

## An issue of language justice

Columnist Lorne Gunter has only been kidding himself if he believed that the place of French in Western Canada was a dead issue, as he asserts in his Feb. 17 column ("Traffic ticket language saga began in Saskatchewan").

It is true that the unilingual English status of the governments of Alberta and Saskatchewan has constituted a century-long and very effective strategy designed to undo the official bilingualism of the territory out of which these provinces were created, as well as the guarantees of bilingual governance that were made to the inhabitants of Rupert's Land — by no less an authority than Queen Victoria herself — as a precondition for the territory's entry into Canada.

But despite more than a century's work to erase French as a founding and official language of government in Western Canada, the inclusive and innovative Fransaskois community is vibrant: there are more than 50,000 fluent speakers of French in Saskatchewan and it is a number

destined to grow as ever more young people enroll in the province's francophone schools and immersion programs, the only ones in Saskatchewan in which enrolments are actually increasing.

These Saskatchewanians are not separatists, the spawn of Trudeau or agents provocateurs from Quebec — they are our neighbours and our children.

The Alberta Caron case holds out the possibility of finally righting past wrongs by implementing Manitoba-style provincial bilingualism in Saskatchewan at minimal cost. It could also give Saskatchewan the opportunity to finally profit from the advantages that come with partial, but official bilingual status.

French is not a dead issue here — *au contraire*, French offers Saskatchewan a path to its future as a diverse, prosperous and socially just province with a national and international profile.

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### COMMENTARY

# Traffic ticket language saga began in Saskatchewan

By LORNE GUNTER

On Nov. 6, 1980, Father Andre Mercure was speeding along one of Saskatchewan's highways when he was pulled over by a Mountie and given a ticket. Fr. Mercure refused to pay it — because it was not printed in both official languages.

The crusading cleric also insisted his trial be conducted in French, and that the pertinent provincial traffic laws be translated into French before his trial proceeded. It took eight years for the case to reach the Supreme Court of Canada and for the justices there to rule on it. When they did, they sided with Fr. Mercure — sort of.

The court said that when Saskatchewan entered Confederation in 1905, it was still guided by language laws that had been passed when it was part of the North-Western Territories. Those laws required that the legislature, laws and courts of the territory be bilingual, so Saskatchewan had to be bilingual, too.

But the justices added that this requirement was merely statutory, not constitutional. Saskatchewan could make itself officially English-only if it merely passed a law in both official languages declaring itself so, which it quickly did. In 1988, Alberta did likewise — passing a law in French and English declaring its courts, legislature and statutes unilingually English.

Several times since, francophones in Alberta and Saskatchewan have returned to court, believing they have found new angles from which to challenge the Mercure ruling. Each time, they have been rebuffed.

In the 1990s, Albertan Luc Paquette sought to have his drug charges thrown out because he could not have a trial in French. The Supreme Court refused even to hear his appeal, saying it had already dealt with the matter. And in 2003, a Saskatchewan francophone activist, Denis Desgagne, was told the same by a provincial court judge when he sought to fight two English-language traffic tickets.

Now another Albertan, truck driver Gilles Caron, is seeking to have a 2003 traffic ticket invalidated because it, too, was English-only. Like Desgagne in Saskatchewan, Caron should have been told early in the process that this is a dead issue. But luckily for him, he found a crusading professor and an activist judge.

Ed Aunger, a political scientist at the University of Alberta's French-language Campus Saint-Jean, believes that since the Mercure decision in 1988, new evidence has come to light that proves francophones in the North-Western Territories had a constitutional right to French services and laws, not merely a statutory right.

Prof. Aunger and Mr. Caron's lawyer, Rupert Baudais, were able to convince Alberta Provincial Court Judge Leo Wenden in 2008 to declare unconstitutional Alberta's unilingual traffic laws and quash Mr. Caron's \$54 ticket.

While acknowledging that Canada's Constitution clearly gives provincial courts "no inherent jurisdiction" to strike down laws based on their constitutionality, Judge Wenden, who also is head of Alberta's Itinerant French Court Program — which trains judges to hear cases in French and promotes the use of French during trials — nonetheless found for himself the right

to strike down those parts of Alberta's highway safety laws under which Mr. Caron's ticket had been issued. The failure to produce bilingual tickets violated Mr. Caron's constitutional rights, Judge Wenden declared.

Since 2008, an appeal by the Alberta government of Judge Wenden's ruling has been stalled while the two sides battled over who should pay the cost of taking the matter to higher courts. Earlier this month, no less an authority than the Supreme Court of Canada ordered Alberta to give the unemployed Mr. Caron \$120,000 to pay the legal costs of his future appeals.

Alberta taxpayers already have paid for an 89-day trial, with 9,000 pages of transcripts, eight expert witnesses and 93 pieces of evidence, all of which led to a decision it is doubtful a provincial court had the authority to make. Nonetheless, Mr. Caron will now be able to proceed to the Alberta Court of Appeal.

Few experts give the Caron case much chance of getting to the Supreme Court. But I'm not so sure. It's possible the high court will take this case so that it can settle this issue once and for all.

There is also a possibility that the court truly will be persuaded by Prof. Aunger's contention that a heretofore little-known statement by the governor-general in 1870 elevated the language rights of North-Western Territories' residents to that of a constitutional guarantee.

If the court reverses the 1988 Mercure decision, it would pick off a scab most Albertans and Saskatchewanians had long since thought was healed.

■ Gunter writes for the *National Post*.