

## The Mystery of the French Language Ordinances: An Investigation into Official Bilingualism and the Canadian North-West —1870 to 1895

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*Abstract — In 1877, the North-West constitution was amended to provide for the publication of all statutes, or ordinances, in both English and French. In 1905, this provision was carried over into the newly-created provinces of Alberta and Saskatchewan; it was not repealed until 1988, shortly after the Supreme Court's ruling in the *Mercure* case. At the present time, however, there remains only scant evidence that this constitutional guarantee was ever respected: very few French language ordinances are extant. Were the great majority of the ordinances never printed in French? Or, were they printed in French but then destroyed?*

*This article examines the Canadian North-West's experience with legislative bilingualism from 1870 until 1895, and the circumstances surrounding its rise and subsequent demise. During the early years of territorial government, when responsibility for the publication of the ordinances was vested in a lieutenant-governor appointed by the Canadian government, perfunctory attention was paid to the language guarantees: the French language ordinances were printed, but with a considerable delay, and then they often went undistributed. After 1894, when authority was transferred to an executive committee directly responsible to the legislative assembly, the language guarantees were completely ignored: the French language printings ceased altogether. Minority rights succumbed to majority rule. The North-West experience provides an abject lesson in the failure of a constitution to protect minority language rights, when faced with determined opposition from an unsympathetic majority-controlled government.*

*Résumé — En 1877, une modification à la constitution du Nord-Ouest a disposé que toutes les lois, ou ordonnances, seraient publiées en anglais et en français.*

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*En 1905, cette disposition sera reçue dans les provinces de l'Alberta et de la Saskatchewan, nouvellement créées, et elle ne sera abrogée qu'en 1988, à la suite de la décision de la Cour suprême dans l'affaire Mercure. À l'heure actuelle, toutefois, il ne reste que de très maigres indices que le gouvernement a jamais respecté ces garanties constitutionnelles : il n'existe aujourd'hui que très peu d'ordonnances publiées en langue française. Est-ce qu'on a refusé de faire imprimer la grande majorité de ces ordonnances? Au contraire, a-t-on fait imprimer ces ordonnances en français, pour les faire détruire par la suite?*

*Cet article étudie l'expérience du Nord-Ouest canadien en matière de bilinguisme législatif de 1870 à 1895, et des circonstances qui ont entouré son essor et sa disparition. Pendant les premières années du gouvernement territorial, quand un lieutenant-gouverneur nommé par le gouvernement canadien était chargé de la publication des ordonnances, on n'a accordé une attention aux garanties linguistiques que pour la forme : on imprimait les ordonnances en français, mais cette impression était souvent retardée et, fréquemment, on ne distribuait pas ces ordonnances par la suite. Après 1894, quand un comité exécutif responsable devant l'assemblée législative fut chargé de la publication, on a complètement négligé les garanties linguistiques : on a mis fin à l'impression en langue française. Les droits minoritaires ont succombé au pouvoir de la majorité. Le cas du Nord-Ouest témoigne tristement de l'incapacité d'une constitution à protéger des droits minoritaires en matière de langue, quand elle doit faire face à l'opposition déterminée d'un gouvernement sous le contrôle d'une majorité hostile.*

### Introduction

English and French were formally recognized as the official languages of the Canadian North-West by an 1877 amendment to the *North-West Territories Act*.<sup>1</sup> This amendment, modelled on similar constitutional provisions for Québec and Manitoba, guaranteed the official bilingualism of the legislature and the courts. In particular, it provided that the North-West statutes, or ordinances, would be printed in both English and French. This recognition was, in the view of Donald Creighton, "a mistake for which the whole of Canada paid dearly." It was "characterized throughout by accident and improvisation" and it saddled the West with an "inappropriate constitution." The error was, however, corrected

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1. Act to amend the *North-West Territories Act*, 1875, S.C. 1877, c. 7, amending S.C. 1875, c. 49.

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some 13 years later when Westerners "began suddenly and uncompromisingly to change the status of the French language."<sup>2</sup>

In 1988, almost a century after the presumed demise of official bilingualism in Western Canada, the Supreme Court of Canada ruled, in the *Mercure* case,<sup>3</sup> that the 1877 provisions had not been extinguished. English and French were still, constitutionally, the official languages of government and justice in Saskatchewan and Alberta, the two provinces carved out of the North-West Territories in 1905. This was a surprising revelation to most Canadians, and an awkward discovery for the provinces concerned. The situation was quickly rectified when, immediately following the court's decision, the governments of Saskatchewan and Alberta adopted legislation rescinding the language provisions of the *North-West Territories Act*. Saskatchewan's *Language Act* and Alberta's *Languages Act*,<sup>4</sup> both hurriedly adopted in 1988, eliminated the newly-rediscovered requirement that provincial statutes, legislative records and assembly proceedings be printed and published in French. The right to speak French in the legislative assembly, and in the provincial courts, was maintained.

In reviewing the evidence, the Supreme Court stated: "It is true, as the respondent maintained, that French in fact ceased to be used in the debates, statutes and proceedings in the courts in 1892, some years before the establishment of the province [of Saskatchewan], but statutes do not, of course, cease to be law from mere disuse."<sup>5</sup> The court's summary of the historical circumstances surrounding the abandonment of French was derived largely from Claude-Armand Sheppard's authoritative and pioneering work, *The Law of Languages in Canada*.<sup>6</sup> In his chapter on the legal history of bilingualism in the West, Sheppard pinpointed the demise of the French language ordinances: "The practice of publishing the ordinances in English and French continued until 1892 when the Legislative Assembly of the Northwest Territories adopted English as the only language of record."<sup>7</sup> This assertion reinforced the conventional interpretation and established an orthodoxy, but it was based on logical conjecture rather than solid evidence. Sheppard assumed that, since the legislative assembly resolved, on 19 January 1892, to publish its *Journals* in English only, this decision marked the end of official bilingualism for other

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2. D. Creighton, "John A. Macdonald, Confederation, and the Canadian West" in Craig Brown, ed., *Minorities, Schools, and Politics* (Toronto: University of Toronto Press, 1969) 1 at 8.
  3. *Mercure v. Attorney General of Saskatchewan*, [1988] 1 S.C.R. 234 [hereinafter *Mercure*].
  4. *Language Act*, S.S. 1988, c. L-6.1; *Languages Act*, S.A. 1988, c. L-7.5.
  5. *Mercure*, *supra* note 3 at 255.
  6. C.-A. Sheppard, *The Law of Languages in Canada* (Ottawa: Information Canada, 1971).
  7. *Ibid.* at 83.

government documents, including the ordinances. However, the record of assembly debate does not support this conclusion: Frederick Haultain, in defending his celebrated resolution, explicitly declared that "the Ordinances must be printed in French."<sup>8</sup>

This declaration suggests the possibility that the ordinances, and other government documents, continued to be published in French, both in 1892 and subsequently. Nevertheless, to date, no conclusive evidence has been presented to support this claim. In fact, quite the contrary: there is some suggestion that the French language publication of the ordinances may have ended well before the adoption of the Haultain resolution. Kenneth Munro, for example, has tentatively cast doubt on the 1892 death-of-bilingualism date, without positively contradicting it. He cites Nicholas Flood Davin who, in 1889, praised the Lieutenant-Governor, Joseph Royal, for his decision "not to print the Ordinances in French."<sup>9</sup> Davin, proprietor of the *Regina Leader*, published most of the North-West government's official documents.

The answer to this question, and to many others, is greatly confounded by the mysterious absence of the French language ordinances themselves. Scholarly research has cited only one French language edition of the North-West ordinances—the 1878 ordinances, printed in a volume by Patrick G. Laurie, publisher of the *Saskatchewan Herald*, and dated 1879.<sup>10</sup> This single reference, first cited by Williams in 1964, has been dutifully repeated by Sheppard, Bastarache, and Auger.<sup>11</sup>

Library holdings and archival collections provide only fragmentary evidence that the North-West ordinances were ever printed in French. Typically, Canadian libraries list the ordinances as an English language publication. For example, the catalogue entry for the University of Ottawa Library Network currently reads: "Text in English only, 1877-1989; text in English and French in two columns, 1990-."<sup>12</sup> This is not surprising given the fact that the North-West government library itself, in its first catalogue dated 1891, listed the North-West

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8. "The Assembly!" *The [Regina] Leader* (26 January 1892) 4.
  9. K. Munro, "Official Bilingualism in Alberta" (1987) 12 *Prairie Forum* 37 at 44.
  10. P. G. Laurie, *Ordonnances des Territoires du Nord-Ouest rendues par le Lieutenant-Gouverneur en conseil, durant la Session commencée et tenue à Battleford le dixième jour de Juillet, et terminée le deuxième jour d'Août, 1878* (Battleford: Government of the North-West Territories, 1879).
  11. D. C. Williams, "Law and Institutions in the North West Territories: 1869-1905" (1964) 29 *Sask. Bar Rev.* 83 at 86; Sheppard, *supra* note 6 at 83; M. Bastarache, "Le Statut du français dans l'Ouest canadien" in P. Pupier & J. Woehrling, eds., *Language and Law* (Montreal: Wilson & Lafleur, 1989) 231 at 234; E. A. Auger, "Language and Law in the Province of Alberta" in P. P. & J. W., eds., *ibid.* 203 at 210.
  12. K. Hayes, *Catalogue of the North-West Government Library* (Regina: North-West Territories Legislative Assembly, 1891) at 64.

statutes as an English language series published, it was claimed, in 12 volumes from 1875 until 1890. The public access catalogue of the National Library of Canada currently lists a single French language holding, the 1883 North-West ordinances, published in Regina.

The North-West ordinances have been reproduced in at least three different microfilm collections.<sup>13</sup> The first collection, released by the Saskatchewan Archives Board in 1953, contains the original unpublished ordinances, as adopted by the North-West legislature from 1877 to 1904. These are printed or, during the early years, hand written, in English only. The second, microfilmed by the Glenbow-Alberta Institute in 1971, includes ordinances adopted by the North-West council, from 1877 to 1887. These are also printed in English only. The third, microfilmed by the Law Library Microform Consortium at the University of Hawaii, in 1992, reproduces the North-West ordinances of 1877 to 1980. With one exception, these are all printed in English; the 1883 ordinances, alone, are printed in French.

Was official bilingualism in the Canadian North-West a sham? The North-West constitution required that the statutes be published in the French language; but did the government respect this obligation in a consistent manner? Is it credible that the French language provision, the source of such violent controversy when, in 1890, the Canadian parliament debated its proposed deletion, had already been for many years, as one North-West legislator claimed, "a dead letter?"<sup>14</sup> If not, if the ordinances were indeed printed in French throughout this period, where are they now? Were they destroyed? Were they ever distributed?

This paper examines the mystery of the North-West's French language ordinances as a case study in official bilingualism. In attempting to document the rise and fall of French as an official language, we have consulted, in particular, the minutes, debates, sessional papers, financial statements, departmental reports, correspondence and ordinances, both published and

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13. The first collection was reproduced on eight microfilm reels in 1953 by the Office of the Saskatchewan Archives, University of Saskatchewan, Regina. (This office has since been renamed the Saskatchewan Archives Board.) The second collection was reproduced on one microfilm reel in 1971 by the Glenbow-Alberta Institute, located in Calgary. The third collection was reproduced on 193 microfiches, in 1992, by the Law Library Microform Consortium, University of Hawaii, Windward Campus, Kaneohe, Hawaii.
  14. Frank Oliver, M.L.A. from Edmonton, and editor of the *Edmonton Bulletin*, defended the proposed suppression of the French language provisions by arguing that it would involve no real change: "As the provisions of the clause were allowed to become practically a dead letter its existence was no great injury to the English speaking population of the Territories, who might well have concentrated their attention on matters of greater importance." See "The Debate" *The [Edmonton] Bulletin* (8 March 1890) 2.

unpublished, of the North-West government. These shed considerable light on the French language ordinances and their puzzling disappearance, as well as on the larger question of official bilingualism in Canada.

### **Borrowing Official Bilingualism—1870 to 1876: French Language Ordinances under the Manitoba Regime**

The *Manitoba Act*, proclaimed on 12 May 1870, also provided for the government of the North-West Territories: the lieutenant-governor of Manitoba would serve, under section 35, as lieutenant-governor for the North-West Territories.<sup>15</sup> He would administer the territories subject to the provisions of the *Temporary Government Act*, a terse act that established a rudimentary and explicitly transitional form of government for the territories.<sup>16</sup> The North-West would, in effect, be a vast appendage to the newly created province of Manitoba, although it was entitled to its own advisory council composed of at least seven members but no more than 15. The Canadian government would appoint this council and determine its powers. Council meetings were to be held in Winnipeg.

Section 23 of the *Manitoba Act* recognized the official status of both English and French in the province's legislative assembly and its courts, and included the provision that "[t]he Acts of the [Manitoba] Legislature shall be printed and published in both those languages." The North-West's constitution made no explicit mention of official languages but, since it provided that the territories would be governed from Manitoba, it effectively granted the North-West a bilingual administration. Executive authority for the North-West Territories was entrusted to the bilingual lieutenant-governor of Manitoba. Legislative power was shared with an advisory council composed largely of legislators from Manitoba's bilingual assembly. Judicial functions were controlled by Manitoba's bilingual courts including, first, the General Court of Assiniboia and then, two years later, the Court of Queen's Bench. Thus, the North-West's official bilingualism was borrowed but not guaranteed.

The first lieutenant-governor of Manitoba and the North-West Territories, Adams G. Archibald, was a Nova Scotian and a Father of Confederation who spoke both English and French. His appointment was effective 15 July 1870 but it was not until three months later that he named three prominent Manitoba

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15. *Act to Amend and Continue the Act 32 and 33 Victoria, chapter 3; and to Establish and Provide for the Government of the Province of Manitoba*, S.C. 1870, c. 3 [hereinafter *Manitoba Act*].

16. *Act for the Temporary Government of Rupert's Land and the North-Western Territory when United with Canada*, S.C. 1869, c. 3 [hereinafter *Temporary Government Act*].

residents, Francis G. Johnson, Pascal Breland and Donald A. Smith, to be "members of the Executive & Legislative Councils for Rupert's Land and the North Western Territory." Archibald reported that "my present Council gives a fair representation of the three great interests of the West, the English, the French & the Hudson's Bay interest."<sup>17</sup> Although Breland was the only native French speaker, all three councillors were bilingual. Unfortunately, Archibald did not have the legal authority to make these appointments: this power had been vested in the Canadian government. He subsequently submitted a list of nominees to the Canadian government but, when the appointments were finally made more than two years later, he had already finished his mandate.

Archibald's successor, Alexander Morris, took office on 2 December 1872. Morris who, only a few months earlier, had been appointed chief justice of Manitoba, was also bilingual although he spoke French imperfectly. His advisory council, appointed 28 December 1872, was composed of 11 members; further appointments, a year later, increased this number to 18. Five councillors were French-speakers: Marc Girard, Pascal Breland, Joseph Dubuc, Joseph Royal, and Pierre Delorme. Girard, Dubuc and Royal were French Canadians; Breland and Delorme, French-speaking Métis. Although a minority, they carried considerable political weight. Marc Girard, named the senior member of the North-West council, had been called to the Canadian Senate in 1871; he subsequently became Premier of Manitoba in 1873. Joseph Dubuc and Joseph Royal were co-founders of Manitoba's French language newspaper, *Le Métis*. Pascal Breland had been a member of the Council of Assiniboia; Pierre Delorme had served as a delegate to the provisional government's 1869 and 1870 conventions. All five held seats in the Manitoba legislative assembly.

Although unsure of his legislative powers, Lieutenant-Governor Archibald had enacted three laws and issued at least two proclamations during his term of office: *Smallpox Prevention Law*, 22 October 1870; *Liquor Law*, 22 October 1870; *Disturbances of the Peace Proclamation*, 21 December 1870; *Poisons Act*, March 1871; *Wood Cutting Proclamation*, 26 February 1872. Not surprisingly, the legislation imitated, in its printed format, the bilingual Manitoba model and was, in all likelihood, printed by the *Manitoba Gazette*. It was headed by the royal coat of arms and an English language title, either "North-Western Territories" or "North-West Territories," followed by two columns of bilingual text, English on the left and French on the right.<sup>18</sup> The *Disturbances of the Peace Proclamation* was also published in Cree.

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17. A. G. Archibald, Lieutenant-Governor, Rupert's Land and the North-West Territory, to J. Howe, Secretary of State for the Provinces (22 October 1870) reprinted in E. H. Oliver, ed., *The Canadian North-West: Its Early Development and Legislative Records*, vol. 2 (Ottawa: Government Printing Bureau, 1915) at 976.

18. This is the format of both the *Liquor Law* and the *Poisons Act*. The former was bound with the *Manitoba Gazette* (18 December 1870), vol. 1; the latter is found in

The North-West Council, led by Lieutenant-Governor Morris, Archibald's successor, resolved similarly to publish all legislative acts in English and in French and, on occasion, in Cree. At its 13 September 1873 meeting, the council appointed a committee, consisting of Robert Hamilton and Andrew Bannatyne, and the clerk William Urquhart, and provided it "with directions to see that all Acts of Council &c shall be published in the *English, French, and Cree* languages."<sup>19</sup> The following year, at its 16 March 1874 meeting, the clerk was asked to prepare a legal manual, containing all acts passed by the council, and to print a number "in both French and English" for use by public officials. It is likely that the proposed acts were passed by council in a bilingual format, and not simply translated after adoption. For example, on 2 June 1874, a council committee, chaired by Joseph Dubuc, reported two bills, and instructed the secretary "to enlarge their Preambles and have copies of the Bills printed (in English and French) for the use of Members."

In spite of these good intentions, the North-West Council published very few, if any, of its acts. The acts did not take force, except for urgent matters, until approved by the Canadian government, and this resulted in endless delays. At its 4 December 1874 meeting, the councillors observed that no response had yet been received from the federal government with regard to legislation adopted since 4 September 1873, and "they respectfully represent that such long delay has paralyzed the action of the Council." Thomas claims that, although the council passed a total of 17 acts, only five ever became operative.<sup>20</sup>

The *Act to Make Further Provision for the Government of the North-West Territories*, adopted in 1871, required that all laws and ordinances be laid before the Parliament "as soon as conveniently may be after the making and enactment thereof."<sup>21</sup> The Canadian government did not fulfill this obligation until 1876

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the Saskatchewan Archives Board [S.A.B.] collection "Proclamations, Orders-in-Council and Acts," file NWT II. Unfortunately, we were unable to locate the original copies of the other legislative acts. Thomas has reported that the *Disturbance of the Peace Proclamation* was published in English, French and Cree. Unfortunately this proclamation could not be located; it has gone missing from the S.A.B. collection. See Lewis H. Thomas, *The Struggle for Responsible Government in the North-West Territories—1870-97*, 2d ed. (Toronto: University of Toronto Press, 1978) at 51.

19. This quotation, and subsequent references to the council minutes, are taken from the original minute book "North-West Territories Council Minutes, 1873-1875," found in the collection of the Saskatchewan Archives Board, Saskatoon, file NWT I.1. Oliver has conveniently reprinted these minutes, but his source was a copy rather than the original. There are only minor differences. See Oliver, *supra* note 17, 990.

20. Thomas, *supra* note 18 at 67.

21. *Act to Make Further Provision for the Government of the North-West Territories*, S.C. 1871, c. 16.



when it presented copies of "all Laws and Ordinances of the Lieutenant-Governor and Council of the North-West Territories." These numbered only three: *Poisons Act*, 10 March 1873; *Act to amend "The Poisons Act,"* 14 March 1874; *Prairie Fires Act*, 29 November 1875. The three laws were published, in English and in French, in the sessional papers.<sup>22</sup> Girard complained bitterly, however, that none of the North-West acts were ever printed in the *Canada Gazette*, or in the *Manitoba Gazette*, as was, he believed, required by statute.<sup>23</sup> He obtained a partial remedy when Parliament published, in both official languages, its North-West correspondence.<sup>24</sup> This correspondence contained all the council's acts, both operative and inoperative.

### **Constitutionalizing Official Bilingualism—1876 to 1878: French Language Ordinances and the North-West Territories Act**

The *North-West Territories Act, 1875* established, for the first time, a separate North-West administration, far removed from Winnipeg, and distinct from the Manitoba government.<sup>25</sup> As before, the administration was to be vested in a lieutenant-governor, aided by an appointed council, but this time the Canadian government would name a maximum of five councillors, including three *ex officio* members. Provision was also made for additional members to be elected as population increased: section 13 empowered the lieutenant-governor to erect electoral districts in areas populated by 1,000 adult inhabitants "exclusive of aliens or unenfranchised Indians." The maximum number of elected councillors was set at 21.

The lieutenant-governor would continue to administer the territories according to the instructions of the Canadian government; however, his legislative acts no longer needed federal approval before taking force.

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22. "Copies of all Orders of His Excellency the Governor General of Canada; and of all Laws and Ordinances of the Lieutenant-Governor and Council of the North-West Territories" in Canada, House of Commons, *Sessional Papers*, No. 1876-70 (7 March 1876) at 6-11. See also Canada, Chambre des communes, *Documents de la session*, No. 1876-70 (7 March 1876) at 6-11.
  23. *Debates of the Senate* (21 February 1876) at 39.
  24. "Copies of all Instructions to the Honorable A. Morris, Lieutenant-Governor of the North-West Territories; Also Copies of all Orders in Council Relative to the said Territories since their organization, and not Already published; also Copies of all Reports and Official Correspondence Between the Lieutenant-Governor and the Dominion Government from the date of his appointment" in Canada, House of Commons, *Sessional Papers*, No. 1877-121 (27 March 1877) at 1-78. See also Canada, Chambre des Communes, *Documents de la session*, No. 1877-121 (27 March 1877) at 1-78.
  25. *North-West Territories Act, 1875*, S.C. 1875, c. 49.

Nevertheless, according to section 7(8), copies of all ordinances were to be transmitted to the Canadian government within 10 days and laid before Parliament as soon as convenient thereafter. The Canadian government could disallow these ordinances at any time within two years.

The act received assent on 8 April 1875 but was not proclaimed until 7 October 1876. On that day, David Laird, a Prince Edward Islander who had served as minister of the interior, was appointed lieutenant-governor of the North-West Territories. Hugh Richardson, Mathew Ryan and James F. Macleod were named stipendiary magistrates and, subsequently, members of the North-West Council. The other public appointments included Amédée Forget, secretary, W. J. Scott, registrar, St. John, sherriff, Dixon, accountant and inspector, Captain McDonald, Indian agent.<sup>26</sup> With the exception of Macleod, the newly appointed commissioner of the North-West Mounted Police, who had already served two years in the territories, none apparently had any experience in the West. Further, all but one, the secretary, Forget, were English-speakers.

The North-West Council's first legislative session opened on 8 March 1877 at the Swan River Barracks in Livingstone, north of Fort Pelly. It met for two weeks and adopted 12 ordinances. Five of these ordinances were published, the same year, in Ottawa, in an edition printed by the Queen's Law Printer, and then rebound with a consolidation of the *North-West Territories Act, 1875*.<sup>27</sup> Only the English language printing is extant but it is likely that there was also a French language version. The remaining ordinances were, it would appear, disallowed: they were judged by the minister of justice to be *ultra vires*.<sup>28</sup> Nevertheless, all 12 ordinances were laid before Parliament, as required by the North-West constitution, and this resulted in a further printing the same year, in both official languages, and publication in the sessional papers.<sup>29</sup>

26. *House of Commons Debates* (8 May 1878) at 2543.

27. *Ordinances of the Lieutenant-Governor and Council of the North-West Territories* (Ottawa: Law Printer to the Queen's Most Excellent Majesty, 1877). These were printed and bound with the *North-West Territories Act, 1875*, S.C. 1875, c.49 and an *Act to amend the North-West Territories Act, 1875*, S.C. 1877, c.7.

28. Canada, Minister of Justice, "Memorandum with Regard to the Legislation of the North West Territories" in *Correspondance, Reports of the Ministers of Justice and Orders in Council upon the Subject of Dominion and Provincial Legislation, 1867-1895* (Ottawa: Government Printing Bureau, 1896) at 1236.

29. This printing was entitled *Copy of Ordinances made by His Honor the Lieutenant-Governor and Council of the North-West Territories, on the 22nd March 1877, submitted for the information of the Honorable The Senate and The House of Commons as directed by Section 7, sub-Section 3, of "The North-West Territories Act, 1877"* (Ottawa: MacLean, Roger, 1877). It appeared in the sessional papers the following year: "Copy of Ordinances made by His Honour the Lieutenant-Governor and Council of the North-West Territories, on the 22nd March, 1877" in Canada, House of Commons, *Sessional Papers*, No. 1878-45 (11 March 1878) at 1-48. See also: "Ordonnances de Son Honneur le lieutenant-gouverneur et le

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The problems leading to the disallowance of the ordinances stemmed largely from the hastily drafted *North-West Territories Act, 1875*. It had granted legislative powers to the territorial government that were poorly defined and often contradictory. The Canadian government attempted to remedy this situation in April 1877, when it introduced an amending bill that repealed the statutory list of powers; in the future, the territories' powers were to be determined by order in council. Subsequent debate on this bill gave rise to calls for further modifications, including an explicit provision for official bilingualism.

The North-West's new constitution had led to the appointment of an English-speaking administration; it had also eliminated the French language components that were characteristic of the earlier Manitoba regime. As the editorialist of *Le Métis* complained:

[L]a population métisse des territoires du Nord-Ouest, c'est-à-dire les trois quarts de la population n'a pas un seul représentant dans le Conseil Exécutif, législatif et judiciaire de son propre pays. On ignore sa langue, ses habitudes, son caractère; mais on lui fait des lois et on se prépare à le juger et d'une façon singulière comme on le voit.<sup>30</sup>

He called upon the Minister of the Interior to modify the *North-West Territories Act* and to restore the rights previously enjoyed by the French-speaking population.

This appeal was echoed by Marc Girard, the leading member of the previous North-West Council, and the only French-speaking Westerner in the Canadian parliament. Girard argued that the new arrangements were unnecessary. The North-West had been better off when it was directed from Manitoba; now, its affairs were "in the hands of strangers." Further, "the French language seemed to have been totally ignored in the bill, although the majority of people of the territories were French, and they had as much right to have their language acknowledged there as they had in Quebec and Manitoba by having a translation of all the ordinances passed for their guidance."<sup>31</sup> Ten days later, he successfully proposed an amendment to the North-West bill, thereby entrenching English and French as the official languages of the North-West Council and the courts.

The *Act to amend the North-West Territories Act, 1875* was passed on 28 April 1877. Section 11 of the act provided that:

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Conseil des Territoires du Nord-Ouest, en date du 22 mars 1877" in Canada, Chambre des communes, *Documents de la Session*, No. 1878-45 (11 mars 1878) at 1-48.

30. "Le Gouvernement du Nord-Ouest" *Le Métis* (12 April 1877) 2.

31. *Debates of the Senate* (9 April 1877) at 319.

Either the English or the French language may be used by any person in the debates of the said Council, and in the proceedings before the Courts, and both those languages shall be used in the records and journals of the said Council, and the ordinances of the said Council shall be printed in both those languages.<sup>32</sup>

When, in 1880, Parliament further consolidated the legislation relating to the North-West Territories, the provision for official bilingualism, now found in section 94, was slightly altered to read "the Council or Legislative Assembly," anticipating that the appointed council would, in the future, be replaced by an elected assembly.<sup>33</sup> The provision was renumbered again in 1886, becoming section 110 of a revised statute.<sup>34</sup> The territories now enjoyed the same constitutional language rights granted to Manitoba seven years earlier.

#### Implementing Official Bilingualism—1878 to 1883: The Publication of the French Language Ordinances

Responding to complaints that the Métis had no representation on the North-West Council, the Canadian government appointed a fourth member, Pascal Breland, on 1 July 1878. Breland had a long record of public service: he had been appointed to the Council of Assiniboia in 1857, elected to the Manitoba Legislative Assembly in 1870, and named to the first North-West Council in 1872. He was joined, several years later, in 1883, by a second French-speaker, Charles Rouleau who, as a stipendiary magistrate, became an *ex officio* council member. In the meantime, the total number of councillors continued to increase as new electoral districts were created to meet the flood of immigrants from Ontario. It grew from four in 1878 to five in 1881, and then rapidly to 11 in 1883, finally reaching 20 in 1886. These seats were held during the life of the North-West Council, from 1876 until 1888, by 30 different members. Only two of these, however, Breland and Rouleau, were French-speakers.

The North-West Council adopted 14 ordinances at its 1878 legislative session, held in Battleford, the new capital and, as before, these were laid before the Canadian parliament and then published, in both English and French, in the sessional papers.<sup>35</sup> The second ordinance, however, *An Ordinance respecting*

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32. *Act to Amend the North-West Territories Act, 1875*, *supra* note 1 at s.11.

33. *North-West Territories Act, 1880*, S.C. 1880, c. 25.

34. *North-West Territories Act*, R.S.C. 1886, c. 50.

35. "Ordinances passed by the Lieutenant-Governor and Council of the North-West Territories, on the 2nd August, 1878" in Canada, House of Commons, *Sessional Papers*, No. 1879-86 (1 April 1879) at 1-30; "Ordonnances passées par le Lieutenant-Gouverneur et le Conseil des Territoires du Nord-Ouest, le deuxième

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*Public Printing*, prepared the way for local publication: in section 1, it made provision for the appointment of a government printer.<sup>36</sup> Shortly afterwards, Patrick G. Laurie, publisher of the *Saskatchewan Herald*, and owner of the North-West's sole printing press, was named "Queen's Printer." Laurie, an Ontario-trained printer formerly employed in Winnipeg, had moved his presses to Battleford that summer, and had published the first issue of his newspaper on 11 August 1878, little more than a week after the adjournment of the second legislative session.

The following year, he published the 1878 and the 1879 ordinances, in English, under the imprint "P.G. Laurie, Printer to the Government of the North-West Territories." The ordinances were then translated by the clerk of the North-West Council, Amédée Forget, and published in a French edition. While the French language edition bears the same imprint date, it was, in all probability, not published until the following year.<sup>37</sup> Laurie similarly published the ordinances of the 1881 legislative session, the last to be held before the capital was moved to Regina. While he had printed 200 copies of the 1878 and 1879 French language ordinances, he increased this substantially to 300 copies for the 1881 ordinances (see Table 1). Apparently, this was needed to meet demand; the secretary later reported that "practically all" copies of the earlier French language ordinances had been distributed, and those of 1881 also.<sup>38</sup> The supply of English language ordinances was similarly exhausted; it was replenished by a second printing, several years later, in Regina.

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jour d'août 1878" in Canada, Chambre des communes, *Documents de la Session*, No. 1879-86 (1 avril 1879) at 1-30.

36. *Ordinance respecting Public Printing*, O.N.W.T. 1878, No. 2.
37. Williams, *supra* note 11 at 86, has suggested that the publication of the French version preceded the English version by several years, and this conclusion has been echoed by Sheppard, *supra* note 7 at 83, Bastarache, *supra* note 11 at 234, and Aunger, *supra* note 11 at 210. The confusion stems from the fact that there was a second printing of the English language ordinances in 1884.
38. "Return Showing, by Years, the Cost of Printing the Ordinances and Other Official Papers and Publications in the French language from the Time of the Passage of the North-West Territories Act of 1877" in Canada, House of Commons, *Sessional Papers*, No. 1890-33 (1890) [hereinafter *McCarthy Language Return*] at 3.

Table 1  
North-West Council, 1878-1883: Publication of Ordinances<sup>39</sup>

session/ language	imprint date	fiscal year	copies printed	printing cost	translation cost/pp.
<b>1878</b>					
French	1879	1880?	200	\$213.36	\$50.00 <sup>a</sup>
English	1879	1879?	?	?	50 pp.
English	1884	1884	750	\$107.83	61 pp.
<b>1879</b>					
French	1879	1881?	200	\$201.14	\$38.00 <sup>a</sup>
English	1879	1879?	?	?	38 pp.
English	1884	1884	750	\$194.45	46 pp.
<b>1881</b>					
French	1881	1883?	300	\$396.00	\$74.00 <sup>a</sup>
English	1882	1883?	?	?	74 pp.
English	1886	1886	500	\$247.98	74 pp.
<b>1883</b>					
French	1883	1884	500	\$300.00	\$88.00 <sup>a</sup>
English	1883	1885	?	\$831.48 <sup>b</sup>	82 pp.

a. The council clerk, A.E. Forget, was paid \$250 retroactively, in 1884-1985, for his work as translator of the 1878, 1879, 1881 and 1883 ordinances. In estimating the translation cost for each volume, this amount was apportioned according to the length of the volume, and the going rate for translation, \$1 per page. Since these four volumes totalled 244 pp., this method leaves a remainder of \$6; this was added to the cost of the longest volume, the 1883 ordinances.

b. The appropriation accounts for the 1884-1885 fiscal year list two printings of the 1884 English language ordinances, one by the *Regina Leader*, and the other by the *Winnipeg Times*. It is assumed that this is an error and that the *Leader* billing is, in fact, for the 1883 ordinances. The *Times* billing is for the 1884 ordinances numbered 5 through 36.

39. Financial information, including printing and translation costs, as well as the number of copies printed, was calculated from the *Appropriation Accounts*, *supra* note 39, and from the *Public Accounts*, *supra* note 39. Additional information on the cost of the French language ordinances was found in the *McCarthy Language Return*, *supra* note 38. Publication information, including the imprint date and the number of pages, was taken from printed copies of the ordinances. French language copies were found in the Bibliothèque Saint-Jean, University of Alberta (1883), Canadian Parliamentary Library (1881, 1883) and the National Library of Canada (1878, 1879, 1881, 1883). Most were uncatalogued.

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The lieutenant-governor, acting as the agent of the minister of the interior, was responsible for the appointment of public officials and the spending of public funds. It was David Laird, therefore, who named the government printer, and allocated the printing budget. There is no evidence that he consulted the council on these matters, and no report was submitted for their information. The Canadian parliament voted the necessary appropriations and the sums expended were recorded in the Canadian public accounts. In 1880-81, these amounted to \$18,279.85, including some \$278.30 paid to P.G. Laurie for printing.<sup>40</sup> The only expenditures reported to the North-West Council were those based on its own revenues from the sale of marriage, billiard and ferry licenses, and the payment of fines. During the two-year period 1879-1881 these expenditures totaled only \$469.50.<sup>41</sup>

Government printing was not put out to public tender. There was no competition and no written contract. The cost of the English ordinances was excessive by Eastern standards, and the cost of the French ordinances was even worse. Laurie was undoubtedly ill-equipped to print French language documents. The charge for printing 200 copies of the 1878 and 1879 French language ordinances was \$414.50, probably much more than double that billed for the English language ordinances published earlier.<sup>42</sup> In 1884, the printing of almost four times as many copies of the 1878 and 1879 English language ordinances, some 750 copies in all, was to cost considerably less: it totaled only \$302.28.

The ordinances themselves, by their content and provisions, promoted official bilingualism. Several, for example, advised that public notices be printed and posted in both French and English. An 1881 ordinance regulating stray animals directed the pound-keeper to insert notices about impounded animals in the nearest newspaper "in both English and French if apparently

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40. Canada, Department of Finance, *Public Accounts of the Dominion of Canada, 1881* (Ottawa: Maclean, Roger & Co., 1882) at 208. The *Public Accounts of the Dominion of Canada* [hereinafter *Public Accounts*] were published annually from 1868 until 1947. Similar information is found in Canada, Office of the Auditor-General, *Report of the Auditor-General on Appropriation Accounts* (Ottawa: Maclean, Roger, published annually from 1880 until 1973) [hereinafter *Appropriation Accounts*].

41. "Government of the North-West Territories in Account with Lieutenant-Governor" in *North-West Territories, Legislative Council, Journals* (1881) App. B at 34.

42. Unfortunately, it is impossible to determine the cost of the first English language printing, and the number of copies printed. The public accounts do not provide sufficient detail. The total amount billed to Laurie for government printing in 1878-1879 was \$185.69, and this likely included the cost of the English language ordinances.

necessary.”<sup>43</sup> A proclamation issued the same year provided for bilingual electoral notices: “In any Electoral District in which a number of the electors speak the French language, such proclamation and notices shall be issued in the English and French language.”<sup>44</sup> Three years later, the *Ordinance Providing for the Organization of Schools in the North-West Territories* also required the posting of bilingual notices but its requirements were unequivocal.<sup>45</sup> Notices were to be posted advising electors on the erection of a proposed school district and, according to section 15(1), “[s]uch notices may be either printed or written and must be in both the French and English languages.” The returning officer was obliged, in section 17(2), to “[k]eep posted in a conspicuous place at the place of polling a copy of the notice of voting in both languages as provided in section fifteen.” Once the lieutenant-governor had proclaimed the erection of a school district, section 41 required that “[t]his proclamation shall be printed and posted up in at least ten public and conspicuous places throughout the district, at least fourteen days before the day appointed therein for the nomination and election of trustees, and shall be in both the French and English languages.”

#### **Obstructing Official Bilingualism—1883 to 1887: Lieutenant-Governor Dewdney Stalls the French Language Ordinances**

On 3 December 1881, Edgar Dewdney, an English-born engineer, and member of Parliament from British Columbia, succeeded Laird as lieutenant-governor. His appointment marked a turning point. The linguistic composition of the North-West was changing, and Dewdney's anti-French prejudices fitted the new environment. The census taken earlier in the year had shown that French-speakers still constituted a majority of the non-Native population, but their proportions were dwindling: there were 2,900 French and 2,500 British inhabitants.<sup>46</sup> Four years later, however, a special census conducted in three provisional districts—Alberta, Assiniboia, and Saskatchewan—counted 4,900 French, but 22,000 British inhabitants.<sup>47</sup> A massive influx, largely from Ontario, had reduced the French to a small minority now numbering only 17.5% of the

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43. *Ordinance Respecting Trespassing and Stray Animals*, O.N.W.T. 1881, No. 6, s. 9(2).

44. *Proclamation relating to Electoral Districts and Elections in the North-West Territories*, O.N.W.T. 1881, s. 50.

45. *Ordinance Providing for the Organization of Schools in the North-West Territories*, O.N.W.T. 1884, No. 5 [hereinafter *School Ordinance of 1884*].

46. Canada, Department of Agriculture, *Census of Canada, 1880-81*, vol. 1 (Ottawa: Maclean, Roger, 1882) at 300.

47. Canada, Department of Agriculture, *Census of the Three Provisional Districts of the North-West Territories, 1884-5* (Ottawa: Maclean, Roger, 1886) at 10-11.



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non-Native population. The government moved with the tide; in March 1883, the North-West capital settled in Regina.

In the same year, Nicholas Flood Davin, publisher of the *Regina Leader*, became the new government printer. Davin, with astute foresight, had settled in Regina shortly before the government, and the first issue of his newspaper appeared on 1 March 1883. His mandate as Queen's Printer lasted until 1886, when the position was awarded to Amédée Forget, the lieutenant-governor's secretary, thereby eliminating a glaring conflict of interest. Nevertheless, Davin's printing company continued to profit from the government's largess. In response to the auditor-general's complaints about financial irregularities, Lieutenant-Governor Dewdney explained that there was no written contract for printing, only a verbal agreement; but he justified this by claiming that the Manitoba Queen's Printer had been consulted, from time to time, when there was a large amount of printing, and that Davin's Prairie Printing Company was then "paid 20 per cent advance on Winnipeg prices."<sup>48</sup> The relatively large sums paid to Davin's printing company were frequent targets during parliamentary debates on the North-West estimates, particularly after 1887 when he was elected to a seat in the House of Commons.<sup>49</sup>

The fourth legislative session ended on 4 October 1883 and Davin published the English language and French language ordinances promptly. Both bear an 1883 imprint date and the French language printing was billed to the 1883–1884 fiscal year. Curiously, an English language printing was not billed until 1884–1885, although this may have been the second printing. Thereafter, publication of the French language ordinances was much less punctual. Although the English language ordinances for 1884, 1885, 1886 and 1887 were printed almost immediately, at the end of the corresponding legislative session, the French language ordinances languished; they were neither translated nor printed. Finally, during the North-West Council's last year, Lieutenant-Governor Dewdney apparently decided to make amends: he contracted for the printing of the backlog, although by the time the translated ordinances were delivered, in 1888, he had finished his mandate (see Table 2).

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48. E. Dewdney, Lieutenant Governor, to the Minister of the Interior (15 July 1885) in *Appropriation Accounts, 1884-85*, *supra* note 40 at 510.

49. For example, in 1889, an opposition member, Mr. Davies (P.E.I.) pointed out that the payments contravened the criminal code: "[T]he hon. member is receiving a benefit from this contract, and I ask that the Minister of Justice should institute proceedings." *House of Commons Debates* (11 April 1889) at 1179.

**Table 2**  
**North-West Council, 1884-1887: Publication of Ordinances<sup>50</sup>**

session/ language	imprint date	fiscal year	copies printed	printing cost	translation cost/pp.
<b>1884</b>					
French	?	1889?	200	\$323.00	\$250.00 <sup>a</sup>
English	1884	1885	?	\$571.10 <sup>b</sup>	184 pp.
<b>1885</b>					
French	?	1888	500	\$463.15 <sup>c</sup>	\$250.00 <sup>a</sup>
English	1885	1887	2,000	\$985.30	138 pp.
<b>1886</b>					
French	?	1889?	200	\$278.00	\$250.00 <sup>a</sup>
English	1886	1887	2,000	\$1558.12	245 pp.
<b>1887</b>					
French	?	1889	200	\$212.00	\$250.00 <sup>a</sup>
English	1887	1888	2,000	\$1184.04	191 pp.

a. An Ottawa translator, A. Prieur, was paid \$1,000 ostensibly to translate the 1884, 1885 and 1886 ordinances: \$800 was paid in 1887-1888 and \$200 in 1888-1889. These ordinances totalled 567 pp. and his remuneration greatly exceeded, therefore, the usual rate of \$1.00 per page. It is quite possible that this sum was also intended to cover translation of the 1887 ordinances, an additional 191 pp.. In any case, it has been assumed, perhaps arbitrarily, that the payment amounted to \$250.00 per volume for the four years 1884 through 1887.

b. This cost, billed by the *Winnipeg Times*, is for the 1884 ordinances, numbered 5 through 36 only.

c. The *Appropriation Accounts* recorded a payment of \$463.15 to *The Regina Leader* for printing "500 French Ordinances of 1885," and this figure is confirmed elsewhere. Nevertheless, there is an obvious error since the billing lists these ordinances at 248 pp. while they were, in fact, only 138 pp. long. There may be confusion with the 1886 ordinances.

50. Financial information, including printing and translation costs, as well as the number of copies printed, was calculated from the public accounts for the North-West Territories. See *Public Accounts*, *supra* note 40. Publication information, including the imprint date and the number of pages, was taken from printed copies of the ordinances. No French-language copies were located.

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It is probable that most members of the North-West Council did not know that the ordinances were to be published in French and, in any case, they showed little interest in the matter. However, at the 31 October 1887 sitting, two elected members, John Turriff and Hugh Cayley, moved for "a return showing the number of ordinances printed in French since 1883, the number distributed and the number on hand."<sup>51</sup> The answer was forthcoming, a week later, when the lieutenant-governor laid a return on the table declaring that 500 French language copies of the 1883 ordinances had been printed in May 1884 but only 126 had been distributed. (These ordinances bore an 1883 imprint but, obviously, this did not provide a dependable guide to the true publication date.) Although no information had been requested concerning cost, Dewdney also reported: "Ordinances of 1884, 1885 and 1886 are now under contract for translation at a cost of \$1,000; and the printing will probably cost as much more."<sup>52</sup> This amount seems excessive given that the going rate for translation was \$1.00 per page, and the ordinances in question totaled only 567 pp. in length. Nevertheless, during the 1887-1888 fiscal year, the lieutenant-governor paid an advance of \$800.00 for translation of these ordinances and then, the next fiscal year, a further \$200.00, the balance owing on the contract.<sup>53</sup> In fact, the final cost for translating and printing the ordinances for the three years was subsequently reported to be \$2,054.00, an exorbitant amount, even by North-West standards. It is likely that this sum also included the cost of translating the 1887 ordinances, but this would only partially mitigate the expense.

The long publication delay had serious consequences: by the time the French language ordinances were printed, they were already outdated. In fact, the decision, in 1888, to revise and consolidate the North-West ordinances rendered all previous versions virtually worthless. In 1889, Frederick Haultain, a leading member of the North-West Assembly, used this fact to argue for the abolition of French as an official language:

Last year, just as the House had finished revising and consolidating the ordinances, large bales of French ordinances were being brought in from the east and deposited in the government buildings. The Territories were saddled with this large expense and the printing was altogether useless."<sup>54</sup>

51. "The North-West Council" *The Regina Leader* (8 November 1887) 2. Cayley's interest in the question may be gauged from the fact that he had successfully proposed, ten days earlier, that the council rescind its rule requiring the printing of private bills in English and French.
52. "Return showing number of Ordinances printed in French since 1883" in North-West Territories, Legislative Council, *Journals* (1887) App. F at 101 [hereinafter *Turriff Language Return*].
53. *Appropriation Accounts, 1887-88*, *supra* note 40 at E-98; *Appropriation Accounts, 1888-89*, *supra* note 40 at E-165.
54. "Legislative Assembly" *The Regina Leader* (1 November 1889) 1.

In all likelihood, these ordinances were never distributed; this would explain why the French language ordinances for the years 1884, 1885, 1886 and 1887 have not survived. A subsequent statement by R.B. Gordon, the new government printer and secretary to the lieutenant-governor, lends credibility to this conclusion: "These Ordinances were ordered to be translated into French and printed in 1887, and were not delivered until the session of the Assembly in 1888, when all the Ordinances were revised. There has been no demand for them, and their circulation then would have been misleading."<sup>55</sup>

The ordinances were not the only French language publication, although they were the most important. The first issue of the *North-West Territories Gazette* appeared on 8 December 1883; it was printed in both English and French, in parallel columns. Seven issues appeared in 1884; this was increased to 12 issues in 1886. The council minutes, apparently, were not printed until 1886, at which time the complete backlog was printed *en bloc*, in both English and French. The lieutenant-governor had made provision for this by requesting an additional \$3,000 for the 1886-1887 printing budget. In the House of Commons, the Minister, Mr. White, explained: "For printing and advertising, last year \$3,000 was voted; this year \$6,000 is asked. The memorandum given me is that the increase of printing is necessitated by the reprint of the ordinances of 1881 and 1883, and the printing of the Journals of Council which, for want of funds, have never been printed."<sup>56</sup> The increase was maintained in subsequent years, apparently to defray the cost of French language publication. In any case, Dewdney claimed, a year later, that the extra appropriation was intended to cover the 1884, 1885, 1886 and, possibly, the 1887 French language ordinances.<sup>57</sup>

The failure to print the French language ordinances, except after a considerable delay, reflected a growing tendency to reduce the official use of French. During the same time period, the council was routinely eliminating, without fanfare, its various legislative provisions for French language proclamations and notices. This was accomplished, typically, during the consolidation of amendments to an ordinance. In 1885, for example, the council purged all bilingual requirements from the school ordinance adopted the previous year, while amending and consolidating that ordinance. The 1884 ordinance, section 15(1), had read: "Such notices may be either printed or

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55. *McCarthy Language Return*, *supra* note 38 at 3.

56. *House of Commons Debates* (29 May 1886) at 1657.

57. The lieutenant-governor estimated the cost of translating and printing the 1884, 1885 and 1886 ordinances at \$2,000. He then stated: "The sum of three thousand dollars was voted for this purpose at the last session of the Dominion Parliament, and it is hoped that this amount will prove sufficient to cover also cost of translating and printing of the Ordinances of this session." *Turriff Language Return*, *supra* note 50 at 101.

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written and must be in both the French and English languages.”<sup>58</sup> The amended ordinance, section 14(1), now read quite simply: “Such notices may be either printed or written.”<sup>59</sup> Other bilingual requirements, previously found in sections 17(2) and 41, were removed in a similar manner. When the first systematic consolidation of North-West legislation took place, in 1888, most of the earlier ordinances were repealed; the new statutes no longer required the use of the French language.

The council had not, as yet, forbidden the use of French, or any other language. Indeed, by omitting any reference to English or French, it implied, at least superficially, that there was freedom of choice, and that both these languages, and others, might still be used for public notices. However, since the North-West legislation was now printed and distributed almost exclusively in English, this was a clear signal that the English language was to be used for official functions. More ominous, perhaps, was the evidence that, on 15 November 1887, the council had considered banning French, during the debate on yet another new school bill, but had decided that this measure was unnecessary. It was reported that “[t]he question of exclusively teaching English in schools was discussed, and as it was shown that only three schools in the Territories taught French alone, the matter was left optional.”<sup>60</sup> Nevertheless, the new school ordinance, section 83, made both the “History of England” and “English Literature” compulsory subjects.<sup>61</sup>

The French language copies of the North-West ordinances were not usually submitted to the Canadian government and, consequently, their publication was not closely monitored. The *North-West Territories Act, 1880*<sup>62</sup> required that an authentic copy of each ordinance be transmitted to the secretary of state, within 30 days of its passing. Since the ordinances were drafted, debated, adopted and printed in English first—and then, later, sometimes much later, translated and printed in French—the certified copies, as well as all relevant correspondence, records and reports, were in English, only.<sup>63</sup> As soon as the ordinances were published, further copies—usually three—were forwarded to the minister responsible for the North-West Territories: to the secretary of state, for a time, and then, later, to the minister of the interior. These inevitably proved insufficient, and the minister frequently requested further copies for his department, for other public officials, and for the parliamentary library. These

58. *School Ordinance of 1884*, *supra* note 45.

59. *An Ordinance to amend and consolidate as amended the School Ordinance of 1884*, O.N.W.T. 1885, No. 3.

60. “The North-West Council” *The Regina Leader* (22 November 1887) 2.

61. *Ordinance respecting Schools*, O.N.W.T. 1887, No. 2.

62. *North-West Territories Act, 1880*, S.C. 1880, c. 25, s. 11.

63. See, for example E. Dewdney, Lieutenant-Governor, to the Secretary of State (November 1883) and A. Campbell, Minister of Justice, to Governor General in Council (28 November 1883) National Archives of Canada, File RG 15-68722.

copies were in English. It could not have been otherwise: the French language ordinances, in many cases, had not yet been printed.

In 1888, shortly after the council had been replaced by a new legislative assembly, the deputy minister wrote to Lieutenant-Governor Dewdney requesting several complete sets of the North-West ordinances, for the departmental records and for the parliamentary library.<sup>64</sup> The lieutenant-governor's office responded promptly and, on 8 June 1888, Forget forwarded six sets to the department of the interior, and a further six sets to the library of Parliament. Mention was made, for the first time, of a French language copy: "For the year 1883, the English Edition being exhausted, a French copy has been forwarded instead."<sup>65</sup> The implication is clear: English language ordinances were the rule, French language ordinances the exception. In any case, the French language ordinances for 1884, 1885, 1886 and 1887 had not yet been printed, and they were probably never distributed.

#### **Attacking Official Bilingualism—1888 to 1893: The North-West Legislative Assembly Contests the French Language Ordinances**

On 22 May 1888, the Canadian parliament amended the *North-West Territories Act* and provided, in section 2, for a legislative assembly that "shall have the powers and shall perform the duties heretofore vested in and performed by the Council of the North-West Territories."<sup>66</sup> The new assembly would be composed of 22 elected members sitting for a three-year term, and three appointed members. The latter would be legal experts entitled to participate in debates, but with no voting rights. The executive power of the Lieutenant-Governor continued unchanged; however, he was to be assisted, according to section 13, by an "advisory council on matters of finance" selected from among the assembly members. During debates on this bill, Prime Minister John A. Macdonald made it clear that the advisory council's powers were to be limited to the expenditure of the "very small" local revenues. The Canadian government and its agent, the lieutenant-governor, retained control over the North-West budget: "Of course the vote is here and the responsibility is here, and that money will be appropriated on the responsibility of the general Government."<sup>67</sup>

64. A. M. Burgess, Deputy Minister of the Interior, to Edgar Dewdney, Lieutenant-Governor of the North-West Territories (2 June 1888), National Archives of Canada, File RG 15-68722.
65. A. E. Forget, Secretary, Lieutenant Governor's Office, to the Deputy Minister of the Interior (8 June 1888) National Archives of Canada, File RG 15-68722.
66. *Act to amend the Revised Statutes of Canada, chapter fifty, respecting the North-West Territories*, S.C. 1888, c.19.
67. *House of Commons Debates* (1888) at 1476, quoted in Thomas, *supra* note 18 at 155.

The new Lieutenant-Governor, Joseph Royal, appointed on 4 July 1888, had first-hand knowledge of Western Canada. He had been a member of the first North-West Council from 1872 until 1876; he had also served as speaker of Manitoba's Legislative Assembly, as well as provincial secretary, minister of public works and attorney-general, before taking a seat in the Canadian House of Commons in 1879. Royal was French speaking and, as Oliver notes, he was "regarded as leader of the Métis and French Canadians of Manitoba"<sup>68</sup> Already, in 1881, he had been rumored to be the favored candidate for the lieutenant-governorship, particularly among those who believed that the position should alternate between an English speaker and a French speaker.<sup>69</sup> This time, his appointment was again widely anticipated, but not welcomed. Thomas observes that it "aroused a considerable volume of adverse comment in the territorial press, much of it motivated by prejudice against French Canadians."<sup>70</sup> When, in 1887, Macdonald advised Dewdney that his successor might be French-speaking, Dewdney responded: "I shall be very sorry to see a Frenchman here and it will create a very bad feeling."<sup>71</sup>

On 3 August 1888, Amédée Forget, the secretary to the lieutenant-governor, and former clerk of the North-West Council, was appointed assistant commissioner of Indian affairs for Manitoba and the North-West Territories. Forget had been secretary since 1876, and had provided French language support to the North-West government. He had translated the *Journals* and the *Gazette*, without remuneration; he had also translated the ordinances, at least until 1883, but for this he had been compensated retroactively. His successor, Robert B. Gordon, had previously served the North-West government as chief clerk. Since Gordon was, however, a unilingual English speaker, he was given, for the first time, a bilingual assistant. N. Levasseur, the new assistant clerk of the North-West Legislative Assembly, was, it was announced, "a man of education and instructed in French and English."<sup>72</sup>

The North-West Legislative Assembly, convened on 31 October 1888, was composed of 22 elected legislators returned in 19 electoral divisions. All were English speakers of British origins and most were Ontario-born. They were nearly all recent arrivals; indeed, 15 had immigrated to the North-West between 1882 and 1884. More than half had been elected to the North-West legislature for the first time and the longest-serving member, James Ross, had been elected only five years earlier, in 1883.<sup>73</sup> No French speakers were returned to the

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68. Oliver, ed., *supra* note 17, vol. 1 at 127.

69. "Lieutenant-Governorship" *Saskatchewan Herald* (18 September 1881) 2.

70. Thomas, *supra* note 18 at 160.

71. E. Dewdney, Lieutenant-Governor, to John A. Macdonald, Prime Minister (11 April 1887) quoted in *ibid.*

72. *The Regina Leader* (6 November 1888) 4.

73. This information is drawn from "Sketches of the Members" *The Regina Leader* (30 October 1888) 4-5.

assembly until 1891, when Antonio Prince was elected in the newly created riding of St. Albert, and Charles Nolin in the readjusted riding of Batoche.<sup>74</sup> The North-West's three Supreme Court judges, James Macleod, Hugh Richardson and Charles Rouleau, acted as legal advisors to the assembly, and non-voting members, until 1891.

Shortly after taking up his duties as lieutenant-governor, Royal appointed a commission, consisting of Judge Hugh Richardson and former legislative clerk Amédée Forget, to prepare the first consolidation of the North-West ordinances. This was duly completed, and then passed by the assembly during its first legislative session. Some 4,000 copies, bearing an 1888 imprint, were published in English, the following year, at a cost of \$5,084.38 (see Table 3). The revised ordinances were then translated into French, and 200 copies, bearing the same 1888 imprint, were published in 1891. Royal requested that the Canadian government grant an increased appropriation to meet the cost of printing the 526-page consolidation, and its French translation. Parliament voted \$7,000.00, in its 1890-1891 estimates, for "[p]rinting and advertising, including translation of Ordinances."<sup>75</sup> It added to this amount, in the supplementary estimates, by voting a further \$1,500.00 "to provide for payment of the cost of printing and translating revised Ordinances of 1888."<sup>76</sup> The final printing cost, for the French language revised ordinances, totaled \$1,606.47, and was paid to Davin's *Regina Leader*.

In the meantime, the 1889 ordinances had been translated and printed, with unprecedented promptness. Both the English language and French language versions were published in 1890 and it was reported, in November, that 941 English copies and 148 French copies had already been distributed.<sup>77</sup> Further, the cost for printing 300 copies of the French language ordinances was the lowest ever paid, at only \$132.00. Royal had given the contract to French language printers, the Canadian Publishing Company, in his former riding of St. Boniface, Manitoba. Davin, upon learning that he would not be printing the 1889 French language ordinances, may have misconstrued this information. He mistakenly reported, with considerable satisfaction, that although the law "required that all public documents shall be printed in French and English,"

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74. Nolin's election was subsequently declared void and he was replaced, the following year, by Charles Boucher.

75. "Estimates for the Fiscal Year ending 30th June 1891" in Canada, House of Commons, *Sessional Papers*, No. 1890-3A (1890) at 74.

76. "Supplementary Estimates for the Fiscal Year ending 30th June 1891" in Canada, House of Commons, *Sessional Papers*, No. 1890-3C (1890) at 12.

77. "Return showing the number of Revised Ordinances that have been printed in each, the English and French languages" in North-West Territories, Legislative Assembly, *Sessional Papers* (20 November 1890), Saskatchewan Archives Board, File Micro R-2.91 [hereinafter *Sutherland Language Return*].



**Table 3**  
**North-West Legislative Assembly, 1888 to 1894:**  
**Publication of Ordinances<sup>78</sup>**

session/ language	imprint date	fiscal year	copies printed	printing cost	translation cost/pp.
<b>1888</b>					
French	1888	1891	200	\$1606.47	\$540.00 <sup>a</sup>
English	1888	1890	4,000	\$5084.38	526 pp.
<b>1889</b>					
French	1890	1890	300	\$132.00	\$91.00 <sup>a</sup>
English	1890	1890	2,500	\$582.07	91 pp.
English	?	1891	?	\$124.50	?
<b>1890</b>					
French	1890	1891	500	\$305.75	\$88.00 <sup>a</sup>
English	1890	1891	2,700	\$609.40	88 pp.
<b>1891-1892</b>					
French	?	1893	200	\$318.00	\$189.00
English	1892	1892	2,000	\$996.40	189 pp.
<b>1892</b>					
French	?	1894	200	\$401.45	\$246.00 <sup>b</sup>
English	1893	1893	2,000	\$650.73	246 pp.

a. In 1889-1890, the sum of \$501.00 was paid for the translation of 501 pp. of ordinances. In 1890-1891, a further \$130.00 was paid "on account" for translating the "Revised Ordinances." It is assumed that these sums include \$91.00 for the 1889 ordinances; the remainder has been allocated to the 1888 revised ordinances.

b. The appropriation accounts indicate a cost of \$246.00 for translating the 1893 ordinances, at \$1.00 per page. This item is clearly in error; the charge is, in fact, for the 1892 ordinances. The 1893 ordinances were 384 pp. in length and were never translated.

78. Financial information, including printing and translation costs, as well as the number of copies printed, was calculated from the *Public Accounts* and the *Appropriation Accounts* for the North-West Territories, *supra* note 40. Publication information, including the imprint date and the number of pages, was taken from printed copies of the ordinances. French language copies were found at the Saskatchewan Legislative Library (1888) and the Bibliothèque Saint-Jean, University of Alberta (1888, 1889, 1890).

Lieutenant-Governor Royal had determined “not to print the Ordinances in French” and that he had “done this without suggestion from anybody”.<sup>79</sup>

Unlike his predecessor, Royal supported the North-West's official bilingualism, and the French language ordinances were published punctually—although with an inevitable time-lag—throughout his term of office, that is, until 31 October 1893. Printing costs, however, resumed their previous elevated amounts: the printing monopoly enjoyed by Davin's *Regina Leader* was restored. Royal was obliged to justify his printing policy when, in 1890, he sought instructions from the Canadian government regarding the expenditure of money voted by Parliament. The minister of the interior advised that “all the contracts for the printing of the Territories to be paid for out of the appropriations made by the Parliament of Canada should be awarded after public competition.”<sup>80</sup> Royal objected to this policy and explained that, if public competition was introduced, the contract for “printing of the Ordinances and Journals in French and English” would be “given to Printing Offices situated outside the Territories.”<sup>81</sup> He expressed his satisfaction with the current printing service, as regarded quality, promptness and cost, noting that “their charges are 25% in addition to current prices in Winnipeg for same work.” As it was, the printing plant “stated to have cost some \$10,000.00” was forced “to lie idle for a large portion of the year.”

In all probability, most of the newly elected legislators were unaware that the *North-West Territories Act* recognized two official languages, since the effects of this provision were largely invisible: ordinances adopted since 1883 had, as yet, been published in English, only.<sup>82</sup> However, they were directly confronted with the North-West's official bilingualism when, at the opening of the legislative assembly, Lieutenant-Governor Royal read the speech from the throne, first in English and then in French. The legislators reacted, apparently, with shocked hostility. William Perley, who had represented Qu'Appelle in the North-West Council from 1885 until 1887, blamed this event for the subsequent backlash against the official use of French:

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79. “Dual Language” *The Regina Leader* (22 October 1889) 4.

80. John R. Hall, Secretary, Department of the Interior, to Robert B. Gordon, Secretary to the Lieutenant-Governor of the North West Territories (29 August 1890) National Archives of Canada, File RG 15-226484 at 564.

81. Robert B. Gordon, Secretary to Lieutenant Governor, to Secretary, Department of the Interior (6 September 1890) National Archives of Canada, File RG 15-226484 at 566-67.

82. That is, the annual series of ordinances had been published in English only. Some individual ordinances had been printed in French. In 1888, for example, the government published extra copies of the 1887 school ordinance: 300 in French and 2,000 in English.

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When I was a member of the Assembly I never heard any fault found about the dual language. There was no question about it at all; I hardly knew that it was on the Statute-book, and there would not have been any fault found with it had it not been that Mr. Royal undertook to force the French language on the people of that country. There were 22 elected members representing the North-West Territories, and not one of them could speak the French language at all. Mr. Royal was conversant with that fact, yet he read his speech in French. Not one of the members of the House understood him, and the ceremony was neither edifying nor amusing. During the four years we had Mr. Forget as Clerk of the Council no fault was found with the French language. We did not say we should have an English clerk as well as a French clerk. Mr. Forget was a satisfactory officer. But Mr. Royal not only read his speech in French, he brought up a French gentleman from Quebec to act as interpreter, and undertook to put the whole French system into operation in the North-West; and then it was that the agitation commenced by the people declaring that they did not want French as an official language.<sup>83</sup>

This was the first and the last time that any lieutenant-governor delivered his speech from the throne in French. At subsequent sessions, Royal read the speech in English only; indeed, it was later reported by Senator Bellerose that the North-West legislators had "warned Governor Royal that if he should [again] speak French at the opening he would be insulted."<sup>84</sup> As for N. Levasseur, the assistant legislative clerk, or "interpreter," as Perley described him, he disappeared from the scene shortly after the 1888 opening ceremony. Enquiries as to his whereabouts met with evasive answers. Frederick Haultain, head of the advisory council, denied that there had ever been an assistant clerk. Later, he described Levasseur as "the French translator," and said that he was "away," with permission.<sup>85</sup>

The 1889 legislative session was opened on 16 October and, this time, Lieutenant-Governor Royal read his speech in English, only. Then, as the *Edmonton Bulletin* subsequently reported, there was a "significant" event: "Before the speech was replied to or any other business done, Mr. [H.S.] Cayley of Calgary gave notice of introducing a motion to have a committee appointed to draft a resolution to be submitted to the governor general, to have clause 110 of

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83. *Senate Debates* (29 April 1890) at 632.

84. *Senate Debates* (3 September 1891) at 547.

85. The lieutenant-governor, as a conciliatory gesture, had apparently agreed to grant the advisory council responsibility for the appointment of public officials, or so Haultain claimed. John Betts, a newly elected legislator, enquired about the assistant clerk's disappearance on three occasions and, each time, the enquiries were directed to Haultain. "Legislative Assembly" *The Regina Leader* (20 November 1888) 4; "Legislative Assembly" *The Regina Leader* (27 November 1888) 4; "Legislative Assembly" *The Regina Leader* (11 December 1888) 5.

the Northwest Territories act expunged.”<sup>86</sup> Two days later, Cayley moved that the committee be appointed, and stated that “owing to the unanimous opinion of the House on this question it was not necessary to make any comments.”<sup>87</sup> His motion was carried. The committee immediately prepared its report, but presentation was delayed several days in order that Judge Charles Rouleau, the assembly's only French-speaking member, might be present. On 28 October, Cayley presented the committee's resolution: it asked that the Canadian government repeal section 110 “on the grounds that the needs of the Territories do not demand the official recognition of a dual language in the North-West, or the expenditure necessitated by the same.”<sup>88</sup> The assembly voted, by a large majority, seventeen in favour and two opposed, to adopt the resolution.

Cayley, a Toronto-born lawyer, and publisher of the *Calgary Herald*, argued that the resolution was largely an economic matter and that French language publication was a needless expense: “The cost [of translating and printing the ordinances in French] was about \$1,000 a year.”<sup>89</sup> Judge Rouleau disputed this cost: “In three or four years it cost \$1,000 for printing the ordinances in French.” Both were referring to Lieutenant-Governor Dewdney's report to the North-West Council, two years previous, putting the translation costs for the 1884, 1885 and 1886 ordinances at \$1,000, and the printing costs at the same amount again.<sup>90</sup> This was a reasonably accurate estimate, if somewhat high; in any case, the members had no other information on publication costs. They did not know, for example, that the average cost of printing the North-West Council's ordinances, to date, had been less than \$300 per volume, plus approximately \$150 for translation. Publication delays had shifted an important part of these costs on to the 1887-1888 and the 1888-1889 fiscal year (see Figure 1).

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86. “Assembly Notes” *The [Edmonton] Bulletin* (2 November 1889) 2. The report continued: “Most of the Territorial papers are clamoring for the abolition of the separate schools, and the use of the French as an official language. One significant fact was that the governor's speech was read in English only, while last year it was read in both French and English.”

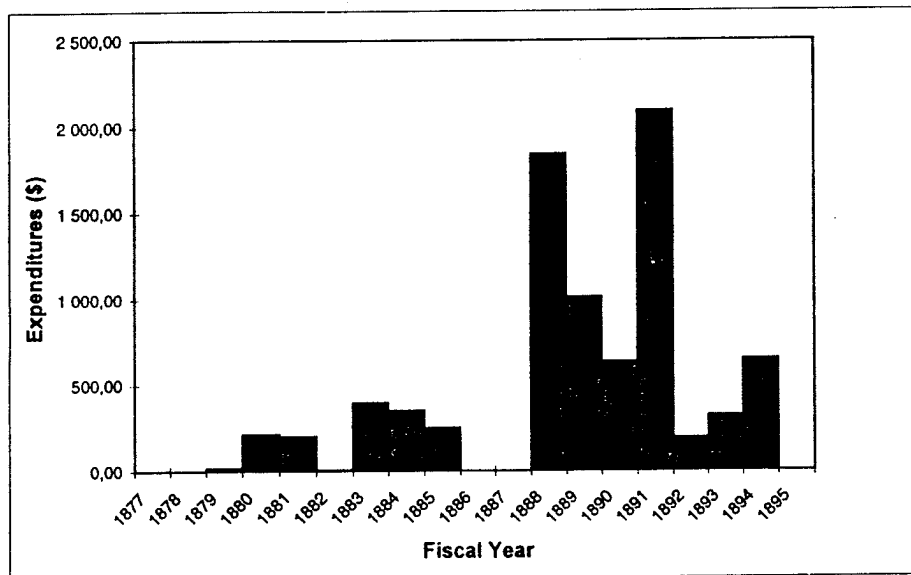
87. “Legislative Assembly” *The Regina Leader* (22 October 1889) 1.

88. “Legislative Assembly” *The Regina Leader* (1 November 1889) 1.

89. *Ibid.*

90. *Turriff Language Return*, *supra* note 50.

**Figure 1**  
**Expenditure for Printing and Translation of French Language Ordinances**  
**by Fiscal Year—1877 to 1895<sup>91</sup>**



91. These data include not only the expenditure on annual volumes but also on extra printings such as, for example, the school ordinances and the municipal ordinances. They are calculated from the *Public Accounts* and the *Appropriation Accounts* of the North-West Territories, *supra* note 40.

Responding to these economic concerns, Rouleau countered that it was the Canadian government, and not the North-West government, that paid for French language publication: "The Dominion pays it. Quebec pays her share." Further, "[a]mong 4,000,000 people that was a twentieth part of a cent each."<sup>92</sup> Frederick Haultain, an English-born Ontario-trained lawyer who represented Macleod, would have none of this: "There are not 4,000,000 in the North-West. We pay that." Haultain voiced his support for the resolution on the grounds of "convenience" and "economy" and pointed, in particular, to the waste that had occurred the previous year when "large bales of French ordinances" had been delivered as the assembly finished its consolidation: "[T]he printing was altogether useless."

Elsewhere, the resolution was perceived to involve more than a simple question of economy. On 22 January 1890, when Dalton McCarthy moved, in the Canadian House of Commons, that section 110 of the *North-West Territories Act* be expunged, he declared that his desire was "to create and build up in this country one race with one national life, and with a language common to us all."<sup>93</sup> Although his motion was later defeated on the second reading, it dominated the parliamentary agenda and provoked a national crisis. The issue was resolved, at least temporarily, when the Minister of Justice, John Thompson, successfully proposed a compromise that, while maintaining official bilingualism in the North-West, would allow the assembly to determine the language of its proceedings. On 21 February 1890, the house voted that "the Legislative Assembly of the North-West Territories should receive from the Parliament of Canada power to regulate, after the next general election of the Assembly, the proceedings of the Assembly and the manner of recording and publishing such proceedings."<sup>94</sup>

The requirement that the ordinances be published in English and French was not touched, and the assembly was not given power to regulate that matter. Indeed, Prime Minister John A. Macdonald, in defending the compromise, argued that "the printing of the ordinances was no matter of concern to the assembly."<sup>95</sup> Further: "Lieutenant Governor Royal published the ordinances in the language he was instructed from Ottawa to publish them in."

Although the compromise was incorporated, on 20 March 1890, into a Senate bill amending the *North-West Territories Act*, an election was looming, and it was allowed to die on the order paper. More than a year later, on 30 September 1891, section 110 was finally amended to read:

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92. *The Regina Leader*, *supra* note 88.

93. *House of Commons Debates* (22 January 1890) at 51.

94. *House of Commons Debates* (21 February 1890) at 1017.

95. "Telegraphic" *The [Edmonton] Bulletin* (22 February 1890) 1.

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Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the courts; and both those languages shall be used in the records and journals of such Assembly; and all ordinances made under this Act shall be printed in both those languages: Provided, however, that after the next general election of the Legislative Assembly, such Assembly may, by ordinance or otherwise, regulate its proceedings, and the manner of recording and publishing the same; and the regulations so made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor in conformity with the law, and thereafter shall have full force and effect."<sup>96</sup>

The territorial elections were held little more than a month later, on 7 November, and the newly elected North-West Assembly opened its first session on 10 December 1891. The amending act, section 6, had suggested, in a convoluted description of the legislature's financial powers, that the assembly "or any committee thereof" might advise the lieutenant-governor on territorial expenditures. This prompted the assembly to adopt, as its first legislative act, an ordinance establishing the "Executive Committee of the Territories."<sup>97</sup> The lieutenant-governor then called upon Frederick Haultain to form a four-member executive. The committee held its first meeting on 4 January 1892 and, the same day, Haultain made an announcement to the assembly: "With regard to the Journals he might say that they had not been printed in French for some time past and he could inform the House that it was the intention of the Executive Committee to bring a resolution before the House on this matter, at which time they hoped to be able to give full reasons for their policy of having the Journals printed only in English." (*Applause*)<sup>98</sup>

Two weeks later, on 19 January 1892, Haultain moved "[t]hat it is desirable that the proceedings of the Legislative Assembly shall be recorded and published hereafter in the English Language only."<sup>99</sup> He explained, unequivocally, that the resolution pertained only to the publication of the North-West's *Journals*; it did not effect the ordinances, or other publications. The *North-West Territories Act*, as amended, still required that these be printed in French: "The North-West Territories *Gazette* and the Ordinances must be printed in French, as also must the reports of the different departments, but the Assembly has been given the right to say what language shall be used in the

96. *An Act to amend the Acts respecting the North-West Territories*, S.C. 1891, c. 22., s.18 [hereinafter *North West Territories Act of 1891*]. See also *North-West Territories Act*, R.S.C. 1886, c. 50, s.110, as am. by S.C. 1891, c. 22, s.18.

97. *Ordinance Respecting the Executive Government of the Territories*, O.N.W.T. 1891-92, No. 1, s.1.

98. "N.W. Parliament" *The [Regina] Leader* (12 January 1892) 1.

99. North-West Territories, Legislative Council, *Journals* (19 January 1892) at 110.

debates of this House and in the Journals."<sup>100</sup> When one member threatened to oppose the resolution unless the ordinances were also included, Haultain retorted: "Read the act. We haven't the power."

Haultain justified his resolution, again, as a simple matter of economy: "He brought up the question simply as one affecting expenditure and he commended the motion to them as reasonable from the point of view of economy, convenience and necessity."<sup>101</sup> He admitted that printing the French language *Journals* did not cost a large sum, but he insisted that two or three volumes "had not been distributed at all. This was simply a waste of money." Cayley concurred: "The motion was a mere question of a small expenditure. It attacked no principle, French was an official language by act of parliament and this House could not alter it."<sup>102</sup>

The North-West Legislative Assembly adopted the motion by a large majority: 20 were in favour, four opposed. However, this, in itself, did not abolish the legal requirement that the proceedings be printed in French. The amending act had stipulated that the decision "shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant Governor."<sup>103</sup> No such proclamation was ever issued and it may be concluded, therefore, that the French language requirement continued unchanged.<sup>104</sup> Nevertheless, Royal respected the assembly's decision and discontinued publication of the French language *Journals*. During the 1890-1891 fiscal year, *The Regina Leader* had been paid a \$200 advance to print 150 French language copies of the 1890 proceedings. The final cost amounted to \$393.71, and the balance was paid, the following year, upon delivery.<sup>105</sup> These *Journals* for the North-West's 1890 legislative session were the last to be printed in French.

The assembly's decision did not affect the printing of the ordinances. At the end of the 1891-1892 session, the ordinances were translated and, on 14 July 1892, Haultain's executive committee recommended "[t]hat tenders for printing 200 copies of the Ordinances of 1891-1892, in French, be called for by letter addressed to the Publishers of all Newspapers in the Territories."<sup>106</sup> The contract was subsequently granted to *The Regina Leader*, and the copies were printed at a

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100. "The Assembly!" *The [Regina] Leader* (26 January 1892) 4.

101. *Ibid.*

102. *Ibid.* at 5.

103. *North-West Territories Act of 1891*, *supra* note 96.

104. We have reached this conclusion after searching the proclamations and orders issued by the Lieutenant-Governor: North-West Territories, lieutenant-governor, *Minutes and Orders, 1876-1892*, Saskatchewan Archives Board, File NWT I.3; North-West Territories, Lieutenant-Governor, Proclamations and Orders, 1876-1898, Saskatchewan Archives Board, File NWT I.7.

105. *Appropriation Account, 1891-92*, *supra* note 40 at D-165.

106. North-West Territories, Executive Committee, *Minutes, 1892-1894*, vol. 1, Saskatchewan Archives Board, File NWT I.6 at 16.



cost of \$318.00. The following year, the process was repeated. This time, however, the executive committee recommended, on 5 June 1893, that the Standard Publishing Company, publisher of *The Regina Standard*, be contracted to print the ordinances. This company had submitted the lowest tender; it had also printed the 1892 English language ordinances. The committee's recommendation was approved by the lieutenant-governor although, oddly enough, when the copies were finally printed, during the 1893–1894 fiscal year, the publisher was *The Regina Spectator* and the cost greatly exceeded the original tender.

**Dismantling Official Bilingualism—1893 to 1895:  
Frederick Haultain Terminates the French Language Ordinances**

On 31 October 1893, Charles Mackintosh, editor of *The Ottawa Citizen*, and former mayor of the city of Ottawa, succeeded Royal as lieutenant-governor of the North-West Territories. Unlike his predecessor, Mackintosh was a newcomer to the West, unfamiliar with its politics; he was also a “controversialist” who, as a member of Parliament, had “displayed scant interest in the practical aspects of legislation and administration.”<sup>107</sup> The changing of the guard was also marked by an important shift in power from the lieutenant-governor to the executive committee. In 1893, Joseph Royal had prepared the 1893–1894 estimates without consulting the executive committee; in 1894, Frederick Haultain prepared the 1894–1895 estimates and then submitted them to the lieutenant-governor for transmission to the minister of the interior.<sup>108</sup> Haultain requested \$406,640, more than double the previous amount, with no increase to the printing budget; he received only \$200,543, a mere \$1,300 more than the previous year.<sup>109</sup>

The executive minutes, which included decisions with respect to printing, were now signed by Haultain, and not by the lieutenant-governor.<sup>110</sup> The 1894 minutes make no mention of the French language ordinances but this silence speaks volumes. The 1893 North-West ordinances were neither translated nor tendered for printing in French. Nor would they ever be. There would be no formal announcement, no public debate, and this inaction would go largely unnoticed for some while. It was not the first time that the French language ordinances had been delayed or, indeed, had simply gone undistributed. In any

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107. Thomas, *supra* note 18 at 234.

108. Charles Mackintosh, Lieutenant-Governor, to the Minister of the Interior (31 January 1894) transmitting “Dominion Appropriation 1894-5 with Assembly Memorial 1893” Saskatchewan Archives Board, File R 201.1-80.

109. Thomas, *supra*, note 18 at 237.

110. *Minutes, 1892–1894*, vol. 3, *supra* note 106.

case, the French-speaking community was already embroiled in a more pressing matter.

The North-West Assembly had, on 31 December 1892, effectively outlawed French language schools: English was now to be the sole language of instruction.<sup>111</sup> Embattled French speakers petitioned both the Canadian government and the North-West Assembly, demanding redress. In a "memorial" submitted to the assembly on 31 August 1894, it was claimed that Roman Catholics had been "wrongly deprived" of many schooling rights, including "the right of using the French language for teaching in those of their schools where this language is that of the pupils attending the same."<sup>112</sup>

On 15 August 1895, the *North-West Territories Gazette* appeared in bilingual format, English and French in parallel columns, for the last time. All future issues were in English, only. In practice, if not in law, official bilingualism had come to an end.

The Canadian government continued to receive the North-West ordinances each year, immediately after publication. Since these copies, the first available, were inevitably in English, the North-West government's failure to print a French language version, as required by its constitution, went unnoticed. Occasionally, the department of the interior requested additional copies and, even, complete sets. On 12 April 1898, for example, T. G. Rothwell, acting deputy minister of the interior, telegraphed the North-West government with an urgent demand: "Minister requires at once four sets all Ordinances passed since 1888 including revised Ordinances that year."<sup>113</sup> The reply, sent by return telegraph, advised that the required sets, minus the 1892 and 1897 ordinances, which were no longer in print, were being forwarded immediately. Two days later, James A. Smart, a newly appointed deputy minister, sent a further telegram, with an unusual request: "Please forward two copies each of all Ordinances in French from and including revised ordinances eighty-eight to date."<sup>114</sup> This time, the North-West's response was not sent by telegraph: it was mailed two weeks later. Robert B. Gordon advised: "In reference to your telegram of the 14th inst., I have the honour to forward you by this mail copy of the North West Ordinances in french from 1888 to 1892 inclusive. The Ordinances have not been printed in french since the latter date, and I regret

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111. *School Ordinance*, O.N.W.T. 1892, No. 22, s. 83.

112. "Report of the Standing Committee on Education concerning complaints of Roman Catholics Against Certain Provisions of the School Ordinances and Regulations" in North-West Territories, Legislative Assembly, *Journals* (6 September 1894) at 121-23.

113. T. G. Rothwell, acting Deputy Minister, to the Territorial Secretary (12 April 1898) National Archives of Canada, File RG 15-226484 at 424.

114. J. A. Smart, Deputy Minister of the Interior, to R. B. Gordon, Assistant Territorial Secretary (14 April 1898) National Archives of Canada, File RG 15-226484 at 426.

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there are not two copies on hand of those forwarded to send you.”<sup>115</sup> The deputy minister marked the letter for the attention of the minister (“Put by copies read for minister”), but there was no further correspondence.

### Conclusion

When, in 1877, official bilingualism was entrenched in the North-West constitution, the decision was not, as some have suggested, a simple “accident.” It formalized the practice, clearly evident from 1870 until 1876, of using both English and French in the North-West government. It also extended the pact, negotiated in 1870 between the provisional government of Rupert's Land and the Canadian government, that guaranteed the publication of Manitoba's statutes in both official languages.

However, this statutory guarantee provided only weak protection against the vagaries of political power. From 1877 until 1881, when the French constituted a majority of the non-Native population, the ordinances were published regularly in the French language, although with a certain delay. In subsequent years, with the massive influx of English speakers, and the arrival of Lieutenant-Governor Edgar Dewdney, these delays lengthened to the point that the ordinances, when finally printed, had little value. Consequently, although the 1884, 1885, 1886 and 1887 French language ordinances were, indeed, printed, they were never distributed.

The appointment of Joseph Royal, a French-speaking lieutenant-governor, in 1888, shifted the linguistic balance of power, at least for a time. The ordinances were again printed regularly in the French language. The 1892 ordinances, the last to appear, were published during the 1893–1894 fiscal year.

The realignment of executive authority, marked by the appointment of a new lieutenant-governor, Charles Mackintosh, on 1 November 1893, signaled the death of official bilingualism. Power previously vested in Joseph Royal, as lieutenant-governor, was now transferred to Frederick Haultain, the head of the executive committee. Haultain, although aware of his government's statutory obligation, ended publication of the French language ordinances. Not openly, but secretly. He had already indicated, on previous occasions, that the requirements of the *North-West Territories Act* would not deter him from the attainment of his objectives.<sup>116</sup>

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115. R. B. Gordon, Assistant Territorial Secretary, to James A. Smart, Deputy Minister of the Interior (26 April 1898) National Archives of Canada, File RG 15-226484 at 422.

116. In defending the advisory council's struggle to wrest financial control from the lieutenant-governor, Haultain had declared he “did not care whether the position of the old Council was illegal or assumption; they as representatives of the people

As long as responsibility for the translation and printing of the ordinances rested with the lieutenant-governor, there was a good possibility that the minority's constitutional language rights would receive, at the very least, perfunctory respect. When this power was passed to the North-West's executive committee, however, minority rights succumbed to majority rule. The North-West government, it may be concluded, wilfully disregarded the constitutional guarantees. For its part, the Canadian government did not monitor these rights; nor did it demonstrate any interest in defending them.

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took hold of it, and they would relinquish it very reluctantly." *The Regina Leader* (12 November 1889), quoted in Thomas, *supra* note 18 at 175.