



Letters to the Editor

# Letters

## Official Languages in Alberta

Sir:

I have read the article by Professor Aunger on "The Constitution of Canada and the Official Status of French in Alberta" in the Summer issue of the *Review* as well as the Rejoinder by A. Neitsch in the Autumn issue. I would like to add my thoughts to this exchange and like Professor Aunger, I was also an expert witness in the *Caron* case.

Professor Aunger and Alfred Neitsch are two political scientists who disagree over whether both English and French should be official languages in the province of Alberta. To substantiate his argument that the French and English languages are entrenched in the Alberta constitution, Professor Aunger re-writes history. To support his argument that English should be the only official language in multi-cultural Alberta, Neitsch advocates majority rule without any consideration for minority rights. While both social scientists put forward essential truths about the province's past, both arguments are flawed because they fail to present and see the whole story of Alberta.

Although Aunger attempts to use the constitution to justify his thesis, he misconstrues the nature of the 1870 Order-in-Council signed by Queen Victoria. To support his argument, he cites a ruling of the Alberta Provincial Court in 2008. In that judgment, the Provincial Court stated that the Rupert's Land and North-Western

Territory Order (an integral part of the Constitution of Canada, as defined by the *Constitution Act, 1982*) guaranteed the official status of the French language in Alberta. However, the decision of the Court of Appeal of the Northwest Territories, Yellowknife (*Public Denominational District Education Authority*) v. *Eucher*, [2008] challenges Aunger's views with respect to linguistic rights. Although the case before the Appeal Court of the Northwest Territories focused on schooling, it is also applicable to the question of French rights. The Court's analysis and conclusion about the 1867 Address by Canada's parliament and the Queen's 1870 Order sets out the undertakings the Parliament of Canada was willing to assume as a condition of the transfer of the North-Western Territory and Rupert's Land to Canada.

In its decision, the Court stated that "Parliament's obligations, if any, relate only to its agreeing to govern and legislate for the territories, protect legal rights through courts of competent jurisdiction and settle aboriginal land claims." (It should be noted that French linguistic rights were not specifically mentioned in either the 1867 Address or the 1870 Order.)

Furthermore, the Court was firm in insisting that "even if some parts of either or both the 1870 Order and the 1867 Address could be construed as terms and conditions obliging Parliament to enact legislation, the precise content of that legislation would still fall wholly within Parliament's

discretion, there being no intention to constrain the exercise of that legislative authority."

As the Court concluded, "Neither the imperial Parliament nor Canada's Parliament could have intended to entrench as a right in the 1870 Order something neither they, nor her Majesty, chose to include as a subject matter therein."

On another matter, the question of entrenching French language rights in the province of Manitoba, both Aunger and Neitsch fail to understand that *The Manitoba Act, 1870* did not entrench French language rights in the province of Manitoba. It could be modified at any time by an act of the Canadian parliament or through the normal constitutional amending process, by an act of the parliament of the United Kingdom. Indeed, the British parliament did alter the nature of *The Manitoba Act, 1870* by incorporating it into the constitution of Canada a year later by an act of the United Kingdom parliament.

This amendment to *The Constitution Act, 1867* entrenched bilingualism in the province of Manitoba in the sense that only through the proper constitutional amending formula, an act of the British parliament, could French language rights be altered in Manitoba. Neither Canada nor Manitoba could alter those rights by themselves.

After 1982, the amending formula presented for this purpose in the *Constitution Act, 1982* must

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be followed, but again, neither Canada nor Manitoba itself can alter the clause respecting French language rights in the Manitoba constitution. Both Aunger and I agree that in the new province of Manitoba, French-language rights were protected, but we disagree on the timing of the entrenchment of those rights. Aunger claims they were protected from 1835 onwards.

I claim French language rights were only entrenched in Manitoba after 1871. In order to make his case for the entrenchment of French linguistic rights in Alberta, Aunger goes beyond the entrenchment of French linguistic rights in Manitoba. He claims the entrenchment of French linguistics rights extended throughout the whole of Rupert's Land and the North-West Territories. In order to substantiate his claim, he uses a very erroneous argument which Neitsch exposes. Aunger claims that because the same individual occupied the office of Lieutenant-Governor of Manitoba and the North-West Territories simultaneously, section 23 of the *Manitoba Act* applied to the Territories. Adams George Archibald was appointed to these two positions under two separate instruments.

Later, Archibald, the first Lieutenant-Governor of Manitoba and the first Lieutenant-Governor of the North-West Territories, received two separate letters of instructions from the Under Secretary of State for the Provinces relative to his two separate appointments. Although resident in Winnipeg, he acted very differently as Lieutenant-Governor of Manitoba than he did as Lieutenant-Governor of the Northwest Territories.

His main duty as Lieutenant-Governor of the Territories was to collect information for the use

by the Canadian government. To fulfill this requirement, he hired William F. Butler to undertake a fact-finding expedition through the North West.

As Lieutenant-Governor of Manitoba, his primary task was to establish the elaborate apparatus of a provincial government at Winnipeg. The Lieutenant-Governor of Manitoba eventually acted like other provincial Lieutenant-Governors with a premier, while the Lieutenant-Governor of the Northwest Territories acted as both head of the Territories and head of government until responsible government was granted at the end of the nineteenth century.

In addition to misunderstanding the role of the Lieutenant-Governor in Manitoba and in the Northwest Territories, Aunger's reasoning is muddled in his discussion of Senator Marc Girard's amendment to the *North-West Territories Act* in 1877. On the one hand, Aunger suggests that the amendment inserting an article providing for bilingualism into the original *North West Territories Act*, 1875 was not necessary because bilingualism already existed in the Northwest Territories through section 23 of *The Manitoba Act*, 1870. On the other hand, he lauds Senator Girard for successfully amending the Act "to recognize official bilingualism in the North-West Territories." I have argued elsewhere that through Senator Girard's amendment of 1877 to the *North-West Territories Act*, 1875, the Northwest Territories became officially bilingual at that time. Despite attempts to modify section 110 subsequently by the territorial legislature, that section was carried over, as originally written, into *The Alberta Act*, 1905 at the time the province of Alberta was created. I suggested, however,

that French language rights could be modified by the provincial government of Alberta alone.

Unlike *The Manitoba Act*, 1870, section 110 was at no time included in the Constitution by the Parliament of the United Kingdom, or by the Parliament of Canada. Thus, while Aunger contends that the territory which became Alberta was bilingual from 1835 and remains officially bilingual to this day, I suggest that the territory which became the province of Alberta was bilingual through the period 1877 to 1988 at which time the legislature legally passed a bilingual act which transformed Alberta into a province which was unilingual English. Aunger argues that the province acted unconstitutionally in 1988 because French language rights were entrenched in the constitution before and after the province was created.

In his focus on the present-day Alberta, Neitsch fails to understand that the reason Canada has accorded a place for minority rights and is a multicultural society is because of the determination of the French-speaking group in Canada to renounce assimilation and remain distinct.

Following the "conquest" of 1760, the British attempted to assimilate the French and failed; following the rebellions of 1837-38, the British again attempted to assimilate the French in Lower Canada and failed; and before the First World War the majority British element of the population attempted to "Canadianize the foreign born", that is assimilate the thousands of immigrants populating the West, and failed. The battle was constant and fought without interruption by the French which provided a public place for minorities in this country. Consequently, the

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ethnic groups Neitsch lauds who maintained their ethnic identity in Alberta and made the province “richer” for it, was because of the French element which through language and schooling protected minorities from assimilation.

Therefore, these “rights” the French have enjoyed have been critical to our multicultural policy which was eventually developed within a constitutional context in the *Constitution Act, 1982*. Multiculturalism in Alberta would not exist today without French rights. Neitsch’s desire for unbridled majority rule would efface not only French rights but multiculturalism from the Canadian landscape.

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