

(a) there is a significant demand for communications with and services from that office in that 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.

Section 23 not affected

(3) Nothing in this section abrogates or derogates from any rights guaranteed by section 23.

Enforcement of rights under section 23.7

23.8 (1) Anyone whose rights under section 23.7 have been infringed or denied may apply to the court for a declaration to that effect and, where that court finds that those rights have been infringed or denied, it may make a declaration to that effect.

#### [Translation]

Declaration and court order for plan

(2) Where the court makes a declaration under subsection (1), it may order the institution concerned to submit to the court a plan for changing its administration to ensure that the rights under section 23.7 are respected by the institution, and the institution shall forthwith submit a plan for the approval of the court.

Submission of plan to court

(3) Where a plan is submitted to the court pursuant to this section, the court may approve the plan as submitted, or may order the institution concerned to submit to the court a new or varied plan for the approval of the court.

When a plan is approved

(4) When a plan submitted to the court pursuant to this section is approved by the court, the institution concerned shall forthwith make such changes in the administration of the office concerned as the plan requires.

Definition of "court"

(5) In this section, "court" means the Court of Queen's Bench for Manitoba".

Coming into force of section 23.7 and 23.8

2. Section 23.7 and 23.8 shall come into force on January 1, 1987.

#### [English]

Citation

3. This Proclamation may be cited as the Constitution Amendment Proclamation, 1984 (Manitoba Act).

● (1710)

**Mr. Hnatyshyn:** Mr. Speaker, I rise on a point of order. I think there may be a disposition, now that we have heard the resolution, to dispense with the reading of the schedule to the motion since the essential ingredients of the motion have now been presented to the House and we can proceed with the debate.

**The Acting Speaker (Mr. Guilbault):** Is there unanimous consent that we dispense with the reading of the schedule?

**Some Hon. Members:** Agreed.

#### [Translation]

**Mr. Gauthier:** Mr. Speaker, the resolution you have just read and which I am moving today is identical to the one introduced by the Attorney General of Manitoba on behalf of his Government in the Legislative Assembly of Manitoba on July 4, 1983. The Manitoba resolution would have initiated the process of amending the Constitution of Canada and particularly the Manitoba Act of 1870 in relation to linguistic rights in that province. The Manitoba resolution reflected the provisions of an agreement made on May 16, 1983,

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between the Governments of Canada and the Province of Manitoba, with, of course, the participation and agreement of the Société Franco-Manitobaine. The compromise reached was the result of negotiations undertaken by the Manitoba Government to find a political solution to a major legal problem.

The Manitoba Government anticipated the possibility that the Supreme Court of Canada, in ruling on the *Bilodeau* case, could invalidate all provincial legislation passed in English only during the last 90 years in flagrant violation of Section 23 of the Manitoba Act of 1870. This section provides, among other things, that the acts of the Province of Manitoba are to be printed and published in French and English. The Supreme Court had indeed already stated in effect in its *Forest* and *Blaikie* rulings made in December 1979 that this obligation extended to the passage of legislation. Thus, according to the Manitoba Government, the purpose of the negotiations was to avoid the actual possibility that the Supreme Court would declare nul and void any unilingual legislation and require the writing and passage of both the French and English versions of each legislative text passed in English only during the past 90 years.

The Manitoba Attorney General, Mr. Penner, in his speech upon introducing the motion proposing the constitutional resolution on July 4, 1983, said the following:

#### [English]

—we have heard, and I'm sure we will hear again, 'well, you should have fought it in the Supreme Court of Canada' . . . I would remind those who urge that course of action that the Government of Manitoba . . . took that stance of 'fight it' in the *Forest* case in the Supreme Court and lost, and went on to instruct Counsel in the *Blaikie* case, in the Supreme Court, on the same issue, and lost. That's what our record is, zero for two, in the Supreme Court, on these very same issues—

So we sought an agreement—not a dishonorable thing to do—the kind of thing that one does day in and day out when faced with a particularly complex or difficult issue before the courts—

—Our initial position, that is the initial position of the government, was simply this: Give us the time that we feel we need; eight years, ten years, 12 years and cut down the requirement of translation from 4,400 to about 400 laws; that was our proposition. We put it on the table—nothing more. It was rejected. Why, said the other parties, what are you talking about; that's ridiculous. That much at least we could get from the Supreme Court of Canada. We'd rather take our chances before the Supreme Court of Canada than "settle" on this basis. You're asking us to give something for nothing. There is no quid pro quo; no this for that. You can't be serious. We then raised the question, well what is the quid pro quo? What is this for that? What is the agreement to be based on, and essentially it was that there should be some constitutional guarantee for French language services that were already being delivered by the government and that then became the key negotiating issue.

#### [Translation]

Constitutional expert Stephen Scott, when testifying before the Committee of the Manitoban legislature which was considering the agreement, told members who objected to the inclusion of certain bilingual services, and I quote:

#### [English]

The shortest answer to this objection is of course that the constitutional amendment will dispense with the duty to translate an immense volume of legislation covering close to a century and will also give the province a considerable further breathing space. It is surely not unreasonable for something to be offered in return, particularly to those whose rights have been denied for so long