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JUDICIAL APPROACHES TO THE INTERPRETATION OF BILINGUAL LEGISLATION

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1. Introduction

2. Rule of Equal Authenticity

3. Search for the Common Meaning of Two Versions

4. Reconciling Two Versions in cases of Semantic Ambiguity

5. Reconciling Two Versions in cases of Inconsistency
   - (a) Cases of Conflict
   - (b) Typical Inconsistency: the Importance of Context
   - (c) Examples

6. Summary: Method of Interpreting Bilingual Legislation

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JUDICIAL APPROACHES TO THE INTERPRETATION OF BILINGUAL LEGISLATION

1. Introduction

It is said from time to time that the common law is dead. This only means that the more important body of law today is statutory. It is also a fact of a judge's life that most of his or her time is spent reading statutory or other legislative material or what others have to say about it. More and more such material is, in Canada, bilingual and no judge is able to escape his or her duty to interpret bilingual statutes or regulations.

Nevertheless, whether for reasons of convenience of reference (one often prefers CCH office consolidations, which are usually unilingual but up-to-date) or because of habits developed earlier in their careers, or because of the unhelpful format and slowness of the official publication of the statutes or infrequency of their consolidation and revision, the majority of the judiciary in Canada still do not articulate in their reasons for judgment any comparison of the two equally authoritative versions of the law.

Whatever the reason, it is my view, at least, that the bilingual and bicultural essence of federal legislation is eroded by the continuing practice of English-speaking judges in particular (with some notable exceptions, of course) to treat the French version of federal legislation (and I could add that of New Brunswick and Manitoba legislation as well) as a more or less dispensable appendage of the law. Time and time again, one reads twenty or thirty page decisions that show the court spinning its wheels on an interpretative issue that could have been solved with much less effort by a simple comparison of the two versions.

../2

Now that I have your attention, I hope to demonstrate how important it is -- what a difference it makes -- to compare both versions of a problematic legislative provision before defining the problem and, certainly, before rendering your judgment.

2. Rule of Equal Authenticity

First of all, what is the rule of equal authenticity of the two versions of statutes and what are its implications for their interpretation?

Whether the rule is found in section 133 of the Constitution Act, 1867, in section 23 of the Manitoba Act, 1870 or in section 18 of the Constitution Act, 1982, it is the same rule: the two versions, English and French, of the statutes and regulations of Canada, Québec, Manitoba and New Brunswick (and, as of 1991, those of Ontario as well) are equally authoritative expressions of the statutes and regulations.

Such a rule means, generally speaking, that in order to interpret reliably a bilingual provision of an Act of the above-mentioned legislatures, each version of the provision must be read in light of the other, while of course taking into account its entire context, including the legislature's intention that the provision be read consistently with the other provisions of the same Act and that the Act as a whole be read in light of the general system of the law.

3. "Common Meaning"

In a phrase, the rule of equal authenticity requires the reader of bilingual legislation to extract from the two versions of a provision the highest common meaning that is consistent with

the total context of the provision. I emphasize the highest common meaning, because it is not enough that one be satisfied with any meaning that is common to the two versions. Every Interpretation Act at present in force in Canada contains a provision similar to section 11 of the federal Interpretation Act, which reads as follows:

> **11.** Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

The rule of equal authenticity takes nothing away from this fundamental principle of statutory interpretation. Thus, in bilingual statutory interpretation, one speaks of "the highest common meaning" consistent with the total context of a provision.

4. Reconciling Two Versions in cases of Semantic Ambiguity

The rule of equal authenticity imposes a peremptory method of interpretation by which we are led to reconciling the two versions of a bilingual enactment in cases of ambiguity.

The typical problem of semantic ambiguity that arises in the interpretation of a bilingual enactment may be represented summarily as follows:[1] $A^e + B^e + A^f$ or $A^e + A^f + B^f$.

When one states that one version is ambiguous, one means that its wording is capable of two reasonable interpretations. The ambiguity may appear in the English version or in the French version. The same ambiguity is rarely found in both versions simultaneously.

The simplest cases of semantic ambiguity juxtapose an ambiguous version with a clear version, the latter being capable of only one reasonable interpretation. Such a case may be summarily represented as follows: $A^e + B^e + A^f$. The method of reconciling the two versions in such a simple case is not complicated; the clear version, which is at the same time consistent with one of the possibilities of the ambiguous one, will prevail. Thus the solution (common meaning) may be represented as having been reached as follows: $A^e + B^e + A^f \rightarrow A$.

For example, in the case of The King v. Dubois, [1935] S.C.R. 378, the English term "public work" was considered ambiguous in light of the question before the court while the French term "chantier public" was considered to be clear. The latter version did not permit the inclusion of the term "automobile".

Another example was the case of Tupper v. The Queen, [1967] S.C.R. 589, where the court saw the English version term "any instrument for housebreaking" as being ambiguous. Nevertheless, by virtue of a clearer French version "instrument pouvant servir aux effractions de maisons" (and some damning circumstantial evidence), the defendant was convicted.

As a third example of the simplest case of ambiguity, one could point to the case of Olavarria v. Minister of Manpower and Immigration, [1973] F.C. 1035 (C.A.). There one had to consider whether the English word "counsel" included a non-lawyer. In replying in the affirmative, the court was able to point to the unequivocal French version: "avocat ou autre conseiller".

5. Reconciling Two Versions in cases of Inconsistency

Despite the relative simplicity of these three examples, one should not be misled. In a great many cases of bilingual statutory interpretation, the problems raised are quite complex and require only as a first step, however essential it may be, a comparison of the two versions.

(a) Cases of Conflict

The case of out-and-out conflict is, fortunately, extremely rare. Nevertheless, where there is an absence of commonality between a clear version and one reasonable interpretation of an ambiguous version, one faces a true case of conflict between versions. But such a case is really an example of a mistake by the legislator, which is corrected or dealt with according to the same interpretative methods that apply to the resolution of other types of legislative mistakes: one traces the legislative history of the provision in its two versions; one compares the consistency or inconsistency in the use of terminology in each version; one looks to the purpose and object of the legislation, and so on.

(b) Typical Inconsistency: the Importance of Context

Questions of inconsistency, whether of the nature of a conflict or of substantial ambiguity between versions, are not finally resolved by a verbal comparison of the two versions alone. That is the starting point, but one must go further. That is because even an apparently clear version of a provision may in the end prove absurd or at odds with the rest of the enactment or with the general system of the law.

The ultimate step in reconciling the two versions requires an evaluation of the common meaning drawn from the two versions against the entire enactment and the system in which it is intended to operate. If the preliminary common meaning clashes

with such system or with the enactment as a whole, then it is quite likely that the court will reject it as the solution to the problem or that it will at least be persuaded to look elsewhere for the "rational choice".

Judicial reasoning of this kind may be represented in summary form as follows:

I $A^e + B^e + A^f \rightarrow A$

(reconciling the versions on a purely semantic level)

II $A^e_o + B^e + A^f_o \rightarrow B$

(reconciling the versions in light of the context)[2]

c) Examples

A number of decisions of Canadian courts may serve to illustrate this reasoning.

The case of Re Black and Decker Manufacturing Co. Ltd. and the Queen, (1973), 34 D.L.R. (3^d) 308 (Ont. C.A.), reversed [1975] 1 S.C.R. 411, well illustrates the principle just stated. The Court of Appeal limited its analysis to a comparison of the two versions on a purely semantic level; the Supreme Court of Canada went much further by consulting the general system of the law in addition to the few provisions requiring interpretation.

In that case the Court of Appeal had to decide whether a newly amalgamated company could be prosecuted for the sins of the amalgamating companies. The relevant portions of the Canada Corporations Act read as follows:

137 (13)...

(b) the amalgamated company possesses all the property, rights, assets, privileges and franchises, and is subject to all the contracts, liabilities, debts and obligations of each of the amalgamating companies.

(14) All rights of creditors against the property, rights, assets, privileges and franchises of a company amalgamated under this section and all liens upon its property, rights, assets, privileges and franchises are unimpaired by the amalgamation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the amalgamated company and may be enforced against it.

137 (13)...

(b) La compagnie née de la fusion possède tous les biens, actifs, prérogatives et concessions de chacune des compagnies constituantes, et elle est assujettie à tous les contrats et engagements, et est liée par toutes les dettes et obligations, de chacune d'entre elles.

(14) Les droits des créanciers à l'encontre des biens, des droits, des actifs, des prérogatives et des concessions d'une compagnie née d'une fusion sous le régime du présent article et les privilèges sur les biens, les droits, les actifs, les prérogatives et les concessions ne sont nullement atteints par la fusion; les dettes, les contrats, les passifs et les fonctions de la compagnie deviennent tous, dès lors, ceux de la compagnie née de la fusion et peuvent être exécutés contre elle.

The narrow issue was, according to Arnup J.A. speaking for the Court of Appeal, "whether s-s. (13)(b) of s. 137, in making the new company 'subject to all the liabilities' of each of the old companies, imposes upon the new company criminal liability of one of the old companies." Without referring specifically to the Official Languages Act, Arnup J.A. found significance in a comparison of the French version with the English:[5]

> "The words used in para. (b) as the French equivalent of "liabilities" is "engagements", and the equivalent of "liabilities" in s-s. (14) is given in French as "passifs". My brother Jessup, whose knowledge and grasp of the French language is much greater than mine, has pointed out to me that both "engagements" and "passifs" are commercial synonyms for the English word "liabilities". In his view, if a connotation of <u>criminal</u> liability had been intended the French synonym would have been the word "responsabilités".

This reasoning, along with the absence of express language imposing a penal sanction, was enough for the Court of Appeal to hold that criminal responsibility did not pass with the amalgamation.

The Supreme Court of Canada overruled the Court of Appeal on the ground that it had misapprehended the nature of an amalgamation.

Dickson J., writing for the Supreme Court, toyed somewhat with the issue raised below by comparing the two language versions of another subsection while demonstrating how misleading presumptions and reverse presumptions can be, depending on how they are used:[6]

> "(iv) the French version of s. 137(1), perhaps better than the English version, serves to express what has occurred. "Deux ou plus de deux compagnies ... peuvent fusionner et continuer comme une seule et même compagnie". The effect is that of blending and continuance as one and the self same company; ... (vi) if Parliament had intended that a company by the simple expedient of amalgamating with another company could free itself of accountability for acts in contravention of the Criminal Code or the Combines Investigation Act or the Income Tax Act, I cannot but think that other and clearer language than that now found in the Canada Corporations Act would be necessary."

In the case of Mekies v. Directeur du Centre de détention Parthenais, [1977] C.S. 91, affirmed [1977] C.A. 362, civil liberties notions were instrumental in eliminating one of the official versions or, at least, in imposing on it an interpretation compatible with the other. The case involved an application for the issue of a writ of habeas corpus. The applicant, a Canadian citizen, was being detained for eventual extradition to France under warrants issued pursuant to Canada's Extradition Act, and sought his release on the basis of an extradition treaty entered into by Great Britain and France in 1878.

An interpretative problem at the heart of the case was caused by a difference between the two language versions of article X of the Extradition Treaty in which it had been drafted.[7]

The two versions read as follows:

If the fugitive criminal who has been committed to prison, be not surrendered and conveyed away within two months after such committal, or within two months after the decision of the Court upon the return to a writ of habeas corpus in the United Kingdom, he shall be discharged from custody, unless sufficient cause be shown to the contrary.	Si le fugitif qui a été arrêté n'a pas été livré et emmené dans les deux mois après son arrestation, ou dans les deux mois après la décision de la Cour sur le renvoi d'une ordonnance d'habeas corpus dans le Royaume-Uni, il sera mis en liberté, à moins qu'il n'y ait d'autre motif de le retenir en prison. [Emphasis added]

The English version was said to be ambiguous in that it would have the period of detention computed from the day the fugitive is "committed to prison". This could mean either the arrest and incarceration of the fugitive by virtue of the warrant issued in Canada upon the request of France, or it could refer to the committal of the fugitive after the court decides that the evidence produced justifies the extradition.

The French version, on the other hand, was much clearer. It speaks of "l'arrestation", the arrest of the fugitive, and not of his committal to prison. That can only relate to the first hypothesis suggested in the English version, and excludes the suggestion that the two months is to be computed after a court's eventual decision on the sufficiency of evidence to extradite.[8]

Of course, the applicant alleged that his detention, computed from the day of arrest, exceeded the two months allowed. France had not at that time pursued the extradition proceedings any further.

../10

Ironically, the lawyer for France argued that the clearer French version should be ignored since only the English version of the treaty could be considered authentic in Canada. This argument was founded on a decision of the British High Court in R. v. Governor of Brixton Prison; Ex parte Mehamed Ben Romdan, where an identical question arose in the interpretation of the same article of the Treaty. The British court concluded that, in England, only the English version of the treaty is authentic, and that the Court had no duty to attempt to bring the English version into harmony with the clearer French.[9] Thus, while there was some indication[10] that the British court would have decided differently had they applied the French version as well, they came to the conclusion on the basis of the English version alone that the two months must be computed from the committal by the magistrate to await extradition, and not from the initial arrest under the warrant.

The Québec Superior Court held that the British reasoning does not apply in Canada, where the courts have not only the right but also the duty to look at both official texts and to interpret them in the light of one another.[11] The Extradition Treaty between France and Great Britain had been promulgated and published in Canada, in both languages, in the Canada Gazette.[12] It was also published in both languages in the Statutes of Canada, 1879.[13] Moreover, as the Superior Court pointed out, section 3 of Canada's Extradition Act recognizes the paramount force of extradition treaties existing at the time of the coming into force of the Act.[14]

The Superior Court then cited[15] Marcotte v. Deputy A.G. Can.,[16] for the fundamental principle that, in a matter of conflict, real ambiguity or serious doubt in a law relating to the liberty of the individual, the court has the solemn duty to give preference to the interpretation that favours the liberty of the subject.

Convinced that the English was ambiguous and the French absolutely precise, the latter clearly favouring the liberty of the subject while the former tended to lead to indefinite incarceration, the Superior Court concluded that the two months should be counted from the arrest of the fugitive and that Mekies should therefore be released, the period having long since expired.[17]

The Court of Appeal was unanimously of the same opinion[18], deciding that the interpretation applied by the Superior Court was the only one in harmony with the French version. The British judges in Brixton Prison were said to have recognized this fact, that their interpretation of the English version ran counter to the clear meaning of the French.[19] On the other hand, the construction placed on the provision by Hugessen J. was not incompatible with the English version.[20]

The case of Gulf Oil Canada Ltd. v. Canadien Pacifique Ltée, [1979] C.S. 72, demonstrates the importance of reconciling the two versions within the confines of the applicable legal system.

In an action for damages for breach of contract, Canadian Pacific invoked the provisions of an order made under the federal National Transportation Act and Transport Act, which stated that a carrier is not liable for loss caused by "act of God", according to the English version, or by "cas fortuit ou de force majeure" according to the French.[21] The Superior Court held that the act of a third party -- the truck that hit the locomotive -- albeit not an "act of God" was nevertheless a "cas fortuit" exonerating the defendant railway company from liability in Québec:[22]

> "Appliquer cette notion d'"act of God" du common law dans le cas soumis rendrait la défenderesse passible des dommages qui lui sont réclamés car l'accident, choc du camion de

Géralin Inc. contre la deuxième locomotive du convoi, découle du fait d'un tiers et ne peut être assimilé à un tremblement de terre ou à la foudre ou act of God.

En droit québécois, le fait du tiers est assimilé au cas fortuit ou de force majeure permettant le renvoi d'un recours en responsabilité aussi bien contractuel que délictuel, article 1200 C.C.

. . .

Le Législateur n'a pas traduit "act of God" par "acte de Dieu" mais par "cas fortuit ou de force majeure". A-t-il voulu conserver la notion de common law dans la traduction? Je crois que non, car, dans un tel cas, il n'aurait pas employé les mots "cas fortuit ou de force majeure" qui n'ont pas la même portée juridique dans notre système de droit."

Citing paragraph 8(2)(c), the court reasoned:[23]

"Le Législateur, par le paragraphe ci-dessus, a tenu compte des systèmes juridiques différents au Canada et a voulu qu'un texte de loi puisse avoir effet tout en étant compatible avec l'un ou l'autre. Ceci nécessitait l'emploi, dans une langue, de mots ou d'expressions dont l'effet pratique peut être différent de ceux de l'autre langue. Si l'on avait traduit "act of God" par "Acte de Dieu" dans l'ordonnance T-5, on ne pourrait appliquer, dans le cas soumis, la notion inexistante en common law de "cas fortuit" par la faute du tiers. Au contraire, en utilisant cette expression dans la version francaise, on a confirmé l'application de la notion selon le système juridique du Québec en accord avec l'esprit du paragraphe c), exception à la règle des paragraphes a) et d), ce dernier reproduisant sensiblement l'article 11 de la Loi d'interprétation. Il ne fait donc pas de doute que la conjugaison de la version francaise de l'article 3 de l'ordonnance T-5 et l'application de l'article 8(2)(c) de la Loi sur les langues officielles sont à l'effet de ne pas tenir compte de l'expression "act of God" pour décider de ce litige contrairement à ce que soutient la demanderesse."

Turning to the interpretation of a bilingual constitution -- there also, it is mandatory to reconcile the two versions of the Canadian Charter of Rights and Freedoms.

A signal decision of the Ontario Court of Appeal synthesizes our methodology and applies it to the interpretation of the Charter. The decision in Reference re Education Act of Ontario and Minority Language Education Rights recognizes the rights of francophone and anglophone minorities to a certain independence in the management of their own schools. The Court of Appeal had to interpret subsection 23(3) of the Charter, which reads as follows:

> Such a conclusion stems from our observation in countless decisions that, based on the rule of equal authenticity of French and English versions, a clear version of the law will normally resolve any doubt residing in an ambiguous one, and the context of a provision will normally resolve any difference between its two versions.
> [Even] though as an initial step in the interpretation of an ambiguous provision, a construction is found that is common to both the English and French versions, that construction must be related back to and tested against the entire context of the provision before being settled upon. Such was the conclusion drawn from the cases of Food Machinery Corporation v. The Registrar of Trade

(3) The right of citizens of Canada under subsections (1) and (2) to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province	(3) Le droit reconnu aux citoyens canadiens par les paragraphes (1) et (2) de faire instruire leurs enfants, aux niveaux primaire et secondaire, dans la langue de la minorité francophone ou anglophone d'une province:
(a) applies wherever in the province the number of children of citizens who have such a right is sufficient to warrant the provision to them out of public funds of minority language instruction; and	a) s'exerce partout dans la province où le nombre des enfants des citoyens qui ont ce droit est suffisant pour justifier à leur endroit la prestation, sur les fonds publics, de l'instruction dans la langue de la minorité;

(b) includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.

b) comprend, lorsque le nombre de ces enfants le justifie, le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique financés sur les fonds publics.

The Court did not see the interpretation of section 23 of the Charter as a purely semantic exercise of reconciling the terms "établissements d'enseignement" in the French version with "educational facilities" in the English. The common meaning of these terms reduced to their lowest common denominator was equivalent to a guarantee of mere classrooms. On the other hand, the highest common meaning attributed to the terms, that for which the court opted, was equivalent to a guarantee of schools managed by francophones:

> "... it is useful to consider a passage from Beaupré, Construing Bilingual Legislation in Canada (1981), at p. 125:
>
> > "... the only reliable approach to the construction of bilingual Canadian legislation entails, as an initial step, a comparative reading of both official versions of the legislation, whenever it raises practical problems of application or its meaning is subject to some doubt.
> >
> > Marks, Ville de Montréal v. ILGWU Centre Inc. [[1974] S.C.R. 59, 24 D.L.R. (3d) 694, 2 L.C.R. 26] and most importantly, of The Queen v. Compagnie Immobilière BCN Ltée." [sic]
>
> It is important to note that deciding upon a definition which is common to both may be too restrictive. Thus, in the second [sic] case mentioned by Beaupré, namely, R. v. Compagnie Immobilière BCN Ltée, [1979] 1 S.C.R. 865 at p. 872, 97 D.L.R. (3d) 238 at p. 242, [1979] C.T.C. 71, Pratte J. asserted:
>
> > "In my view...the narrower meaning of one of the two versions should not be preferred where such meaning would clearly run contrary to the intent of the legislation and would consequently tend to defeat rather than assist the attainment of its objects."

In the light of this approach to construing bilingual texts, one should consider dictionary meanings of the terms used.[24]

When considering these definitions, it must be remembered that s.23 speaks of "minority language educational facilities" and to "établissements d'enseignement de la minorité linguistique". The English version is somewhat ambiguous. The word "minority" can either be an adjective referring only to the word "language" or it can mean "the language educational facilities of the minority". The latter interpretation would certainly appear to be the meaning of the French version. It is possessive rather than descriptive. At least some support for this interpretation can be found in the reference in the opening paragraph of s-s.23(3) where the English version refers to "the language of the English or French linguistic minority population", and the French version refers to "la langue de la minorité francophone ou anglophone". The educational facilities in s. 23(3)(b) would appear to be those of the minority.

Further support for this conclusion may be found in the fact that para. (3)(a) of s. 23 provides the right to "minority language instruction" which must include, apart from the requisite teachers and teaching materials, either classrooms or other physical facilities, like television, for such instruction. There would be no need for para. (3)(b) if the only purpose were to be a requirement of physical facilities. In our opinion, the rights granted by para. (3)(b) must be greater than those guaranteed by para. (3)(a).[25]

. . .

The Charter contemplates something more than French-speaking teachers in Ontario class-rooms in which French-speaking children are taught.

Further, one might draw attention to the fact that both paras. (3)(a) and 3(b) refer to the "numbers warrant" test. The repetition in para. (3)(b), even though in slightly different terms, would not be necessary unless the facilities there referred to are different from those included in the providing of instruction. It would appear, further, that a different numbers test might apply. Logically a larger number would be required for para. (3)(b) than for para. (3)(a). No one questions that para. (3)(b) at least means "minority language education facilities" separate from majority language education facilities, where numbers warrant.

Thus, it would appear that where educational facilities are to be provided to assure the realization of the rights accorded by s.23(3)(b), the facilities to be provided must appertain to

> or be those of the linguistic minority. Both the English and the French versions of s. 23(3)(b) must be read together and, in our opinion, they accord in their meaning to support that interpretation."[26]

Thus it was important for the Court of Appeal of Ontario to seek the object and purpose for which the constitutional provision was enacted despite any apparent contradictions or inconsistencies between its two versions. Without this final step in the interpretation of the Charter, a so-called reconciliation of its two versions would have been incomplete.

6. Summary: Method of Interpreting Bilingual Legislation

Thus, in conclusion, our examination of some of the relevant case-law amply demonstrates that the only reliable approach to the construction of bilingual Canadian legislation entails, as an initial step, a comparative reading of both official versions of the legislation.

Such a conclusion stems from our observation in countless decisions that, based on the rule of equal authenticity of French and English versions, a clear version of the law will normally resolve any doubt residing in an ambiguous one, and the context of a provision will normally resolve any difference between its two versions.

As a rule of thumb, we suggested a formula for this approach to the interpretation of bilingual legislation: (1) $A^e + B^e + A^f \rightarrow A$ and its corollary: (2) $A^e_o + B^e + A^f_o \rightarrow B$. In summary form, the formula is likely to answer any variation of the problem that may arise. There may be, for example, three constructions possible on a reading of the two versions, as in $A^e + B^e + A^f + C^f \rightarrow A$. The one construction common to both versions (A) would still prevail, so long as it is not subject to objection when the provision is so read within its total context. The latter condition is the major premise of the above-mentioned corollary, which itself brings us back to the context approach as the final step in the equation.

In other words, even though as an initial step in the interpretation of an ambiguous provision, a construction is found that is common to both the English and French versions, that construction must be related back to and tested against the entire context of the provision before being settled upon.

ENDNOTES

1. Key: A, B -- possible interpretations
   e -- English version
   f -- French version

2. Key: A, B -- possible interpretations
   e -- English version
   f -- French version
   o -- subject to some objection, because absurd or out of context

3. These examples are taken from my text: Interpreting Bilingual Legislation, Carswell, Toronto, 1986.

4. R.S.C. 1970, c. C-32.

5. Re Black and Decker Mfg. Co. Ltd., (1973) 34 D.L.R. (3d) 308 (Ont. C.A.), p. 324.

6. Id., [1975] 1 S.C.R. 411, pp. 417-18.

7. Mekies v. Directeur du Centre de détention Parthenais, [1977] C.A. 362, p. 363.

8. Id., [1977] C.S. 91, pp. 92-93.

9. R. v. Governor of Brixton Prison, Ex parte Mehamed Ben Romdan, [1912] 3 K.B. 190, pp. 195-197.

10. Id., pp. 195 and 197.

11. Hugessen A.C.J. in Mekies, supra, note 8, p. 93 (Qué. S.C.).

12. (1878) 11 Canada Gazette, p. 1379 (English) and p. 1397 (French).

13. S.C. 1879, page ix.

14. Mekies, supra, note 8, p. 93 (Qué. S.C.).

15. Id., p. 94; confirmed by Qué. C.A., supra, note 7, p. 365.

16. [1976] 1 S.C.R. 108, at 115.

17. Mekies, supra, note 8, p. 94 (Qué. S.C.).

18. Ibid., supra, note 7, Mayrand J.A. for Court of Appeal Bench of three judges.

19. Id., p. 363.

20. Id., p. 364.

21. Gulf Oil Canada Ltd. v. Canadien Pacifique Ltée, [1979] C.S. 72, p. 73, 75.

22. Id., p. 75.

23. Id., p. 76.

24. Ref. re Education Act of Ontario and Minority Language Education Rights, (1984) 10 D.L.R. (4th) 491 (C.A. Ont.), pp. 524-5.

25. Id., pp. 526-527.

26. Id., pp. 527-8.

27. This summary is drawn from my text, supra note 3, p. 153.