

Before I begin my address proper, I cannot help but remark that, in this morning's skit, before panel presentations, the coif of Sir John A. MacDonald's hair looks identical to Justin Trudeau's. I begin, not meaning to be alarmist, with a wake-up call. In fifty years from now judicial and legislative bilingualism in Canada will be a formality, a thing of the past. There will be several reasons for this: the changing demographics of Canada outside of Quebec will give rise to a new cohort of Canadians who know little or nothing of the reality of the two founding peoples, English and French. This new generation will see little relevance to emphasizing, at the provincial level, a bilingual system. It is projected that within twenty to thirty years at the most, the majority of so called English-Canadians will be of non-European decent. While this is not a pejorative, the European English-French dichotomy will become more historic than real.

In Quebec, in fifty years, every minority group will speak fluent French. The justification for access to justice in English will be deemed moot, an unnecessary expense in a province which has deliberately legislated the primacy and official public use of only one language in the public space.

As the use of the English language becomes increasingly limited and ultimately anachronistic in the Quebec provincial legislative and judicial system, the justification for the sustaining and improvement of the use of the French language in the legislature and Courts of other provinces will lose its rationale. The notion of two founding peoples, interspersed as a minority the one in the other, undergirds the Canadian constitution. Once one of the official linguistic minorities becomes moot, the justification for bilingual laws and Courts and access to justice in both official languages will be gone, replaced by a generally unilingual system, official language bilingualism remaining only in the Federal Courts.

While francophones outside of Quebec have struggled mightily, and still struggle, for access to justice in French, once upon a time the English minority in Quebec had a fairly mature system of bilingual laws, Courts and access to justice. It can be argued that in the 1960's the most bilingual institutions were the Courts in Quebec, particularly in Montreal. This was an age when one could hear in the courtroom a sentence begin in French and end in English.

As in the rest of Canada, up until the 1980's, there were few administrative tribunals, the explosion of administrative Courts beginning in the 1990's, and becoming, for many users of the judicial system, the primary point of contact. As a result of the Quebec Charter of French Language, administrative tribunals are not officially bilingual. Outside of the greater Montreal area it is difficult to find an administrative judge who can speak at least functional English. The clerks and bureaucrats of most legislative tribunals have difficulty expressing themselves in English; those that do, do so more as a courtesy than as a service. Most Quebec administrative tribunals when confronted with anglophone litigants need to find a decisor who can function in English. Few administrative judges can render a judgment in English.

The judges of the Quebec Court of Appeal and Superior Court are appointed by the federal government and usually have some English language skills, although outside of the greater Montreal area there has been a noticeable decline in Superior Court judges who can effectively use oral English. Generally, though, few Quebec Superior Court judges can write their judgments in English.

Judicial bilingualism in the inferior courts of Quebec, the Quebec Court, whose jurisdiction is up to \$85,000, appointed by the Government of Quebec, is lacking. Most have poor if any English language skills.

Up until the 1970's all Quebec legal forms such as summons, writs of execution, subpoenas and the other usual materials, were bilingual. This is no longer the case.

It has become the habit of English mother-tongue lawyers, particularly when English language clients are absent, to address the court in French. This practice has become conventional wisdom. It is rare to hear in Practice Court, the Quebec version of Weekly or Motions Court, the use of any English. I have experienced cases where the judge and the lawyers are all English mother-tongue speakers, interacting only in the French language, a rather ironic and somewhat amusing situation.

I have experienced trials where the presiding judge, whose English language skills are poor, asks me to translate French into English for my English language unilingual client, putting me in the awkward position of having to try to listen to the opposing counsel and judge while whispering sweet English into my clients ear. It should be understood that French and English interpreters are generally not used in Quebec Courts. When they are it is at the expense of the party using the interpreter, unless the interpreter is for the benefit of the judge on the judge's order.

There are over two thousand self-identified anglophone lawyers in Quebec out of a total Bar of twenty-six thousand lawyers, yet apart from the Bar of Montreal, little effort is made by the larger Bar of Quebec to sustain legislative and judicial bilingualism.

In the result, while francophones outside of Quebec have achieved some measure of improvement, anglophones in Quebec find access to justice in English in growing decline. We have heard this morning of the pitiful nature of the English version of Quebec law, poor translations of the original French, a classic example of which is the 1994 reformed Civil Code of Quebec. Describing the manner in which legal persons-corporations-operate, the relevant articles of the Code in English said, “legal persons function through their organs”. Without exploring this provision of law too closely, Quebec must be the only jurisdiction where corporations have sexuality.

If the decline of the English language in the legal system in Quebec cannot be halted, then the rationale for effective access to justice in the French language outside Quebec will be lost. In a meaningful way the one is dependent on the other.

For these reasons I sound the alarm, not to be a pessimist, but to say that something must be done now. It will be a shame, if in fifty years from now, our successors are gathered at a similar conference saying the same things, the only different remark being that the coif of Sir John A. MacDonald’s hair is the same as that of the female Prime Minister of Canada.

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