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WILL ALBERTA RETURN TO THE FOLD OF OFFICIAL BILINGUALISM AFTER 150 YEARS?

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The Supreme Court of Canada will soon decide whether the Legislative Assembly of Alberta is constitutionally required to adopt and publish its laws in both English and French. In doing so, the Court will have to examine and construe the historical rights of an often forgotten branch of Canada's francophone community, the French-speaking Métis of Western Canada.

In 1870, the areas of Rupert's Land and the North-Western Territory – which together comprised the entire stretch of land between the Great Lakes and the Rocky Mountains – became part of Canada. In the *Caron* case, the Supreme Court will have to rule on whether the regime of official bilingualism that prevailed in this vast area before its incorporation into Canada was constitutionalized and accordingly still applies in Alberta and, by extension, Saskatchewan.

Whatever the outcome, the Court's decision is sure to send a powerful message concerning its conception of Canadian federalism today, and the ranking of linguistic duality among the fundamental values that define this country.

The Métis people of the Canadian West

During the time of the fur trade, the Métis made up a large majority of the population inhabiting the Prairies, and most of those inhabitants were francophone. French, moreover, remained the primary European language used there until the Prairies became part of Canada in 1870.

The Métis had long enjoyed an entrenched system of official bilingualism. The civil authorities provided services and published laws in both French and English, and court proceedings were conducted in each of those languages.

Historical pact heralds entry of the Prairies into Canada

In 1869-1870, the MacDonald-Cartier government of Canada and the provisional government of Louis Riel negotiated the conditions for the Prairies to become part of Canada. In a royal proclamation issued in late 1869, the federal authorities guaranteed the people of the Prairies the preservation of their lifestyle and their rights, both linguistic and religious.

After negotiations were concluded in 1870, the equivalent of a social contract was agreed to, based on a dualist model similar to that of Québec. Ultimately however, the decision was made to create only a relatively small province named Manitoba, and to retain the balance of the area, now called the Northwest Territories, within Canada under federal jurisdiction.

Manitoba was officially made a province by the *Manitoba Act, 1870*, which provided the following guarantees: bilingualism of public institutions, denominational schools, and land grants to the children of Métis.

The Northwest Territories, however, remained under federal authority, and no official document of the time specified what if any guarantees under the 1870 social contract applied to its residents.

Breaking the pact

From 1870 to 1890, with the arrival of a large number of immigrants from Eastern Europe and anglophones from Ontario, profound demographic changes occurred on the Prairies, and francophones and the Métis became a minority there.

By the end of the 19th century, the new anglophone and Protestant elite was openly opposed to the protective regime for the francophone and Catholic minority. Western Canada then became the setting for a heated confrontation between two diametrically opposed visions of the country, i.e. a bi-dimensional vision of a Canadian federation based on a solemn pact between its two founding European peoples, and a uni-dimensional vision of one nation and one officially recognized language and culture, with francophones on an equal footing with all other ethno-linguistic groups.

The uni-dimensional vision prevailed and the social contract of 1870 lapsed. The dualist model meant to protect the francophone minority in Western Canada was effectively repudiated.

Recent restoration of some of the 1870 legal guarantees

Starting in the 1960s and 1970s, some past injustices were remedied, or at least acknowledged. One prominent example is the 1979 *Forest* decision, whereby the Supreme Court restored parliamentary, legislative and judicial bilingualism in Manitoba.

At present only one substantial aspect of the 1870 social contract has yet to be resolved, namely the issue of parliamentary, legislative and judicial bilingualism in Alberta and Saskatchewan. It would be somewhat of a paradox if this last battle in the long struggle by francophone and Métis groups in this country were to be lost.

Arguments before the Supreme Court

The federal authorities of the time were bound to negotiate in good faith, with honesty, fairness and integrity. Their solemn undertakings should continue to generate binding and enforceable legal obligations.

According to the historical evidence it seems unlikely that the parties sought an all-or-nothing result whereby only the inhabitants of Manitoba would enjoy language guarantees, as opposed to residents of the Northwest Territories.

The honour and dignity of the Métis, the indigenous occupants of the area, must be taken into account in any solution to this volatile issue.

The restoration of official bilingualism in Alberta would help achieve a constitutional goal recognized in case law, namely the development and vitality of francophone communities.

It will be interesting to see whether the Supreme Court chooses to uphold the social contract of 1870. As Josée Boileau pointed out in her editorial in *Le Devoir* on August 3, 2014 ([Français hors Québec – Encore se battre](#)), in the area of aboriginal rights, the country’s highest court recently [TRANSLATION] “went beyond a literal reading of the applicable legislation to account for the undertakings of the British Crown and thereby give effect to the demands of the original inhabitants of the territory of Canada”. It remains to be seen whether this approach will henceforth be used in matters involving the language rights of francophones outside Québec.

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