

CANADA / JUDGMENT

Re Manitoba Language Rights Order

[1990] 3 SCR 1417**COURT**

Supreme Court of Canada

DECIDED

7 December 1990

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Re Manitoba Language Rights Order Collection Supreme Court Judgments Date 1990-12-07 Report

[1990] 3 SCR 1417 Case number 18606 Judges Lamer, Antonio; La Forest, Gérard V.; L'Heureux-Dubé, Claire; Gonthier, Charles Doherty; Cory, Peter deCarteret; McLachlin, Beverley; Stevenson, William On appeal from Manitoba Subjects Constitutional law Notes SCC Case Information: 18606 Decision Content Re Manitoba Language Rights Order, [1990] 3 S.C.R. 1417 IN THE MATTER OF a Reference by the Governor in Council concerning certain language rights under Section 23 of the Manitoba Act, 1870, and Section 133 of the Constitution Act, 1867, set out in Order-in-Council P.C. 1984-1136 dated the 5th day of April 1984 File No.: 18606. 1990: December 7. Present: Lamer C.J. and La Forest, L'Heureux-Dubé, Gonthier, Cory, McLachlin and Stevenson JJ. order for special hearing Constitutional law -- Language guarantees -- Hearing to be held to determine certain constitutional questions arising from Supreme Court's order establishing minimum time period necessary for the translation, re-enactment, printing and publishing of Manitoba laws -- Temporary validity of laws of Manitoba continued until judgment rendered but only as regards the matters raised in application. ORDER to inscribe for hearing certain constitutional questions which arise from the order of this Court dated November 4, 1985, [1985] 2 S.C.R. 347. Donna J. Miller and Deborah Carlson, for the Attorney General of Manitoba. Michel Bastarache and Antoine F. Hacault, for the Société franco-manitobaine. Vaughan L. Baird, Q.C., for Roger Bilodeau. François Dumaine, for the Fédération des francophones hors Québec. Stephen A. Scott and Victoria Percival-Hilton, for Alliance Québec. D. Martin Low, Q.C., and Warren J. Newman, for the Attorney General of Canada. //Lamer C.J.// The judgment of the Court was delivered orally by LAMER C.J. -- We are all of the view that this Court has jurisdiction to entertain this application to hold a hearing and determine the questions submitted to us by the parties. We are of the view that, in the exercise of our discretion, we should hear this matter and address the questions put to us by Manitoba save question number 6; in the exercise of our discretion we will in the stead address the question put to us by Alliance Quebec in substitution to Manitoba's question number 6, as amended in accordance with the submission of the Société franco-manitobaine. The question reads as follows: 6.(a) If the obligations of the Province of Manitoba pursuant to s. 23 of the Manitoba Act, 1870 are more extensive than

its practice, can the period of temporary validity established pursuant to the Order of this Court dated November 4, 1985, be extended, or a further period be established, to cover the orders in council, instruments or documents in question, as well as the rights, obligations and legal effect thereof, in order to allow the Province to conform to its constitutional obligations?

- (b) Can such orders in council, instruments or documents, as well as the rights, obligations and legal effect thereof, if invalid, be rendered valid retroactively, and if so by what means? We refer the parties to the Chief Justice's Chambers for setting down a date for hearing, and to the rota judge to settle all other procedural matters within Chamber's jurisdiction, as they arise. We order that the order as regards the continuation of the temporary validity of laws referred to in paragraph 2(a) of the order of this Court reported at [1985] 2 S.C.R. 347, at p. 349, be further continued, but only as regards the matters raised in this application*, until the hearing has been held and judgment has been handed down, subject to any order of this Court. This order is to be served upon all Attorneys General. Order accordingly. Solicitor for the Attorney General of Manitoba: The Attorney General of Manitoba, Winnipeg. Solicitors for the Société franco-manitobaine: Michel Bastarache, Ottawa; Thompson, Dorfman, Sweatman, Winnipeg. Solicitors for Roger Bilodeau: Newman MacLean, Winnipeg. Solicitor for the Fédération des francophones hors Québec: François Dumaine, Ottawa. Solicitors for Alliance Québec: Stephen A. Scott and Victoria Percival-Hilton, Montréal. Solicitor for the Attorney General of Canada: John C. Tait, Ottawa. * The following constitutional questions were submitted to the Court: 1. Are any or all of the types of orders in council described below, and listed in the materials provided in the casebook or orders in council similar in character thereto, subject to:
- (i) s. 23 of the Manitoba Act, 1870; (ii) the first paragraph of the Order of this Court dated November 4, 1985?
 - (a) Orders in council establishing government departments, health and social services district boards and committees of cabinet;
 - (b) Orders in council authorizing a Minister or a Crown corporation to enter into a contract;
 - (c) Orders in council authorizing the issuing of grants to municipalities or community groups;
 - (d) Orders in council relating to appointments and, in particular:
 - (i) appointing judges and members of quasi-judicial tribunals; and (ii) appointing persons to positions in the civil service or to Crown corporations.
 - (e) Orders in council affecting the rights or responsibilities of a specific person or persons, such as the issuing of a licence or permit to such person or persons. 2. Are any or all of the types of instruments or documents described below, and listed in the materials provided in the casebook or instruments or documents similar in character thereto, subject to:

- (i) s. 23 of the Manitoba Act, 1870; (ii) the first paragraph of the Order of this Court dated November 4, 1985?
- (a) Contracts attached to orders in council authorizing a Minister or a Crown corporation to enter into that contract;
- (b) Schedules attached to orders in council authorizing grants to municipalities or community groups and:
 - (i) setting the terms and conditions on which those grants are to be made; or (ii) listing the recipient groups.
- (c) Schedules attached to orders in council described in question 1(e). 3.If the answer to either the first question or the second question is affirmative with respect to any or all of the types of orders in council, or instruments or documents described therein, what principles or criteria apply to determine the extent to which orders in council, or instruments or documents described therein, are subject to s. 23 of the Manitoba Act, 1870? 4.Are any or all of the types of instruments or documents described below, and listed in the materials provided in the casebook or instruments or documents similar in character thereto, subject to:
 - (i) s. 23 of the Manitoba Act, 1870; or (ii) the first paragraph of the Order of this Court dated November 4, 1985?
 - (a) Instruments or documents created by non-governmental organisations or persons and incorporated by reference in the laws of Manitoba;
 - (b) Instruments or documents created by governments other than that of the Province of Manitoba, including departments, boards and agencies of such governments, and incorporated by reference in the laws of Manitoba;
 - (c) Instruments or documents created by international organizations or persons and incorporated by reference in the laws of Manitoba;
 - (d) Instruments or documents created by departments, boards and agencies of the government of the Province of Manitoba and incorporated by reference in the laws* of Manitoba. 5.If the answer to the fourth question is affirmative with respect to any or all of the types of instruments or documents described therein, what principles or criteria apply to determine the extent to which these instruments or documents are subject to s. 23 of the Manitoba Act, 1870? 6.(a) If the obligations of the Province of Manitoba pursuant to s. 23 of the Manitoba Act, 1870 are more extensive than its practice, can the period of temporary validity established pursuant to the Order of this Court dated November 4, 1985, be extended, or a further period be established, to cover the orders in council, instruments or documents in question, as well as the rights, obligations and legal effects thereof, in order to allow the Province to conform to its constitutional obligations?

- (b) Can such orders in council, instruments or documents, as well as the rights, obligations and legal effects thereof, if invalid, be rendered valid retroactively, and if so by what means? *
- See Erratum, [1991] 1 S.C.R. iv

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