



The French Language Debate ⁹¹

Manitoba's statutes were the focus of a constitutional court challenge in 1981. Winnipeg lawyer, Roger Bilodeau, had challenged a speeding ticket on the grounds the statutes under which he had been charged were invalid because they were printed in English only. English-only statutes were contrary to section 23 of the *Manitoba Act, 1870* (Manitoba's constitution) which stipulated that statutes were to be printed in both English and French. A successful challenge to the Supreme Court of Canada could have meant a declaration of invalidity of hundreds of Manitoba statutes.

In an attempt to avoid this drastic outcome and the legal chaos that would follow, the Pawley government solicited legal opinions on the options open to the government. These opinions indicated a constitutional amendment negotiated by the government with the Franco-Manitoban community would be preferable to letting the Supreme Court decide on, and impose, a possibly more severe remedy.

During the summer of 1982, the government participated in negotiations with Mr. Bilodeau, the *Societe Franco-Manitobaine* and the federal government which ultimately led to an agreement—in essence, an out of court settlement.

Pursuant to the agreement, the province would introduce amendments to the *Manitoba Act, 1870* to translate major statutes over a grace period while maintaining the validity of statutes already printed in only one language. The agreement would also explicitly declare both English and French as Manitoba's official languages, and guarantee certain French language services at government offices. In exchange, Bilodeau would adjourn his case before the Supreme Court.

The following spring, on 20 May 1983, Attorney General Roland Penner tabled the draft agreement in the legislature. On July 4, the resolution on the constitutional amendments was officially introduced for consideration in the House.

⁹¹ Except where otherwise noted, the information for this account came from G. Mackintosh, "Heading Off Bilodeau: Attempting Constitutional Amendment" (1986) 15:3 *Manitoba Law Journal* 271. See also, F. Youngs, "French language debates filled with sound and fury" *Winnipeg Free Press* (28 February 1984) 39 for a helpful chronology of events.

Opposition to the constitutional amendments immediately swelled, both inside the legislature and among the general public. Concerns grew—both warranted and unwarranted—about the effect and cost of official bilingualism and the guarantee of bilingual services. The Conservative Opposition expressed these fears in the House and argued continually that this matter should be discussed and debated outside of the legislature—by the people of Manitoba—before the legislature moved ahead to pass the amendments. The Opposition wanted a committee to hear public submissions during a recess of the House, not while the House was sitting, and wanted the committee to report back to the House with its recommendations by the end of December 1983.

Part of the Tories' opposition tactics included unlimited ringing of the division bells—buzzers used to call members of the legislature for a vote. The bells were to stop, and a vote taken, when both the government and opposition house leaders informed the Speaker that their members were in place. On 12 August 1983, both House leaders signed an agreement which guaranteed all subsequent bell-ringing would be limited to two weeks in duration.

On 18 August 1983, the legislature began a five-month recess as the government agreed to prorogue the House to conduct public hearings on the constitutional amendments. The French-language issue went through three sets of public hearings and was the subject of numerous polls and plebiscites. The majority of Manitobans seemed to reject the package of constitutional amendments.

The legislature resumed its session on 5 January 1984 and received the report of the committee that had heard public submissions during the recess. Despite overwhelming public opposition, the committee recommended the legislature proceed with the amendments. On the same day, Government House Leader, Andy Anstett, removed the government services section from the constitutional resolution and, on January 6, he introduced Bill 115 which would require the provision of bilingual services at various government agencies.⁹² This was likely in response to public fears about entrenching guaranteed bilingual services directly in the constitution. On 24 January 1984, Andy Anstett invoked closure to move Bill 115 past second reading and into committee.⁹³

The Tories' greatest opposition to the constitutional amendments was the provision declaring two "official" languages in Manitoba. The Opposition moved an amendment to have this provision removed, to no avail.

⁹² Manitoba, Legislative Assembly, *Debates and Proceedings* [hereinafter Hansard], Vol. XXXI No. 155 (6 January 1984) at 5390.

⁹³ Hansard, Vol. XXXI No. 167A (24 January 1984) at 5677.

During the latter part of January, the Opposition continued to use bell-ringing as a tactic to delay and stall on votes in the House. The government tried four times to invoke closure to cut off debate on the constitutional amendments, but each time the motion came to a vote, the Opposition walked out and let the bells ring.⁹⁴ On 6 February 1984, House Leader Andy Anstett raised a matter of privilege and moved a motion seeking referral of the bell-ringing issue to the Rules Committee of the House. Anstett also wanted to impose an interim rule limiting bell-ringing to two hours in an attempt to stop the Opposition from delaying a vote on the constitutional amendments—something Anstett argued was an obstruction and contempt of the legislature.⁹⁵

On 16 February 1984, a vote was called on Anstett's motion. The Opposition Tories left the chamber refusing to vote and the division bells began to ring for what would ultimately be 12 days of continuous ringing.⁹⁶

Six days into the bell-ringing episode, Premier Howard Pawley approached Speaker Jim Walding and asked that he set a time for the vote regardless of whether the Opposition would be present to participate in the vote or not. Walding refused to intervene, stating any intervention on his part would compromise the impartiality of the Speaker's chair.⁹⁷

Some observers noted the agreement on bell-ringing signed in August of 1983 meant the Tories could only ring the bells for a total of two weeks. The vote could then be held, and the Tories would have only one more opportunity to leave the House for a two-week period before the government could force a vote on the amendments. House Leader, Andy Anstett, however, and other members of the NDP were not convinced that the Tories would abide by the agreement and return to the House after the two week period. Also weighing on the minds of the government was the ever-nearing end of the fiscal year and the desperate \$26 million shortage in funds. The government could not legally provide either a funding grant or an appropriation transfer while the legislature was sitting.

On 27 February 1984, the government decided it could no longer hope to pass the constitutional amendments, and it could no longer afford to wait until the Opposition decided to return to the House. The Lieutenant-Governor was requested to prorogue the House and the resolution on constitutional

⁹⁴ Hansard, Vol. XXXI No. 169 (26 January 1984) at 5773; No. 170 (27 January 1984) at 5781; No. 171 (30 January 1984) at 5789; No. 174 (2 February 1984) at 5853.

⁹⁵ Hansard, Vol. XXXI No. 176 (6 February 1984) at 5868.

⁹⁶ Hansard, Vol. XXXI No. 184 (16 February 1984) at 6097.

⁹⁷ See G. Stephenson, "Pawley lashes Speaker" *Winnipeg Sun* (22 February 1984) 7.

amendments, and Bill 115, died on the Order Paper.⁹⁸ The proroguing of the House on February 27 marked the end of the longest legislative session in Manitoba's history, a session that had started on 2 December 1982.

In June of 1984, the Supreme Court heard the Bilodeau case, now forced to continue in the face of the failed amendment attempt. The Court concurrently considered a reference by the federal government to determine the validity of all Manitoba statutes.

One year later, on 13 June 1985, the Supreme Court handed down its decision in the reference case and ruled all of Manitoba's laws passed in English only were contrary to section 23 of the *Manitoba Act*, 1870 and thus invalid and of no force or effect. However, this would invalidate nearly all of Manitoba's laws passed since 1890. In order to avoid the chaos that would result from such a ruling, the Court ruled the laws were to be deemed temporarily valid until the expiration of a minimum time specified for translation.⁹⁹

⁹⁸ Hansard, Vol. XXXI No. 184 (16 February 1984) at 6097-6098.

⁹⁹ Reference Re Language Rights under Section 23 of the Manitoba Act, 1870 and Section 133 of the Constitution Act, 1867, [1985] 1 S.C.R. 721.