficient time for the **translation** of a document filed in court or served on a party in a proceeding, extend the time within which the document shall be filed or a further step taken in the proceeding.

6.14 Provincial Court Act, The, R.S.M. 1987, c. C275.

Extension of time for translations

51. Notwithstanding this or any other Act of the Legislature, for the purpose of allowing time for obtaining a **translation** from **French** into **English** or **English** into **French** of any document filed in the Provincial Court or served on a party in an action or proceeding in the Provincial

Court, a judge may extend the time within which, or postpone the day before or by which, any further document is required to be filed in response or any proceeding is required to be taken under any Act of the Legislature.

6.15 Public Schools Act, The, R.S.M. 1987, c. P250.

See: Constitution Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

6.16 Elections Act, The, R.S.M. 1987, c. E30.

Persons not understanding language

88. (1) Where a person desiring to vote does not understand the **language** which the deputy returning officer speaks, the deputy returning officer may employ an **interpreter** to translate the oath or any lawful question necessarily put to or by that person and the answer thereto but the **interpreter** shall first take an oath in the prescribed form and the poll clerk shall enter in the remarks column of the poll book the word "Interpreted" and the name of the **interpreter**.

Interpreter not available

(2) Where a person desiring to vote who does not speak and understand either the **English** or **French language** is required to take an oath, the deputy returning officer shall not give him a ballot paper or permit him to vote until an **interpreter** is present who can interpret the **language** spoken by the person.

6.17 Child Custody Enforcement Act, The, R.S.M. 1987, c. C360.

SCHEDULE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Done at The Hague, on October 25, 1980, in the **English** and **French languages**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

6.18 Reciprocal Enforcement of Judgments Act, The, R.S.M. 1987, c. J20.

Where judgment not in English or French

6. Where a judgment sought to be registered under this Act is in a **language** other than the **English** or **French language**, the judgment or the exemplification or certified copy thereof, as the case may be, shall have attached thereto, for all purposes of this Act, a **translation** in the **English** or **French language** approved by the court and, upon such approval being given, the judgment shall be deemed to be in the **English** or **French language**, as the case may be.

6.19 International Trusts Act, The, S.M. 1993, c. 12.

Article 32 Done at The Hague, on the..... day of ....., 19 ....., in **English** and **French**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

6.20 Universities Establishment Act, The, R.S.M. 1987, c. U40.

Examinations either in English or French

15. The examination for any degree to be conferred by a university established under this Act may be answered by the candidate in either the **English** or **French** language.

6.21 Jury Act, The, R.S.M. 1987, c. J30.

Language difficulty

4. Where the **language** in which a trial is primarily to be conducted is one that a person is unable to understand, speak or read, that person is disqualified from serving as a juror in the trial.

6.22 Multiculturalism Act, The Manitoba, S.M. 1992, c. 56 [M223].

AND WHEREAS the Legislative Assembly of Manitoba believes that Manitoba's multicultural society is not a collection of many separate societies, divided by **language** and culture, but is a single society united by shared laws, values, aspirations and responsibilities within which persons of various backgrounds have:

the freedom and opportunity to express and foster their cultural heritage;

the freedom and opportunity to participate in the broader life of society; and

the responsibility to abide by and contribute to the laws and aspirations that unite society;

Purpose of secretariat

5. The Secretariat shall . . .

(d) work with the business community, labour organizations, voluntary and other private organizations to . . .

(iii) recognize the benefits of a multilingual, multicultural society;

(e) encourage the use of **languages** that contribute to the multicultural heritage of Manitoba;

6.23 Employment Standards Act, The, R.S.M. 1987, c. E110.

Records required to be kept ty employers

6. (1) Unless the minister authorizes him in writing to dispense therewith, every employer shall maintain in his principal place of business in the province a true and correct record in the **English language**, or if he is a **French-speaking** person a similar record in the **French language**, …

6.24 Regional Health Authority Act, The, S.M. 1996, c. 53 R34.

Regulations by the Lieutenant Governor in Council

59. The Lieutenant Governor in Council may make regulations . . .

(p.1) respecting the obligations of regional health authorities in relation to the provision of health services in the **French language**, including without limitation, the designation of those regional health authorities which must fulfill the obligations;

6.25 Court of Queen's Bench Surrogate Practice Act, The, R.S.M. 1987, c. C290.

Translation of testamentary documents

48 (3)**.** A certified copy of any testamentary document to which reference is made in the foreign grant shall be produced, together with a **translation** thereof, into the **English** or the **French language** if the original testamentary document or copy thereof is written in another **language**.

6.26 Builders' Liens Act, The, R.S.M. 1987, c. B91.

Records by contractors and sub-contractors

10 (1) Every contractor and sub-contractor shall maintain in his principal place of business in the province a true and correct record in the **English** or **French language** …

6.27 Maintenance Orders Act, The Reciprocal Enforcement of, R.S.M. 1987, c. M20.

Translation

13. (3) Where an order or other document received by a court is not in **English** or **French**, the order or other document shall have attached to it from the other jurisdiction a **translation** in **English** or **French** approved by the court and the order or other document shall be deemed to be in **English** or **French** for the purposes of this Act.

6.28 Liquor Control Act, The, R.S.M. 1988, c. L160.

Requirements

76. (1) The commission may issue a private club licence to a club that

(d) has submitted to the commission in **English** or in **French**, a copy of its Act, or articles of incorporation, and of its constitution and general by-laws, and such other of its by laws or rules as affect the operation of the premises operated by the club.

6.29 University of Manitoba Act, The, R.S.M. 1987, c. U60.

Examinations in English or French

64. The examination for any degree to be conferred by the University may be answered by the candidate in either the **English** or **French language**.

6.30 International Sale of Goods Act, The, S.M. 1989-90, c. 18 [S11].

(Assented to December 22, 1989)

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic.

6.31 City of Winnipeg Act, The, S.M. 1989-90, c. 10.

PART 3 OFFICIAL LANGUAGES OF MUNICIPAL SERVICES

Definitions

87.1 (1) In this Part,

"designated area" means the area of the Riel Community as described in the City of Winnipeg Wards and Communities Regulation on the coming into force of this section; («zone désignée»)

"municipal services" means services that are provided to the public by the city; («services municipaux»)

"St. Boniface Ward" means St. Boniface Ward as described in the City of Winnipeg Wards and Communities Regulation on the coming into force of this section. («Saint-Boniface »)

Meaning of "official languages"

(2) For the purposes of this part, **English** and **French** are **official languages**.

General obligation of city

87.2. (1) Except where a later date or series of dates is fixed by by-law under clause 87.11(1)(b) for compliance with a provision of this Part, the city shall ensure that all things necessary are provided or done to satisfy the requirements of this Part and to permit a person to do anything he or she is entitled to do under this Part.

Interpretation

(2) Nothing in this Part shall be interpreted so as to preclude the city from providing more municipal services in **French** than are required in this Part or from providing municipal services to persons in any **language** other than **English** or **French**.

Limitation of obligation

(3) The obligations of the city under this Part are subject to such limitations as circumstances make reasonable and necessary, if the city has taken all reasonable measures to comply with this Part.

PROCEEDINGS OF COUNCIL AND COMMUNITY COMMITTEE

Use of French in a proceeding of council

87.3. (1) In addition to **English**, every person is entitled, upon notice, to use **French** in a proceeding of or before council with respect to a matter and, where notice is given, the proceeding with respect to that matter shall be conducted or simultaneously interpreted in **French**.

Notice

(2) A notice referred to in subsection (1) shall be in writing, shall specify the matter and the proceeding and shall be given to the city clerk

(a) in the case of a regular meeting of council, not less than two working days before the proceeding; and

(b) in the case of a special or emergency meeting of council, within a reasonable time having regard to the period of notice that is given for the special or emergency meeting.

Use of official languages in proceedings of community committee

(3) Every person is entitled to use either **official language** in a proceeding of or before the community committee in the designated area with respect to a matter shall be conducted or simultaneously interpreted in both **official languages**.

COMMUNICATION AT CITY OFFICES

Services in official languages at City Hall

87.4 (1) Every person is entitled, within a reasonable time of a request, to receive in the **official language** of his or her choice any municipal services that are available at any office of the city located at City Hall and in the course of the provision of those services to speak and be spoken to in the **official language** of his or her choice.

Services in official languages at the community committee office in designated area

(2) Every person is entitled to receive in either **official language** municipal services prescribed by by-law under subsection 87.11(1) for the purposes of this subsection at the community committee office in the designated area and in the course of the provision of those services to speak and be spoken to in the **official language** of his or her choice.

Services in official languages at designated locations

(3) Where a municipal service is not available in both **official languages** in the designated area, every person is entitled, within a reasonable time of a request, to receive that municipal service in the **official language** of his or her choice at an office at any location designated by council by by-law under subsection 87.11(1) for the purposes of this subsection and in the course of the provision of those services to speak and be spoken to in the **official language** of his or her choice.

Written communication

(4) Every person who communicates in writing with the city with respect to a matter is entitled with respect to that matter to be communicated with in writing in the **official language** of his or her choice.

Subsequent communications

(5) If a person initiates a communication with respect to a matter in an **official language**, whether spoken or written, in circumstances where that person is entitled to do so under this section, that person is entitled to use and to require the use of that **official language** in all subsequent communications, whether spoken or written, with respect to that matter.

St-Boniface office

(6) The city shall provide an office in historic St. Boniface where the municipal services in both **official languages** prescribed by by-law under subsection 87.11(1) for the purposes of this subsection are provided.

Definition

(7) In subsection (6), **"**historic St. Boniface**"** means the area bounded on the east by the centre line of Panet Road, extending north from the Canadian National Railway Right of Way to the centre line of Mission Street, thence north along the centre line of Panet Road to the northern limit of River Lot 72 in the Parish of St. Boniface; on the west by the eastern bank of the Red River; on the north by the northern limit of River Lot 72 in the Parish of St. Boniface and on the south by a line drawn south-easterly from the eastern bank of the Red River along the northern limit of Lots 37, 36, 33 and 32, Plan Number 4709 to the centre line of St. Mary's Road and thence south-east along the centre line of St. Mary's Road to the centre line of Enfield Crescent and its straight projection east to the centre line of Kenny Street and its straight projection north to the back lane between Berry Street and Goulet Street and its straight projection east to the eastern limit of Plan No. 692, thence northerly to the centre line of Bertand Street and its straight projection east to the centre line of the Seine River, thence north along this line to the northern limit of Plan No. 1507 extending to the eastern limit of the land taken for the Right of Way of the Canadian Pacific Railway (Emerson Branch) thence northerly along the eastern limit of the land taken for the said Right of Way to the north-eastern limit of the land taken for the Right of Way of the Canadian National Railway according to registered Plan No. 6705; thence south-easterly along the said north eastern limit to the northern limit of Parcel 4 in Plan Number 6737 and its straight north-easterly projection along the Canadian National Railway spurline to the North limit of the Canadian National Railway spurline known as the MacArthur cut-off; thence easterly to the centre line of Panet Road.

MUNICIPAL SERVICES

Application

87.5 (1) This section applies in respect of municipal services other than those available at an office.

Receipt of municipal services in St. Boniface Ward

(2) Every person resident in St. Boniface Ward is entitled to receive in the **official language** of his or her choice at a facility of the city within that Ward or at his or her place of residence all municipal services that are ordinarily provided at that facility or place of residence.

Municipal services for designated area

(3) Every person who is resident in the designated area and who goes to a facility of the city where a municipal service is ordinarily provided is entitled to have that municipal service provided in either **official language** within the designated area or at any location designated by council by by-law under subsection 87.11(1) for the purposes of this subsection.

Subsequent communications

(4) A person who is entitled to a municipal service in the **official language** of his or her choice under this section and who initiates communication respecting that service in the **official language** of his or her choice is entitled to use or to require the use of that **official language** in all subsequent communications, whether spoken or written, with respect to that service.

BILINGUAL DOCUMENTS

Notices, statements etc.

87.6 (1) All notices, statements of account, certificates, demands in writing and other documents sent or given by the city to persons resident in the designated area shall be in both **official languages**.

Forms and brochures

(2) All application forms provided by the city to the general public and all brochures, pamphlets and similar printed documents distributed by the city to the general public shall be available to the general public in both **official languages** in the designated area.

Publication of notices and advertisements

87.7 (1) Any public notice respecting a matter that affects the designated area generally, whether or not it also affects the rest of the city, and any advertisement for the employment of a person with competence in both **official languages** shall be published by the city in both **official languages**.

Public notices may be published separately

(2) The **English** and **French** versions of a public notice or an advertisement referred to in subsection (1) may be published in separate publications.

Cost of publication

(3) Where a public notice referred to in subsection (1) is given under Part 20 with respect to land in the designated area, the person on whose behalf it is published shall pay the cost of publication in the **official language** of his or her choice and the city shall pay the cost of publication in the other **official language**.

BILINGUAL SIGNS

Signs respecting municipal services

87.8 (1) The city shall, inside and outside each location where municipal services are available in both **official languages**, erect and maintain signs bearing information in both **official languages** respecting the particular municipal services that are available in both **official languages** at that location.

General information signs

(2) In addition to the signs referred to in subsection (1), all signs that are inside or outside each location where municipal services are available in both **official languages** and that provide information to the public shall be erected and maintained in both **official languages**.

Street and traffic signs

(3) All street signs and the words on all traffic signs erected or maintained in the St. Boniface Ward and, where feasible, elsewhere in the designated area shall be in both **official languages**.

ACCESS GUIDE

Contents of access guide

87.9 (1) The city shall cause to be prepared and published in both **official languages** an access guide to municipal services in **French** that shall include

(a) a statement of the requirements to be satisfied by the city and the things that a person is entitled to do under this Part;

(b) details of the actions the city has taken to satisfy those requirements, including, without limitation, a list of the offices, together with their addresses and telephone numbers, where municipal services are available in **French** and particulars of whether the municipal services are available during normal business hours or within a reasonable time of request; and

(c) such information respecting the organisational structure of the city and of each of its departments as is reasonably necessary to enable a person to take advantage of what he or she is entitled to under this Part.

Availability of access guide

(2) The city shall ensure that copies of the access guide are available

(a) in every office or facility of the city in the designated area;

(b) in every office or facility at every location designated by council by by-law under subsection 87.11(1) for the purposes of any provision of this Part; and

(c) at any other location considered appropriate by the city.

Updating access guide

(3) The city shall prepare and publish an updated access guide

(a) if the information becomes substantially inaccurate, within a reasonable period after that occurs; and

(b) at least every three years.

COMPLAINTS

Complaint to ombudsman

87.10 Any person who feels that the city has failed to meet its obligations under this Part may make a complaint to the ombudsman for the city.

IMPLEMENTATION

By-law for implementation

87.11 (1) The City of Winnipeg shall, not later than September 1, 1993, pass a by-law establishing a plan to implement this Part that shall include provisions

(a) prescribing the municipal services that are to be provided by the city for the purposes of subsections 87.4(2) and (6);

(b) where, on the coming into force of this Part, any further actions are required to be taken by the city to comply with its obligations under subsections 87.4(3), 87.5(2), 87.5(3), 87.6(1), 87.6(2), 87.8(1) and 87.8(2), fixing with respect to each of those subsections

(i) the date or dates by which those further actions are required to be taken, or

(ii) where the city elects to phase in compliance with an obligation, a series of dates upon which a series of specified further actions are required to be taken; and

(c) designating locations for the purposes of subsections 87.4(3) and 87.5(3).

Priority services

(2) The city shall, in the by-law referred to in subsection (1), give priority to providing in both **official languages** fire, police and ambulance services, social services, library services and leisure and recreational programming to persons in St. Boniface Ward.

ADMINISTRATION

French language coordinator

87.12 The city shall appoint a **French language** coordinator

(a) to assist in the development and coordination of the implementation of the plan described in section 87.11; and

(b) to advise on, coordinate, oversee and monitor the provision of municipal services in accordance with, and in satisfaction of the requirements of, this Part.

Annual report to minister

87.13 The council shall annually, not later than four months after the end of the fiscal year of the city, make a report in **English** and **French** to the minister respecting the compliance by the city with its obligations under this Part and that report shall include particulars of any complaints under this Part filed with the ombudsman and the disposition of each of those complaints.

Review by minister

87.14 (1) The minister shall, not later than five years after the coming into force of this section, review the compliance by the city with its obligations under this Part for the purpose of determining whether further legislative or other action is required or advisable.

Consultations

(2) In the course of the review referred to in subsection (1), the minister may consult with the public with respect to such matters as the minister considers advisable.

7. NEW BRUNSWICK

7.1 Canadian Charter of Rights And Freedoms, Part I of the ***Constitution Act, 1982***, being Schedule B to the ***Canada Act, 1982***, (U.K.) 1982, c. 11.

Official languages of New Brunswick

16. (2) **English** and **French** are the **official languages** of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.

See also in this book:

Canada, *Canadian Charter of Rights and Freedoms*, s. 16(1);

New Brunswick, *Official Languages Act of New Brunswick*.

English and French linguistic communities in New Brunswick

16.1 (1) The **English linguistic** community and the **French linguistic** community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.

Role of the legislature and government of New Brunswick

(2) The role of the legislature and government of New Brunswick to preserve and promote the status, rights and privileges referred to in subsection (1) is affirmed.

See also in this book:

New Brunswick, *An Act Recognizing The Equality of The Two Official Linguistic Communities In New Brunswick*.

Proceedings of New Brunswick legislature

17. (2) Everyone has the right to use **English** or **French** in any debates and other proceedings of the legislature of New Brunswick.

Canada, *Canadian Charter of Rights and Freedoms*, s. 17(1);

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s.23.

New Brunswick statutes and records

18. (2) The statutes, records and journals of the legislature of New Brunswick shall be printed and published in **English** and **French** and both **language** versions are equally authoritative.

Canada, *Canadian Charter of Rights and Freedoms*, s. 18(1);

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s.23.

Proceedings in New Brunswick courts

19. (2) Either **English** or **French** may be used by any person in, or in any pleading in or process issuing from, any court of New Brunswick.(89)

The question we must answer is whether the right to choose which language to use in court includes the right to be understood by the judge or judges hearing the case ***(p. 559)****. In my opinion, "all institutions of ... government" includes judicial bodies or courts:* ***(p. 565)****. It is my view that the rights guaranteed by s. 19(2) of the Charter are of the same nature and scope as those guaranteed by s. 133 of the Constitution Act, 1867 with respect to the courts of Canada and the courts of Quebec. As was held by the majority at pp. 498 to 501 in MacDonald, these are essentially language rights unrelated to and not to be confused with the requirements of natural justice. These language rights are the same as those which are guaranteed by s. 17 of the Charter with respect to parliamentary debates. They vest in the speaker or in the writer or issuer of court processes and give the speaker or the writer the constitutionally protected power to speak or to write in the official language of his choice. And there is no language guarantee, either under s. 133 of the Constitution Act, 1867, or s. 19 of the Charter, any more than under s. 17 of the Charter, that the speaker will be heard or understood, or that he has the right to be heard or understood in the language of his choice* ***(pp. 574-575)****.* ***Société des Acadiens*** **v.** ***Association of parents***, [1986] 1 S.C.R. 549.

Section 19 of the Charter may not be invoked in support of a right to an interpreter as that question has been dealt with as a separate issue in s. 14 ***(p. 677)****.* ***Cormier*** **v.** ***Fournier*** (1986), 29 D.L.R. (4th) 675 (N.B. Q.B.).

See also in this book:

Canada, *Canadian Charter of Rights and Freedoms*, s. 19(1);

Canada, *Constitution Act, 1867*, s. 133;

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s.23;

See also:

R.* v. *L. (F.S.) (1986), 71 N.B.R. (2d) 225 (N.B. Q.B.).

Communications by public with New Brunswick institutions

20. (2) Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in **English** or **French**.

The word "public" does not cause any problems. Whether it be in English or French, the term has a clear meaning. Public understanding or dictionary meanings, all lead to the same result: the word "public" in s. 20(2) of the Charter necessarily includes any individual or group of people ***(p. 16)****. I am satisfied of the relevance and practical application of the above-mentioned criteria. The application of these criteria leads me to conclude that the issuing of a ticket by a member of a police force in New Brunswick to an individual in New Brunswick to an individual in New Brunswick is a communication or a service as contemplated by s. 20(2) of the Charter. Consequently, the communication must be made by the police officer in the individual's desired language* ***(p. 22)****. According to s. 24(1) of the Charter, the remedy for the denial of a Charter right, must be "appropriate and just in the circumstances". In this case, a review of the case law is unnecessary. The appropriate remedy for the infringement of a right can only be to set aside or dismiss the charge or stay the proceedings. The summons is thus set aside and the Provincial Court is prohibited from continuing proceedings* ***(p.41)***. ***Gautreau* v. *R.*** (1989), 101 N.B.R. (2d) 1 (N.B. Q.B.). Reversed on procedural grounds in (1991), 109 N.B.R. (2d) 54 (N.B. C.A.).

A municipal police force such the Saint John Police Force, in my opinion, is not an office of an institution of the legislature of the government of New Brunswick ***(p. 233)***. ***R.* v. *Bastarache***, [1992] 128 N.B.R. (2d) 217 (N.B. Q.B.).

In my opinion, the word "office" in the wording of s. 20(2) limits the scope of the institutions covered by this section to public institutions whose management, policies and guidelines are supervised and controlled by the legislature or government ***(p. 93)****. A municipality, despite the intervention of the government in some of its activities, is sufficiently autonomous, sovereign and responsible in its*

administration and organization within the limits of its powers and is not, in my opinion, subject to such supervision and control by the government or legislature as to make it an institution within the meaning of s. 20(2) of the Charter ***(p. 94)****. Section 20(2) does not provide that a citizen must be informed of his or her rights under that subsection. The same goes for all of the other sections of the Charter, even though they guarantee such fundamental rights as life, freedom, etc., with the exception of paragraph 10(b) which states that a detainee must be informed of the rights set out therein. In my opinion, the Parliament of Canada would have set out the same duty in the wording of s. 20(2) if such had been its intent. I am not satisfied that this court must interpret the provision other that according to its wording and thus give it a different meaning than the whole of the legislation* ***(pp. 96-97)****.* ***Haché*** **v.** ***La Reine*** (1993), 139 N.B.R. (2d) 81. (N.B. C.A.).

See also in this book:

Canada, *Canadian Charter of Rights and Freedoms*.

See also:

Bourque **v.** ***R***. (August, 20 1992), M/M/141/92 (N.B. Q.B.) Landry J.

R. **v.** ***Bertrand*** (1992), 131 N.B.R. (2d) 91 (N.B. Q.B.).

University of British Columbia **v.** ***Berg***, [1993] 2 S.C.R. 353.

7.2 Business Corporations Act, R.S.N.B. 1973, c. B-9.1.

Name of corporation and related issues

8 (1) The word "Limited", "Limitée", "Incorporated", "Incorporé", or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." shall be the last word of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form.

(2) The Director may exempt a body corporate continued as a corporation under this Act from the provisions of subsection (1).

(3) Subject to subsection l0(1), a corporation may set out its name in its articles in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form and it may use and may be legally designated by any such form.

(4) Subject to subsection 10(1), a corporation may, for use outside Canada, set out its name in its articles in any **language** form and it may use and may be legally designated by its name in any such form outside Canada.

(5) A corporation shall set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the corporation.

Application for registration

197. (3) If all or any part of any material or information required by the Director is not in the **English** or **French language**, the Director may require the submission to him of a **translation** of the material or information, verified in accordance with section 210.1, before he registers the extra-provincial corporation. 1983, c. 15, s. 26; 1985, c. 5, s. 4.

7.3 Companies Act, R.S.N.B. 1973, c. C-13.

Application for letters patent

6. (1) The applicants for letters patent, who must be of the full age of nineteen years, shall file in the office of the Minister an application setting forth the following particulars:

(a) the proposed corporate name of the company, the last word of which shall be the word "Limited" or "Limitée" or the abbreviation thereof, "Ltd." or "Limitée", which name shall not be that of any other known corporation or association, incorporated or unincorporated, or of any syndicate or partnership or of any individual or any name under which any known business is being carried on or so nearly resembling the same as to be liable to be confounded therewith, or otherwise on public grounds objectionable, except where the existing corporation, association, partnership, individual or person signifies its or his consent in writing to its or his name in whole or in part being granted to the proposed corporation;

(2) In the case of a non-trading corporation, the last word of the name may be the word "Incorporated" or the abbreviation "Inc." instead of "Limited," "Limitée", "Ltd." or "Ltée" as required by subsection (1).

(3) If the company has a name consisting of a separated or combined **French** and **English** form, it may from time to time use, and it may be legally designated by, either the **French** or **English** form of its name or both forms. R.S., c. 33, s. 6; 1966, c. 40, s. 1; O.C.64-312; 1972, c. 5, s. 2; 1977, c. 11, s. 1;1978,c. D 11.2, s. 7.; 1991, c. 27, s. 10.

Reissuance of letters patent in the other official language

34.1 (1) Where the Minister has issued letters patent to a company under section 16 or 18 in one of the **official languages** and that company is desirous of obtaining like letters patent in the **official language** other than that in which they were originally issued, the company may make application for the reissuance of the letters patent and any supplementary letters patent by providing the Minister with

(a) a copy of a by-law authorizing the application, and

(b) a **translation** of the letters patent and any supplementary letters patent issued to the company verified in a manner satisfactory to the Minister.

(2) Before the Minister reissues the letters patent and any supplementary letters patent the applicant shall establish to the satisfaction of the Minister that

(a) the by-law authorizing the application has been duly passed by the company, and

(b) the **translation** of the letters patent and any supplementary letters patent correctly sets out, without substantive change, the provisions of the original letters patent and any supplementary letters patent and for such purposes the Minister shall take any requisite evidence in writing, by oath or affirmation, or by statutory declaration under the Evidence Act, and shall keep record of such evidence so taken.

(3) The Minister may, on being satisfied with the evidence provided in accordance with subsection (2), reissue the letters patent and any supplementary letters patent in the **official language** other than that in which the letters patent were originally issued.

7.4 Convention Between Canada And The United Kingdom of Great Britain And Northern Ireland Providing For The Reciprocal Recognition And Enforcement of Judgments In Civil And Commercial Matters, An Act Respecting The, R.S.N.B. 1973, c. R-4.1.

SCHEDULE A

Article XIV Termination

DONE in duplicate at Ottawa, this 24th day of April, 1984 in the **English** and **French languages**, each version being equally authentic.

7.5 Co-operative Associations Act, R.S.N.B. 1973, c. C-22.1.

Name of association

10. (1) Notwithstanding sections 6 and 7, an association may have a name consisting of a separated or combined **French** and **English** form and may be legally designated by either the **French** or **English** form of its name or both forms.

7.6 Court Reporters Act, R.S.N.B. 1973, c. C-30.1.

Official transcripts

6. (3) Where a transcript of proceedings, or a portion thereof, that has been reported in one of the **official languages** is requested to be prepared in the other **official language**

(a) by a presiding judge or presiding chairman for the purposes of any proceedings before a court or tribunal, or

(b) by the Minister, for any purpose, the Chief Court Reporter shall designate a qualified person to prepare, in the **official language** required, a transcript of the proceedings, or portion thereof, reported in the other **official language**, and such transcript, when certified by the person so designated as a correct **translation** of the proceedings, and when signed by the Chief Court Reporter, shall be an **official** transcript of such proceedings, or portion thereof, and the validity of the transcript shall not be questioned on the ground of the qualifications of the person designated.

(4) In the absence of evidence to the contrary, an **official** transcript of the proceedings of a court or tribunal is proof of matters transpiring at those proceedings. 1985, c. 4, s. 18.

7.7 Credit Unions Act, The, R.S.N.B. 1973, c. C-32.2.

Names

12. (1) The words "Credit Union" or "Caisse Populaire" or both shall be part of the name of every credit union.

(2) Subject to section 14, a credit union may set out its name in its articles in an **English** form a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form and it may be use and may be legally designated by any such form.

7.8 Elections Act, The, R.S.N.B. 1973, c. E-3.

Section 85 Interpreter for voter

85. (1) Whenever the deputy returning officer does not understand the **language** spoken by an elector, he shall if possible appoint an **interpreter** who shall be the means of communication between him and the elector with reference to all matters required to enable such elector to vote.

7.9 Equality of The Two Official Linguistic Communities In New Brunswick, An Act Recognizing The, S.N.B. 1981, c. O-1.1.

WHEREAS the Legislative Assembly of New Brunswick acknowledges the existence of two **official linguistic** communities within New Brunswick whose values and heritages emanate from and are expressed through the two **official languages** of New Brunswick; and

WHEREAS the Legislative Assembly of New Brunswick desires to recognize the equality of these **official linguistic** communities; and

WHEREAS the Legislative Assembly of New Brunswick seeks to enhance the capacity of each **official linguistic** community to enjoy and safeguard its heritage for succeeding generations; and

WHEREAS the Legislative Assembly of New Brunswick desires to affirm and protect in its laws the equality of status and the equal rights and privileges of the **official linguistic** communities; and

WHEREAS the Legislative Assembly of New Brunswick desires to enshrine in its laws a declaration of principles relating to this equality of status and these equal rights and privileges which shall provide a framework for action on the part of public institutions and an example to private institutions;

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

Recognition of English linguistic community and French linguistic community and affirmation of equality of status and equal rights of each

1. Acknowledging the unique character of New Brunswick, the **English linguistic** community and the **French linguistic** community are officially recognized within the context of one province for all purposes to which the authority of the Legislature of New Brunswick extends, and the equality of status and the equal rights and privileges of these two communities are affirmed.

Protection of the equality of status and equal rights and privileges of official linguistic communities

2. The Government of New Brunswick shall ensure protection of the equality of status and the equal rights and privileges of the **official linguistic** communities and in particular their right to distinct institutions within which cultural, educational and social activities may be carried on.

Promotion of cultural, economic, educational and social development

3. The Government of New Brunswick shall, in its proposed laws, in the allocation of public resources and in its policies and programs, take positive actions to promote the cultural, economic, educational and social development of the **official linguistic** communities.

See also in this book:

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 16.1(1).

7.10 Foreign Resident Corporations Act, The, R.S.N.B. 1973, c. F-19.1.

Document required to accompany application

3. (3) Where all or any part of the documents submitted to the Minister under subsection (1) are not in the **French** or **English language**, the Minister may require a submission to him of a **translation** of the documents or any part thereof, verified in a manner satisfactory to him, before he considers the application. 1990, c.10, s. 1.

Filing of documents before application for certificate

7. (2) Where all or any part of the documents submitted to the Minister under subsection (1) are not in the **French** or **English language**, the Minister may require a submission to him of a **translation** of the documents or any part thereof, verified in a manner satisfactory to him, before the documents are filed under subsection (1).

Name of foreign resident corporation

10. A foreign resident corporation shall continue to conduct business

(b) in the name of the foreign resident corporation which is a **translation** into **English** or **French**, or

(c) in a name approved by the Minister that describes or identifies the foreign resident corporation, followed by the initials “F.R.C”.

7.11 Human Rights Act, R.S.N.B. 1973, c. H-11.

Definitions

2. In this Act

"mental disability" means

(a) any condition of mental retardation or impairment,

(b) any learning disability, or dysfunction in one or more of the mental processes involved in the comprehension or use of symbols or spoken **language**, or . . . 1985, c. 30, s. 4.

7.12 Insurance Act, R.S.N.B. 1973, c. I-12.

OFFICIAL LANGUAGES

20.1 (1) No insurer carrying on business in the Province shall use any form or document relating to a contract of insurance and which is to be provided to an applicant for insurance, an insured, a beneficiary or a claimant unless that form or document is provided or made available in both **official languages**; and every insurer shall, if the Superintendent so requests, file a copy of the form or document in each **official language** in the office of the Superintendent.

(2) The Superintendent may require an insurer to change a form of document filed under subsection (1) and, when the Superintendent so requires, he shall specify in writing his reasons for requiring the change.

(3) An insurer who violates subsection (1) or who fails to comply with a requirement issued by the Superintendent under subsection (2) commits an offence. 1982, c. 32, s.1.

20.2 (1) No insurer carrying on business in the Province shall engage a solicitor to act on behalf of an insured unless the insured has indicated to the insurer the **official language** he wishes to be used by the solicitor acting on his behalf

(2) Where an insurer is required or wishes to engage a solicitor to act on behalf of an insured, the insurer shall, after the insured has indicated the **official language** he wishes to be used by the solicitor acting on his behalf, engage a solicitor who uses that **official language**.

(3) An insurer who violates subsection (1) or who fails to comply with subsection (2) commits an offence. 1986, c. 48, s. 1.

7.13 International Child Abduction Act, The, R.S.N.B. 1973, c. I-12.1.

Schedule A

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority.

7.14 International Sale of Goods Act, R.S.N.B. 1973, c. I-12.21.

Article 101

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic.

7.15 International Trusts Act, R.S.N.B. 1973, c. I-12.3.

Article 32 Notification

Done at The Hague, on the _____day of _____, 19____, in **English** and **French**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

7.16 International Wills Act, R.S.N.B. 1973, c. I-12.4.

SCHEDULE A

Article XVI

The original of the present Convention, in the **English**, **French**, Russian and Spanish **languages**, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

Schedule

Article 3

1. The will shall be made in writing.

3. It may be written in any **language**, by hand or by any other means.

7.17 Interpretation Act, The, R.S.N.B. 1973, c. I-13.

Language of corporation name

13. Where an Act or regulation establishes a corporation and in each of the **English** and **French** versions of the Act or regulation the name of the corporation is in the form only of the **language** of that version, the name of the corporation shall consist of the form of its name in each of the versions of the Act or regulation. 1973, c. 74, s. 45; 1982, c. 33, s. 4.

14. Words in an Act or regulation establishing a corporation having a name consisting of an **English** and a **French** form or a combined **English** and **French** form shall be construed to vest in the corporation power to use either the **English** or **French** form of its name or both forms and to show on its seal both the **English** and **French** forms of its name or to have two seals, one showing the **English** and the other showing the **French** form of its name. 1973,c.74,s.45; 1982,c.33,s.4.

7.18 Jury Act, R.S.N.B. 1973, c. J-3.1.

Grounds for exemption

5. The following persons may be exempted from serving as jurors: …

(c) a person who is unable to understand, speak or read the **official language** in which the proceeding is to be conducted; 1994, c.74, s. 7.

7.19 Official languages of New Brunswick Act, R.S.N.B. 1973, c. O-1.

Definitions

1. In this Act

"court" includes judicial, quasi-judicial and administrative tribunals;

"official languages" means those **languages** so established under section 2. 1969, c.14, s.2.

Official languages

2. Subject to this Act, the **English** and **French languages**

(a) are the **official languages** of New Brunswick for all purposes to which the authority of the Legislature of New Brunswick extends, and

(b) possess and enjoy equality of status and equal rights and privileges as to their use for such purposes. 1969, c.14, s.3.

R.* v. *Voisine (1984), 57 R.N.-B. (2d) 38 (N.B. Q.B.).

Use of official languages in Legislature

3. The **official languages** may be used in any proceeding of the Legislative Assembly or committee hereof. 1969, c.14, s.4.

Records and reports of Legislature

4. Records and reports of any proceeding of the Legislative Assembly or committee thereof are to be printed in the **official languages**. 1969, c.14, s.5.

Bills of Legislature

5. (1) Bills introduced into the Legislative Assembly are to be printed in the **official languages**.

Motions or other documents of Legislature

(2) Motions or other documents introduced into the Legislative Assembly or committee thereof may be printed in either or both **official languages**. 1969, c.14, s.6; 1975, c.42, s.1; 1984, c.28, s.1.

Revised Statutes of New Brunswick

6. The next and succeeding revisions of the Statutes of New Brunswick are to be printed in the **official languages**. 1969, c.14, s.7.

Statute passed subsequent to Act

7. (1) Statutes passed subsequent to the proclamation of this section are to be printed in the **official languages**. 1969, c.14, s.8; 1984, c.28, s.2.

At the beginning of the trial, the appellant moved to dismiss the information on the ground that the Chiropractors Act of 1958 only existed in English. He

invoked the Official Languages of New Brunswick Act, . . . the Canadian Charter of Rights and Freedoms and section 52 of the Canada Act, 1982 ***(p. 62)***. [I]*n order to dispose of this ground of appeal, we only have to refer to s. 7(1) of the Official Languages of New Brunswick Act* ***(p. 68)***. *Although the Official Languages of New Brunswick Act was proclaimed in 1969, s. 7(1) was only proclaimed in 1984. The Chiropractic Act was passed in 1958.* **(NP)** *For the above reasons, the appeal is dismissed* ***(pp. 68-69)***. ***R.* v. *Losier*** (1992), 130 N.B.R. (2d) 53 (N.B. Q.B.).

Notice and other writings under statute

8. Subject to section 15, notices, documents, instruments or writings required under this or any Act to be published by the Province, any agency thereof or any Crown corporation are to be printed in the **official languages**. 1969, c.14, s.9.

Official documents in Royal Gazette in both languages

9. Subject to section 15, copies of **Official** and other notices, advertisements and documents appearing in *The Royal Gazette* are to be printed in the **official languages**. 1969, c.14, s.10.

(a) to obtain the available services for which such public officer or employee is responsible, and

(b) to communicate regarding those services, in either **official language** requested. 1969, c.14, s.11.

Municipalities

11. The council of any municipality may declare by resolution that either or both **official language** may be used with regard to any matter or in any proceeding of such council. 1969, c.12, s.12.

Public, trade or technical schools

12. In any public, trade or technical school

(a) where the mother tongue of the pupils is **English**, the chief **language** of instruction is to be **English** and the second **language** is to be **French**;

(b) where the mother tongue of the pupils is **French**, the chief **language** of instruction is to be **French** and the second **language** is to be **English**;

(c) subject to paragraph (d), where the mother tongue of the pupils is in some cases **English** and in some cases **French**, classes are to be so arranged that the chief **language** of instruction is the mother tongue of each group with the other **official language** the second **language** for those groups; and

(d) where the Minister of Education decides that it is not feasible by reason of numbers to abide by the terms of paragraph (c), he may make alternative arrangements to carry out the spirit of this Act. 1969, s.14, s.13.

Court

13 (1) Subject to section 15, in any proceeding before a court, any person appearing or giving evidence may be heard in the **official language** of his choice and such choice is not to place that person at nay disadvantage.

It is my view that the rights guaranteed by s. 19(2) of the Charter are of the same nature and scope as those guaranteed by s. 133 of the Constitution Act, 1867 with respect to the courts of Canada and the courts of Quebec. As was held by the majority at pp. 498 to 501 in MacDonald, these are essentially language rights unrelated to and not to be confused with the requirements of natural justice. These language rights are the same as those which are guaranteed by s. 17 of the Charter with respect to parliamentary debates. They vest in the speaker or in the writer or issuer of court processes and give the speaker or the writer the constitutionally protected power to speak or to write in the official language of his choice. And there is no language guarantee, either under s. 133 of the Constitution Act, 1867, or s. 19 of the Charter, any more than under s. 17 of the Charter, that the speaker will be heard or understood, or that he has the right to be heard or understood in the language of his choice **(NP)** *I am reinforced in this view by the contrasting wording of s. 20 of the Charter. Here, the Charter has expressly provided for the right to communicate in either official language with some offices of an institution of the Parliament or Government of Canada and with any office of an institution of the Legislature or Government of New Brunswick. The right to communicate in either language postulates the right to be heard or understood in either language.* **(NP)** *I am further reinforced in this view by the fact that those who drafted the Charter had another explicit model they could have used had they been so inclined, namely s. 13(1) of the Official Languages of New Brunswick Act, R.S.N.B. 1973, c. O-1...* **(NP)** *Here again, s. 13(1) of the Act, unlike the Charter, has expressly provided for the right to be heard in the official language of one's choice. Those who drafted s. 19(2) of the Charter and agreed to it could easily have followed the language of s. 13(1) of the Official Languages of New Brunswick Act instead of that of s. 133 of the Constitution Act, 1867. That they did not do so is a clear signal that they wanted to provide for a different effect, namely the effect of s. 133. If the people of the Province of New Brunswick were agreeable to have a provision like s. 13(1) of the Official Languages of New Brunswick Act as part of their law, they did not agree to see it entrenched in the Constitution. I do not think it should be forced*

upon them under the guise of constitutional interpretation. ***(p. 574-575)***. ***Société des Acadiens* v. *Association of parents***, [1986] 1 S.C.R. 549.

Subsection 17(2) of the Charter, which governs the use of both official languages in the Legislature of New Brunswick, provides the following: **(NP)** *17(2) Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick* **(NP)** *The Legislature of New Brunswick uses simultaneous interpretation so as to conform with this subsection of the Charter. The court intends to use these same means so as to conform not only with the Charter but also with s-s. 13(1) of the Official Languages of New Brunswick Act* ***(p. 679)***. ***Cormier* v. *Fournier*** (1986), 29 D.L.R. (4th) 675 (N.B. Q.B.).

I turn finally to the answers that I would give to the questions referred to the New Brunswick Supreme Court, Appeal Division....In my view, in the absence of federal legislation competently dealing with the language of proceedings or matters before provincial Courts which will fall within exclusive federal legislative authority, it was open to the Legislature of New Brunswick to legislate respecting the languages in which proceedings in Courts established by that Legislature might be conducted. This includes the languages in which evidence in those cCourts must be given. Section 92(14) of the British North America Act, 1867 is ample authority for such legislation ***(p. 197)***. ***Jones* v. *A.G. of New Brunswick***, [1975] 2 S.C.R. 182.

See also:

Price, Re (1973), 8 N.B.R.(2d) 620 (N.B. Q.B.).

Language of proceeding where person accused of offence

(1.1) Subject to subsection (1), a person accused of an offence under an Act or a regulation of the Province, or a municipal by law, has the right to have the proceedings conducted in the **official language** of his choice, and he shall be advised of the right by the presiding judge before his plea is taken.

Right to be heard by court that understands language of proceedings

(1.2) Subject to subsection (1), a person who is a party to proceedings before a court has the right to be heard by a court that understands, without the need for **translation**, the **official language** in which the person intends to proceed.

Powers of appointment

(1.3) A power under an Act or regulation of the Province to appoint a person to or as a court includes, notwithstanding any provision of the Act or regulation, the power

(a) to appoint, for the purposes of the proceedings of that court, or such of them as may be specified in the appointment, another person to act in the place of the person appointed under the Act or regulation when it is necessary that another person so act in order to give effect to the right referred to in subsection (1.2), and

(b) to fix the remuneration of the person so appointed.

(1.4) A person appointed in accordance with subsection (1.3) to act in the place of a person appointed under an Act or regulation of the Province has, for the purposes for which the appointment is made, all of the powers and duties of the person appointed under the Act or regulation. 1969, c.14, s.14; 1982, c.47, s.1; 1990, c.49, s.1.

Statutory construction

14. In construing any of the instruments, bills statutes, writings, records reports, motions, notices, advertisements, documents or other writings mentioned in this Act, both versions in the **official language** are equally authentic. 1969, c.14, s.15.

See also:

Fisherman's Warf Ltd, Re (1982), 44 N.B.R. (2d) 201 (N.B. Q.B.).

R.* v. *Voisine (1984), 57 R.N.-B. (2d) 38 (N.B. Q.B.).

Regulations

15. (1) Where

(a) warranted by reason of the number of persons involved,

(b) the spirit of this Act so requires, or

(c) it is deemed necessary to so provide for the orderly implementation of this Act,

the Lieutenant-Governor in Council may make regulations determining the application of sections 8, 9 and 10.

(2) The Lieutenant-governor in Council may make regulations governing the procedure in proceedings before any court, including regulations respecting the giving of notice as he deems necessary to enable the court to exercise or carry out any power or duty conferred or imposed upon it by section 13.

Appointment of official translators

(3) The Lieutenant-Governor in Council may appoint **Official Translators** and may make regulations governing their functions and the status and admissibility into evidence of **translations** prepared by them. 1969, c.14, s.16; 1975, c.42, s.2; 1984, c.28, s.3.

7.20 Reciprocal Enforcement of Maintenance Orders Act, R.S.N.B. 1973, R-4.01.

Translation

13. (3) Where an order or other document received by a court is not in **English** or **French**, the order or other document shall have attached to it from the other jurisdiction a **translation** in **English** or **French** approved by the court and the order or other document shall be deemed to be in **English** or **French** for the purposes of this Act.

7.21 Right To Information Act, R.S.N.B 1973, c. R-10.3.

Granting of request

4. (3) Where a request for information is granted, the information shall only be provided in the **language** or **languages** in which it was made. 1979, c.41, s.111; 1995, c.51, s. 4.

7.22 Schools Act, The, R.S.N.B. 1973, c. S-5.

See: Constitution Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

7.23 Standard Forms of Conveyances Act, S.N.B, 1980, c. S-12.2.

0.1. The purpose of this Act is to standardize the form and content of conveyances of land, to simplify the **English language** version of common law legal terms and provide **French language** equivalents for these terms, and to provide shortened equivalents in both **official languages** for traditional long form legal clauses. 1984, c. 63, s. 1.

(2) In making regulations pursuant to subsection (1) the Lieutenant-Governor in Council may prescribe the meaning and legal effect of any **language** used in any form prescribed thereunder, and any conveyance made in a form prescribed by regulation shall be construed in all courts in accordance with the meaning and legal effect assigned to its **language** by the regulations.

(2.1) In making regulations pursuant to subsection (1), the Lieutenant-Governor in Council may prescribe the meaning and legal effect of the **language** used in a covenant or condition which may be included in a conveyance of land by deed, lease or mortgage and any such covenant or condition contained in a conveyance made in a form prescribed hereunder shall be construed in all courts in accordance with the meaning and legal effect assigned to its **language** by the regulations.

2.2. Where a conflict exists between the **English** version and the **French** version of wording prescribed hereunder, the meaning and legal effect of such wording in a conveyance shall be determined by the **language** version in which the conveyance was executed unless a contrary intention is expressed in the conveyance. 1984, c. 63, s. 3.

7.24 Vital Statistics Act, The, R.S.N.B. 1973, c. V-3.

Issuance of certificates in either official language

40. The Registrar General, may, upon request and upon payment of the prescribed fee, issue certificates of birth, death or marriage containing the following items in either **official language**, regardless of the **language** in which the items appear in the registration: . . .

8. NOVA SCOTIA

8.1 Canada and United Kingdom Reciprocal Recognition and Enforcement of Judgments Act, R.S.N.S. 1989, c. 52.

ARTICLE VI

4. The registering court may require that an application for registration be accompanied by

(a) the judgment of the original court or a certified copy thereof;

(b) a certified **translation** of the judgment, if given in a **language** other than the **language** of the territory of the registering court;

(c) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and

(d) particulars of such other matters as may be required by the rules of the registering court.

DONE in duplicate at Ottawa, this 24th day of April 1984 in the **English** and **French languages**, each version being equally authentic. R.S. c. 52, Sch.

8.2 Canada - Nova Scotia Ofshore Petroleum Resources Accord Implementation (Nova Scotia) Act, S.N.S. 1987, c. 3.

Board to prepare annual report

30. (1) The Board shall, in respect of each fiscal year, prepare an annual report in both **official languages** in Canada…1987 c. 3 s. 30.

8.3 Child Abduction Act, R.S.N.S. 1989, c. 67.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority.

8.4 Children and Family Services Act, S.N.S. 1990, c. 5.

Culture, race or language

47. (5) Where practicable, a child, who is the subject of an order for permanent care and custody, shall be placed with a family of the child's own culture, **race** or **language** but, if such placement is not available within a reasonable time, the child may be placed in the most suitable home available with the approval of the Minister. 1990, c. 5, s. 47; 1996, c. 10, s. 6.

8.5 Community Colleges Act, S.N.S. 1995-96, c. 4.

Collège de l'acadie

3. (1) There is hereby established a body corporate to be known as Collège de l'Acadie.

French language

(2) Subject to subsection (3), the **language** of administration and operation of the Collège shall be **French**.

Circumstances warranting the use of English

(3) When the circumstances warrant the use of **English**, the Collège shall use **English**. 1995-96, c. 4, s. 3.

8.6 Companies Act, R.S.N.S. 1989, c. 81.

Shared companies

10. In the case of a company limited by shares,

(a) the memorandum must state

(i) the name in all its **language** forms of the company, with "Incorporated", "Incorporée", "Limited" or "Limitée" as the last word in each form of its name, . . . R.S., c. 81, s. 10.

Guaranteed companies

11. In the case of a company limited by guarantee,

(a) the memorandum must state

(i) the name in all its **language** forms of the company, with "Incorporated", "Incorporée", "Limited" or "Limitée" as the last word in each form of its name. R.S., c. 81, s. 12.

Unlimited companies

12 In the case of an unlimited company,

(a) the memorandum must state

(i) the name in all its **language** forms of the company, and

Language of name

15. Subject to subclause (i) of clause (a) of Section 10 and subclause (i) of clause (a) of Section 11, a company may have its name in more than one **language** form. R.S., c. 81, s. 15.

Language of name

80. (3) Where a company's name is in more than one **language** form, the company may be legally designated by any such form and, unless expressly required by law to use a particular **language** form or all **language** forms of its name, it may use any one **language** form of its name by itself in any case where its name is required to be used....

Exceptions

(8) Where it is proved to the satisfaction of the Governor in Council that an association about to be formed as a company limited by guarantee is to be formed for promoting art, science, religion, education or any charitable, patriotic or other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Governor in Council may by order in council direct that the association, upon complying with the other provisions of this Act with respect to incorporation, be registered as a company limited by guarantee as defined by clause (b) of Section 9, without the addition of the word "Incorporated", "Incorporée", "Limited" or "Limitée", and the association may be registered accordingly....

Privileges of association

(11) The association shall on registration enjoy all the privileges of companies limited by guarantee, and be subject to all their obligations, except those of using the word "Incorporated", "Incorporée", "Limited" or "Limitée" as any part of its name, and of publishing its name and of sending lists of members and directors and managers to the Registrar.

Revocation of status

(12) The Governor in Council may by order in council at any time revoke such registration and upon revocation the Registrar shall enter the word "Incorporated", "Incorporée", "Limited" or "Limitée" at the end of the name of the association upon the register and the association shall cease to enjoy the exemptions and privileges granted by this Section, provided, that before such

registration is so revoked, the Governor in Council shall give to the association notice in writing of his intention and shall afford the association an opportunity of being heard in opposition to the revocation.

Instatement as association

(13) A company, as described in subsection (8), which has been registered with the word "Incorporated", "Incorporée", "Limited" or "Limitée" as the last word in its name, may, by special resolution and with the approval of the Governor in Council, change its name by omitting the word "Incorporated", Incorporée", "Limited" or "Limitée", and upon such change being made, the Registrar shall amend the register accordingly and issue a certificate of incorporation altered to meet the circumstances of the case.

Application to subsection (11)

(14) Subsections (11) and (12) shall apply to a company whose name has been changed under subsection (13) as though it had been originally registered without the addition of the word "Incorporated", "Incorporée", "Limited" or "Limitée" as part of its name. R.S., c. 81, s. 80.

Penalty for improper incorporation

81. If any person or persons trade or carry on business under any name or title of which "Incorporated", "Incorporée", "Limited" or "Limitée" or any contradiction thereof is the last word, that person or each of those persons shall, unless duly incorporated with limited liability, be liable to a penalty not exceeding twenty-five dollars for every day upon which the name or title has been used. R.S., c. 81, s. 81.

8.7 Costs and Fees Act, R.S.N.S. 1989, c. 104.

Fees allowed interpreters

20. (1) **Interpreters** where necessary on the hearing of any criminal matter shall be allowed such fees as are certified by the prosecuting officer, not exceding five dollard per day.

Payment by Province

(2) Such fees be paid by Her Majesty in right of Province on the production of a certificate from the prosecuting officer certifying that an **interpreter** was necessary in the matter, and that the amount certified for such fees is reasonable and proper in the circumstances. R.S., c. 104, s. 20; 1994-95, c. 7, s. 19.

8.8 Education Act, S.N.S. 1995-96, c. 1.

See: Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

8.9 Elections Act, R.S.N.S. 1989, c. 140.

Interpreter

116. (1) Where a deputy returning officer does not understand the **language** spoken by an elector, the deputy returning officer shall, if possible, obtain an **interpreter** who, after taking an oath in prescribed form in the poll book, shall be the means of communication between the deputy returning officer and the elector with reference to all matters required to enable the elector to vote.

Necessity for interpreter

(2) If no **interpreter** is obtained, the elector shall not be allowed to vote until one is obtained. R.S., c. 140, s. 116.

8.10 Human Rights Act, R.S.N.S. 1989, c. 214.

Interpretation

3. In this Act, . . .

(l) "physical disability or mental disability" means an actual or perceived . . .

(iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken **language**, . . .1991, c. 12, s. 1.

8.11 International Commercial Arbitration Act, R.S.N.S. 1989, c. 234.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

a) The duly authenticated original award or a duly certified copy thereof;

b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an **official language** of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a **translation** of these documents into such **language**. The **translation** shall be certified by an **official** or sworn **translator** or by a diplomatic or consular agent.

Article 22. Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an **official language** of this State, the party shall supply a duly certified **translation** thereof into such **language**.

Article XVI.

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

8.12 International Sale of Goods Act, S.N.S. 1988, c. 13.

Schedule

Article 101

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic. 1988, c. 13, Sch.

8.13 Maintenance Enforcement Act, S.N.S 1994-95, c. 6.

Garnishment order issued outside the Province

27. (1) On the filing with the Director of a garnishment or a document of similar effect that . . .

(d) is written in or accompanied by a sworn, affirmed or certified **translation** into **English** or **French**,

Income source outside the Province

(2) A garnishment may be issued in respect of an income source that is outside the Province and shall . . .

(d) be written in or accompanied by a sworn, affirmed or certified **translation** into **English** or **French**. 1994-95, c. 6, s. 27.

8.14 Maritime Economic Cooperation Act, S.N.S. 1992, c. 7.

Guiding principles

3. (1) In future actions that affect the economy of the Maritime Provinces, the governments of the Maritime Provinces are to be guided by the following principles:

(a) maintain the authority of each government and legislature;

(b) protect and enhance the right of all residents of the Maritime Provinces to participate fully in the Maritime economy regardless of **language** and geographic location and in accordance with the Human Rights Act; 1992, c. 7, s. 3.

Bilingualism

8. Any resident of the Maritime Provinces has the right to communicate with and receive service in **English** and **French** from any institution established specifically in pursuance of the purpose, principles and strategic goals of this Act. 1992, c. 7, s. 8.

8.15 Motor Vehicle Act, R.S.N.S. 1989, c. 293.

Illiteracy or disability

67. (24) The Department shall not issue a driver's license to any person when, in the opinion of the Department, the person is sufficiently illiterate or is afflicted with or suffering from such physical or mental disability or disease as will serve to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways, nor shall a license be issued to any person who is unable to understand highway warning or direction signs in the **English language**. R.S., c. 293, s. 67; 1994-95, c. 12, s. 5; 1996, c. 34, s. 2.

8.16 Municipal Elections Act, R.S.N.S. 1989, c. 300.

Interpreter

87. (1) Where a deputy returning officer does not understand the **language** spoken by an elector and is satisfied that the elector does not understand the procedure that he must follow to cast his vote, the deputy returning officer shall, if possible, obtain an **interpreter** who, after taking the oath in prescribed form in the poll book, shall be the means of communication between the deputy returning officer and the elector with reference to all matters required to enable the elector to vote.

Interpreter required

(2) The elector shall not be allowed to vote until an **interpreter** is obtained. R.S., c. 300, s. 87.

8.17 Pharmacy Act, R.S.N.S. 1989, c. 343.

Prohibited activity

27. (1) Save as in this Act otherwise provided, no person shall . . .

(g) assume or use the title of "pharmaceutical chemist", or "chemist and druggist", or "druggist", "pharmacist", or "apothecary", or "dispensing chemist", or "dispensing druggist" or words of like import, or display on or about a shop or advertise, display, list or use in an advertisement any of the titles mentioned or the designation "drug store", or "drug department" or "drug dispensary" or "drugateria" or "drug sundries" or "pharmacy" or "drugs" or "medicines" or assume, use, display, advertise, list or use in an advertisement in **English** or any other **language** any other sign, title or advertisement implying or calculated to lead the public to infer that he is registered under this Act, unless he be registered under this Act and hold an unexpired valid and annual licence as a pharmaceutical chemist. R.S., c. 343, s. 27.

8.18 Probate Act, R.S.N.S. 1989, c. 359.

Appointment and costs of interpreter

121. If it is necessary to appoint an **interpreter** to interpret in open court, or to translate or decipher any document, the court may, in its discretion, employ such **interpreter** and make a reasonable allowance for his services, to be paid to him in the first instance by the party who requires the services of the **interpreter** and ultimately to be borne by the party against whom the costs are awarded. R.S. c. 359, s. 121.

8.19 Reciprocal Enforcement of Judgments Act, R.S.N.S. 1989, c. 388.

Judgment not in English

5. Where a judgment sought to be registered under this Act is in a **language** other than the **English language**, the judgment or the exemplification or certified copy thereof, as the case may be, shall have attached thereto for all purposes of this Act a **translation** in the **English language** approved by the court, and upon such approval being given the judgment shall be deemed to be in the **English language**. R.S., c. 388, s. 5.

8.20 Trust and Loan Companies Act, S.N.S. 1991, c. 7.

Name of provincial loan company

20. (1) The words "Loan Corporation", "Corporation de prêt", "Loan Corp.", "Société de prêt", "Loan Company", "Compagnie de prêt", shall be included in the name of every provincial loan company, and the words "Trust Corporation", "Corporation de fiducie", "Trust Corp.", "Trust Co.", "Trustco", "Trustee Corp.", "Compagnie fiduciaire", "Trustee Company" or "Société fiduciaire" shall be included in the name of every provincial trust company but, notwithstanding its legal name, a company may use and may be legally designated by either the full or the abbreviated form of those words.

English and French forms

(3) Subject to subsection (1) of Section 22, the instrument of incorporation may set out the name of the company in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form and it may use and may be legally designated by

any such form, but where the name is set out in an **English** form and a **French** form or in a combined **English** and **French** form, the company may use and may be legally designated by any one of those forms.

Any language form

(4) Subject to subsection (1) of Section 22, the instrument of incorporation may, for use outside Canada, set out the name of the company in any **language** form and it may use and may be legally designated by its name in any such form outside Canada. 1991, c. 7, s. 20.

English and French forms

22. (2) Subject to this Act and the regulations, a provincial company may have a name in an **English** form, a **French** form, an **English** form and a **French** form or a combined **English** and **French** form and it may be legally designated by any such name.

9. NUNAVUT

9.1 Nunavut, Act, S. C. 1993, c. 28.

Legislative powers

23. (1) Subject to any other Act of Parliament, the Legislature may make laws in relation to the following classes of subjects:

(m) education in and for Nunavut, subject to the condition that any law respecting education must provide that

(i) a majority of the ratepayers of any part of Nunavut, by whatever name called, may establish such schools in that part as they think fit, and make the necessary assessment and collection of rates for those schools, and

(ii) the minority of the ratepayers in that part of Nunavut, whether Protestant or Roman Catholic, may establish separate schools in that part and, if they do so, they are liable only to assessments of such rates as they impose on themselves in respect of those separate schools;

(n) the preservation, use and promotion of the **Inuktitut language**, to the extent that the laws do not diminish the legal status of, or any rights in respect of, the **English** and **French languages**;

Laws in respect of Indians and Inuit

(3) Subject to any other Act of Parliament, nothing in subsection (2) shall be construed as preventing the Legislature from making laws of general application that apply to or in respect of Indians and Inuit.

Transmittal of laws

28. (1) A copy of every law made by the Legislature shall be transmitted to the Governor in Council within thirty days after its enactment.

Disallowance

(2) The Governor in Council may disallow any law made by the Legislature or any provision of any such law at any time within one year after its enactment.

Laws Applicable in Nunavut Laws of Northwest Territories

29. Subject to this Act, the laws in force in the Northwest Territories on the coming into force of this section continue to be in force in Nunavut, in so far as they are not thereafter repealed, amended or rendered inoperable in respect of Nunavut.

Official Languages ordinance

38. (1) Except in respect of any provision that the Commissioner in Council of the Northwest Territories was empowered, by section 43.2 of the *Northwest Territories Act*, to enact without the concurrence of Parliament, the ordinance of the Northwest Territories entitled the *Official Languages Act* and continued in force in Nunavut by section 29 may not be amended, repealed or otherwise rendered inoperable by the Legislature without the concurrence of Parliament by way of a resolution.

Additional rights and services

(2) Nothing in subsection (1) shall be construed as preventing the Commissioner or the Legislature from granting rights in respect of, or providing services in, **English** and **French** or any of the **languages** of the aboriginal peoples of Canada, in addition to the rights and services provided for in the ordinance referred to in that subsection, whether by amending that ordinance, without the concurrence of Parliament, or by any other means.

Coming into force

79. (1) Subject to subsection (2), this Act or any provision of this Act or of any Act as amended by this Act shall come into force on April 1, 1999 or on such earlier day or days as the Governor in Council may fix by order.

Idem

(2) Part III shall come into force on the day that is six months after the day on which this Act is assented to or on such earlier day as the Governor in Council may fix by order.

[Note: Part III in force December 10, 1993; sections 1 and 4 in force June 20, 1996, see SI/96-51; sections 71 to 75 in force November 26, 1996, see SI/96-102; sections 1, 121 and 126 of Schedule III in force November 27, 1997, see SI/97-136.]

See in this book: Northwest Territories, ***Official Languages Act***.

10. ONTARIO

10.1 Assessment Act, R.S.O. 1990, c. A.31.

Definitions

1. In this Act,

"**French-language** rights holder" means a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the **French language** in Ontario; ("titulaire des droits liés au français") R.S.O. 1990, c. A.31, s. 1; S.O. 1997, c. 31, s. 143.

Assessment roll content

14. (1) The assessment commissioner shall cause to be prepared an assessment roll for each municipality in the region for which he or she is the assessment commissioner and, in the preparation, shall cause to be set down the following particulars:

Municipality in Ottawa-Carleton

16. (4) The assessment commissioner shall also accept an application in respect of a municipality in The Regional Municipality of Ottawa-Carleton as proof in the absence of evidence to the contrary for placing a person on the list as a supporter of the public sector or the Roman Catholic sector of The Ottawa-Carleton **French-language** School Board if the application indicates that a person is a **French**-speaking person and a public sector supporter or a **French-speaking** person, a Roman Catholic and a Roman Catholic sector supporter. R.S.O. 1990, c. A.31, s. 16 (3-10).

10.2 Audit Act, R.S.O. 1990, c. A.35.

Oath of office and secrecy and oath of allegiance

21. (1) Every employee of the Office of the Auditor, before performing any duty as an employee of the Auditor, shall take and subscribe before the Auditor or a person designated in writing by the Auditor,

(a) the following oath of office and secrecy, in **English** or in **French**: (…)

(b) the following oath of allegiance, in **English** or in **French**: (…) R.S.O. 1990, c. A.35, s. 21

10.3 Business Corporations Act, R.S.O. 1990, c. B.16.

Use of "Limited", "Limitée", etc.

10. (1) The word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the corresponding abbreviations "Ltd.", "Ltée", "Inc." or "Corp." shall be part, in addition to any use in a figurative or descriptive sense, of the name of every corporation, but a corporation may be legally designated by either the full or the abbreviated form. R.S.O. 1990, c. B.16, s. 10(1).

Corporate names

(2) Subject to this Act and the regulations, a corporation may have a name that is in,

(a) an **English** form only;

(b) a **French** form only;

(c) a **French** and **English** form, where the **French** and **English** are used together in a combined form;

(d) a **French** form and an **English** form where the **French** and **English** forms are equivalent but are used separately.

Same

(2.1) A corporation that has a form of name described in clause (2)(d) may be legally designated by the **French** or **English** version of its names. 1994, c. 27, s. 71 (3).

10.4 Child And Family Services Act, R.S.O. 1990, c. C.11.

French language services

2. (1) Service providers shall, where appropriate, make services to children and their families available in the **French language**. R.S.O. 1990, c. C.11, s. 2.

10.5 Children's Law Reform Act, R.S.O. 1990, c. C.12.

Schedule Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority. R.S.O. 1990, chap. C.12, s. 46.

10.6 Consolidation and Revision of the Statutes of Ontario, An Act to provide for the, S.O. 1989, c. 81.

Proclamation

6. (1) After the set of printed volumes is deposited in accordance with section 4, the Lieutenant Governor may by proclamation name the day on which the consolidated and revised **English** and **French** versions of the statutes come into force.

7. (5) The Lieutenant Governor may by proclamation name the day on which the **English** and **French** versions of the statutes published in the second volume come into force.

(6) On and after the named day, the **English** and **French** versions of the statutes published in the second volume are in force as though they were part of this Act, and the versions of those statutes published in the first volume are repealed on that duty.

10.7 Co-operative Corporations Act, R.S.O. 1990, c. C.35.

Use of "co-operative" or "coopérative"

7. (1) The corporate name of a co-operative shall include the word "co-operative" in **English** or "coopérative" in **French** as part thereof.

Idem

(2) Where a co-operative or any director, officer, employee or member uses the name of the co-operative, the word "co- operative" or coopérative may be abbreviated to "co-op" in **English** or "coop" in **French**.

Idem

(3) No corporation, association, partnership or individual not being a co-operative to which this Act applies shall use in Use of "Limited" or "Limitée"

Use of "Limited" or "Limitée"

(6) Where a co-operative has share capital, the name of the co-operative may have the word "Limited" or "Limitée" or its corresponding abbreviation "Ltd." or "Ltée" as the last word thereof. R.S.O. 1990, c. C.35, s. 7

Contents of certificates

46. (1) Every share or loan certificate shall state upon its face,

(a) the name of the co-operative and a statement in **English** or in **French** that it is a co-operative incorporated under the law of the Province of Ontario;

Restrictions to be noted

(2) Every share certificate shall have noted conspicuously thereon a statement in **English** or in **French** that the transfer of shares is restricted. R.S.O. 1990, c. C.35, s. 46.

10.8 Coroners Act, R.S.O., 1990, c. C.37.

Interpreters

48 (1) A coroner may, and if required by the Crown Attorney or requested by the witness shall, employ a person to act as **interpreter** for a witness at an inquest, and such person may be summoned to attend the inquest and before acting shall make oath or affirm that he or she will truly and faithfully translate the evidence. R.S.O. 1990, c. C.37, s. 48.

10.9 Corporations Act, R.S.O. 1990, c. C.38.

Contents of share certificates

46. (1) Every share certificate,

(a) shall bear upon its face the name of the company, a statement in **English** or in **French** that the company is incorporated in the Province of Ontario and a statement of its authorized capital; . . . R.S.O. 1990, chap. C.38, s. 46.

List of shareholders

306. (1) No shareholder or member or creditor or the agent or legal representative of any of them shall make or cause to be made a list of all or any of the shareholders or members of the

corporation, unless the person has filed with the corporation or its agent an affidavit of such shareholder, member or creditor in the following form in **English** or **French**, and, where the shareholder, member or creditor is a corporation, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of such corporation: R.S.O. 1990, chap. C.38, s. 306.

Where list of shareholders to be furnished

307. (1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection (2), may require a corporation, other than a private company, or its transfer agent to furnish within ten days from the filing of such affidavit a list setting out the names alphabetically arranged of all persons who are shareholders or members of the corporation, the number of shares owned by each such person and the address of each such person as shown on the books of the corporation made up to a date not more than ten days prior to the date of filing the affidavit.

Affidavit

(2) The affidavit referred to in subsection (1) shall be made by the applicant and shall be in the following form in **English** or **French**: R.S.O. 1990, chap. C.38, s. 307.

10.10 County of Oxford Act, R.S.O. 1990, c. C.42.

Oath of allegiance and declaration of qualification

11. (4) The warden, before taking his or her seat, shall take an oath of allegiance in Form 1 and a declaration of qualification in Form 2, in **English** or in **French**.

Declaration of office

(5) No business shall be proceeded with at the first meeting of the County Council until after the declarations of office in Form 3 of the Municipal Act have been made, in **English** or in **French**, by all members who present themselves for that purpose. R.S.O. 1990, c. C.42, s. 11 (3-6).

10.11 Courts of Justice Act, R.S.O. 1990, c. C.43.

ONTARIO JUDICIAL COUNCIL

Annual report

51. (6) After the end of each year, the Judicial Council shall make an annual report to the Attorney General on its affairs, in **English** and **French**, including, with respect to all complaints received or dealt with during the year, a summary of the complaint, the findings and a statement of the disposition, but the report shall not include information that might identify the judge or the complainant. 1994, c. 12, s. 16, part.

Use of official languages of courts

51.2. (1) The information provided under subsections 51(1), (3) and (4) and the matters made public under subsection 51.1(1) shall be made available in **English** and **French**.

Same

(2) Complaints against provincial judges may be made in **English** or **French**.

Same

(3) A hearing under section 51.6 shall be conducted in **English**, but a complainant or witness who speaks **French** or a judge who is the subject of a complaint and who speaks **French** is entitled, on request,

(a) to be given, before the hearing, **French translations** of documents that are written in **English** and are to be considered at the hearing;

(b) to be provided with the assistance of an **interpreter** at the hearing; and

(c) to be provided with simultaneous **interpretation** into **French** of the **English** portions of the hearing.

Same

(4) Subsection (3) also applies to mediations conducted under section 51.5 and to the Judicial Council's consideration of the question of compensation under section 51.7, if subsection 51.7(2) applies.

Bilingual hearing or mediation

(5) The Judicial Council may direct that a hearing or mediation to which subsection (3) applies be conducted bilingually, if the Council is of the opinion that it can be properly conducted in that manner.

Same

(7) In a bilingual hearing or mediation,

(a) oral evidence and submissions may be given or made in **English** or **French**, and shall be recorded in the **language** in which they are given or made;

(b) documents may be filed in either **language**;

(c) in the case of a mediation, discussions may take place in either **language**;

(d) the reasons for a decision or the mediator's report, as the case may be, may be written in either **language**.

Same

(8) In a bilingual hearing or mediation, if the complainant or the judge who is the subject of the complaint does not speak both **languages**, he or she is entitled, on request, to have simultaneous **interpretation** of any evidence, submissions or discussions spoken in the other **language** and **translation** of any document filed or reasons or report written in the other **language**. 1994, c. 12, s. 16, part, in force February 28, 1995 (O. Gaz. 1995 p. 685

Duty of Chief Judge

51.9. (2) The Chief Judge shall ensure that the standards of conduct are made available to the public, in **English** and **French**, when they have been approved by the Judicial Council. 1994, c. 12, s. 16, part.

Duty of Chief Judge

51.10. (2) The Chief Judge shall ensure that the plan for continuing education is made available to the public, in **English** and **French**, when it has been approved by the Judicial Council. 1994, c. 12, s. 16, part.

Oath of office

80. Every judge or officer of a court in Ontario, including a deputy judge of the Small Claims Court, shall, before entering on the duties of office, take and sign the following oath or affirmation in either the **English** or **French language**: I solemnly swear (affirm) that I will faithfully, impartially and to the best of my skill and knowledge execute the duties of ..... So help me God. (Omit this line in an affirmation.) 1994, c. 12, s. 30.

How certain judges to be addressed

86. (1) Every judge of the Ontario Court (General Division) and the Unified Family Court may be addressed as "Your Honour" or as "(Mr. or Madam) Justice (naming the judge)" in **English**

or as "Votre Honneur" ou "(M. ou Mme) le/la Juge (nom du juge)" in **French**. 1994, c. 12, s. 33.

PART VII

COURT PROCEEDINGS

Application of Part

95. (1) This Part applies to civil proceedings in courts of Ontario.

Application to criminal proceedings

(2) Sections 109 (constitutional questions) and 123 (giving decisions), section 125 and subsection 126 (5) (language of proceedings) and sections 132 (judge sitting on appeal), 136 (prohibition against photography at court hearing) and 146 (where procedures not provided) also apply to proceedings under the Criminal Code (Canada), except in so far as they are inconsistent with that Act.

Application to provincial offences

(3) Sections 109 (constitutional questions), 125, 126 (language of proceedings), 132 (judge sitting on appeal), 136 (prohibition against photography at court hearings), 144 (arrest and committal warrants enforceable by police) and 146 (where procedures not provided) also apply to proceedings under the Provincial Offences Act and, for the purpose, a reference in one of those sections to a judge includes a justice of the peace presiding in the Ontario Court (Provincial Division). R.S.O. 1990, c. C.43, s. 95.

LANGUAGE

Official languages of the courts

125. (1) The **official languages** of the courts of Ontario are **English** and **French**.

Proceedings in English unless otherwise provided

(2) Except as otherwise provided with respect to the use of the **French language**,

(a) hearings in courts shall be conducted in the **English language** and evidence adduced in a **language** other than **English** shall be interpreted into the **English language**; and

(b) documents filed in courts shall be in the **English language** or shall be accompanied by a **translation** of the document into the **English language** certified by affidavit of the **translator**. R.S.O. 1990, c. C.43, s.

Bilingual proceedings

126. (1) A party to a proceeding who speaks **French** has the right to require that it be conducted as a bilingual proceeding.

We are all of the view that the learned motions judge correctly exercised his discretion when he ordered that these proceedings were bilingual pursuant to s. 126(1), and that this right applied to a corporation pursuant to s. 126(8). It is clear that a plain reading of s. 126(2)6, permits the filing of pleadings and other documents written in French in areas named in schedule 2. **(NP)** *However, we are of the view that the learned motions judge erred when he ordered the Registrar to provide to the defendant/appellant a translation into English of the statement of claim written in French pursuant to s. 126(6) of the Act. That section only applies to proceedings referred to in ss. 126(4) and (5) and has no application whatsoever to proceedings in the General Division of the Ontario Court of Justice. If the legislature had wanted a translation to be required it could have easily done so by including the General Division in the context of s-s. (4) and (5). The legislature not having done so, the intent is therefore clear that no translation is required and that none can be ordered as it pertains to an action in the General Division* ***(p. 5)***. ***Sunshine Snow Services Inc.*** **v.** ***Marathon Realty Company Limited*** (August, 22 1995), Ottawa 568/93 et 572/93 (Ont. C.J.).

Idem

(2) The following rules apply to a proceeding that is conducted as a bilingual proceeding:

1. The hearings that the party specifies shall be presided over by a judge or officer who speaks **English** and **French**.

2. If a hearing that the party has specified is held before a judge and jury in an area named in Schedule 1, the jury shall consist of persons who speak **English** and **French**.

3. If a hearing that the party has specified is held without a jury, or with a jury in an area named in Schedule 1, evidence given and submissions made in **English** or **French** shall be received, recorded and transcribed in the **language** in which they are given.

4. Any other part of the hearing may be conducted in **French** if, in the opinion of the presiding judge or officer, it can be so conducted.

5. Oral evidence given in **English** or **French** at an examination out of court shall be received, recorded and transcribed in the **language** in which it is given.

6. In an area named in Schedule 2, a party may file pleadings and other documents written in **French**.

7. Elsewhere in Ontario, a party may file pleadings and other documents written in **French** if the other parties consent.

8. The reasons for a decision may be written in **English** or **French**.

9. On the request of a party or counsel who speaks **English** or **French** but not both, the court shall provide **interpretation** of anything given orally in the other **language** at hearings referred to in paragraphs 2 and 3 and at examinations out of court, and **translation** of reasons for a decision written in the other **language**. R.S.O. 1990 c. C.43, s. 126(1)-(2).

Prosecutions

(2.1) When a prosecution under the Provincial Offences Act by the Crown in right of Ontario is being conducted as a bilingual proceeding, the prosecutor assigned to the case must be a person who speaks **English** and **French**. 1994, c. 12, s. 43(1).

Appeals

(3) When an appeal is taken in a proceeding that is being conducted as a bilingual proceeding, a party who speaks **French** has the right to require that the appeal be heard by a judge or judges who speak **English** and **French**; in that case subsection (2) applies to the appeal, with necessary modifications. R.S.O. 1990 c. C.43, s. 126(3).

Documents

(4) A document filed by a party before a hearing in a proceeding in the Family Court of the Ontario Court (General Division), the Ontario Court (Provincial Division) or the Small Claims Court may be written in **French**.

Process

(5) A process issued in or giving rise to a criminal proceeding or a proceeding in the Family Court of the Ontario Court (General Division) or the Ontario Court (Provincial Division) may be written in **French**. 1994, c. 12, s. 43(2), in force February 28, 1995 (O. Gaz. 1995 p. 685).

Section 126(5) of the Courts of Justice Act, supra, does not require that a process issued in a criminal proceeding be written in French. It is only a possibility. The subsection does not create an obligation in this respect, and s. 126(6) which requires that the courts translate such documents does not apply to a criminal proceeding as it is not mentioned in s. 95(2) of the Courts of Justice Act. In this respect, the provincial legislation corresponds to the Criminal Code ***(p. 125).***

Simard* v. *R. (1995), 27 O.R. (3d) 116 (Ont. C.A.). Leave to appeal refused No 24408, [1995] 1 R.C.S. x.

Translation

(6) On a party's request, the court shall provide **translation** into **English** or **French** of a document or process referred to in subsection (4) or (5) that is written in the other **language**.

Interpretation

(7) At a hearing to which paragraph 3 of subsection (2) does not apply, if a party acting in person makes submissions in **French** or a witness gives oral evidence in **French**, the court shall provide **interpretation** of the submissions or evidence into **English**. R.S.O. 1990, c. C.43, s. 126 (6-9).

SCHEDULE 1

BILINGUAL JURIES

Paragraphs 2 and 3 of subsection 126 (2)

The following counties:

Essex

Kent

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

Timiskaming

The area of the County of Welland as it existed on December 31, 1969.

The Regional Municipality of Hamilton-Wentworth.

The Regional Municipality of Ottawa-Carleton.

The Regional Municipality of Peel.

The Regional Municipality of Sudbury.

The Municipality of Metropolitan Toronto. 1994, c. 12, s. 43 (3), part.

SCHEDULE 2

BILINGUAL DOCUMENTS

Paragraph 6 of subsection 126 (2)

The following counties:

Essex

Kent

Prescott and Russell

Renfrew

Simcoe

Stormont, Dundas and Glengarry

The following territorial districts:

Algoma

Cochrane

Kenora

Nipissing

Sudbury

Thunder Bay

___

Timiskaming

The area of the County of Welland as it existed on December 31, 1969.

The Regional Municipality of Hamilton-Wentworth.

The Regional Municipality of Ottawa-Carleton.

The Regional Municipality of Peel.

The Regional Municipality of Sudbury.

The Municipality of Metropolitan Toronto. 1994, c. 12, s. 43 (3), part.

10.12 Credit Unions And Caisses Populaires Act, S.O. 1994, c. 11.

Language and form of name

19. (1) The name used by a credit union must be in the **language** and form authorized in the articles and approved by the Director. . . .

Use of "caisse populaire"

(3) Only a corporation incorporated under this Act or a predecessor of this Act that provides financial services to its members and promotes the interests of the **French-speaking** community in Ontario by providing management and democratic control in **French** may include "caisse populaire" in its name and all other corporations incorporated under this Act or a predecessor of this Act shall include "credit union" in their names.

Use of "Limited", etc.

(4) The name of a credit union must have at the end of it one of the following: "Limited", "Ltd", "Limitée", "Ltée", "incorporated", "incorporée" or "Inc".

(5) Subject to subsection (3), a credit union incorporated under a predecessor of this Act may continue to use the name under which it was incorporated. 1994, c. 11, s. 19.

Documents to be kept

231. (1) Every credit union shall keep the following documents and registers in either **English** or **French**:1994, . . . c. 11, s. 231.

10.13 Creditors' Relief Act, R.S.O. 1990, c. C.45.

Entries by sheriff after levy

5. (1) Where a sheriff levies money under an execution against the property of a debtor or receives money in respect of a debt that has been attached or sold under section 15 of the Absconding Debtors Act, the sheriff shall forthwith make an entry in Form 1, in **English** or **French**, in a book to be kept in his or her office, and such book shall be open to the public for inspection without chargeR.S.O. 1990, c. C.45, s. 5.

Affidavit of creditor

7. (1) An affidavit in Form 2, in **English** or **French**, of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by a person cognizant of the facts.

Service on debtor

(3) The claimant shall serve on the debtor one of the duplicates and a notice in Form 3, in **English** or **French**. R.S.O. 1990, c. C.45, s. 7.

Filing affidavit

8. (5) The claimant shall file with the local registrar of the Ontario Court (General Division) for the county, the sheriff for which has the execution, one of the duplicate affidavits of claim and a copy of the notice with an affidavit of service thereof in Form 4, in **English** or **French.** R.S.O. 1990, c. C.45, s. 8.

Certificate where claim not disputed

9. (1) Where the claim is not contested in the manner hereinafter mentioned, after ten days from the day of service, or after the time mentioned in the order provided for by subsection 7 (4), as the case may be, on the application of the claimant and the claimant's filing proof of due service of the affidavit and notice, or, where the claim is contested, upon the determination of a dispute in favour of the claimant, either in whole or in part, the local registrar of the Ontario Court (General Division) shall deliver to the creditor a certificate in Form 5, in **English** or **French**, and, where the claim is disputed as to a part only, the claimant may elect, by a writing filed with the local registrar, to abandon such part and is entitled to a certificate as to the residue. R.S.O. 1990, c. C.45, s. 9.

Statement to be kept in sheriff's office, pending distribution

30. Pending the distribution, the sheriff shall keep, in the book mentioned in section 5, a statement in Form 6, in **English** or **French**, showing, R.S.O. 1990, c. C.45, s. 30.

Contents of list

32. (8) A copy of the appointment and a notice in writing in Form 7, in **English** or **French**, of the objections stating the grounds thereof shall be served by the contestant upon the debtor,

unless the debtor is the contestant, and upon the creditors or such of them as the judge may direct. R.S.O. 1990, c. C.45, s. 32 (4-12).

10.14 Education Act, R.S.O., c. E.2, amended by, S.O. 1997, c. 3; s. 2-10, 1997, c. 19, s. 33; 1997, c. 22; 1997 c. 31, ss. 141, 142; 1997, c. 32, s. 10.

See: Consitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

10.15 Employers And Employees Act, R.S.O. 1990, c. E.12.

Warrant for arrest

4. (2) Where the justice of the peace before whom a complaint is laid under this section is satisfied that the employer is about to leave Ontario, the justice of the peace may issue a warrant in Form 1, in **English** or **French**, for the arrest of the employer. R.S.O. 1980, c. 257, s. 4 (1, 2).

10.16 Family Responsibility And Support Arrears Enforcement Act, S.O. 1996, c. 31.

Recognition of extra-provincial garnishments

50. (1) On the filing of a garnishment process that, . . .

(c) is written in or accompanied by a sworn or certified **translation** into **English** or **French**,

the clerk of the Ontario Court (Provincial Division) or Family Court shall issue a notice of garnishment to enforce the support or maintenance obligation. 1996, c. 31, s. 50.

10.17 Farm Registration and Farm Organizations Funding Act, S.O. 1993, c. 21.

Francophone organization

12. One francophone organization representing farmers in the Province may be eligible for special funding under this Act if,

(a) it serves the socioeconomic and cultural interests of francophone farmers;

(b) it offers its services to farming businesses in the **French language**; and

(c) it meets the prescribed criteria for eligibility. 1993, c. 21, s. 12.

Regulations

33. (1) The Lieutenant Governor in Council may make regulations, . . .

7. respecting the question of whether a farm organization offers its services to farming businesses in the **French language** and serves the socioeconomic and cultural interests of francophone farmers;

10.18 Forestry Workers Lien For Wages Act, R.S.O. 1990, c. F.28.

Claim of lien to be filed

5. (1) The person claiming the lien shall state the claim in writing in Form 1 in **English** or in **French**, setting out briefly the nature of the claim, the amount claimed to be due and a description of the logs or timber upon which the lien is claimed.

Verified by affidavit

(2) The claim shall be verified by the affidavit in Form 2 in **English** or in **French** of the claimant or the solicitor or agent of the claimant. R.S.O. 1980, c. 537, s. 7.

10.19 French Language Services Act, R.S.O. 1990, c. F.32.

Preamble

Whereas the **French language** is an historic and honoured **language** in Ontario and recognized by the Constitution as an **official language** in Canada; and whereas in Ontario the **French language** is recognized as an **official language** in the courts and in education; and whereas the Legislative Assembly recognizes the contribution of the cultural heritage of the **French speaking** population and wishes to preserve it for future generations; and whereas it is desirable to guarantee the use of the **French language** in institutions of the Legislature and the Government of Ontario, as provided in this Act;

The French Language Services Act provides that a person has the right to receive services in French from any publicly-funded agency that provides services to the public and is designated as a public service agency. Public hospitals are among the agencies that may be designated under the Act, and Hôpital Montfort is one such designated agency. ***(para. 57)*** **(NP)** *The purpose of the French Language Services Act, and its underlying premises, are expressed in its preamble, which states as follows: . . .* ***(para. 58)*** *Thus the historic contribution of the francophone cultural heritage in Ontario is recognized. That recognition, and the*

preservation of the culture of the French speaking population - one of the official languages groups of Canada - is exemplified in the legislative framework of the Province. By virtue of section 5 of the Act, a person is entitled to communicate with a government institution or a designated agency in French with respect to available services, and has the corresponding right to receive those services in French. ***(para. 59)*** *Paraphrasing the Beaulac decision, then, it can be said that when the French Language Services Act was promulgated in Ontario, and Hôpital Montfort was fully designated as a government agency in respect of the services it provided, the scope of the language rights of the Applicants arising in that regard was not meant thereafter to be determined restrictively. The law was remedial and meant to form part of the unfinished edifice of fundamental language rights pertaining to the francophone minority in the field of health care in Ontario.* ***(para. 65)*** *. . . Because of the particular position of Hôpital Montfort in relation to the Franco-Ontarian community and its role, not just in the delivery of francophone medical services and the provision of francophone medical training, but also as a symbol of francophone minority culture, there is more involved in the impact of the Commission's Directions than the discrete issue of whether the Charter guarantees minority language health care services or minority language medical education.* ***(para. 66)*** *What is at stake in these proceedings is not simply a minority language issue or a minority education issue. What is at stake is a minority culture issue. The Commission's Directions bring into play considerations bearing upon the preservation and protection of not just language and not just education and, indeed, not just health services. They bring into play a combination of all of these concepts plus the factor of linguistic and cultural symbolism which, according to Dr. Bernard, makes Hôpital Montfort "une institution qui incarne et évoque la culture française en Ontario". If Montfort were simply one of a number of francophone hospitals offering similar services and playing the same role - as was the case, in an anglophone context with Lachine General Hospital in Montreal [See Note 6 below] -- the situation might be different. However, it is not. Before the establishment of the Commission in 1996, Hôpital Montfort was the sole community hospital of its kind in Ontario in the sense that it provided a wide variety of primary and secondary care in a homogeneous French setting and at the same time offered a training centre for medical professionals in a French milieu.* **(NP)** *Thus, this is not a minority language rights case. This is not a minority language education rights case. This is a case about whether the rights of the Franco-Ontarian minority have been undermined by the Directions of the Commission in a fashion which violates the "protection of minorities" principle, one of the fundamental organizing principles underlying the Canadian Constitution. In a way this is not even a case about the fate of a hospital, but rather a case about the place of that hospital in the cultural/linguistic milieu of francophone minority rights in Ontario. In that sense the issues to be determined on this Application touch on broader concepts than the more discrete notions of minority language rights or minority language education rights, as contemplated*

in the Charter. They touch on the preservation of the multicultural francophone heritage of Canadians. ***(para. 68-69)*** *The survival of the Franco-Ontarian community is threatened by an alarming rate of assimilation. It is not alone amongst minorities in this respect, of course, but the francophone community - as one of the founding constitutional groups in Canada - enjoys a special constitutional status which other minorities do not.* ***(para. 75)*** *The pursuit of a restructuring of the health care system in Ontario is an urgent and commendable object. However, the transformation imposed upon Montfort, and the fact that adequate health services and medical training in a truly francophone environment which are already in existence will be taken away from the Franco-Ontarian community, can only have a significant negative impact on the continuing vitality of that community, its language and its culture.* ***(para. 81)*** *There is more at issue here than merely "the provision of French language services" in the health sector, however. It is not simply a question of the community's ability, through Montfort or some other hospitals, to provide treatment and training in the French language. At issue, as well, is the impact of the proposed changes on the rights of the members of the minority francophone community in Ontario to have their cultural/linguistic heritage respected and protected. This obliged the Commission to consider and give effect to the institutional role of Montfort as a truly francophone centre - as opposed to a bilingual centre - for medical treatment and training of francophones in Ontario.* ***(para. 101)*** ***Lalonde*** v. ***Ontario (Commission de Restructuration des Services de Santé),*** [1999] O.J. No. 4489, No. 98-DV-244, Ontario Superior Court of Justice, Divisionnal Court, Carnwath, Blair, Charbonneau JJ.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows: Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Definitions

1. In this Act,

"government agency" means,

(a) a ministry of the Government of Ontario, except that a psychiatric facility, residential facility or college of applied arts and technology that is administered by in the Municipal Affairs Act, other than a local board that is designated under clause (e); ("organisme gouvernemental")

(b) a board, commission or corporation the majority of whose members or directors are appointed by the Lieutenant Governor in Council,

(c) a non-profit corporation or similar entity that provides a service to the public, is subsidized in whole or in part by public money and is designated as a public service agency by the regulations,

(d) a nursing home as defined in the Nursing Homes Act or a home for special care as defined in the Homes for Special Care Act that is designated as a public service agency by the regulations,

(e) a service provider as defined in the Child and Family Services Act or a board as defined in the District Welfare Administration Boards Act that is designated as a public service agency by the regulations, and does not include a municipality, or a local board as defined in the Municipal Affairs Act, other than a local board that is designated under clause (e); ("organisme gouvernemental")

"service" means any service or procedure that is provided to the public by a government agency or institution of the Legislature and includes all communications for the purpose. ("service") R.S.O. 1990, c. F.32, s. 1.

Provision of services in French

2. The Government of Ontario shall ensure that services are provided in **French** in accordance with this Act. R.S.O. 1990, c. F.32, s. 2. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Use of English or French in Legislative Assembly

3. (1) Everyone has the right to use **English** or **French** in the debates and other proceedings of the Legislative Assembly.

Bills and Acts of the Assembly

(2) The public Bills of the Legislative Assembly introduced after the 1st day of January, 1991 shall be introduced and enacted in both **English** and **French**. R.S.O. 1990, c. F.32, s. 3. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Translation of Statutes

4. (1) Before the 31st day of December, 1991, the Attorney General shall cause to be translated into **French** a consolidation of the public general statutes of Ontario that were re-enacted in the Revised Statutes of Ontario, 1980, or enacted in **English** only after the coming into force of the Revised Statutes of Ontario, 1980, and that are in force on the 31st day of December, 1990.

Enactment

(2) The Attorney General shall present the **translations** referred to in subsection (1) to the Legislative Assembly for enactment.

Translation of regulations

(3) The Attorney General shall cause to be translated into **French** such regulations as the Attorney General considers appropriate and shall recommend the **translations** to the Executive Council or other regulation-making authority for adoption. R.S.O. 1990, c. F.32, s. 4. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Right to services in French

5. (1) A person has the right in accordance with this Act to communicate in **French** with, and to receive available services in **French** from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule.

Duplication of services

(2) When the same service is provided by more than one office in a designated area, the Lieutenant Governor in Council may designate one or more of those offices to provide the service in **French** if the Lieutenant Governor in Council is of the opinion that the public in the designated area will thereby have reasonable access to the service in **French.**

Idem

(3) If one or more offices are designated under subsection (2), subsection (1) does not apply in respect of the service provided by the other offices in the designated area. R.S.O. 1990, c. F.32, s. 5. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Existing practice protected

6. This Act shall not be construed to limit the use of the **English** or **French language** outside of the application of this Act. R.S.O. 1990, c. F.32, s. 6. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Limitation of obligations of government agencies, etc.

7. The obligations of government agencies and institutions of the Legislature under this Act are subject to such limits as circumstances make reasonable and necessary, if all reasonable measures and plans for compliance with this Act have been taken or made. R.S.O. 1990, c. F.32, s. 7. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Regulations

8. The Lieutenant Governor in Council may make regulations,

(a) designating public service agencies for the purpose of the definition of "government agency";

(b) amending the Schedule by adding areas to it;

(c) exempting services from the application of sections 2 and 5 where, in the opinion of the Lieutenant Governor in Council, it is reasonable and necessary to do so and where the exemption does not derogate from the general purpose and intent of this Act. R.S.O. 1990, c. F.32, s. 8. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Public service agencies; limited designation

9. (1) A regulation designating a public service agency may limit the designation to apply only in respect of specified services provided by the agency, or may specify services that are excluded from the designation.

Consent of university

(2) A regulation made under this Act that applies to a university is not effective without the university's consent. R.S.O. 1990, c. F.32, s. 9. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Notice and comment re exempting regulation, etc.

10. (1) This section applies to a regulation,

(a) exempting a service under clause 8 (1) (c);

(b) revoking the designation of a public service agency;

(c) amending a regulation designating a public service agency so as to exclude or remove a service from the designation.

Idem

(2) A regulation to which this section applies shall not be made until at least forty-five days after a notice has been published in The Ontario Gazette and a newspaper of general circulation in Ontario setting forth the substance of the proposed regulation and inviting comments to be submitted to the Minister responsible for **Francophone Affairs**.

Idem

(3) After the expiration of the forty-five day period, the regulation with such changes as are considered advisable may be made without further notice. R.S.O. 1990, c. F.32, s. 10.

Responsible Minister

11. (1) The Minister responsible for **Francophone Affairs** is responsible for the administration of this Act. R.S.O. 1990, c. F.32, s. 11 (1).

Functions

(2) The functions of the Minister are to develop and co- ordinate the policies and programs of the government relating to Francophone Affairs and the provision of **French language** services and for the purpose, the Minister may,

(a) prepare and recommend government plans, policies and priorities for the provision of **French language** services;

(b) co-ordinate, monitor and oversee the implementation of programs of the government for the provision of **French language** services by government agencies and of programs relating to the use of the **French language**;

(c) make recommendations in connection with the financing of government programs for the provision of **French language** services;

(d) investigate and respond to public complaints respecting the provision of **French language** services;

(e) require the formulation and submission of government plans for the implementation of this Act and fix time limits for their formulation and submission,

and shall perform such duties as are assigned to the Minister by order in council or by any other Act. R.S.O. 1990, c. F.32, s. 11 (2); 1993, c. 27, Sched.

Annual report

(3) The Minister, after the close of each fiscal year, shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Office of Francophone Affairs and shall then lay the report before the Assembly if it is in session or, if not, at the next session. R.S.O. 1990, c. F.32, s. 11 (3). Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Office for Francophone Affairs

12. (1) Such employees as are considered necessary shall be appointed under the Public Service Act for the administration of the functions of the Minister responsible for Francophone Affairs, and shall be known as the Office of Francophone Affairs. R.S.O. 1990, c. F.32, s. 12 (1).

Function of Office of Francophone Affairs

(2) The Office of Francophone Affairs may,

(a) review the availability and quality of **French language** services and make recommendations for their improvement;

(b) recommend the designation of public service agencies and the addition of designated areas to the Schedule;

(c) require non-profit corporations and similar entities, facilities, homes and colleges referred to in the definition of "government agency" to furnish to the Office information that may be relevant in the formulation of recommendations respecting their designation as public service agencies;

(d) recommend changes in the plans of government agencies for the provision of **French language** services;

(e) make recommendations in respect of an exemption or proposed exemption of services under clause 8 (1) (c),

and shall perform any other function assigned to it by the Minister responsible for Francophone Affairs, the Executive Council or the Legislative Assembly. R.S.O. 1990, c. F.32, s. 12 (2); 1993, c. 27, Sched. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

French language services co-ordinators

13. (1) A **French language** services co-ordinator shall be appointed for each ministry of the government.

Committee

(2) There shall be a committee consisting of the **French language** services co-ordinators, presided over by the senior **official** of the Office of Francophone Affairs.

Communication

(3) Each **French language** services co-ordinator may communicate directly with his or her deputy minister.

Deputy minister

(4) Each deputy minister is accountable to the Executive Council for the implementation of this Act and the quality of the **French language** services in the ministry. R.S.O. 1990, c. F.32, s. 13. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

Municipal by-laws re official languages

14. (1) The council of a municipality that is in an area designated in the Schedule may pass a by-law providing that the administration of the municipality shall be conducted in both **English** and **French** and that all or specified municipal services to the public shall be made available in both **languages**.

The avowed purpose of The By-law is to designate the Town of Kapuskasing an officially bilingual municipality. By-law 1994 by comparison was said to be a by-law concerning the use of the English and French languages. There is no specific power in the Municipal Act, R.S.O. 1980 ch. 302, that empowers a municipality to designate itself an officially bilingual municipality. This is common ground between the parties. Indeed the enabling legislation, namely the Municipal Act, does not provide for any specific power to enact any designation of any kind ***(p. 6)***. ***Trumble et al.* v. *The Corporation of the Town of Kapuskasing*** (October 16 1986), nº Re 1419/86 (Ont. S.C.) Smith J.

The field of language legislation belongs to the federal and provincial governments. Municipalities do not have the power to legislate except in narrow areas of responsibility under the Municipal Act and the French Languages Services Act, confered upon them by the legislature. **(NP)** *Section 103 requires English language use but permits French language use in certain circumstances. In one case, s. 103(4), a by-law may extend French use and in another, s. 103(5), the city may direct that the wide multilingual privileges may be restricted. The Municipal Act, does not permit any declarations of official languages in a municipality* ***(pp. 300-301)***. ***Re Chaperon et al. and Corporation of the City of Sault Ste-Marie*** (1994), 19 O.R. (3d) 281 (Ont. C. Gen Div.).

Right to services in English and French

(2) When a by-law referred to in subsection (1) is in effect, a person has the right to communicate in **English** or **French** with any office of the municipality, and to receive available services to which the by-law applies, in either **language**.

Metropolitan and regional councils

(3) Where an area designated in the Schedule is in a metropolitan or regional municipality and the council of a municipality in the area passes a by-law under subsection (1), the council of the metropolitan or regional municipality may also pass a by-law under subsection (1) in respect of its administration and services. R.S.O. 1990, c. F.32, s. 14. Chapter F.32 **French Language** Services Act Amended by 1993, c. 27, Sched.

SCHEDULE

MUNICIPALITY OR DISTRICT AREA

Municipality of Metropolitan Toronto All

Regional Municipality of Hamilton-Wentworth City of Hamilton

Regional Municipality of Niagara and Welland Cities of: Port Colborne

Regional Municipality of Ottawa-Carleton All

Regional MunicipalityCity of Mississauga of Peel

Regional Municipality of Sudbury All

County of Dundas Township of Winchester

County of Essex City of Windsor

Towns of: Belle River and Tecumseh

Townships of: Anderdon, Colchester North, Maidstone, Sandwich South, Sandwich West, Tilbury North, Tilbury West and Rochester

County of Glengarry All

County of Kent Town of Tilbury

Townships of: Dover and Tilbury East

County of Prescott All

County of Renfrew City of Pembroke

Townships of: Stafford and Westmeath

County of Russell All

County of SimcoeTown of Penetanguishene

Townships of: Tiny and Essa

County of Stormont All

District of Algoma All

District of Cochrane All

District of Kenora Township of Ignace

District of Nippissing All

District of Sudbury All

District of Thunder BayTowns of: Geraldton, Longlac and Marathon

Townships of: Manitouwadge, Beardmore, Nakina and Terrace Bay

District of Timiskaming All

10.20 Highway Traffic Act, R.S.O. 1990, c. H.8.

When owner may appear before justice of the peace

Certificate

213. (2) The justice, if satisfied of the truth of the evidence, shall forthwith make out a certificate in **English** or in **French** in the form set out in the Schedule to this Act and forward it by registered mail to the justice before whom the summons is returnable. R.S.O. 1990, c. H.8, s. 212.

10.21 Human Rights Code, R.S.O. 1990, c. H.19.

Services

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of **race**, **ancestry**, place of **origin**, colour, **ethnic origin**, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 1.

Accommodation

2. (1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of **race**, **ancestry**, place of **origin**, colour, **ethnic origin**, citizenship, creed, sex, sexual orientation, age, marital status, family status, handicap or the receipt of public assistance.

Harassment in accommodation

(2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of **race**, ancestry, place of **origin**, colour, **ethnic origin**, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance. R.S.O. 1990, c. H.19, s. 2.

Contracts

3. Every person having legal capacity has a right to contract on equal terms without discrimination because of **race**, **ancestry**, place of **origin**, colour, **ethnic origin**, citizenship,

creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 3.

Employment

5. (1) Every person has a right to equal treatment with respect to employment without discrimination because of **race**, **ancestry**, place of **origin**, colour, **ethnic origin**, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or handicap.

Harassment in employment

(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of **race**, ancestry, place of **origin**, colour, **ethnic origin**, citizenship, creed, age, record of offences, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 5.

Vocational associations

6. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of **race**, **ancestry**, place of **origin**, colour, **ethnic origin**, citizenship, creed, sex, sexual orientation, age, marital status, family status or handicap. R.S.O. 1990, c. H.19, s. 6.

10.22 Insurance Act, R.S.O. 1990, c. I.8.

Statutory conditions

148. (1) The conditions set forth in this section shall be deemed to be part of every contract in force in Ontario and shall be printed in **English** or **French** in every policy with the heading "Statutory Conditions" or "Conditions légales", as may be appropriate, and no variation or omission of or addition to any statutory condition is binding on the insured. R.S.O. 1990, c. I.8, s. 148.

Limitation of liability clause

149. A contract containing, . . .

(c) a clause limiting recovery by the insured to a specified percentage of the value of any property insured at the time of loss, whether or not that clause is conditional or unconditional, shall have printed or stamped upon its face in red ink or bold type the words "The policy contains a clause that may limit the amount payable", or the **French** equivalent failing which the clause is not binding upon the insured. R.S.O. 1990, c. I.8, s. 149; 1997, c. 19, s. 10.

Form of note

154. (2) The premium note shall be, in **English** or **French**, in the form prescribed by Schedule A. R.S.O. 1990, c. I.8, s. 154.

Statutory conditions

234. (1) The conditions prescribed by the regulations made under paragraph 15.1 of subsection 121 (1) are statutory conditions and shall be deemed to be part of every contract to which they apply and shall be printed in **English** or **French** in every policy to which they apply with the heading "Statutory Conditions" or "Conditions légales", as may be appropriate. 1993, c. 10, s. 17.

Stamping required

261. (2) Where a clause is inserted in accordance with subsection (1) or (1.1), there shall be printed or stamped upon the face of the policy in conspicuous type the words "This policy contains a partial payment of loss clause" or the **French** equivalent. R.S.O. 1990, c. I.8, s. 261.

Stamping required

263. (5.3) If a contract contains an agreement referred to in subsection (5.1), or a provision required by subsection (5.2.1) the policy shall have printed or stamped on its face in conspicuous type the words "This policy contains a partial payment of recovery clause for property damage" in **English** or "La présente police comporte une clause de recouvrement partiel en cas de dommages matériels" in **French**, as may be appropriate. R.S.O. 1993, c. 10, s. 21 (2).

Statutory conditions

300. Subject to section 301, the conditions set forth in this section shall be deemed to be part of every contract other than a contract of group insurance, and shall be printed in **English** or **French** in or attached to the policy forming part of such contract with the heading "Statutory Conditions" "Conditions légales", as may be appropriate.

10.23 International Commercial Arbitration Act,. R.S.O. 1990, c. I.9.

Article 22. Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

10.24 International Sale of Goods Act, R.S.O. 1990, c. I.10.

SCHEDULE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS THE STATES PARTIES TO THIS CONVENTION,

Article 101 DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic. 1988, c. 45, Sched.

10.25 Interpretation Act, R.S.O. 1990, c. I.11.

Imperative and permissive forms

29. (2) In the **English** version of an Act, the word "shall" shall be construed as imperative and the word "may" as permissive. In the **French** version, obligation is usually expressed by the use of the present indicative form of the relevant verb, and occasionally by other verbs or expressions that convey that meaning; the conferring of a power, right, authorization or permission is usually expressed by the use of the verb "pouvoir", and occasionally by other expressions that convey those meanings. R.S.O. 1990, c. I.11, s. 29 (2).

10.26 Juries Act, R.S.O. 1990, c. J.3.

English, French and bilingual jurors

8. (2) The jury roll prepared under subsection (1) shall be divided into three parts, as follows:

1. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand **English**.

2. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand **French**.

3. A part listing the persons who appear, by the returns to jury service notices, to speak, read and understand both **English** and **French**. 1994, c. 27, s. 48 (5).

Omission of names

(3) The sheriff may, with the written approval of a judge of the Ontario Court (General Division), omit the name from the roll where it appears such person will be unable to attend for jury duty. R.S.O. 1980, c. 226, s. 8 (3).

Supplementary names

(4) The sheriff may request the Director of Assessment to mail such number of additional jury service notices and forms of returns to jury service notice as in the opinion of the sheriff are required.

Supplying of supplementary names

(5) Upon receipt of a request from the sheriff under subsection (4), the Director of Assessment shall forthwith carry out such request and for such purpose section 6 applies with necessary modifications with respect to the additional jury service notices requested by the sheriff to be mailed.

Selection from unorganized territory

(6) In a territorial district, the sheriff shall select names of eligible persons who reside in the district outside territory with municipal organization in the numbers fixed under subsection 5 (2) and for the purpose may have recourse to the latest polling list prepared and certified for such territory, and to any assessment or collector's roll prepared for school purposes and may obtain names from any other record available. R.S.O. 1990, c. J.3, s. 8 (3-6).

10.27 Justices of The Peace Act, R.S.O. 1990, c. J.4.

Oath of office

3. Every justice of the peace, before beginning the duties of office, shall make the following oath or affirmation in **French** or in **English**: . . . R.S.O. 1990, c. J.4, s. 3.

10.28 Labour Relations Act, S.O. 1995, c. 1.

Oath of Office

26. Each member of a conciliation board shall, before entering upon his or her duties, take and subscribe before a person authorized to administer oaths or before another member of the board, and file with the Minister, an oath in the following form, in **English** or in **French**: . . . R.S.O. 1990, c. L.2, s. 24.

Oath of office

110. (8) Each member of the Board shall, before entering upon his duties, take and subscribe before the Clerk of the Executive Council and file in his or her office an oath of office in the following form in **English** or **French**: . . .

10.29 Lakes And Rivers Improvement Act, R.S.O., 1990, c. L.3.

Form of security

77. The security referred to in sections 70, 73 and 76 may be by bond in Form 1 (in **English** or **French**) or by deposit of money, or in such other way as the parties agree upon. R.S.O. 1990, c. L.3, s. 77.

10.30 Land Titles Act, R.S.O. 1990, c. L.5.

Registrations in languages other than English

84. Where an instrument, application or related attachment is written wholly or in part in a **language** other than **English** there shall be produced with the instrument, application or related attachment a **translation** into **English**, together with an affidavit by the **translator** stating that he or she understands both **languages** and has carefully compared the **translation** with the original and that the **translation** is in all respects a true and correct **translation**. R.S.O. 1990, c. L.5, s. 84

Registration of instruments and applications in French language

85. (1) Despite section 84, where an instrument, application or related attachment is in a prescribed form, the instrument or application may be registered or deposited, if,

(a) the instrument or application affects land in a land titles division or part thereof that is designated by regulation; and

(b) the instrument or application is otherwise acceptable for registration or deposit.

Regulations

(2) The Lieutenant Governor in Council may make regulations, . . .

(b) prescribing a lexicon of **French-English** terms to be used in connection with the prescribed forms of instruments, applications and related attachments and deeming the corresponding forms of expression in the lexicon to have the same effect in law; R.S.O. 1990, c. L.5, s. 85.

10.31 Landlord And Tenant Act, R.S.O. 1990, c. L.7.

Application, how entitled

75. Application under this Part shall be styled in **English** or **French**, as may be appropriate:

In the matter of (giving the name of the party complaining), Landlord, against (giving the name of the party complained against) Tenant. R.S.O. 1990, c. L.7, s. 75.

113. (4) The application shall be served on the respondent at least four clear days before the day for the return of the application and it shall contain the following warning in **English** or **French**, as may be appropriate: . . . R.S.O. 1990, c. L.7, s. 113.

10.32 Loan And Trust Corporations Act, R.S.O. 1990, c. L.25.

Bilingual names

11. (3) Subject to this Act and the regulations, a corporation may have a name in an **English** form, a **French** form, an **English** form and a **French** form or a combined **English** and **French** form and it may be legally designated by any such name. R.S.O. 1990, c. L.25, s. 11.

Bilingual names

37. (3) Subject to this Act and the regulations, a corporation may be registered that has a name in an **English** form, a **French** form, an **English** form and a **French** form or a combined **English** and **French** form and it may be legally designated in Ontario by any such name. 1990, c. L.25, s. 37.

10.33 Local Improvement Act, R.S.O. 1990, c. L.26.

Notices

74. A notice required to be given in Form 1, 2, 3 or 4 may be given in **English** or in **French**.

10.34 Local Services Boards Act, R.S.O. 1990, c. L.28.

Notice

3. (4) The notice calling the meeting,

(a) shall be in both **English** and **French** in Form 1; . . . R.S.O. 1990, c. L.28, s. 3.

Challenge to eligibility

20. Where the eligibility of any inhabitant to vote or to seek office is challenged, the chair shall require that the inhabitant whose eligibility has been challenged swear an affidavit in **English** or **French** before in Form 2 and, where the inhabitant swears such affidavit, the inhabitant may thereupon vote at the meeting or be eligible to seek office. R.S.O. 1990, c. L.28, s. 20.

10.35 Marriage Act, R.S.O. 1990, c. M.3.

Language

24. (4) For the purposes of subsection (3), it is sufficient to use only the **English** or only the **French language**. R.S.O. 1990, c. M.3, s. 24; S.O. 1991, c. 27

10.36 Municipal Act, R.S.O. 1990, c. M.45.

Names of Municipal Corporations

8. (1) The name of the body corporate shall be The Corporation of the County [United Counties, City, Town, Village, Township (as the case may be)] of …… (municipality). R.S.O. 1980, c. 302, s.8.

Idem

(2) The body corporate masy also have the name of comté [comtés unis, cité, ville, village, canton (as the case may be)] de …… (municipality).

Idem

(3) A municipal corporation may continue to use a **French** version of its name adopted before coming into force of the subsection though the **French** version of the name does not conform to subsection (2).

English and French by-laws and resolutions

103. (1) Every council may pass its by-laws and resolutions in **English** or in both **English** and **French**.

Official plans

(2) Every council may adopt an **official** plan that is in **English** or that is in both **English** and **French**.

Proceedings of council

(3) Every council and every committee of council may conduct its proceedings in **English** or **French** or in both **English** and **French**.

Minutes

(4) Despite subsection (3), the minutes of the proceedings of council and all committees of council shall be kept in **English** or, where so authorized by a by-law of the council, in both **English** and **French**.

Conduct of affairs, etc., of municipality

(5) Unless otherwise directed by a by-law of the council, the officers and employees of a municipality may conduct the business and affairs of the municipality in such **language**, including a **language** other than **English** or **French**, as may be reasonable in the circumstances.

Proviso

(6) Nothing in this section,

(a) affects an obligation imposed by or under any Act to make, keep, use, file, register or submit any form, book, document or other paper of any kind in the **language** or **languages** specified by or under the Act;

Translations

(7) Where any form, book, document or other paper of any kind is submitted by a municipality to a ministry of the Government of Ontario in **French**, the municipality shall, at the request of the minister of the ministry to which the form, book, document or other paper was submitted, supply the minister with an **English translation** thereof. R.S.O. 1990, c. M.45, s. 103.

The avowed purpose of The By-law is to designate the Town of Kapuskasing an officially bilingual municipality. By-law 1994 by comparison was said to be a by-law concerning the use of the English and French languages. There is no specific power in the Municipal Act, R.S.O. 1980 ch. 302, that empowers a municipality to designate itself an officially bilingual municipality. This is common ground between the parties. Indeed the enabling legislation, namely the Municipal Act, does not provide for any specific power to enact any designation of any kind ***(p. 6)***. ***Trumble et al.* v. *The Corporation of the Town of Kapuskasing*** (October 16 1986), nº Re 1419/86 (Ont. S.C.) Smith J.

The field of language legislation belongs to the federal and provincial governments. Municipalities do not have the power to legislate except in narrow areas of responsibility under the Municipal Act and the French Languages Services Act, confered upon them by the legislature. **(NP)** *Section 103 requires English language use but permits French language use in certain circumstances. In one case, s. 103(4), a by-law may extend French use and in another, s. 103(5), the city may direct that the wide multilingual privileges may be restricted. The Municipal Act, does not permit any declarations of official languages in a municipality* ***(pp. 300-301)***. ***Re Chaperon et al. and Corporation of the City of Sault Ste-Marie*** (1994), 19 O.R. (3d) 281 (Ont. C. Gen Div.).

Name

104. (2) A by-law passed under subsection (1) may be known in **English** as The (name of municipality) Municipal Code, and may also be known in **French** as Code municipal de (name of municipality). R.S.O. 1990, c. M.45, s. 104.

Promulgation of by-laws

134. (1) The promulgation of a by-law consists of the publication of a true copy of it, with a notice in Form 6 in **English** or in **English** and **French** appended thereto, at least once a week for three successive weeks. R.S.O. 1990, c. M.45, s. 134.

Clerks of municipalities to make out collector's rolls, their form, contents, etc.

387. (1) The clerk of every municipality shall make a collector's roll or rolls, as may be necessary, containing columns for all information required by this or any other Act to be entered by the collector therein, in the following manner: . . .

5. Each column shall be given a clear heading in **English** only or **English** and **French** indicating the rate to which it is dedicated. R.S.O. 1990, c. M.45, s. 387.

Collector's roll to be certified by clerk

389. The clerk shall attach to the roll a certificate signed by him or her according to the following form in **English** only or in **English** and **French**: I do certify that the within (or annexed, or attached, or as the case may be) Roll is the Collector's Roll prepared according to the Municipal Act for the..... of..... (name of municipality) for the year 19.... R.S.O. 1990, c. M.45, s. 389.

Form

415. (4) The certified statement may be in Form 8 in **English** or **English** and **French**. R.S.O. 1990, c. M.45, s. 415.

English and French language forms

450. (1) The Minister may, by order, prescribe an **English** and **French language** version of any form prescribed by or under this Act. R.S.O. 1990, c. M.45, s. 450.

10.37 Municipal And School Board Payments Adjustment Act, R.S.O. 1990, c. M.47.

Definitions

1. "**French-language** instructional unit" and "**French-speaking** person" have the same meaning as in section 288 of the Education Act; ("module scolaire de **langue française**", "francophone") 1989, c. 9, s. 1.

Residence on defence property

3. (1) Despite section 45 of the Education Act, a person who resides with his or her parent or guardian on defence property in a prescribed municipality that makes an allocation under section 2 is entitled to attend an elementary school or a secondary school, as the case requires, in accordance with this section without payment of a fee.

Entitlement

(2) A person who resides with his or her parent or guardian on defence property in a prescribed municipality, . . .

(c) where the prescribed municipality is an area municipality in The Municipality of Metropolitan Toronto, is entitled to attend a school that is operated by a board of education that has jurisdiction in The Municipality of Metropolitan Toronto and if the parent or guardian is a **French-speaking** person is entitled to attend a school operated by The Metropolitan Toronto **French-language** School Council; . . . 1989, c. 9, s. 3.

10.38 Municipal Elections Act, S.O. 1996, c. 32.

Language of notices and forms

9. (1) Notices, forms and other information provided under this Act shall be made available in **English** only, unless the council of the municipality has passed a by-law under subsection (2).

(2) A municipal council may pass a by-law allowing the use of,

(a) **French**, in addition to **English**, in prescribed forms;

(b) **French**, other **languages** other than **English**, or both, in notices, forms (other than prescribed forms) and other information provided under this Act. 1996, c. 32.

10.39 Occupational Health And Safety Act, R.S.O. 1990, c. O.1.

Duties of employers

25. (2) Without limiting the strict duty imposed by subsection (1), an employer shall,

(i) post, in the workplace, a copy of this Act and any explanatory material prepared by the Ministry, both in **English** and the majority **language** of the workplace, outlining the rights, responsibilities and duties of workers; appoint himself or herself as a supervisor where the employer is a competent person.

Idem

(4) Clause (2)(j) does not apply with respect to a workplace at which five or fewer employees are regularly employed. R.S.O. 1990, c. O.1, s. 25.

Hazardous material identification and data sheets

37. (1) An employer, . . .

(c) shall ensure that the identification required by clause (a) and material safety data sheets required by clause (b) are available in **English** and such other **languages** as may be prescribed.

Notices

41. (3) An employer to whom subsection (2) applies shall post prominent notices identifying and warning of the hazardous physical agent in the part of the workplace in which the thing is used or operated or is to be used or operated.

Idem

(4) Notices required by subsection (3) shall contain such information as may be prescribed and shall be in **English** and such other **language** or **languages** as may be prescribed. R.S.O. 1990, c. O.1, s. 41. S.O. 1991, c. 33

10.40 Ontario College of Teachers Act, S.O. 1996, c. 12.

Right to use French

44. (1) A person has the right to use **French** in all dealings with the College.

Council to ensure

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use **French** in all dealings with the College.

Limitation

(3) The right to use **French** given by this section is subject to the limits that are reasonable in the circumstances.

Definition

(4) In this section,

"dealings" means any service or procedure available to the public or to members of the College and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews. 1996, c. 12, s. 44. S.O. 1996, c. 12

Disclosure by minority language section: conduct or actions of member

47. (4) For the purposes of subsection (3), where a board has a **French-language** section or **English-language** section, the section has the responsibilities of the board with respect to members who are or have been employed for schools or classes governed by the section.

10.41 Ontario Municipal Board Act, R.S.O. 1990, c. O.28.

Form of certificate

61. (1) The certificate of the Board to the validity of any debenture of a municipality shall be in the following form: THE ONTARIO MUNICIPAL BOARD

In pursuance of the Ontario Municipal Board Act, the Board certifies that By-law No ..... of the Corporation of the..... of....., passed on the.....day of....., 19..., has been approved by the Board, and that the within debenture, issued under the authority of such by-law and in conformity therewith, is valid and binding upon the said corporation and its validity may not be contested or questioned for any cause whatsoever.

Dated this ..... day of ....., 19.....

(SEAL) ..... for the Board.

Language

(2) The certificate may be written in **English**, in **French** or in both **languages**. R.S.O. 1990, c. O.28, s. 61.

10.42 Pay Equity Act, R.S.O. 1990, c. P.7.

Posting of notice

7.1. (1) Every employer to whom Part III applies and any other employer who is directed to do so by the Pay Equity Office shall post in the employer's workplace a notice setting out,

(a) the employer's obligation to establish and maintain compensation practices that provide for pay equity; and

(b) the manner in which an employee may file a complaint or objection under this Act.

Language

(2) The notice shall be in **English** and the **language** other than **English** that is understood by the greatest number of employees in the workplace. 1993, c. 4, s. 5.

10.43 Personal Property Security Act, R.S.O. 1990, c. P.10.

Regulations

74. (1) The Lieutenant Governor in Council may make regulations, . . .

(o) prescribing a lexicon of **French-English** terms to be used in connection with prescribed forms and deeming the corresponding forms of expression in the lexicon to have the same effect in law. R.S.O. 1990, c. P.10, s. 74(1); 1991, c. 44, s. 7 (5).

10.44 Pounds Act, R.S.O. 1990, c. P.17.

Statement of demand to be delivered to poundkeeper by impounder

8. (1) The person distraining and impounding the animal shall, at the time of the impounding, deposit poundage fees, if demanded, and within twenty-four hours thereafter deliver to the poundkeeper duplicate statements in writing of the person's demands against the owner for damages, if any, not exceeding $20, done by such animal, exclusive of poundage fees, and shall also give a written agreement, with a surety if required by the poundkeeper, in the following form or in words to the same effect in **English** or in **French**: Form of agreement with poundkeeper I (or we, as the case may be) do hereby agree that I or we) will pay to the owner of the (describing the animal), by me (A.B.) this day impounded, all costs to which the owner may be put in case the distress by me the said (A.B.) proves to be illegal or in case the claim for

damages now put in by me the said (A.B.) fails to be established. Release of animal on security being furnished . . .

Release of animal on security being furnished

(2) The owner of an animal impounded is entitled to it at any time on demand made therefor, without payment of any poundage fees, on giving satisfactory security to the poundkeeper for all costs, damages and poundage fees that may be established against the owner. R.S.O. 1980, c. 383, s. 8.

10.45 Public Inquiries Act, R.S.O. 1990, c. P.41.

Forms

19. The **English** or **French** version of Forms 1, 2 and 3 may be used. R.S.O. 1990, c. P.41, s. 19.

10.46 Public Libraries Act, R.S.O. 1990, c. P.44.

Notice of vacancies

11. (1) The clerk of the appointing municipality or county or, in the case of a union board, the clerks of the affected municipalities shall give public notice of vacancies on the board by publishing a notice of them, inviting applications, in a newspaper of general circulation in the municipality.

Idem

(2) The notice referred to in subsection (1) shall be in **English** or in both **English** and **French**, as may be appropriate. R.S.O. 1990, c. P.44, s. 11.

Language

17. A board may conduct its meetings in **English** or **French** or in both **English** and **French**, and subsections 103 (1), (4), (5), (6) and (7) of the Municipal Act apply to a board with necessary modifications. R.S.O. 1990, c. P.44, s. 17.

Powers and duties of board

20. A board,

(a) shall seek to provide, in co-operation with other boards, a comprehensive and efficient public library service that reflects the community's unique needs;

(b) shall seek to provide library services in the **French language**, where appropriate; . . . R.S.O. 1990, c. P.44, s. 20.

10.47 Public Service Act, R.S.O. 1990, c. P.47.

Oath of office and secrecy

10. (1) Every civil servant shall before any salary is paid to him or her take and subscribe before the Clerk of the Executive Council, his or her deputy minister, or a person designated in writing by either of them, an oath of office and secrecy in the following form in **English** or **French**: . . .

Oath of allegiance

(2) Every civil servant shall before performing any duty as a member of the regular staff take and subscribe before the Clerk of the Executive Council, his or her deputy minister, or a person designated in writing by either of them, an oath of allegiance in the following form in **English** or **French**: R.S.O. 1990, c. P.47, s. 10.

10.48 Reciprocal Enforcement of Judgments (U.K.) Act, R.S.O. 1990, c. R.6.

SCHEDULE

CONVENTION BETWEEN CANADA AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND PROVIDING FOR THE RECIPROCAL RECOGNITION AND COMMERCIAL MATTERS

ARTICLE XIV

DONE in duplicate at Ottawa, this 24th day of April 1984 in the **English** and **French languages**, each version being equally authentic.

10.49 Reciprocal Enforcement of Support Orders Act, R.S.O. 1990, c. R.7.

Section Translation

14. (3) Where an order or other document received by a court is not in **English** or **French**, the order or other document shall have attached to it from the other jurisdiction a **translation** in **English** or **French** approved by the court and the order or other document shall be deemed to be in **English** or **French** for the purposes of this Act. R.S.O. 1990, c. R.7, s. 14.

10.50 Regional Municipality of Ottawa-Carleton, R.S.O. 1990, c. R.14.

Oath

7. (4) Every member of the Regional Council, before taking his or her seat, shall take an oath of allegiance in Form 1 of the Municipal Act and make a declaration of office in Form 3 of the Municipal Act using either the **English** or the **French** version of those forms. R.S.O. 1990, c. M.3, s. 7.

Forms in both French and English language

52. (1) The Minister may by order prescribe an **English** and **French language** version of any form that is prescribed by this Act. R.S.O. 1990, c. R.14, s. 52.

10.51 Registry Act, R.S.O. 1990, c. R.20.

Registrations in languages other than English

43. Where an instrument, document or related attachment is written wholly or in part in a **language** other than **English** there shall be produced with the instrument, document or related attachment a **translation** into **English**, together with an affidavit by the **translator** stating that he or she understands both **languages** and has carefully compared the **translation** with the original and that the **translation** is in all respects a true and correct **translation**. R.S.O. 1990, c. R.20, s. 43.

Registration of instruments and documents in French language

44. (1) Despite section 43, where an instrument, document or related attachment is in a prescribed form, the instrument may be registered or the document deposited if,

(a) the instrument or document affects the title to land in a registry division or part thereof that is designated by regulation; and

(b) the instrument or document is otherwise acceptable for registration or deposit.

Regulations

(2) The Lieutenant Governor in Council may make regulations, . . .

(b) prescribing a lexicon of **French-English** terms to be used in connection with the prescribed forms of instruments, documents and related attachments and deeming the corresponding forms of expression in the lexicon to have the same effect in law; . . . R.S.O. 1990, c. R.20, s. 44.

10.52 Regulated Health Professions Act, S.O. 1991, c. 18.

SCHEDULE 2 HEALTH PROFESSIONS PROCEDURAL CODE

Right to use French

86. (1) A person has the right to use **French** in all dealings with the College.

Council to ensure right

(2) The Council shall take all reasonable measures and make all reasonable plans to ensure that persons may use **French** in all dealings with the College.

Definition

(3) In this section, "dealings" means any service or procedure available to the public or to members and includes giving or receiving communications, information or notices, making applications, taking examinations or tests and participating in programs or in hearings or reviews.

Limitation

(4) A person's right under subsection (1) is subject to the limits that are reasonable in the circumstances. 1991, c. 18, Sched. 2, s. 86.

10.53 Science North Act, R.S.O. 1990, c. S.4.

Services in French and English

2. (6) The programs and services of the Centre shall be available in both **French** and **English**. 1986, c. 5, s. 2 (7).

10.54 Short Forms of Leases Act, R.S.O. 1990, c. S.11.

Effect of lease made according to Sched. A and Col. 1 of Sched. B

1. Where a lease under seal, made according to the form set forth in Schedule A, in **English** or **French**, or any other such lease expressed to be made in pursuance of this Act or referring thereto, contains any of the forms of words contained in Column One of Schedule B and distinguished by any number therein, the lease has the same effect as if it contained the form of words contained in Column Two of Schedule B distinguished by the same number as is annexed to the form of words used in the lease; but it is not necessary in any such lease to insert any such number. R.S.O. 1980, c. 473, s. 1.

10.55 Small Business Development Corporations, R.S.O. 1990, c. S.12.

Share certificate

26. Every share certificate in respect of equity shares issued by a small business development corporation shall conspicuously state upon its face the words, "The value of the shares represented by this certificate may be significantly affected by recapture provisions under the Small Business Development Corporations Act if the share certificate is in **English** or "La valeur des actions représentées par ce certificat peut être affectée de façon significative par les dispositions relatives à la récupération visées à la *Loi sur les sociétés pour l'expansion des petites entreprises*" if the share certificate is in **French**. R.S.O. 1990, c. S.12, s. 26.

10.56 Statistics Act, R.S.O. 1990, c. S.18.

Oath of office and secrecy

4. (1) No person shall collect, compile, analyse or publish statistical information under this Act until taking and subscribing before the person's minister or deputy minister, or a person designated in writing by either of them, an oath of office and secrecy in the following form in **English** or in **French**: . . . R.S.O. 1980, c. 480, s. 4 (1).

10.57 Statute Labour Act, R.S.O. 1990, c. S.20.

Idem

13. (2) The notice shall be in **English**, and may also be in **French**.

Objections to voters

19. If an objection is made to the right of any person to vote at the meeting, the person shall name the property in respect of which he or she claims the right to vote, and the chair shall administer to the person an oath, or affirmation if he or she is by law permitted to affirm, according to the following form in **English** or **French**, whereupon the person shall be permitted to vote: . . . R.S.O. 1990, c. S.20, s. 19,

Declaration of office

20. The commissioners elected shall take a declaration of office in Form 2 in **English** or **French** before a justice of the peace and shall hold office until their successors are elected at the meeting called as provided in section 28 or, where no such meeting is called, until the 31st day of May in the year following that in which they were elected. R.S.O. 1980, c. 482, s. 20.

Election of chair and appointment of secretary-treasurer

30. (1) The commissioners, at the first meeting after their election, shall elect one of their number as chair to preside at meetings and shall appoint some competent person who may be one of themselves other than the chair, as secretary-treasurer and the secretary-treasurer is exempt from the performance of statute labour and the commissioners may each year pay to the secretary-treasurer out of the commutation fund such amount as may be fixed by resolution of the commissioners. R.S.O. 1980, c.482, s. 30 (1).

Security

(2) The secretary-treasurer before entering on his or her duties shall take a declaration of office in Form 2 in **English** or **French** before a justice of the peace, and shall give security satisfactory to the commissioners which shall be lodged for safekeeping with the chair. R.S.O. 1980, c. 482, s. 30 (2).

Statute labour book

32. (1) The secretary-treasurer shall keep a statute labour book in Form 3 and shall enter therein the name of every person liable for the performance of statute labour or payment of the commutation and the lot or parcel of land in respect of which he or she is liable. R.S.O. 1980, c. 482, s. 32 (1).

Idem

(2) The statute labour book shall be in **English**, and may also be in **French**. R.S.O. 1990, c. S.20, s. 32.

Notice to perform statute labour

33. (1) The secretary-treasurer shall serve each notice to perform statute labour in Form 4 or, where a resolution has been passed and sanctioned as provided by section 27, to pay the commutation thereof in Form 5 personally or by leaving it at the usual place of abode of the person to whom it is directed with a grown up person residing there or by sending it by registered mail addressed to the person to whom it is directed at the post office nearest to his or her last known place of residence. R.S.O. 1980, c. 482, s. 33 (1).

Idem

(2) The notices shall be in **English**, and may also be in **French**. R.S.O. 1990, c. S.20, s. 33.

Return of arrears to sheriff

34. (1) On or before the 1st day of June in the year following that in which default was made, the secretary-treasurer shall make a return in Form 6 to the sheriff for the district showing each lot or parcel of land in respect of which default has been made, the name of the owner or

locatee, the amount chargeable at the date of the return and the year for which the amount in arrear was imposed. R.S.O. 1980, c. 482, s. 34 (1).

Idem

(2) The return shall be in **English**, and may also be in **French**.

10.58 Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.

Form and service of summons

12. (2) A summons issued under subsection (1) shall be in the prescribed form (in **English** or **French**) and, . . .

Same

(4.1) The warrant shall be in the prescribed form (in **English** or **French**), directed to any police officer, and shall require the person to be apprehended anywhere within Ontario, brought before the tribunal forthwith and, . . . 1994, c. 27, s. 56 (26).

Rules

25.1. (1) A tribunal may make rules governing the practice and procedure before it.

Application

(2) The rules may be of general or particular application.

Consistency with Acts

(3) The rules shall be consistent with this Act and with the other Acts to which they relate.

Public access

(4) The tribunal shall make the rules available to the public in **English** and in **French**. Regulations Act

Regulations Act

(5) Rules adopted under this section are not regulations as defined in the Regulations Act. Additional power

Additional power

(6) The power conferred by this section is in addition to any power to adopt rules that the tribunal may have under another Act. 1994, c. 27, s. 56 (38).

10.59 Succession Law Reform Act, R.S.O. 1990, c. S.26.

SCHEDULE Convention Providing a Uniform Law on The Form of an International Will

Article XVI

1. The original of the present Convention, in the **English**, **French**, Russian and Spanish **languages**, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

10.60 Toronto Islands Residential Community Stewardship Act, S.O. 1993, c. 15.

Service and contents of notice

9. (12) The application under subsection (11) shall be served on the protected occupant at least four clear days before the day for the return of the application and it shall contain the following warning in **English** or **French**, as may be appropriate: . . .

11. QUEBEC

11.1 Constitution Act, 1867, (U.K.) 30 & 31 Victoria, c. 3.

Use of English and French Languages

133. Either the **English** or the **French Language** may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those **Languages** shall be used in the respective Records and Journals of those Houses; and either of those **Languages** may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those **Languages**.

Sections 8 and 9 of the Charter of the French language, reproduced above, are not easy to reconcile with s. 133 which not only provides but requires that official status be given to both French and English in respect of the printing and publication of the Statutes of the Legislature of Quebec. It was urged before this Court that there was no requirement of enactment in both languages, as contrasted with printing and publishing. However, if full weight is given to every word of s. 133 it becomes apparent that this requirement is implicit. What is required to be printed and published in both languages is described as "Acts" and texts do not become "Acts" without enactment. Statutes can only be known by being printed and published in connection with their enactment so that Bills be transformed into Acts. [...] So, too, is there incompatibility when ss. 11 and 12 of the Charter would compel artificial persons to use French alone and make it the only official language of "procedural documents" in judicial or quasi-judicial proceedings, while section 133 gives persons involved in proceedings in the Courts of Quebec the option to use either French or English in any pleading or process ***(p. 1022)****. What the Jones case decided was that Parliament could enlarge the protection afforded to the use of French and English in agencies and institutions and programmes falling within federal legislative authority. There was no suggestion that it could unilaterally contract the guarantees or requirements of s. 133. Yet it is contraction not enlargement that is the object and subject of Chapter III, Title I of the Charter of the French language. But s. 133 is an entrenched provision, not only forbidding modification by unilateral action of Parliament or of the Quebec Legislature but also providing a guarantee to members of Parliament or of the Quebec Legislature and to litigants in the Courts of Canada or of Quebec that they are entitled to use either French or English in parliamentary or legislative assembly debates or in pleading*

(including oral argument) in the Courts of Canada or of Quebec ***(p. 1026-1027)****. Dealing now with the question whether "regulations" issued under the authority of acts of the Legislature of Quebec are "Acts" within the purview of s. 133, it is apparent that it would truncate the requirement of s. 133 if account were not taken of the growth of delegated legislation. This is a case where the greater must include the lesser* ***(p. 1027)***. [T]*he reference in s. 133 to "any of the Courts of Quebec" ought to be considered broadly as including not only so-called s. 96 Courts but also Courts established by the Province and administered by provincially-appointed Judges. It is not a long distance from this latter class of tribunal to those which exercise judicial power, although they are not courts in the traditional sense. If they are statutory agencies which are adjudicative, applying legal principles to the assertion of claims under their constituent legislation, rather than settling issues on grounds of expediency or administrative policy, they are judicial bodies, however some of their procedures may differ not only from those of Courts but also from those of other adjudicative bodies* ***(p. 1028)***. [N]*ot only is the option to use either language given to any person involved in proceedings before the Courts of Quebec or its other adjudicative tribunals (and this covers both written and oral submissions) but documents emanating from such bodies or issued in their name or under their authority may be in either language, and this option extends to the issuing and publication of judgments or other orders* ***(p. 1030)***. ***A.G. of Quebec* v. *Blaikie et al***, [1979] 2 S.C.R. 1016.

The Government of the province is not a body of the Legislature's own creation. It has a constitutional status and is not subordinate to the Legislature in the same sense as other provincial legislative agencies established by the Legislature. Indeed, it is the Government which, through its majority, does in practice control the operations of the elected branch of the Legislature on a day to day basis, allocates time, gives priority to its own measures and in most cases decided whether or not the legislative power is to be delegated and, if so, whether it is to hold it itself or to have it entrusted to some other body. **(NP)** *Legislative powers so delegated by the Legislature to a constitutional body which is part of itself must be viewed as an extension of the legislative power of the legislature and the enactments of the Government under such delegation must clearly be considered as the enactments of the Legislature for the purposes of s. 133 of the B.N.A. Act* ***(p. 320)***. *Regulations enacted by the Government to alter regulations made by a subordinate body must also be included in this class. . . . But there is no valid reason for distinguishing such regulations from ordinary Government regulations* ***(p. 321)***. *Last but not least, municipal institutions constitute a distinct albeit subordinate order of government at the local level, the administration of which is usually in the hands of locally elected mayors and members of council. Their growth and the multiplication of their regulations were inherent in their nature and accordingly foreseeable. Since the provinces were explicitly given the power to make laws relating to those institutions in s.*

92(8) of the B.N.A. Act, the absence of any reference to them in s. 133 cannot possibly be viewed as an oversight. It is a purposeful silence to which effect must be given if the intent of the Fathers of Confederation is to be respected. **(NP)** *Much the same can be said, a fortiori, about school bodies regulations. Education falls under provincial legislative authority subject to the denominational principles stated in s. 93 of the B.N.A. Act. It was quite foreseeable that school districts and school bodies would be organized along even more homogeneous linguistic lines than municipal corporations. Yet, the safeguards provided by s. 93 are of a religious, not of a linguistic nature* ***(p. 324)****. Since the B.N.A. Act is explicit on the subject of religious safeguards with respect to education, its silence on the language of school by-laws is also a deliberate one. It is a silence which speaks and it speaks against the application of s. 133 to school by-laws. . . . Municipal by-laws constitute a separate and distinct class of regulations. As we have seen, they are the legislative enactments of a third level of government clearly contemplated by the B.N.A. Act and yet not mentioned in s. 133. The fact that they may be subject to the control or supervision of the Government by way of required approval or potential disallowance does not alter their municipal character nor the constitutional intent to subtract them from the operation of s. 133* ***(p. 325)****. This residual class includes all regulations of the civil administration and of semi-public agencies contemplated by the Charter other than government, municipal and school bodies regulations* ***(p. 326)****. In order to determine the proper test, one must keep two sets of considerations in mind.* **(NP)** *First, the proliferation of these other regulations was at least as unforeseeable as that of Government regulations which, unlike municipal and school board by-laws could not have been originally intended to escape the operation of s. 133 of the B.N.A. Act.* **(NP)** *Second, while the ordinary meaning of the words "Acts...of the Legislature" in s. 133 must be departed from to prevent the requirements of the section from being frustrated, it cannot be stretched beyond what is necessary to accomplish this purpose* ***(p. 328)****. It is because in our constitutional system the enactments of the Government should be assimilated with the enactments of the Legislature that they are governed by s. 133. Other regulations must in our opinion be viewed in the same light when they can also properly be said to be the enactments of the Government.* **(NP)** *This happens whenever these other regulations are made subject to the approval of the Government.* **(NP)** *The particular form of words used in this respect by various statutes matters little. Whether it be provided that some regulations "shall have no force and effect until approved and sanctioned by the Lieutenant-Governor in Council" or "shall not be carried into execution until approved by the Lieutenant-Governor in Council" or "shall not have force and effect until confirmed by the Lieutenant-Governor in Council", they can be assimilated with the enactments of the Government and therefore of the Legislature as long as positive action of the Government is required to breathe life into them. Without such approval or confirmation, they are a nullity (North*

Coast Air Services Ltd. v. Canadian Transport Commission, [1968] S.C.R. 940) or at least inoperative. The Government does legislate in approving them in the same way as one house legislates in a bicameral legislature when it passes a bill already passed by the other house, or the Lieutenant-Governor when he assents to a bill passed by the house of the now unicameral Legislature. **(NP)** *Regulations which are subject to disallowance by the Government are different. They have an independent life of their own. Their disallowance is a contingency. And even when they are disallowed, they probably are fully effective for the period preceding their disallowance* ***(pp. 329-330)***. [Courts] *Rules of practice are not expressly referred to in s. 133 of the B.N.A. Act. Given the circumstances described above, they are unlikely to have been overlooked but in our view the draftsmen must have thought that they were subject to the section by necessary intendment* ***(p. 332)***. *Furthermore, and as was noted by Deschênes C.J.S.C., (at p. 49 of his reasons), this fundamental right is also guaranteed to judges who are at liberty to address themselves to litigants in the language of their choice. When they so address themselves collectively to litigants as they peremptorily do in rules of practice, they must necessarily use both languages if they wish to safeguard the freedom of each judge* ***(p. 333)***. ***A.G. of Quebec* v. *Blaikie et al***, [1981] 1 S.C.R. 312.

Does a summons which is printed and published in the French language only and commands an English speaking person to appear before the Courts of Quebec offend the provisions of s. 133 of the Constitution Act, 1867, resulting in a total absence of jurisdiction of the Court to proceed against him ***(p. 468)****? t is clear that the rights preserved in Parliamentary debates are those of the speaker only. Those who listen to the speaker cannot have a right to be addressed in the language of their choice without defeating the speaker's own right to use the language of his choice and making the constitutional provisions nonsensical. Also, the speaker might be unilingual and find it impossible to address his listeners in the language of their choice. Furthermore, the choice of the listeners might vary, making it impossible to accommodate each of them. The use of interpreters or simultaneous translation which, in any event, has nothing to do with s. 133, would not meet the essential thrust of appellant's submission that he has the right to be addressed in the language of his choice by the very person or body who is purporting to address him.* **(NP)** *The same reasoning applies to the language spoken in the courts covered by s. 133 and in the written pleadings in and processes of such courts: the language rights then protected are those of litigants, counsel, witnesses, judges and other judicial officers who actually speak, not those of parties or others who are spoken to; and they are those of the writers or issuers of written pleadings and processes, not those of the recipients or readers thereof. In my view, under s. 133 of the Constitution Act, 1867, and apart from other legal principles or statutory provisions such as the Official Languages Act, R.S.C. 1970, c. O-2, the appellant was not entitled to a summons in English only, from the Municipal Court or from any court contemplated by s.*

133, including this Court ***(pp. 483-484)****. Section 133 has not introduced a comprehensive scheme or system of official bilingualism, even potentially, but a limited form of compulsory bilingualism at the legislative level, combined with an even more limited form of optional unilingualism at the option of the speaker in Parliamentary debates and at the option of the speaker, writer or issuer in judicial proceedings or processes. Such a limited scheme can perhaps be said to facilitate communication and understanding, up to a point, but only as far as it goes and it does not guarantee that the speaker, writer or issuer of proceedings or processes will be understood in the language of his choice by those he is addressing.* **(NP)** *This incomplete but precise scheme is a constitutional minimum which resulted from a historical compromise arrived at by the founding people who agreed upon the terms of the federal union. The scheme is couched in a language which is capable of containing necessary implications, as was held in Blaikie No. 1 and Blaikie No. 2 with respect to certain forms of delegated legislation. It is a scheme which, being a constitutional minimum, not a maximum, can be complemented by federal and provincial legislation, as was held in the Jones case. And it is a scheme which can of course be modified by way of constitutional amendment. But it is not open to the courts, under the guise of interpretation, to improve upon, supplement or amend this historical constitutional compromise* ***(p. 496)****.* ***MacDonald* v. *City of Montreal****,* [1986] 1 S.C.R. 460.

These special guarantees of language rights do not, by implication, preclude a construction of freedom of expression that includes the freedom to express oneself in the language of one's choice. A general freedom to express oneself in the language of one's choice and the special guarantees of language rights in certain areas of governmental activity or jurisdiction -- the legislature and administration, the courts and education -- are quite different things. The latter have, as this Court has indicated in MacDonald, supra, and Société des Acadiens, supra, their own special historical, political and constitutional basis. The central unifying feature of all of the language rights given explicit recognition in the Constitution of Canada is that they pertain to governmental institutions and for the most part they oblige the government to provide for, or at least tolerate, the use of both official languages. In this sense they are more akin to rights, properly understood, than freedoms. They grant entitlement to a specific benefit from the government or in relation to one's dealing with the government. Correspondingly, the government is obliged to provide certain services or benefits in both languages or at least permit use of either language by persons conducting certain affairs with the government. They do not ensure, as does a guaranteed freedom, that within a given broad range of private conduct, an individual will be free to choose his or her own course of activity. The language rights in the Constitution impose obligations on government and governmental institutions that are in the words of Beetz J. in MacDonald, a "precise scheme", providing specific opportunities to use English or French, or to receive services

in English or French, in concrete, readily ascertainable and limited circumstances ***(p. 750-751)***. ***Ford* v. *Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

[TRANSLATION] *The Attorney General submits that legislative technique used* [incorporation by reference] *in the two impugned statutes is legitimate. I have no objection to this statement so long as it does not have the effect, voluntary or not, of rendering inoperative the dispositions of section 133 of the Constitution Act. Otherwise, this technique would become a simplistic means of getting around the language requirements of the Constitution, stripping section 133 of all its effect. It does not matter that the Legislature has used this means occasionally. It would not have the effect of valiting a subsequent statute inconsistent with the provisions of the section 133. And, if the constitutionality of a statute enacted in this way is challenged, it is without a doubt the principle of section 133 which applies regardless of the practice that could have been followed until then by the National Assembly.* **(NP)** *What then of the application of section 133 when the content of a statute is to be found, in whole or in part, in a so-called sessional document tabled whith the National Assembly along with the Bill which makes reference thereto? I believe, like Deschênes C.J., that the solution rests on the relationship between the impugned statute and the sessional document to which it refers.* **(NP)** *In this case the sessional documents, to which refers Bills 70 and 105, describes all conditions pertaining to wages and work that the government prepared and that it proposes to enact as law by the National Assembly. Without these documents, one could not know even approximately the substance of Bills 70 and 105. . . . These two statutes by themselves contain nothing or nearly nothing which had could be considered on its own as implementing of the goals that they are aiming at achieving. Everything is contained in the sessional documents and nothing is to be found in the text of the statutes themselves, except for the reference to the sessional document. These documents are therefore, in my view, the very pith and substance of Bills 70 et 105, which, without these documents, have no real purpose* ***(p. 562)***. ***A.G. of Quebec* v. *Brunet***, [1985] C.A. 559. (Que. C.A.). Aff'd by ***Quebec (A.G.)* v. *Brunet***, [1990] 1 S.C.R. 260.

All of the instruments challenged by the respondents in this appeal, from the ministerial order postponing the municipal elections in Rouyn, to the final notification of the issuance of the letters patent for the city of Rouyn-Noranda in the Gazette officielle du Québec, were part of a process which, when viewed in its entirety, was undoubtedly legislative. Accordingly, all of them were subject to the requirements of s. 133 of the Constitution Act, 1867, no less than was Bill 190 itself. The requirements of s. 133 cannot be circumvented by the disingenuous division of the legislative process into a series of discrete steps, and then claiming that each of these steps, when examined in isolation, lacks a legislative character. **(NP)** *All of the instruments in question were printed and published in the French language only, or were not officially published at all. Clearly,*

therefore, the requirements of s. 133 were not complied with. It follows that all of them are, and have always been, nullities and of no legal force and effect ***(p. 593). Sinclair* v. *Quebec (Attorney General)***, [1992] 1 S.C.R. 579.

This argument was rejected by Baudouin J.A. in the judgment under appeal, partly on the basis that the English version of the Civil Code is [TRANSLATION] "merely a translation of the original French version" (p. 1327). With respect, although what he stated is unfortunately true, it cannot be used to reject the argument made by the appellant. Section 7 of the Charter of the French language, R.S.Q., c. C-11, provides that the French and English versions of Quebec statutes "are equally authoritative" . This is in accordance with s. 133 of the Constitution Act, 1867 which requires that the statutes of the legislature of Quebec be enacted in both official languages and that both versions be equally authoritative and have the same status ***(pp. 878-879)***. ***Doré* v. *Verdun (City)***, [1997] 2. S.C.R. 862.

[TRANSLATION] *While it may be that the appellants or their counsel require a translation of the witness' answers, they did not convince me that the trial judge exercised his judicial discretion improperly by holding, impliedly, that it is up to them to make and bear the expense of the necessary arrangements. No authority was brought to my attention that would stand for the proposition that judicial employees or lawyers are entitled to an interpreter in a civil trial conducted in one of the languages recognized by section 133 of the Constitution Act* ***(p. 485)***. ***Ferncraft Leather Inc.* v. *Roll et al.*** (March 2, 1979), Montreal no 09-001270-784 (Que. C.A.), Owen, Bélanger and Bernier J.J.A. Reproduced in J. Deschênes, *Ainsi parlèrent les tribunaux, Conflits linguistiques au Canada 1968-1980*, Wilson & Lafleur, 1981, p. 483.

A reading of section 23[*An act to ensure that Essential services are maintained in the health and social services sector*, S.Q. 1986, c. 74]*, and of the order-in-council itself, clearly discloses in this Court's opinion that the word "order-in-council" was intended to be taken in its first meaning, that is to say a decision-making instrument, not a normative instrument. Indeed, the government's only purpose in enacting the order-in-council is to determine the date the sanscions contemplated in the statute begin to apply. It is an administrative decision, through which the statute can then be applied.* **(NP)** *The instrument does not create a legal standard of conduct, nor does it establish or modify a particular legal order* ***(p. 146-147)***. *Thus, the orders-in-council contemplated in sections 23 and 20 of Bill 160 are not regulations (i.e. normative instruments that are enacted under enabling legislation and make general and impersonal rules).* **(NP)** *This distinction is of the utmost importance because, in doing so, the government did not have to enact the orders-in-council simultaneously in both English and French* ***(p. 147)***. ***Syndicat professionnel des infirmières et infirmiers de Chicoutimi* v. *L'hôpital de Chicoutimi Inc.***, [1990] R.J.Q. 141 (Que

S.C.). Appeal dismissed in ***Syndicat professionnel des infirmières et infirmiers de Chicoutimi* v. *L'hôpital de Chicoutimi Inc. and A.G. of Quebec*** (March 15, 1990), Quebec 200-09-000732-898 (Que. C.A.).

[TRANSLATION] *In a 1979 judgment which affirmed the opinions of both Deschênes J. and the seven Justices of the Quebec Court of Appeal, the Supreme Court clearly articulated and definitively established — in the opinion of this Court — the proposition that judges are free to write their decisions in the language of their choice, regardless of the language employed by the parties or their counsel in their pleadings or oral submissions to the Court* ***(p. 12)****. The Canadian and Quebec Charters cannot be applied in such a manner as to infringe the rights conferred by the Constitution Act, 1867; such is the position of the Attorney General of Quebec and it accords with a unanimous judgment of the Supreme Court of Canada* ***(p. 13)****. Sections 96 and 98 of the Constitution Act, 1867 contain nothing that would require the Governor General of Canada to exclusively appoint bilingual judges who are able to speak and write either of the official languages; consequently, it is not up to this Court to amend the Constitution Act, 1867 by means of a declaratory judgment or a mandamus order* ***(pp. 19-20)****.* ***Morand et al.* v. *A.G. of Quebec*** (August, 19, 1991), Montreal 500-05-003482-872 (Que. S.C.) Trudeau J.

In short, from whatever angle we analyze s. 133 of the Constitution Act, 1867, the jurisprudence seems to me to say very clearly that it is in the judge that this provision vests the constitutional right to use at his choosing either French or English in writing his judgment whereas the same provision imposes no obligation on the state to provide an authenticated translation ***(p. 664)****. Finally, in conclusion, as the Attorney-General of Quebec has argued, the Government of Quebec does, in fact, provide a translation service from English to French and vice versa, upon request by one party to a dispute. This is not an authenticated translation, nor is it an automatic translation attached to the original. However, this service seems to me to be sufficient to meet the demands of the Quebec Charter of Human Rights and Freedoms even if we were to conclude that the Charter vests in the parties the right to demand such a translation, a conclusion I am not personally prepared to affirm* ***(p. 667)****.* ***Pilote v. Corporation de l'hôpital Bellechasse et al.*** (1994), D.L.R. (4th) 657 (Que. C.A.). Leave to appeal refused, No. 24419, [1995] 1 S.C.R. ix.

See also in this book:

Canada, *Constitution Act, 1867,* s. 133;

Canada, *Canadian Charter of Rights and Freedoms,* s. 17(1) to 19(1);

Manitoba, *Manitoba, 1870,* s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 17(2) to 19(2).

11.2 Acunpucture Act, R.S.Q., c. A-5.1.

Permits issued subject to provisions.

40. The issue of permits to persons to whom the provisions of sections 30 to 35 apply remains subject to any other condition, formality and procedure for the issue of permits prescribed by the Professional Code (chapter C-26) and the Charter of the **French language** (chapter C-11), except that relating to the awarding of a diploma recognized as valid. 1994, c. 37, s. 40.

11.3 Agricultural Societies Act, R.S.Q., c. S-25.

Name.

1.1. The name of a society shall not

(1) contravene the Charter of the **French language** (chapter C-11); 1993, c. 48, s. 444.

11.4 Amusement Clubs Act, R.S.Q., c. C-23.

Change of name.

4. The members of the association, in general meeting assembled, may, at any time, by resolution, change the name thereof, provided that a notice to that effect be transmitted to the Inspector General, who shall deposit it in the register, and that a notice of the change be published once in a **French** newspaper and once in an **English** newspaper published in the judicial district in which the association is established. The change has effect from the date of deposit of the notice in the register.

Effect.

The association, under its new name, shall enjoy and possess all the privileges and be subject to all the duties and liabilities of the said association incurred under its former name. R. S. 1964, c. 298, s. 4; 1969, c. 26, s. 115; 1975, c. 76, s. 11; 1981, c. 9, s. 24; 1982, c. 52, s. 113; 1993, c. 48, s. 214.

11.5 Charter of Human Rights and Freedoms, R.S.Q., c. C-12.

Fundamental freedoms.

3. Every person is the possessor of the fundamental freedoms, including freedom of conscience, freedom of religion, freedom of opinion, freedom of expression, freedom of peaceful assembly and freedom of association. 1975, c. 6, s. 3.

Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the Charter of the French Language itself indicates, a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality. That the concept of "expression" in s. 2(b) of the Canadian Charter and s. 3 of the Quebec Charter goes beyond mere content is indicated by the specific protection accorded to "freedom of thought, belief [and] opinion" in s. 2 and to "freedom of conscience" and "freedom of opinion" in s. 3. That suggests that "freedom of expression" is intended to extend to more than the content of expression in its narrow sense ***(pp. 748-749)****. These special guarantees of language rights* [section 133 of the *Constitution Act, 1867,* and sections 16 to 23 of the Canadian Charter] *do not, by implication, preclude a construction of freedom of expression that includes the freedom to express oneself in the language of one's choice. A general freedom to express oneself in the language of one's choice and the special guarantees of language rights in certain areas of governmental activity or jurisdiction -- the legislature and administration, the courts and education -- are quite different things* ***(p. 750)****. In contrast, what the respondents seek in this case is a freedom as that term was explained by Dickson J. (as he then was) in R. v. Big M Drug Mart Ltd., [1985] 1 S.C.R. 295, at p. 336: "Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the Charter is to protect, within reason, from compulsion or restraint.". The respondents seek to be free of the state imposed requirement that their commercial signs and advertising be in French only, and seek the freedom, in the entirely private or non-governmental realm of commercial activity, to display signs and advertising in the language of their choice as well as that of French* ***(pp. 751-752)****. The recognition that freedom of expression includes the freedom to express oneself in the language of one's choice does not undermine or run counter to the special guarantees of official language rights in areas of governmental jurisdiction or responsibility. The legal structure, function and obligations of government institutions with respect to the English and French languages are in no way affected by the recognition that freedom of expression includes the freedom to express oneself in the language of one's choice in areas outside of those for which the special guarantees of language have been provided* ***(p. 752)****. It is apparent to this Court that the guarantee of freedom of expression in s. 2(b) of the Canadian Charter and s. 3 of the Quebec Charter cannot be confined to political expression, important as that form of expression is in a free and democratic society. The pre-Charter jurisprudence emphasized the importance of political expression because it was a challenge to that form of*

expression that most often arose under the division of powers and the "implied bill of rights", where freedom of political expression could be related to the maintenance and operation of the institutions of democratic government. But political expression is only one form of the great range of expression that is deserving of constitutional protection because it serves individual and societal values in a free and democratic society ***(p. 764)****. It is necessary only to decide if the respondents have a constitutionally protected right to use the English language in the signs they display, or more precisely, whether the fact that such signs have a commercial purpose removes the expression contained therein from the scope of protected freedom.* **(NP)** *In our view, the commercial element does not have this effect. Given the earlier pronouncements of this Court to the effect that the rights and freedoms guaranteed in the Canadian Charter should be given a large and liberal interpretation, there is no sound basis on which commercial expression can be excluded from the protection of s. 2(b) of the Charter* ***(pp. 766-767)****.* ***Ford* v. *Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

It appears to have been accepted by all the members of the Court of Appeal, whether expressly or impliedly, that provincial legislative jurisdiction with respect to language is not an independent one but is rather "ancillary" to the exercise of jurisdiction with respect to some class of subject matter assigned to the province by s. 92 of the Constitution Act, 1867. That conclusion was based primarily on what was said by this Court in Jones v. Attorney General of New Brunswick, [1975] 2 S.C.R. 182, and on the opinion of Professor Hogg in Constitutional Law of Canada (2nd ed. 1985), at pp. 804-806, which in turn is based on what was said in Jones. Since this Court agrees with that conclusion, substantially for the reasons given in the Court of Appeal in the judgments of Monet, Chouinard and Paré JJ.A., it would not serve a useful purpose to reproduce here the references to the authorities in support of that conclusion which are fully set out in their opinions, including a long extract from the opinion of Professor Hogg. We adopt the following passages of the opinion of Professor Hogg as a statement of the law on this question, i.e., that: **(NP)** *...language is not an independent matter of legislation (or constitutional value); that there is therefore no single plenary power to enact laws in relation to language; and that the power to enact a law affecting language is divided between the two levels of government by reference to criteria other than the impact of law upon language. On this basis, a law prescribing that a particular language or languages must or may be used in certain situations will be classified for constitutional purposes not as a law in relation to language, but as a law in relation to the institutions or activities that the provision covers.* **(NP)** *...for constitutional purposes language is ancillary to the purpose for which it is used, and a language law is for constitutional purposes a law in relation to the institutions or activities to which the law applies.* **(NP)** *In order to be valid, provincial legislation with respect to language must be truly in relation*

to an institution or activity that is otherwise within provincial legislative jurisdiction ***(p. 807-808)***. ***Devine* v. *Quebec (A.G.)***, [1988] 2 S.C.R. 790.

Exercice of rights and freedoms

9.1. In exercising his fundamental freedoms and roghts, a person shall maintain a proper regard for democratic values, public order and the general well-being of the citizens of Québec.

Scope fixed by law.

In this respect, the scope of the freedoms and rights, and limits to their exercice, may be fixed by law. 1982, c. 61, a. 2.

The section 1 and s. 9.1 materials establish that the aim of the language policy underlying the Charter of the French Language was a serious and legitimate one. They indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. Moreover, they indicate a rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the "visage linguistique". The section 1 and s. 9.1 materials do not, however, demonstrate that the requirement of the use of French only is either necessary for the achievement of the legislative objective or proportionate to it ***(pp. 778-779)***. *Thus, whereas requiring the predominant display of the French language, even its marked predominance, would be proportional to the goal of promoting and maintaining a French "visage linguistique" in Quebec and therefore justified under the Quebec Charter and the Canadian Charter, requiring the exclusive use of French has not been so justified. French could be required in addition to any other language or it could be required to have greater visibility than that accorded to other languages* ***(p. 780)***. ***Ford* v. *Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

Discrimination forbidden.

10. Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on **race**, colour, sex, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, **language**, **ethnic** or **national origin**, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination defined.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right. 1975, c. 6, s. 10; 1977, c. 6, s. 1; 1978, c. 7, s. 112; 1982, c. 61, s. 3.

Section 58 of the Charter of the French Language, because of its differential effect or impact on persons according to their language of use, creates a

distinction between such persons based on language of use. It is then necessary to consider whether this distinction has the effect of nullifying or impairing the right to full and equal recognition and exercise of a human right or freedom recognized by the Quebec Charter. The human right or freedom in issue in this case is the freedom to express oneself in the language of one's choice, which has been held to be recognized by s. 3 of the Quebec Charter. In this case, the limit imposed on that right was not a justifiable one under s. 9.1 of the Quebec Charter. The distinction based on language of use created by s. 58 of the Charter of the French Language thus has the effect of nullifying the right to full and equal recognition and exercise of this freedom. Section 58 is therefore also of no force or effect as infringing s. 10 of the Quebec Charter ***(p. 787)***. ***Ford* v. *Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

Accordingly, the word "language" means the language of the person. As such the concept of language is not limited to the mother tongue but also includes the language of use or habitual communication. I do not see why the scope of the word "language" has to be limited to the language of origin, since this often differs from the language used by a person every day. As the grounds of discrimination mentioned in s. 10 are not unchanging characteristics of the person, there is no reason to adopt a narrow interpretation which does not take into account the possibility that the mother tongue and the language of use may differ ***(p. 100)***. ***Forget* v. *Quebec (P.G)***, [1988] 2 S.C.R. 90.

Information on grounds of arrest.

28. Every person arrested or detained has a right to be promptly informed, in a **language** he understands, of the grounds of his arrest or detention. 1975, c. 6, s. 28.

Interpreter.

36. Every accused person has a right to be assisted free of charge by an **interpreter** if he does not understand the **language** used at the hearing or if he is deaf. 1975, c. 6, s. 36; 1982, c. 61, s. 13.

11.6 Charter of The French Language, R.S.Q., c. C-11.

Preamble.

WHEREAS the **French language**, the distinctive **language** of a people that is in the majority **French-speaking**, is the instrument by which that people has articulated its identity;

Whereas the National Assembly of Québec recognizes that Quebecers wish to see the quality and influence of the **French language** assured, and is resolved therefore to make of **French** the **language** of Government and the Law, as well as the normal and everyday **language** of work, instruction, communication, commerce and business;

Whereas the National Assembly intends to pursue this objective in a spirit of fairness and open-mindedness, respectful of the institutions of the **English-speaking** community of Québec, and respectful of the **ethnic** minorities, whose valuable contribution to the development of Québec it readily acknowledges;

Whereas the National Assembly of Québec recognizes the right of the Amerinds and the Inuit of Québec, the first inhabitants of this land, to preserve and develop their original **language** and culture;

Whereas these observations and intentions are in keeping with a new perception of the worth of national cultures in all parts of the earth, and of the obligation of every people to contribute in its special way to the international community;

Therefore, Her Majesty, with the advice and consent of the National Assembly of Québec, enacts as follows:

TITLE- I : STATUS OF THE FRENCH LANGUAGE

CHAPTER I

THE OFFICIAL LANGUAGE OF QUÉBEC

Official language.

1. French is the **official language** of Québec. 1977, c. 5, s. 1.

CHAPTER II

FUNDAMENTAL LANGUAGE RIGHTS

Communications with public and private sectors.

2. Every person has a right to have the civil administration, the health services and social services, the public utility firms, the professional corporations, the associations of employees and all business firms doing business in Québec communicate with him in **French**. 1977, c. 5, s. 2.

In deliberative assembly.

3. In deliberative assembly, every person has a right to speak in **French**. 1977, c. 5, s. 3.

Workers.

4. Workers have a right to carry on their activities in **French**. 1977, c. 5, s. 4.

Consumers.

5. Consumers of goods and services have a right to be informed and served in **French**. 1977, c. 5, s. 5.

Instruction.

6. Every person eligible for instruction in Québec has a right to receive that instruction in **French**. 1977, c. 5, s. 6.

CHAPTER III

THE LANGUAGE OF THE LEGISLATURE AND THE COURTS

Legislature and courts.

7. French is the **language** of the legislature and the courts in Québec, subject to the following:

(1) legislative bills shall be printed, published, passed and assented to in **French** and in **English**, and the statutes shall be printed and published in both **languages**;

(2) the regulations and other similar acts to which section 133 of the Constitution Act, 1867 applies shall be made, passed or issued, and printed and published in **French** and in **English**;

(3) the **French** and **English** versions of the texts referred to in paragraphs 1 and 2 are equally authoritative;

(4) either **French** or **English** may be used by any person in, or in any pleading in or process issuing from, any court of Québec. 1977, c. 5, s. 7; 1993, c. 40, s. 1.

This argument was rejected by Baudouin J.A. in the judgment under appeal, partly on the basis that the English version of the Civil Code is [TRANSLATION] "merely a translation of the original French version" (p. 1327). With respect, although what he stated is unfortunately true, it cannot be used to reject the argument made by the appellant. Section 7 of the Charter of the French language, R.S.Q., c. C-11, provides that the French and English versions of Quebec statutes "are equally authoritative" . This is in accordance with s. 133 of the Constitution Act, 1867 which requires that the statutes of the legislature of Quebec be enacted in both official languages and that both versions be equally authoritative and have the same status. . . ***(pp. 878-879)***. ***Doré* v. *Verdun (City)***, [1997] 2. S.C.R. 862.

Discrepancy.

8. Where an **English** version exists of a regulation or other similar act to which section 133 of the Constitution Act, 1867 does not apply, the **French** text shall prevail in case of discrepancy. 1977, c. 5, s. 8; 1993, c. 40, s. 1.

Judgment.

9. Every judgment rendered by a court of justice and every decision rendered by a body discharging quasi-judicial functions shall, at the request of one of the parties, be translated into **French** or **English**, as the case may be, by the civil administration bound to bear the cost of operating such court or body. 1977, c. 5, s. 9; 1993, c. 40, s. 1.

Finally, in conclusion, as the Attorney-General of Quebec has argued, the Government of Quebec does, in fact, provide a translation service from English to French and vice versa, upon request by one party to a dispute. This is not an authenticated translation, nor is it an automatic translation attached to the original. However, this service seems to me to be sufficient to meet the demands of the Quebec Charter of Human Rights and Freedoms even if we were to conclude that the Charter vests in the parties the right to demand such a translation, a conclusion I am not personally prepared to affirm ***(p. 667)***. ***Pilote v. Corporation de l'hôpital Bellechasse et al.*** (1994), D.L.R. (4th) 657 (Que. C.A.). Leave to appeal refused, No. 24419, [1995] 1 S.C.R. ix.

CHAPTER IV

THE LANGUAGE OF THE CIVIL ADMINISTRATION

Designation.

14. The Government, the government departments, the other agencies of the civil administration and the services thereof shall be designated by their **French** names alone. 1977, c. 5, s. 14.

Texts and documents.

15. The civil administration shall draw up and publish its texts and documents in the **official language**.

Exceptions.

This section does not apply to relations with persons outside Québec, to publicity and communiqués carried by news media that publish in a **language** other than **French** or to correspondence between the civil administration and natural persons when the latter address it in a **language** other than **French**. 1977, c. 5, s. 15.

Communication with other governments and artificial persons.

16. The civil administration shall use the **official language** in its written communications with other governments and with artificial persons established in Québec. 1977, c. 5, s. 16; 1993, c. 40, s. 2.

Interdepartmental communications.

17. The Government, the government departments and the other agencies of the civil administration shall use only the **official language** in their written communications with each other. 1977, c. 5, s. 17, s. 14.

Internal communications.

18. French is the **language** of written internal communications in the Government, the government departments, and the other agencies of the civil administration. 1977, c. 5, s. 18, s. 14.

Notices of meeting.

19. The notices of meeting, agendas and minutes of all deliberative assemblies in the civil administration shall be drawn up in the **official language**. 1977, c. 5, s. 19.

Knowledge of French for appointment or promotion.

20. In order to be appointed, transferred or promoted to an office in the civil administration, a knowledge of the **official language** appropriate to the office applied for is required.

Criteria and procedures.

For the application of the preceding paragraph, each agency of the civil administration shall establish criteria and procedures of verification and submit them to the Office de la langue française for approval, failing which the Office may establish them itself. If the Office considers the criteria and procedures unsatisfactory, it may either request the agency concerned to modify them or establish them itself.

Applicability.

This section does not apply to bodies, services and departments recognized under the first paragraph of section 29.1 which implement the measures approved by the Office according to the third paragraph of section 23. 1977, c. 5, s. 20; 1983, c. 56, s. 2; 1993, c. 40, s. 3.

Contracts.

21. Contracts entered into by the civil administration, including the related sub-contracts, shall be drawn up in the **official language**. Such contracts and the related documents may be drawn

up in another **language** when the civil administration enters into a contract with a party outside Québec. 1977, c. 5, s. 21.

Signs and posters.

22. The civil administration shall use only **French** in signs and posters, except where reasons of health or public safety require the use of another **language** as well.

Traffic signs.

In the case of traffic signs, the **French** inscription may be complemented or replaced by symbols or pictographs, and another **language** may be used where no symbol or pictograph exists that satisfies the requirements of health or public safety.

Civil administration.

The Government may, however, determine by regulation the cases, conditions or circumstances in which the civil administration may use **French** and another **language** in signs and posters. 1977, c. 5, s. 22; 1993, c. 40, s. 4.

Designation of thoroughfares.

22.1 In the territory of a municipality, a specific term other than a **French** term may be used in conjunction with a generic **French** term to designate a thoroughfare if the term is sanctioned by usage or if its use has unquestionable merit owing to its cultural or historical interest. 1983, c. 56, s. 3; 1996, c. 2, s. 112.

Services to the public.

23. The bodies, services and departments recognized under the first paragraph of section 29.1 must ensure that their services to the public are available in the **official language**.

Notices.

They must draw up their notices, communications and printed matter intended for the public in the **official language**.

Approval.

They must devise the necessary measures to make their services to the public available in the **official language**, and criteria and procedures for verifying knowledge of the **official language** for the purposes of application of this section. These measures, criteria and

procedures are subject to approval by the Office. 1977, c. 5, s. 23; 1983, c. 56, s. 4; 1993, c. 40, s. 5.

Recognized bodies and services: bilingual signs and posters.

24. The municipal and school bodies, the health services and social services and the other services recognized under the first paragraph of section 29.1 may erect signs and posters in both **French** and another **language**, the **French** text predominating. 1977, c. 5, s. 24; 1993, c. 40, s. 6.

Bilingual names and internal communications.

26. The bodies, services and departments recognized under the first paragraph of section 29.1 may use both the **official language** and another **language** in their names, their internal communications and their communications with each other.

French version.

In the recognized bodies, services and departments, two persons may use what **language** they choose in written communications to one another. However, a body, service or department shall, at the request of a person required to consult such a communication in the course of his duties, prepare a **French** version of it. 1977, c. 5, s. 26; 1983, c. 56, s. 6; 1993, c. 40, s. 7.

Clinical records in health services and social services.

27. In the health services and the social services, the documents filed in the clinical records shall be drafted in **French** or in **English**, as the person drafting them sees fit. However, each health service or social service may require such documents to be drafted in **French** alone. Resumés of clinical records must be furnished in **French** on demand to any person authorized to obtain them. 1977, c. 5, s. 27.

Communications in the language of instruction.

28. Notwithstanding sections 23 and 26, school bodies recognized under the first paragraph of section 29.1, as well as departments recognized under the same provision which, in the school bodies, are entrusted with giving instruction in a **language** other than **French** may use the **language** of instruction in their communications connected with teaching without having to use the **official language** at the same time. 1977, c. 5, s. 28; 1983, c. 56, s. 7; 1993, c. 40, s. 8.

Recognition.

29.1 The Office shall, for the purposes of the provisions of the third paragraph of section 20 and sections 23, 24, 26 and 28, recognize, at their request, the municipal or school bodies within the meaning of the Schedule, or the health and social services institutions referred to in the

Schedule, that provide services to persons who, in the majority, speak a **language** other than **French**. It shall also recognize, for the purposes of those provisions and at the request of a school body, the departments of such a body that have charge of organizing or giving instruction in a **language** other than **French**.

Recognition.

The Government may, at the request of a body or institution that no longer satisfies the condition which enabled it to obtain recognition under the first paragraph, withdraw such recognition if it considers it appropriate in the circumstances and after having consulted the Office. Such a request shall be made to the Office, which shall transmit it to the Government with a copy of the record. The Government shall inform the Office and the body or institution of its decision. 1993, c. 40, s. 10.

CHAPTER V

THE LANGUAGE OF THE SEMIPUBLIC AGENCIES

Public utilities and professional corporations: services.

30. The public utility firms, the professional corporations and the members of the professional corporations must arrange to make their services available in the **official language**.

[TRANSLATION] *The instant case involves a French-speaking patient (Mr. Buisson) who requested the services of an English-speaking orthopedist (Dr. Sutton). The day after the visit, a French-speaking lawyer confirmed the request of the patient in question, who was his client* ***(p. 1003)****. On the other hand, Mr. Buisson and/or his counsel had the right to require that the expert report be provided in French. He need only have exercised this right at the time of the service request. The right was not exercised. No request was made to receive the report in French at the time of service request. Only after the report was received was the request made. It was late. As such, I find that all of the ensuing efforts are not relevant to the instant case* ***(p. 1004)****.* ***Sutton*** **v.** ***R.,*** [1983] C.S.P. 1001 (Que. C. Sess. P.).

Notices, tickets.

They must draw up their notices, communications and printed matter intended for the public, including public transportation tickets, in the **official language**. 1977, c. 5, s. 30.

Members of professional corporations.

30.1 The members of the professional orders must, where a person who calls upon their services so requests, provide a **French** copy of any notice, opinion, report, expertise or other document they drawn up concerning that person**,** without requiring a charge for **translation**. The request may be made at any time. 1983, c. 56, s. 8, 1997, c. 24 s. 1.

Written communications.

31. The public utility firms and the professional corporations shall use the **official language** in their written communications with the civil administration and with artificial persons. 1977, c. 5, s. 31.

With general membership.

32. The professional corporations shall use the **official language** in their written communications with their general membership.

Option: with individual member.

They may, however, in communicating with an individual member, reply in his **language**. 1977, c. 5, s. 32.

Exceptions.

33. Sections 30 and 31 do not apply to communiqués or publicity intended for news media that publish in a **language** other than **French**. 1977, c. 5, s. 33.

Professional corporations: designation.

34. The professional corporations shall be designated by their **French** names alone. 1977, c. 5, s. 34.

Appropriate knowledge of French.

35. The professional corporations shall not issue permits except to persons whose knowledge of the **official language** is appropriate to the practice of their profession.

Presumption.

A person is deemed to have the appropriate knowledge if

(1) he has received, full time, no less than three years of secondary or post-secondary instruction provided in **French**;

(2) he has passed the fourth or fifth year secondary level examinations in **French** as the first **language**;

(3) from and after the school year 1985-86, he obtains a secondary school certificate in Québec.

Certificate.

In all other cases, a person must obtain a certificate issued by the Office de la langue française or hold a certificate defined as equivalent by regulation of the Government.

Regulations of the Government.

The Government, by regulation, may determine the procedures and conditions of issue of certificates by the Office, establish the rules governing composition of an examining committee to be formed by the Office, provide for the mode of operation of that committee, and determine criteria for evaluating the appropriate knowledge of **French** for the practice of a profession or a category of professions and a mode of evaluating such knowledge. 1977, c. 5, s. 35; 1983, c. 56, s. 9; 1993, c. 40, s. 11.

In the instant case non-francophones are not prohibited from joining a professional corporation on grounds that are arbitrary and have nothing to do with the required aptitudes. On the contrary, the Regulations enacted by the Office allow them to show that they possess the necessary skills, namely an appropriate knowledge of French, to be admitted to a professional corporation. It should be borne in mind that this requirement is imposed by s 35 of the Charter of the French language, and this provision is not being challenged. The impugned Regulations do not reject non-francophones outright, they offer them a means of establishing that they meet this requirement. What is more, under s. 11 of the Regulations, candidates may retake the test as many times as they have to in order to pass it. Far from being an arbitrary obstacle for a professional candidate, the Regulations facilitate admission to the corporation while remaining consistent with the requirements of the Act ***(pp. 103-104)***. ***Forget* v. *Quebec (P.G)***, [1988] 2 S.C.R. 90.

Proof before diploma is obtained.

36. Within the last two years before obtaining a qualifying diploma for a permit to practise, every person enrolled in an educational institution that issues such diploma may give proof that his knowledge of the **official language** meets the requirements of section 35. 1977, c. 5, s. 36.

Temporary permit for outsiders.

37. The professional corporations may issue temporary permits valid for not more than one year to persons from outside Québec who are declared qualified to practise their profession but whose knowledge of the **official language** does not meet the requirements of section 35. 1977, c. 5, s. 37.

Renewal.

38. The permits envisaged in section 37 may be renewed, only three times, with the authorization of the Office de la langue française and if the public interest warrants it. For each

renewal, the persons concerned must sit for examinations held according to the regulations of the Government.

Annual report of activities.

In its annual report of activities, the Office shall indicate the number of permits for which it has given authorization for renewal pursuant to this section. 1977, c. 5, s. 38; 1993, c. 40, s. 12.

Temporary permit for Québec graduates.

39. Persons having obtained, in Québec, a diploma referred to in section 36 may, until the end of 1980, avail themselves of sections 37 and 38. 1977, c. 5, s. 39.

Restricted permit.

40. Where it is in the public interest, a professional corporation, with the prior authorization of the Office de la langue française, may issue a restricted permit to a person already authorized under the laws of another province or another country to practise his profession. This restricted permit authorizes its holder to practise his profession for the exclusive account of a single employer, in a position that does not involve his dealing with the public.

Spouse.

In the case of this section, a permit may be issued to the spouse as well. 1977, c. 5, s. 40; 1983, c. 56, s. 10.

CHAPTER VI

THE LANGUAGE OF LABOUR RELATIONS

Employer's notices, offers.

41. Every employer shall draw up his written communications to his staff in the **official language**. He shall draw up and publish his offers of employment or promotion in **French**. 1977, c. 5, s. 41.

L'Hôpital de Montréal pour enfants* v. *Infirmières et infirmiers unis Inc. (1981), 29 L.A.C. (2d) 381 (T.T. Qué.).

Offer of employment in newspaper.

42. Where an offer of employment regards employment in the civil administration, a semipublic agency or a firm required to establish a francization committee, have an attestation of implementation of a francization programme or hold a francization certificate, as the case may be, the employer publishing this offer of employment in a daily newspaper published in a **language** other than **French** must publish it simultaneously in a daily newspaper published in **French**, with at least equivalent display. 1977, c. 5, s. 42; 1993, c. 40, s. 13.

Collective agreements.

43. Collective agreements and the schedules to them must be drafted in the **official language**, including those which must be filed pursuant to section 72 of the Labour Code (chapter C-27). 1977, c. 5, s. 43.

Arbitration award.

44. An arbitration award made following arbitration of a grievance or dispute regarding the negotiation, renewal or review of a collective agreement shall, at the request of one of the parties, be translated into **French** or **English**, as the case may be, at the parties' expense. 1977, c. 5, s. 44; 1977, c. 41, s. 1; 1993, c. 40, s. 14.

Prohibition: dismissal, or demote for ignorance of other language.

45. An employer is prohibited from dismissing, laying off, demoting or transferring a member of his staff for the sole reason that he is exclusively **French-speaking** or that he has insufficient knowledge of a particular **language** other than **French**. Or because he has demanded that a right arising from the provisions of this chapter be respected. 1977, c. 5, s. 45; 1997, c. 24, s. 2.

Prohibition: knowledge of other language as condition of employment.

46. An employer is prohibited from making the obtaining of an employment or office dependent upon the knowledge of a **language** other than the **official language**, unless the nature of the duties requires the knowledge of that other **language**.

Onus.

The burden of proof that the knowledge of the other **language** is necessary is on the employer, at the demand of the person or the association of employees concerned or, as the case may be, the Office de la langue française. The Office de la langue française has the power to decide any dispute. 1977, c. 5, s. 46.

Vindication of worker's rights under Labour code.

47. Any contravention of section 45 or 46, in addition to being an offence against this act, gives a worker not governed by a collective agreement the same entitlement to vindicate his rights through a labour commissioner appointed under the Labour Code as if he were dismissed for union activities. Sections 15 to 20 of the Labour Code then apply, mutatis mutandis.

Arbitration of grievance.

If the worker is governed by a collective agreement, he has the same entitlement to submit his grievance for arbitration as his association, if the latter fails to act. Section 17 of the Labour

Code applies, mutatis mutandis, for the arbitration of this grievance. 1977, c. 5, s. 47; 1977, c. 41, s. 1.

Juridical acts null.

48. Except as they regard the vested rights of employees and their associations, juridical acts, decisions and other documents not in conformity to this chapter are null. The use of a **language** other than that prescribed in this chapter shall not be considered a defect of form within the meaning of section 151 of the Labour Code. 1977, c. 5, s. 48.

Associations of employees' written communications.

49. Every association of employees shall use the **official language** in written communications with its members. It may use the **language** of an individual member in its correspondence with him. 1977, c. 5, s. 49.

Ss. 41 to 49 integral to all collective agreements.

50. Sections 41 to 49 of this act are deemed an integral part of every collective agreement. Any stipulation in the agreement contrary to any provision of this act is void. 1977, c. 5, s. 50.

CHAPTER VII

THE LANGUAGE OF COMMERCE AND BUSINESS

Labels, directions, warranties, menus: in French.

51. Every inscription on a product, on its container or on its wrapping, or on a document or object supplied with it, including the directions for use and the warranty certificates, must be drafted in **French**. This rule applies also to menus and wine lists.

Other languages.

The **French** inscription may be accompanied with a **translation** or **translations**, but no inscription in another **language** may be given greater prominence than that in **French**. 1977, c. 5, s. 51; 1997, c. 24, s. 24.

Catalogues, brochures.

52. Catalogues, brochures, folders, commercial directories and any similar publications must be drawn up in **French**. 1977, c. 5, s. 52; 1983, c. 56, s. 11; 1993, c. 40, s. 15.

52.1 All computer software, including game software and operating systems, whether installed or uninstalled, must be available in **French** unless no **French** version exists. Software can also be available in **languages** other than **French**, provided that the **French** version can be obtained on terms, except price where it reflects higher production or distribution costs, that are

no less favourable and that it has technical characteristics that are at least equivalent. 1997. c. 24, s. 3.

Toys and games.

54. Toys and games, except those referred to in section 52.1, which require the use of a non-**French** vocabulary for their operation are prohibited on the Québec market, unless a **French** version of the toy or game is available on the Québec market on no less favourable terms. 1977, c. 5, s. 54; 1993, c. 40, s. 17; 1997, c. 24, s. 5.

54.1 The Government may, by regulation and on the conditions it fixes, provide for exceptions to the application of section 51 to 54. 1997, c. 24, s. 6.

Contracts pre-determined by one party.

55. Contracts pre-determined by one party, contracts containing printed standard clauses, and the related documents, must be drawn up in **French**. They may be drawn up in another **language** as well at the express wish of the parties. 1977, c. 5, s. 55.

Exception.

56. If the documents referred to in section 51 are required by any act, order in council or government regulation, they may be excepted from the rule enunciated in that section, provided that the **languages** in which they are drafted are the subject of a federal-provincial, interprovincial or international agreement. 1977, c. 5, s. 56.

Application forms for employment.

57. Application forms for employment, order forms, invoices, receipts and quittances shall be drawn up in **French**. 1977, c. 5, s. 57.

Signs and posters.

58. Public signs and posters and commercial advertising must be in **French**.

Signs and posters.

They may also be both in **French** and in another **language** provided that **French** is markedly predominant.

These special guarantees of language rights do not, by implication, preclude a construction of freedom of expression that includes the freedom to express oneself in the language of one's choice. A general freedom to express oneself in the language of one's choice and the special guarantees of language rights in certain areas of governmental activity or jurisdiction -- the legislature and

administration, the courts and education -- are quite different things. The latter have, as this Court has indicated in MacDonald, supra, and Société des Acadiens, supra, their own special historical, political and constitutional basis. The central unifying feature of all of the language rights given explicit recognition in the Constitution of Canada is that they pertain to governmental institutions and for the most part they oblige the government to provide for, or at least tolerate, the use of both official languages. In this sense they are more akin to rights, properly understood, than freedoms. They grant entitlement to a specific benefit from the government or in relation to one's dealing with the government. Correspondingly, the government is obliged to provide certain services or benefits in both languages or at least permit use of either language by persons conducting certain affairs with the government. They do not ensure, as does a guaranteed freedom, that within a given broad range of private conduct, an individual will be free to choose his or her own course of activity. The language rights in the Constitution impose obligations on government and governmental institutions that are in the words of Beetz J. in MacDonald, a "precise scheme", providing specific opportunities to use English or French, or to receive services in English or French, in concrete, readily ascertainable and limited circumstances ***(p. 750-751)****. The section 1 and s. 9.1 materials establish that the aim of the language policy underlying the Charter of the French Language was a serious and legitimate one. They indicate the concern about the survival of the French language and the perceived need for an adequate legislative response to the problem. Moreover, they indicate a rational connection between protecting the French language and assuring that the reality of Quebec society is communicated through the "visage linguistique". The section 1 and s. 9.1 materials do not, however, demonstrate that the requirement of the use of French only is either necessary for the achievement of the legislative objective or proportionate to it* ***(pp. 778-779)****. Thus, whereas requiring the predominant display of the French language, even its marked predominance, would be proportional to the goal of promoting and maintaining a French "visage linguistique" in Quebec and therefore justified under the Quebec Charter and the Canadian Charter, requiring the exclusive use of French has not been so justified. French could be required in addition to any other language or it could be required to have greater visibility than that accorded to other languages* ***(p. 780)****.* ***Ford* v. *Quebec (Attorney General)***, [1988] 2 S.C.R. 712.

It appears to have been accepted by all the members of the Court of Appeal, whether expressly or impliedly, that provincial legislative jurisdiction with respect to language is not an independent one but is rather "ancillary" to the exercise of jurisdiction with respect to some class of subject matter assigned to the province by s. 92 of the Constitution Act, 1867. That conclusion was based primarily on what was said by this Court in Jones v. Attorney General of New Brunswick, [1975] 2 S.C.R. 182, and on the opinion of Professor Hogg in Constitutional Law of Canada (2nd ed. 1985), at pp. 804-806, which in turn is

based on what was said in Jones. Since this Court agrees with that conclusion, substantially for the reasons given in the Court of Appeal in the judgments of Monet, Chouinard and Paré JJ.A., it would not serve a useful purpose to reproduce here the references to the authorities in support of that conclusion which are fully set out in their opinions, including a long extract from the opinion of Professor Hogg. We adopt the following passages of the opinion of Professor Hogg as a statement of the law on this question, i.e., that: **(NP)** *...language is not an independent matter of legislation (or constitutional value); that there is therefore no single plenary power to enact laws in relation to language; and that the power to enact a law affecting language is divided between the two levels of government by reference to criteria other than the impact of law upon language. On this basis, a law prescribing that a particular language or languages must or may be used in certain situations will be classified for constitutional purposes not as a law in relation to language, but as a law in relation to the institutions or activities that the provision covers.* **(NP)** *...for constitutional purposes language is ancillary to the purpose for which it is used, and a language law is for constitutional purposes a law in relation to the institutions or activities to which the law applies.* **(NP)** *In order to be valid, provincial legislation with respect to language must be truly in relation to an institution or activity that is otherwise within provincial legislative jurisdiction* ***(p. 807-808)***. ***Devine* v. *Quebec (A.G.)***, [1988] 2 S.C.R. 790.

See also:

Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 1, 2b) and 15;

Quebec, *Charter of Human Rights and Freedoms*, s. 3, 9.1 and 10.

Signs and posters.

However, the Government may determine, by regulation, the places, cases, conditions or circumstances where public signs and posters and commercial advertising must be in **French** only, where **French** need not be predominant or where such signs, posters and advertising may be in another **language** only. 1977, c. 5, s. 58; 1983, c. 56, s. 12; 1988, c. 54, s. 1; 1993, c. 40, s. 18.

Exceptions.

59. Section 58 does not apply to advertising carried in news media that publish in a **language** other than **French**, or to messages of a religious, political, ideological or humanitarian nature if not for a profit motive. 1977, c. 5, s. 59; 1988, c. 54, s. 2; 1993, c. 40, s. 19.

Firm names.

63. Firms names must be in **French**. 1977, c. 5, s. 63.

Juridical personality.

64. To obtain juridical personality, it is necessary to have a firm name in **French**. 1977, c. 5, s. 64.

Delay to comply.

65. Every firm name that is not in **French** must be changed before 31 December 1980, unless the act under which the firm is incorporated does not allow it. 1977, c. 5, s. 65.

Applicable provisions.

66. Sections 63, 64 and 65 also apply to firm names entered by way of declaration in the register instituted in accordance with the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (chapter P-45). 1977, c. 5, s. 66; 1993, c. 48, s. 197.

Family names in firm names.

67. Family names, place names, expressions formed by the artificial combination of letters, syllables or figures, and expressions taken from other **languages** may appear in firm names to specify them, in accordance with the other Acts and with the regulations of the Government. 1977, c. 5, s. 67; 1993, c. 40, s. 21.

Firm name.

68. A firm name may be accompanied with a version in a **language** other than **French** provided that, when it is used, the **French** version of the firm name appears at least as prominently.

Version.

However, in public signs and posters and commercial advertising, the use of a version of a firm name in a **language** other than **French** is permitted to the extent that the other **language** may be used in such signs and posters or in such advertising pursuant to section 58 and the regulations enacted under that section.

Firm name.

In addition, in texts or documents drafted only in a **language** other than **French**, a firm name may appear in the other **language** only. 1977, c. 5, s. 68; 1983, c. 56, s. 14; 1988, c. 54, s. 6; 1993, c. 40, s. 22.

Health services and social services.

70. Health services and social services the firm names of which, adopted before 26 August 1977, are in a **language** other than **French** may continue to use such names provided they add a **French** version. 1977, c. 5, s. 70.

Non-profit organizations.

71. A non-profit organization devoted exclusively to the cultural development or to the defense of the peculiar interests of a particular **ethnic** group may adopt a firm name in the **language** of the group, provided that it adds a **French** version. 1977, c. 5, s. 71.

CHAPTER VIII

THE LANGUAGE OF INSTRUCTION

Language of instruction.

72. Instruction in the kindergarten classes and in the elementary and secondary schools shall be in **French**, except where this chapter allows otherwise.

See: Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

Scope.

This rule obtains in school bodies within the meaning of the Schedule and in private educational institutions accredited for purposes of subsidies under the Act respecting private education (chapter E-9.1) with respect to the educational services covered by an accreditation.

Instruction in English.

Nothing in this section shall preclude instruction in **English** to foster the learning thereof, in accordance with the formalities and on the conditions prescribed in the basic school regulations established by the Government under section 447 of the Education Act (chapter I-13.3). 1977, c. 5, s. 72; 1992, c. 68, s. 138; 1993, c. 40, s. 23.

Instruction in English.

73. The following children, at the request of one of their parents, may receive instruction in **English**:

(1) a child whose father or mother is a Canadian citizen and received elementary instruction in **English** in Canada, provided that that instruction constitutes the major part of the elementary instruction he or she received in Canada;

(2) a child whose father or mother is a Canadian citizen and who has received or is receiving elementary or secondary instruction in **English** in Canada, and the brothers and sisters of that child, provided that that instruction constitutes the major part of the elementary or secondary instruction received by the child in Canada;

(3) a child whose father and mother are not Canadian citizens, but whose father or mother received elementary instruction in **English** in Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received in Québec;

(4) a child who, in his last year in school in Québec before 26 August 1977, was receiving instruction in **English** in a public kindergarten class or in an elementary or secondary school, and the brothers and sisters of that child;

(5) a child whose father or mother was residing in Québec on 26 August 1977 and had received elementary instruction in **English** outside Québec, provided that that instruction constitutes the major part of the elementary instruction he or she received outside Québec. 1977, c. 5, s. 73; 1983, c. 56, s. 15; 1993, c. 40, s. 24.

See: Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

Parental authority.

74. The parent who may make the requests provided for in this chapter must be the holder of parental authority. However, the person who has de facto custody of the child and who is not the holder of parental authority may also make such a request provided the holder of parental authority does not object. 1977, c. 5, s. 74; 1993, c. 40, s. 25.

Verification of eligibility.

75. The Minister of Education may empower such persons as he may designate to verify and decide on children's eligibility for instruction in **English** under any of sections 73, 81, 85 and 86.1. 1977, c. 5, s. 75; 1993, c. 40, s. 26.

Verification of eligibility.

76. The persons designated by the Minister of Education under section 75 may verify the eligibility of children to receive their instruction in **English** even if they are already receiving or are about to receive their instruction in **French**.

Eligibility.

Such persons may also declare a child eligible to receive instruction in **English** where his father or mother attended school after 26 August 1977 and would have been eligible to receive such instruction under any of paragraphs 1 to 5 of section 73, even if he or she did not receive such instruction. However, where the father or mother attended school before 17 April 1982, his or her eligibility shall be determined in accordance with section 73 as it read before that date, by adding, at the end of paragraphs a and b of that section, the words «provided that that instruction constitutes the major part of the elementary instruction he or she received in Québec». 1977, c. 5, s. 76; 1993, c. 40, s. 27.

Presumption.

76.1 The persons declared eligible to receive instruction in **English** under any of sections 73, 76, 81, 85.1 and 86.1 are deemed to have received or be receiving instruction in **English** for the purposes of section 73. 1993, c. 40, s. 28.

Fraud.

77. A certificate of eligibility obtained fraudulently or on the basis of a false representation is void. 1977, c. 5, s. 77.

Revocation of certificate.

78. The Minister of Education may revoke a certificate of eligibility issued in error. 1977, c. 5, s. 78.

Prohibition.

78.1 No person may permit or tolerate a child's receiving instruction in **English** if he is ineligible therefor. 1986, c. 46, s. 7.

Authorization to introduce instruction in English.

79. A school body not already giving instruction in **English** in its schools is not required to introduce it and shall not introduce it without express and prior authorization of the Minister of Education.

Instruction in English.

However, every school body shall, where necessary, avail itself of section 213 of the Education Act (chapter I-13.3) to arrange for the instruction in **English** of any child declared eligible therefor.

Authorization at Minister's discretion.

The Minister of Education shall grant the authorization referred to in the first paragraph if, in his opinion, it is warranted by the number of pupils in the jurisdiction of the school body who are eligible for instruction in **English** under this chapter. 1977, c. 5, s. 79; 1988, c. 84, s. 547; 1993, c. 40, s. 29.

Procedure and proof.

80. The Government may, by regulation, prescribe the procedure to be followed where parents invoke section 73 or section 86.1, and the elements of proof they must furnish in support of their request. 1977, c. 5, s. 80, s. 14; 1993, c. 40, s. 30.

Instruction in English.

81. Children having serious learning disabilities may, at the request of one of their parents, receive instruction in **English**. The brothers and sisters of children thus exempted from the application of the first paragraph of section 72 may also be exempted.

Regulation: exemption.

The Government, by regulation, may define the classes of children envisaged in the preceding paragraph and determine the procedure to be followed in view of obtaining such an exemption. 1977, c. 5, s. 81, s. 14; 1983, c. 56, s. 16; 1993, c. 40, s. 31.

Appeal.

82. An appeal lies from every decision rendered by the persons designated by the Minister of Education under section 75.

Time limit.

An appeal is brought within 60 days after communication of a decision. 1977, c. 5, s. 82; 1983, c. 56, s. 17; 1992, c. 68, s. 157; 1993, c. 40, s. 32.

Appeals committee.

83. An appeals committee is established to hear appeals provided for in section 82. This committee consists of three members appointed by the Government after consultation with the most representative associations or organizations of parents, teachers, school boards, school administrators and socio-economic groups. The decisions of this committee are final.

The Government shall appoint a substitute member to act whenever a member is absent or unable to act. 1977, c. 5, s. 83; 1983, c. 56, s. 18; 1997, c. 24, s. 7.

Powers of the committee.

83.1. The committee has all the necessary powers for the exercise of its jurisdiction; it may make such orders as it sees fit to safeguard the rights of the parties and rule on any question of fact or of law. 1983, c. 56, s. 18.

Procedure.

83.2. Appeals are brought and heard according to the procedure and rules of proof prescribed by regulation of the Government. 1983, c. 56, s. 18.

Immunities.

83.3. For the exercise of their functions under this Act, the members of the committee are vested with the immunities provided in sections 16 and 17 of the Act respecting public inquiry commissions (chapter C-37). 1983, c. 56, s. 18.

Secondary school leaving certificate.

84. No secondary school leaving certificate may be issued to a student who does not have the **speaking** and writing knowledge of **French** required by the curricula of the Ministère de l'Éducation. 1977, c. 5, s. 84.

Temporary residents.

85. Children staying in Québec temporarily may, at the request of one of their parents, be exempted from the application of the first paragraph of section 72 and receive instruction in **English** in the cases or circumstances and on the conditions determined by regulation of the Government. The regulation shall also prescribe the period for which such an exemption may be granted and the procedure to be followed in order to obtain or renew it. 1977, c. 5, s. 85; 1983, c. 56, s. 19; 1993, c. 40, s. 33.

File transmitted to the Minister.

85.1 Where the appeals committee cannot allow an appeal pertaining to an application relating to the eligibility of a child for instruction in **English** but deems that proof of the existence of a serious situation has been made on family or humanitarian grounds, it shall make a report to the Minister of Education and transmit the child's file to him.

Certification.

The Minister may certify eligible for instruction in **English** a child whose file is transmitted to him by the appeals committee under the first paragraph.

Report.

The Minister of Education shall indicate, in the report referred to in section 4 of the Act respecting the Ministère de l'Éducation (chapter M-15), the number of children certified eligible

for instruction in **English** under the second paragraph and the grounds on which he certified them eligible. 1986, c. 46, s. 8.

Reciprocity agreement.

86. The Government may make regulations extending the scope of section 73 to include such persons as may be contemplated in any reciprocity agreement that may be concluded between the Gouvernement du Québec and another province. 1977, c. 5, s. 86; 1993, c. 40, s. 34.

Instruction in English.

86.1. In addition to the cases provided for in section 73, the Government, by order, may, at the request of one of the parents, authorize generally the following children to receive their instruction in **English**:

(a) a child whose father or mother received the greater part of his or her elementary instruction in **English** elsewhere in Canada and, before establishing domicile in Québec, was domiciled in a province or territory that it indicates in the order and where it considers that the services of instruction in **French** offered to **French-speaking** persons are comparable to those offered in **English** to **English-speaking** persons in Québec;

(b) a child whose father or mother establishes domicile in Québec and who, during his last school year or from the beginning of the current school year, has received primary or secondary instruction in **English** in the province or territory indicated in the order;

(c) the younger brothers and sisters of children described in subparagraphs a and b.

Applicability.

Sections 76 to 79 apply to the persons contemplated in this section. 1983, c. 56, s. 20; 1993, c. 40, s. 35.

Amerindic languages and Inuktitut.

87. Nothing in this Act prevents the use of an Amerindic **language** in providing instruction to the Amerinds, or of Inuktitut in providing instruction to the Inuit. 1977, c. 5, s. 87; 1983, c. 56, s. 21.

Languages of instruction.

88. Notwithstanding sections 72 to 86, in the schools under the jurisdiction of the Cree School Board or the Kativik School Board, according to the Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14), the **languages** of instruction shall be Cree and Inuktitut, respectively, and the other **languages** of instruction in use in the Cree and Inuit communities in Québec on the date of the signing of the Agreement indicated in section 1 of the

Act approving the Agreement concerning James Bay and Northern Québec (chapter C-67), namely, 11 November 1975.

Cree School Board and the Kativik School Board.

The Cree School Board and the Kativik School Board shall pursue as an objective the use of **French** as a **language** of instruction so that pupils graduating from their schools will in future be capable of continuing their studies in a **French** school, college or university elsewhere in Québec, if they so desire.

Rate of introduction of French and English.

After consultation with the school committees, in the case of the Crees, and with the parents' committees, in the case of the Inuit, the commissioners shall determine the rate of introduction of **French** and **English** as **languages** of instruction.

Non-qualifying Crees or Inuit.

With the assistance of the Ministère de l'Éducation, the Cree School Board and the Kativik School Board shall take the necessary measures to have sections 72 to 86 apply to children whose parents are not Crees or Inuit. For the purposes of the second paragraph of section 79, a reference to the Education Act is a reference to section 450 of the Education Act for Cree, Inuit and Naskapi Native Persons.

Naskapi of Schefferville.

This section, with the necessary changes, applies to the Naskapi of Schefferville. 1977, c. 5, s. 88; 1983, c. 56, s. 22, s. 51; 1988, c. 84, s. 548.

CHAPTER IX

MISCELLANEOUS

French use exclusive only if specified.

89. Where this Act does not require the use of the **official language** exclusively, the **official language** and another **language** may be used together. 1977, c. 5, s. 89.

Statutory publication may be in French only.

90. Subject to section 7, anything that, by prescription of an Act of Québec or an Act of the British Parliament having application to Québec in a field of provincial jurisdiction, or of a

regulation or an order, must be published in **French** and **English** may be published in **French** alone.

Publication in French newspaper.

Similarly, anything that, by prescription of an Act, a regulation or an order, must be published in a **French** newspaper and in an **English** newspaper, may be published in a **French** newspaper alone. 1977, c. 5, s. 90; 1993, c. 40, s. 36.

Prominence of French version.

91. Where this act authorizes the drafting of texts or documents both in **French** and in one or more other **languages**, the **French** version must be displayed at least as prominently as every other **language**. 1977, c. 5, s. 91.

International organizations.

92. Nothing prevents the use of a **language** in derogation of this act by international organizations designated by the Government or where international usage requires it. 1977, c. 5, s. 92.

Regulations.

93. In addition to its other regulation-making powers under this Act, the Government may make regulations to facilitate the administration of the Act, including regulations defining the terms and expressions used in the Act or defining their scope. 1977, c. 5, s. 93; 1993, c. 40, s. 37.

Right to use Cree and Inuktitut.

95. The following persons and bodies have the right to use Cree and Inuktitut and are exempt from the application of this act, except sections 87, 88 and 96:

(a) persons qualified for benefit under the Agreement indicated in section 1 of the Act approving the Agreement concerning James Bay and Northern Québec (chapter C-67), in the territories envisaged by the said Agreement;

(b) bodies to be created under the said Agreement, within the territories envisaged by the Agreement;

(c) bodies of which the members are in the majority persons referred to in subparagraph a, within the territories envisaged by the Agreement.

Naskapi of Schefferville.

This section, with the necessary changes, applies to the Naskapi of Schefferville. 1977, c. 5, s. 95; 1983, c. 56, s. 51.

Introduction of French.

96. The bodies envisaged in section 95 must introduce the use of **French** into their administration, both to communicate in **French** with the rest of Québec and with those persons under their administration who are not contemplated in subparagraph a of that section, and to provide their services in **French** to those persons.

Transitional period.

During a transitional period of such duration as the Government may fix after consultation with the persons concerned, sections 16 and 17 of this act do not apply to communications of the civil administration with the bodies envisaged in section 95.

Naskapi of Schefferville.

This section, with the necessary changes, applies to the Naskapi of Schefferville. 1977, c. 5, s. 96.

Indian reserves.

97. The Indian reserves are not subject to this Act.

Exception.

The Government, by regulation, shall determine the cases, conditions and circumstances where or whereunder an agency or body contemplated in the Schedule is authorized to make an exception to the application of one or several provisions of this Act in respect of a person who resides or has resided on a reserve, a settlement in which a native community lives or on Category I and Category I-N lands within the meaning of the Act respecting the land regime in the James Bay and New Québec territories (chapter R-13.1). 1977, c. 5, s. 97; 1983, c. 56, s. 23; 1993, c. 40, s. 39.

Agencies contemplated.

98. The various agencies of the civil administration, and the health services and social services, the public utility firms and the professional corporations referred to in this act are listed in the Schedule. 1977, c. 5, s. 98.

TITLE II

THE OFFICE DE LA LANGUE FRANÇAISE AND FRANCIZATION

CHAPTER I

INTERPRETATION

Interpretation:

99. In this title,

«Commission»;

(a) «Commission» means the Commission de toponymie established by this title;

«Minister»;

(b) «Minister» means the Minister responsible for the application of this Act;

«Office».

(c) «Office» means the Office de la langue française established by this title. 1977, c. 5, s. 99.

CHAPTER II

THE OFFICE DE LA LANGUE FRANÇAISE

Office established.

100. An Office de la langue française is established to define and conduct Québec policy on **linguistics** research and terminology and to see that the **French language** becomes, as soon as possible, the **language** of communication, work, commerce and business in the civil administration and business firms. 1977, c. 5, s. 100; 1993, c. 40, s. 40; 1997, c. 24, s. 8.

Members and terms.

101. The Office is composed of seven members, including a president, appointed by the Government for not more than five years.

The president shall exercise his functions on a full-time basis 1977, c. 5, s. 101; 1997, c. 24, s. 9.

Staff.

102. The staff of the Office shall be appointed and remunerated under the Public Service Act (chapter F-3.1.1). 1977, c. 5, s. 102; 1978, c. 15, s. 140; 1983, c. 55, s. 161.

President's powers.

103. The president shall exercise in regard to the members of the staff of the Office the powers vested by the Public Service Act (chapter F-3.1.1) in the chief executive officer of an agency. 1977, c. 5, s. 103; 1978, c. 15, s. 133, s. 140; 1983, c. 55, s. 161.

Emoluments.

104. The Government shall fix the fees, allowances or salary of the president and of the other members of the Office or, as the case may be, their additional salary. 1977, c. 5, s. 104.

Replacement of president.

106. If the president is unable to act, he shall be replaced by another member appointed by the Government. 1977, c. 5, s. 106.

106.1 The president of the Office may not, on pain of forfeiture of office, have a direct or indirect interest in an enterprise that forfeiture is not incurred if the interest devolves to him by succession or gift, provided it is renounced or disposed of with diligence. 1997, c. 24, s. 11.

Personal interest.

107. No member of the Office shall participate in the discussion of a question in which he has a personal interest.

At discretion of Office.

The Office shall decide if he has a personal interest. The member concerned shall not participate in that decision. 1977, c. 5, s. 107.

Quorum.

108. Three members shall constitute a quorum of the Office. In case of a tie-vote, the president shall have a casting vote. 1977, c. 5, s. 108.

Term continued.

109. At the expiry of their term, the president and the other members of the Office shall remain in office until they are reappointed or replaced. 1977, c. 5, s. 109.

Head office.

110. The seat of the Office shall be in the territory of Ville de Québec or in that of Ville de Montréal, as the Government may decide.

Other office.

The Office shall have an office in the territory of both cities.

Place of sittings.

The Office may hold its sittings at any place in Québec. 1977, c. 5, s. 110, s. 14; 1996, c. 2, s. 113.

Minutes authentic.

111. The minutes of the sittings approved by the Office and certified true by the president or the secretary are authentic. The same applies to documents or copies emanating from the Office or forming part of its records when they are signed by the president or the secretary of the Office. 1977, c. 5, s. 111.

Immunity.

112. The members and staff of the Office cannot be prosecuted by reason of official acts done in good faith by them in the performance of their duties. 1977, c. 5, s. 112; 1993, c. 40, s. 41; 1997, c. 24, s. 12.

Duties of the Office.

113. The Office shall

(a) standardize and publicize the terms and expressions approved by it;

(b) establish the research programmes necessary for the application of this Act;

(e) assist in defining and preparing the francization programmes provided for by this Act and oversee the application thereof; 1977, c. 5, s. 113; 1993, c. 40, s. 42.

Powers.

114. The Office may

(a) give its opinion to the Minister on draft regulations of the Government;

(b) establish **linguistic** committees and determine their composition and their terms and conditions of operation and, as may be required, delegate such committees to the departments and agencies of the civil administration;

(c) adopt internal management by-laws subject to approval by the Government;

(d) establish by by-law subject to approval by the Government the services and committees necessary for the attainment of its purposes;

(e) make agreements, according to law, with any other agency or any government to facilitate the administration of this Act;

(f) require every teaching institution at the college or university level to file a report on the **language** used in its manuals and state its observations in that respect in its annual report;

(g) assist the agencies of the civil administration, the semi-public agencies, business firms, the different associations, and individuals, in refining and enriching spoken and written **French** in Québec;

(h) make recommandations concerning the terms and expressions it recommends, and publish its recommendations in the *Gazette officielle du Québec*. 1977, c. 5, s. 114; 1985, c. 30, s. 24; 1992, c. 68, s. 157; 1993, c. 40, s. 43; 1997, c. 24, s. 13.

Co-operation by departments.

115. The Government may, by regulation, prescribe the measures of co-operation with the Office that must be taken by the departments and other agencies of the civil administration. 1977, c. 5, s. 115.

Mandate of terminology committees.

116. The departments and agencies of the civil administration may establish linguistic and operation.

The mission of a linguistic committee established by the office or by departments or agencies shall be to

(a) assist departments and agencies in improving the quality of the **French language**;

(b) identify terminological deficiencies and problematical terms and expressions in its designated field, and indicate the terms and expressions it recommends. Such terms and expressions shall be submitted to the Office for standardization or recommendation. 1977, c. 5, s. 116; 1997, c. 24.

Standardized terms and expressions.

118. Upon publication in the Gazette officielle du Québec of the terms and expressions standardized by the Office, their use becomes obligatory in texts, documents, signs and posters emanating from the civil administration and in contracts to which it is a party, and in teaching manuals and educational and research works published in **French** in Québec and approved by the Minister of Education. 1977, c. 5, s. 118; 1983, c. 56, s. 24; 1985, c. 21, s. 20; 1988, c. 41, s. 88; 1993, c. 51, s. 18; 1994, c. 16, s. 50.

Annual report.

119. Not later than 31 October every year, the Office must submit a report of its activities for the preceding fiscal year to the Minister. 1977, c. 5, s. 119.

Tabling.

120. The Minister shall table such report in the National Assembly within thirty days following its receipt. If he receives it while the National Assembly is not sitting, he shall table it within thirty days after the opening of the next session or after resumption. 1977, c. 5, s. 120.

Immunity.

121. No civil action may be brought by reason of the publication in good faith of the whole or a part of the reports of the Office, or of resumés of such reports. 1977, c. 5, s. 121.

CHAPTER III

THE COMMISSION DE TOPONYMIE

Commission established.

122. A Commission de toponymie is established at the Office de la langue française and is incorporated into it for administrative purposes. 1977, c. 5, s. 122.

Composition.

123. The Commission is composed of seven members, including the chairman, appointed by the Government for not more than five years.

Remuneration.

The Government shall fix the remuneration and determine the fringe benefits and other conditions of employment of the members of the Commission. 1977, c. 5, s. 123; 1983, c. 56, s. 25; 1993, c. 40, s. 45.

Continuance in office.

123.1. The members of the Commission remain in office notwithstanding the expiry of their term until they are reappointed or replaced. 1983, c. 56, s. 25.

Competence.

124. The Commission has competence to propose to the Government the criteria of selection and rules of spelling of all place names and to make the final decision on the assignment of names to places not already named and to approve any change of place names.

Regulations.

The Government may establish, by regulation, the criteria for the choice of place names, the rules of spelling to be followed in matters relating to toponymy and the method to be followed in choosing and obtaining approval for place names. 1977, c. 5, s. 124; 1993, c. 40, s. 46.

Duties.

125. The Commission shall:

(a) propose to the Government the standards and rules of spelling to be followed in place names;

(b) catalogue and preserve place names;

(c) establish and standardize geographical terminology, in cooperation with the Office;

(d) officialize place names;

(e) publicize the official geographical nomenclature of Québec;

(f) advise the Government on any question submitted by it to the Commission relating to toponymy. 1977, c. 5, s. 125; 1993, c. 40, s. 47.

Powers.

126. The Commission may:

(a) advise the Government and other agencies of the civil administration on any question relating to toponymy; . . .

(c) in unorganized territories, name geographical places or change their names;

(d) with the consent of the agency of the civil administration having concurrent jurisdiction over the place name, determine or change the name of any place in a local municipal territory. 1977, c. 5, s. 126; 1993, c. 40, s. 48; 1996, c. 2, s. 114.

Publication.

127. The names approved by the Commission during the year must be published at least once a year in the Gazette officielle du Québec. 1977, c. 5, s. 127.

Use of names obligatory.

128. Upon the publication in the Gazette officielle du Québec of the names chosen or approved by the Commission, the use of such names becomes obligatory in texts and documents of the civil administration and the semipublic agencies, in traffic signs, in public signs and posters and in teaching manuals and educational and research works published in Québec and approved by

the Minister of Education. 1977, c. 5, s. 128; 1985, c. 21, s. 21; 1988, c. 41, s. 88; 1993, c. 51, s. 19; 1994, c. 16, s. 50.

CHAPTER IV

FRANCIZATION OF THE CIVIL ADMINISTRATION

Francization programme.

129. Every agency of the civil adminitration requiring a delay to comply with certain provisions of this act or to ensure the generalized use of **French** in its domain must as soon as possible adopt a francization programme under the authority and with the assistance of the Office. 1977, c. 5, s. 129.

Near retirement, long service.

130. The francization programmes must take into account the situation of persons nearing retirement or having a long record of service with the civil administration. 1977, c. 5, s. 130.

Report.

131. Every agency of the civil administration must, not later than 180 days after the beginning of its activities, submit to the Office a report including an analysis of the **language** situation in that agency and an account of the measures it has adopted and those it intends to adopt in view of complying with this Act.

Form and content.

The Office shall determine the form of such report and the information it must furnish. 1977, c. 5, s. 131; 1983, c. 56, s. 26.

Hearing.

132. If the Office considers the adopted or envisaged measures insufficient, it shall hear the persons concerned and have the documents and information it considers essential forwarded to it.

Correctives.

It shall prescribe appropriate correctives, if needed.

Offence.

Any agency refusing to implement such correctives is guilty of an offence. 1977, c. 5, s. 132.

Exemption.

133. For a period of not more than one year, the Office may exempt from the application of any provision of this act any service or agency of the civil administration that requests it, if it is satisfied with the measures taken by that service or agency towards the objectives set by this act and the regulations. 1977, c. 5, s. 133.

CHAPTER V

FRANCIZATION OF BUSINESS FIRMS

Applicability.

135. This chapter applies to all firms, including public utility firms. 1977, c. 5, s. 135; 1993, c. 40, s. 49.

Francization committee.

136. Firms employing one hundred or more persons must form a francization committee composed of six or more persons.

Francization committee.

The francization committee shall analyse the **language** situation in the firm and make a report to the management of the firm for transmission to the Office. Where necessary, the committee shall devise a francization programme for the firm and supervise its implementation. Where a francization certificate is issued to the firm, the committee shall ensure that the use of **French** remains generalized at all levels of the firm according to the terms of section 141.

Subcommittees.

The francization committee may establish subcommittees to assist it in the carrying out of its tasks.

Meetings.

The francization committee shall meet not less than once every six months. 1977, c. 5, s. 136; 1983, c. 56, s. 28; 1993, c. 40, s. 49.

Members.

137, At least one-third of the members of the francization committee and of every subcommittee shall be representatives of the workers of the firm.

Representatives.

Such representatives shall be designated by the association of employees representing the majority of the workers or, where several associations of employees together represent the majority of the workers, such associations shall designate the representatives by agreement. In the absence of an agreement, or in all other cases, such representatives shall be elected by the whole body of the workers of the firm in the manner and on the conditions determined by the management of the firm.

Representatives.

The workers' representatives are designated for a period of not more than two years. However, their term as representatives may be renewed. 1977, c. 5, s. 137; 1983, c. 56, s. 29; 1993, c. 40, s. 49.

List of members.

138. The firm shall provide the Office with a list of the members of the francization committee and every subcommittee, and any changes to such list. 1977, c. 5, s. 138; 1993, c. 40, s. 49.

50 persons or more.

139. A firm which employs fifty persons or more for a period of six months must register with the Office within six months of the end of that period. For that purpose, the firm shall inform the Office of the number of persons it employs and provide it with general information on its legal status and its functional structure and on the nature of its activities.

Certificate of registration.

The Office shall issue a certificate of registration to the firm.

Analysis.

Within twelve months of the date on which the certificate of registration is issued, the firm shall transmit an analysis of its **linguistic** situation to the Office. 1977, c. 5, s. 139; 1983, c. 56, s. 31; 1993, c. 40, s. 49.

Francization certificate.

140. If the Office considers, after examining the analysis of the firm's **linguistic** situation, that the use of **French** is generalized at all levels of the firm according to the terms of section 141, it shall issue a francization certificate.

Francization programme.

If, however, the Office considers that the use of **French** is not generalized at all levels of the firm, it shall notify the firm that it must adopt a francization programme. The programme shall be

submitted to the Office for approval within twelve months of the date on which the notice is received. 1977, c. 5, s. 140; 1983, c. 56, s. 32; 1993, c. 40, s. 49.

Francization programme.

141. The francization programme is intended to generalize the use of **French** at all levels of the firm through

(1) the knowledge of the **official language** on the part of management, the members of the professional corporations and the other members of the personnel;

(2) an increase, where necessary, at all levels of the firm, including the board of directors, in the number of persons having a good knowledge of the **French language** so as to generalize its use;

(3) the use of **French** as the **language** of work and as the **language** of internal communication;

(4) the use of **French** in the working documents of the firm, especially in manuals and catalogues;

(5) the use of **French** in communications with the civil administration, clients, suppliers, the public and shareholders except, in the latter case, if the firm is a closed company within the meaning of the Securities Act (chapter V-1.1);

(6) the use of **French** terminology;

(7) the use of **French** in public signs and posters and commercial advertising;

(8) appropriate policies for hiring, promotion and transfer;

(9) the use of **French** in information technologies. 1977, c. 5, s. 141; 1993, c. 40, s. 49.

Francization programme.

142. A francization programme must take account of

(1) the situation of persons who are near retirement or of persons who have long records of service with the firm;

(2) the relations of the firm with the exterior;

(3) the particular case of head offices and research centres established in Québec by firms whose activities extend outside Québec;

(4) in firms producing cultural goods having a **language** content, the particular situation of production units whose work is directly related to such **language** content. 1977, c. 5, s. 142; 1993, c. 40, s. 49.

Attestation of implementation.

143. After having approved the francization programme of a firm, the Office shall issue an attestation of implementation in respect of the programme.

Compliance.

The firm must comply with the elements and stages of its programme and keep its personnel informed of the implementation thereof.

Reports.

In addition, the firm must submit reports on the implementation of its programme to the Office, every twenty-four months in the case of a firm employing fewer than one hundred persons and every twelve months in the case of a firm employing one hundred or more persons. 1977, c. 5, s. 143; 1983, c. 56, s. 33; 1993, c. 40, s. 49.

Special agreements.

144. The implementation of francization programmes in head offices and in research centres may be the subject of special agreements with the Office to allow the use of a **language** other than **French** as the **language** of operation.

Regulations.

The Government shall determine, by regulation, in what cases, on what conditions and according to what terms a head office or research centre may be a party to such an agreement. The regulation may prescribe matters which must be dealt with under certain provisions of such an agreement.

Presumption.

While such an agreement remains in force, the head office or research centre is deemed to be complying with the provisions of this chapter. 1977, c. 5, s. 144; 1983, c. 56, s. 34; 1993, c. 40, s. 49.

Francization certificate.

145. Where a firm has completed the implementation of its francization programme and the Office considers that the use of **French** is generalized at all levels of the firm according to the terms of section 141, the Office shall issue a francization certificate. 1977, c. 5, s. 145; 1993, c. 40, s. 49.

Requirement.

146. Every firm holding a francization certificate issued by the Office is required to ensure that the use of **French** remains generalized at all levels according to the terms of section 141.

Report.

The firm shall submit to the Office, every three years, a report on the progression of the use of **French** in the firm. 1977, c. 5, s. 146; 1983, c. 56, s. 35; 1993, c. 40, s. 49.

Non-compliance.

147. The Office may refuse, suspend or cancel the attestation of implementation of a francization programme or the francization certificate of a firm which is not or is no longer complying with its obligations under this Act or the regulations thereunder.

Decision.

Before making a decision, the Office may hear the views of any interested person on the situation of the firm concerned. 1977, c. 5, s. 147; 1983, c. 56, s. 36; 1993, c. 40, s. 49.

Attestation.

148. The Government shall determine, by regulation, the procedure relating to the issue, suspension or cancellation of an attestation of implementation of a francization programme or a francization certificate. Such procedure may vary according to the classes of firms established by the Government.

Regulations.

The Government shall also determine, by regulation, the procedure by which an interested person makes his views known under the second paragraph of section 147. 1977, c. 5, s. 148; 1983, c. 56, s. 37; 1993, c. 40, s. 49.

Under fifty employees.

151. The Office may, with the approval of the Minister, and on condition of a notice in the Gazette officielle du Québec, require a business firm employing less than fifty persons to analyse its **language** situation and to prepare and implement a francization programme.

Special agreement.

Where such a firm requires a period of time to comply with certain provisions of this Act or of a regulation thereunder, it may request the assistance of the Office and enter into a special agreement with the latter. Within the scope of such an agreement, the Office may, for the period it determines, exempt the firm from the application of any provision of this Act or of a regulation thereunder.

Report.

The Office shall, every year, make a report to the Minister of the measures taken by the firms and the exemptions granted. 1977, c. 5, s. 151; 1993, c. 40, s. 50.

151.1 Every business firm that fails to comply with the obligations imposed by section 136 to 146 and 151 with regard to the francization process applicable to it commits an offence and is liable to the penalties provided for in section 205. 1997, c. 24, s. 16

Exemptions.

153. The Office may, for such period as it may determine, exempt a business firm from the application of any provision of this Act or of the regulations

(a) where it issues a certificate of registration or a francization certificate, or

(b) where a francization programme approved by the Office is in the process of being implemented in the firm.

Notice.

The Office shall notify the Minister of any exemption thus granted. 1977, c. 5, s. 153; 1983, c. 56, s. 39; 1993, c. 40, s. 52.

Forms and questionnaires.

154. The general information, the analysis of the **linguistic** situation and the reports provided for in this chapter must be submitted on the forms and questionnaires furnished by the Office. 1977, c. 5, s. 154; 1983, c. 56, s. 40; 1993, c. 40, s. 53.

TITLE III

THE COMMISSION DE PROTECTION DE LA LANGUE FRANÇAISE

CHAPTER I

ESTABLISHMENT AND MISSION

157. A commission is hereby established, under the name of Commission de protection de la langue française, and is charged with ensuring compliance with this Chapter. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

CHAPTER II

ORGANIZATION

158. The Commission shall consist of three members, appointed by the Government, including a chairman who shall have the direction of the Commission. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

159. The members of the Commission shall be appointed for a term of not more than five years. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

160. Only the chairman shall exercise his functions on a full-time basis. The remuneration, employee benefits and other conditions of employment of the chairman shall be fixed by the Government.

The Government shall fix the fees and allowances of the other members of the Commission. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

161. The chairman may not, on pain of forfeiture of office, have a direct or indirect interest in an enterprise that places his personal interest and that of the Commission in conflict. However, forfeiture is not incurred if the interest devolves to him by succession or gift, provided it is renounce or disposed of with diligence.

Where a member of the Commission other than the chairman is in the situation referred to in the first paragraph, the member must, on pain of forfeiture of office, disclose his interest in writing to the chairman and refrain from taking part in any discussion or decision involving the enterprise in which the interest is held. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

162. Two members of the Commission, including the chairman, constitute a quorum. In the case of a tie-vote, the chairman has a casting vote. 1997, c. 24, s. 17.

163. If the chairman is absent or unable to act, the Government shall designate a person to replace the chairman, on the conditions it fixes. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

164. The members of the staff of the Commission shall be appointed in accordance with the Public Service Act (chapter F-3.1.1). 1993, c. 40, s. 54; 1997, c. 24, s. 17.

165. The Commission shall have its head office at the place determined by the Government. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

CHAPTER III

INSPECTIONS AND INQUIRIES

166. The Commission may, for the purposes of this Charter, make inspections and inquiries. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

167. The Commission shall act on its own initiative or following the filing of a complaint. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

168. Every complaint must be filed in writing; it must set out the grounds on which it is based and state the identity of the complainant. The Commission shall provide assistance to complainants in drawing up their complaints. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

169. The Commission shall refuse to act if the complaint is manifestly unfounded or in bad faith.

The Commission may refuse to act if an appropriate recourse is available to the complainant or if it considers that the circumstances do not justify its intervention.

Where it refuses to act, the Commission shall inform the complainant of its decision, giving the reasons on which it is based. The Commission shall inform the complainant of the recourses available, if any. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

170. The Commission shall forward records concerning a firm to which section 136, 139 or 151 applies to the Office de la langue française to enable the Office to propose corrective measures, where necessary, to be taken by the firm within the time limit fixed by the Commission after consultation with the Office.

If the corrective measures are not taken within the time fixed, the Commission shall undertake an inquiry.

The Commission may, in the same manner and for the same purposes, forward the record of a firm not referred to in the first paragraph to the Office. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

171. The Commission may designate, generally or specially, any person to make an inquiry or an inspection. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

172. The Commission has the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

Where necessary, the Commission may confer such powers and immunity on any person it designates. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

173. No proceedings may be instituted against a person making an inspection or an inquiry by reason of any act or omission done in good faith in the exercise of his functions. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

174. a person making an inspection for the purposes of this Act may, during business hours, provided it is at a reasonable time, enter any place open to the public. In the course of the

inspection, the person may, in particular, examine any product or document, make copies, and require any relevant information.

The person must, at the request of any interested person, identify himself and produce the certificate attesting his capacity. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

175. The Commission may, for the purposes of this chapter, require a person to forward any relevant document or information within the time it fixes. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

176. No person ma hinder, in any way, the actions of the Commission or of a person designated by the Commission when acting in the exercise of their functions, mislead the Commission or the person by withholding information or making false statements, or refuse to provide any information or document the Commission or the person is entitled to obtain. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

177. Where the Commission is of the opinion that this Charter or a regulation therunder has been contravened, it shall give the alleged offender formal notice to comply therewith within the time indicated. If the alleged offender fails to comply, the Commission shall refer the matter to the Attorney General so that he may, where required, institute appropriate penal proceedings.

In the case of a contravention of section 78.1 or 176, the Commission shall refer the matter directly to the Attorney General, without giving prior formal notice. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

CHAPTER IV

MISCELLANEOUS PROVISIONS

178. The Commission may, as regards certain administrative services, enter into pooling agreements with the Office. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

179. The Commission must file with the Minister, not later than 31 October every year, a report of its activities for the preceding fiscal year.

The Minister shall table the report in the National Assembly within 30 days following its receipt or, if the Assembly is not sitting, within 30 days of resumption. 1993, c. 40, s. 54; 1997, c. 24, s. 17.

TITLE- IV THE CONSEIL DE LA LANGUE FRANÇAISE

Interpretation:

185. In this title,

«Conseil»;

(a) «Conseil» means the Conseil de la langue française;

«Minister»;

(b) «Minister» designates the Minister entrusted with the application of this act;

«Office».

(c) «Office» means the Office de la langue française. 1977, c. 5, s. 185.

Conseil established.

186. A Conseil de la langue française is established to advise the Minister on Québec policy with regard to the **French language** and on any question relating to the interpretation and application of this act. 1977, c. 5, s. 186.

Composition.

187. The Conseil shall be composed of twelve members, appointed by the Government, namely:

(a) the chairman and a secretary;

(b) two persons chosen after consultation with the representative socio-cultural associations;

(c) two persons chosen after consultation with the representative union bodies;

(d) two persons chosen after consultation with the representative management groups;

(e) two persons chosen after consultation with the universities;

(f) two persons chosen after consultation with the representative associations of the **ethnic** groups. 1977, c. 5, s. 187.

Duties.

188. The Conseil shall:

(a) advise the Minister on the questions he submits to it relating to the situation of the **French language** in Québec and the interpretation or application of this Act;

(b) keep a watch on **language** developments in Québec with respect to the status and quality of the **French language** and communicate its findings and conclusions to the Minister;

(c) apprise the Minister of the questions pertaining to **language** that in its opinion require attention or action by the Government; 1977, c. s. 188; 1993, c. 40, s. 55.

Powers.

189. The Conseil may:

(0.a) advise the Minister on the draft regulations of the Government;

(a) receive and hear observations of and suggestions from individuals or groups on questions relating to the status and quality of the **French language**;

(b) undertake the study of any question pertaining to **language** and carry out or have others carry out any appropriate research;

(c) receive the observations of any agency of the civil administration or business firm on the difficulties encountered in the application of this Act and report to the Minister;

(d) inform the public on questions regarding the **French language** in Québec;

(e) adopt internal management by-laws, subject to approval by the Government. 1977, c. 5, s. 189; 1993, c. 40, s. 56.

Term of office.

190. The chairman and the secretary shall be appointed for not more than five years and the other members for four years.

Term of office.

However, three of the first members other than the chairman shall be appointed for one year, three for two years, two for three years and two for four years.

Renewal.

The term of office of the members of the Conseil may be renewed. 1977, c. 5, s. 190 ; 1997, c. 24, s. 18.

Continuation.

191. At the expiry of their term, the members of the Conseil shall remain in office until they are reappointed or replaced. 1977, c. 5, s. 191.

Replacement of member.

192. In the case where a member does not complete his term, the Government shall replace him, in the mode prescribed in section 187, for the remainder of his term. 1977, c. 5, s. 192.

Chairman's functions.

193. The chairman shall direct the activities of the Conseil and coordinate its work; he shall be responsible for liaison between the Conseil and the Minister. 1977, c. 5, s. 193.

Chairman's emoluments.

195. The Government shall fix the fees, allowances or salary of the chairman or, as the case may be, his additional salary. 1977, c. 5, s. 195.

Other members: no emoluments expenses reimburses.

196. The members of the Conseil other than the chairman and the secretary shall not be remunerated. They are entitled, however, to reimbursement of their expenses incurred in the exercise of their functions and to an attendance allowance fixed by the Government. 1977, c. 5, s. 196.

Staff.

197. The staff of the Conseil are appointed and remunerated in accordance with the Public Service Act (chapter F-3.1.1).

The chairman shall exercice in regard to the members of the staff of the Conseil the powers vested by the said act in the chief executive officer of an agency. 1977, c. 5, s. 197; 1978, c. 15, s. 133, s. 140; 1983, c. 55, s. 161.

197.1. The chairman and the secretary of the Conseil may not, on pain of forfeiture of office, have a direct or indirect interest in an enterprise that places their personal interest and that of the Conseil in conflict. However, forfeiture is not incurred if the interest devolves to them by succession or gift provided it is renounced or disposed of with diligence. 1997, c. 24, s. 20.

Chairman's powers.

The chairman shall exercise in regard to the members of the staff of the Conseil the powers vested by the said act in the chief executive officer of an agency. 1977, c. 5, s. 197; 1978, c. 15, s. 133, s. 140; 1983, c. 55, s. 161.

Special committees.

198. The Conseil may establish special committees for the study of specific questions and commission them to collect the relevant information and report their findings and recommendations to it.

Composition, allowances, fees.

Such committees may consist in whole or in part of persons who are not members of the Conseil. The attendance allowances and fees of such persons shall be determined by the

Conseil in accordance with the standards established for that purpose by the Government. 1977, c. 5, s. 198, s. 14; 1993, c. 40, s. 57.

Additional staff.

199. In addition to the staff contemplated in section 197, the Conseil may employ the persons required to carry out the duly authorized work. 1977, c. 5, s. 199; 1993, c. 40, s. 58.

Seat.

200. The seat of the Conseil shall be in the territory of the Communauté urbaine de Québec. It may hold its sittings at any place in Québec. It shall meet as often as necessary. 1977, c. 5, s. 200, s. 14; 1996, c. 2, s. 115.

Quorum.

201. Six members are a quorum of the Conseil. In the case of a tie-vote, the chairman has a casting vote. 1977, c. 5, s. 201.

Replacement of chairman.

202. If the chairman is temporarily absent or unable to act, he shall be replaced by the secretary. 1977, c. 5, s. 202.

Annual report.

203, Not later than 31 October each year, the Conseil must submit to the Minister a report of its activities for the preceding fiscal year. 1977, c. 5, s. 203.

Tabling.

204. The Minister shall table the report of the Conseil in the National Assembly if he receives it during a session. If he receives it while the National Assembly is not sitting, he shall table it within thirty days after the opening of the next session or after resumption. 1977, c. 5, s. 204.

TITLE V

PENAL PROVISIONS AND OTHER SANCTIONS.

Offences and penalties.

205. Every person who contravenes a provision of this Act or the regulations adopted by the Government thereunder commits an offence and is liable

(a) for each offence, to a fine of $250 to $700 in the case of a natural person, and of $500 to $1 400 in the case of an artificial person;

(b) for any subsequent conviction, to a fine of $500 to $1 400 in the case of a natural person, and of $1 000 to $7 000 in the case of an artificial person. 1977, c. 5, s. 205, s. 14; 1986, c. 58, s. 15; 1990, c. 4, s. 128; 1991, c. 33, s. 18; 1993, c. 40, s. 59; 1997, c. 24. s. 21.

205.1 Every person who contravenes any of the provisions of sections 51 to 54 by distributing, selling by retail sale, renting, offering for sale or rental or otherwise marketing, for consideration or free of charge, or by possessing for such purposes,

(1) a product, if the inscriptions on the product, on its container or wrapping, or on a document or object supplied with it, including the directions for use and the warranty certificates, are not in conformity with the provisions of this Charter,

(2) computer software, including game software and operating systems, or a game or toy that is not in conformity with the provisions or this Charter, or

(3) a publication that is not in conformity with the provisions of this Charter,

commits an offence and is liable to the fines provided for in section 205.

The operator of an establishment where menus or wine lists that are not in conformity with the provisions of section 51 are presented to the public also commits an offence and is liable to the fines provided for in section 205.

The burden of proof concerning the exceptions provided for in sections 52.1 and 54, pursuant to section 54.1, lies with the person who invokes the exceptions. 1997, c. 24, s. 22.

Prosecutions and recourses.

207. The Attorney General or the person authorized by him shall institute the prosecutions provided for by this Act and shall exercise the recourses necessary for its application. 1977, c. 5, s. 207; 1990, c. 4, s. 130.

Court order to remove or destroy sign, poster.

208. Any court of civil jurisdiction, on a motion by the Attorney General, may order the removal or destruction at the expense of the defendant, within eight days of the judgment, of any poster, sign, advertisement, bill-board or illuminated sign not in conformity with this act.

Person affected.

The motion may be directed against the owner of the advertising equipment or against whoever placed the poster, sign, advertisement, bill-board or illuminated sign or had it placed. 1977, c. 5, s. 208.

Disqualification.

208.1. Every person who is convicted of contravening section 78.1 is disqualified for office as a school board commissioner.

Disqualification period.

The disqualification period is five years from the date on which the judgment of guilty becomes res judicata. 1986, c. 46, s. 11; 1988, c. 84, s. 549; 1990, c. 4, s. 131.

Contravention of section 78.1.

208.2. Where a judgment of guilty become res judicata has been rendered against a person in the employ of a school body who has been convicted of contravening section 78.1, the Attorney General shall notify the school body in writing.

Suspension.

On receiving the notice, the school body shall suspend that person without pay for six months. 1986, c. 46, s. 11; 1990, c. 4, s. 132.

TITLE VI

TRANSITIONAL AND MISCELLANEOUS PROVISIONS

Coming into force, s. 11.

209. Section 11 shall come into force on 3 January 1979 and shall not affect cases pending on that date.

Coming into force, s. 13.

Section 13 shall come into force on 3 January 1980 and shall not affect cases pending on that date.

Coming into force, ss. 34, 58 and 208.

Section 34, 58 and 208 shall come into force on 3 July 1978, subject to section 211. 1977, c. 5, s. 209.

Delay to comply: signs.

210. Owners of bill-boards or illuminated signs erected before 31 July 1974 must comply with section 58 from its coming into force. 1977, c. 5, s. 210.

Delay to comply.

211. Every person who has complied with the requirements of section 35 of the **Official language** Act (1974, chapter 6) in respect of bilingual public signs shall have until 1 September 1981 to make the required changes, in particular to change his bill-boards and illuminated signs, in order to comply with this act. 1977, c. 5, s. 211.

Minister responsible.

212. The Government shall entrust a minister with the application of this Act. Such minister shall exercise in regard to the staff of the Office de la langue française that of the Commission de protection de la langue française and that of the Conseil de la langue française the powers of the incumbent minister of a department. 1977, c. 5, s. 230, s. 14; 1978, c. 15, s. 140; 1983, c. 56, s. 43; 1993, c. 40, s. 61; 1997, c. 24, s. 23.

Scope.

213. This Act applies to the Government. 1977, c. 5, s. 231, s. 14.

SCHEDULE

A. The civil administration

1. The Government and the Government departments.

2. The Government agencies:

Agencies to which the Government or a minister appoints the majority of the members, to which, by law, the officers or employees are appointed or remunerated in accordance with the Public Service Act (chapter F-3.1.1), or at least half of whose capital stock is derived from the consolidated revenue fund except, however, health services and social services, general and vocational colleges and the Université du Québec.

2.1 The Metropole Development Commission;

3. The municipal and school bodies:

(a) the urban communities:

The Communauté urbaine de Québec, the Communauté urbaine de Montréal and the Communauté urbaine de l'Outaouais, the Société de transport de la Communauté urbaine de Québec, the Société de transport de la Communauté urbaine de Montréal, the Société de transport de l'Outaouais, the Société de transport de la Ville de Laval and the Société de transport de la rive sud de Montréal;

(b) the municipalities:

The municipalities and the agencies under the jurisdiction of such municipalities which participate in the administration of their territory;

(c) the school bodies:

The school boards and the Conseil scolaire de l'Île de Montréal.

4. The health services and the social services:

Institutions within the meaning of the Act respecting health services and social services (chapter S-4.2) or within the meaning of the Act respecting health services and social services for Cree Native persons (chapter S-5).

B. Semipublic agencies

1. Public utility firms:

If they are not already Government agencies, the telephone, telegraph and cable-delivery companies, the air, ship, autobus and rail transport companies, the companies which produce, transport, distribute or sell gas, water or electricity, and business firms holding authorizations from the Commission des transports.

2. Professional orders:

The professional orders listed in Schedule I to the Professional Code (chapter C-26) under the designation «Ordre professionnel», or established in accordance with that Code. 1977, c. 5, Schedule; 1978, c. 15, s. 140; 1983, c. 55, s. 161; 1984, c. 42, s. 137; 1985, c. 31, s. 44; 1985, c. 32, s. 159; 1988, c. 84, s. 550; 1990, c. 85, s. 115; 1992, c. 21, s. 119; 1993, c. 36, s. 8; 1993, c. 40, s. 62; 1993, c. 67, s. 108; 1994, c. 40, s. 457; 1994, c. 23, s. 23; 1996, c. 2, s. 116; 1997, c. 44, s. 98.

11.7 Cinema Act, R.S.Q., c. C-18.1.

Exemption.:

77. The following films are exempt from classification: . . .

(4) instructional films on a **language**, sport, physical exercise program or a similar skill, provided they do not include scenes of violence or explicit sexual activity; 1983, c. 37, s. 77; 1991, c. 21, s. 12.

Films in a language other than French.

83. No stamp may be issued by the Régie for the exhibition to the public of a film in a version other than a **French-language** version except in accordance with the following rules:

(1) the maximum number of stamps that may be issued for prints of such a version cannot exceed the number of stamps applied for prints of the **French-dubbed** version of the film, and

the latter versions must be available to operators of premises where films are exhibited to the public at the same time as the former;

(2) a stamp may be issued for every print with **French** subtitles;

(3) a stamp may be issued for as many prints as requested, provided that the applicant files with the Régie, together with the application, a contract providing for the **French** dubbing of the film in Québec within such time as the Régie considers reasonable, with proof of the delivery of the elements required for the performance of such a contract to the person responsible therefor;

(4) a provisional stamp may be issued if, at the time the application is filed, no **French-dubbed** version exists. 1983, c. 37, s. 83; 1991, c. 21, s. 14.

Special distributor's licence.

105.1. Notwithstanding section 105, a special distributor's licence may be issued to a member in good standing, on 1 January 1987, of an association of distributors which entered into an agreement, before that date, with the Minister of Cultural Affairs to make films from all parts of the world more readily available to film distributors in Québec.

Film other than English language film.

The licence shall be issued by the Régie, in accordance with the Act and the conditions determined in the agreement. However, in the case of a film shot in any other **language** than **English** and in respect of which a member has not invested 100 % of the costs of production, no licence may be issued unless the member produces a certificate issued by the Minister in the form prescribed in Schedule I. The Minister shall issue such a certificate to a member if it is established to the Minister's satisfaction that the application is justified considering the size of the member's investment in the film. 1986, c. 93, s. 1; 1991, c. 21, s. 28.

11.8 Cities and Towns Act, R.S.Q. 1977, c. C-19.

Special or public notices.

335. Every notice shall be either special or public, and shall be in writing.

Public notices shall be published; special notices shall be served.

Public notices must be drawn up in **French** and in **English**. R. S. 1964, c. 193, s. 362.

Publication of a public notice.

345. The publication of a public notice for municipal purposes shall be made by posting it in the office of the municipality and by inserting it once in an **English** newspaper or in a **French**

newspaper circulating in the territory of the municipality. R. S. 1964, c. 193, s. 372; 1968, c. 55, s. 104; 1996, c. 2, s. 210.

11.9 Civil Code of Québec, S.Q. 1991, c. 64.

Article 140. Every act of civil status or juridical act made outside Québec and drawn up in a **language** other than **French** or **English** shall be accompanied by a **translation** authenticated in Quebec. 1991, c. 64, a. 140.

Article 1897. The lease and the by-laws of the immovable shall be drawn up in **French**. They may, however, be drawn up in another **language** at the express wish of the parties. 1991, c. 64 a. 1897

Article 1898. Every notice relating to a lease, except notice given by the lessor with a view to having access to the dwelling, shall be given in writing at the address indicated in the lease or, after the lease has been entered into, at the new address of the partie, if the other partie has been informed of it; the notice shall be drawn up in the same **language** as the lease and conform to the rules prescribed by regulation. 1991, c. 64 a. 1898.

Article 3006. Where the law prescribes that the application shall, upon presentation, be accompanied with other documents, any such documents drawn up in a **language** other than **French** or **English** shall themselves be accompanied with a **translation** authenticated in Québec. 1991, c. 64, a. 3006.

11.10 Code of Civil Procedure, R.S.Q., c. C-25.

3. In the case of a difference between the **French** and **English** texts of any provision of this Code, the text most consistent with the former law must prevail, unless the provision changes the former law, in which case the text most consistent with the intention of the article in accordance with the ordinary rules of legal interpretation shall prevail. 1965 (1st sess.), c. 80, a. 3.

136. The Attorney General may, on request made to the Government through diplomatic channels, direct a bailiff to serve upon a person in Québec any proceeding issued by a tribunal foreign to Canada.

Such service is made by leaving for the party in the ordinary way a true copy of such proceeding, certified by an officer of the court by which such proceeding was issued. If such copy is not drawn in the **French** or **English language**, a certified **translation** thereof must be annexed thereto.

The return of service also is made in the ordinary way, but with mention where necessary of the fact that a **translation** was annexed to the copy served.

The capacity and signature of the serving officer must be attested by the clerk of the Superior Court of the district where he resides.

The Lieutenant-Governor may attest the signature of and the declaration by the clerk, and have the original proceeding with the return of service and the taxed bill of costs transmitted to the Secretary of State of Canada. 1965 (1st sess.), c. 80, s. 136; 1992, c. 57, s. 420; 1996, c. 5, s. 11..

139. Service by public notice of a writ of summons is made by publication of an order of the judge or clerk, calling upon the defendant to appear within a delay of 30 days or such other delay as may be fixed, and informing him that a copy of the writ and declaration has been left for him at the office of the court.

Unless the judge or the clerk decides otherwise, the order is published only once; the publication is made in a newspaper, designated by the judge or clerk, distributed in the locality of the last known address of the defendant or, if no newspaper is distributed in that locality, in the locality where he is required to appear.

If the circumstances so require, the judge may order the publication by any other appropriate means, in particular by letter, or by an advertisement on the radio or television; he shall then determine the mode of proof of publication.

The order is published in **French** but if the circumstances so require, the judge may order it published in **English** as well.

The same rules are followed, with any necessary modifications, for the service by public notice, when it is required, of any proceeding other than a writ of summons, and for the publication of the public notices of sale provided for in articles 594 and 670.

Service by one publication is complete and is deemed to have taken place on the date of such publication; in the other cases, service is complete only when all the prescribed publications have been made, but it is deemed to have been made on the date of the first publication. 1965 (1st sess.), c. 80, a. 139; 1977, c. 73, s. 5; 1992, c. 57, s. 226, s. 420.

296. A person afflicted with an infirmity which renders him unable to speak, or to hear and speak, may take the oath and testify, either by writing under his hand, or by signs with the aid of an **interpreter**. 1965 (1st sess.), c. 80, s. 296; 1992, c. 57, s. 256.

305. To facilitate the examination of a witness, the judge may retain the services of an **interpreter**, whose remuneration forms part of the cost of the case. .

However, the Minister of Justice assumes that remuneration in the judicial districts of Abitibi and Roberval, if one of the parties benefits by the agreement contemplated in chapter C-67, and in the judicial district of Mingan, if one of the parties benefits by the agreement contemplated in chapter C-67.1. 1965 (1st sess.), c. 80, s. 305; 1977, c. 73, s. 13; 1979, c. 37, s. 14; 1981, c. 14, s. 12.

786. A party seeking recognition or enforcement of a foreign decision attaches to his application a copy of the decision and an attestation emanating from a competent foreign public officer stating that the decision is no longer, in the State in which it was rendered, subject to ordinary remedy and that it is final or enforceable.

If the decision was rendered by default, a certified copy of the documents establishing that the procedure which instituted the proceedings was duly served on the defaulting party is attached to the application.

All documents drafted in a **language** other than **French** or **English** must be accompanied with a **translation** authenticated in Québec. 1965 (1st sess.), c. 80, s. 786; 1973, c. 38, s. 88; 1992, c. 57, s. 367.

11.11 Collective Agreement Decrees, An Act Respecting, R.S.Q., c. D-2.

Notice.

5. The Minister shall publish in the *Gazette officielle du Québec* a notice of receipt of the application together with the text of the related draft decree. The notice shall also be published in a **French language** newspaper and in an **English language** newspaper.

Cost.

The costs incurred for the publication of the notice in the newspaper and for the translation of the notice and draft decree shall be borne by the applicant. R.S. 1964, c. 143, s. 5, 1996, c. 71, s. 5.

11.12 Commission municipale, An Act respecting the, R.S.Q., c. C-35.

Powers and immunity.

23. For the purposes of any investigation that the Commission is authorized to make, each of its members and every investigator designated by the president has the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

Notice of public sittings; report to the Government.

The Commission whenever it holds public sittings during an investigation under the second paragraph of subsection 1 of section 22, shall give notice of the time and place of such sittings in two **French** and two **English** newspapers published nearest to the place of the sittings; it shall report the result of every such investigation, with all evidence taken, to the Government which shall order such action to be taken in the matter as shall be warranted by the evidence and

report. R. S. 1964, c. 170, s. 23; 1968, c. 49, s. 4; 1979, c. 30, s. 2; 1992, c. 61, s. 203; 1996, c. 2, s. 465; 1997, c. 43, s. 189.

Notice of presentation.

40. Such petition shall be taken into consideration only after at least eight days' notice of its presentation has been given to the municipality or fabrique and has been published in the Gazette officielle du Québec, in a **French** newspaper and in an **English** newspaper published in the territory of Ville de Québec, and in a **French** newspaper and an **English** newspaper published in the territory of Ville de Montréal.

Publication.

A single publication in the *Gazette officielle du Québec* and in each of such newspapers shall be sufficient. R. S. 1964, c. 170, s. 39; 1965 (1st sess.), c. 55, s. 12; 1996, c. 2, s. 468.

11.13 Communauté urbaine de l'Outaouais, An Act Respecting the, R.S.Q., c. C-37.1.

Publication.

45. Every by-law shall be published, after the passing thereof or its final approval in the case where it has been submitted to one or several approvals, under the signature of the secretary, by being posted up at the office of the Community and by one insertion in a **French language** daily newspaper and in an **English language** daily newspaper circulating in the territory of the Community, of a notice mentioning the object of the by-law, the date on which it was passed, and the place where communication thereof may be had.

Mention in notice.

If the by-law has received one or several approvals, the notice shall mention the date of each of these approvals. 1969, c. 85, s. 62.

Judgment ordering quashing.

56. (1) The court may quash such by-law in whole or in part and order the service of such judgment upon the secretary of the Community, and order the same to be published in whole or in part in one or more **French language** or **English language** daily newspapers circulating in the territory of the Community.

Effect of quashing.

(2) Every by-law or part of a by-law so quashed shall cease to be in force from the date of the judgment. 1969, c. 85, s. 73.

11.14 Companies Act, R.S.Q., c. C-38.

Corporate name.

9.1. The company's corporate name must not

(1) contravene the Charter of the **French language** (chapter C-11); 1993, c. 48, s. 236.

Notice.

97. In default of other express provision in the deed of incorporation or by-laws of a company, notice of the time and place for holding general meetings, including the annual and special meetings, shall be given at least ten days previously thereto by registered or certified letter to each shareholder at his last known address, and by an advertisement in a newspaper published in the **English language** and in a newspaper published in the **French language** at the place where the company has its head office, or if there is only one, by a notice inserted in one or two newspapers, as the case may be, published in the nearest place. R. S. 1964, c. 271, s. 94; 1975, c. 83, s. 84; 1979, c. 31, s. 8.

Dissolution.

131. (1) A company may be dissolved if it prove, to the satisfaction of the Inspector General . . .

(d) That the company has given notice to the Inspector General of its intention to apply for dissolution, by filing a declaration to that effect in accordance with the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (chapter P-45) and by making an announcement to that effect, once in a newspaper published in the **French language** and once in a newspaper published in the **English language** at or as near as may be to the place where the company has its head office. R. S. 1964, c. 271, s. 127; 1966-67, c. 72, s. 23; 1972, c. 61, s. 17; 1975, c. 76, s. 11; 1981, c. 9, s. 24; 1982, c. 52, s. 132, s. 138; 1993, c. 48, s. 305.

Notice.

190. In default of other express provision in the charter or by-laws of a company, notice of the time for holding general meetings, including the annual and special meetings, shall be given at least ten days previously thereto by registered or certified letter to each shareholder at his last known address, and by an advertisement in a newspaper published in **French** and in a newspaper published in **English**, at the place where the company has its head office, or, if there are no newspapers published at that place, or if there is only one, by a notice inserted in one or

two newspapers, as the case may be, published in the nearest place. R. S. 1964, c. 271, s. 186; 1975, c. 83, s. 84.

11.15 Conseil des relations interculturelles, An Act respecting the, R.S.Q., c. C-57.2.

Composition.

3. The Conseil is composed of 15 members, including a president, appointed by the Government.

The members of the Conseil shall be chosen for their interest in intercultural relations and so as to reflect the composition of Québec society.

11.16 Constitution Act 1982, An Act Respecting The, R.S.Q., c. L-4.2.

DIVISION I

PROVISIONS RELATING TO SECTION 33 OF THE CONSTITUTION ACT, 1982

Acts adopted before 17 April 1982.

1. Each of the Acts adopted before 17 April 1982 is replaced by the text of each of them as they existed at that date, after being amended by the addition, at the end and as a separate section, of the following:

Exception.

"This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom)."

Separate Act.

The text so amended of each of these Acts constitutes a separate Act.

Force of law.

No such Act is to be construed as new law except for the purposes of section 33 of the Constitution Act, 1982; for all other purposes, it has force of law as if it were a consolidation of the Act it replaces.

Effect.

Every provision of such an Act shall have effect from the date the provision it replaces took effect or is to take effect.

Reference.

Such an Act must be cited in the same manner as the Act it replaces. 1982, c. 21, s. 1.

Acts adopted between 17 April 1982 and 23 June 1982.

2. Each of the Acts adopted between 17 April 1982 and 23 June 1982 is replaced by the text of each of them as they existed on 23 June 1982, after being amended by the addition, at the end and as a separate section, of the derogatory provision set out in the first paragraph of section 1.

Applicability.

The second, third, fourth and fifth paragraph of section 1 apply, *mutatus mutandis*, to the Acts referred to in the first paragraph. 1982, c. 21, s. 2.

Printing and distribution.

3. The formalities respecting the printing and distribution of the Acts do not apply to an Act enacted under section 1, to the extent that such formalities have already been observed in respect of the Act it replaces.

Printing and distribution.

The same holds true in respect of an Act enacted under section 2. 1982, c. 21, s. 3.

DIVISION II

PROVISION RELATING TO SECTION 59 OF THE CONSTITUTION ACT, 1982

Consent of the National Assembly.

4. The Government shall not authorize a proclamation under subsection 1 of section 59 of the Constitution Act, 1982 without obtaining the prior consent of the National Assembly. 1982, c. 21, s. 4; 1982, c. 62, s. 143.

DIVISION III

FINAL PROVISIONS

Sanction.

6. The sanction of this Act is valid for each of the Acts enacted under section 1 or 2. 1982, c. 21, s. 6.

Retroactive effect.

7. Section 1 and the first paragraph of section 3 have effect from 17 April 1982; section 2 and the second paragraph of section 3 have effect from the date from which each of the Acts replaced under section 2 came into force. 1982, c. 21, s. 7 (Part).

11.17 Consumer Protection Act, R.S.Q., c. P-40.1.

Language of contracts.

26. The contract and the documents attached thereto must be drawn up in **French**. They may be drawn up in another **language** if the parties expressly agree thereto. Where they are drawn up in **French** and in another **language**, in the case of a divergence between the texts, the interpretation more favourable to the consumer prevails. 1978, c. 9, s. 26.

Same language as contract.

268. Every notice given by a merchant under this act must be drawn up in the **language** of the contract to which it refers. 1978, c. 9, s. 268.

11.18 Cooperatives Act, R.S.Q., c. C-67.2.

Corporate name.

15. The corporate name of the cooperative must not

(1) contravene the Charter of the **French language** (chapter C-11); 1982, c. 26, s. 15; 1993, c. 48, s. 360; 1995, c. 67, s. 166.

11.19 Cree Villages and the Naskapi Village Act, The, R.S.Q., c. V-5.1.

French name.

9.2. A municipality may also be designated, in **French**, under a name containing the words «Municipalité du village cri» or «Municipalité du village naskapi», as the case may be, and the toponym constituting its name.

Cree, Naskapi or English name.

An equivalent name in Cree or Naskapi, as the case may be, and in **English** is also authorized. 1996, c. 2, s. 993.

11.20 Cultural Property Act, R.S.Q., c. B-4.

Ville de Québec.

115. This chapter, except the second paragraph of sections 72, 74, 84, 86 and 88 and sections 90, 111 and 112, applies to Ville de Québec, adapted as follows: . . .

(4) the public notice provided for in the first paragraph of section 74 and in the first paragraph of section 88 shall be published twice in a **French language** newspaper; 1985, c. 24, s. 41; 1996, c. 2, s. 95.

11.21 Education Act, R.S.Q., c. I-13.3.

See: Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

11.22 Election Act, R.S.Q., c. E-3.3.

Name of electoral division.

18. The Commission shall assign a name to each electoral division delimited by it, after consulting the Commission de toponymie established under the Charter of the **French language** (chapter C-11). 1989, c. 1, s. 18.

11.23 Entente Between France And Québec Respecting Mutual Aid in Judicial Matters, An Act to Secure the Carrying Out of the, R.S.Q., c. A-20.1.

Title II: Transmission And Delivery Of Judicial And Extrajudicial Written Proceedings

2. The application indicates the authority issuing the proceeding, the name and capacity of each party, the name and address of the person for whom it is intended and the nature of the proceeding.

The proceedings to be notified or served that are attached to the application are sent in duplicate. The application and the proceedings are drawn up in the **French language** or accompanied with a **translation** in that **language**.

Title III: Transmission et exécution des commissions rogatoires

4. Rogatory commissions are drawn up in the **French language**. They contain the following indications, to facilitate their execution:

(a) the petitioning authority and, if possible, the petitioned authority;

(b) the identities and addresses of the parties and, as the case may be, of their representatives;

(c) the nature and object of the suit;

(d) the trial proceedings or other judicial proceedings to be carried out;

(e) the names and addresses of the persons to be heard;

(f) the questions to be asked of the persons to be heard or the facts on which they must be heard;

(g) the documents or other objects to be examined;

(h) as the case may require, the application for receiving a sworn or solemnly affirmed deposition and, where that is the case, the indication of the formula to be used;

(i) where that is the case, the special form the use of which is required.

5. The rogatory commission is executed by the petitioned judicial authority in conformity with its law unless the petitioning judicial authority has asked that it be proceeded with in a particular form.

If requested in the rogatory commission, the questions and answers are integrally transcribed or recorded. The judge may ask and authorize the parties and their defendants to ask questions; such questions must be drawn up in or translated into the **French language**. The same holds true for the answers to these questions.

The appointed judge informs the appointing jurisdiction, if it so requests, of the place, day and time fixed for the execution of the rogatory commission.

11.24 Fire Investigations Act, R.S.Q., c. E-8.

Personnel.

26. The investigation commissioner may, if he deems it necessary, retain the services of a secretary or of an **interpreter** and swear in a sufficient number of peace officers to maintain peace and good order during the inquiry; the persons whose services are so required and any witnesses shall be entitled to the fees and indemnities provided in the tariff established for such purpose by the Government. 1968, c. 16, s. 26; 1983, c. 28, s. 45.

11.25 Gas, Water and Electricity Companies Act, R.S.Q., c. C-44.

Publishing notices.

4. Any notice required by this Act to be given in a newspaper printed where the operations of the company are carried on, may, in any case where there is no newspaper so printed, be given by posting up such notice, in the **English** and in the **French languages**, on the door of the church or one of the churches, or other place or places of public worship, or if there be no church, then at the most public place in the locality in which the operations of the company are to be carried on, and by publicly reading the notice at such place; and any report required to be published in a newspaper printed as aforesaid may, if there be none so printed, be published in a newspaper printed in some neighbouring locality, the whole within the delays hereinafter established. R. S. 1964, c. 285, s. 4; 1996, c. 2, s. 578.

11.26 Health Insurance Act, R.S.Q, c. A-29.

Qualifications.

89. No one shall be entitled to a scholarship if, in the opinion of the Minister: . . .

b) he does not have a working knowledge of the **official language** of Québec; 1974, c. 40, s. 18; 1984, c. 47, a. 18; 1990, c. 11, a. 58.

Qualifications.

96. No one shall be entitled to a research scholarship if, in the opinion of the Fonds de la recherche en santé du Québec established pursuant to the Act to promote the advancement of science and technology in Québec (chapter D-9.1), . . .

(2) he does not have a working knowledge of the **official language** of Québec; . . . 1974, c. 40, s. 18; 1979, c. 1, s. 51; 1981, c. 22, s. 31; 1983, c. 23, s. 102; 1992, c. 21, s. 117.

11.27 Health Services And Social Services For Cree Native Persons, An Act Respecting, R.S.Q., c. S-5.

Powers of Minister.

3. The Minister shall exercise the powers that this Act confers upon him in order to: . . .

(d) better adapt the health services and social services to the needs of the population, taking into account regional characteristics, including the geographical, **linguistic**, sociocultural and socioeconomic characteristics of the region, and apportion among such services the human and financial resources in the most equitable and rational manner possible;

(d.1) promote, for the members of the various cultural communities of Québec, access to health services and social services in their own **language**; 1971, c. 48, s. 3; 1986, c. 106, s. 1, s. 2.

Services in English.

5.1 Every **English-speaking** person is entitled to receive health services and social services in the **English language**, taking into account the organization and resources of the institutions providing such services and to the extent provided by an access program contemplated in section 18.0.1. 1986, c. 106, s. 3.

Access program.

18.0.1. Every regional council, in cooperation with the institutions and jointly with other regional councils, as the case may be, shall prepare a program of access to health services and social services in the **English language** for persons contemplated in section 5.1 in the institutions it indicates, taking into account the organization and resources of such institutions. The program must be approved by the Government. 1986, c. 106, s. 4.

Regulations.

173. In addition to the other regulatory powers assigned to it by this Act, the Government may make regulations to:

Designated establishments.

The Government may, by regulation, for any region it indicates, designate which of the establishments recognized under paragraph f of section 113 of the Charter of the **French language** (chapter C-11) are required to make their health services and social services available in the **English language** to the persons contemplated in section 5.1. 1971, c. 48, s. 129; 1974, c. 42, s. 59; 1975, c. 61, s. 6; 1977, c. 48, s. 39; 1978, c. 72, s. 44; 1981, c. 22, s. 98; 1982, c. 58, s. 73; 1983, c. 38, s. 77; 1983, c. 54, s. 76; 1984, c. 47, s. 184; 1986, c. 57, s. 5; 1986, c. 106, s. 10; 1987, c. 104, s. 13; 1992, c. 21, s. 375.

11.28 Health Services and Social Services, An Act Respecting, R.S.Q., c. S-4.2.

Objects.

1. The health services and social services plan established by this Act aims to maintain and improve the physical, mental and social capacity of persons to act in their community and to carry out the roles they intend to assume in a manner which is acceptable to themselves and to the groups to which they belong. 1991, c. 42, s. 1.

Objectives.

2. In order to permit these objectives to be achieved, this Act establishes an organizational structure of human, material and financial resources designed . . .

(7) to foster, to the extent allowed by the resources, access to health services and social services in their own **languages** for members of the various cultural communities of Québec; 1991, c. 42, s. 2.

English-speaking users.

15. English-speaking persons are entitled to receive health services and social services in the **English language**, in keeping with the organizational structure and human, material and financial resources of the institutions providing such services and to the extent provided by an access program referred to in section 348. 1991, c. 42, s. 15.

Territory.

125. For the application of this section to the territory of the regional board established for the Montréal Centre region, the Minister shall determine otherwise than on the basis of the territory of the regional board, on a proposal submitted by the latter, the organization provided for in the first paragraph so as to permit the operation, by at least two institutions, of child and youth protection centres and the provision, by either of them, of services in the **English language** for **English-speaking** persons of the region. 1991, c. 42, s. 125; 1992, c. 21, s. 10.

Regional adjustments.

128. A regional board may propose to the Minister that he modify the organizational structure provided for in sections 119 to 126 where the nature or size of the territory or the nature, the number, the special characteristics or the capacity of the centres situated in the territory, the type of clientele served, the density of the population served or the sociocultural, ethnocultural or **linguistic** characteristics of part of the population or the institutions warrant it. The regional board shall, more particularly, take into account the institutions recognized under section 29.1 of the Charter of the **French language** (chapter C-11).

Services to English-speaking population.

348. Each regional board, in collaboration with institutions, must develop a program of access to health services and social services in the **English language** for the **English-speaking** population of its area in the centres operated by the institutions of its region that it indicates or, as the case may be, develop jointly, with other regional boards, such a program in centres operated by the institutions of another region.

Institutional resources.

Such an access program must take into account the human, financial and material resources of institutions and include any institution in the region designated under section 508.

Approval.

The program must be approved by the Government and revised at least every three years. 1991, c. 42, s. 348.

Services in the English language.

508. The Government shall designate from among the institutions recognized under of section 29.1 of the Charter of the **French language** (chapter C-11) those which are required to make health services and social services accessible in the **English language** to **English-speaking** persons. 1991, c. 42, s. 508; 1994, c. 23, s. 5.

Provincial committee.

509. The Government shall, by regulation, provide for the formation of a provincial committee entrusted with advising the Government on

(1) the dispensing of health and social services in the **English language**; 1991, c. 42, s. 509.

Presumption.

619.29. The program of access to health services and social services in the **English language** for the **English-speaking** population prepared by a regional council in accordance with section 18.0.1 of the Act respecting health services and social services is deemed to be the program that a regional board must develop for the purposes of section 348, and it shall continue to apply until revised in accordance with that section.

Access to services.

Every institution to which are transferred some or all of the services which an institution mentioned in such a program was bound to make accessible in the **English language** for the **English-speaking** population shall continue to maintain access to those services as if it had been mentioned in the program until the program is revised.

Presumption.

619.44. Every institution designated by a regulation made under the second paragraph of section 173 of the *Act respecting health services and social services* which is bound to make the health services and social services that it dispenses accessible in the **English language** to **English-speaking** persons is deemed to have been designated pursuant to section 508.

Access to services.

Every institution to which are transferred all or some of the services which an institution designated by such a regulation is bound to make accessible in the **English language** to **English-speaking** persons shall continue to maintain access to those services as if it had been mentioned in the program of access referred to in section 619.29. 1992, c. 21, s. 68.

11.29 Immigration to Québec, An Act Respecting, R.S.Q., c. I-0.2.

Linguistic integration services.

3.2.4. The Minister, under the integration program, shall provide and take charge of the implementation of **linguistic** integration services consisting of services of **French language** instruction and introduction to Québec life. 1991, c. 3, s. 2.

11.30 Insurance, An Act Respecting, R.S.Q, c. A-32.

Corporate name.

93.22. The corporate name of a mutual insurance association shall not

(1) contravene the Charter of the **French language** (chapter C-11); 1985, c. 17, s. 6; 1993, c. 48, s. 122; 1996, c. 63, s. 83.

11.31 Interpretation Act, R.S.Q., c. I-16.

Preamble.

40. The preamble of every statute shall form part thereof, and assist in explaining its purport and object.

Construction.

In case of doubt, the construction placed on any act shall be such as not to impinge on the status of the **French language**. R. S. 1964, c. 1, s. 40; 1977, c. 5, s. 213.

11.32 Judgement Rendered In The Supreme Court of Canada On 13 December 1979 On The Language of The Legislature And The Courts In Quebec, An Act Respecting A, R.S.Q. c. J-1.1.

Preamble.

WHEREAS, on 26 August 1977, the Charter of the French language was adopted by the National Assembly of Québec, and assented to;

Whereas Chapter III of the Charter enacts that French is the language of the legislature and the courts in Québec;

Whereas the Supreme Court of Canada, in a judgment rendered on 13 December 1979, in *Procureur général de la province de Québec c. Peter M. Blaikie et autres*, has declared Chapter III unconstitutional;

Whereas the Supreme Court, in two other judgments, namely in *Procureur général de la province de Québec c. Peter Blaikie et autres* rendered on 6 April 1981 and in *Procureur général du Québec c. Albert Sinclair et autres* rendered on 27 February 1992, further defined the scope of section 133 of the *Constitution Act, 1867* with respect to certain statutory instruments;

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

French text and English version.

1. The Charter of the French language, and each of the Acts adopted thereafter, are replaced by their French text and English version, as published in the Gazette officielle du Québec or as tabled in the National Assembly on 14 December 1979, as Sessional Papers, Nos. 420 to 431, and as they will be published in the Gazette officielle du Québec. The French text of each of these Acts, together with its English version, forms a separate Act, and must be cited in the same manner as the Act it replaces.

Effect.

Every such Act and every provision of such an Act has effect from the date the Act or provision it replaces is deemed to have taken effect.

Applicability of Div. V of the Interpretation Act.

Such an Act is not subject to Division V of the Interpretation Act, to the extent that the prescriptions of that division have already been followed in respect of the Act it replaces. 1979, c. 61, s. 1.

Replacement of regulations.

2. The Government may, by one or more regulations, replace by a general reference, without amendment, all the regulations and other instruments of a legislative nature the French text and English version of which were published in the Gazette officielle du Québec. Each instrument to which such a regulation refers remains nevertheless an instrument of the authority empowered to adopt, issue or publish that instrument according to the Act which authorizes it.

Exemption and coming into force.

A regulation adopted under the first paragraph is not subject to the Regulations Act (chapter R-18.1). It comes into force on the day of its publication in the Gazette officielle du Québec, but each provision of the instruments to which it refers has effect on the same date as that provided for the corresponding provision of the replaced instruments. 1979, c. 61, s. 2; 1992, c. 37, s. 3.

Text in French and English.

3. In the case of a regulation or other instrument of a legislative nature which was required to be published in French and in English and was not, the authority empowered to adopt, issue or publish the instrument, as the case may be, may replace the instrument with a text which reproduces it, without amendment, this time in French and in English. Once the text is published in the Gazette officielle du Québec, each provision of the text may have effect on the same date as that provided for the corresponding provision of the replaced instrument.

Notice not required.

Notwithstanding any provision to the contrary, no posting, notice, prior publication, approval or consultation is required. 1979, c. 61, s. 3; 1992, c. 37, s. 3.

Revised Statutes of Québec.

4. Notwithstanding the Act respecting the consolidation of the statutes and regulations, the text tabled in the National Assembly on 14 December 1979, as Sessional Papers, No. 432, has force of law from 1 September 1979, under the designation, «Revised Statutes of Québec» or «Revised Statutes of Québec, 1977».

R.S.Q., 1964, deemed not repealed.

The English text of the statutes replaced by the Revised Statutes is deemed not to have been repealed by the proclamation made by order in council 2046-79.

Repeal by proclamation.

The English text of the statutes replaced by the Revised Statutes will be repealed on the date fixed by another proclamation, to be made in accordance with section 15 of the Act respecting the consolidation of the statutes and regulations.

Reference.

Until the date fixed in accordance with the third paragraph, a reference to a provision of the Revised Statutes will be considered, with respect to the English text, as also a reference to the corresponding provision of the statutes replaced by the Revised Statutes. 1979, c. 61, s. 4.

Applicability.

6. The second paragraph of section 1, the second paragraph of section 2, the first paragraph of section 3 and the first paragraph of section 4 apply notwithstanding section 37 of the Charter of human rights and freedoms. 1979, c. 61, s. 6.

Effect.

7. The sanction of chapter 61 of the annual statutes of 1979 has effect equally for the Acts contemplated in section 1. 1979, c. 61. S. 7 (part).

11.33 Jurors Act, R.S.Q., c. J-2.

Disqualification.

4. The following persons are disqualified from serving as jurors:

(i) persons who do not speak **French** or **English** fluently, subject to sections 30 and 45; or . . .

Types.

14. Juries are unilingual or mixed.

Unilingual juries.

A **French** unilingual jury is composed exclusively of **French-speaking** persons and an **English** unilingual jury, of **English-speaking** persons.

Mixed jury.

A mixed jury is composed of **French-speaking** and **English-speaking** persons in equal proportions. 1976, c. 9, s. 14.

Separate boxes for French- and English-speaking.

19. As the sheriff proceeds to inscribe the selected names on the cards, he shall place and mix them in two boxes, one for the surnames and given names of persons he considers to be **French-speaking** and the other for the surnames and given names of persons he considers to be **English-speaking**. 1976, c. 9, s. 19.

Person not fluent in language of unilingual panel.

30. If, in a district requiring several panels, an application concerning disqualification is based on the ground that a **French-speaking** person who does not speak **English** fluently has been summoned for enrolment on an unilingual **English** panel, or the converse, the judge or the sheriff

may at any time enter such **French-speaking** person on an unilingual **French** panel, or the converse. 1976, c. 9, s. 30.

Indian or Inuk.

45. An Indian or an Inuk, even though he does not speak **French** or **English** fluently, may serve as a juror if the accused is an Indian or an Inuk. 1976, c. 9, s. 45.

11.34 Labour Relations, Vocational Training and Manpower Management in the Construction Industry, An Act Respecting, R.S.Q., c. R-20.

Publication of names of associations.

29. The Commission shall, not later than the last of day the twelfth month preceding the expiry date of a collective agreement made under section 47, cause to be published in the *Gazette officielle du Québec* and in a **French** daily newspaper, the name of each association mentioned in section 28 that has presented an application to the Commission. 1968, c. 45, s. 5; 1973, c. 28, s. 5; 1975, c. 51, s. 3; 1978, c. 58, s. 2; 1986, c. 89, s. 50; 1987, c. 110, s. 2, s. 4; 1993, c. 61, s. 14; 1996, c. 74, s. 32..

11.35 Lands of Religious Congregations, An Act Respecting, R.S.Q., c. T-7.

Exchange of land.

13. Whenever, on application of any such parish, mission, congregation or society, after two months' notice first duly given in **French** and **English**, in the Gazette officielle du Québec and in one or more newspapers published in or as near as may be to the district wherein such lands are situated, it is made to appear to the satisfaction of the Government that an exchange of other land for any land held for burial purposes by such parish, mission, congregation or society is on any public ground desirable, the Government may authorize such exchange, subject to all conditions and restrictions deemed advisable, whether as to removal of bodies interred or as to other operations; and such parish, mission, congregation or society may thereupon make the exchange so authorized, and do all other acts thereto requisite or pertinent, whether for removal of bodies interred or for other operations, subject always to such conditions and restrictions and to all charges and liabilities thence resulting. R. S. 1964, c. 306, s. 13. 1968, c. 23, s. 8.

11.36 Legal Publicity of Sole Proprietorships, Partnerships And Legal Persons, An Act Respecting The, R.S.Q., c. P-45.

Restrictions applicable to name.

13. No registrant may declare or use in Québec a name which

(1) is not in conformity with the Charter of the **French language** (chapter C-11); . . .

French version of name.

Every registrant whose name is in a **language** other than **French** must declare the **French** version of the name used in Québec in carrying on activities, in operating an enterprise or for the purposes of the possession of an immovable real right, other than a prior claim or hypothec.

Exception.

The second paragraph does not apply to a natural person who registers voluntarily and who, for that purpose, declares only his surname and given name. 1993, c. 48, s. 13.

11.37 Ministère des Relations avec les citoyens et de l'Immigration, An Act respecting the, S.Q. 1996, c. 21.

Functions.

12. In exercising his responsibilities in immigration matters, the Minister shall, in particular, . . .

(4) take the necessary measures to enable the persons who settle in Québec to acquire the knowledge of the **French language** upon their arrival or even before they leave their country of **origin** and to promote the use of the **French language** by immigrants;

(5) facilitate the **linguistic**, social and economic integration of immigrants into Québec society;

(6) encourage society's contribution to immigrant integration. 1996, c. 21, s. 12.

Jong* v. *Lavigne et al. (August 26, 1994) Montreal 500-09-001428-929 (Que. C.A.).

11.38 Municipal And Intermunicipal Transit Corporations, An Act Respecting, R.S.Q., c. C-70.

Corporation deemed listed.

117. Every municipal or intermunicipal transit corporation is deemed listed in the Schedule to the **Charter of the French language**. 1977, c. 64, s. 122.

11.39 Municipal Code of Québec, R.S.Q., c. C-27.1.

24. If, in any article of this Code founded on the laws existing on 1 November 1916, there is a difference between the **French** and **English** texts, that version shall prevail which is most consistent with the provisions of the existing laws.

If there be any such difference in an article amending the existing laws, that version shall prevail which, according to the ordinary rules of legal interpretation, is most consistent with the intention of the article. M.C. 1916, s. 15; 1937, c. 13, s. 5; 1938, c. 22, s. 1, s. 2.

424. Every special notice must be given verbally or in writing, except in particular cases in which the law prescribes that the special notice must be given in writing, and it must be given or drawn up in the **language** of the person to whom it is addressed, unless such person speaks a **language** other than **French** or **English**.

A special notice given or addressed to any person who speaks neither the **French** nor the **English language**, or who speaks both of these **languages**, may be given in either **language**. M.C. 1916, s. 339.

11.40 Municipal Taxation, An Act Respecting, R.S.Q., c. F-2.1.

Exemptions.

236.1 No business tax may be imposed by reason of . . .

(7) a management activity related to an activity carried on without pecuniary gain mainly for the purpose of defending the interests or rights of a group of persons formed on the basis of **language**, **ethnic** or **national origin**, age or a handicap, of fighting a form of illegal discrimination or of helping socially or economically underprivileged or oppressed persons; 1979, c. 72, s. 236; 1980, c. 34, s. 40; 1982, c. 63, s. 216; 1986, c. 34, s. 19; 1987, c. 42, s. 12; 1988, c. 76, s. 67; 1989, c. 17, s. 9; 1990, c. 85, s. 113; 1991, c. 29, s. 20; 1991, c. 32, s. 116; 1992, c. 21, s. 169, 1992, c. 68, s. 140; 1993, c. 67, s. 119; 1994, c. 15, s. 33; 1994, c. 30, s. 69; 1995, c. 7, s. 3; 1995, c. 73, s. 6; 1995, c. 65, s. 123; 1996, c. 14, s. 28; 1996, c. 16, s. 65.

11.41 Occupational Health And Safety, An Act Respecting, R.S.Q., c. S-2.1.

Language requirements.

62.4. The label and material safety data sheet of a controlled product must be in **French**. The **French** text may be accompanied with one or several **translations**. 1988, c. 61, s. 2.

11.42 Police Act, R.S.Q., c. P-1.

Advisory board.

79.8. The Government may, by regulation, create an advisory board to advise him on the maintenance of peace, order and public safety in a Cree environment.

Powers of Government

For these purposes, he may:

(a) state the name under which the board may be designated and permit a Cree or **English** designation; 1979, c. 35, s. 2.

11.43 Prearranged Funeral Services And Sepultures, An Act Respecting, R.S.Q., c. A-23.001.

Language.

24. With each deposit or withdrawal made with the depositary, the seller must produce a list ot the names and addresses of the buyers on whose behalf the deposit or withdrawal is made, indicating for each the contract number and the amount deposited or withdrawn on the buyers' behalf.

On making the first deposit on behalf of a buyer pursuant to a contract, the seller must indicate in writing to the depositary the **language** in which the contract is drawn up. 1987, c. 65, s. 24.

Notice

52. Every notice given by a seller under this Act must be drawn up in the **language** of the contract to which it refers. 1987, c. 65, s. 52.

Notice.

53. Every notice given by a depositary under this Act must be drawn up in the **language** specified by the seller pursuant to the second paragraph of section 24. 1987, c. 65, s. 53.

Offences and penalties.

64. Every seller who . . .

(4) upon making a first deposit on behalf of a buyer pursuant to a contract, fails to specify to the depositary the **language** in which the contract is drawn up,

is guilty of an offence and is liable to a fine of not less than $500 nor more than $25 000. 1987, c. 65, s. 64; 1990, c. 4, s. 62.

Offences and penalties.

70. Every depositary which . . .

(2) fails to transmit to a buyer in writing and in the **language** of the contract specified by the seller the information prescribed by section 36 within thirty days from the first deposit in trust made on his behalf, or

(3) contravenes a provision of a regulation the contravention of which constitutes an offence, is guilty of an offence and is liable to a fine of not less than $500 nor more than $25 000. 1987, c. 65, s. 70; 1990, c. 4, s. 62.

11.44 Private Education An Act Respecting, R.S.Q., c. E-9.1.

Exceptions.

30. The Minister may allow exceptions to the provisions of the basic school regulation in order to further the realization of a special school project in any subject prescribed in the basic school regulation.

Applicability.

In addition, the provisions of the basic school regulation concerning exemptions or exceptions shall apply to private educational institutions.

Exemption.

Furthermore, the institution may, subject to the rules on certification of studies prescribed in the basic school regulation and to the by-laws of the Catholic committee or Protestant committee established by the Act respecting the Conseil supérieur de l'éducation (chapter C-60), exempt from a subject prescribed in the basic school regulation a student who needs support in the programs relating to the **language** of instruction, a second **language** or mathematics; the student cannot be exempted, however, from any of these programs. 1992, c. 68, s. 30.

Eligibility.

126. An accredited institution which does not comply with the provisions of section 72 or 73 of the Charter of the **French language** (chapter C-11) or the regulations made under section 80 or 81 of that Act is not eligible for the subsidies applicable to the level of instruction concerned for the school year of non-compliance. 1992, c. 68, s. 126.

11.45 Professional Chemists Act, R.S.Q., c. C-15.

Committee of examiners.

11. The Bureau shall appoint annually a committee of examiners and may fill any vacancies that may occur therein during the term of office.

Composition.

The committee shall consist of not less than five members of whom not less than three shall be appointed upon the recommendation or approval of universities in Québec as may be prescribed by by-law.

Duties.

The duties of the committee shall be prescribed by by-law.

Choice of language.

A candidate may elect to be examined in **English** or in **French** at his option. R. S. 1964, c. 265, s. 9; 1973, c. 63, s. 9, s. 17.

11.46 Professional Code, R.S.Q., c. C-26.

Interpretation:

1. In this Code and in the regulations made thereunder, unless the context indicates a different meaning, the following terms mean:

«permit»;

(f) «permit»: a permit issued under this Code and the Charter of the **French language** which allows the exclusive practice of the profession mentioned therein and the use of a title reserved to the professionals practising such profession or only allows the use of a title reserved to the members of the order issuing the permit, subject to entry of the holder of such permit on the roll of that order; 1973, c. 43, s. 1; 1974, c. 65, s. 1; 1975, c. 81, s. 63; 1977, c. 5, s. 222; 1994, c. 40, s. 1.

Engaging in professional activities.

37. Every member of one of the following professional orders may engage in the following professional activities in addition to those otherwise allowed him by law: . . .

(t) the Ordre professionnel des traducteurs et interprètes agréés du Québec: provide services consisting in the **translation** of texts, spoken words or terms from one **language** to another, as an intermediary between persons of different **languages**. 1973, c. 43, s. 37; 1974, c. 65, s. 6; 1975, c. 80, s. 2; 1977, c. 5, s. 222; 1979, c. 72, s. 490; 1987, c. 17, s. 2; 1988, c. 29, s. 5; 1988, c. 84, s. 698; 1993, c. 38, s. 3; 1994, c. 40, s. 33; 1996, c. 2, s. 218.

Temporary permit for outsiders.

41. Subject to sections 35, 37 and 38 of the Charter of the **French language** (chapter C-11), the Bureau of an order may issue, on the conditions it determines, to any person legally authorized to practise outside Québec the same profession as the members of such order a temporary permit valid for a period of one year and renewable. 1973, c. 43, s. 41; 1974, c. 6, s. 113; 1977, c. 5, s. 223; 1994, c. 40, s. 37.

11.47 Public Inquiry Commissions, An Act Respecting, R.S.Q., c. C-37.

Meetings.

5. The commissioners shall, within a reasonable time after their appointment, hold meetings for the purposes of the inquiry, at the place where the necessary information is to be obtained.

Notice.

They shall give notice of the time and place of their first meeting, in two **French** and two **English** newspapers published nearest to the place of meeting.

Adjournments.

The commissioners shall not adjourn the inquiry for a period of more than one week, unless they be duly authorized to that effect by the Minister of Justice. R. S. 1964, c. 11, s. 5; 1965 (1st sess.), c. 16, s. 21.

11.48 Referendum Act, S.R.Q., c. C-64.1.

Question in French and English.

20. The ballot paper is a printed paper on which is entered, in **French** and in **English**, the question put to the electors.

Space for mark.

The ballot paper also contains a space specially and solely reserved for the mark by which the elector expresses his choice. 1978, c. 6, s. 20; 1984, c. 51, s. 534.

Question also in language of native majority.

21. Notwithstanding section 20, the question entered on the ballot papers used in polling stations situated in an Indian reserve or in a place where an Amerind or Inuit community lives, must be drawn up in **French**, in **English** and in the **language** of the native majority of the place, to the extent that the returning officer may have the ballot papers printed in such **language**.

Native language.

The returning officer shall determine which native **language** must be used and cause a **translation** of the question entered on the ballot paper to be made into such **language**. 1978, c. 6, s. 21; 1981, c. 4, s. 9..

11.49 Sales tax, Act Respecting the Québec, R.S.Q., c. T-0.1.

Second-language courses.

130. A supply of an educational service that consists in instructing individuals in, or administering examinations in respect of, **language** courses that form part of a program of second-**language** instruction in either **English** or **French** is exempt, where the supply is made by a school authority, public college or university or an educational institution that is established and operated primarily to provide instruction in **languages**. 1991, c. 67, s. 130

11.50 Savings and Credit Unions Act, R.S.Q., c. C-4.

Avoidance of confusion.

10. The name of a union must not be susceptible of confusion with that of another union, association, society or corporation and must in no case contain the word «association», «society» or «cooperative».

French name.

A union shall only be constituted under a **French** name or a name comprising a **French** version. R.S. 1964, c. 293, s. 9; 1970, c. 59, s. 7.

Name.

11. No union shall in the course of its operations use any name other than that given to it in the founding memorandum unless it has changed its name by by-law in accordance with section 39, and in such case it shall use its new name only.

French and English names.

If the union has a **French** name and an **English** name or a name comprising a **French** version and an **English** version, it may be legally designated by its **French** name or the **French** version of such name or by both names or both versions. 1970, c. 59, s. 8.

11.51 School Election Act, R.S.Q., c. E-2.3.

Interpretation.

1.1. The integration of immigrants into the **French-speaking** community being a priority for Québec society, this Act shall not operate

(1) to amend, directly or indirectly, the provisions of the *Charter of the French language* (chapter C-11) relating to the **language** of instruction;

(2) to modify or confer any minority language educational rights.

More particularly, the fact that a person who does not have a child admitted to the educational services provided in schools of a school board chooses to vote at the election of the commissioners of an **English language** school board and pays school taxes to that school board, or runs for office within an **English language** school board, does not make the person, or the person's children, eligible to receive preschool, elementary or secondary instruction in **English**.

11.52 Securities Act, R.S.Q., c. V-1.1.

Language used in documents.

40.1. Every prospectus of any type, document authorized by the Commission for use in lieu of a prospectus, offering notice or offering memorandum contemplated in this Act or the regulations and permanent information record contemplated in Title III, as well as every take-over bid circular, take-over bid, circular of a board of directors and notice of a senior executive contemplated in Title IV, shall be drawn up in **French** only or in **French** and **English**. 1983, c. 56, s. 44; 1984, c. 41, s. 12, s. 263.

Report to the Office de la langue française.

302.1. At the end of every fiscal year, the Commission shall remit to the Office de la langue française a report of the use it has made of its power to grant exemptions under section 263 with regard to the obligation enacted in section 40.1.

Form.

The Office shall determine the mode of drawing up the report. 1983, c. 56, s. 45.

11.53 United Nations Convention On Contracts For The International Sale of Goods, An Act Respecting The, R.S.Q., c. C-67.01.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic. 1991, c. 68, annex.

11.54 Youth Protection Act, R.S.Q., c. P-34.1.

Interpreter.

77. The stenographer's note shall be transcribed only whn judge so orders or in case of appeal; the cost of such transcription shall be at the expense of the Minister of the Justice

Interpreter

To assist in the cross-examination of a witness, the tribunal may retain the services of an **interpreter**, whose remuneration shall be paid by the Minister of Justice. 1977, c. 20, s. 77; 1988, c. 21, s. 119; 1989, c. 53, s. 11; 1994, c. 35, s. 47.

12. SASKATCHEWAN

12.1 Northwest Territories Act, S.C. 1886, c. 50, s. 110, amended by S.C. 1891, c. 22.

110. Either the **English** or the **French language** may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those **languages** shall be used in the records and journals of such Assembly; and all ordinances made under this Act shall be printed in both those **languages**: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law, and thereafter shall have full force and effect.

This case raises several important questions: whether a French-speaking person accused of a provincial quasi-criminal offence under a Saskatchewan statute has the right to use French at his trial; whether he has the right to have the trial conducted in that language; whether the statutes of that province are required to be published in both English and French; whether such rights are constitutionally entrenched; and the content of any such rights ***(p. 244)****? It can hardly be gainsaid that language is profoundly anchored in the human condition. Not surprisingly, language rights are a well-known species of human rights and should be approached accordingly* ***(p. 268)*** *I realize, of course, that, as in the case of other human rights, governmental measures for the protection of language rights must be tailored to respond to practical exigencies as well as to the nature and history of the country. But when Parliament or the legislature has provided such measures, it behooves the courts to respect them. Any inroads on them should be left to the legislative branch. This is particularly so of rights regarding the English and French languages, which are basic to the continued viability of the nation* ***(p. 269)****. In my view, therefore, s. 110 continued in effect in Saskatchewan after the establishment of that province either by virtue of s. 16(1) or of the combined effect of ss. 16(1) and 14. As noted earlier, this is entirely in accord with the legislative history of these provisions* ***(p. 270)****. Absent valid legislation requiring the recording of the appellant's statements in one language only, and none was brought to our attention, the appellant would seem to me to have a right to have his statements recorded in the French language. His situation, of course, differs from that of a person who uses a language other than English or French whose rights to translation derive solely from the requirements of due process* ***(p. 276)****. The legislature has the power to amend its constitution by an ordinary statute, but in enacting such amending statute it must*

do so in the manner and form required by the law for the time being in force. This, we saw, requires that such statute be enacted, printed and published in the English and French languages. Accordingly, the legislature may resort to the obvious, if ironic, expedient of enacting a bilingual statute removing the restrictions imposed on it by s. 110 and then declaring all existing provincial statutes valid notwithstanding that they were enacted, printed and published in English only ***(pp. 280-281)***. ***R.* v. *Mercure***, [1988] 1 S.C.R. 234.

See also in this book:

Canada, *Canadian Charter of Rights and Freedoms*.

Canada, *Constitution Act, 1867,* s. 133;

Québec, *Constitution Act, 1867*, s. 133;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 17(2) to 19(2).

Canada, *Canadian Charter of Rights and Freedoms*, s. 17(1) to 19(1).

Manitoba, *Manitoba Act, 1870*, s. 23;

Northwest Territories, *Northwest Territories Act*, s. 110;

Alberta, *Northwest Territories Act*, s. 110;

See also:

R.* v. *Rottiers (1995), Sask.R. 152 (Sask. C.A.).

R.* v. *Tremblay (1985), 20 C.C.C. (3d) 454 (Sask. Q.B.).

Reference re French Language Rights of Accused in Saskatchewan Criminal Proceedings, [1987] 5 W.W.R. 577 (Sask. C.A.).

12.2 Agricultural Implements Act, The, R.S.S. 1978, c. A-10.

Contracts explained before signature

38. (1) Where a purchaser is unable to read in the **English language** the contract shall, before it is signed by him, be read over and explained to him in a **language** that he understands, and in such case the burden of proving that the contract was so read over and explained to him shall be upon the dealer.

(2) An affidavit to the effect that the deponent has, within eight days preceding the taking of the affidavit, read over and explained the contract to the purchaser in a **language** that the purchaser

understood, prior to his signature thereto, is prima facie proof of all the facts sworn to in the affidavit. 1968, c.1, s.18; 1976, c.2, s.20.

12.3 Business Corporations Act, The, R.S.S. 1978, c. B-10.

Name of corporation

10. (1) The word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." shall be part of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form if the full and the abbreviated forms are in the same **language** and represent the same word.

Exemption

(2) The Director may exempt a body corporate continued as a corporation under this Act from the provisions of subsection (1).

Alternative name

(4) Subject to subsection 12(1), a corporation may set out its name in its articles in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form and it may use and may be legally designated by any such form.

(5) Subject to subsection 12(1), a corporation may set out its name in its articles in any **language** form and it may use and may be legally designated by any such form outside Canada. 1976-77, c.10, s.10; 1979, c.6, s.6; 1992, c.44, s.5.

12.4 Chartered Accountants Act, 1986, R.S.S. 1986, c. C-7.1.

Members and students

14. (1) The council may, in accordance with the bylaws:

(3) Each member has the right to use the designation "Chartered Accountant" in **English** and "comptable agrée" in **French** and may use after his name the initials

12.5 Companies Act, The, R.S.S. 1978, c. C-23.

Statement upon application for registration

195. (5) Where a document required to be filed under this section is not in the **English language**, the registrar may require a **translation** thereof notarially certified. R.S.S. 1978, 1965, c.131, s.195; 1989-90, c.54, s.4.

12.6 Co-operatives Act, 1996, The, S.S. 1996, c. C-37.3.

Alternate name

14. (1) Subject to section 15, a co-operative may set out its name in:

(a) an **English** form;

(b) a **French** form;

(c) a combined **English** and **French** form; or

(d) any **language** form other than **English** or **French** that is approved by the registrar.

(2) A co-operative may be legally designated by the **language** form it has chosen pursuant to subsection (1).

Form of documents filed

236. (1) Every document sent to the registrar is required to be in typed or printed form.

(2) Where any document required pursuant to this Act is not in the **English language**, the registrar may require a **translation** of the document which shall be notarially certified.

(3) Where the registrar considers it appropriate, the registrar may exempt a co-operative from subsection (1). 1989-90, c.C-37.2, s.235.

12.7 Credit Union Act, 1985 The, R.S.S. 1984-85-86, c. C-45.1.

Alternate name

13. Subject to section 14, a credit union may set out its name in:

(a) an **English** form;

(b) a **French** form;

(c) a combined **English** and **French** form; or

(d) any **language** form other than **English** or **French** that is approved by the registrar.

(2) A credit union may be legally designated by the **language** form it has chosen pursuant to subsection (1). 1984-85-86, c.C-45.1, s.13

Form of documents filed

230. (1) Every document sent to the registrar pursuant to this Act or the regulations is required to be in typed or printed form.

(2) Where any document mentioned in subsection (1) is not in the **English language**, the registrar may require that an **English translation** of its content, notarially certified, accompany the document.

(3) Where he considers it appropriate, the registrar may exempt a credit union from subsection (1). 1984-85-86, c.C-45.1, s.230.

12.8 Education Act, 1995, The, S.S 1995, c. E-0.2.

See: Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

12.9 Election Act,1996, The, S.S. 1996, c. E-6.01.

Interpreters

78. (1) If a voter does not does not understand **English** a deputy returning officer may use an **interpreter** to translate any oath or declaration and to ask any questions that the deputy returning officer is required by this Act to put to the voter and to translate the voter's answers.

(2) Every **interpreter** mentioned in subsection (1) shall take an oath or make a declaration in the prescribed form.

(3) Subject to subsection (4) and at the request of a voter who does not understand **English** and who is accompanied by a friend, a deputy returning officer may permit the friend to accompany the voter into the voting station and to assist the voter in marking the voter's ballot paper.

12.10 Enforcement of Foreign Arbitral Awards Act, 1996, The , S.S. 1996, c. E-9.12.

SCHEDULE A.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

12.11 Highway Traffic Act. The , S.S. 1986, c. H-3.1.

Driver's licence required

17. (1) No person shall drive a motor vehicle on a highway unless he holds a driver's licence permitting him to drive that motor vehicle.

(2) Subsection (1) does not apply:

(i) carries with him a licence to drive issued to him by the Government of Canada and is operating a motor vehicle in the service of and owned by the Government of Canada and produces the licence at the request of any peace officer;

(ii) subject to subsection 27(1) of The Vehicle Administration Act, is a non-resident if, while driving a motor vehicle in Saskatchewan, he carries with him:

(A) a licence that permits him to drive that motor vehicle on the highways in the jurisdiction in which he resides or formerly resided; and

(B) if the licence mentioned in paragraph (A) is issued in a **language** other than **English** or **French**, an International Driving Permit issued by a contracting state under the Convention on Road Traffic of the United Nations Conference on Road and Motor Transport; . . . 1986, c.H-3.1, s.17; 1989-90, c.10, s.6

12.12 Human Rights Code, The Saskatchewan, S.S. 1979, c. S-24.1**.**

Prohibition of Certain Discriminatory practices

9. Every person and every class of person shall enjoy the right to engage in and carry on any occupation, business or enterprise under the law without discrimination because of his or their **race**, creed, religion, **colour**, sex, sexual orientation, family status, marital status, disability, **nationality**, **ancestry**, place or **origin** or receipt of public assistance. 1979, c.S-24.1, s.9; 1989-90, c.23, s.5; 1993, c.61, s.9.

12.13 International Child Abduction Act, 1996, The, S.S. 1996, c. I-10.11.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority.

Done at The Hague, on the 25th day of October 1980 in the **English** and **French languages**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

12.14 International Sale of Goods Act. The, S.S. 1990-91, c. I-10.3.

SCHEDULE [Section 2] UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic. 1990-91, c.I- 10.3.

12.15 Interpretation Act, The 1995, S.S. 1995, c. I-11.2.

Corporate rights and powers

16. (1) This section and section 17 apply to a corporation continued or established by or pursuant to an enactment other than *The Business Corporations Act*, *The Non-profit Corporations Act*, *The Co-operatives Act, 1989*, *The Credit Union Act, 1985* or *The Crown Corporations Act, 1993*.

(4) If a corporation has a name consisting of an **English** form, a **French** form, an **English** form and a **French** form or a combined **English** and **French** form, the corporation may use and be designated by that form.

General definitions

27. (3) In the **English** version of an Act:

(a) "shall" shallbe interpreted as imperative; and

(b) "may" shall be interpreted as permissive or empowering.the conferring of a power, right, authorization or permission is usually expressed by the use of the verb "pouvoir" and occasionally by other expressions that convey those meanings.

(4) In the **French** version of an Act:

(a) obligation is usually expressed by the use of the present indicative form of the relevant verb and occasionally by other words or expressions that convey that meaning; and

(b) the conferring of a power, right, authorization or permission is usually expressed by the use of the verb "pouvoir" and occasionally by other expressions that convey those meanings.

(5) The Lieutenant Governor in Council may make regulations prescribing an **official French language** equivalent for the title or name of any place, body, society, officer, functionary, person, party or thing. 1995, c.I-11.2, s.27

12.16 Jury Act, 1981, The, S.S. 1980-81, c. J-4.1.

4. The persons excluded from services as jurors in any civil or criminal proceeding tried by a jury in the province are:

(i) persons who are unable to understand the **language** in which the trial is to be concluded. 1980-81, c.J-4.1, s. 4; 1983, c.48, s.3; 1993, c.55, s.177.

Selection of jurors

7. Notwithstanding section 6, where a trial is to be held in a **language** other than **English**, the sheriff may obtain the names and addresses of prospective jurors from any alternative sources that are prescribed in the regulations. 1980-81, c.J-4.1, s.7.

Regulations

36. (1) Subject to subsection (2), for the purpose of carrying out this Act according to its intent, the Lieutenant Governor in Council may make regulations:

(a) prescribing the sources that the sheriff may use to select prospective jurors where a trial is to be held in a **language** other than **English**; 1980-81, c.J-4.1, s.36

12.17 Local Government Election Act. The, S.S. 1982-83, c. L-30.1.

Interpreter

90. (1) Where a person who intends to vote does not understand the **English language**, the deputy returning officer may permit an **interpreter**, other than a person who is a candidate or

agent of a candidate, to translate any declaration and any lawful question necessarily put to the person and his corresponding answers.

(2) Every **interpreter** shall execute the declaration of **interpreter** in the prescribed form.

(3) Where a person votes in accordance with subsection (1), the deputy returning officer shall cause to be entered in the poll book opposite the name of the person, in the proper column, that the vote of the person is marked pursuant to this section. 1982-83, c.L-30.1, s.90

12.18 Marriage Act, The, R.S.S. 1995, c. M-4.1.

Issuer to read licence to parties

14. (1) The issuer shall read the form of licence to each of the parties separately, in order to verify that both parties fully understand its contents.

(2) If necessary, an independent **interpreter** shall be employed for the purposes of subsection (1).

12.19 Non-Profit Corporations Act, 1995, The, S.S. 1995, c. N-4.2.

Name of corporation

10. (1) The word "incorporated", "Incorporée" or "Corporation" or the abbreviation "Inc." or "Corp." are to be part of the name of every corporation, but a corporation may use and may be legally designated by either the full or the abbreviated form. . . .

(3) Subject to subsection 12(1), a corporation may set out its name in its articles in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form and it may use and may be legally designated by that form. 1995, c.N-4.2, s.10

Form of documents filed

270. (1) Every document sent to the Director is to be in typed or printed form.

(2) Where any document required pursuant to this Act is not in the **English language**, the Director may require a notarially certified **translation**. 1995, c.N-4.2, s.270.

12.20 Osteopathic Practice Act. The, R.S.S 1978, c. O-7.

Registration and examinations

8. (1) Only those persons who can produce a certificate of having successfully passed the provincial junior matriculation examination or can exhibit qualifications equivalent thereto, and who are duly qualified Doctors of Osteopathy and graduates of a recognized school or college of osteopathy, shall be entitled to apply for registration as osteopathic physicians under this Act and become members of the society. For the purpose of this section a recognized school or college of osteopathy shall be deemed to be an institution which teaches a resident course of four school or college periods of nine months each or more, which requires as a prerequisite of entrance two years of university, preosteopathic education including courses in **English**, physics, chemistry and biology, and which is recognized as an approved osteopathic college by the American Osteopathic Association. S.S. 1965, c.320, s.8; 1979, c.50, s.8; 1989, c.54, s.4.

12.21 Reciprocal Enforcement of Maintenance Orders Act, 1996, The, S.S. 1996, c. R-4.2.

Translation of documents

15. Where an order or other document received by a court is not in **English** or in **French**, the order or other document is to have attached to it from the other jurisdiction a translation in **English** or in **French** approved by the court and the order or other document is deemed to be in **English** or in **French** for the purposes of this Act.

12.22 Trusts Convention Implementation Act, 1994, The, S.S. 1994, c. T-23.1.

CHAPTER V - FINAL CLAUSES

Done at The Hague, on the _____day of _____, 19____, in **English** and **French**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session.

12.23 Language Act, The, S.S. 1988-89, c. L-6.1.

Short title

1. This Act may be cited as ***The Language Act***.

Interpretation

2. In this Act:

"Act" <loi>

"Act" means an Act or statute of the Legislature of Saskatchewan;

"Assembly" <Assemblée>

"Assembly" means the Legislative Assembly of Saskatchewan;

"Ordinance" <Ordonnance>

"Ordinance" means an Ordinance of the North-West Territories that is or was at any time in force in Saskatchewan or that part of the North-West Territories that formed Saskatchewan;

"records and journals of the Assembly" <archives et comptes rendus>

"records and journals of the Assembly" includes:

(i) the documents of the Assembly entitled "debates and proceedings", "routine proceedings and orders of the day", "votes and proceedings" and "journals of the Legislative Assembly"; and

(ii) reports, sessional papers and other documents produced by or tabled in the Assembly;

but does not include rules and procedures of the Assembly;

"regulation" <règlements>

"regulation" includes a regulation, order, bylaw or rule that is:

(i) of a legislative nature; and

(ii) enacted pursuant to an Act or an Ordinance;

but does not include the rules of the courts mentioned in subsection 11(1) or of tribunals;

"rules and procedures of the Assembly" <règlements de l'Assemblée>

"rules and procedures of the Assembly" means the document of the Assembly entitled "rules and procedures of the Legislative Assembly of Saskatchewan";

"tribunal" <autorité administrative>

"tribunal" means a board, commission, tribunal or other body that:(i) is established pursuant to an Act; and

(ii) performs a judicial or quasi-judicial function;

but does not include a court mentioned in subsection 11(1).

Validation of certain Acts and matters

3. (1) All Acts, regulations and Ordinances enacted prior to the coming into force of this Act, whether proclaimed in force or not, are declared valid notwithstanding that they were enacted, printed and published in **English** only.

(2) All:

(a) actions, proceedings, transactions or other matters taken, done or arising by or pursuant to an Act, regulation or Ordinance validated pursuant to subsection (1) are declared not to be invalid;

(b) rights, obligations, duties, powers and other effects created, limited, revoked or otherwise dealt with by or pursuant to an Act, regulation or Ordinance validated pursuant to subsection (1) are declared not to have been invalidly created, limited, revoked or otherwise dealt with; and

(c) matters or things, in addition to those mentioned in clauses (a) and (b), done by, in, in reliance on or pursuant to an Act, regulation or Ordinance validated pursuant to subsection (1) are declared not to have been invalidly done;

solely by reason of the fact that the Act, regulation or Ordinance was enacted, printed and published in **English** only.

Language of Acts

4. All Acts and regulations may be enacted, printed and published in **English** only or in **English** and **French**.

Existing Acts

5. The Lieutenant Governor in Council may by regulation:

(a) designate any Act which was enacted, printed and published in **English** only before the coming into force of this Act as an Act that is to be introduced to the Assembly for enactment, printing and publishing in **English** and **French**;

(b) prescribe a date by which any Bill to accomplish the purposes of this section is to be introduced to the Assembly.

Future Acts and Bills

6. The Lieutenant Governor in Council may by regulation:

(a) designate any Bill which is to be introduced to the Assembly by a member of the Executive Council after the coming into force of this Act as a Bill that is to be introduced to the Assembly for enactment, printing and publishing in **English** and **French**;

(b) designate any Act which is enacted, printed and published in **English** only after the coming into force of this Act as an Act that is to be introduced to the Assembly for enactment, printing and publishing in **English** and **French**;

(c) prescribe a date by which any Bill to accomplish the purposes of this section is to be introduced to the Assembly.

Validity of Enactment

7. Notwithstanding section 12 or any other Act or law, where a Bill is introduced to the Assembly for enactment, printing and publishing in **English** and **French**:

(a) all stages of the enactment shall be recorded in **English** and **French** in the document of the Assembly entitled "votes and proceedings"; and

(b) if all stages of the enactment are recorded in the manner described in clause (a), the Bill is conclusively deemed to be validly enacted.

Existing regulations

8. The Lieutenant Governor in Council may by regulation:

(a) designate regulations which were enacted, printed and published before the coming into force of this Act in **English** only as regulations that are to be enacted, printed and published in **English** and **French**;

(b) prescribe a date by which regulations designated pursuant to clause (a) are to be enacted, printed and published in **English** and **French**.

Future regulations

9. The Lieutenant Governor in Council may by regulation:

(a) designate proposed regulations which are to be enacted, printed and published after the coming into force of this Act as regulations that are to be enacted, printed and published in **English** and **French**;

(b) designate regulations which are enacted, printed and published in **English** only after the coming into force of this Act as regulations that are to be enacted, printed and published in **English** and **French**;

(c) prescribe a date by which regulations designated pursuant to this section are to be enacted, printed and published in **English** and **French**. 1988-89, c.L-6.1, s.9.

Versions to have equal authority

10. Where an Act or regulation is enacted, printed and published in **English** and **French**, the **English** version and the **French** version are equally authoritative. 1988-89, c.L-6.1, s.10.

11. (1) Any person may use **English** or **French** in proceedings before the courts entitled as:

(a) the Court of Appeal;

(b) the Provincial Court of Saskatchewan;

(c) Her Majesty's Court of Queen's Bench for Saskatchewan;

(d) the Surrogate Court for Saskatchewan;

(e) the Traffic Safety Court of Saskatchewan; or

(f) the Unified Family Court for Saskatchewan.

(2) The courts mentioned in subsection (1) may make rules for the purpose of carrying into effect the provisions of this section or for the purpose of providing for any matters not fully or sufficiently provided for in this section or in their rules already in force.

(3) Where the courts mentioned in subsection (1) make rules pursuant to subsection (2), those rules shall be printed and published in **English** and **French**.

(4) The rules of the courts mentioned in subsection (1) and the rules of tribunals are declared valid notwithstanding that they were made, printed and published in **English** only.

(5) The rules of the courts mentioned in subsection (1) shall be printed and published in **English** and **French** not later than January 1, 1994.

(6) Before the date mentioned in subsection (5), the courts mentioned in subsection (1) may cause to be printed and published their rules, other than rules made pursuant to subsection (2), in **English** only.

(7) Where the rules of a court mentioned in subsection (1) are printed and published in **English** and **French**, the **English** version and the **French** version are equally authoritative.

[TRANSLATION] *The difference between language rights and fundamental justice can be explained by examining the rights of a French-speaking person at a trial in Saskatchewan. French-speakers are entitled to use French in court even if they can speak and understand English. The right to speak French before the courts is not tied to English or French ability. By contrast, members of other language groups do not have a right to speak their language before the courts.* **(NP)** *A person who cannot follow the trial is entitled to an interpreter regardless of his or her mother tongue. This right, which is based on the principles of fundamental justice, is guaranteed by section 14 of the Charter. Unlike a francophone's right to use French, it is not tied to any language group. The right*

exerciseable if the person cannot understand the trial. The trial judge confused the two kinds of rights and did not treat each of them differently. He approached the language rights contained in the Language Act as legal rights ("garanties juridiques"). The trial judge tried to interpret the purpose of section 11 of the Language Act as though it were a corollary of the right to a fair trial. Natural or fundamental justice rights are distinct from language rights. In my opinion, the trial judge erred in havings interpretated language rights as he did and the conclusion of the appellate court was correct. This ground of the appeal is dismissed ***(pp. 156-157)***. ***R.*** **v.** ***Rottiers*** (1995), 134 Sask. R. 152 (Sask. C.A). Leave to appeal refused, No. 25020, [1995] 2 S.C.R. ix.

Language in Assembly

12. (1) Every person may use **English** or **French** in the debates of the Assembly.

(2) The rules and procedures of the Assembly and records and journals of the Assembly that were made before the coming into force of this section are declared valid notwithstanding that they were made, printed and published in **English** only.

(3) The rules and procedures of the Assembly and records and journals of the Assembly may be made, printed and published in **English** only.

(4) Notwithstanding subsection (3), the Assembly may, by resolution, direct that all or part of the rules and procedures of the Assembly or records and journals of the Assembly shall be made, printed and published in **English** and **French**.

(5) Where all or any part of the rules and procedures of the Assembly or the records and journals of the Assembly are made, printed and published in **English** and **French**, the **English** version and the **French** version are equally authoritative.

Certain provision

13. Section 110 of *The North-West Territories Act*, being chapter 50 of the Revised Statutes of Canada, 1886, as it existed on September 1, 1905, does not apply to Saskatchewan with respect to matters within the legislative authority of Saskatchewan.

Effect of validation

14. The declaration of validity of Acts, regulations, Ordinances, rules of court, rules of tribunals and rules and procedures of the Assembly pursuant to this Act does not revive any Act, regulation, Ordinance, rule of court, rule of tribunal or rule and procedure of the Assembly that has been repealed, substituted, superseded or that has otherwise ceased to be in force on or before the day this Act comes into force.

Regulations

15. (1) The Lieutenant Governor in Council may make regulations prescribing any matter or thing that is authorized or required to be prescribed in the regulations.

(2) A regulation made pursuant to this Act shall be enacted, printed and published in **English** and **French**.

Coming into force

16. This Act comes into force on the day of assent.

12.24 Wages Recovery Act. The, R.S.S. 1978, c. W-1.

Records

18. (1) Every employer to whom Part II of The Labour Standards Act applies shall at all times keep readily available for inspection by the minister or his duly authorized representative, in each place of business operated by him in the province or in connection with which any employee is employed or in such other place or places as are approved by the minister, true and correct records in the **English language** showing a copy of every written contract of service, collective bargaining agreement or other document dealing with wages or other monetary benefits to which any employee is entitled and the following particulars in respect of each of his employees or the employment of each of his employees, as the case may be: S.S. 1965, c.296, s.18

12.25 Wills Act, 1996, The, S.S. 1996, c. W-14.1.

SCHEDULE Convention Providing a Uniform Law on The Form of an International Will

Article XVI 1 The original of the present Convention, in the **English**, **French**, Russian and Spanish **languages**, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

13. NEWFOUNDLAND

13.1 Children's Law Act, The, R.S.N.F. 1990, c. C-13.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority.

Done at The Hague, on the 25th day of October, 1980. 1988 c. 61 Sch

13.2 Corporations Act, The, R.S.N.F. 1990, c. C-36.

Name of corporation

17. (1) The word "Limited", "Limitee", "Incorporated", "Incorporee" or "Corporation" or the abbreviation "Ltd.", "Ltee", "Inc." or "Corp." shall be part of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form.

(2) The registrar may exempt a body corporate continued as a corporation under this Act from subsection (1). 1986 c. 12 s. 20.

English French Form of name

18. A corporation may set out its name in its articles in an **English** form, a **French** form, an **English** form and a **French** form or in a combined **English** and **French** form, and the corporation may use and may be legally designated that form. 1986 c. 12 s. 21.

Name in any language

19. A corporation may set out its name in an articles in any **language** form and it may use and may be legally designated by that form. 1986 c. 12 s. 22.

13.3 Humans Rights Code, The, R.S.N.F. 1990, c. H-14.

Rights of the public to services

6. (1) A person shall not deny to or discriminate against a person or class of persons with respect to accomodation, services, facilities or goods to which members of the public customarily have access or which are customarily offered to the public because of the **race**, religion, creed, political opinion, **colour** or **ethnic**, **national** or social **origin**, sex, marital status, physical disability or mental disability of that person or class of persons. 1988 c. 62 s. 4.; 1990 c.59 s1.

13.4 International Commercial Arbitration Act, The, R.S.N.F. 1990, c. I-15.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

a) The duly authenticated original award or a duly certified copy thereof;

b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an **official language** of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a **translation** of these documents into such **language**. The **translation** shall be certified by an **official** or sworn **translator** or by a diplomatic or consular agent.

Article 22. Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is

not made in an **official language** of this State, the party shall supply a duly certified **translation** thereof into such **language**.

Article XVI

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

13.5 International Trusts Act, The, R.S.N.F. 1990, c. I-17.

Article 32

Done at The Hague, on the _____day of _____, 19____, in **English** and **French**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fifteenth Session. 1989 c. 29 sch.

13.6 Jury Act, The, R.S.N.F. 1990, c. J-5.

Language difficulty

5. Where the **language** in which a trial is to be conducted is one that a person is unable to understand or speak, he or she is disqualified from serving as a juror in the trial. 1980 c. 41 s. 6.

13.7 Reciprocal Enforcement of Judgments Act, The, R.S.N.F. 1990, c. R-4.

Extra Provincial Notice Judgment in a language other than English

6. Where a judgment sought to be registered under this Act is in a **language** other than **English**, the judgment or the certified copy of it shall have attached to it a **translation** in **English** approved by the court, and upon the approval being given the judgment shall be considered to be in **English**. RSN 1970 v. 327 s. 6.

13.8 Reciprocal Enforcement of Support Orders Act, The, R.S.N.F. 1990, c. R-5.

Currency and Translation

14. (3) Where an order or other received by a court is not in **English**, the order or the other document shall have attached to it from the other jurisdiction a **translation** approved by the court and the order or other document shall be considered to be in **English** for the purposes of this Act. 1988 c. 59 s. 14.

13.9 Schools Act, The 1996, S.N. 1996, c. S-12.1.

See: Constittutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

13.10 Support Orders Enforcement Act, The, R.S.N.F. 1990, c. S-31.

Extra Provincial Notice

15. On the filing of a notice of garnishment or a document of a similar effect that,

(a) is issued outside the province;

(b) states that it is issued in respect of support; and

(c) is written in or accompanied by a sworn, affirmed or certified **translation** into **English**,

the director may issue and serve a notice of garnishment in accordance with section 14. 1988 c. 58 s.15; 1989 c11 s.6.

13.11 Veterinary Medical Act, The, R.S.N.F. 1990, c. V-4.

19 Entitlement to Licence

A person shall be entitled to receive a licence to practice veterinary science in the province who pays the prescribed registration and licence fees and who . . .

(c) has a working knowledge of the **English language**;

13.12 Wills Act, The, R.S.N.F. 1990, c. W-10.

SCHEDULE

CONVENTION PROVIDING A UNIFORM LAW ON THE FORM OF AN INTERNATIONAL WILL

Article XVI

1 The original of the present Convention, in the **English**, **French**, Russian and Spanish **languages**, each version being equally authentic, shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each of the signatory and acceding States and to the International Institute for the Unification of Private Law.

Article 3

1. The will shall be made in writing.

3. It may be written in any **language**, by hand or by any other means.

14. NORTHWEST TERRITORIES

14.1 Northwest Territories Act, S.C. 1886, c. 50, s. 110 Amended By S.C. 1891, c. 22, s. 18.

110. Either the **English** or the **French language** may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those **languages** shall be used in the records and journals of such Assembly; and all ordinances made under this Act shall be printed in both those **languages**: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law, and thereafter shall have full force and effect.

See also:

Canada, *Canadian Charter of Rights and Freedoms*.

Canada, *Constitution Act, 1867*, s. 133;

Québec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba Act, 1870*, s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 17(2), 18(2) and 19(2).

14.2 Northwest Territories Act, R.S.C. 1985, c. N-27.

PART II.1

OFFICIAL LANGUAGES

Official Languages Ordinance

43.1 Subject to section 43.2, the ordinance entitled the Official Languages Act, made on June 28, 1984 by the Commissioner in Council, as amended on June 26, 1986, may be amended or repealed by the Commissioner in Council only if the amendment or repeal is concurred in by Parliament through an amendment to this Act. R.S., 1985, c. 31 (4th Supp.), s. 98.

Additional rights and services

43.2 Nothing in this Part shall be construed as preventing the Commissioner, the Commissioner in Council or the Government of the Territories from granting rights in respect of, or providing services in, English and French or any languages of the aboriginal peoples of Canada, in addition to the rights and services provided for in the ordinance referred to in section 43.1, whether by amending the ordinance, without the concurrence of Parliament, or by any other means. R.S., 1985, c. 31 (4th Supp.), s. 98.

Amendment concurred in

43.3 The ordinance entitled An Act to amend the Official Languages Act, made on October 29, 1990 by the Commissioner in Council, is hereby concurred in by Parliament. 1990, c. 48, s. 1.

14.3 Adoption of The French Version of Statutes And Statutory Instruments Act, The, R.S.N.W.T. 1988, c. 92 (Supp.).

1. In this Act, "statutory instrument" means a rule, order, regulation or proclamation issued, made or established

(a) in the execution of a power conferred by or under an Act, by or under which the instrument is expressly authorized to be issued, made or established otherwise than by the conferring on any person or body of powers or functions in relation to a matter to which the instrument relates, or

(b) by or under the authority of the Commissioner,

but does not include

(c) an order of a court made in the course of an action,

(d) an order made by a public officer or administrative tribunal in a dispute between two or more persons, or

(e) a by-law, resolution, order or directive of a local authority.

2. (1) The Minister shall cause to be prepared and printed

(a) a Statute Roll comprised of the **French** version of

(i) all statutes revised in accordance with the Statute Revision Act,

(ii) all statutes not revised but still in force, and

(iii) all statutes enacted after December 31, 1988 and before the Commissioner declares any part of the Statute Roll in force; and

(b) subject to subsection (2), a Statutory Instruments Roll comprised of the **French** version of all statutory instruments in force on December 31, 1990.

(2) Subsection (1) does not apply to regulations that were in force on December 31, 1990 and that are repealed or repealed and replaced between that date and March 31, 1992.

(2.1) The Supreme Court Rules need not be included in the Statutory Instruments Roll referred to in subsection (1).

(3) The Statute Roll and the Statutory Instruments Roll shall be attested by the signature of the Commissioner and countersigned by the Minister and shall be deposited in the Office of the Clerk of the Legislative Assembly.

(4) The Statute Roll and the Statutory Instruments Roll deposited in the Office of the Clerk of the Legislative Assembly are the original of the **French** version of the Acts and statutory instruments contained in the Rolls. S.N.W.T. 1991-92,c.1,s.1.

3. (1) The Minister shall lay the Statute Roll before the Legislative Assembly as soon as possible after it is completed.

(2) The Commissioner may, by order, declare the day or days on which the Statute Roll, a part of the Statute Roll, the Statutory Instruments Roll or a part of the Statutory Instruments Roll comes into force and has effect as law.

(3) On or after the day named in an order made under subsection (2), the Statute Roll or that part of the Statute Roll is in force and has effect as law to all intents as if the Statute Roll or part of the Statute Roll was expressly embodied in and enacted by this Act to come into force and to have effect on and after that day.

(4) On or after the day named in an order made under subsection (2), the Statutory Instruments Roll or that part of the Statutory Instruments Roll is in force and has effect as law to all intents as if the Statutory Instruments Roll or part of the Statutory Instruments Roll was expressly brought into force in accordance with the Regulations Act.

4. (1) An order under section 3 does not, unless it otherwise states, operate to bring into force an Act or part of an Act included in the Statute Roll, where

(a) the Act contains a provision stating that the Act or part of the Act is to come into force on a day specified in the Act or on a day to be fixed by order of the Commissioner; and

(b) the Act or part of the Act does not come into force before the day on which the Statute Roll or that part of the Statute Roll containing the Act comes into force.

(2) An order under section 3 does not, unless it otherwise states, operate to bring into force a statutory instrument or part of a statutory instrument included in the Statutory Instruments Roll, where

(a) the statutory instrument contains a provision stating that the statutory instrument or part of the statutory instrument is to come into force on a day specified in the statutory instrument; and

(b) the statutory instrument or part of the statutory instrument does not come into force before the day on which the Statutory Instruments Roll or that part of the Statutory Instruments Roll containing the statutory instrument comes into force.

5. The inclusion or omission of an Act or a part of an Act in the Statute Roll or a statutory instrument or a part of a statutory instrument in the Statutory Instruments Roll shall not be construed as a declaration that the Act or statutory instrument or part of the Act or statutory instrument was or was not in force immediately before the coming into force of the Statute Roll or the Statutory Instruments Roll.

6. (1) An Act in the Statute Roll may be cited by its title as an Act or as a chapter of the Revised Statutes of the Northwest Territories, 1988 or a supplement to the Revised Statutes of the Northwest Territories, 1988.

(2) A statutory instrument in the Statutory Instruments Roll may be cited by its title as a statutory instrument or as a chapter of the Revised Regulations of the Northwest Territories.

7. The Minister may cause to be made any modifications, additions or corrections required to the Statute Roll or Statutory Instruments Roll by reason of any omission or error in its preparation or printing.

14.4 Education Act, S.N.W.T. 1995, c. C.28.

See: Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

14.5 International Child Abduction Act, R.S.N.W.T. 1988, c. C.I-5.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority.

14.6 International Commercial Arbitration Act, S.N.W.T. 1995, c. C. 28.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

a) The duly authenticated original award or a duly certified copy thereof;

b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an **official language** of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a **translation** of these documents into such **language**. The **translation** shall be certified by an **official** or sworn **translator** or by a diplomatic or consular agent.

Article 22. Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an **official language** of this State, the party shall supply a duly certified **translation** thereof into such **language**.

Article XVI

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

14.7 International Sale of Goods Act, R.S.N.W.T. 1988,c. C.I-7.

DONE at Vienna, this eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, **English**, **French**, Russian and Spanish texts are equally authentic.

14.8 Interpretation Act, R.S.N.W.T. 1988, c. C. I-8.

General definitions

28. (1) In an enactment,

"**Official languages**" means **Official languages** as defined in the **Official languages** Act; (**langues officielles**)

Judicial construction

37. (3) The re-enactment, revision, consolidation or amendment of an enactment does not imply that the construction that has, by judicial decision or otherwise, been placed on the **language** used in the enactment or on similar **language** is adopted.

14.9 Jury Act, R.S.N.W.T. 1988, c. J-2.

Persons qualified as jurors

4. Subject to this Act, every person who

(c) is able to speak and understand an **Official language**,

is qualified to serve as a juror in any action or proceeding that may be tried by a jury in the Territories. R.S.N.W.T. 1988, c. 125 (Supp.), s.2; S.N.W.T. 1995, c. 29, s. 2.

Notice to Sheriff from clerk

12. (1) On receipt of a notice that a jury will be required for the sittings of the Court, the Clerk shall, within a reasonable time before the day fixed for the commencement of the sittings, notify the Sheriff in writing of the place, the date and the time at which a jury panel shall be required to attend, whether the trial will be conducted in **English** or **French** and any other relevant information and shall issue to the Sheriff a precept in the prescribed form.

14.10 Official languages Act, R.S.N.W.T. 1988, c. O-1.

Recognizing that the existence of aboriginal peoples, centred in the Territories from time immemorial, but also present elsewhere in Canada, constitutes a fundamental characteristic of Canada;

Recognizing that the existence of aboriginal peoples, **speaking** aboriginal **languages** constitutes the Territories a distinct society within Canada;

Recognizing that many **languages** are spoken and used by the people of the Territories;

Being committed to the preservation, development and enhancement of the aboriginal **languages**;

Recognizing that the aboriginal **languages**, being the **languages** of the aboriginal peoples of the Territories, should be given recognition in law;

Desiring to provide in law for the use of the aboriginal **languages** in the Territories including the use of the aboriginal **languages** for all or any of the **official** purposes of the Territories at the time and in the manner that is appropriate;

Expressing the wish that the aboriginal **languages** will be entrenched in the Constitution of Canada as **Official languages** of the Territories;

Desiring to establish **English** and **French** as the **Official languages** of the Territories having equality of status and equal rights and privileges as **Official languages**;

Believing that the legal protection of **languages** will assist in preserving the culture of the people as expressed through their **language**;

Desiring that all **linguistic** groups in the Territories should, without regard to their first **language** learned, have equal opportunities to obtain employment and participate in the institutions of the Legislative Assembly and Government of the Territories, with due regard to the principle of selection of personnel according to merit;

The Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows: R.S.N.W.T. 1988, c. 56 (Supp.), s.2.

INTERPRETATION

Definitions

1. In this Act,

"Inuktitut" includes Inuvialuktun and Inuinnaqtun; (*inuktitut*)

"**Official languages**" means the **languages** referred to in section 4; (***langues officielles***)

"Slavey" includes North Slavey and South Slavey. (*Esclave*) R.S.N.W.T. 1988, c. 56 (Supp.), s. 3; c. 125 (Supp.), s. 4.

Continuation of existing rights or privileges

2. Nothing in this Act abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Act with respect to any **language** that is not **English** or **French**.

Municipalities and settlements

3. For the purposes of this Act, a municipality or settlement or the council of a municipality or settlement shall not be construed to be an institution of the Legislative Assembly or Government of the Northwest Territories.

PART I

OFFICIAL LANGUAGES

Official languages

4. *Chipewyan*, *Cree*, *Dogrib*, ***English***, ***French***, *Gwich'in*, *Inuktitut* and *Slavey* are the **Official languages** of the Territories. R.S.N.W.T. 1988, c. 56 (Supp.), s. 4.

Official languages of the Territories

8. (1) To the extent and in the manner provided in this Act and any regulations under this Act, the **Official languages** of the Territories have equality of status and equal rights and privileges as to their use in all institutions of the Legislative Assembly and Government of the Territories.

Proceedings of Legislative Assembly

9. Everyone has the right to use any **Official language** in the debates and other proceedings of the Legislative Assembly. R.S.N.W.T. 1988, c. 56 (Supp.), s. 7.

Acts, records and journals

10. (1) Acts of the Legislature and records and journals of the Legislative Assembly shall be printed and published in **English** and **French** and both **language** versions are equally authoritative.

Other languages

(2) The Commissioner in Executive Council may prescribe that a **translation** of any Act shall be made after enactment and be printed and published in one or more of the **Official languages** in addition to **English** and **French**.

Recordings of debates

(3) Copies of the sound recordings of the public debates of the Legislative Assembly, in their original and interpreted versions, shall be provided to any person on reasonable request. R.S.N.W.T. 1988, c. 56 (Supp.), s. 8.

Instruments directed to public

11. Subject to this Act, all instruments in writing directed to or intended for the notice of the public, purporting to be made or issued by or under the authority of the Legislature or Government of the Northwest Territories or any judicial, quasi-judicial or administrative body or Crown corporation established by or under an Act, shall be promulgated in both **Official languages** and in such other **Official languages** as may be prescribed by regulation. R.S.N.W.T. 1988, c. 56 (Supp.), s. 9.

Proceedings in courts

12. (1) Either **English** or **French** may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislature.

Proceedings in courts

(2) *Chipewyan*, *Cree*, *Dogrib*, *Gwich'in*, *Inuktitut* and *Slavey* may be used by any person in any court established by the Commissioner acting by and with the advice and consent of the Legislative Assembly.

Interpretation for the public

(3) A court may, in any proceedings conducted before it, cause facilities to be made available for the simultaneous **interpretation** of the proceedings, including evidence given and taken, from one **Official language** into another where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings. R.S.N.W.T. 1988, c.56(Supp.),s.10.

Decisions, orders and judgments

13. (1) All final decisions, orders and judgments, including any reasons given for them, issued by any judicial or quasi-judicial body established by or under an Act shall be issued in both **English** and **French** where

(a) the decision, order or judgment determines a question of law of general public interest or importance; or

(b) the proceedings leading to the issue of the decision, order or judgment were conducted in whole or in part in both **English** and **French**.

Delay in issuing one version

(2) Where a body by which a final decision, order or judgment including any reasons given for it is to be issued in both **English** and **French** under subsection (1) is of the opinion that to issue it in both **English** and **French** would occasion a delay

(a) prejudicial to the public interest, or

(b) resulting in injustice or hardship to any party to the proceedings leading to its issue,

the decision, order or judgment, including any reasons given for it, shall be issued in the first instance in its version in one of **English** or **French** and after that, within the time that is reasonable in the circumstances, in its version in the other **language**, each version to be effective from the time the first version is effective.

Oral rendition of decisions not affected

(3) Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in one only of the **Official languages**, of any decision, order or judgment or any reasons given for it.

Sound recordings Validity not affected

(4) A sound recording of all final decisions, orders and judgments, including any reasons given for them, issued by any judicial or quasi-judicial body established by or under an Act shall be made in one or more of the **Official languages** other than **English** or **French** and copies of the sound recording shall be made available to any person on reasonable request, where

(a) the decision, order or judgment determines a question of law or general public interest or importance, and

(b) it is practicable to make available that version or versions, and it will advance the general public knowledge of the decision, order or judgment.

(5) Nothing in subsection (4) shall be construed as affecting the validity of a decision, order or judgment, referred to in subsection (1), (2) or (3). R.S.N.W.T. 1988, c. 56 (Supp.), s. 11.

Communication by public with head, central or other offices

14. (1) Any member of the public in the Territories has the right to communicate with, and to receive available services from, any head or central office of an institution of the Legislative Assembly or the Government of the Northwest Territories in **English** or **French**, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in any such **language**; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both **English** and **French**.

Communication by public with regional, area or community offices

(2) Any member of the public in the Territories has the right to communicate with, and to receive available services from, any regional, area or community office of an institution of the Legislative Assembly or the Government of the Territories in an **Official language**, other than **English** or **French**, spoken in that region or community, where

(a) there is a significant demand for communications with and services from that office in any such **language**; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in such **language**. R.S.N.W.T. 1988, c. 56 (Supp.), s. 12.

Publication in *Northwest Territories Gazette*

15. (1) Any Act, and any rule, order, regulation, by-law or proclamation required by or under the authority of an Act to be published in the *Northwest Territories Gazette* is of no force or effect if it is not printed and published in both **English** and **French**.

Status of previous legislation

(2) Any Act, and any rule, order, regulation, by-law or proclamation required by or under the authority of an Act to be published in the *Northwest Territories Gazette* that is made before December 31, 1989, is of no force or effect if it is not printed and published in both **English** and **French** before September 30, 1992.

Idem

(3) For greater certainty, before September 30, 1992, no Act, rule, order, regulation, by-law or proclamation made before December 31, 1989, is without force or effect by reason only of

its having been printed and published in only one **Official language**. R.S.N.W.T. 1988, c. 56 (Supp.), s. 13; c. 78 (Supp.), s. 1; 1991-92, c. 8, s. 1.

Rights and services not affected

17. Nothing in this Part shall be construed as preventing the Commissioner, the Legislative Assembly or the Government of the Northwest Territories from granting rights in respect of, or providing services in, any **Official language** in addition to the rights and services provided in this Act and the regulations. R.S.N.W.T. 1988, c. 56 (Supp.), s. 14.

PART II LANGUAGES COMMISSIONER

Languages Commissioner and appointment

18. (1) There shall be a **Languages** Commissioner who shall be appointed by the Commissioner under the Seal of the Territories after approval of the appointment by resolution of the Legislative Assembly.

Tenure and removal

(2) The **Languages** Commissioner holds office during good behaviour for a term of four years, but may be removed by the Commissioner at any time on address of the Legislative Assembly. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

Staff

19. (1) Such officers and employees as are necessary for the proper conduct of the work of the office of the **Languages** Commissioner shall be appointed in the manner authorized by law.

Public Service Act

(2) The officers and employees of the office of the **Languages** Commissioner appointed under subsection (1) shall be deemed to be persons employed in the public service for the purposes of the *Public Service Act*.

Status of Languages Commissioner

(3) The **Languages** Commissioner shall rank as and have all the powers of a Deputy Minister of a department. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

Duty of Languages Commissioner

20. (1) It is the duty of the **Languages** Commissioner to take all actions and measures within the authority of the **Languages** Commissioner with a view to ensuring recognition of the rights, status and privileges of each of the **Official languages** and compliance with the spirit and intent of this Act in the administration of the affairs of government institutions, including any of their activities relating to the advancement of the aboriginal **languages** in the Territories.

Investigations and reports

(2) In carrying out the duties set out in subsection (1), the **Languages** Commissioner may conduct and carry out investigations either on his or her own initiative or pursuant to any complaint made to the **Languages** Commissioner and report and make recommendations with respect thereto as provided in this Act.

Meetings with representatives of Official languages

(3) For the purposes of soliciting the advice of representatives of each **Official language**, the **Languages** Commissioner shall meet not less than once a year with the representatives of such organizations as may be prescribed. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

Investigations of complaints

21. (1) The **Languages** Commissioner shall investigate any reasonable complaint made to the **Languages** Commissioner arising from any act or omission to the effect that, in any particular instance or case, in the administration of the affairs of any government institution

(a) the status of an **Official language** was not or is not being recognized;

(b) any provision of any Act or regulation relating to the status or use of the **Official languages** was not or is not being complied with; or

(c) the spirit and intent of this Act was not or is not being complied with.

Refuse or cease investigation

(2) The **Languages** Commissioner may refuse to investigate or cease to investigate any complaint if in the opinion of the **Languages** Commissioner it is reasonable to do so, in which case the **Languages** Commissioner shall inform the complainant of that decision and the reasons for it. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

Refer to Government Leader and Deputy Minister

Refer to Government Leader and Deputy Minister

22. (1) If, after carrying out an investigation under this Act, the **Languages** Commissioner is of the opinion that any matter should be referred to a government institution concerned for consideration and any necessary action, the **Languages** Commissioner shall report that opinion and the reasons for it to the Government Leader and the Deputy Minister or other administrative head of the institution concerned.

Recommendations

(2) In a report under subsection (1) the **Languages** Commissioner may make the recommendations that he or she thinks fit and may request the Deputy Minister or other

administrative head of the government institution concerned to notify the **Languages** Commissioner within a specified time of the action, if any, that the institution proposes to take to give effect to those recommendations.

Inform complainant

(3) The **Languages** Commissioner shall inform the complainant of the results of an investigation, the recommendations made and any action taken, in the manner and at the time that the **Languages** Commissioner thinks proper.

Report to Legislative Assembly where appropriate action not taken

(4) If, within a reasonable time after a copy of a report is transmitted to the Government Leader and the Deputy Minister or other administrative head of the government institution, appropriate action has not, in the opinion of the **Languages** Commissioner, been taken, the **Languages** Commissioner may make such report thereon to the Legislative Assembly as the **Languages** Commissioner considers appropriate. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

Annual report

23 The **Languages** Commissioner shall, within a reasonable time after the termination of each year, prepare and submit to the Legislative Assembly a report relating to the conduct of the office of the **Languages** Commissioner and the discharge of the duties under this Act during the preceding year including recommendations, if any, for proposed changes to this Act that the **Languages** Commissioner considers necessary or desirable in order to give effect to its spirit and intent. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

Confidentiality

24. Subject to this Act, the **Languages** Commissioner and every person acting on behalf or under the direction of the **Languages** Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Act. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

Protection of Commissioner

25 No criminal or civil proceedings lie against the **Languages** Commissioner, or against any person acting on behalf or under the direction of the **Languages** Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of any power, duty or function of the **Languages** Commissioner under this Act. R.S.N.W.T. 1988, c. 56 (Supp.), s. 15.

PART III GENERAL

Enforcement

26. (1) Anyone whose rights under this Act or the regulations have been infringed or denied may apply to a court of competent jurisdiction to obtain a remedy that the court considers appropriate and just in the circumstances.

Languages Commissioner may apply or appear

(2) The **Languages** Commissioner may

(a) appear before the Supreme Court on behalf of any person who has applied under subsection (1) for a remedy; or

(b) with leave of the Supreme Court, appear as a party to any proceedings under subsection (1). R.S.N.W.T. 1988, c. 56 (Supp.), s. 17 and 18.

Agreements

27. The Minister or the Commissioner, on the recommendation of the Minister, may, on behalf of the Government of the Northwest Territories, enter into agreements with the Government of Canada or any person or body respecting the implementation of this Act or the regulations or any other matter related to this Act or the regulations. R.S.N.W.T. 1988, c. 56 (Supp.), s. 17.

Regulations

28. The Commissioner, on the recommendation of the Executive Council, may make regulations

(a) respecting any matter that the Commissioner considers necessary to implement section 12; and

(b) designating an **Official language** or **Languages** in which communications with and services from regional and community offices shall be provided pursuant to subsection 14(2); and

(c) as the Commissioner considers necessary for carrying out the purposes and provisions of this Act. R.S.N.W.T. 1988,c.56(Supp.),s.17,19.

Review after 10 years

29. (1) The Legislative Assembly or a committee of the Legislative Assembly designated or established by it shall review the provisions and operation of the **Official languages** *Act* at the next session following December 31, 2000.

Scope of review

(2) The review shall include an examination of the administration and implementation of the Act, the effectiveness of its provisions, the achievement of the objectives stated in its preamble, and may include any recommendations for changes to the Act.

Languages Commissioner assistance

(3) The **Languages** Commissioner shall provide all reasonable assistance to the Legislative Assembly or any committee of it that is designated or established for the purposes of this section. R.S.N.W.T. 1988,c.56(Supp.),s.20.

See also in this book:

Canada, *Constitution Act, 1867,* s. 133;

Canada, *Canadian Charter of Rights and Freedoms*, s. 16(1) to 20(1);

Canada, *Official Languages Act*, L.R.C. 185, c. O-3.01.

14.11 Reciprocal Enforcement of Judgments (Canada-U.K.) Act, R.S.N.W.T. 1988, c. R-2.

Article VI

4. The registering court may require that an application for registration be accompanied by

(a) the judgment of the original court or a certified copy thereof;

(b) a certified **translation** of the judgment, if given in a **language** other than the **language** of the territory of the registering court;

DONE in duplicate at Ottawa this 24th day of April, 1984 in the **English** and **French languages**, each version being equally authentic.

14.12 Reciprocal Enforcement of Judgments Act, R.S.N.W.T. 1988, c. R-1.

Where judgment is in a language other than English or French

3. Where a judgment sought to be registered under this Act is in a **language** other than the **English** or **French language**, an **English language translation** of the judgment shall be attached to the original, a certified copy or an exemplification of the judgment and, upon approval of the Court, the judgment shall be deemed to be in the **English language**. R.S.N.W.T. 1988, c.111(Supp.),s.2.

14.13 Statute Revision Act, S.N.W.T. 1996, c. 16.

Powers

(2) In the performance of the duties of the Statute Revision Commissioner under this Part, the Statute Revision Commissioner may

(a) make such alterations in the **language** and punctuation of the Acts as are necessary to obtain a uniform mode of expression in the Acts;

(k) revise and alter the **language** to give better expression to the spirit and meaning of the law, without changing the substance of any enactment;

(n) make such minor improvements in the **language** of the Acts as may be required to make the form of expression of the Act in **English** or **French** more compatible with its expression in any other **Official language** without changing the substance of any enactment;

15. YUKON

15.1 Business Corporations Act, R.S.Y. 1986, c.15.

Corporate name

12. (1) The word "Limited", Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." shall be the last word of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form notwithstanding that the full or abbreviated form appears on its certificate of incorporation.

(3) No person other than a body corporate shall carry on business within the Yukon under any name or title that contains the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation", or the abbreviation "Ltd.", "Ltée.", "Inc." or "Corp.", or the words "Professional Corporation".

(5) Subject to subsection 14(1), a corporation may set out its name in its articles in an **English** form or a **French** form or an **English** and **French** form or in a combined **English** and **French** form and the corporation may use and may be legally designated by any of those forms.

(6) Subject to subsection 14(1), a corporation may, outside Canada, use and may be legally designated by a name in any **language** form.

Application for registration

278. (1) An extra-territorial corporation shall apply for registration by sending to the registrar a statement in the prescribed form and such further information and documents as the registrar may require.

(3) If all or any part of a document is not in the **English language**, the registrar may require the submission to him of a **translation** of the document or that part of the document, verified in a manner satisfactory to him, before he registers the extra-territorial corporation.

15.2 Children's Act, R.S.Y. 1986, c. 22.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original **language**, and shall be accompanied by a **translation** into the **official language** or one of the **official languages** of the requested State or, where that is not feasible, a **translation** into **French** or **English**.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either **French** or **English**, but not both, in any application, communication or other document sent to its Central Authority.

Done at The Hague, on the 25th day of October, 1980 in the **English** and **French languages**, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

15.3 Cooperative Associations Act, R.S.Y. 1986, c. 34.

Documents submitted for registration

30. (2) Every document required by this Act to be filed or registered with the registrar

(b) shall be in the **English language**, or accompanied by a notarially certified **English translation** of it.

15.4 Coroners Act, R.S.Y. 1986, c. 35.

Record of evidence

23. (3) Shorthand evidence need not be transcribed into **English** unless the chief coroner, a judge or counsel representing Her Majesty so directs or any person requests a transcript and pays the stenographer therefor.

15.5 Education Act, S.Y. 1989-90, c. 25.

See: Constitutional Laws of General Application, *Canadian Charter of Rights and Freedoms*, s. 23.

15.6 Elections Act, R.S.Y. 1986, c. 48.

Interpreters and Poll Attendants

206. (1) Every deputy returning officer who has reason to believe that there will be electors voting at a polling station who do not understand the **English language** shall appoint by writing

in the prescribed form for the polling station an **interpreter** familiar with the **English language** and with a **language** with which such electors will be familiar.

(2) Every **interpreter** upon his appointment shall be required to take an oath in the prescribed form.

15.7 Enactments Republication Act, 1993, S.Y. 1993, c.20.

1. 1. The purpose of this Act is to fulfil obligations under the **Languages** Act and, to that end,...

(a) to authorize the republication of the **English** text and the first-time publication of the **French** text of the Revised Statutes Act; the Revised Statutes of the Yukon, 1986, including the Acts and provisions listed as Not Consolidated, Not Repealed; the Revised Statutes of the Yukon, 1986, Supplement and Appendix; the Statutes of the Yukon, 1988; the Statutes of the Yukon 1989/90; and

(b) to authorize the Commissioner in Executive Council to establish an **English** and **French** text of a consolidation of the regulations and Orders-in-Council that were in force before January 1, 1991 and intended to remain in force after December 31, 1993, together with such other regulations that came into force after December 31, 1991 and are made before January 1, 1994 as the Commissioner in Executive Council thinks appropriate; and

(c) to declare the **English** and **French** texts to be equally authoritative.

Authoritative texts of Acts

2.(1) The **English** text and the **French** text of the Acts in the Statute Roll certified by the Minister of Justice and deposited with the Clerk of the Legislative Assembly before Second Reading of this Act are each hereby declared to be law as though enacted by this Act.

(2) The **English** text and the **French** text of the Acts referred to in subsection (1) are each equally authoritative.

15.8 Foreign Arbitral Awards Act, R.S.Y. 1986, c. 70.

Article 4

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article 16

1. This Convention, of which the Chinese, **English**, **French**, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

15.9 Historic Resources Act, S.Y. 1991, c. 8.

7. The Minister may . . .

(e) promote the recording and preservation of traditional **languages**, beliefs, and histories, legends, and cultural knowledge of Yukon Indian People.

15.10 Hospital Act, R.S.Y. 1989 (Supp.), c.13.

Relationship to Government of the Yukon

8. (2) Notwithstanding subsection (1), the **Languages** Act applies to the Corporation.

15.11 Human Rights Act, R.S.Y. Supp. 1986, c. 11.

Prohibited grounds

6. It is discriminatory to treat individual or group unfavourably of the following grounds:

(a) ancestry, including colour and **race**,

(b) **national origin**,

(c) **ethnic** or **linguistic** background or **origin** . . .

15.12 International Commercial Arbitration Act, R.S.Y. 1986 Supp., c. 14.

Article 22

Language

(1) The parties are free to agree on the **language** or **languages** to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the **language** or **languages** to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a **translation** into the **language** or **languages** agreed upon by the parties or determined by the arbitral tribunal.

15.13 Jury Act, R.S.Y 1986, c. 97.

Persons qualified to serve as jurors

4. Subject to this Act, every person who . . .

(c) is able to speak and understand the **English language**,

is qualified to serve as a juror in any action or proceeding that may be tried by a jury in the Yukon.

15.14 **Languages Act**, S.Y. 1988, c. 13.

The Commissioner of the Yukon Territory, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Purpose

1. (1) The Yukon accepts that **English** and **French** are the **official languages** of Canada and also accepts that measures set out in this Act constitute important steps towards implementation of the equality of status of **English** and **French** in the Yukon.

(2) The Yukon wishes to extend the recognition of **French** and the provision of services in **French** in the Yukon.

(3) The Yukon recognizes the significance of aboriginal **languages** in the Yukon and wishes to take appropriate measures to preserve, develop, and enhance those **languages** in the Yukon.

Still, the general principles enunciated lead me to conclude that the Yukon territory and its Government and Legislature are not the kind of bodies which the Supreme Court contemplated in Blaikie (No.2) as coming necessarily within the ambit of s. 133 [of the Constitution Act, 1867], *in order not to truncate it and frustrate the intentions of the Fathers of Confederation* ***(pp. 6-7)****. The framers of s. 16(1) and s. 18(1) of the Charter, as well as s. 19(1), cannot have contemplated the inclusion of the Yukon Territory, or its government or legislature, in these sections, and the purposeful silence of the Charter must be respected. Moreover, the Charter goes so far as to equate the Yukon Territory with the other provinces of Canada in s. 30, in order to specifically make operative, in the Yukon Territory, those Charter sections which apply in all provinces of Canada, even where linguistic rights do not apply* ***(p. 17)****.* ***St-Jean* v. *The Queen and The***

Commissioner of the Yukon (September 26, 1986), Whitehorse, 545.83 (Y. S.C.) Meyer J.

Advancement of status and use

2. Nothing in this Act limits the authority of the Legislative Assembly to advance the equality of status of **English**, **French**, or a Yukon aboriginal **language**.

Proceedings of the Legislative Assembly

3. (1) Everyone has the right to use **English**, **French**, or a Yukon aboriginal **language** in any debates and other proceedings of the Legislative Assembly.

(2) The Legislative Assembly or a committee of the Assembly, when authorized by resolution of the Assembly, may make orders in relation to the **translation** of records and journals of the Assembly, Hansard, Standing Orders and all other proceedings of the Legislative Assembly.

Acts and regulations

4. Acts of the Legislative Assembly and regulations made thereunder shall be printed and published in **English** and **French** and both **language** versions are equally authoritative.

Proceedings in courts

5. Either **English** or **French** may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislative Assembly.

Section 5 of the Yukon Languages Act, S.Y. 1988, c. 13, states that "either English or French may be used by any person" in Yukon courts. This section is, as pointed out by counsel for the Crown, "somewhat a carbon copy" of s. 133 of the Constitution Act, 1867; s. 23 of the Manitoba Act, S.C. 1870, c. 3; s. 19 of the Canadian Charter of Rights and Freedoms, and s. 110 of the North-West Territories Act, R.S.C. 1886, c. 50 ***(p. 458)***. ***R.* v. *Rodrigue*** (1994), 91 C.C.C. (3d) 455 (Y. S.C.). Appeal dismissed on other grounds, (1995), 95 C.C.C. (3d) 455 (Y. C.A.). Leave to appeal refused, No. 24585, [1995] 3 R.C.S. vii.

Communication by public with institutions of the Government of the Yukon

6. (1) Any member of the public in the Yukon has the right to communicate with, and to receive available services from, any head or central office of an institution of the Legislative Assembly or of the Government of the Yukon in **English** or **French**, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in both **English** and **French**, or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be in both **English** and **French**.

(2) The Commissioner in Executive Council may make regulations prescribing circumstances in which for the purposes of subsection (1) significant demand shall be deemed to exist or in which the nature of the office is such that it is reasonable that communications with and services from that office be in **English** and **French**.

Continuation of rights and privileges

7. Nothing in this Act abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Act with respect to any **language** that is not **English** or **French**.

Rights and services not affected

8. Nothing in this Act shall be construed as preventing the Legislative Assembly or the Government of the Yukon from granting rights in respect of, or providing services in, **English** and **French** or any Yukon aboriginal **language** in addition to the rights and services provided in this Act.

Enforcement

9. Anyone whose rights under this Act have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

Agreement for implementation of this Act

10. The Government of the Yukon may enter into agreements with the Government of Canada or any person or body respecting the implementation of the provisions of this Act or any matter related to this Act.

Services in aboriginal languages

11. The Commissioner in Executive Council may make regulations in relation to the provision of services of the Government of the Yukon in one or more of the aboriginal **languages** of the Yukon.

Regulations

12. The Commissioner in Executive Council may make regulations

(a) respecting any matter that the Commissioner in Executive Council deems necessary to implement section 5;

Orderly adaptation to this Act

13. (1) No Act or regulation made after December 31, 1990, will be of any force or effect if it has not already been published in **English** and **French** at the time of its coming into force.

(2) No Act or regulation made before December 31, 1990, will be of any force or effect if it has not been published in **English** and **French** before January 1, 1994.

(3) Subsections (1) and (2) come into force upon assent; the other provisions of this Act come into force on December 31, 1992 or such earlier date as may for some or all of them be proclaimed by the Commissioner in Executive Council.

See also in thos book:

R. v. ***Breton***, (July 9, 1995), Whitehorse TC-94-10538, 10005, 1005A, 100013 (Y. T.C.) Dutil J.

Canada, *Constitution Act, 1867*, s. 133.

Canada, *Canadian Charter of Rights and Freedoms*, s. 16(1) to 20(1).

Canada, *Official Languages Act*, L.R.C. 185, c. O-3.01.

Quebec, *Constitution Act, 1867*, s. 133;

Manitoba, *Manitoba, 1870*, s. 23;

New Brunswick, *Canadian Charter of Rights and Freedoms*, s. 16(2) to 20(2);

15.15 Maintenance And Custody Orders Enforcement Act, R.S.Y.1986, C. 108.

Garnishment

10. (1) An obligation to pay money under a maintenance order may be enforced by garnishment in accordance with the provisions of the Garnishee Act.

(3) On the filing of a writ or notice of garnishment that

(c) is written in or accompanied by a sworn or certified **translation** into **English**,

(8) A notice of garnishment may be issued in respect of a garnishee who is outside the Yukon and shall . . .

(d) be written in or accompanied by a sworn or certified translation into a **language** ordinarily used in the courts of the jurisdiction where it is to be served.

the clerk of the court shall issue a writ of garnishment under the Garnishee Act.

15.16 Marriage Act, R.S.Y. 1986, c. 110.

Issuer to read licence to parties

31. (1) The issuer shall satisfy himself that both parties to the intended marriage fully understand the contents of a licence and shall read over the form of licence to each of the parties separately.

(2) Where either of the parties to the intended marriage does not understand the **English language** an independent **interpreter** shall be employed to explain the contents of the licence to that party.

15.17 Medical Profession Act, R.S.Y. 1988, C. 114.

Registration requirements

13. (1) Every person requesting the entry of his name in the Yukon medical register, the temporary register or the limited register, and every person who applies for incorporation pursuant to section 49, shall submit to the council in such form as may be prescribed such supporting documentation and evidence as shall satisfy the council . . .

(c) that he is reasonably able to converse, read and write in one of the **official languages** of Canada, . . .

15.18 Partnership Act, R.S.Y. 1986, c. 127.

Name of limited partnership

52. (1) The business name of each limited partnership shall end with the words "Limited Partnership" in full or the **French language** equivalent.

15.19 Reciprocal Enforcement of Judgments Act, R.S.Y. 1986, c.146.

Judgments in languages other than English

5. Where a judgment sought to be registered under this Act is in a **language** other than the **English language**, the judgment or the exemplification or certified copy thereof, as the case may be, shall have attached thereto for all purposes of this Act a **translation** in the **English language** approved by the Supreme Court, and upon such approval being given the judgment shall be deemed to be in the **English language**.

15.20 Reciprocal Enforcement of Maintenance Orders Act, R.S.Y., c. 148.

Canadian currency and translation requirements

13. (3) Where an order or other document received by a court is not in **English**, the order or other document shall have attached to it from the other jurisdiction a **translation** in **English** approved by the court, and the order or other document shall be deemed to be in **English** for the purposes of this Act.

15.21 **Yukon Act**, R.S.C. 1985, c. Y-2.

Languages Ordinance

46.1. Subject to section 46.2, the ordinance entitled the ***Languages*** *Act*, made on May 18, 1988 by the Commissioner in Council, may be amended or repealed by the Commissioner in Council only if the amendment or repeal is concurred in by Parliament through an amendment to this Act. R.S. 1985, c. 31 (4th Supp.), s. 99.

Additional rights and services

46.2. Nothing in this Part shall be construed as preventing the Commissioner, the Commissioner in Council or the Government of the Territory from granting rights in respect of, or providing services in, **English** and **French** or any **languages** of the aboriginal peoples of Canada, in addition to the rights and services provided for in the ordinance referred to in section 46.1, whether by amending that ordinance, without the concurrence of Parliament, or by any other means. R.S. 1985, c. 31 (4th Supp.), s. 99.

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CANADA

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ALBERTA

Date: 01/19/98

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BRITISH COLUMBIA

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NEW BRUNSWICK

New Brunswick Public Acts

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NOVA SCOTIA

The public statutes of Nova Scotia, consolidated to October 1, 1997, are available on compact disc (CD) in a searchable Folio Views® infobase from the Nova Scotia Government Bookstore.

The CD contains all of the statutes in the *Revised Statutes of Nova Scotia,1989* (including the unrevised statutes in volume 12 of the Revised Statutes) unless repealed, the public statutes subsequently in force and not repealed and the statutes establishing the three regional municipalities (Cape Breton, Halifax and Queens). The CD includes all amendments to these statutes in force as of October 1, 1997. A searchable appendix contains the new Personal

Property Security Act which comes into force on November 3, 1997, and amendments to the Children and Family Services Act which come into force on November 30, 1997.

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17. TABLE OF STATUTES AND CASES

1. CONSTITUTIONAL LAWS OF GENERAL APPLICATION

Canadian Charter of Rights and Freedoms, Part I of the ***Constitution Act, 1982***, being Schedule B to the ***Canada Act 1982*** (U.K.), 1982, c.11. 6
Constitution Act, 1867, (U.K.) 30 & 31 Victoria Vict. c. 3. 1

2. CANADA

Access to Information Act, R.S.C. 1985, c. A-1 65
Aeronautics Act, R.S.C. 1985, c. A-2 66
Air Canada Public Participation Act, R.S.C. 1985, c. 35 (4th Supp.) [A-10.1]. 66
Airport Transfer (Miscellaneous Matters) Act, S.C. 1992, c. 5, [A-10.4] 67
Bank Act, S.C. 1991, c. 46 [B-1.01] 68
Bank of Canada Act, R.S.C. 1985, c. B-2. 68
Broadcasting Act, S.C. 1991, c. 11 [B-9.01] 68
Canada Business Corporations Act, ***R.S.C. 1985, c. C-44.*** 70
Canada Cooperative Credit Associations Act, R.S.C. 1985, c. C-40. 71
Canada Elections Act, R.S.C. 1985, c. E-2. 71
Canada Shipping Act, R.S.C. 1985, c. S-9 72
Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, ***S.C. 1988, c. 28 [C-7.8].*** 72
Canada-United Kingdom Civil and Commercial Judgments Convention Act, R.S.C. 1985, c. C-30 72
Canadian Bill of Rights 1960, ***S.C. c. 44, [C-12.3].*** 72
Canadian Charter of Rights and Freedoms, Part I of the ***Constitution Act, 1982***, being Schedule B to the ***Canada Act 1982*** (U.K.), 1982, c.11. 56
Canadian Environmental Protection Act, ***R.S.C. 1985, c. 16 (4th Supp.) [C-15.3].*** 74
Canadian Human Rights Act, R.S.C. 1985, c. H-6. 74
Canadian Multiculturalism Act, ***R.S.C. 1985, c. 24 (4th Supp.) [C-18.7].*** 75
Carriage by Air Act, ***R.S.C. 1985, c. C-26.*** 77
Carriage of Goods by Water Act, ***S.C. 1993, c. 21 [C-27.01].*** 77
Civil Air Navigation Services Commercialization Act, S.C. 1996, c. 20 [C-29.7] 78
CN Commercialization Act, S.C. 1995, c. 24. 78
Commercial Arbitration Act, (1985) R.S.C., c. 17 (2nd Supp.) [C-34.6]. 78
Constitution Act, 1867, (U.K.) 30 & 31 Victoria Vict. c. 3. 53
Consumer packaging and Labelling Act, R.S.C. 1985, c. C-38. 79
Copyright Act, R.S.C. 1985, c. C-42. 79
Corrections And Conditional Release Act, ***S.C. 1992, c. 20 [C-44.6].*** 81
Cree-Naskapi (of Quebec) Act, S.C. 1984, c. 18 [C-45.7]. 82
Criminal Code, R.S.C. 1985, c. C-46 83
Customs Tariff, R.S.C. 1985, c. 41 (3rd Supp.) [C-54.01] 111
Department of Canadian Heritage Act, ***S.C. 1995, c. 11 [C-17.3].*** 111
Employment Insurance Act, ***S.C. 1996, c. 23 [E-5.6].*** 111
European Bank for Reconstruction and Development Agreement Act, S.C. 1991, c. 12 [E-13.5]. 112
Excise Tax Act, R.S.C. 1985, c. E-15. 112
Federal Court Act, R.S.C 1985, c. F-7 113
Food and Agriculture Organization of the United Nations Act, ***R.S.C. 1985, c. F-26.*** 114
Foreign Missions and International Organizations Act, S.C. 1991, c. 41 [F-29.4]. 114
Geneva Conventions Act, R.S.C. 1985, c. G-3. 115
Income Tax Act, R.S.C. 1985, c. 1 (5th Supp.). 123

Income Tax Conventions Implementation Act, S.C. 1995, c. 37 [I-3.5]. 124
Insurance Companies Act, S.C. 1991, c. 47 [I-11.8]. 125
International Sale of Goods Contracts Convention Act, S.C. 1991, c. 13 [I-20.4]. 125
Interpretation Act, ***R.S.C. 1985 c. I-21***. 126
Marine Transportation Security Act, S.C. 1994, c. 40 [M-0.8]. 126
Motor Vehicle Safety Act, S.C. 1993, c. 16 [M-10.01]. 126
Museums Act, S.C. 1990, c. 3 [M-13.4]. 127
National Capital Act, R.S.C. 1985, c. N-4. 127
National Park Act, R.S.C. 1985, N-14. 127
Northern Pipeline Act, ***R.S.C. 1985, c. N-26***. 128
Oceans Act, S.C. 1996, c. 31 [O-2.4]. 128
Official Languages (Communications With And services To The Public) Regulations, *SOR/92-48*. 183
Official languages of Canada, An Act Respecting the Status and Use of the, R.S.C. 1985, c. O-3.01. 128
Petro-Canada Public Participation Act, S.C. 1991, c. 10 [P-11.1]. 197
Pilotage Act, R.S.C. 1985, c. P-14. 198
Plant Breeders' Rights Act, S.C. 1990, c. 20 [P-14.6]. 198
Privacy Act, R.S.C. 1985, c. P-21. 198
Privileges and Immunities (North Atlantic Treaty Organisation) Act, ***R.S.C. 1985, c. P-24***. 199
Public Service Employment Act, R.S.C. 1985, c. P-32. 200
Publication of Statutes Act, R.S.C. 1985, c. S-21. 203
Referendum Act, ***S.C. 1992, c. 30 [R-4.7]***. 203
Safe Containers Convention Act, R.S.C. 1985, c. S-1. 203
Statistics Act, R.S.C. 1985, c. S-19. 204
Statute Revision Act, R.S.C. 1985, c. S-20. 204
Statutory Instrument Act, ***R.S.C. 1985, c. S-22***. 205
Trade-marks Act, R.S.C. 1985, c. T-13. 205
Trust And Loan Companies Act, S.C. 1991, c. 45 [T-19.8]. 207
United Nations Foreign Arbitral Awards Convention Act, R.S.C, 1985, c. 16 (2nd Supp.) [U-2.4]. 208
Yukon First Nations Self-Government Act, L.C. 1994, c. 35. 208

3. ALBERTA

Business Corporation Act, R.S.A. 1980, c. B-15. 209
Certified General Accountants Act, R.S.A. 1980, c. C-3.6. 209
Chartered Accountants Act, R.S.A. 1980, c. C-5.1. 210
Colleges Act, R.S.A. 1980, c. C-18. 210
Companies Act, R.S.A. 1980, c. C-20. 211
Court of Appeal Act, R.S.A. 1980, c. C-28. 211
Court of Queen's Bench Act, R.S.A. 1980, c. C-29. 211
Elections Act, R.S.A. 1980, c E-2. 212
Fatality Inquiries Act, R.S.A. 1980, c. F-6. 213
International Child Abduction Act, R.S.A. 1980, c. I-6.5. 213
International Commercial Arbitration Act, R.S.A. 1980, c. I-6.6. 214
International Conventions Implementation Act, R.S.A. 1980, c. I-6.8. 215
Interpretation Act, R.S.A. 1980, c. I-7. 217
Languages Act, ***S.A. 1988, c. L-7.5***. 217
Loan and Trust Corporations Act, R.S.A. 1980, c. L-26.5. 219
Local Authorithies Election Act, R.S.A. 1980, c. L-27.5. 220
Marriage Act, R.S.A. 1980, c. M-6. 220
Mental Health Act, R.S.A. 1980, c. M-13.1. 221
Municipal Government Act, R.S.A. 1980, c. M-26.1. 221
Northland School Division Act, R.S.A. 1980, c. N-10.1. 221

NorthWest Territories Act, The, ***S.C. 1886, c. 50, s. 110 amended by S.C. 1891, c. 22***. 222
Provincial Court Act, R.S.A. 1980, c. P-20. 224
Reciprocal Enforcement of Judgments Act, R.S.A. 1980, c. R-6. 224
Reciprocal Enforcement of Maintenance Orders Act, R.S.A. 1980, c. R-7.1. 224
School Act, R.S.A. 1980, c. S-3.1. 224
Wills Act, R.S.A. 1980, c. W-11. 225

4. BRITISH COLUMBIA

An Act that All Proceedings in Courts of Justice within that Part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language, *1730-31, 4 Geo. 2, c. 26*. [Incorporated by reference under the ***Law and Equity Act***, R.S.B.C. 1996, c. 253, s. 2.] 227
Child, Family And Community Service Act, R.S.B.C. 1996, c. 46. 228
Children's Commission Act, S.B.C. 1997, c. 11. 228
Company Act, R.S.B.C. 1996, c. 62. 228
Coroners Act, R.S.B.C. 1996, c. 72. 229
Court Order Enforcement Act, R.S.B.C. 1996, c. 78. 229
Election Act, R.S.B.C. 1996, c. 106. 230
Employment Standards Act, R.S.B.C. 1996, c. 113. 231
Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127. 231
Family Relations Act, R.S.B.C. 1996, c. 128. 231
First Peoples' Heritage, Language and Culture Act, R.S.B.C. 1996, c. 147. 232
Foreign Arbitral Awards Act, R.S.B.C. 1996, c. 154. 232
Human Rights Code, R.S.B.C. 1996, c. 210. 232
Independent School Act, R.S.B.C. 1996, c. 216. 234
Indian Self Government Enabling Act, R.S.B.C. 1996, c. 219. 234
International Commercial Arbitration Act, R.S.B.C. 1996, c. 233. 235
International Sale of Goods Act, R.S.B.C. 1996, c. 236. 236
International Trusts Act, R.S.B.C. 1996, c. 237. 236
Interpretation Act, R.S.B.C. 1996, c. 238. 236
Jury Act, R.S.B.C. 1996, c. 242. 237
Land Title Act, R.S.B.C. 1996, c. 250. 237
Multiculturalism Act, R.S.B.C. 1996, c. 321. 238
Partnership Act, R.S.B.C. 1996, c. 348. 239
School Act, R.S.B.C. 1996, c. 412. 239
Securities Act, R.S.B.C. 1996, c. 418. 239
Trade Practice Act, R.S.B.C. 1996, c. 457. 239
Vancouver Charter, R.S.B.C. 1996, c. 478. 240
Veterinarians Act, R.S.B.C. 1996, c. 476. 240
Victims of Crime Act, R.S.B.C. 1996, c. 478. 241

5. MANITOBA

Co-operative Associations Act, R.S.P.E.I. 1988, c. C-23. 242
Credit Unions Act, R.S.P.E.I. 1988, c. C-29.1. 242
Human Rights Act, R.S.P.E.I 1988, c. H-12. 242
International Commercial Arbitration Act, R.S.P.E.I 1988, c. I-5. 243
International Sale of Goods Act, R.S.P.E.I 1988, c. I-6. 244
International Trusts Act, R.S.P.E.I, 1988, c. I-7. 244
Interpretation Act, R.S.P.E.I. 1988, c. I-8. 244
Jury Act, R.S.P.E.I, 1988, c. J-5. 245
Marriage Act, R.S.P.E.I. 1988, c. M-3. 245
Reciprocal Enforcement of Judgments, R.S.P.E.I. 1988, c. R-7. 245

School Act, R.S.P.E.I. 1988, c. S-2.....245
Supreme Court Act, R.S.P.E.I. 1988, c. S-10.....245

6. NEW BRUNSWICK

Builders' Liens Act, The, ***R.S.M. 1987, c. B91.***.....261
Canada - United Kingdom Judgments Enforcement Act, The, R.S.M. 1987, c. J21.....256
Centre Culturel Franco-Manitobain Act, Le, R.S.M. 1987, c. C45.....255
Child Custody Enforcement Act, The, R.S.M. 1987, c. C360.....259
City of Winnipeg Act, The, S.M. 1989-90, c. 10.....262
Cooperatives Act, The, R.S.M. 1987, c. C223.....256
Corporations Act, The, R.S.M. 1987, c. C225.....257
Court of Appeal Act, The, R.S.M. 1987, c. C240.....257
Court of Queen's Bench Act, The, S.M. 1988-89, c. 4 [C280].....258
Court of Queen's Bench Surrogate Practice Act, The, R.S.M. 1987, c. C290.....261
Credit Unions and Caisses Populaires Act, The, S.M. 1986-87, c. 5 [C301].....254
Elections Act, The, R.S.M. 1987, c. E30.....258
Employment Standards Act, The, ***R.S.M. 1987, c. E110.***.....260
Human Rights Code, The, S.M. 1987-88, c. 45.....255
Intercountry Adoption Act, The, S.M. 1985, c. 22.....252
International Commercial Arbitration Act, The, S.M. 1986-87, c. 32 [C151].....253
International Sale of Goods Act, The, S.M. 1989-90, c. 18 [S11].....262
International Trusts Act, The, S.M. 1993, c. 12.....259
Jury Act, The, R.S.M. 1987, c. J30.....260
Liquor Control Act, The, R.S.M. 1988, c. L160.....262
Maintenance Orders Act, The Reciprocal Enforcement of, R.S.M. 1987, c. M20.....261
Manitoba Act, 1870 The, S.C. 1870, c. 3.....247
Multiculturalism Act, The Manitoba, S.M. 1992, c. 56 [M223].....260
Northern Affairs Act, The, S.R.M. 1988, c. N100.....253
Provincial Court Act, The, R.S.M. 1987, c. C275.....258
Public Schools Act, The, R.S.M. 1987, c. P250.....258
Reciprocal Enforcement of Judgments Act, The, R.S.M. 1987, c. J20.....259
Regional Health Authority Act, The, S.M. 1996, c. 53 R34.....261
Teachers' Association Act, The, R.S.M. 1987, c. T30.....254
Universities Establishment Act, The, R.S.M. 1987, c. U40.....259
University of Manitoba Act, The, R.S.M. 1987, c. U60.....262

7. NEWFOUNDLAND

Business Corporations Act, R.S.N.B. 1973, c. B-9.1.....274
Canadian Charter of Rights And Freedoms, Part I of the ***Constitution Act, 1982***, being Schedule B to the ***Canada Act, 1982***, (U.K.) 1982, c. 11.....271
Companies Act, R.S.N.B. 1973, c. C-13.....275
Convention Between Canada And The United Kingdom of Great Britain And Northern Ireland Providing For The Reciprocal Recognition And Enforcement of Judgments In Civil And Commercial Matters, An Act Respecting The, R.S.N.B. 1973, c. R-4.1.....277
Co-operative Associations Act, R.S.N.B. 1973, c. C-22.1.....277
Court Reporters Act, R.S.N.B. 1973, c. C-30.1.....277
Credit Unions Act, The, R.S.N.B. 1973, c. C-32.2.....278
Elections Act, The, R.S.N.B. 1973, c. E-3.....278
Equality of The Two Official Linguistic Communities In New Brunswick, An Act Recognizing The, S.N.B. 1981, c. O-1.1.....278
Foreign Resident Corporations Act, The, R.S.N.B. 1973, c. F-19.1.....279

Human Rights Act, R.S.N.B. 1973, c. H-11 280
Insurance Act, ***R.S.N.B. 1973, c. I-12.*** 280
International Child Abduction Act, The, R.S.N.B. 1973, c. I-12.1 281
International Sale Of Goods Act, R.S.N.B. 1973, c. I-12.21. 282
International Trusts Act, R.S.N.B. 1973, c. I-12.3. 282
International Wills Act, R.S.N.B. 1973, c. I-12.4 282
Interpretation Act, The, R.S.N.B. 1973, c. I-13. 283
Jury Act, R.S.N.B. 1973, c. J-3.1 283
Official languages of New Brunswick Act, R.S.N.B. 1973, c. O-1. 283
Reciprocal Enforcement of Maintenance Orders Act, R.S.N.B. 1973, R-4.01. 289
Right To Information Act, R.S.N.B 1973, c. R-10.3. 289
Schools Act, The, R.S.N.B. 1973, c. S-5. 289
Standard Forms of Conveyances Act, S.N.B, 1980, c. S-12.2. 289
Vital Statistics Act, The, R.S.N.B. 1973, c. V-3 290

8. NORTHWEST TERRITORIES

Canada - Nova Scotia Ofshore Petroleum Resources Accord Implementation (Nova Scotia) Act, S.N.S. 1987, c. 3. 291
Canada and United Kingdom Reciprocal Recognition and Enforcement of Judgments Act, R.S.N.S. 1989, c. 52. 291
Child Abduction Act, R.S.N.S. 1989, c. 67. 291
Children and Family Services Act, S.N.S. 1990, c. 5. 292
Community Colleges Act, S.N.S. 1995-96, c. 4. 292
Companies Act, R.S.N.S. 1989, c. 81. 292
Costs and Fees Act, R.S.N.S. 1989, c. 104. 295
Education Act, S.N.S. 1995-96, c. 1. 295
Elections Act, R.S.N.S. 1989, c. 140. 295
Human Rights Act, R.S.N.S. 1989, c. 214. 295
International Commercial Arbitration Act, R.S.N.S. 1989, c. 234. 296
International Sale of Goods Act, S.N.S. 1988, c. 13. 297
Maintenance Enforcement Act, S.N.S 1994-95, c. 6. 297
Maritime Economic Cooperation Act, S.N.S. 1992, c. 7. 298
Motor Vehicle Act, R.S.N.S. 1989, c. 293. 298
Municipal Elections Act, R.S.N.S. 1989, c. 300. 298
Pharmacy Act, R.S.N.S. 1989, c. 343. 299
Probate Act, R.S.N.S. 1989, c. 359. 299
Reciprocal Enforcement of Judgments Act, R.S.N.S. 1989, c. 388 300
Trust and Loan Companies Act, S.N.S. 1991, c. 7. 300

9. NOVA SCOTIA

Nunavut, Act, S.C. 1993, c. 28 302

10. NUNAVUT

Assessment Act, R.S.O. 1990, c. A.31. 304
Audit Act, R.S.O. 1990, c. A.35 304
Business Corporations Act, R.S.O. 1990, c. B.16. 305
Child And Family Services Act, R.S.O. 1990, c. C.11. 305
Children's Law Reform Act, R.S.O. 1990, c. C.12 306
Consolidation and Revision of the Statutes of Ontario, An Act to provide for the, S.O. 1989, c. 81 306
Co-operative Corporations Act, R.S.O. 1990, c. C.35. 306
Coroners Act, R.S.O., 1990, c. C.37 307

Corporations Act, R.S.O. 1990, c. C.38.....308
County of Oxford Act, R.S.O. 1990, c. C.42.....309
Courts of Justice Act, R.S.O. 1990, c. C.43.....309
Credit Unions And Caisses Populaires Act, S.O. 1994, c. 11.....317
Creditors' Relief Act, R.S.O. 1990, c. C.45.....317
Education Act, R.S.O., c. E.2, amended by, S.O. 1997, c. 3; s. 2-10, 1997, c. 19, s. 33; 1997, c. 22; 1997 c. 31, ss. 141, 142; 1997, c. 32, s. 10.....319
Employers And Employees Act, R.S.O. 1990, c. E.12.....319
Family Responsibility And Support Arrears Enforcement Act***, S.O. 1996, c. 31.***.....319
Farm Registration and Farm Organizations Funding Act, S.O. 1993, c. 21.....319
Forestry Workers Lien For Wages Act, R.S.O. 1990, c. F.28.....320
French Language Services Act, R.S.O. 1990, c. F.32.....320
Highway Traffic Act, R.S.O. 1990, c. H.8.....330
Human Rights Code, R.S.O. 1990, c. H.19.....331
Insurance Act, R.S.O. 1990, c. I.8.....332
International Commercial Arbitration Act,. R.S.O. 1990, c. I.9.....333
International Sale of Goods Act, R.S.O. 1990, c. I.10.....334
Interpretation Act, R.S.O. 1990, c. I.11.....334
Juries Act, R.S.O. 1990, c. J.3.....334
Justices of The Peace Act, R.S.O. 1990, c. J.4.....335
Labour Relations Act, S.O. 1995, c. 1.....335
Lakes And Rivers Improvement Act***, R.S.O., 1990, c. L.3.***.....336
Land Titles Act, R.S.O. 1990, c. L.5.....336
Landlord And Tenant Act, R.S.O. 1990, c. L.7.....337
Loan And Trust Corporations Act, R.S.O. 1990, c. L.25.....337
Local Improvement Act, R.S.O. 1990, c. L.26.....337
Local Services Boards Act, R.S.O. 1990, c. L.28.....338
Marriage Act, R.S.O. 1990, c. M.3.....338
Municipal Act, R.S.O. 1990, c. M.45.....338
Municipal And School Board Payments Adjustment Act, R.S.O. 1990, c. M.47.....341
Municipal Elections Act, S.O. 1996, c. 32.....342
Occupational Health And Safety Act, R.S.O. 1990, c. O.1.....342
Ontario College of Teachers Act***, S.O. 1996, c. 12.***.....343
Ontario Municipal Board Act, R.S.O. 1990, c. O.28.....344
Pay Equity Act, R.S.O. 1990, c. P.7.....344
Personal Property Security Act, R.S.O. 1990, c. P.10.....345
Pounds Act, R.S.O. 1990, c. P.17.....345
Public Inquiries Act***, R.S.O. 1990, c. P.41.***.....345
Public Libraries Act, R.S.O. 1990, c. P.44.....346
Public Service Act, R.S.O. 1990, c. P.47.....346
Reciprocal Enforcement of Judgments (U.K.) Act, R.S.O. 1990, c. R.6.....347
Reciprocal Enforcement of Support Orders Act, R.S.O. 1990, c. R.7.....347
Regional Municipality of Ottawa-Carleton, R.S.O. 1990, c. R.14.....347
Registry Act, R.S.O. 1990, c. R.20.....348
Regulated Health Professions Act, S.O. 1991, c. 18.....348
Science North Act, R.S.O. 1990, c. S.4.....349
Short Forms of Leases Act, R.S.O. 1990, c. S.11.....349
Small Business Development Corporations, R.S.O. 1990, c. S.12.....349
Statistics Act***, R.S.O. 1990, c. S.18.***.....350
Statute Labour Act***, R.S.O. 1990, c. S.20.***.....350
Statutory Powers Procedure Act, R.S.O. 1990, c. S.22.....352
Succession Law Reform Act***, R.S.O. 1990, c. S.26.***.....353

Sunshine Snow Services Inc.* v. *Marathon Realty Company Limited (August, 22 1995), Ottawa 568/93 et 572/93 (Ont. C.J.). 313
Toronto Islands Residential Community Stewardship Act, S.O. 1993, c. 15. 353

11. ONTARIO

Acunpucture Act, ***R.S.Q., c. A-5.1.*** 362
Agricultural Societies Act, R.S.Q., c. S-25. 362
Amusement Clubs Act***, R.S.Q., c. C-23.*** 362
Charter of Human Rights and Freedoms, R.S.Q., c. C-12. 363
Charter of The French Language, R.S.Q., c. C-11. 367
Cinema Act, R.S.Q., c. C-18.1. 419
Cities and Towns Act, R.S.Q., c. C-19. 420
Civil Code of Québec, S.Q. 1991, c. ***64*** 420
Code of Civil Procedure, R.S.Q., c. C-25. 421
Collective Agreement Decrees, An Act Respecting, R.S.Q., c. D-2. 423
Commission municipale, An Act respecting the, R.S.Q., c. C-35. 423
Communauté urbaine de l'Outaouais, An Act Respecting the, R.S.Q., c. C-37.1. 424
Companies Act, R.S.Q., c. C-38. 425
Conseil des relations interculturelles, An Act respecting the, R.S.Q., c. C-57.2. 426
Constitution Act 1982, An Act Respecting The, R.S.Q., c. L-4.2. 426
Constitution Act, 1867, (U.K.) 30 & 31 Victoria, c. 3. 354
Consumer Protection Act, R.S.Q., c. P-40.1. 428
Cooperatives Act, R.S.Q., c. C-67.2. 428
Cree Villages and the Naskapi Village Act, The, R.S.Q., c. V-5.1. 429
Cultural Property Act***, R.S.Q., c. B-4.*** 429
Education Act, R.S.Q., c. I-13.3. 429
Election Act, R.S.Q., c. E-3.3. 429
Entente Between France And Québec Respecting Mutual Aid in Judicial Matters, An Act to Secure the Carrying Out of the, R.S.Q., c. A-20.1. 430
Fire Investigations Act, R.S.Q., c. E-8. 431
Gas, Water and Electricity Companies Act, R.S.Q., c. C-44. 431
Health Insurance Act, R.S.Q, c. A-29. 431
Health Services And Social Services For Cree Native Persons, An Act Respecting, R.S.Q., c. S-5. 432
Health Services and Social Services, An Act Respecting, R.S.Q., c. S-4.2. 433
Immigration To Québec, An Act Respecting, R.S.Q., c. I-0.2. 436
Insurance, An Act Respecting***, R.S.Q, c. A-32.*** 436
Interpretation Act, R.S.Q., c. I-16. 436
Judgement Rendered In The Supreme Court of Canada On 13 December 1979 On The Language of The Legislature And The Courts In Quebec, An Act Respecting A, R.S.Q. c. J-1.1. 436
Jurors Act, R.S.Q., c. J-2. 439
Labour Relations, Vocational Training and Manpower Management in the Construction Industry, An Act Respecting, R.S.Q., c. R-20. 440
Lands of Religious Congregations, An Act Respecting, R.S.Q., c. T-7. 440
Legal Publicity of Sole Proprietorships, Partnerships And Legal Persons, An Act Respecting The, R.S.Q., c. P-45. 441
Ministère des Relations avec les citoyens et de l'Immigration, An Act respecting the, S.Q. 1996, c. 21. 441
Municipal And Intermunicipal Transit Corporations, An Act Respecting, R.S.Q., c. C-70. 442
Municipal Code of Québec, R.S.Q., c. C-27.1. 442
Municipal Taxation, An Act Respecting, R.S.Q., c. F-2.1. 442
Occupational Health And Safety, An Act Respecting, R.S.Q., c. S-2.1. 443
Police Act, R.S.Q., c. P-1. 443

Prearranged Funeral Services And Sepultures, An Act Respecting, R.S.Q., c. A-23.001. 443
Private Education An Act Respecting, R.S.Q., c. E-9.1. 444
Professional Code, R.S.Q., c. C-26. 446
Public Inquiry Commissions, An Act Respecting, R.S.Q., c. C-37. 447
Referendum Act, S.R.Q., c. C-64.1. 447
Sales tax, Act Respecting the Québec, R.S.Q., c. T-0.1. 448
Savings and Credit Unions Act, R.S.Q., c. C-4. 448
School Election Act, R.S.Q., c. E-2.3. 448
Securities Act, R.S.Q., c. V-1.1. 449
United Nations Convention On Contracts For The International Sale of Goods, An Act Respecting The, R.S.Q., c. C-67.01. 449
Youth Protection Act, R.S.Q., c. P-34.1 450

12. PRINCE EDWARD ISLAND

Agricultural Implements Act, The, R.S.S. 1978, c. A-10. 452
Business Corporations Act, The, R.S.S. 1978, c. B-10. 453
Chartered Accountants Act, 1986, R.S.S. 1986, c. C-7.1. 453
Companies Act, The, R.S.S. 1978, c. C-23. 454
Co-operatives Act, 1996, The, S.S. 1996, c. C-37.3 454
Credit Union Act, 1985 The, R.S.S. 1984-85-86, c. C-45.1. 454
Education Act, 1995, The, S.S 1995, c. E-0.2. 455
Election Act,1996, The, S.S. 1996, c. E-6.01. 455
Enforcement Of Foreign Arbitral Awards Act, 1996, The , S.S. 1996, c. E-9.12 456
Highway Traffic Act. The , S.S. 1986, c. H-3.1. 456
Human Rights Code, The Saskatchewan, S.S. 1979, c. S-24.1 457
International Child Abduction Act, 1996, The, S.S. 1996, c. I-10.11. 457
International Sale Of Goods Act. The, S.S. 1990-91, c. I-10.3. 457
Interpretation Act, The 1995, S.S. 1995, c. I-11.2 458
Jury Act, 1981, The, S.S. 1980-81, c. J-4.1. 458
Language Act, The, S.S. 1988-89, c. L-6.1. 461
Local Government Election Act. The, S.S. 1982-83, c. L-30.1. 459
Marriage Act, The, R.S.S. 1995, c. M-4.1. 459
Non-Profit Corporations Act, 1995, The, S.S. 1995, c. N-4.2 460
Northwest Territories Act, S.C. 1886, c. 50, s. 110, amened by S.C. 1891, c. 22 451
Osteopathic Practice Act. The, R.S.S 1978, c. O-7. 460
Reciprocal Enforcement Of Maintenance Orders Act, 1996, The, S.S. 1996, c. R-4.2. 461
Trusts Convention Implementation Act, ***1994, The,*** S.S. 1994, c. T-23.1. 461
Wages Recovery Act. The, R.S.S. 1978, c. W-1. 467
Wills Act, 1996, The, S.S. 1996, c. W-14.***1***. 467

13. QUEBEC

Children's Law Act, The, R.S.N.F. 1990, c. C-13 468
Corporations Act, The, R.S.N.F. 1990, c. C-36. 468
Humans Rights Code, The, R.S.N.F. 1990, c. H-14. 469
International Commercial Arbitration Act, The, R.S.N.F. 1990, c. I-15. 469
International Trusts Act, The, R.S.N.F. 1990, c. I-17. 470
Jury Act, The, R.S.N.F. 1990, c. J-5. 470
Reciprocal Enforcement Of Judgments Act, ***The***, R.S.N.F. 1990, c. R-4. 471
Reciprocal Enforcement Of Support Orders Act, The, R.S.N.F. 1990, c. R-5. 471
Schools Act, The 1996, S.N. 1996, c. S-12.1 471
Support Orders Enforcement Act, The, R.S.N.F. 1990, c. S-31 471

Veterinary Medical Act, The, R.S.N.F. 1990, c. V-4. 472
Wills Act, The, R.S.N.F. 1990, c. W-10 472

14. SASKATCHEWAN

Adoption of The French Version of Statutes And Statutory Instruments Act, The, R.S.N.W.T. 1988, c. 92 (Supp.). 474
Education Act, S.N.W.T. 1995, c. C.28. 476
International Child Abduction Act, R.S.N.W.T. 1988, c. C.I-5 477
International Commercial Arbitration Act***, S.N.W.T. 1995, c. C. 28.*** 477
International Sale of Goods Act, R.S.N.W.T. 1988,c. C.I-7. 478
Interpretation Act, R.S.N.W.T. 1988, c. C. I-8. 478
Jury Act, R.S.N.W.T. 1988, c. J-2. 479
Northwest Territories Act***, R.S.C. 1985, c. N-27.*** 473
Northwest Territories Act, S.C. 1886, c. 50, s. 110 Amended By S.C. 1891, c. 22, s. 18. 473
Official languages Act, R.S.N.W.T. 1988, c. O-1. 479
Reciprocal Enforcement of Judgments (Canada-U.K.) Act, R.S.N.W.T. 1988, c. R-2. 489
Reciprocal Enforcement of Judgments Act, R.S.N.W.T. 1988, c. R-1. 489
Statute Revision Act, S.N.W.T. 1996, c. 16. 490

15. YUKON

Business Corporations Act, R.S.Y. 1986, c.15. 491
Children's Act, R.S.Y. 1986, c. 22. 491
Cooperative Associations Act, R.S.Y. 1986, c. 34. 492
Coroners Act, R.S.Y. 1986, c. 35 492
Education Act, S.Y. 1989-90, c. 25 492
Elections Act, R.S.Y. 1986, c. 48. 493
Enactments Republication Act, 1993, S.Y. 1993, c.20. 493
Foreign Arbitral Awards Act, R.S.Y. 1986, c. 70 494
Historic Resources Act, S.Y. 1991, c. 8 494
Hospital Act, R.S.Y. 1989 (Supp.), c.13 494
Human Rights Act, R.S.Y. Supp. 1986, c. 11 494
International Commercial Arbitration Act, R.S.Y. 1986 Supp., c. 14. 495
Jury Act, R.S.Y 1986, c. 97 495
Languages Act, S.Y. 1988, c. 13. 495
Maintenance And Custody Orders Enforcement Act, R.S.Y.1986, C. 108. 499
Marriage Act, R.S.Y. 1986, ***c***. 110. 499
Medical Profession Act, R.S.Y. 1988, C. 114. 499
Partnership Act, R.S.Y. 1986, c. 127. 500
Reciprocal Enforcement of Judgments Act, R.S.Y. 1986, c.146. 500
Reciprocal Enforcement of Maintenance Orders Act, R.S.Y., c. 148. 500
Yukon Act, R.S.C. 1985, c. Y-2. 500

16. CASE-LAW

A.G. (Que.)* v. *Quebec Protestant School Boards, [1984] 2 S.C.R. 66. ..... 6, 31
A.G. (Quebec)* v. *Langlois (April 21, 1998), Quebec 36-511-972, (Que. S.C.) Tremblay J. 51
A.G. (Quebec)* v. *Langlois (December 5, 1997), Quebec 200-73-000514-979, decision on a motion (Que. C.) Vallières J. 51
A.G. of Quebec* v. *Blaikie et al, [1979] 2 S.C.R. 1016. ..... 6, 355
A.G. of Quebec* v. *Blaikie et al, [1981] 1 S.C.R. 312. 357
A.G. of Quebec* v. *Brunet, [1985] C.A. 559. (Que. C.A.). 359
Adler* v. *Ontario, [1996] 3 S.C.R. 609. 44
Administration régionale Crie* v. *Canada, [1991] 3 F.C. 533 (F.C. T.D.). 134
Alcan Aluminium Limitée* v. *La Reine (June 15, 1995), Chicoutimi 150-27-001626-908 (Que. C.), Tremblay J. 56
Alcan Aluminium Limitée* v. *The Queen (February 10, 1994), Chicoutimi 150-27-001626-908 (Que. C.) Tremblay J. 110
Alexander* v. *R. (1930), 49 Que. K.B. 215 (Que. C.A.). 102
Allain* v. *R. (1991), 70 Man.R. (2d) 161 (Man. Q.B.). 252
Andrews* v. *Law Society of British Columbia, [1989] 1 S.C.R. 143. 27
Aquarius Computer and Pheripherals Limited* v. *The Queen (September 21 and 22, 1989), Toronto RE 973/89 (Ont. S.C.) Maloney J. 60
***Arsenault-Cameron* v. *Prince Edward Island*,** [2000] 1 S.C.R. 3. 44
Association des gens de l'air du Québec* v. *Hon. Otto Lang, [1978] 2 F.C. 371 (F.C.A.). 57, 152
Association des Parents Francophones (Colombie-Britannique)* v. *British Columbia (August 19, 1996), Vancouver A890762 (B.C S.C.), Vickers J. 41
Association française des conseils scolaires de l'Ontario*, *Ginette Gratton and Jacques Marchand* v. *Her Majesty The Queen in Right of Ontario (1988), 66 O.R. (2d) 599 (Ont. C.A.) 45
Azzi, Re (1992), 52 F.T.R. 159 (F.C. T.D.). 77
B. (R.)* v. *Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315. 27
Ballantyne et al* v. *Canada, (March 31, 1993), Communications Nos. 359/1989 and 385/1989, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-seventh Session, (A/48/40), United Nations, New York, 1993, p. 91. ..... 10, 27, 58
Barzhig* v. *France (April 11, 1991)**,** Communication No. 327/1988, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-ninth session, United Nations, New York, 1991, p. 262. ..... 12, 19
Bauer* v. *Canada (Public Service Commission – Appeal Board), [1991] 1 F.C. 373 (F.C.A.). 202
Beaudoin* v. *The Minister of National Health and Welfare and Jacinthe Smades, [1993] 3 F.C. 518 (F.C.A.). 140
***Belleus* v. *R*.** (May 3, 1991), in Télé-Clef #3, p. 43 (Ont. C. Gen. Div.) Soublière J. 92
Bertrand* v. *Dussault and Lavoie (30 janvier 1909), Saint-Boniface, **reproduced in *Re Forest and Court of Appeal of Manitoba*** (1977), 77 D.L.R. (3d) 445 Ont. C.A.). 252
Bertrand* v. *Quebec (Attorney General) (1996), 138 D.L.R. (4th) 481 (Que. S.C.). 51
Bilodeau* v. *A.G. (Man.), [1986] 1 S.C.R. 449. ..... 61, 249
Bourque* v. *R. (August, 20 1992), M/M/141/92 (N.B. Q.B.) Landry J. 274
***Brisebois* v. *R*.** (September 25, 1992), Montreal 505-36-000051-922 (Que. S.C.) Greenberg J. 110
Brophy* v. *Man. (1893), 22 S.C.R. 577. 252
Cadoret and Le Bihan* v. *France (July 25 and November 9, 1989)**,** Communications Nos. 221/1987 and 232/1988, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-first Session, United Nations, New York, 1991, p. 219. 20
Canada (A. G.)* v. *Viola, [1991] 1 F.C. 373 (F.C.A.). ..... passim
Canada (A.G.)* v. *Asselin (1995), 100 F.T.R. 309 (F.C. T.D.). 163, 181, 200
Canada Post* v. *P.S.A.C. (1996), 58 L.A.C. (4th) 377. 178
Canadian Javelin Lim.* v. *Restrictive Trade Practices Commission, [1981] 2 F.C. 82 (F.C. T.D.). 73

Chagnon* v. *L'honorable juge Claude Provost et Sa Majesté La Reine (February 24, 1995), Montreal 505-36-000160-947 (Que. S.C.) Zerbisias J. 20
Chisasibi Band* v. *Chewanish (1984), Amos 640-27-000099-842 (Que. P.C.) Ouellet J. 82
Chiu, Re (1996), 112 F.T.R. 27 (F.C. T.D.). 77
Choices Hotels International Inc.* v. *Hotels Confortel Inc. (1996), 112 F.T.R.39 (F.C. T.D.). 207
Cie Imm. BCN Ltée* v. *The Queen, [1979]1 R.C.S 865. 137
Citizenship Act, R.S.C. 1985, c. C-29. 77
Clarck* v. *Canadian National Railway Company, [1988] 2 S.C.R. 680. 137
Colin* v. *Commission d'appel sur la langue d'enseignement (1995), R.J.Q. 1478 (Que. S.C.). 45
Commission des écoles fransaskoises inc.* v. *Saskatchewan (1991), 81 D.L.R. (4th) 88 (Sask. C.A.). 45
Commissioner of Official Languages of Canada* v. *Air Canada and National Automobile, Aerospace, Transportation and General Workers Union of Canada, (December 31, 1997), Ottawa T-1989-96 (F.C. T.D.) Dubé J. 148, 176
Conseil des Écoles Séparées Catholiques Romaines de Dufferin & Peel* v. *Ontario (Ministre de l'éducation et de la formation) (1996), 136 D.L.R. (4th) 704 (Ont. C. Gen. Div.) 40
Cormier* v. *Fournier (1986), 29 D.L.R. (4th) 675 (N.B. Q.B.). 18, 272, 287
Cornejo* v. *Opus Building Corp. (1991), 14 C.H.R.R. D/167 (H.R.C. B.C.) 233
Côté and The Queen and The Commissioner of Official Languages (March 28, 1994), Ottawa T-1051-92 (F.C. T.D.) Noël J. 174
Cotton* v. *La Reine (March 13, 1991), Hull 550-36-000038-909 (Que. S.C.) Landry J. 110
Covrig* c. *Canada (Minister of Citizenship and Immigration) (1995), 104 F.T.R. 41 (F.C. T.D.). 123
Dans l'affaire de la faillite de : Nolisair International* v. *Richter et Ass et al., [1994] R.J.Q. 733 (Que. S.C.). 60, 138
Davies* v. *R. (1991) O.J No. 40 action No 300/89 (Ont. C. Gen.Div.) Borins J. (QL) 110
Daycal Publishing Inc.* v. *Canada Post (1993), N.R. 318 (F.C.A.). 139
Dehghani* v. *Canada (Minister of Employment and Immigration), [1993] 1 S.C.R. 1053. 20
Deltonic Trading Corp.* v. *Minister of National Revenue (Custom and Excise) (1990), 113 N.R. 7 (F.C.A.). 139
Deputy Minister of National Revenue* v. *Film Technique Ltd., [1973] F.C. 75 (F.C.A.). 139
Devinat v. Canada (Immigration and Refugee Board) . (November 29,1999), Ottawa (F.C. A) A-336-98 , Desjardins, Linden, Létourneau J.J. A.. 145
Devinat* v. *Canada (Immigration and Refugee Board) (May 1st, 1998), Ottawa T-2062-96 (F.C. T.D.) Nadon J. 146, 172, 174
Devine* v. *Quebec (A.G.), [1987] R.J.Q. 50 (Que. C.A.). 6
Devine* v. *Quebec (A.G.), [1988] 2 S.C.R. 790 ..... 5, 365, 382
Dia, Re (1992), 53 F.T.R. 75 (F.C. T.D.). 77
DiMaulo et al.* v. *R. (1973), 21 C.R.N.S. 195 (Que. Q.B.). 101
DiMaulo et al.* v. *Regina (1973), 21 C.R.N.S. 195 (Que. Q.B.). 21
DiMaulo* v. *R. (September 13, 1995), Montreal 500-01-001861-951 (Que. S.C.) Pinard J. 100
Doré* v. *Verdun (City), [1997] 2. S.C.R. 862 ..... 360, 369
Dougall* v. *The Queen (1874), C.Q.B. 242 (Que. C.A.). 21
Duval et al* v. *Regina (1938), 64 R.J.Q. 270. (K.B.C.) 102
Eastmain Indian Band* v. *Robinson, [1992] 3 F.C. 800 (F.C.A.) 138
Edwards et al.* v. *Honourable Yves Lagacé, j.c.q. es qualité and A.G. of Canada (March 24, 1998), Montreal 505-36-00327-983 (Que. S.C.) Béliveau 29, 99
Eldridge* v. *British Columbia (Attorney General), [1997] 3 S.C.R. 624. 23
Étienne* v. *Canada (1992), 54 F.T.R. 253 (F.C. T.D.). 173
Étienne* v. *Canada (1994), 165 N.R. 315 (F.C.A.) 173
Étienne* v. *Canada, [1992] 3 F.C. 557 (F.C. T.D.). 173
Ferncraft Leather Inc.* v. *Roll et al. (March 2, 1979), Montreal no 09-001270-784 (Que. C.A.), Owen, Bélanger and Bernier J.J.A.. Reproduced in J. Deschênes, *Ainsi parlèrent les tribunaux, Conflits linguistiques au Canada 1968-1980*, Wilson & Lafleur, 1981, p. 483. 360

Fisherman's Warf Ltd, Re (1982), 44 N.B.R. (2d) 201 (N.B. Q.B.).....288
Fletcher Challenge Canada Limited* v. *B.C. Council of Human Rights and Grewal (1992), 18 C.H.R.R. D/422 (B.C. S.C.).....233
Ford* v. *Quebec (Attorney General), [1988] 2 S.C.R. 712.....passim
***Forest* v. A.G. (Man.)**, [1979] 2 S.C.R. 1032.....247
Forget* v. *Quebec (P.G), [1988] 2 S.C.R. 90.....366, 376
Fournier* v. *R. (9 juillet 1995), Whitehorse, TC-94-01371 (Y. T.C.).....100
Frankie* v. *Canada, [1993] 3 F.C. 3 (F.C.A.).....138
Garcia* v. *Canada (Minister of Employment and Immigration) (1993), 70 F.T.R. 211 (F.C. T.D.).....21
Garcia* v. *R. (1990), 58 C.C.C. (3d) 43 (Que. S.C.).....89
Gariepy* v. *Canada (1987), 14 F.T.R. 58 (F.C. T.D.).....181
Gautreau* v. *R. (1989), 101 N.B.R. (2d) 1 (N.B. Q.B.).....273
Gautreau* v. *R. (1991), 109 N.B.R. (2d) 54 (N.B. C.A.).....273
Gingras* v. *Canada, [1994] 2 F.C. 734 (F.C.A.).....25, 152
Gladyszewski* v. *R. (1979), 5 M.V.R. 7 (P.E.I. S.C.).....21
Glynos* v. *Canada, [1992] 3 F.C. 691 (F.C.A.).....138
Goguen* c. *Shannon (1989), 50 C.C.C. (3d) 45 (N.B. C.A.).....60
Goguen* v. *Revenue Canada, [1991] R.J.Q. 363 (Que. S.C.).....60, 139
Goguen* v. *Shannon (1989), 50 C.C.C. (3d) 45 (N.B. C.A.).....138
Goodine* v. *Regina (1992), 71 C.C.C. (3d) 146 (N.S. C.A.).....109
Gouin* v. *R. (1936), 43 R.L.N.S. 149 (Que. C.A.).....102
Gravel* v. *Cité de St-Léonard, [1978] 1 S.C.R. 660.....139
Griffin* v. *Commission scolaire régionale Blainville Deux-Montagnes, [1989] R.J.Q. 2741 (Que. S.C.).....38
Guay* v. *R. (1996), 3 C.T.C. 2384.....124
Gulf Oil Canada Ltd.* v. *C.P. Ltée, [1979] C.S. 72 (Que. S.C.).....139
Guy* v. *Canada (Public Service Commission – Appeal Board), [1984] 2 F.C. 369 (F.C.A.).....202
Haché* v. *La Reine (1993), 139 N.B.R. (2d) 81. (N.B. C.A.).....274
Harward* v. *Norway (July 26, 1993), Communication No. 451/1991, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly, Forty-eighth Session, No. 40 (A/48/40), United Nations, New York, 1994, p. 146.....13, 20
Headley* v. *Canada (Public Service Commission Appeal Board) [1987], 2 F.C. 235 (F.C.A.)..27, 175, 181, 200
Herold* v. *Wiggins Adjustments Ltd. (1985), 6 C.H.R.R. D/2714 (H.R.C. B.C.).....233
Holman* v. *R., (1983) 28 Alta L.R.(2d) 35 (Alta. P.C.).....61
Ictensev* v. *Canada (Department of Employment and Immigration) (1988), 43 C.R.R. 147 (F.C. T.D.).....21
Immeubles Claude Dupont Inc. (Les)* v. *Procureur général du Québec et Procureur général du Canada, [1994] R.J.Q. 1968 (Que. S.C.).....10
Immigration, Act, R.S.C. 1985, c. I-2.....122
Jacques Clau* v. *Uniglobe Pacific Travel Limited (1995), 23 C.H.R.R. D/515 (H.R.C. B.C.).....233
Jones* v. *A.G. of New Brunswick, [1975] 2 S.C.R. 182.....passim
Jong* v. *Lavigne et al. (August 26, 1994), Montreal 500-09-001428-929 (Que. C.A.).....21
Jonik Hospitality Group Ltd.* v. *Atlas Conti Travel & Tourism Inc. (1996), 68 C.P.R. (3d) 99 (F.C. T.D.)...113
Jonik Hospitality Group Ltd.* v. *Voyages et circuits touristiques Atlas Conti Inc. (1996), 68 C.P.R. (3d) 99 (F.C. T.D.).....140
Joyal* v. *Air Canada, [1982] C.A. 39 (Que. C.A.).....152
Keller* v. *Regina, [1966] 2 C.C.C. 380 (B.C. S.C.).....227
Kelso* v. *The Queen, [1981] 1 S.C.R. 199.....202
Labrie* v. *Les machineries Kraft et autres, [1984] C.S. 263 (Que. S.C.).....18
Lacasse* v. *R. (1938), 66 Que. K.B. 74, 72 C.C.C. 168 (B.R. Qué.).....102
Laclede Chain Manufacturing Co.* v. *Deputy Minister of National Revenue (1992), 10 T.T.R. 339 (C.I.T.T.).....139
Lajoie* v. *Regina (1971), 2 C.C.C. (2d) 89 (B.C S.C.).....56

Lalonde **v.** *Ontario (Commission de Restructuration des Services de Santé)*, [1999] O.J. No. 4489, No. 98-DV-244, Ontario Superior Court of Justice, Divisionnal Court, Carnwath, Blair, Charbonneau JJ. 23
Lapierre* v. *Regina (1980), 54 C.C.C. (2d) 408 (Ont. Dist.C.)..... 87
Lapointe and Sicotte* v. *Regina (1981), 64 C.C.C. (2d) 562 (Ont. Ct.C.)..... 88
Lapointe and Sicotte* v. *Regina (1983), 9 C.C.C. (3d) 366 (Ont. C.A.)..... 17
Lavigne* v. *Canada (Human Resources Development) (December 6, 1995), Ottawa T-1977-94 (F.C. T.D.) Richard J. 141
Lavigne* v. *Canada (Human Resources Development), [1997] 1 F.C. 305 (F.C. T.D.). 152, 174, 177
Lavigne* v. *Canada (Minister of Human Resources Development) (1995), 96 F.T.R. 68 (F.C. T.D.). 144
Lavoie et al.* v. *Masse (March 23, 1990), Montreal 500-36-000010-903 (Que. S.C.) Boilard J. 107
Lavoie* v. *Nova Scotia (1989), 58 D.L.R. (4th) 293 (N.S. C.A.). 39
Lefebvre* v. *R. (1993), 100 D.L.R. (4th) 591 (Alta. C.A.)..... 223
Leroy S.A.* v. *Alberta Distillers Ltd. (1994), 53 C.P.R. (3d) 97 (T.M.Opp.Bd.)..... 207
Les importations cachères Hahamovitch Inc. et le Procureur général du Canada et al. (October 24, 1995), Montreal T-1881-95 (F.C. T.D.) Teitlebaum J. 10
L'Hôpital de Montréal pour enfants* v. *Infirmières et infirmiers unis Inc. (1981), 29 L.A.C. (2d) 381 (T.T.Qué.). 377
Lin* c. *Canada (Minister of Citizenship and Immigration) (1996), 107 F.T.R. 225 (F.C. T.D.). 123
MacDonald* v. *City of Montreal, [1986] 1 S.C.R. 460. ..... passim
MacMillan Bloedel Ltd.* v. *Rheaume, [1994] B.C.J. 296 (B.C S.C.) (QL). 228
Mahe* c. *Alberta, [1990] 1 S.C.R. 342..... 22, 35, 49
Marchand* v. *Simcoe (1984), 10 C.R.R.169 (Ont. H.C.)..... 45
Marchand* v. *Simcoe, (1987) 61 O.R. (2d) 651 (Ont. H.C.). 45
Massia* v. *R. (1991), 4 O.R. (3d) 705 (Ont. C.A.). 55, 60
McDonnell v. ***Federation des Franco-Colombiens*** (1985), 69 B.C.L.R.87 (B.C. Co. Ct.). 26
McDonnell* v. *Fédération des franco-colombiens (1986), 26 C.R.R. 128 (B.C. C.A.)..... 24, 228
McKenzie* v. *Canadian Human Rights Commission (1985), 6 C.H.R.R. 2929 (F.C. T.D.). 56, 75
McKinnon and Public Service Commission (May 23, 1990), Ottawa, Ontario, A-316-89 (F.C.A.) Hugessen J.A. 201
McNeill* v. *Canada, [1987] 1 F.C. 119 (F.C. T.D.). 124, 152
Miller and Kyling* v. *La Reine, [1970] S.C.R. 214. 53
Mills et al.* v. *The Queen (1993), 124 N.S.R. (2d) 317 (N.S. S.C.). 93
Mitchell* v. *Regional Administrative Unit 3 (1986), 60 Nfld & P.E.I.R.1 (P.E.I. S.C.)..... 21
Montreuil* v. *Air Canada (1996), 121 F.T.R. 17 (F.C. T.D.). 173
Morand et al.* v. *A.G. of Quebec (August, 19, 1991), Montreal 500-05-003482-872 (Que. S.C.) Trudeau J. ... 361
Mount* v. *R. (1931), 51 R.J.Q. 482 (K.B.C.)..... 102
Muffin House Bakery Ltd.* v. *Deputy Minister of National Revenue (Custom and Excise) (1986), 12 C.E.R. 43 (F.C. T.D.). 139
Nassrat* c. *Canada (Minister of Citizenship and Immigration) (1995), 30 Imm. L.R. (2d) 1 (F.C. T.D.)..... 123
Nima* v. *McInnes (1988), 32 B.C.L.R. (2d) 197 (B.C S.C.). 60, 137
Nitrochem Inc.* v. *Deputy Minister of National Revenue (Custom and Excise), [1983] C.T.C. 608 (F.C.A.). 139
Nordlandsbanken* v. *Ship Nor-Fisk I et al. (1993), 62 F.T.R. 103 (F.C. T.D.)..... 60, 139
Northwest Child and Family Services Agency* v. *Lavoie et al. (1992), 88 D.L.R. (4th) 230 (Man. Q.B.)..... 252
Ontario Catholic Occasional Teachers' Assn.* v. *Frontenac-Lennox & Addington (County) Roman Catholic Separate School Board, [1988] O.L.R.B. Rep. 888 (B.R.T.Ont.). 45
***Order: Manitoba Language Rights*,** [1990] 3 S.C.R. 1417. 252
***Ordonnance relative aux droits linguistiques au Manitoba*,** [1985] 2 S.C.R. 347. 249
Paquette* v. *R. (1988), 55 Alta.L.R. (2d) 1 (Alta. C.A.). 223
Paquette* v. *R., [1988] 2 W.W.R. 44 (Alta. C.A.). 25
Pare* v. *Regina (1986), 31 C.C.C. (3d) 260 (B.C S.C.). 26, 27, 29, 89
Pellant* v. *Hébert (March 19, 1892), Manitoba, reproduced in (1981) 12 R.G.D. 237..... 247

Penikett et al.* v. *The Queen et al. (1988), 45 D.L.R. (4th) 108 (Y. C.A.). 27
Perry* v. *R. (August 24, 1989), Vancouver, No. CC891337, B.C.J. nº 1616 (B.C. S.C.) Macdonald J. (QL)..... 106
Pfahl et al.* v. *The Queen (December 9, 1993), Ottawa T-2971-89 (F.C. T.D.) McGillis J. 202
Pilote v. Corporation de l'hôpital Bellechasse et al. (1994), D.L.R. (4th) 657 (Que. C.A.)..... 361, 369
Piperno* v. *The Queen, [1953] 2 S.C.R. 292. 100
Price, Re (1973), 8 N.B.R.(2d) 620 (N.B. Q.B.). 287
Professional Chemists Act, R.S.Q., c. C-15..... 445
Professional Institute of Public Service* v. *Canada, [1993] 2 F.C. 90 (F.C. T.D.). 157, 181
Quebec (A.G.)* v. *Brunet, [1990] 1 S.C.R. 260..... 359
R v. ***Noiseux*** (1999), R.J.Q. 704 (QUE.C.A.). 108
R.* v. *Allain (1991), 70 Man. R. (2d) 161 (Man. Q.B.). 100
R.* v. *Bain, [1992] 1 S.C.R. 91..... 104
R.* v. *Bartle, [1994] 3 S.C.R. 173. 14
R.* v. *Bastarache, [1992] 128 N.B.R. (2d) 217 (N.B. Q.B.). 273
R.* v. *Beaulac, [1999] 1 S.C.R. 768..... 98
R.* v. *Beaulieu (October 5,), Toronto C9210, C8948 Lacoursière, Arbour et Labrosse JJ.A. (Ont. C.A.). 94
R.* v. *Beaupré (January 7, 1998), Smithers, B.C. 14311C (B.C. P.C.) Paradis J..... 64
R.* v. *Bertrand (1992), 131 N.B.R. (2d) 91 (N.B. Q.B.). 274
R.* v. *Biasi (1981), 62 C.C.C. (2d) 304 (B.C. S.C.)..... 84
R.* v. *Biasi (No. 2) (1981), 66 C.C.C. (2d) 563 (B.C. S.C.). 84
R.* v. *Boucher (1991), 65 C.C.C. (3d) 446 (Que. C.A.)..... 139
R.* v. *Boudreau (1990), 107 N.B.R. (2d) 298 (N.B. C.A.), reversing (1989) 103 N.B.R. (2d) 104 (N.B. Q.B.)..... 21
R.* v. *Boudreau (1990), 107 N.B.R. (2d) 298; 267 A.P.R. (N.B. C.A.)..... 90
R.* v. *Breton (July 9, 1995), Whitehorse TC-94-10538, 10005, 1005A, 100013 (Y. T.C.) Dutil J. 12, 27, 100
R.* v. *Brown (March 28, 1985), Quebec, 36-494-842 / 700-01-3172-840 (Que. S.C.) Barette-Joncas J..... 102
R.* v. *Butcher, (1990) R.L. 621 (Que. C.A.)..... 21
R.* v. *Cohen, [1984] C.A. 408 (Que. C.A.). 139
R.* v. *Crawford, [1995] 1 S.C.R. 858. 87
R.* v. *Crete (1993), 64 O.A.C. 399 (Ont. C.A.). 25
R. v. ***Cross***, [1998] C.S.C.R. no 526. 91
R.* v. *Cross, [1998] R.J.Q. 2587 (Que. C.A.)..... 91
R.* v. *Diep (1991), 122 A.R. 374.(Alta. P.C.) 110
R.* v. *Dollan (1980), 53 C.C.C. (2d) 146 (Ont. H.C.)..... 139
R.* v. *Dollan (1980), 65 C.C.C. (2d) 240 (Ont. C.A.). 139
R.* v. *Dubois, [1935] S.C.R. 378..... 139
R.* v. *Duchesneau (1991), 90 Nfld & P.E.I.R. 231 (P.E.I. S.C.)..... 100
R.* v. *Forsey (1995), C.C.C. (3d) 354 (Que. S.C.)..... 94
R.* v. *G.M. (1985), 24 C.C.C. (3d) 288 (Ont P.C.). 88
R.* v. *Gauvin (1995), 169 R.N.B. (2d) 161 (N.B. Q.B.)..... 96
R.* v. *Girard (1993), 119 N.S.R. (2d) 110; 330 A.P.R. 110 (N.S. C.A.). 14
R.* v. *Govedarov (1975), 3 O.R. (2d) 23 (Ont. C.A.). 139
R.* v. *Guay (1980), 10 Man. R. (2d) 322 (Man. Ct. C.). 252
R.* v. *Guimond (1992), 106 Sask. R. 274 (Sask. Q.B.)..... 21
R.* v. *Henni (1970), 2 C.C.C. (2d) 575 (Que. S.C.). 102
R.* v. *Hunlin (19 juillet 1994), Doc. Williams Lake 16422 (B.C. P.C.)..... 21
R.* v. *Jervis (1984), 11 C.R.R. 373 (Man. Ct.C.). 62, 147
R.* v. *Karnakov (1996) 3 O.T.C. 212 (Ont. C. Gen. Div.). 21
R.* v. *Keenan (1990), 84 Man.R. (2d) 1 (Man. P.C.). 107
R.* v. *L. (F.S.) (1986), 71 N.B.R. (2d) 225 (N.B. Q.B.). 273
R.* v. *Landry (March 29, 1995), Ottawa-Carleton (Ont. C. Gen.Div) Doyle J..... 95
R.* v. *Langlois (1991), 67 C.C.C. (3d) 375 (B.C S.C.). 110
R.* v. *Lapointe and Sicotte, [1987] 1 S.C.R. 1253. 17

R.* v. *Leblanc (December 20, 1988), Moncton M/M/29/88 (N.B. Q.B.) Deschênes J. 89
R.* v. *LeCompte (12 mars 1997), Doc. CA C23900, M19873 (Ont. C.A.) 21
R.* v. *Les équipements Grand Prix Inc. (September 15, 1992), Montreal 27-015499-900 (Que. C.) Dubreuil J. 10
R.* v. *Li (No. 1) (1976), 6 W.W.R. 128 (B.C. Co. Ct.) 84
R.* v. *Lorentz-Aflalo (October 8, 1987), Montreal 500-01-006114-877 (Que. S.C.) Greenberg J. 101
R.* v. *Losier (1992), 130 N.B.R. (2d) 53 (N.B. Q.B.). 284
R.* v. *Melanson, (1992) 122 R.N.B. (2d) 358, 306 A.P.R. 358 (N.B. Q.B.). 21
R.* v. *Mercure, [1988] 1 S.C.R. 234. 452
R.* v. *Moore, [1988] 1 S.C.R. 1097. 106
R.* v. *Murphy (1968), 69 D.L.R. (2d) 530 (N.B. C.A.). 3
R.* v. *Murphy (1995), 137 N.S.R. (2d) 236) (N.S. C.A.). 110
R.* v. *Ng (February 26, 1996), O.J. No. 666, DRS 96-0635, F1504/95 et T0219220 (Ont. C.) Keenan J. (QL) 84
R.* v. *Nguyen, (1996) 179 A.R. 306 (Alta. Q.B.). 21
R.* v. *O'Donnell, [1979] 1 W.W.R. 385 (B.C. Co. Ct.). 139
R.* v. *Ouellet (1977), 33 C.C.C. (2d) 417 (B.C. P.C.). 84
R.* v. *Paquette, [1990] 2 S.C.R. 1103. 222
R.* v. *Popovic, [1976] 2 S.C.R. 308 139
R.* v. *Prince (1946), 1 D.L.R. 659 (Ont. C.A.). 21
R.* v. *Randall (1963), 1 C.C.C. 353 (N.B. C.A.). 21
R.* v. *Rivest (April 23, 1991), Quesnel, B.C. No. 14481 (B.C S.C.) Braidwood J. 91
R.* v. *Robin (November 28, 1995), New Westminster, C.B. No. 36499C (B.C. P.C.) Routhwaite J. 95
R.* v. *Robin : Note concerning comments of the Honourable A.E. Rounthwaite regarding a decision held on November 28, in the Provincial Court of British Columbia (December 4, 1995), New Westminster, B.C. No. 36499C (B.C. P.C.) Routhwaite J. 96
R.* v. *Robinson (September 18, 1992), Doc. S.C.C. 02657, 02658, 02659 (N.S. C.A.). 110
R.* v. *Rodrigue (1994), 91 C.C.C. (3d) 455 (Y. S.C.) ..... passim
R.* v. *Rodrigue (1995), 95 C.C.C. (3d) 129 (Y. C.A.) 93
R.* v. *Rottiers (1995), 134 Sask. R. 152 (Sask. C.A.) 466
R.* v. *Rowbotham (No. 4) (1977), 33 C.C.C. (2d) 411 (Ont. G.S.P.). 84
R.* v. *S. (1995), 87 O.A.C. 114 (Ont. C.A.) 21
R.* v. *Sadjade (1982), 136 D.L.R. (3d) 605 (Que. C.A.). 74
R.* v. *Sadjade, [1983] 2 S.C.R. 361 74
R.* v. *Saini (May 4, 992), Doc. Vancouver CC911319 (B.C. S.C.). 14
R.* v. *Saulnier (No. 2) (1980), 53 C.C.C. (2d) 237 (N.S. C.A.). 15
R.* v. *Saulnier, (1979), 50 C.C.C. (2d) 350 (N.S. C.A.) 136
R.* v. *Shayesteh (November 8 1996), Doc. CA C20184 (Ont. C.A.). 84
R.* v. *Skin (February 22, 1988), Doc. CA007364 (B.C. C.A.) 22
R.* v. *St. Pierre (May 14, 1991), Victoria, B.C. No. 60466 (B.C. S.C.) Hutchison J. 92
R.* v. *St.Pierre (March 21 1995, Sault-Ste-Marie (Ont. C.J. Gen.Div.) Pardu J. 96
R.* v. *Tanguay (1984), 27 M.V.R. 1 (Ont. Ct.C.) 14
R.* v. *Tran, [1994] 2 S.C.R. 951 ..... 17, 49
R.* v. *Tremblay (1985), 20 C.C.C. (3d) 454 (Sask. Q.B.). 27, 452
R.* v. *Tripp (9 mai 1990), Barrie, Ont. (Ont P.C.) Silverman J. 107
R.* v. *Tsang (1985), 27 C.C.C. (3d) 365 (B.C. C.A.). 22
R.* v. *Vanstaceghem (1987), 36 C.C.C. (3d) 142 (Ont. C.A.). 14
R.* v. *Voisine (1984), 57 N.B.R.(2d) 38 (N.B. Q.B.). 284, 288
R.* v. *Young (April 17, 1990), Scarborough, Ont. (Ont. P.C.) MacDonnell J. 107
R.* v. *Zanella (1980), 55 C.C.C. (2d) 567 (B.C. C.A.). 22
***Ratelle* v. *R.*,** [1992] R.J.Q. 791 (Que. S.C.) 10
Re Bachman and St. James Assiniboia School Division No. 2 et al. (1984), 13 D.L.R. (4th) 606 (Man. C.A.). 55

Re Chaperon et al. and Corporation of the City of Sault Ste-Marie (1994), 19 O.R. (3d) 281 (Ont. C. Gen Div.). 329, 340
Re Constitutionnal Challenge against s. 530.1 (e) of the Criminal Code, [1991] R.J.Q. 1430 (Que. S.C.).... 19
Re Education Act (1986), 53 O.R. (2d) 513 (Ont. C.A.). 45
Re Education Act of Ontario and Minority Language Education Rights (1984), 47 O.R. (2d) 1 (Ont. C.A.). 45
Re Lefebvre and The Queen (1988), 41 D.L.R. (4th) 311 (Alta. C.A.).... 223
Re Manitoba Language Rights, [1985] 1 S.C.R. 721. .... 6, 249
Re Minority Language Educational Rights (1988), 49 D.L.R. (4th) 499 (P.E.I. C.A.). 38
Re Ottawa Board of Education et al. and Attorney General of Ontario (1987), 57 O.R. (2d) 722 (Ont. H.C.). 45
Re Ringuette and The Queen (1987), 33 C.C.C. (3d) 509 (Nfld. C.A.). 24, 58, 88
Re Use of French in Criminal Proceedings in Saskatchewan (1987), 44 D.L.R. (4th) 16 (Sask. C.A.)...passim
Red River Forest Products Inc. **v.** ***Ferguson*** (1992), 98 D.L.R. (4th) 697 (Man. C.A.).... 251
Reference : Re Regina **v.** ***Coffin***, [1956] R.C.S 191. 101
Reference by the Commissioner of Official Languages concerning Air Canada's regional carriers (July 9, 1997), Ottawa T-541-97 (F.C. T.D.) Tremblay-Lamer J. 163
Reference Education Act of Ontario and Minority Language Education Rights (1984), 47 O.R. (2d) 1 (Ont. C.A.). 40
Reference re Education Act (Que.), [1993] 2 S.C.R. 511.... 37
Reference re French Language Rights of Accused in Saskatchewan Criminal Proceedings, [1987] 5 W.W.R. 577 (Sask. C.A.). 452
Reference re Manitoba Language Rights, [1992] 1 S.C.R. 212. 250
Reference re Public Schools Act (Man.), s. 79(3), (4) and (7), [1993] 1 S.C.R. 839. .... 27, 36
Reference re Secession of Quebec *[1998] 2 S.C.R. 217*. 48
Robin **v.** ***College de Saint-Boniface*** (1984), 15 D.L.R. (4th) 199 (Man. C.A.). 251
Robin **v.** ***College de St-Boniface*** (1985), 15 D.L.R. (4th) 198 (Man. Q.B.).... 252
Robinson **v.** ***The Queen*** (10 février 1992), Moncton, M/M/197/91 (N.B. Q.B.) Miller J. 63
Roy et al. and Hackette et al. (1988), 62 O.R. (2d) 351. (Ont. C.A.). 22
Saggu **v.** ***Canada (Minister of Citizenship and Immigration)*** (1994), 87 F.T.R. 137 (F.C. T.D.). 123
Saraga **v.** ***The Queen*** (November 18, 1988), Montreal 500-01-01624L-876 (Que. S.C.) Martin J.... 101
Saulnier **v.** ***R.*** (1989), 90 N.S.R. (2d) 77 (N.S. Ct.C.). 62, 136, 205
Shaw **v.** ***Montreal (City)*** (1982), 70 C.C.C. (2d) 19 (Que. S.C.).... 22
Sheehan **v.** ***The Queen***, [1897] C.C.C. 402. 102
Shields **v.** ***The Queen*** (July 20, 1990), Belleville A 768/90 (Ont. Dist.C.) Byers J. 107
Simard **v.** ***R.*** (1995), 27 O.R. (3d) 116 (Ont. C.A.). .... passim
Sinclair **v.** ***Quebec (Attorney General)***, [1992] 1 S.C.R. 579. 360
Singer **v.** ***Canada,*** (July 26, 1994), Communication No. 455/1991, in *Report of the Human Rights Committee*, Vol. II, Official Records, General Assembly Fifty-first Session, United Nations, New York, 1994, p. 1..... 10
Société des Acadiens **v.** ***Association of parents***, [1986] 1 S.C.R. 549. .... passim
Sorensen **v.** ***Regina*** (1990), 75 O.R. (2d) 659 (Ont. C. Gen Div.). 108
Stauffer **v.** ***R.*** (1981), 22 C.R. (3d) 336 (Alta. C.A.). 136
St-Jean **v.** ***The Queen and The Commissioner of the Yukon*** (September 26, 1986), Whitehorse, 545.83 (Y. S.C.) Meyer J.... 58, 62, 496
St-Onge **v.** ***Canada***, [1992] 3 F.C. 287 (F.C.A.). 130, 148, 162, 164
Sunshine Coast Parents for French et al. **v.** ***Board of School Trustees of School District No. 46*** (1991), 44 Admin.L.R. 252 (B.C S.C.). 45
Sutton **v.** ***R.,*** [1983] C.S.P. 1001 (Que. Ct Sess. P.). 374
Syndicat des débardeurs, Section locale 375 **v.** ***Association des employeurs maritimes***, [1993] T.A. 79 (Que. A.T.). 19, 132
Syndicat professionnel des infirmières et infirmiers de Chicoutimi **v.** ***L'hôpital de Chicoutimi Inc. and A.G. of Quebec*** (March 15, 1990), Quebec 200-09-000732-898 (Que. C.A.). 361

Syndicat professionnel des infirmières et infirmiers de Chicoutimi* v. *L'hôpital de Chicoutimi Inc., [1990] R.J.Q. 141 (C.S.). 360
Szasz et al.* v. *Commission scolaire Lakeshore (May 27, 1998), Montreal 500-09-003117-967, (Que. C.A.). .. 44
Szczecka* v. *Canada (Minister of Employment and Immigration) (1994), 170 N.R.58 (F.C.A.). 140
The Canadian Union of Postal Workers and Canada Post Corporation Re: National Grievance Imperative Staffing of Bilingual Wicket Positions (November 22, 1994), C.U.P.W. Grievance No. N00-91-001, Innis Christie, arbitrator. 181
The Information Commissioner of Canada* v. *Public Works (June 23, 1995), Ottawa T-426-95 (F.C. T.D.) Rouleau J. 99, 143
The Queen* v. *Castillo Gardia et al, [1990] R.J.Q. 2312 (Que. S.C.). 102
The Queen* v. *Côté, [1978] 1 S.C.R. 8. 14
The Queen* v. *Desgagne (January 20, 1997), Peace River Alberta No. A 06115443 T (Alta. P.C.) McIntosh J. 64
The Queen* v. *Desgagne (June 13, 1996), Peace River Alberta No. A 06115443 T (Alta. P.C.) McIntosh J. ... 218
The Queen* v. *Sopko and Duncan (June 14, 1990), Winnipeg (Man. Q.B.) Kroft J. 28
The Queen* v. *Yancey (1899), 2 C.C.C. 320 (Que. Q.B.). 100
Thorson* v. *A.G. of Canada, [1975] 1 S.C.R. 138. 130
Ting* c. *Canada (Minister of Citizenship and Immigration) (October 30, 1996), Doc. IMM-556-96 (F.C. T.D.). 123
Toma* v. *Minister of Education (June 9, 1983), Montreal 500-09-001283-829 (Que. C.A.). 45
Townsend* v. *Canada (1994), F.T.R. 21 (F.C. T.D.). 175
Trumble et al.* v. *The Corporation of the Town of Kapuskasing (October 16 1986), nº Re 1419/86 (Ont. S.C.) Smith J. 328, 340
Trutschmann et Millette* v. *Procureur général du Québec (March 30 1995), Montreal 500-05-009387-943 (Que. S.C.). 45
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