

**SUPREME COURT OF CANADA**

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| **Citation:** Caron *v.* Alberta, 2015 SCC 56, [2015] 3 S.C.R. 511 | **Date:** 20151120  **Docket:** 35842 |

Between:

Gilles Caron

Appellant

and

Her Majesty The Queen

Respondent

**And Between:**

Pierre Boutet

Appellant

and

Her Majesty The Queen

Respondent

- and -

Attorney General of Canada, Attorney General for Saskatchewan,

Alberta Catholic School Trustees’ Association, Conseil scolaire Centre-Nord No. 2, Denis Lefebvre, Association canadienne-française de l’Alberta,

Commissioner of Official Languages of Canada, Assemblée communautaire fransaskoise and Fédération des associations de juristes d’expression française de common law inc.

Interveners

**Coram:** McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

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| **Joint Reasons for Judgment:**  (paras. 1 to 114)  **Joint Dissenting Reasons:**  (paras. 115 to 244) | Cromwell and Karakatsanis JJ. (McLachlin C.J. and Rothstein, Moldaver and Gascon JJ. concurring)  Wagner and Côté JJ. (Abella J. concurring) |

Caron *v.* Alberta, 2015 SCC 56, [2015] 3 S.C.R. 511

Gilles Caron Appellant

v.

Her Majesty The Queen Respondent

‑ and ‑

Pierre Boutet Appellant

v.

Her Majesty The Queen Respondent

and

Attorney General of Canada,

Attorney General for Saskatchewan,

Alberta Catholic School Trustees’ Association,

Conseil scolaire Centre‑Nord No. 2, Denis Lefebvre,

Association canadienne‑française de l’Alberta,

Commissioner of Official Languages of Canada,

Assemblée communautaire fransaskoise and

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d’expression française de common law inc. Interveners

**Indexed as: Caron *v.* Alberta**

2015 SCC 56

File No.: 35842.

2015: February 13; 2015: November 20.

Present: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon and Côté JJ.

on appeal from the court of appeal for alberta

*Constitutional law — Language rights — Alberta laws and regulations — Alberta Languages Act provides provincial laws and regulations be enacted, printed and published in English only — Whether Languages Act is ultra vires or inoperative insofar as it abrogates constitutional duty owed by Alberta to enact, print and publish its laws and regulations in both English and French — Meaning of “legal rights” in 1867 Address to Queen concerning Rupert’s Land and North‑Western Territory — Languages Act, R.S.A. 2000, c. L‑6 — Rupert’s Land and North‑Western Territory Order (1870) (U.K.) (reprinted in R.S.C. 1985, App. II, No. 9), Schs. A, B.*

*Provincial offences — Highways — Traffic offences — Alberta law and regulation under which accused were charged enacted, printed and published in English only — Whether Traffic Safety Act and other laws and regulations that have not been enacted, printed and published in both English and French unconstitutional — Languages Act, R.S.A. 2000, c. L‑6 — Traffic Safety Act, R.S.A. 2000, c. T‑6 — Use of Highway and Rules of the Road Regulation, Alta. Reg. 304/2002.*

C and B were charged with traffic offences under the Alberta *Traffic Safety Act* and the *Use of Highway and Rules of the Road Regulation*, which were enacted in English only. Both claimed that the law and regulation were unconstitutional because they were not enacted in French, and further that the Alberta *Languages Act* was inoperative to the extent that it abrogates what they claimed was a constitutional obligation on the part of Alberta to enact, print and publish its laws and regulations in both French and English.

In 1870, the vast western territories under the control of the Hudson’s Bay Company became part of Canada. The terms of this Canadian expansion were largely the result of negotiations and agreement between Canadian officials and representatives of the territories. The result was that the new province of Manitoba was added by the *Manitoba Act, 1870*. Further, the remainder of what had been the North‑Western Territory and Rupert’s Land — a vast land mass including most of what is now Alberta, Saskatchewan, Nunavut, the Yukon, the Northwest Territories, and parts of Ontario and Quebec — was annexed as a new Canadian territory under federal administration by the 1870 *Rupert’s Land and North‑Western Territory Order* (the “*1870* *Order*”). The *Manitoba Act, 1870* expressly provided for legislative bilingualism. The *1870 Order* did not.

C and B contend, however, that legislative bilingualism was in fact guaranteed for both areas and therefore extends to the modern province of Alberta, which was created out of the new territory. Their argument is intricate and has changed over time, but rests on one key proposition: an assurance given by Parliament in 1867 (the “*1867 Address*”) that it would respect the “legal rights of any corporation, company, or individual” in the western territories must be understood as a promise of legislative bilingualism. And that promise is an entrenched constitutional right because the *1867 Address* became a schedule to the *1870 Order*, which is part of the Constitution of Canada by virtue of s. 52(2)(*b*) and the Schedule to the *Constitution Act,* *1982*. Their challenge was successful at trial, but was rejected by the summary conviction appeal court and by the Court of Appeal.

*Held* (Abella, Wagner and Côté JJ. dissenting): The appeals should be dismissed.

*Per* McLachlinC.J. and Rothstein, Cromwell, Moldaver, Karakatsanis and Gascon JJ.: Alberta is not constitutionally obligated to enact, print and publish its laws and regulations in both French and English. C and B’s position is inconsistent with the text, context, and purpose of the documents on which they rely and must be rejected. Absent some entrenched constitutional guarantee of legislative bilingualism, a province has the authority to decide the language or languages to be used in its legislative process. Clearly, a province may choose to enact its laws and regulations in both French and English. But one cannot simply infer a guarantee of legislative bilingualism that would override this exclusive provincial jurisdiction absent clear textual and contextual evidence to support an entrenched right.

Linguistic rights have always been dealt with expressly from the beginning of Canada’s constitutional history. It has never been the case that the words “legal rights” have been understood to confer linguistic rights. The words “legal rights” in the *1867 Address* cannot support a constitutional guarantee of legislative bilingualism in the province of Alberta. Contemporaneous guarantees of language rights were explicit and clear. The Canadian Parliament knew how to entrench language rights and did so in the *Constitution Act, 1867* and the *Manitoba Act, 1870* in very similar and very clear terms. The total absence of similar wording in the contemporaneous *1867* *Address* or *1870* *Order* counts heavily against C and B’s contention that the words “legal rights” should be understood to include language rights.

In fact, the contemporary discussions show that neither Canada nor the representatives of the territories ever considered that the promise to respect “legal rights” in the *1867 Address* referred to linguistic rights. Rather, the contemporary evidence shows that the territorial representatives considered that their linguistic rights had been assured through the *Manitoba Act, 1870*, not the *1870 Order*, and not the *1867* *Address*, which is annexed as a schedule to the *1870 Order*. In addition, the parliamentary debates related to the adoption of the *1867* *Address* show that language rights were not subsumed under the phrase “legal rights”.

There is no doubt that the territorial representatives sought to entrench bilingual rights, just as there is no doubt they sought for the territories to enter Canada as a province. However, the contrast between the two contemporaneous documents in relation to legislative bilingualism could not be more stark. There is express provision in the *Manitoba Act, 1870* for legislative bilingualism in terms that were very similar to those used in s. 133 of the *Constitution Act, 1867*. However, in the *1870 Order*, there is no express reference to legislative bilingualism. This strongly suggests that while legislative bilingualism was successfully negotiated and established for the new province of Manitoba, there was no similar agreement or provision for legislative bilingualism in the newly annexed territories.

The purpose of the *1870 Order* was simply to effect the transfer of Rupert’s Land and the North‑Western Territory to Canada. To the extent that an historic compromise was reached to entrench legislative bilingualism as part of the annexation of Rupert’s Land and the North‑Western Territory, it was entrenched in the *Manitoba Act, 1870*, and not elsewhere. C and B’s position overlooks the failure of the territorial representatives to have the entire territories enter Canada as a province. Instead, the territorial representatives accepted a compromise whereby only a small portion of the territories — the province of Manitoba — would join the Dominion as a province, and the rest of the territories would be under Parliament’s jurisdiction. This is no small detail. Many of the territorial representatives’ demands were tied to the creation of a province and the existence of a provincial legislature (demands such as voting rights, representation in the Canadian Senate and House of Commons, and the subsidy to the province in proportion to its population). Like the right to legislative bilingualism, these demands were incorporated in the *Manitoba Act, 1870*, but the population outside the newly created province received none of these rights.

Furthermore, it would be incongruous for an 1867 document to embody a compromise reached only three years later in 1870. Rather, this tends to confirm that the end result of the negotiations was the *Manitoba Act, 1870* —a bill adopted at the culmination of the negotiations.

To be sure, it is possible that parties to a negotiation could agree to give effect to an agreement by entrenching an older document. In the present case, however, this is implausible. B’s assumption that the British government could effectively entrench the compromise regarding legislative bilingualism reached in 1870 — by incorporating as a schedule an 1867 document issued not by the British government but by the Canadian government, one that makes no specific reference to language rights — is purely speculative.

One cannot simply resort to the historical evidence of the desires and demands of those negotiating the entry of the territories, and presume that those demands were fully granted. It is obvious that they were not. The Court must generously interpret constitutional linguistic rights, not create them. It must look at the ordinary meaning of the language used in each document, the historical context, and the philosophy or objectives lying behind the words and guarantees.

Accepting C and B’s position that legislative bilingualism was entrenched for all of the annexed territories in 1870 would require holding that the understanding of the status of legislative bilingualism in the new province of Alberta was fundamentally misunderstood by virtually everyone involved in the debate in the House of Commons at the time the province was created. However, federal legislation and the related debates in relation to the new North‑West Territories in 1875 and 1877 show that no one involved thought that there had been any guarantee of legislative bilingualism in 1870.

Finally, in 1988, this Court held in *R. v. Mercure*, [1988] 1 S.C.R. 234, that there was no entrenched right to legislative bilingualism in Saskatchewan and the constitutional position of Alberta on this point is indistinguishable. If C and B’s position is right, *Mercure* was wrong. Although the English text of the *1867 Address* remains unchanged, the French text has evolved over time. In the initial version published in the *Journaux de la Chambre des communes de la Puissance du Canada*, the phrase “legal rights” is translated as “*droits acquis*”. But in the text of the *1867 Address* that was eventually annexed as a schedule to the *1870 Order*, the phrase used is “*droits légaux*”. In any event, the analysis in this case does not depend upon which version of the French text is used. Whether the French version reads “*droits acquis*” or “*droits légaux*”, the conclusion remains the same.

*Per* Abella, Wagnerand Côté JJ. (dissenting): Alberta is constitutionally required to enact, print and publish its laws and regulations in both French and English. This is because the historic agreement between the Canadian government and the inhabitants of Rupert’s Land and the North‑Western Territory contained a promise to protect legislative bilingualism. That agreement is constitutionally entrenched by virtue of the *1867 Address*, which stated that upon Great Britain’s agreeing to transfer the territories, Canada would provide for the “legal rights” of any individual therein.

The constitutional status of the *1867* *Address* is reaffirmed in the modern context by virtue of it being annexed to the *1870 Order*, which is a constitutional document pursuant to s. 52(2)(*b*) of, and the Schedule to, the *Constitution Act, 1982*. The principles of constitutional interpretation must therefore be applied to the *1867 Address* in order to establish the meaning of the term “legal rights”. Properly understood, the constitutional compromise that gave rise to the promise to respect “legal rights” encompasses legislative bilingualism. Moreover, the case of *R. v. Mercure*, [1988] 1 S.C.R. 234, is not dispositive because this Court did not undertake an analysis of the compromise underlying the *1870 Order*.

The historical context leads to the unavoidable conclusion that there was a historic compromise regarding legislative bilingualism. The *1867 Address* establisheda constitutional guarantee of legislative bilingualism throughout the territories annexed in 1870. The *Address* promised that, once the annexation took place, Canada would provide for the “legal rights” of any individual therein. By its very terms, this promise was a forward‑looking undertaking that was meant to be shaped by subsequent negotiations. The meaning of its terms must therefore be informed by those negotiations.

The historical record shows convincingly that the territorial representatives demanded legislative bilingualism as a condition of annexation, and that the Canadian representatives accepted that demand without objection — indeed, with assurances that it would be met. This demand for legislative bilingualism and its acceptance by Canada were grounded in the pre‑annexation linguistic rights and practices in the territories, including an established right to legislative bilingualism. This historical context shows that by the time the *1870 Order* annexed the territories to Canada, the Canadian government had come to accept that legislative bilingualism was among the rights of the territories’ inhabitants. Thus, when the documents are properly interpreted in their entire context, legislative bilingualism was included in the promise of the *1867 Address* — itself incorporated into the *1870 Order* — to respect the inhabitants’ “legal rights”.

Specifically, the historical evidence shows that linguistic rights were of paramount importance to the inhabitants, and that they demanded and obtained a promise that these rights would be protected. This conclusion is reached on the basis of six overarching points. First, bilingualism was indisputably well established throughout Rupert’s Land and the North‑Western Territory in the period leading up to — and immediately following — the annexation. This was true of legislative bilingualism but also permeated the social and judicial fabric of the community.

At trial, the judge thoroughly canvassed the pre‑1870 legislative and judicial practices in Rupert’s Land. His findings of fact are entitled to deference and may be disturbed only on the basis of a palpable and overriding error. He found that legislative and judicial bilingualism had existed before the annexation, and extended throughout the territories. He concluded that the French language had had equal and official status before the annexation. These commitments to bilingualism illustrate how deeply the French language was rooted in the region, and the fact that it formed an important part of the context in which the deal took place.

Second, legislative bilingualism was consistently demanded in the negotiations and met with no resistance from the Canadian delegates, who were eager to reach a compromise with representatives of the inhabitants. Third, it was necessary to negotiate with those representatives in order to proceed with the annexation. Fourth, the Canadian and British governments made a number of promises that assured the inhabitants that bilingualism would be preserved. Fifth, the governments kept these promises and conducted themselves in accordance with them in the years immediately following the 1870 compromise. Sixth, these linguistic practices, the demands that they be maintained and the promises to maintain them applied throughout the territories and were not confined to the Red River Colony.

The result of the negotiations was the addition of two new regions to the Dominion of Canada. That these new regions entered the Dominion pursuant to different instruments is no reason to ignore the singular context of the negotiations. The creation of the Province of Manitoba and the explicit protection of minority language rights in that province cannot lead to an inference that no such rights existed in the North‑Western Territory. Such an interpretation is inconsistent with fundamental principles of constitutional interpretation. Moreover, there is no evidence that the delegates simply capitulated and renounced their conditions as regards the extensive territory. The annexation was achieved not by conquest, but by negotiation.

The end result of the negotiations regarding legislative bilingualism was not the enactment of the *Manitoba Act, 1870* alone. Any other conclusion rests on the contrast between the *Manitoba Act, 1870* and the *1870 Order* and, in particular, on the fact that the latter contained no express reference to legislative bilingualism. This contrast is a “red herring” and is of no help in this case. These two instruments are not really comparable, as they did not come from the same legislative authorities — the *Manitoba Act, 1870* was passed by the Canadian Parliament, while the *1870 Order* was issued by the British authorities. Furthermore, the *1870 Order* contained an explicit promise to respect the “legal rights” of the inhabitants set out in the *1867 Address.* This promise encompassed the protection of legislative bilingualism. In addition, the *Manitoba Act*, *1870* not only dealt with matters arising in the new province, but also in the territories. Therefore, a proper understanding of the safeguards for legislative bilingualism set out in the *Manitoba Act, 1870* is that they effectively extended to the newly created territories. Finally, the annexed territories fell under federal authority. It was therefore guaranteed pursuant to s. 133 of the *Constitution Act, 1867* that federal Acts applicable to the territories would be printed and published in both languages as a consequence of their being Acts of the Parliament of Canada.

In sum, after the annexation, there were two Canadian legislatures that were competent to pass laws in the annexed territories — the new Manitoba legislature and the Parliament of Canada. Both were under a constitutional obligation to publish laws in English and French.

In addition to the historical context, there are three principles of constitutional interpretation that must inform any reading of the *1867 Address.* The first is that the Constitution must be interpreted in light of its historical, philosophical and linguistic context. The second is that constitutional provisions must be interpreted broadly and purposively. The third relates to the very nature of a constitution, which is an expression of the will of the people. The application of these principles to the *1867 Address* leads to the conclusion that it enshrined a constitutional guarantee of legislative bilingualism that applied throughout the territories annexed in 1870.

It can be seen from the historical record that legislative bilingualism was in effect throughout the territories before the annexation. In fact, the Parliament of Canada delivered the *1867 Address* in both languages. In the initial French version, the equivalent of the expression “legal rights” was “*droits acquis*”. This initial translation is significant because it provides insight into the drafters’ intent. The French term “*droit* *acquis*” is more naturally translated into English as “vested right”. Such a right can be defined as one based on “very strong expectations the fulfilment of which citizens had just cause to count on”. This description of the rights that were to be respected and protected by Canada upon the transfer of the region is apt given the historical context. Canada was making a commitment in relation to the annexation of the territories. The meaning of the term “legal rights” is therefore anchored in the context of the transfer — it refers to the “vested rights” of the inhabitants. And legislative bilingualism was one of them.

In addition, representatives of the territories demanded legislative bilingualism as a peremptory condition for annexation, and this demand was met with no resistance from Canada. On the contrary, Canadian representatives offered clear assurances that legislative bilingualism in the territories would unquestionably be provided for.

Read against this background, the *1867 Address* enshrined the promise of legislative bilingualism, and this interpretation is supported by subsequent documents, notably the *Royal Proclamation* of 1869. Finally, nothing in the *Manitoba Act, 1870* negates this reading; indeed, that Act effectively ensured that legislative bilingualism would continue to prevail throughout the territories after the annexation.

In short, the historical record clearly shows that there was an agreement to protect legislative bilingualism throughout the annexed territories. This agreement was constitutionally enshrined in the *1870* *Order*, which incorporated the *1867 Address*, as is confirmed by the events of that period.

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**Explained:** *R. v. Mercure*, [1988] 1 S.C.R. 234; *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261; **referred to:** *Société des Acadiens du Nouveau‑Brunswick Inc. v. Association of Parents for Fairness in Education*, [1986] 1 S.C.R. 549; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, rev’g 2007 MBQB 293, 223 Man. R. (2d) 42; *Reference re Same‑Sex Marriage*, 2004 SCC 79, [2004] 3 S.C.R. 698; *R. v. Beaulac*, [1999] 1 S.C.R. 768; *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*, [1993] 1 S.C.R. 839; *Reference re Authority of Parliament in relation to the Upper House*, [1980] 1 S.C.R. 54; *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313; *British Columbia (Attorney General) v. Canada (Attorney General)*, [1994] 2 S.C.R. 41; *R. v. Blais*, 2003 SCC 44, [2003] 2 S.C.R. 236; *Attorney General of Manitoba v. Forest*, [1979] 2 S.C.R. 1032; *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721; *R. v. Van der Peet*, [1996] 2 S.C.R. 507; *R. v. Marshall*, [1999] 3 S.C.R. 456; *R. v. Sappier*, 2004 NBCA 56, 273 N.B.R. (2d) 93; *R. v. Marshall*, 2003 NSCA 105, 218 N.S.R. (2d) 78; *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511; *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78; *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, [2003] 3 S.C.R. 371; *Conseil scolaire francophone de la Colombie‑Britannique v. British Columbia*, 2013 SCC 42, [2013] 2 S.C.R. 774; *DesRochers v. Canada (Industry)*, 2009 SCC 8, [2009] 1 S.C.R. 194.

By Wagner and Côté JJ. (dissenting)

*R. v. Mercure*, [1988] 1 S.C.R. 234; *R. v. Paquette*, [1990] 2 S.C.R. 1103; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; *Reference re Supreme Court Act, ss. 5 and 6*, 2014 SCC 21, [2014] 1 S.C.R. 433; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010; *Ross River Dena Council v. Canada (Attorney General)*, 2013 YKCA 6, 337 B.C.A.C. 299; *General Motors Acceptance Corp. of Canada Ltd. v. Perozni* (1965), 52 W.W.R. 32; *Sinclair v. Mulligan* (1886), 3 Man. L.R. 481, aff’d (1888), 5 Man. L.R. 17; *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, rev’g 2007 MBQB 293, 223 Man. R. (2d) 42; *R. v. Lefebvre* (1986), 74 A.R. 81; *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721; *Reference re Manitoba Language Rights*, [1992] 1 S.C.R. 212; *Adler v. Ontario*, [1996] 3 S.C.R. 609; *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712; *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *R. v. Beaulac*, [1999] 1 S.C.R. 768; *Reference re Authority of Parliament in relation to the Upper House*, [1980] 1 S.C.R. 54; *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 257.

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APPEALS from a judgment of the Alberta Court of Appeal (O’Brien, Slatter and Rowbotham JJ.A.), 2014 ABCA 71, 92 Alta. L.R. (5th) 306, 569 A.R. 212, 606 W.A.C. 212, 306 C.C.C. (3d) 515, 301 C.R.R. (2d) 255, [2014] 6 W.W.R. 74, [2014] A.J. No. 173 (QL), 2014 CarswellAlta 282 (WL Can.), affirming a decision of Eidsvik J., 2009 ABQB 745, 23 Alta. L.R. (5th) 321, 476 A.R. 198, [2010] 8 W.W.R. 318, [2009] A.J. No. 1468 (QL), 2009 CarswellAlta 2188 (WL Can.), setting aside the acquittals entered by Wenden Prov. Ct. J., 2008 ABPC 232, 95 Alta. L.R. (4th) 307, 450 A.R. 204, [2008] 12 W.W.R. 675, [2008] A.J. No. 855 (QL), 2008 CarswellAlta 1046 (WL Can.). Appeals dismissed, Abella, Wagner and Côté JJ. dissenting.

*Roger J. F. Lepage*, *Francis P. Poulin* and *Romain Baudemont*, for the appellant Gilles Caron.

*Sébastien Grammond, Allan Damer*, *Mark C. Power*, *François Larocque* and *Justin Dubois*, for the appellant Pierre Boutet.

*Peter P. Taschuk*, *Q.C.*, *Teresa R. Haykowsky*, *David D. Risling* and *Randy Steele*, for the respondent.

*Alain Préfontaine* and *Catherine A. Lawrence*, for the intervener the Attorney General of Canada.

*Graeme G. Mitchell*, *Q.C.*, for the intervener the Attorney General for Saskatchewan.

*Kevin P. Feehan*, *Q.C.*, and *Anna Loparco*, for the interveners the Alberta Catholic School Trustees’ Association, Conseil scolaire Centre‑Nord No. 2 and Denis Lefebvre.

*Mark C. Power*, *Justin Dubois* and *François Larocque*, for the intervener Association canadienne‑française de l’Alberta.

*Kevin Shaar* and *Christine Ruest Norrena*, for the intervener the Commissioner of Official Languages of Canada.

*Roger J. F. Lepage* and *Francis P. Poulin*, for the intervener Assemblée communautaire fransaskoise.

*Nicolas M. Rouleau*, for the intervener Fédération des associations de juristes d’expression française de common law inc.

The judgment of McLachlin C.J. and Rothstein, Cromwell, Moldaver, Karakatasanis and Gascon JJ. was delivered by

Cromwell and Karakatsanis JJ. —

1. Introduction
2. These appeals sit at a contentious crossroads in Canadian constitutional law, the intersection of minority language rights and provincial legislative powers. The province of Alberta’s *Languages Act*, R.S.A. 2000, c. L-6, provides that laws may be enacted in English only. The appellants claim that this is unconstitutional. While they take no issue with the general rule that the language of provincial legislation is a matter for the Province to decide, they say that an exception to this general rule applies here: there is a constitutional right, from which the Province may not derogate, to have Alberta laws enacted in both English and French. We will refer to this as a right to legislative bilingualism. The Province maintains that there is no such right.
3. The appellants’ arguments take us back to the period leading up to 1870 when the vast western territory under the control of the Hudson’s Bay Company (“HBC”) became part of Canada. The terms of this Canadian expansion were largely the result of negotiations and agreement between Canadian officials and representatives of the territories. The result was that the new province of Manitoba was added by the *Manitoba Act, 1870*, S.C. 1870, c. 3. Further, the remainder of what had been the North-Western Territory and Rupert’s Land — a vast land mass including most of what is now Alberta, Saskatchewan, Nunavut, the Yukon, the Northwest Territories, and parts of Ontario and Quebec — was annexed as a new Canadian territory under federal administration by the 1870 *Rupert’s Land and North-Western Territory Order* (U.K.) (reprinted in R.S.C. 1985, App. II, No. 9) (the “*1870* *Order*”). The *Manitoba Act, 1870* expressly provided for legislative bilingualism. The *1870* *Order* did not.
4. The appellants contend, however, that legislative bilingualism was in fact guaranteed for both areas and therefore extends to the modern province of Alberta, which was created out of the new territory. Their argument is intricate and has changed over time, but rests on one key proposition: an assurance given by Parliament in 1867 (the “*1867* *Address*”) that it would respect the “legal rights of any corporation, company, or individual” in the western territories must be understood as a promise of legislative bilingualism. And that promise is an entrenched constitutional right because the *1867* *Address* became Schedule A to the *1870* *Order* which created the new western Canadian territory and which is part of the Constitution of Canada by virtue of s. 52(2)(*b*) and the Schedule to the *Constitution Act, 1982*.
5. The appellants’ position, however, is inconsistent with the text, context, and purpose of the documents on which they rely and must be rejected. The words “legal rights” or “*droits aquis*” / “*droits légaux*”, read in their full context and in light of their purpose, simply cannot bear the weight the appellants seek to attach to them. Specifically:
   * + - 1. Never in Canada’s constitutional history have the words “legal rights” been taken to confer linguistic rights;
         2. Legislative bilingualism is expressly provided for in the *Manitoba Act, 1870* but is not mentioned in either the *1867* *Address* or the *1870* *Order*, the documents upon which the appellants rely. It is inconceivable that such an important right, if it were granted, would not have been granted in explicit language as it was in the Canadian Constitution and in the *Manitoba Act, 1870*, which was enacted at the same time as the *1870* *Order* was made;
         3. The contemporary discussions show that neither Canada nor the representatives of the territories ever considered that the promise to respect “legal rights” in the *1867 Address* referred to linguistic rights;
         4. The contemporary evidence also shows that the territorial representatives themselves considered that their linguistic rights had been assured through the *Manitoba Act, 1870*, not the *1867* *Address* or the *1870 Order*;
         5. Federal legislation and debates surrounding it in relation to the new North-West Territories in 1875 and 1877 show that no one involved thought that there had been any guarantee of legislative bilingualism in 1870; and
         6. In 1988, this Court held in *R. v. Mercure*, [1988] 1 S.C.R. 234, that there was no entrenched right to legislative bilingualism in Saskatchewan and the constitutional position of Alberta on this point is indistinguishable. If the appellants are right, *Mercure* was wrong.
6. There is, of course, no question that linguistic duality and linguistic rights with respect to French and English are deeply rooted in our history and reflect our fundamental principles of constitutionalism and the protection of minorities. They are basic to the very idea of Canada. The Court must, as it has often affirmed, “take special care to be faithful to the spirit and purpose of the guarantee of language rights”: *Mercure*, at p. 269, quoting *Société des Acadiens du Nouveau-Brunswick Inc. v. Association of Parents for Fairness in Education*, [1986] 1 S.C.R. 549, at p. 564. The Court must also be mindful, however, that federalism — another fundamental constitutional principle — recognizes a large measure of “autonomy of provincial governments to develop their societies within their respective spheres of jurisdiction”: *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 58. We must be equally faithful to the spirit and purpose of all of these fundamental constitutional principles.
7. We therefore cannot, as the appellants ask us to do, allow the pursuit of language rights to trample on areas of clear provincial legislative jurisdiction. Neither can we resolve the tension arising from the interplay of fundamental constitutional principles, as the appellants ask us to do, by resorting to broad and uncontroversial generalities, or by infusing vague phrases with improbable meanings. Rather, we must examine the text, context and purpose of our Constitution to see whether there is a constitutional constraint on the power of the province of Alberta to decide in what language or languages it will enact its legislation.
8. Having done so, our view is that there is no such constraint and that the appeals must be dismissed.
9. Overview of the Litigation
10. This dispute had an inauspicious beginning when Gilles Caron and Pierre Boutet were charged with traffic offences under an Alberta law and regulation: s. 34(2) of the *Use of Highway and Rules of the Road Regulation*,Alta. Reg. 304/2002; ss. 160(1) and 115(2)(p) of the *Traffic Safety Act*,R.S.A. 2000, c. T-6. Both claimed the law and regulation were unconstitutional because they were not enacted or published in French, and further that the Alberta *Languages Act* was inoperative to the extent that it abrogates what they claimed was a constitutional obligation on the part of Alberta to enact, print, and publish its laws and regulations in both French and English.
11. Their challenge was successful at trial (2008 ABPC 232, 95 Alta. L.R. (4th) 307), but was rejected by the summary conviction appeal court (2009 ABQB 745, 23 Alta. L.R. (5th) 321), and by the Court of Appeal (2014 ABCA 71, 92 Alta. L.R. (5th) 306). The main issue now before this Court, as set out in the first constitutional question stated by the Chief Justice, is whether the “*Languages Act* [is] *ultra vires* or inoperative insofar as it abrogates a constitutional duty owed by Alberta to enact, print and publish its laws and regulations in English and in French”.
12. Historical and Legislative Background
13. The issues in this case are situated in a complex historical and legislative context. It will be helpful before turning to the legal issues to provide a brief outline of that background.
    1. The Initial Confederation and the Plans for Expansion
14. On July 1, 1867, the provinces of Canada, Nova Scotia and New Brunswick united to form Canada under constitutional arrangements set out in an Imperial statute now known as the *Constitution Act, 1867*. Linguistic rights were, of course, a key issue in the discussions leading to this union. The *Constitution Act, 1867* explicitly addressed legislative bilingualism in its s. 133, which provides:

**133.** Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

1. At that time, the vast territories to the west and northwest of the new Dominion were known as Rupert’s Land and the North-Western Territory. They were controlled by the HBC. It operated a fur trade under Royal Charter, and exercised various governmental functions, including a legal system (*Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, at paras. 20-23; *Mercure*, at pp. 287-88). As the provincial court judge found, the use of French was a feature of life in the territories at that time. The *Constitution Act,* *1867* anticipated that these two western territories might eventually become part of the new Dominion of Canada. Section 146 authorized the Queen to admit Rupert’s Land and the North-Western Territory into Confederation “on Address from the Houses of the Parliament of Canada” and “on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve”. Thus, the procedure for annexation contemplated a formal request from the Canadian Parliament setting out the proposed terms of annexation, which Her Majesty could then approve or not.
2. The addresses that were ultimately made leading to the annexation of these territories are critical to the appellants’ contention that there is an entrenched constitutional right to legislative bilingualism that binds the province of Alberta.
   1. The Addresses
3. In December 1867, the Parliament of Canada delivered an address to the Queen asking the Imperial Parliament to “unite Rupert’s Land and the North-Western Territory with this Dominion” and to grant Canada authority to legislate in respect of the territories (*1867* *Address*). As part of the address, Canada promised that, in the event of a transfer, Canada “will be ready to provide that the legal rights of any corporation, company, or individual within the same shall be respected”. The appellants attach great weight to the undertaking by Canada in this *1867* *Address* to respect the “legal rights” of those in the territories, submitting that when read in their full context, these words gave assurance that there would be legislative bilingualism in the territories and hence in what eventually became the province of Alberta.
4. Although the English text of the *1867* *Address* remains unchanged, the French text has evolved over time. In the initial version published in the *Journaux de la Chambre des communes de la Puissance du Canada*, the phrase “legal rights” is translated as “*droits acquis*” (vol. I, 1st Sess., 1st Parl., December 12, 1867). But in the text of the *1867* *Address* that was eventually annexed as a schedule to the *1870* *Order*, the phrase used is “*droits légaux*”. We also note that the French constitutional drafting committee later recommended a third version of the *1867 Address*, which simply used the word “*droits*”. However, Parliament did not adopt this recommendation. In any event, our analysis does not depend upon which version of the French text is used. Whether the French version reads “*droits acquis*” or “*droits légaux*”, our conclusion remains the same.[[1]](#footnote-1)
5. The Imperial government initially refused Canada’s request set out in the *1867* *Address*. It preferred to see a negotiated admission of the territories into Canada. Canada was thus compelled to undertake negotiations with the HBC in order to convince the Imperial government to accede to the transfer.
6. In the ensuing negotiations, Canada agreed to pay the HBC £300,000 and to allow it to retain some land around its trading posts. In May 1869, the Canadian Parliament adopted a second address,which asked the Queen to annex Rupert’s Land on the conditions agreed to with the HBC and provide for the incorporation of Rupert’s Land into Canada (*1870 Order*, Schedule B (the “*1869 Address*”)). As part of the *1869* *Address*, Parliament authorized and empowered the Governor in Council “to arrange any details that may be necessary to carry out the terms and conditions of the above agreement”.
7. Over the course of the subsequent months in 1869 and 1870, the HBC surrendered its charter to the British Crown in preparation for annexation of the territories by Canada.
   1. Opposition to Annexation
8. The prospect of annexation led to unrest in the territories, particularly in the major population centre of the Red River Settlement. In November 1869, a group of inhabitants blocked the entry of Canada’s proposed Lieutenant Governor of the new territory. Shortly thereafter, a group of Métis inhabitants, including Louis Riel, seized control of Upper Fort Garry in the Red River Settlement. Riel summoned representatives of the English- and French-speaking parishes. These representatives and others subsequently formed a provisional government.
9. In the months that followed, the representatives issued a number of demands that Canada would have to satisfy before they would accept Canadian control. These demands took the form of “Lists of Rights”: one produced in December 1869, another in February 1870, and another in March 1870.
10. Among the items listed was the demand that “the English and French languages be common in the Legislature and Courts, and that all public documents and Acts of the Legislature be published in both languages” (second List of Rights, art. 12, reproduced in *Sessional Papers*, vol. V, 3rd Sess., 1st Parl., 1870, No. 12, app., at p. 11; see also Prov. Ct. reasons, at paras. 208-12; Queen’s Bench reasons, at paras. 65-83; W. L. Morton, *Manitoba: The Birth of a Province* (1965), at pp. 242-50). This demand reflected the practice of the time in the territories. The representatives also demanded that both Rupert’s Land and the North-Western Territory should enter Canada as a province named Assiniboia, that the bargain with the HBC over annexation should be annulled, and that all future public infrastructure should be at the cost of the federal government (third List of Rights, Archives of Manitoba, Red River Disturbance collection, SIS 4/B/10).
11. Canada treated these activities as acts of rebellion. The Governor General issued the 1869 *Royal* *Proclamation* on December 6, 1869 (“*1869* *Proclamation*”), referring to the “sorrow and displeasure with which the Queen views the unreasonable and lawless proceedings which have occurred” (reproduced in *Sessional Papers*, No. 12, at pp. 43-44). It assured the residents that

on the union with Canada all your civil and religious rights and privileges will be respected, your properties secured to you, and that your Country will be governed, as in the past, under British laws, and in the spirit of British justice. [Emphasis added.]

The appellants also rely on the emphasized words as being evidence of a guarantee of legislative bilingualism.

* 1. The Creation of the New Province of Manitoba and the New North-Western Territory in 1870

1. As this Court explained in *Manitoba Metis*, the Canadian government subsequently adopted “a conciliatory course” (para. 28). Canadian representative Donald Smith met with Riel and members of the provisional government in early 1870 to discuss their concerns. While Smith noted that final authority rested with Parliament, he assured the representatives that he would communicate their demands to Ottawa (Court of Appeal reasons, at para. 130; *The New Nation*, February 11, 1870).[[2]](#footnote-2) Canada subsequently invited a delegation to Ottawa to present the demands of the settlers. Three delegates from the provisional government travelled to Ottawa in April 1870 to negotiate: Father Ritchot, a priest; Judge Black, a judge; and Alfred Scott, a local businessman. They met and negotiated with Prime Minister John A. Macdonald and the Minister of Militia and Defence, George-Étienne Cartier. There is little evidence regarding the substance of these negotiations. However, the representatives were ultimately unsuccessful in securing agreement that the entire territories would enter Canada as a province. Instead, a compromise was reached whereby only a small portion of the territories — the new province of Manitoba — would join the Dominion as a province, and the rest of the territories would be annexed to Canada as a new territory under Parliament’s jurisdiction.
2. As agreed, Parliament passed the *Manitoba Act,* *1870* in May 1870, which created the province of Manitoba out of part of the territories; this included the Red River Settlement within its boundaries. In June 1870, the Queen in Council issued the *1870* *Order*, which ordered the admission of Rupert’s Land and the North-Western Territory into Canada as a territory on the terms and conditions set forth in the addresses made by Canada. The *1867* *Address* and the *1869 Address* were attached as schedules to the *1870* *Order*. The *1870 Order*, with its schedules, was subsequently included in the schedule to the *Constitution Act, 1982*.
3. Thus, the result of the annexation process was the creation of one province, Manitoba, with the remaining annexed territory comprising the North-Western Territory (later known as the Northwest Territories). In 1869, in anticipation of these annexations, Canada had enacted the *Temporary Government of Rupert’s Land Act, 1869*,S.C. 1869, c. 3. Following the passage of the *Manitoba Act, 1870*, the remainder of the annexed lands outside the new province continued to be governed under this interim scheme. Parliament subsequently enacted *The North‑West Territories Act, 1875*, S.C. 1875, c. 49, which established a legislative assembly and a court of civil and criminal jurisdiction in the North-West Territories.
4. It was out of the North-West Territories that the provinces of Alberta and Saskatchewan would be created in 1905: *Alberta Act*, S.C. 1905, c. 3; *Saskatchewan Act*, S.C. 1905, c. 42.
5. Analysis
   1. Overview of the Position of the Parties
6. The appellants contend that there is a constitutional right to legislative bilingualism in Alberta. The origin of this right, they argue, is an historic agreement reached between the Canadian government and the inhabitants of Rupert’s Land and the North-Western Territory that cleared the way for the transfer of the territories to Canada.
7. The appellants’ main argument is that the right to legislative bilingualism was entrenched by the *1870 Order* in which the Canadian Parliament assured the Queen that Canada would respect the “legal rights” of the population of Rupert’s Land and the North-Western Territory upon transfer to Canada. This assurance is found in the *1867* *Address*, which is attached as a schedule to the *1870 Order*. The relevant passage reads as follows:

That in the event of your Majesty’s Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same shall be respected, and placed under the protection of Courts of competent jurisdiction. [Emphasis added.]

1. In this Court, the appellants rely in particular on the French version of the *1867* *Address*, in which “legal rights” is translated as “*droits acquis*” / “*droits légaux*”.
2. The appellants argue that in the context of the unrest in the Red River Settlement, the Lists of Rights, and the negotiations with the inhabitants of the territories, the promise to respect “legal rights” or “*droits acquis*” / “*droits légaux*” constitutionalized an historic compromise to protect legislative bilingualism in the entirety of the territories transferred to Canada in 1870 — which includes the modern-day province of Alberta. According to the appellants, this constitutional guarantee prevents the Province from legislating in a manner that would undermine legislative bilingualism, an area otherwise within its exclusive competence.
3. The appellants also rely on events following the transfer of the territories to support their argument. They see evidence that the *1870* *Order* entrenched an obligation of bilingual governance throughout the entire annexed territories because (1) there was, in effect, bilingual administration of the North-Western Territory beginning in 1870; and (2) Parliament had to legislate in French and English with regard to the territories under its jurisdiction in accordance with s. 133 of the *Constitution Act, 1867*. To the appellants, this shows that the inhabitants of the territories were successful in obtaining entrenched bilingual governance throughout the entire annexed lands.
4. The appellant Mr. Caron also argues that the Governor General of Canada promised to guarantee legislative bilingualism in the transferred territories because he assured the population in the *1869 Proclamation* that “on the union with Canada all your civil and religious rights and privileges will be respected”. This promise, once again, would be entrenched by the *1870 Order* because the latter empowers the Governor in Council to “arrange any details” necessary to carry out the annexation process. In Mr. Caron’s view, the promise embodied in the *1869 Proclamation* would therefore be a “detail” that was necessary to arrange.
5. The respondent maintains that there is no such guarantee in the *1870* *Order* or anywhere else. The documents relied upon by the appellants stand in stark contrast to the *Manitoba Act, 1870*, with its specific guarantee of language rights, and other documents of the time. Accordingly, there was no corresponding constitutional obligation that could have bound Alberta from the time of its creation.
6. As we see it, there are many fundamental flaws in the appellants’ position. We will outline why we think so after turning briefly to the governing interpretative principles.
   1. Guiding Principles of Interpretation
7. Constitutional documents should be interpreted in a large and liberal manner: see *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 S.C.R. 698, at para. 23. Moreover, important guiding principles apply in relation to language rights and the protection of minorities. Language rights must be interpreted purposively and remedially, “in a manner consistent with the preservation and development of official language communities in Canada”:  *R. v. Beaulac*,[1999] 1 S.C.R. 768, at para. 25, citing *Reference re Public Schools Act (Man.), s. 79(3), (4) and (7)*, [1993] 1 S.C.R. 839, at p. 850; *Reference re Secession of Quebec*. When looking at historical rights involving minorities, we must be mindful that, even at the time of Confederation, the protection of minority rights was “an essential consideration in the design of our constitutional structure”: *Reference re Secession of Quebec*, at para. 81, citing *Reference re Authority of Parliament in relation to the Upper House*,[1980] 1 S.C.R. 54, at p. 71.
8. These important principles, however, do not undermine the primacy of the written text of the Constitution: *Reference re Secession of Quebec*, at para. 53. The Constitution,the Court has emphasized, “should not be regarded as an empty vessel to be filled with whatever meaning we might wish from time to time”:  *Reference re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313, at p. 394; see also *British Columbia (Attorney General) v. Canada (Attorney General)*, [1994] 2 S.C.R. 41 (“*Vancouver Island Railway (Re)*”); P. W. Hogg, *Constitutional Law of Canada* (5thed. Supp.), at p. 15-50.
9. As Iacobucci J. observed in *Vancouver Island Railway (Re)*: “Although constitutional terms must be capable of growth, constitutional interpretation must nonetheless begin with the language of the constitutional law or provision in question” (p. 88). More recently, this Court in *R. v. Blais*, 2003 SCC 44, [2003] 2 S.C.R. 236, cautioned that courts are “not free to invent new obligations foreign to the original purpose of the provision”; rather, “[t]he analysis must be anchored in the historical context of the provision” (para. 40).
10. Thus, we must assess the appellants’ arguments by looking at the ordinary meaning of the language used in each document, the historical context, and the philosophy or objectives lying behind the words and guarantees. We cannot simply resort to the historical evidence of the desires and demands of those negotiating the entry of the territories, and presume that those demands were fully granted. It is obvious that they were not. The Court must generously interpret constitutional linguistic rights, not create them.
    1. Analysis of the Appellants’ Submissions
11. For many reasons, we reject the appellants’ submission that the guarantee of legal rights in the *1867* *Address* created a constitutional right to legislative bilingualism.
    * 1. Never in Canada’s Constitutional History Have the Words “Legal Rights” Been Understood to Confer Linguistic Rights — Contemporaneous Guarantees of Language Rights Were Explicit and Clear
12. As our brief historical overview shows, linguistic rights have always been dealt with expressly from the beginning of our constitutional history. Language rights were dealt with explicitly in s. 133 of the *Constitution Act, 1867* and in the *Manitoba Act, 1870* in very similar and very clear terms. The total absence of similar wording in the contemporaneous *1870* *Order* counts heavily against the appellants’ contention that the terms “legal rights” or “*droits acquis*” / “*droits légaux*” in the *1867* *Address* (attached to that order) should be understood to include language rights.
13. The year 1867 saw both the Confederation of Canada and the adoption by Parliament of the *1867* *Address*. As our colleagues note, the negotiations surrounding Confederation turned in no small part on the issue of language rights. When these rights were addressed in the *Constitution Act, 1867*, they were addressed explicitly, not by means of implied inclusion in a general term such as “legal rights”.
14. Subsequently, the *Manitoba Act, 1870* and the *1870 Order* formed a comprehensive political arrangement regarding annexation. Section 23 of the *Manitoba Act,* *1870* expressly provided for legislative bilingualism in terms very similar to those found in s. 133 of the *Constitution Act, 1867*:

**23.** [English and French languages to be used] Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the Constitution Act, 1867, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages.

1. The *Constitution Act, 1871* (U.K.), 34 & 35 Vict., c. 28, an Imperial statute, confirmed the *Manitoba Act, 1870* and provided that the Canadian Parliament could not amend it: s. 6. In contrast, there is no similar express reference to legislative bilingualism in the *1870 Order* or the *1867 Address* annexed to it.
2. When Manitoba tried to amend s. 23 to provide for English language only legislation, the amendment was ruled unconstitutional by Manitoba courts in 1892, 1909, and 1976, and by this Court in 1979 in *Attorney General of Manitoba v. Forest*, [1979] 2 S.C.R. 1032 (see *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, at pp. 732-33). The Court held that the province’s legislative authority to amend the provincial constitution did not extend to giving it the authority to amend the guarantee of language rights in s. 23 of the *Manitoba Act, 1870*.
3. In *Forest*, the Court held that s. 23 of the *Manitoba Act, 1870* was modelled after s. 133 of the *Constitution Act,* *1867*, which provides for (among other things) legislative bilingualism in the Parliament of Canada and the Quebec legislature. This Court also drew upon the similarity between these provisions in *Reference re Manitoba Language Rights*:

. . . the drafters of the *Constitution Act, 1867* . . . intended s. 133’s language guarantees to be just that — guarantees. And the use by Parliament only three years later of nearly identical language in s. 23 of the *Manitoba Act, 1870* is strong evidence of a similar intendment with regard to the language provisions of that Act. [Emphasis deleted; p. 739.]

1. The relevant time period of these provisions — 1867 to 1870 — coincides with the events and instruments on which the appellants rely. Given this contemporaneity, the express and mandatory language respecting legislative bilingualism used by the Imperial Parliament in s. 133 in the *Constitution Act, 1867* and by the Parliament of Canada in the *Manitoba Act, 1870* stands in marked contrast to the complex web of instruments, vague phrases, political pronouncements and historical context on which the appellants’ claims depend.
2. Had the intent been to accord constitutional protection to language rights in the annexed territories outside Manitoba, wording similar to s. 23 of the *Manitoba Act, 1870* would have been used in the *1870 Order*. But there is no similarity between, on the one hand, the specific guarantees of language rights in s. 133 and s.  23 and, on the other, the general reference to “legal rights” or “*droits acquis”* / “*droits légaux*” found in the schedule to the *1870 Order*.
3. In sum, contemporaneous guarantees of language rights were explicit and clear: legislative bilingualism was provided for expressly in the *Constitution Act, 1867* and the *Manitoba Act, 1870*. And, as we shall see, the subject of legislative bilingualism was addressed — explicitly — in the amendments to *The* *North-West Territories Act* in 1877 and 1891 (*The North-West Territories Act, 1877*, S.C. 1877, c. 7; *An Act to amend the Acts respecting the North-West Territories*, S.C. 1891, c. 22). Never in Canada’s constitutional history have the words “legal rights” been understood to confer linguistic rights. These facts considerably undermine the appellants’ position.
4. But it is not just the documents themselves that belie the appellants’ claim. The context surrounding the creation of these documents further illuminates the point that “legal rights” are and always have been distinct from language rights. Let us turn to that context.
   * 1. The Representatives of the Territories Never Considered That the Promise to Respect “Legal Rights” Referred to Linguistic Rights
5. The political leaders in the territories treated language-related demands as distinct from the protection of other, more general or proprietary, rights.
6. For example, the second List of Rights produced in February 1870 included specific language claims at arts. 12 and 13:

12. That the English and French languages be common in the Legislature and Courts, and that all public documents and Acts of the Legislature be published in both languages.

13. That the Judge of the Supreme Court speak the French and English languages.

By contrast, art. 16 in the same List of Rights contained an independent claim related to other, more general rights:

16. That all properties, rights and privileges, as hitherto enjoyed by us, be respected . . . .

The words “rights and privileges” are similar to those used in the *1867* *Address* (and the *1869 Proclamation*).

1. In short, the Lists of Rights demonstrate that political leaders in the territories themselves expressly provided for language rights when they were meant to be protected and those rights were differentiated from other, more general, rights.
   * 1. Parliamentary Debates Show That the Promise to Respect Legal Rights in the *1867 Address* Did Not Refer to Linguistic Rights
2. The parliamentary debates related to the adoption of the *1867 Address* show that language rights were not subsumed under the term “legal rights” or “*droits acquis*” / “*droits légaux*”. As the provincial court judge found, the parliamentary debates about the part of the text including “legal rights” concerned whether the HBC had a legal right to the territory: para. 499. It is clear from the debates that Parliament understood “legal rights” in this context as describing the proprietary rights over the territory and other rights flowing from it (such as the exclusive right to trade granted to the HBC under the Royal Charter). These were rights that could be valued, and on which an agreement could be reached.
3. A major point of disagreement throughout the debate focused on the parliamentarygrant of power to the executive to reach an agreement with the HBC regarding the HBC’s “legal rights”, and the undetermined cost of such an agreement. In the end, the draft *1867* *Address* was amended to delete reference to a possible agreement. Speaking in Parliament, the then-Minister of Public Works confirmed that the legal rights envisaged were rights that might exist with regard *to the territory itself*:

. . . these amendments would remove all difficulties that had arisen in the course of the debates, and the Address would then stand as embodying a proposition by the Parliament of this country to assume that territory, reserving and protecting all rights that might exist in regard to it . . . . [Emphasis added.]

(*House of Commons Debates*, 1st Sess., 1st Parl. (“*Debates*”), December 9, 1867, at p. 223)

1. The Minister’s understanding of “legal rights” was shared by other members of Parliament: see e.g. *Debates*, December 4, 5, 6, 9 and 11, 1867, at pp. 181, 183, 194-96, 200, 203, 205, 208, 222-25, 244 and 254. One Member of Parliament stated that the HBC had “no legal right” in the sense that it had no “claim to the territory” (December 4, 1867, at p. 183). Similarly, while referring to the “rights” that might be claimed by existing corporations, Prime Minister John A. Macdonald gave assurance that the promises in the *1867* *Address* “would forbid the suspicion that any confiscation was mediated” (December 6, 1867, at p. 200). Clearly, his focus was on rights that were capable of confiscation. Language rights, by their very nature, are not.
2. Of course, this is not to suggest that the intentions of Parliament occupy a position of privilege over those of the territorial inhabitants negotiating three years later in 1870. On the contrary, the understanding and intention of the representatives and negotiators also informs the context of the negotiations in 1870. However, there is no evidence that they used the words “legal rights” from the *1867* *Address* in the broad manner suggested by the appellants.
   * 1. Contemporary Evidence Shows That the Parties Thought That Linguistic Rights Were Addressed in the *Manitoba Act, 1870* But Not in the *1870 Order*
3. The appellants invite this Court to interpret the *1870* *Order* and the *1867* *Address* purposively to give effect to the historic compromise reached between the Canadian government and the population of the territories regarding the right to legislative bilingualism. The purpose of the *1870* *Order*, they submit, is to effectuate the transfer of the territories while entrenching this wide-ranging agreement. Accordingly, the words “legal rights” or “*droits acquis*” / “*droits légaux*” must be interpreted in light of such an agreement.
4. While there can be no debate that there was a political compromise or that constitutional provisions must be interpreted purposively, we cannot accept the appellants’ conclusion. The end result of the negotiations regarding legislative bilingualism was the enactment of the *Manitoba Act, 1870*. Conversely, it was never the objective of the *1870* *Order* to dictate that French and English must be used by the legislative body governing the newly established North-Western Territory.
5. Our colleagues emphasize what they see as a lack of opposition on the part of the Canadian government to entrenching bilingualism in the entirety of the territories entering Canada. We would note, however, that the lack of evidence of opposition by the Canadian negotiators does not provide evidence for the inverse proposition — namely, that Canada was content to entrench bilingualism in the North-Western Territory, by way of an order of the Imperial Crown. There is no evidence to this effect.
6. However, there is no doubt the delegates sought to entrench bilingual rights, just as there is no doubt they sought for the territories to enter Canada as a province. That being said, the contrast between the two contemporaneous documents in relation to legislative bilingualism could not be more stark. As discussed above, there is express provision in the *Manitoba Act, 1870* for legislative bilingualism in terms that were very similar to those used in s. 133 of the *Constitution Act, 1867*. However, in the *1870 Order*, there is no express reference — none — to legislative bilingualism. This strongly suggests that while legislative bilingualism was successfully negotiated and established for the new province of Manitoba (per s. 23 of the *Manitoba Act, 1870*), there was no similar agreement or provision for legislative bilingualism in the newly annexed territories. It is noteworthy that the major population centre of the Red River Settlement became part of the province of Manitoba, while the sparsely populated areas of Rupert’s Land and the North-Western Territory became a federally administered territory.
7. While we take no issue with the factual findings of the provincial court judge regarding the negotiations between the delegates and Canada, we disagree with his legal conclusion that the negotiations resulted in a pact with Canada to establish legislative bilingualism in all of the annexed territories (para. 354). In this respect, there is a helpful distinction drawn in Aboriginal rights jurisprudence between a trial judge’s findings of fact on historical matters, which are entitled to deference, and the legal inferences or conclusions that a trial judge draws from such facts, which are not. As Lamer C.J. explained in *R. v. Van der Peet*, [1996] 2 S.C.R. 507, “[the trial judge’s] determination of the scope of the appellant’s aboriginal rights on the basis of the facts as he found them . . . is a determination of a question of law which, as such, mandates no deference from this Court” (para. 82; see also *R. v. Marshall*, [1999] 3 S.C.R. 456, at para. 18; and *R. v. Sappier*, 2004 NBCA 56, 273 N.B.R. (2d) 93, at para. 76). In our view, the same distinction applies with respect to the historical factual findings of the provincial court judge in this case, and the legal inferences he draws on the basis of these facts.
8. The purpose of the *1870 Order* was simply to effect the transfer of Rupert’s Land and the North-Western Territory to Canada. To the extent that an historic compromise was reached to entrench legislative bilingualism as part of the annexation of Rupert’s Land and the North-Western Territory, this took the form of s. 23 of the *Manitoba Act, 1870*. As this Court explained in *Mercure*:

After some tense confrontations, in which demands were made that English and French be used in the legislature and that judges speak both languages, the Canadian government acceded to the demands of the people of the Territories. To that end, Canada enacted the *Manitoba Act, 1870*, S.C. 1870, c. 3, which created the province of Manitoba out of the Red River settlement and surrounding lands, and by s. 23, provided certain guarantees regarding the use of the English and French languages in the Manitoba Legislature and in its courts. [p. 249]

1. There is ample evidence in the historical record confirming the parties’ understanding that the compromise reached was for legislative bilingualism in the province of Manitoba, in the form of the *Manitoba Act, 1870*. It created a new province including the population centre of the Red River Settlement and incorporated parts of the negotiators’ demands.
2. Perhaps most telling in this regard are the comments of the territorial negotiators and of the provisional government at the time. When the territorial negotiator Father Ritchot reported back to the provisional government at Red River in June 1870, following the passage of the *Manitoba Act, 1870* by Parliament, he did not refer to an agreement regarding legislative bilingualism in the territories outside of Manitoba (*Manitoba Métis Federation Inc. v. Canada (Attorney General)*,2007 MBQB 293,223 Man. R. (2d) 42 (“*Manitoba Métis* (2007)”),at para. 508). Similarly, Judge Black, another one of the territorial negotiators, wrote in May 1870 that “the best report which I could possibly give on the subject” was the bill for the *Manitoba Act, 1870* itself, “of which copies will, no doubt, be duly forwarded to Red River” (R.R., at p. 93; *Manitoba Métis* (2007), at para. 505). Moreover, while the provisional government approved the *Manitoba Act, 1870*, there is no evidence that it approved the *1870* *Order* in a similar fashion. All of this is consistent with the text of the two documents and inconsistent with the notion that legislative bilingualism was guaranteed for the annexed territories outside of Manitoba.
3. There is other important contemporary evidence to this effect. For instance, in a May 1870 telegram, Canadian Governor General John Young described the outcome of the Ottawa negotiations as follows:

Negotiations with Delegates closed satisfactorily. A province named Manitoba erected, containing eleven thousand square miles. Lieutenant-Governor appointed by Canada representative institutions Upper House seven, not exceeding twelve members . . . the rest of the territory the vast extent unsettled and unpeopled to be governed by the Lieutenant-Governor under instructions from the Canadian government. [Emphasis added.]

(*Correspondence Relative to the Recent Disturbances in the Red River Settlement* (1870) (“*Correspondence*”), at p. 131; *Manitoba Métis* (2007), at para. 123)

In a subsequent telegram on May 12, 1870, Young wrote, in reference to the *Manitoba Act, 1870*, that the “Bill for Government of North-West passed, sanctioning conditions agreed upon with Delegates. Parliament prorogued to-day” (*Correspondence*, at p. 161; *Manitoba Métis* (2007), at para. 138).

1. Federal negotiator George-Étienne Cartier was also of the view that the result of the negotiations was the *Manitoba Act, 1870* (*Manitoba Métis* (2007), at para. 509).
2. The appellants would have us dismiss this evidence on the basis that the provisional government and the negotiators purported to represent the entire population of the territories — not just the Red River Settlement. Consequently, it could not have been the intention to negotiate for geographically specific language rights, and the *Manitoba Act, 1870* cannot embody the end result of the wide-ranging compromise regarding bilingualism: Boutet, A.F., at paras. 46-49; Caron, A.F., at para. 64. Adopting the same logic, our colleagues state that it is “implausible” that the Métis would have “abandon[ed]” the concerns of their kin who lived in the outlying regions by accepting legislative bilingualism in only a portion of the annexed territory: para. 211.
3. But there is overwhelming evidence that many of the settlers’ demands were not met. For instance, out of the Lists of Rights the settlers prepared, many of the demands were not reflected in either the *Manitoba Act, 1870* or the *1870* *Order*. For example, the entirety of Rupert’s Land and the North-Western Territory did not enter Canada as a province named Assiniboia, the bargain with the HBC over annexation was not annulled, and all future public infrastructure was not charged to the federal government. These had all been demanded, but were not obtained.
4. The appellants’ position overlooks the failure of the provisional government to have the entire territories enter Canada as a province. Instead, the provisional government accepted a compromise whereby only a small portion of the territories — the province of Manitoba — would join the Dominion as a province, and the rest of the territories would be under Parliament’s jurisdiction. This is no small detail. Many of the demands contained in the Lists of Rights were tied to the creation of a province and the existence of a provincial legislature (demands such as voting rights, representation in the Canadian Senate and House of Commons, and the subsidy to the province in proportion to its population). These demands were incorporated in the *Manitoba Act, 1870*, but the population outside the newly created province received none of these rights. For example, while Manitoba was represented by four members in the House of Commons, as demanded in the second and third Lists of Rights, the North-West Territories did not receive any seats until 1886: *The* *North-West Territories Representation Act, 1886*, S.C. 1886, c. 24.
5. The fact is that by accepting the creation of the province of Manitoba plus the North-Western Territory, the representatives and negotiators *did* make sacrifices with respect to the outlying regions. Far from being implausible, this reflects the very essence of negotiations: making compromises to reach an agreement. This is especially so in light of the fact that the representatives framed the demand as follows: “That the English and French languages be common in the Legislature . . . .” Like many other demands in the Lists of Rights, this was tied to the very first demand in the third List of Rights — namely, the demand for entry as a province, with the creation of a provincial legislature for the whole annexed territories. It thus follows that the agreement regarding bilingualism was entrenched in the *Manitoba Act, 1870*, and not elsewhere.
   * 1. The *1867* *Address* Does Not Embody the Compromise Reached in 1870
6. The appellants’ assertion that the *1870* *Order* embodies a wide-ranging historic compromise with regard to legislative bilingualism is further undermined by a chronological obstacle. The words “legal rights” or “*droits acquis*” / “*droits légaux*” relied upon by the appellants are found in the *1867* *Address*,incorporated as a schedule to the *1870* *Order*. It would be incongruous for an 1867 document to embody a compromise reached only three years later in 1870. Rather, this tends to confirm that the end result of the negotiations was the *Manitoba Act, 1870* —a bill adopted at the *culmination* of the negotiations.
7. To be sure, it is possible that parties to a negotiation could agree to give effect to an agreement by entrenching an older document. In the present case, however, this is implausible. The appellant Mr. Boutet’s assumption that the Imperial government could effectively entrench the compromise regarding legislative bilingualism reached in 1870 — by incorporating as a schedule an 1867 document issued not by the Imperial government but by the Canadian government, one that makes no specific reference to language rights — is purely speculative; he points to no evidence to support this assertion: A.F., at paras. 66 and 90.
8. On the contrary, it is much more plausible that the Imperial government believed that the *Manitoba Act, 1870* was the end result of the compromise. This remains the case today. Ultimately, there is no basis to interpret the *1867* *Address* in light of an historic compromise reached in 1870.
9. We now look ahead, beyond the contemporary evidence surrounding 1870, to examine events transpiring subsequent to the creation of Manitoba and the annexation of the western territory. As we shall see, these events further undercut the appellants’ claim.
   * 1. Federal Legislation and Debates Surrounding It in Relation to the New North-West Territories in 1875 and 1877 Show That No One Involved Thought That There Had Been Any Guarantee of Legislative Bilingualism in 1870
10. Before agreement was reached with the enactment of the *Manitoba Act, 1870* and before the *1870* *Order*, Parliament had enacted in 1869 the *Temporary Government of Rupert’s Land Act, 1869*, which said nothing about legislative bilingualism. Following 1870, this Act continued to govern the North-Western Territory, outside the province of Manitoba, until *The North-West Territories Act, 1875* governed it. When the latter was amended in 1877, Parliament added a section providing for (among other things) legislative bilingualism, once again in terms very similar to those found in s. 133 of the *Constitution Act, 1867*:

**11.** 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.

1. That section was subsequently re-enacted to become s. 110 of *The North-West Territories Act*, R.S.C. 1886, c. 50, and was amended in 1891 to expressly place legislative bilingualism under the competence of the territorial legislature:

**110.** 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. [S.C. 1891, c. 22, s. 18]

1. The province of Saskatchewan was created by the *Saskatchewan Act* in 1905 (just as Alberta was created by an enactment bearing its name in the same year). It provided, in identical language to the *Alberta Act*, that “[a]ll laws . . . existing immediately before the coming into force of this Act” were to continue subject to the power of the appropriate legislature to repeal or amend such laws: s. 16; *Alberta Act*, s. 16; see also *Mercure*, at p. 257.
2. La Forest J.comments in detail on this aspect of the legislative history in *Mercure*, the case in which this Court ruled on the status of legislative bilingualism in Saskatchewan. He notes that the “prevailing view” during the debate on the *Saskatchewan Act* was that “the language provisions should not be entrenched so that the legislatures would be free to deal with the matter”: p. 256. He cites the comments of the Minister of Justice regarding the similarly worded provision in the *Alberta Act* and its effect on s. 110 of *The* *North-West Territories Act*. The Minister stated that if the law were enacted, legislative bilingualism

would become subject to the control of the local legislature, and it will be a matter to be dealt with by them; and I say emphatically, . . . that is my intention. That is, the matter as I view it, ought to be dealt with by the local legislature . . . . [p. 256]

(Quoting *Debates of the House of Commons*, vol. LXXIII, 1st Sess., 10th Parl., June 27, 1905, at p. 8242.)

1. In *Mercure*, the Court concluded that the provisions of s. 110 of *The* *North-West Territories Act* continued to be part of the law of Saskatchewan by virtue of s. 16 of the *Saskatchewan Act*, but that the new province had the legislative authority to amend it. La Forest J. said this:

The appellant took the position that s. 110 can only be repealed by virtue of an amendment to the Constitution of Canada made under s. 43 of the *Constitution Act, 1982*, i.e., by resolutions of the Parliament of Canada and of the legislature of the province to which the amendment applies. I do not think this proposition can stand in the face of the express words of ss. 14 and 16(1) of the *Saskatchewan Act*, which clearly provide that the laws continued under the Act are subject to being repealed by the appropriate legislature. Not only is the province empowered to legislate respecting procedure in the courts under s. 92(14) of the *Constitution Act, 1867*; it is also given power under s. 45 of the *Constitution Act, 1982* to amend the constitution of the province. But that is not all. Parliament knew full well how to entrench a provision if it wished to do so, namely, by expressly providing for language rights in the *Saskatchewan Act* as it did in the case of s. 23 of the *Manitoba Act, 1870*. Such provisions, in common with s. 133 of the *Constitution Act, 1867*, are constitutionally protected and do not fall within the province’s legislative capacity to amend its constitution or otherwise . . . . [Emphasis added; pp. 270-71.]

1. The appellants’ argument is that legislative bilingualism was entrenched for all of the annexed territories in 1870. However, accepting that position would make s. 110 redundant and, presumably, its amendment in 1891 invalid. Their position would also require us to hold that the understanding of the status of legislative bilingualism in the new province of Alberta was fundamentally misunderstood by virtually everyone involved in the debate in the House of Commons at the time the province was created.
   * 1. If the Appellants Are Right, *Mercure* Is Wrong
2. Both Saskatchewan and Alberta became provinces in 1905 under substantially similar legislation, fashioned from the North-Western Territory that had been annexed to Canada in 1870. This Court ruled on the status of legislative bilingualism in Saskatchewan in *Mercure*.
3. We agree with the appellants that *Mercure* is not dispositive of their appeals because it did not consider the possible impact of the *1870 Order*. But it is nonetheless an important element of context to bear in mind that if the appellants are right, the result reached by the Court in *Mercure* is clearly wrong. The stability of our constitutional law counsels against accepting such a proposition too readily.
4. We should add that *Mercure* in no way assists the appellants. The appellant Mr. Boutet points to language in this Court’s decision in *Mercure*, where the expression “vested rights/*droits acquis*” was understood to encompass language rights: A.F., at para. 73. He suggests that this should guide the interpretation of “*droits acquis*” in the present case. However, this reliance on *Mercure* is misplaced. The discussion in *Mercure* to which the appellant refers centred on a completely different subject.
5. When, in *Mercure*,La Forest J. referred to the principle that statutes are not to be read as interfering with “vested rights/*droits acquis*” unless that intention is declared expressly or by necessary implication, he was referring to rights that had already been explicitly granted, such as the language rights expressly provided for in s. 110 of *The North-West Territories Act*: pp. 265-66. This is very different from the use of the words “legal rights” or “*droits acquis*” / “*droits légaux*” in the *1870 Order*, and does not assist the appellants in demonstrating that language rights are subsumed under the term “*droits acquis*” / “*droits légaux*”.
   * 1. Other Events Following the Transfer of the Territories Do Not Assist the Appellants
6. The appellants place great weight on certain other events following the transfer of the territories to support their interpretation of the *1870 Order*. First, they argue that the joint bilingual administration of the North-Western Territory beginning in 1870 represents after-the-fact evidence that legislative bilingualism was successfully entrenched for the whole of the annexed territories. Second, Mr. Caron submits that explicit entrenchment of legislative bilingualism for the lands outside of Manitoba was not necessary, since that obligation was already incumbent on Parliament on the basis of s. 133 the *Constitution Act, 1867*. In our view, the appellants’ reliance on this joint administration and s. 133 is misplaced.
7. First, as the appellants note, the *Manitoba Act, 1870* established a system of joint administration in the North-Western Territory that was, in effect, bilingual in the years immediately following 1870. For all intents and purposes, the executive and legislative branches of government in the North-Western Territory were each merged during the period between 1870 and 1875. During this time, the Lieutenant Governor of Manitoba acted as Lieutenant Governor of the North-Western Territory (*Manitoba Act, 1870*, s. 35). A number of laws for the North-Western Territory passed between 1870 and 1875 were enacted in both French and English.
8. The appellants hold up this joint bilingual administration to support their argument that there was an agreement concerning *all* territories admitted to Canada in 1870 — that is, as a way that the Canadian government chose to respect its new constitutional obligation with regard to bilingualism in the North-Western Territory.
9. We cannot agree. The legislative history post-1870 cannot support an inference regarding the *1870* *Order* that is helpful to the appellants. Furthermore, the provincial court judge’s legal conclusion based on these arguments is in error. There is simply no evidence that this joint administration was part of the implementation of a constitutional guarantee. The evidence is, in fact, entirely to the contrary. After a few short years, Canada ended the joint administration in 1875 with the enactment of *The* *North-West Territories Act, 1875*. The Act established permanent institutions of government for the North-West Territories, but contained no guarantee regarding legislative bilingualism. As reviewed above, two years later, an amendment providing for bilingualism in the North-West Territories was introduced in the Senate as part of a bill containing some unrelated amendments to the Act. In *Mercure*, this Court explained the background of this amendment:

The amendment was not sponsored by the Government. Rather it was introduced in the Senate by Senator Girard of Manitoba who stated that this was desirable because there were as many French as English people in the Territories . . . . The amendment was rather grudgingly accepted by the Government when it came up for consideration in the House of Commons in order to avoid delaying the Bill for another session . . . . But there is no suggestion that the Government had any objection to the amendment as such. Rather, as Mr. Mills, speaking for the Government, stated, it regretted the amendment because it had thought this was a matter best left to the Council in question . . . . This policy was probably grounded in the dominant attitude in Quebec that language rights should be left to the local governments rather than to Parliament . . . . [Citations omitted; pp. 250-51.]

This amendment became s. 110 of the statute, as discussed earlier.

1. In sum, Parliament put an end to the joint administration of the North-West Territories only five years after the *1870 Order*. There was no guarantee of legislative bilingualism contained in *The* *North-West Territories Act, 1875*.When legislative bilingualism was enacted as part of the amendment processin 1877, nothing suggested that the House of Commons adopted the amendment out of a sense of constitutional obligation. Rather, there is some indication the government thought this was a matter best left to the Council of the North-West Territories.
2. Finally, Mr. Caron’s argument regarding s. 133 of the *Constitution Act, 1867* cannot succeed. Section 133 does not apply anywhere but to the Parliament of Canada and Quebec. This Court decided the issue in *Mercure*,and we see no basis on which to revisit that conclusion. In *Mercure*, La Forest J. stated that, “[c]ertainly, the language of debate in the Assembly [of the North-West Territories] was not covered by s. 133 of the *Constitution Act, 1867*, since that provision was in this regard aimed specifically at the federal Parliament and the Quebec Legislature” (p. 252). Rather, he stated, the historical forces that led to the provision of legislative bilingualism in the North-West Territories beginning in 1877 “were quite separate from those which resulted in the language compromise of 1867 regarding federal and Quebec governmental institutions (s. 133)” (p. 253).
3. Ultimately, the events of this period do not assist the appellants in demonstrating that the *1870* *Order* contained a guarantee of legislative bilingualism for the North-Western Territory. We are therefore of the view that the provincial court judge erred in concluding that the bilingual joint administration in the years after 1870 demonstrates the existence of an entrenched right to legislative bilingualism (paras. 323 and 351-54). The legal instruments, properly interpreted, not only provide no support for this view but in fact support the opposite conclusion.
   1. The 1869 Royal Proclamation
4. The appellant Mr. Caron advances a subsidiary argument to the effect that the *1869 Proclamation* itself entrenches legislative bilingualism.
5. The *1869* *Proclamation* was issued by the Governor General of Canada, in response to the unrest in the Red River Settlement. As noted earlier, it cited the “sorrow and displeasure with which the Queen views the unreasonable and lawless proceedings which have occurred”. It also assured the residents that “on the union with Canada all your civil and religious rights and privileges will be respected”. Mr. Caron considers that this assurance can be read to include a promise of legislative bilingualism.
6. This assurance, in turn, would be incidentally incorporated in the *1870 Order*. To this end, Mr. Caron focuses on the words of the *1869 Address* (Schedule B to the *1870 Order*), and condition No. 15 of the *1870 Order*, which empowers the Governor in Council to “arrange any details” necessary to carry out the annexation process. In Mr. Caron’s view, the *1869* *Proclamation* would therefore be a detail that was necessary to arrange (A.F., at para. 46). This argument builds on the legal inference made by the provincial court judge that the grant of power contained in condition No. 15 extended beyond the conditions specifically listed in the *1870* *Order* (para. 526).
7. We cannot agree, for several reasons. When the *1869 Proclamation* is read in context and in light of its objective, the words “civil and religious rights and privileges” do not connote a solemn promise to guarantee legislative bilingualism. In this respect, we respectfully disagree with the conclusion reached by the provincial court judge that the *1869 Proclamation* was meant to accede to the demands of the residents of the territories concerning language rights (para. 454). His legal inference as to the purpose of the *1869 Proclamation* is not supported by the evidence. We agree with the differing conclusion of the Court of Queen’s Bench judge, who concluded that the *1869 Proclamation* was a document designed to defuse the conflict in face of the annexation (para. 179).
8. While the *1869 Proclamation* should benefit from a liberal interpretation, the words, the context and the purpose of the *1869* *Proclamation* must be considered “in order to arrive at an interpretation that, to the greatest extent, harmonizes the grammatical and ordinary sense of the words, read in their entire context, with the scheme and objects of the Proclamation” (*R. v. Marshall*, 2003 NSCA 105, 218 N.S.R. (2d) 78, at para. 203).
9. As already noted, legislative bilingualism was understood separately from other “rights and privileges”, and was treated as such. The various Lists of Rights drafted by the representatives of the provisional government at the Red River Settlement demanded, on the one hand, that “English and French languages be common in the Legislature and Courts”, and on the other hand that “all properties, rights and privileges” be respected. If, as the appellant asserts, the *1869* *Proclamation* was a direct response to the first List of Rights (Caron, A.F., at paras. 44-45), it seems incongruous that the *1869* *Proclamation* could somehow guarantee legislative bilingualism while using words (“rights and privileges”) that mirror only the non-language portion of the settlers’ demands. The words, and their divergent meanings, do not support the appellant’s interpretation.
10. Moreover, the appellant’s proposed interpretation of the historical context of the *1869 Proclamation* does not support the purposive argument he seeks to advance. If, as Mr. Caron argues, the *1869 Proclamation* indeed represented a binding promise to protect a variety of rights, including legislative bilingualism, there would have been no reason for the representatives to draft a second and third List of Rights with the specific intention of securing those rights in the ensuing negotiations with Canada.
11. As previously discussed, the historical record shows that the provisional government sent three delegates to Ottawa to negotiate rights it wished to see secured. In some respects they were successful. The province of Manitoba was created. The *Manitoba Act, 1870* responded to several of their demands. Seen in this light, and given the context and language of the *1869 Proclamation*, the appellant’s argument must fail.
    1. Conclusion
12. In summary, at its highest the appellants’ argument is that there was a constitutional guarantee for bilingualism in the North-Western Territory located in the *1870* *Order* orin the *1869 Proclamation*. In the context of the unrest, the Lists of Rights, and the negotiations, the promise to respect “legal rights” or “*droits acquis*” / “*droits légaux*” or “rights and privileges” represented an historic compromise and a constitutional guarantee operating to limit a province’s power to legislate within its own area of competence. The fact that the joint administration of the North-Western Territory beginning in 1870 was bilingual, combined with the operation of s. 133 of the *Constitution Act, 1867*, shows that the inhabitants of the North-Western Territory were successful in getting what they bargained for: bilingual governance.
13. At their most basic, the essence of these lines of reasoning is as follows: the inhabitants of the territories demanded legislative bilingualism in the negotiations with Canada, and we must hold that Canada acceded to this demand and granted a constitutionally protected right throughout the territories, either because Parliament assured the inhabitants in the *1867* *Address* that their “legal rights” would be respected and this was attached to the *1870* *Order*, orbecause of the assurances given by the Governor General in 1869.
14. We note that these arguments have far-reaching consequences. They would require holding that bilingualism has been constitutionally entrenched not only for Alberta, but also for all of the former HBC lands, which now form part of Saskatchewan, Ontario, Quebec, Yukon, Nunavut and present-day Northwest Territories. This reasoning would also require holding that this Court’s decision in *Mercure* is erroneous because bilingualism has been protected in Saskatchewan since 1870. The logical extension of this reasoning would also lead inevitably to the conclusion that a variety of other demands made by the settlers have been constitutionalized by the words “legal rights”. To note but one example, the settlers demanded bilingual judges (“XVIII. That the Judge of the Supreme Court speak the English and French languages”: third List of Rights). As our colleagues describe, this reflected the practice of the time in the pre-annexation territorial courts. The argument that supports the entrenchment of legislative bilingualism throughout the annexed territories supports equally the entrenchment of a right to the exclusive appointment of bilingual judges to the Superior Court, which would continue to the present day.
15. However, these arguments cannot be sustained in the face of the historical record and the underlying principles of constitutional interpretation. Absent some entrenched guarantee, a province has the authority to decide the language or languages to be used in its legislative process. Clearly, a province may choose to enact its laws and regulations in French and English. But we cannot simply infer a guarantee of legislative bilingualism that would override this exclusive provincial jurisdiction absent clear textual and contextual evidence to support an entrenched right. It has never been the case in our constitutional history that a right to legislative bilingualism was constitutionalized by inference through the vehicle of the words “legal rights”. The words in the *1867* *Address* cannot support a constitutional guarantee of legislative bilingualism in the province of Alberta. Parliament knew how to entrench language rights and did so in the *Manitoba Act, 1870* but not in the *1867* *Address*.
    1. Fiduciary Duty
16. The intervener Association canadienne-française de l’Alberta (“ACFA”) argues that Parliament and the Crown owe a fiduciary duty to Métis and the French-speaking population with regard to legislative bilingualism. The ACFA submits that the three-part test set out by this Court in *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, [2011] 2 S.C.R. 261, is met in this case.
17. In our view, this submission cannot succeed. As this Court explained in *Elder Advocates*, for an *ad hoc* fiduciary duty to arise, the claimant must show

(1) an undertaking by the alleged fiduciary to act in the best interests of the alleged beneficiary or beneficiaries; (2) a defined person or class of persons vulnerable to a fiduciary’s control (the beneficiary or beneficiaries); and (3) a legal or substantial practical interest of the beneficiary or beneficiaries that stands to be adversely affected by the alleged fiduciary’s exercise of discretion or control. [para. 36]

1. However, the Court also emphasized that the adverse effect must be with respect to a “specific private law interest to which the person has a pre-existing distinct and complete legal entitlement” (*Elder Advocates*,at para. 51 (underlining added)). In our view, a private law interest does not arise in the circumstances of this case.
2. With respect to the relationship between the Métis and the Crown, a fiduciary duty may arise as a result of the “Crown [assuming] discretionary control over specific Aboriginal interests” (*Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, [2004] 3 S.C.R. 511, at para. 18). While this Court has noted that the relationship between the Métis and the Crown, viewed generally, is fiduciary in nature, not all dealings between parties in a fiduciary relationship are governed by fiduciary obligations (*Manitoba Metis*, at para. 48; see generally paras. 46-50). The appellants have not demonstrated that a fiduciary duty attaches to the Crown in these circumstances.
3. Disposition
4. For the above reasons, we would dismiss the appeals and answer the constitutional questions as follows:

1. Is the *Languages Act*, R.S.A. 2000, c. L-6, *ultra vires* or inoperative insofar as it abrogates a constitutional duty owed by Alberta to enact, print and publish its laws and regulations in English and in French in accordance, *inter alia*, with the *Rupert’s Land and North-Western Territory Order* of June 23, 1870, R.S.C. 1985, App. II, No. 9?

No.

2. If the answer to question 1 is affirmative, are the *Traffic Safety Act*, R.S.A. 2000, c. T-6, and any other laws and regulations that have not been enacted, printed and published by Alberta in English and French inoperative?

It is not necessary to answer this question.

1. Costs
2. Mr. Caron seeks solicitor and client costs before all courts. Mr. Boutet seeks party and party costs before all courts. The appellants request these costs irrespective of the outcome of these appeals. Alberta seeks costs against both appellants before this Court, and opposes solicitor and client costs to Mr. Caron.
3. While costs typically follow the outcome of the case, this Court has the discretion, in appropriate circumstances, to award costs on appeal and in the courts below regardless of the outcome (*Supreme Court Act*, R.S.C. 1985, c. S-26, s. 47). Here, we would exercise our discretion to depart from the normal practice: despite their lack of success, we would award Mr. Caron and Mr. Boutet their costs on a party and party basis.
4. This case clearly raises issues of considerable public interest, a fact this Court has already recognized (*R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78). In that decision, this Court applied the framework that it had earlier established in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, [2003] 3 S.C.R. 371, and upheld the lower court’s decision to award Mr. Caron interim costs — an award granted, by definition, before any decision on the merits. An interim costs award is itself exceptional, reserved for cases that engage issues of public interest and that transcend the individual interests of the particular litigant. In upholding Mr. Caron’s interim costs award, this Court held that this litigation is to the benefit of the broader Alberta public interest and the Franco-Albertan community generally (paras. 45 and 49). In addition, the outcome of the litigation impacts “the validity of the entire corpus of Alberta’s unilingual statute books” (para. 44). These observations remain true today and apply with equal force to Mr. Boutet.
5. Further, an award of party and party costs in these circumstances finds footing in this Court’s jurisprudence. This Court has previously awarded party and party costs to an unsuccessful party who has raised an issue of public interest in the context of constitutional litigation: see *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2013 SCC 42, [2013] 2 S.C.R. 774,at para. 64; see also *DesRochers v. Canada (Industry)*, 2009 SCC 8, [2009] 1 S.C.R. 194. While these appeals originated in a quasi-criminal context, “this case is more in the nature of regular constitutional litigation conducted . . . for the benefit of the Franco-Albertan community generally” (*Caron* (2011), at para. 49).
6. Although we would award Mr. Caron and Mr. Boutet party and party costs, we see no compelling reason to depart further from the norm to award Mr. Caron solicitor and client costs. Mr. Caron was not successful in establishing the language rights he sought. In balancing the competing interests at play, including access to justice, the result, and the use of public funds, we are not persuaded that such an elevated costs award is justified in this case.
7. In sum, we would exercise our discretion to award Mr. Caron and Mr. Boutet party and party costs here and in the Court of Appeal and the summary conviction appeal court. This award of costs in no way disturbs the interim costs previously awarded to Mr. Caron, as affirmed by this Court in 2011. While the resolution of the present appeals is not in the appellants’ favour, this litigation has nevertheless served an important public function.

The reasons of Abella, Wagner and Côté JJ. were delivered by

Wagner and Côté JJ. (dissenting) —

1. Introduction
2. The answer to the question whether Alberta is constitutionally required to enact, print and publish all its laws in French as well as in English is written across the history of Rupert’s Land and the North-Western Territory. It requires us to go back to the country’s foundational moments, to its “constitution” in the most literal sense. More precisely, at the heart of this case are the negotiations regarding the annexation of Rupert’s Land and the North-Western Territory to Canada. These negotiations between representatives of the provisional government of the territories to be annexed and representatives of the Canadian government took place in the period leading up to 1870. It is common ground that they unequivocally resulted in a historic political compromise that permitted the annexation of those territories.
3. We conclude that Alberta is constitutionally required to enact, print and publish its laws in both French and English. We reach this conclusion on the basis that the historic agreement between the Canadian government and the inhabitants of Rupert’s Land and the North-Western Territory contained a promise to protect legislative bilingualism. We accept the appellants’ argument that that agreement is constitutionally entrenched by virtue of the *1867 Address* of Parliament to the Queen. We would therefore allow the appeals.
4. There are three principles that are of paramount importance in this case and that must inform our reading of the *1867 Address*. The first is that the Constitution must be interpreted in light of its historical, philosophical and linguistic context. The second is that constitutional provisions must be interpreted broadly and purposively. The third relates to the very nature of a constitution, which is an expression of the will of the people.
5. In accordance with these fundamental principles of constitutional interpretation, the following conclusions provide compelling support for the appellants’ case. First, it can be seen from the historical record that legislative bilingualism was in effect throughout the territories before the annexation. Second, representatives of the territories demanded legislative bilingualism as a peremptory condition for annexation, and this demand was met with no resistance from Canada. On the contrary, Canadian representatives offered clear assurances that legislative bilingualism in the territories would unquestionably be provided for. Third, the *1867 Address*, read against this background, enshrined the promise of legislative bilingualism, and this interpretation is supported by subsequent documents, notably the *Royal Proclamation* of 1869. Finally, nothing in the *Manitoba Act, 1870*, S.C. 1870, c. 3, negates this reading; indeed, that Act effectively ensured that legislative bilingualism would continue to prevail throughout the territories after the annexation.
6. In short, the historical record clearly shows that there was an agreement to protect legislative bilingualism throughout the annexed territories. This agreement was constitutionally enshrined in the *Rupert’s Land and North-Western Territory Order* (1870) (U.K.) (reprinted in R.S.C. 1985, App. II, No. 9) (the “*1870 Order*”) — which incorporated the *1867 Address* — as is confirmed by the events of that period.
7. Facts and Judicial History
8. Mr. Boutet and Mr. Caron were charged with traffic offences in Alberta under the *Traffic Safety Act*, R.S.A. 2000, c. T-6, which had been enacted in English only. They concede the facts, which are sufficient to establish their guilt beyond a reasonable doubt. However, they argue that the *Traffic Safety Act* is unconstitutional because it was not enacted in both French and English.
9. At trial, both were found not guilty by Judge Wenden of the Provincial Court, who concluded that the *Traffic Safety Act* was of no force and effect, because Alberta was under a constitutional obligation to enact its laws in French as well as in English: 2008 ABPC 232, 95 Alta. L.R. (4th) 307 . The trial court’s decision turned on the constitutional status of the *Royal* *Proclamation* of December 6, 1869. Wenden Prov. Ct. J. ultimately concluded that the *Royal* *Proclamation* was a constitutional document that contained a promise regarding the bilingual publication of statutes, which applied throughout the region that was then Rupert’s Land and the North-Western Territory.
10. The Court of Queen’s Bench allowed the Crown’s appeal, concluding that the province was under no such obligation: 2009 ABQB 745, 23 Alta. L.R. (5th) 321. Eidsvik J. found that although French had been widely used in Rupert’s Land and the North-Western Territory, neither the *Royal* *Proclamation* nor the *1870 Order* had had the effect of constitutionalizing language rights in what is now Alberta. She concluded that the *Proclamation* had been a political gesture and that the *1867 Address* did not include language rights.
11. Mr. Boutet and Mr. Caron appealed to the Alberta Court of Appeal, and their appeals were dismissed: 2014 ABCA 71, 92 Alta. L.R. (5th) 306. Rowbotham J.A., writing for herself and O’Brien J.A., upheld the decision of the Court of Queen’s Bench. She concluded that the geographic scope of the right to publication of legislation in both English and French that had existed before the annexation was limited to the District of Assiniboia. Moreover, she agreed with Eidsvik J. that this right had not been constitutionally entrenched by the *Proclamation* or the *1870 Order*. She relied on the fact that Parliament had shown that it knew how to entrench language rights at the time, as can be seen from s. 23 of the *Manitoba Act, 1870*.
12. In concurring reasons, Slatter J.A. concluded that this Court’s decision in *R. v. Mercure*, [1988] 1 S.C.R. 234,was binding and that the case could be disposed of on the basis of *stare decisis*. He nevertheless proceeded to assess the constitutional claims. Although he agreed that interpretive principles should be applied to favour the protection of minority rights, he found that the historical documents could not be amplified so as to entrench linguistic protection. He further concluded that the language rights that existed at the time of the annexation and the *Proclamation* were limited geographically to the Red River Colony.
13. Issues
14. On September 24, 2014, the Chief Justice stated the following constitutional questions:

Is the *Languages Act*, R.S.A. 2000, c. L-6, *ultra vires* or inoperative insofar as it abrogates a constitutional duty owed by Alberta to enact, print and publish its laws and regulations in English and in French in accordance, *inter alia*, with the *Rupert’s Land and North-Western Territory Order* of June 23, 1870, R.S.C. 1985, App. II, No. 9?

If the answer to question 1 is affirmative, are the *Traffic Safety Act*, R.S.A. 2000, c. T-6, and any other laws and regulations that have not been enacted, printed and published by Alberta in English and French inoperative?

1. Analysis
2. In accordance with the procedure set out in s. 146 of the *Constitution Act, 1867*, the Senate and the House of Commons asked the Queen in the *1867 Address* to admit Rupert’s Land and the North-Western Territory into the Dominion. The relevant portion of s. 146 reads as follows:

**146.** It shall be lawful for the Queen, by and with the Advice of Her Majesty’s Most Honourable Privy Council, . . . on Address from the Houses of the Parliament of Canada to admit Rupert’s Land and the North-western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.

The effect of the final clause of s. 146 was to subject the Parliament of Canada to any order issued by the Queen in Council under that section. In other words, the Parliament of Canada was not competent to alter any terms or conditions expressed in an address of Parliament that had been approved by the Queen in an order pursuant to s. 146. This was clearly set out in s. 2 of the *Colonial Laws Validity Act, 1865* (U.K.), 28 & 29 Vict., c. 63, which provides:

**2.** Any Colonial Law which is or shall be in any respect repugnant to the Provisions of any Act of Parliament extending to the Colony to which such Law may relate, or repugnant to any Order or Regulation made under Authority of such Act of Parliament, or having in the Colony the Force and Effect of such Act, shall be read subject to such Act, Order, or Regulation, and shall, to the Extent of such Repugnancy, but not otherwise, be and remain absolutely void and inoperative.

1. The *1867 Address* stated that upon Great Britain’s agreeing to transfer the territories, Canada would provide for the “legal rights” of any individual therein. It reads as follows:

That in the event of your Majesty’s Government agreeing to transfer to Canada the jurisdiction and control over the said region, the Government and Parliament of Canada will be ready to provide that the legal rights of any corporation, company, or individual within the same shall be respected, and placed under the protection of Courts of competent jurisdiction. [Emphasis added.]

1. The Address was adopted by both houses of Parliament in English and in French. The initial French version of this passage states:

Que dans le cas où le Gouvernement de Votre Majesté consentirait à donner juridiction et contrôle au *Canada* sur ces régions, le Gouvernement et le Parlement du *Canada* seront prêts à pourvoir à ce que les droits acquis de toute Corporation, Compagnie ou Individu de ces régions soient respectés et placés sous la protection de Cours de Justice de juridiction compétente . . . . [Underlining added.]

(*Journaux de la Chambre des communes de la Puissance du Canada*, vol. I, 1st Sess., 1st Parl., December 12, 1867, at p. 68)

1. The promise in the *1867 Address* to respect the “legal rights” of the inhabitants of Rupert’s Land and the North-Western Territory forms part of the Constitution of Canada by virtue of the Address being annexed to the *1870 Order.* As we noted above, s. 146 provided for the entrenchment of the terms and conditions contained in the Address, from the time when the *1870 Order* was issued, as if those terms and conditions had been enacted by statute of the Imperial Parliament. The constitutional status of the Address is reaffirmed in the modern context by virtue of the fact that the *1870 Order* is a constitutional document pursuant to s. 52(2)(*b*) of, and the Schedule to, the *Constitution Act, 1982*. The principles of constitutional interpretation must therefore be applied in order to establish the meaning of the term “legal rights”. Properly understood, the constitutional compromise that gave rise to this promise encompasses legislative bilingualism.
2. Given the extended review of *Mercure* by the courts below, we will begin our analysis by discussing the real impact of that case on the case at bar. We will then turn to the core of our reasoning, which will be set out in two parts. First, we will discuss the historical context, which in our view leads to the unavoidable conclusion that there was a historic compromise regarding legislative bilingualism. We are of the opinion that the *1867 Address* establisheda constitutional guarantee of legislative bilingualism throughout the territories annexed in 1870. As we mentioned above, the Address promised that, once the annexation took place, “the Government and Parliament of Canada will be ready to provide that the legal rights of any . . . individual within the [territories] shall be respected”. By its very terms, this promise was a forward-looking undertaking that was meant to be shaped by subsequent negotiations. The meaning of its terms must therefore be informed by those negotiations. As we will explain below, the historical record shows convincingly that the representatives of the territories’ inhabitants demanded legislative bilingualism as a condition of annexation, and that the Canadian representatives accepted that demand without objection — indeed, with assurances that it would be met. This demand for legislative bilingualism and its acceptance by Canada were grounded in the pre-annexation linguistic rights and practices in the territories, including an established right to legislative bilingualism. This historical context shows that by the time the *1870 Order* annexed the territories to Canada, the Government of Canada had come to accept that legislative bilingualism was among the rights of the territories’ inhabitants. Thus, when the documents are properly interpreted in their entire context, legislative bilingualism was included in the promise of the *1867 Address* — itself incorporated into the *1870 Order* — to respect the inhabitants’ “legal rights”.
3. In the second part of the core of our reasoning, we will analyze the *1867 Address* in light of the three principles of constitutional interpretation identified above. The interpretation of the Address also leads to the conclusion that legislative bilingualism is constitutionally entrenched in Alberta.
   1. Impact of Mercure
4. *Mercure* is not dispositive. As Alberta concedes, the questions in the instant case differ significantly from those raised in *Mercure*. The questions in *Mercure* were whether s. 110 of *The North-West Territories Act*, R.S.C. 1886, c. 50 (s. 110 rep. & sub. 1891, c. 22, s. 18), continued to apply, in whole or in part, to the province of Saskatchewan by virtue of s. 16 of the *Saskatchewan Act*, S.C. 1905, c. 42, and whether the language rights derived from s. 110 were constitutionally entrenched. This Court concluded that s. 110 was not entrenched and that it was therefore not a source of constitutional protection (*Mercure*, at p. 272).
5. In the instant case, the question is whether the *Languages Act*,R.S.A. 2000, c. L-6, which was enacted after this Court’s decision in *Mercure*, is invalid on the basis that Alberta is under a constitutional obligation to publish its laws in French in accordance with, *inter alia*, the *1870 Order*. This case thus turns on the possible existence of a constitutionally entrenched right that predates s. 110 of *The North-West Territories Act*.
6. This distinction is significant. As Eidsvik J. noted in the case at bar, *Mercure* did not deal with the effect of the *Royal Proclamation* of 1869, the *1870 Order*, or the 1867 and 1869 addresses. Unlike in *Mercure*, the trial court in this case heard voluminous evidence arising from the historical inquiry. Wenden Prov. Ct. J. heard from eight expert witnesses over the course of an 89-day trial. These witnesses were experts in history, sociology, sociolinguistics and political science. Academic books and articles were also filed in support of their testimony. The hearing transcript was more than 9,000 pages long.
7. *Mercure* is of limited relevance to the instant case, and we therefore do not need to disturb its conclusions, which were based on s. 110 of *The North-West Territories Act*.We recognize that in *Mercure*, the Courtbelieved that its decision dealt exhaustively with French language rights in Saskatchewan (and in Alberta, as can be seen from its subsequent decision in *R. v. Paquette*, [1990] 2 S.C.R. 1103). Although the Court did, in *Mercure*, touch on some of the issues that are central to the case at bar, the findings it made in that regard were not central to its holding. In particular, it did not undertake an analysis of the compromise underlying the *1870 Order*. An argument that simply touches peripherally on an issue cannot preclude other parties from raising it as a central issue in a subsequent case. To hold otherwise would be unjust.
8. Alberta also compares the *1870 Order* with the *Manitoba Act, 1870* by reference to La Forest J.’s statement in *Mercure*, at p. 271, that “Parliament knew full well how to entrench a provision if it wished to do soˮ (Boutet, R.F., at para. 26). We find, for several reasons, that this statement does not disprove the existence of a promise for legislative bilingualism in the North-Western Territory. First, the political climate at the time was imbued with improvisation. Second, the fact that the provisions differed in terms of their specificity reflects the distinct purposes and origins of the two documents — the *Manitoba Act, 1870* established a new province, whereas the *1870 Order* annexed a territory that would be administered federally. Third, as we will explain below, such an interpretation also runs counter to the established principles of constitutional interpretation.
9. Accordingly, *Mercure* does not preclude a finding that a promise of legislative bilingualism was included in the *1870 Order*.
   1. Preparing for a Contextual Interpretation: The Historical Context of the 1867 Address
10. In order to conduct a proper analysis of the *1867 Address*, andin accordance with the established principles of constitutional interpretation, it is essential for us to review the factual record submitted by the parties. A failure to do so would result in an incomplete decision that would be both fragile from a legal perspective and unjust to the parties. Our colleagues assert that there is little to no evidence in support of the argument advanced by the appellants (paras. 56 and 59). However, in the substantial record that was presented over the course of an 89-day trial, we have identified ample evidence to support the conclusion that there was a constitutionally entrenched promise of legislative bilingualism.
11. As the appellants contend, the content of the promises conveyed in the *1867 Address* cannot be interpreted without reference to the context in which they were made. This Court has committed itself to taking a holistic approach to constitutional analysis by considering all the relevant historical sources: see e.g. *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 (“*Secession Reference*”); *Reference re Supreme Court Act,* *ss. 5 and 6*, 2014 SCC 21, [2014] 1 S.C.R. 433; *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010.
12. The importance of a contextual interpretation of the *1870 Order* was emphasized by Groberman J.A. in *Ross River Dena Council v. Canada (Attorney General)*, 2013 YKCA 6, 337 B.C.A.C. 299. Groberman J.A. insisted that it was not possible to treat the interpretation of the *1870 Order* as an independent issue. Writing for a unanimous panel, he stated:

The Order can only be interpreted in light of the pre-existing relationship of the Crown and First Nations, and in light of the philosophical and jurisprudential precepts underlying Aboriginal Title and Aboriginal Rights.

As I have indicated, a court should not sever off an issue in litigation where that issue is incapable of being analyzed independently of other issues. . . .

. . .

While I do not doubt that the intentions of the Canadian Parliament and the British government in 1867 and 1879 are of some moment in the interpretation of the 1870Order, those intentions cannot be isolated from other considerations in assessing its modern effect. [Emphasis added; paras. 33-34 and 43.]

1. The historical evidence shows that linguistic rights were of paramount importance to the inhabitants, and that the inhabitants demanded and obtained a promise that these rights would be protected. We reach this conclusion on the basis of the following overarching points. First, bilingualism was indisputably well established throughout Rupert’s Land and the North-Western Territory in the period leading up to — and immediately following — the annexation. This was true of legislative bilingualism but also permeated the social and judicial fabric of the community. Second, legislative bilingualism was consistently demanded in the negotiations and met with no resistance from the Canadian delegates, who were eager to reach a compromise with representatives of the inhabitants. Third, it was necessary to negotiate with those representatives in order to proceed with the annexation. Fourth, the Canadian and British governments made a number of promises that assured the inhabitants that bilingualism would be preserved. Fifth, the governments kept these promises and conducted themselves in accordance with them in the years immediately following the 1870 compromise. Sixth, these linguistic practices, the demands that they be maintained and the promises to maintain them applied throughout the territories and were not confined to the Red River Colony.
   * 1. Bilingualism in Rupert’s Land and the North-Western Territory Before the Annexation
2. At trial, Wenden Prov. Ct. J. thoroughly canvassed the pre-1870 legislative and judicial practices in Rupert’s Land. His findings of fact are entitled to deference and may be disturbed only on the basis of a palpable and overriding error. He found that legislative and judicial bilingualism had existed before the annexation, and extended throughout the territories. Wenden Prov. Ct. J. concluded that the French language had had equal and official status before the annexation (paras. 163 and 167). These commitments to bilingualism illustrate how deeply the French language was rooted in the region, and the fact that it formed an important part of the context in which the deal took place.
   * + 1. Bilingualism as a Fact of Everyday Life
3. In 1867, the population of the Red River Colony was divided almost equally between French-speaking and English-speaking people. The majority of the inhabitants were either of mixed French and Aboriginal ancestry (referred to in the record as “Métis”), or of mixed English and Aboriginal ancestry (referred to in the record as “half-breeds”). French was widely used throughout the Red River Colony, as were English and Aboriginal languages such as Cree (Court of Appeal reasons, at para. 109, per Slatter J.).
4. Before the annexation, the French-speaking Métis understood themselves to have linguistic rights within the territories. Far from being resigned to the English governance of the Hudson’s Bay Company (“HBC”), they demanded — and received — legislative and judicial services in both languages. Several examples confirm this state of affairs.
5. In 1847, a group of Métis and a group of people of mixed English and Aboriginal ancestry sent two memoranda, one in French and one in English, to the Secretary for the Colonies in which they addressed the problems caused by the HBC’s monopoly. The two groups collaborated in drafting these memoranda, which must be read as a whole (Prov. Ct. reasons, at paras. 92-93 and 108-9). The French memorandum requested that justices of the peace or magistrates be chosen from among those whom the people respected and considered just. Implicit in this request was a requirement that the judges speak French, as it was one of the official languages of the territories (*ibid.*, at para. 118).
6. The expectation that French be spoken in the judiciary was demanded even more emphatically in the Sayer affair, which we will discuss below. Once again, the inhabitants believed that they had a right to this, and made their discontent known.
7. The importance of bilingualism was recognized by officials in the territories. In a letter to George-Étienne Cartier dated October 7, 1869, Bishop Taché lamented the appointment of an almost solely English-speaking administration sent to govern the North-Western Territory:

[translation] The French element is too significant in the North-West for so limited a representation to be just. And so is the French language. Our Fathers discovered all these lands, they drenched them in their sweat, and even their blood: our missionaries endured too much suffering here for it to be possible to justify reducing our compatriots to the form of exclusion to which they seem to be being condemned. The French language is not only the language of many of the N.W.’s inhabitants, it is itself also an official language, yet most of the members of the new administration do not speak it: this is enough to seal the fate of those who speak no other . . . . I have always dreaded the entry of the N.W. into Confederation, because I have always believed that the French Catholic element would be sacrificed, but I have to admit that it had never occurred to me that our rights would be ignored so quickly and so completely. It seems to me that the new system is likely to undo what cost us so dear. [Emphasis added.]

(Summary of the testimony of Dr. Edmund Aunger in rebuttal, A.R., vol. VI, Tab 103 (“Aunger testimony”), at para. 15)

1. In Wenden Prov. Ct. J.’s view, it was impossible to conclude that French was the *lingua franca* of the fur trade, owing in part to prejudice that prevented Métis from occupying senior positions in the HBC. Nevertheless, he observed that the Métis had contributed significantly to the fur trade and that French was widely spoken by those working at the trading posts (paras. 319-22). As the fur trade was at the heart of the territories’ economy at that time, this meant that French was a key language of commerce.
   * + 1. Legislative Bilingualism at the Assiniboia Council
2. Before the annexation, the HBC was responsible for governing Rupert’s Land. The Royal Charter issued by King Charles II in 1670 granted to the HBC the power to make laws and organize courts of justice to adjudicate civil and criminal cases. Although the HBC’s governance was supplemented by the laws of the United Kingdom, which were evidently issued in English, the HBC’s council increasingly took control over a wide range of matters in the territories. In 1835, George Simpson, the Governor of Rupert’s Land, took steps “to put the administration of Justice on a more firm and regular footing than heretofore” by ordering that “a general Court of the Governor and Council shall be held at the Governor’s residence on the last Thursday of every quarter”: E. H. Oliver, ed., *The Canadian North-West: Its Early Development and Legislative Records*, vol. I (1914), at pp. 267 and 270; Aunger testimony, at para. 10.
3. Within a very short period of time it was decided that these legislative practices would be bilingual. In 1845, an ordinance was passed by the council requiring that the council’s ordinances and regulations be printed and circulated in both French and English:

Whereas the publication and explanation of these resolutions are highly expedient, it is

Resolved 33rd. . . . that copies, in both languages, be read aloud and explained at the meetings of the General Court in November and February of each year, and at such other meetings of the same as the Governor may select for that purpose . . . .

(Oliver, vol. I, at p. 326)

1. This ordinance imposed a meaningful legislative obligation on the council. As the evidence shows, this was not an empty promise: the commitment is apparent from the council’s practices. From that time on, the council’s ordinances were printed in both languages (Queen’s Bench reasons, at para. 131). This is apparent from a letter sent by Recorder Adam Thom, which he read to the council on November 27, 1851. In it, he described certain arrangements he had made in the previous year for the purchase of a bilingual printing press.

6. As everything must be printed in French as well as English, we require a supply of accents and cedillas . . . .

7. With reference to the use of two languages, we need as many capitals . . . as may express “Rivière Rouge” and “District d’Assiniboie [*sic*]” .

(Oliver, vol. I, at pp. 367-68)

1. Further evidence of the council’s commitments to bilingualism can be found in a 1852 report in which it notified the Governor of the HBC in London of the practice of making laws in French and English. In both the 1852 and 1862 consolidations, ordinances were published in French as well as in English. A copy provided to the HBC in London was entitled “General Enactments of the Governor and Council of Assiniboia Entered both in French and in English”: Oliver, vol. II (1915), at p. 1317 (emphasis added).
2. The ordinances covered a wide range of topics that pertained to life throughout the territories, such as the use of horses, trading of alcohol, marriage, customs duties, the administration of justice and the right of succession: Oliver, vol. II, at pp. 1317-24. That the territorial effect of the council’s ordinances extended beyond the Assiniboia District is evidenced by the council’s commitment to fund education in Rupert’s Land and the North-Western Territory. On May 1, 1851, the Assiniboia Council resolved to grant £100, which was to be divided between the bishop of Rupert’s Land and the bishop of the North-Western Territory, for the purpose of education:

Resolved. That £100 be granted from the public funds, to be divided, equally, between the Bishop of Rupert’s Land and the Bishop of North West, to be applied by them at their discretion for the purposes of education.

Carried unanimously.

(Oliver, vol. I, at p. 365)

1. On the basis of the evidence, it is clear that before the annexation, the territories’ inhabitants held a deeply rooted statutory right to the publication of ordinances in both French and English.
   * + 1. Judicial Bilingualism in the General Court
2. The General Court of Rupert’s Land and the North-Western Territory also functioned bilingually. This is significant, as the judicial process played an important role in the development of the law at the time, given that there was comparatively little legislative activity in the territories. Like the council’s ordinances, the common law was created and applied in both languages.
3. To begin with, the judges (known as “recorders”) who administered the law in the territories were bilingual (Prov. Ct. reasons, at para. 78). On January 5, 1838, when Governor Simpson offered Mr. Thom the office of recorder, he stated: “. . . I presume you are qualified to express yourself with perfect facility in the French Language as that may in a great measure be considered the Language of the Country and without which you would not be adapted for the situation” (*ibid.*, at para. 89). This is significant, as it shows how deeply bilingualism was rooted in the courts: the Governor of Rupert’s Land would not consider appointing a recorder who was not fluent in French.
4. Recorder Thom’s subsequent refusal to conduct proceedings in French gave rise to the “Sayer trial” episode in 1849. When Mr. Sayer appeared in the General Quarterly Court on May 17, 1849, to answer to a charge of trading furs in the HBC’s territories without a licence, Recorder Thom refused to allow French to be spoken at the trial. James Sinclair, purportedly representing the Métis and people of mixed English and Aboriginal ancestry, presented to the Court a document listing certain grievances intended for the Governor. The document included a demand that the recorder speak both French and English: R. St. George Stubbs, *Four Recorders of Rupert’s Land* (1967), at pp. 27 and 31, cited by Wenden Prov. Ct. J., at paras. 131-32.
5. Following this incident, the Governor of Assiniboia called together his council to consider the grievances they had received and acquiesced to the demand for “[t]he conducting of all judicial business through the medium of a judge who would address the Court in the French as well as in the English language”: Stubbs, at p. 31. As Recorder Thom was found to be “perfectly competent to conduct the judicial business in French as well as in English”, the council decided that he “should retain his office”: *ibid.* The council’s minutes included the following declaration:

. . . Mr. Thom having at the commencement of the proceedings, expressed his willingness, in future, to address the Court in both languages, in all cases involving either Canadian or Half-breed interests, such a line of procedure should be hereafter adopted.

(Stubbs, at p. 31, cited by Wenden Prov. Ct. J., at para. 132.)

1. It follows that juries were also bilingual. In 1868, there were at least nine civil trials and one criminal trial with a French-speaking or bilingual jury in Rupert’s Land and the North-Western Territory: Aunger testimony, at para. 14. At the criminal trial, the jury consisted of six men who were primarily French-speaking and six men of English or Scottish origin. Interpretation was offered during the trial, as the proceedings were conducted in both languages (Prov. Ct. reasons, at paras. 154-56, citing D. Gibson, *Attorney for the Frontier: Enos Stutsman* (1983)).
   * + 1. Territorial Jurisdiction of the Assiniboia Council and the General Court
2. The territorial jurisdiction of the Assiniboia Council and the General Court extended beyond the Red River Colony, as it included all of Rupert’s Land and the North-Western Territory. Moreover, the evidence clearly demonstrates that the bilingual practices of both these institutions also extended beyond the narrow boundaries of the Red River Colony. Both the council and the court derived their authority from the HBC’s charter. Tavender Dist. Ct. J. wrote the following on this subject in *General Motors Acceptance Corp. of Canada Ltd. v. Perozni* (1965), 52 W.W.R. 32 (Alta. Dist. Ct.), at p. 35:

While I think it is impossible to determine exactly what areas were included in Rupert’s Land [as described in the Royal Charter] I think it is definite from the terms of the Royal Charter that the area now incorporated in the province of Alberta formed part of Rupert’s Land. What later became the provinces of Manitoba and Saskatchewan was also part of Rupert’s Land. It follows then that by Royal Charter in 1670 Charles II of England incorporated the Hudson’s Bay Company and vested in it, *inter alia*, that area which later became the province of Alberta and gave to the company full and complete power and authority to govern the said area subject only to the laws to be enacted and enforced being “reasonable and not contrary or repugnant but as neare as may bee to the Lawes Statutes or Customes” of England and subject to allegiance to the crown. Nothing is said about language in the Royal Charter. The Hudson’s Bay Company governed Rupert’s Land until after Confederation in 1867.

1. The geographic scope of the HBC’s legislative authority is evidenced by Recorder Thom’s practice of applying ordinances to the whole of the territories. Moreover, the council’s 1845 decision requiring that ordinances be printed and circulated in both French and English referred to activities beyond the limits of the Colony: Aunger testimony, at para.13.
2. Several events illustrate the extent to which the HBC exercised its judicial authority beyond the boundaries of the Red River Colony. In 1848, Recorder Thom decided that the General Court had jurisdiction to try James Caulder, who was charged with murder in the Peace River District, which lay far to the northwest of the Red River Colony (Prov. Ct. reasons, at para. 150). Further, in 1857, a man arrested in Norway House, which was located outside the Colony on the northern tip of Lake Winnipeg, was also considered to be within the jurisdiction of the General Court, as he was moved to the Colony before being released by the recorder (*ibid.*, at para. 151). In 1886,in *Sinclair v. Mulligan* (1886), 3 Man. L.R. 481 (Q.B.), aff’d (1888), 5 Man. L.R. 17 (C.A.), Killam J. of the Manitoba Court of Queen’s Bench mentioned that the General Court had had *de facto* territorial jurisdiction and had been empowered “to try charges of offences committed within the limits of the lands granted to the company, or over which it was given authority by its charter” (p. 488).
3. Governor Simpson testified to these practices in 1857 in an appearance before the British House of Commons Select Committee on the Hudson’s Bay Company:

1019. Supposing an outrage takes place in a distant part of the country, what happens? — The case would be tried probably at Red River or at Norway House.

. . .

1021. I suppose in very distant parts of the country you administer justice as best you may? — In many instances we have brought cases to Red River, where the parties have been regularly tried by jury.

. . .

1189. . . . Is there a recorder, independent of the Governor? — Yes.

1190. At the Red River and at Norway House also? — No; the recorder of Red River goes to Norway House.

(*Report from the Select Committee on the Hudson’s Bay Company* (1858), Minutes of Evidence, at pp. 59 and 66)

1. In summary, the evidence clearly shows that, before the annexation, all the inhabitants of Rupert’s Land and the North-Western Territory enjoyed linguistic rights in both the legislative and judicial spheres. This context is crucial to a proper interpretation of Parliament’s promise to protect the inhabitants’ “legal rights”.
   * 1. Representatives of the Inhabitants Stipulated Their Conditions for the Annexation
2. A second important element of the context is the relationship between the territories’ inhabitants and the Canadian government and how these two parties approached the inhabitants’ concerns regarding bilingualism. As we will explain below, when the inhabitants learned of Canada’s intention to unilaterally incorporate their land into the Dominion, some of them expressed their discontent and stipulated the conditions under which they would consent to the annexation. One of these conditions was a guarantee of legislative bilingualism.
   * + 1. Discontent and Uprising
3. Section 146 of the *Constitution Act, 1867* contemplated the possibilitythat the territories would join the Dominion. Initially, Canada and Great Britain had overlooked the fact that Rupert’s Land and the North-Western Territory were inhabited, and proceeded to negotiate with one another. Until 1869, the only parties involved in the annexation discussions were Great Britain, Canada and the HBC; the inhabitants were not included (Prov. Ct. reasons, at para. 173). Moreover, Canada did not appear attuned to the concerns of the French-speaking Métis. For example, in the fall of 1869, Canada, believing the annexation to be imminent, made appointments to the new territorial government, and almost all the appointees were Anglophones (Aunger testimony, at para. 15).
4. This situation sowed discontent among the inhabitants. As we mentioned above, Bishop Taché expressed concerns to Minister of Militia and Defence Cartier regarding the consequences of the annexation for the status of the French language. On November 2, 1869, a group of inhabitants made their discontent known. They barred entry to the British government’s representative and refused him access to the whole of the territories. Shortly after, this group, led by Louis Riel, took Fort Garry and later, they established a provisional government. The uprising caused the transfer of the territories from Great Britain to Canada to be delayed. (See *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, [2013] 1 S.C.R. 623, at para. 26.)
   * + 1. Conditions for the Annexation
5. Some of the inhabitants protested against a unilateral annexation, and their representatives stipulated conditions for the territories’ entry into Confederation, one of which was the demand for legislative bilingualism. Representatives of the French-speaking and English-speaking inhabitants of Rupert’s Land and the North-Western Territory gathered at two conventions in order to determine what interests they had in common and to discuss the future of the territories. Legislative bilingualism consistently featured among the concerns raised. Two lists of rights emerged from these conventions. These were not airy hopes, but the conditions upon which the annexation would proceed.
6. The first of these conventions was held from November 16 to December 1, 1869. Twenty-four delegates were convened, twelve French-speaking Métis and twelve English-speaking people of mixed English and Aboriginal descent. Two of the representatives who attended were from outside the Red River Colony, more specifically from the parish of Sainte-Marie and Sainte-Margaret, and the parish of Sainte-Anne.
7. This convention resulted in the first list of rights. As was noted at the bottom of the list itself, the conditions were adopted unanimously:

All the above articles have been severally discussed and adopted by the French and English Representatives without a dissenting voice, as the conditions upon which the people of Rupert’s Land enter into confederation.

(*Sessional* *Papers*, vol. V, 3rd Sess., 1st Parl., 1870, No. 12, at p. 100)

1. One of these conditions was “[t]hat the English and French languages be common in the Legislature and Courts, and that all public documents and Acts of the Legislature be published in both languages” (art. 10): *Sessional* *Papers*, at p. 100.
2. The second convention took place at Fort Garry from January 25 to February 10, 1870. The French-speaking Métis and English-speaking people of mixed English and Aboriginal descent each sent 20 delegates, six of whom were from outside the Red River Colony. A second list of rights emerged from this convention. Once again, linguistic rights featured prominently:

12. That the English and French languages be common in the Legislature and Courts, and that all public documents and Acts of the Legislature be published in both languages.

(*Sessional* *Papers*, Report of Donald A. Smith, at p. 11)

1. Some of the articles in this list provoked extensive discussions; however, those concerning linguistic rights incited no debate at all (Prov. Ct. reasons, at paras. 203 and 206). It was taken for granted that these rights would be included, as they reflected the existing reality (*ibid.*, at para. 296).
2. The delegates to the convention drafted the lists on behalf of the inhabitants of the territories as a whole. The secretary of the committee responsible for drafting the second list of rights noted that “[t]he document was one containing a list of demands in the event of the country entering the Dominion as a Territory”: *The New Nation*, February 4, 1870, at p. 1, fifth day of the convention, January 29, 1870, 10:00 p.m., cited by Wenden Prov. Ct. J., at para. 202. This is significant, as it shows that what was being discussed was not the entry of the Red River Colony, but rather the entry of the “country”. Moreover, the secretary’s note shows that the demands in the list were not linked to entry as a province.
3. A third list of rights was drafted by the executive of the provisional government and was dated March 23, 1870 (Queen’s Bench reasons, at para. 81). Although almost identical to the second list, the third contains broader linguistic demands:

XVI. That the English and French languages be common in the Legislature and in the Courts, and that all public documents, as well as all acts of the Legislature be published in both languages.

XVII. That whereas the French and English speaking people of Assiniboia are so equally divided as to number, yet so united in their interests and so connected by commerce, family connections and other political and social relations, that it has, happily, been found impossible to bring them into hostile collision, — although repeated attempts have been made by designing strangers, for reasons known to themselves, to bring about so ruinous and disastrous an event; — and whereas after all the troubles and apparent dissentions [*sic*] of the past, — the result of misunderstanding among themselves; they have — as soon as the evil agencies referred to above were removed, — become as united and friendly as ever; — therefore, as a means to strengthen this union and friendly feeling among all classes, we deem it expedient and advisable, — That the Lieutenant-Governor, who may be appointed for the Province of Assiniboia, should be familiar with both the French and English languages.

(Archives of Manitoba, “Red River Disturbance collection”, SIS 4/B/10; see also W. L. Morton, *Manitoba: The Birth of a Province* (1965), at pp. 246-47.)

1. Three delegates — Father Ritchot, Judge Black and Alfred Scott — were sent to Ottawa to negotiate with the Canadian government (Prov. Ct. reasons, at para. 283). They were given this list of rights along with a letter of instruction from the President of the Provisional Government of Assiniboia in council. It advised them that certain provisions, including the guarantee of legislative bilingualism in art. 16, were peremptory. Moreover, it informed the delegates that they were not empowered to conclude final arrangements with the Canadian government; any agreement entered into would require the approval of and ratification by the provisional government (see A. Begg, *History of the North-West*, vol. I (1894), at pp. 475-76).
2. The delegates represented the inhabitants of the whole of Rupert’s Land and the North-Western Territory, not only those of what is now Manitoba. This is evidenced by, *inter alia*, the third list of rights, which referred to the people of “Rupert’s Land and North-West” (art. 1). Moreover, the delegates were received by the Canadian government as “delegates from the North-West”: letter from Secretary of State for the Provinces Joseph Howe to the delegates, in G. F. G. Stanley, *The Birth of Western Canada:* *A History of the Riel Rebellions* (1936), at p. 118, quoted by Wenden Prov. Ct. J., at para. 285. Finally, there is no evidence that at the time of the negotiations the negotiating parties were contemplating that the Red River Colony would enter into Confederation independently. At the time the conditions for entry were drawn up, the entry of Manitoba as a separate province was not foreseen (*ibid.*, at paras. 234-35). The creation of Manitoba was a compromise that arose during the later stages of the negotiations, when the three delegates of the provisional government met in Ottawa with Prime Minister John A. Macdonald and Minister of Militia and Defence Cartier. It has no effect on the existence of the promise at issue here.
3. In summary, the representatives of the inhabitants of Rupert’s Land and the North-Western Territory were resolute in their demands, which included a guarantee of legislative bilingualism. This condition for entry was treated as non-negotiable, and it reflected what had been the reality in the territories over the previous 20 years. As we will explain below, the representatives of the inhabitants of the territories were in a position to impose such conditions on the Canadian government.
   * 1. Negotiations With the Inhabitants Were Necessary in Order to Proceed With the Annexation
4. A third contextual consideration concerns the relative negotiating strengths of the parties. Although Great Britain was keen to proceed with the annexation, Canada had refused to do so unless possession could be taken peacefully. British officials, in particular Earl Granville, the Colonial Secretary, placed considerable pressure on the Canadian government to negotiate with and grant concessions to the inhabitants. Great Britain did not want to be responsible for administering the territories. Under the *Rupert’s Land Act, 1868* (U.K.), 31 & 32 Vict., c. 105,it had but one month from the date of surrender to arrange for the transfer of the territories to Canada: s. 3 (see Queen’s Bench reasons, at para. 60).
5. A telegram from Governor General John Young to Earl Granville dated November 26, 1869, illustrates Canada’s unwillingness to accept the territories under non-peaceful circumstances:

On surrender by Company to the Queen, the Government of Company ceases. The responsibility of Administration of affairs will then rest on Imperial Government. Canada cannot accept transfer unless quiet possession can be given — anarchy will follow. . . . My advisers think Proclamation should be postponed. Mr. McDougall will remain near Frontier, waiting favorable opportunity for peaceable ingress. [Emphasis added.]

(*Correspondence Relative to the Recent Disturbances in the Red River Settlement* (1870) (“*Correspondence*”), at p. 12; see also Prov. Ct. reasons, at para. 463.)

1. Earl Granville responded to Young’s telegram by refusing to postpone the annexation. He instead requested that the Governor General “use every effort to explain whatever misunderstandings may have arisen”: November 26, 1869, *Correspondence*,at p. 101, cited byWenden Prov. Ct. J., at para. 384. He also required that Young ascertain the “wants” and “conciliate the good-will” of the people (*ibid.*). Shortly after this, the *Royal* *Proclamation* of 1869 was issued by the British government in response to the uprising. As we will explain below, the promises made in the *Royal* *Proclamation* were intended to reassure the inhabitants about the impending annexation.
2. Prime Minister Macdonald urged the British government to allow matters to “remain as they are until quiet is restored”: report of a committee of the Privy Council, December 16, 1869, *Sessional Papers*, at p. 143, cited by Wenden Prov. Ct. J., at para. 391. The British government nevertheless continued to insist that Canada negotiate with the inhabitants. For example, on March 5, 1870, Earl Granville telegrammed Young, stating that military assistance would be sent “provided reasonable terms are granted Red River Settlers” (*Correspondence*, at p. 175, quoted by Wenden Prov. Ct. J., at para. 480). A subsequent telegram dated April 23, 1870, confirmed that troops were permitted to advance but required the “Canadian Government to accept decision of Her Majesty’s Government on all disputed points of the Settlers’ Bill of Rights” (*Correspondence*, at p. 177, quoted by Wenden Prov. Ct. J., at para. 481).
3. It is clear that Canada was unwilling to annex the territories while the inhabitants’ resistance was under way. However, this was not a situation in which they could simply wait out the inhabitants’ demands. The British government was applying significant pressure on Canada to negotiate reasonable terms for the transfer. This was the socio-political context in which the negotiations and the promises made to the inhabitants by the Canadian government must be understood. An interpretation that does not account for this context is not only inaccurate, but also unjust.
   * 1. Promises Made by the Canadian and British Governments Before the Annexation
4. The fourth relevant element of the context relates to the interrelated undertakings that were extended to the inhabitants. Over the course of the negotiations, the Canadian and British governments made a series of promises. As will become apparent, those promises inform the basis of Alberta’s constitutional duty to enact, print and publish its laws and regulations in French. However, we will start here by surveying the sources and the geographic scope of the promises.
   * + 1. Promise in the Royal Proclamation That All Civil and Religious Rights and Privileges Would Be Respected
5. The *Royal* *Proclamation* of 1869 was issued by the Governor General at the order of the Queen in response to the inhabitants’ resistance. It contained a guarantee from the British government that upon annexation, all the “civil and religious rights and privileges” of the inhabitants of the North-Western Territory would be respected.
6. The relevant portions of the *Proclamation*, which was addressed to the inhabitants, read as follows:

The Queen has charged me, as Her representative, to inform you that certain misguided persons in Her Settlements on the Red River, have banded themselves together to oppose by force the entry into Her North-Western Territories of the officer selected to administer, in Her Name, the Government, when the Territories are united to the Dominion of Canada, under the authority of the late Act of the Parliament of the United Kingdom; and that those parties have also forcibly, and with violence, prevented others of Her loyal subjects from ingress into the country.

Her Majesty feels assured that she may rely upon the loyalty of her subjects in the North-West, and believes those men, who have thus illegally joined together, have done so from some misrepresentation.

The Queen is convinced that in sanctioning the Union of the North-West Territories with Canada, she is promoting the best interest of the residents, and at the same time strengthening and consolidating her North American possessions as part of the British Empire. You may judge then of the sorrow and displeasure with which the Queen views the unreasonable and lawless proceedings which have occurred.

Her Majesty commands me to state to you, that she will always be ready through me as her representative, to redress all well founded grievances, and that she has instructed me to hear and consider any complaints that may be made, or desires that may be expressed to me as Governor General. At the same time she has charged me to exercise all the powers and authority with which she has entrusted me in the support of order, and the suppression of unlawful disturbances.

By Her Majesty’s authority I do therefore assure you, that on the union with Canada all your civil and religious rights and privileges will be respected, your properties secured to you, and that your Country will be governed, as in the past, under British laws, and in the spirit of British justice. [Emphasis added.]

(*Sessional Papers*, at p. 44)

1. Although the *Proclamation* does refer to the Red River Colony, its effect was clearly not limited to the settlers in that area. It is explicitly addressed to people living in territories outside the Colony as well. It refers to the loyalty of the Queen’s “subjects in the North-West”, and also to the geographic region itself. The first paragraph of the *Proclamation* quoted above mentions that the Queen’s officer had been denied entry into the North-West Territories as a whole. And in the third paragraph, the annexation is described as a “Union of the North-West Territories with Canada”.
2. The significance attached to the *Royal* *Proclamation* by representatives of the Canadian government is evident from the manner in which they invoked it. The *Proclamation* was widely discussed, and 500 copies of it were printed and distributed in English, French and Cree: P. Foucher, “Le statut constitutionnel de la Proclamation royale de 1869”, in S. Bouffard and P. Dorrington, eds., *Le statut du français dans l’Ouest canadien: la cause Caron* (2014), 177, at p. 183; *Correspondence*, at p. 101; *Report of the Select Committee on the Causes of the Difficulties in the North-West Territory in 1869-70* (1874), at pp. 17 and 101. As will be seen below, Commissioner Donald Smith, who was charged by the Governor General with conveying the Canadian government’s intentions to the North-Western Territory’s inhabitants, emphasized the *Proclamation* in his negotiations with the inhabitants.
   * + 1. Promises Made by the Government’s Representatives to the Inhabitants and Their Delegates
3. The delegates of the Canadian government who met with the inhabitants’ representatives confirmed that the inhabitants’ rights and privileges would be respected.
4. On January 19 and 20, 1870, at a mass outdoor meeting held in Fort Garry, Smith read out several pieces of government correspondence to a crowd of more than 1,000 people: E. A. Aunger, “Pourvoir à ce que les droits acquis soient respectés: la cause *Caron* et la protection constitutionnelle du bilingisme officiel dans l’Ouest canadien”, in Bouffard and Dorrington, 59, at p. 80; see also Queen’s Bench reasons, at para. 74, and Prov. Ct. reasons, at paras. 192 and 378. This correspondence included a letter from Young to William McTavish, the then-Governor of Rupert’s Land, dated December 6, 1869, which contained the following statement:

And the inhabitants of Rupert’s Land, of all classes and persuasions, may rest assured Her Majesty’s Government has no intention of interfering with, or setting aside, or allowing others to interfere with, the religion, the rights, or the franchise hitherto enjoyed, or to which they may hereafter prove themselves equal.

(*Correspondence*, at p. 101, cited by Wenden Prov. Ct. J., at para. 383.)

Following the outdoor meeting, a second convention took place, from which a second list of rights emerged. Upon hearing the demands set out in the second list of rights, Smith assured the inhabitants of their right to legislative bilingualism, stating: “. . . I have to say, that its propriety is so very evident that it will unquestionably be provided for” (*The New Nation*, February 11, 1870, at p. 4; Aunger testimony, at para. 20; Prov. Ct. reasons, at para. 479).

1. Promises were also made to the inhabitants’ representatives during the negotiations in Ottawa. Legislative bilingualism was not a contentious request in these negotiations, and there is no indication that it was not accepted. This follows from correspondence between Earl Granville’s delegates to the negotiations in which the conditions that had been rejected by the British and Canadian delegations were listed. Article 16, which demanded a guarantee of legislative and judicial bilingualism, was not among the ones they had rejected: see *Manitoba Métis Federation Inc. v. Canada (Attorney General)*, 2007 MBQB 293, 223 Man. R. (2d) 42, at para. 484.
2. These commitments were not simply a propaganda tool — the guarantees were referred to in correspondence between government officials. For example, in a letter from Secretary of State for the Provinces Howe to Lieutenant Governor McDougall dated December 7, 1869, Howe wrote: “You will now be in a position, in your communications with the residents of the North-West, to assure them [t]hat all their civil and religious liberties and privileges will be sacredly respected” (*Correspondence*, at p. 35).
3. The promises made by the officials were accepted by the inhabitants’ delegates. On June 24, 1870, Father Ritchot returned to Fort Garry from Ottawa and reported to the provisional government. The provisional government subsequently accepted entry into the union, noting:

In view, however, of the liberal policy adopted in the interest of the people of the North-West by the Canadian Ministry, and recommended by the Imperial Government, a policy necessarily based on the principles for which they have fought, the Provisional Government and the Legislative Assembly, in the name of the people of the North-West, do accept the “Manitoba Act”, and consent to enter into Confederation on the terms entered into with our delegates.

(Stanley, at p. 124)

1. Alberta submits that the provisional government approved only the *Manitoba Act, 1870* (Boutet, R.F., at paras. 56-60). In our view, the above passage shows that the situation is more nuanced than that. It is important to bear in mind that, while it is true that the provisional government accepted the *Manitoba Act, 1870*, it also consented “to enter into Confederation on the terms entered into with our delegates”. The provisional government’s understanding of what was agreed on cannot therefore be reduced to the content of that Act only. Moreover, its statement shows that there was no radical break between the earlier stages of the negotiations, which clearly included legislative bilingualism for the whole territory, and the final agreement. The deal was informed by a “liberal policy adopted in the interest of the people of the North-Westˮ that was “based on the principles for which they have foughtˮ. The provisional government agreed, “in the name of the people of the North-West”, to the annexation of the whole of the territories to Canada, and it did so because Canada had agreed to the conditions that were essential to that people. These conditions included legislative bilingualism.
2. Given the importance of legislative bilingualism, had it been dropped as a condition for entry for the vast majority of the territories that were to be annexed, discussions would surely have taken place in this regard. It is inconceivable that, in their position of strength, the inhabitants would have dropped this demand without a word of protest or explanation. Absent evidence to the contrary, it must be concluded that the inhabitants understood legislative bilingualism to be included among the promises that had been made with respect to the creation of the North-Western Territory.
   * 1. Post-annexation Situation
3. The relevance of the context does not end with the issuance of the *1870 Order*. Immediately after the annexation, the North-Western Territory was governed pursuant to the *Manitoba Act, 1870*. Although our colleagues agree on the existence of a system of joint bilingual administration in the post-annexation period, they contend that there is no evidence that this joint administration was part of the implementation of a constitutional guarantee (see para. 88). To deny that there is any evidence in this regard, it is necessary to disregard a large part of the historical context found in the record. We are of the view that the state of affairs that prevailed throughout the territories and the actions of the negotiating parties after the agreement was reached are indicative of their understanding of the constitutional deal that had been struck.
4. With regard to legislative and judicial practices in the territories, little changed following the provisional government’s decision to accede to the annexation. Bilingualism continued in the legislative, judicial and social spheres throughout the territories (Prov. Ct. reasons, at para. 354). This both represented continuity in relation to prior practices and followed from the application of the *Manitoba Act, 1870*.
5. At the time of the annexation, no distinct governing structure was legislated for the North-Western Territory. As a result, the transition was marked by continuity. This can be seen in the legislative schemes that existed in the period leading up to the annexation as well. For instance, s. 5 of the *Rupert’s Land Act, 1868* and s. 5 of the *Temporary Government of Rupert’s Land Act, 1869*, S.C. 1869, c. 3, provided for continuity of the courts and laws throughout the territories.
6. Upon joining the Dominion, the North-Western Territory and Manitoba were administered largely by the same officials*.* This was in keeping with the demographic reality: the North-Western Territory was sparsely populated, and its inhabitants had significant historical, political and family ties to Manitoba. Moreover, the *de facto* joint administration was supported by specific provisions of the *Manitoba Act, 1870*.
7. In 1870, government officials served in the same capacities for both Manitoba and the North-Western Territory. In the case of the Lieutenant Governor, this was explicitly provided for in s. 35 of the *Manitoba Act,* *1870*. In practice, his legal adviser for Manitoba also served as attorney general for the North-Western Territory. The same practice prevailed in the legislative branch, with members of Manitoba’s Legislative Assembly doubling as members of the council of the North-Western Territory. With regard to judicial affairs, the General Court functioned as the highest court in both jurisdictions, and the Recorder of Manitoba also served in the same capacity in the North-Western Territory (Prov. Ct. reasons, at paras. 326 and 331-33).
8. The individuals appointed to such offices were predominantly bilingual. Adams Archibald, who served as Lieutenant Governor, was bilingual, as were the members of his legislative and executive councils. In appointing these officials, he explicitly considered the need for Francophones to be represented. The Recorder, Francis Johnson, was also bilingual (Prov. Ct. reasons, at paras. 344-46).
9. Because legislative and judicial affairs were each conducted in an integrated manner, the explicit guarantees afforded to Manitoba in the *Manitoba Act,* *1870* were effectively extended to the North-Western Territory. In particular, legislative and judicial bilingualism were ensured by s. 23 of the *Manitoba Act,* *1870*, which provided that either French or English could be used in debates of the houses of the legislature and in the courts, and required that the acts, records and journals of the legislature be printed and published in both languages.
10. That legislative bilingualism did not prevail only in Manitoba is evident from the practices of the territorial council, which enacted and printed its laws in both French and English. The first council passed three laws, two of which were printed simultaneously in French and English. The council later recommended the production of

a Manual containing all such Acts and Orders of Council as relate to the Government of the North West Territories, together with all Acts of the Dominion of Canada, whether relating to the Criminal Laws or otherwise, which apply to the N. W. Territories and all Acts passed by this Council, should be prepared and a number printed, in both French and English for use of the said Justices of the Peace and other officials. [Emphasis added.]

(Oliver, vol. II, at p. 1023; see also Prov. Ct. reasons, at para. 352.)

1. In 1877, the existing practice of legislative bilingualism was codified in s. 11 of *The North-West Territories Act, 1877*,S.C. 1877, c. 7. This section was the result of an amendment proposed in the Senate, one that passed without debate (Prov. Ct. reasons, at para. 365). Our colleagues state that “[w]hen legislative bilingualism was enacted as part of the amendment process in 1877, nothing suggested that [this was done] out of a sense of constitutional obligation” (para. 89). We respectfully disagree. Senator Girard, who introduced the amendment, noted that

the French language seemed to have been totally ignored in the bill, although the majority of the 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. [Emphasis added.]

(*Debates of the Senate*, 4th Sess., 3rd Parl., April 9, 1877, at p. 319; see also *R. v. Lefebvre* (1986), 74 A.R. 81, at para. 49, per Belzil J.A., dissenting.)

1. Our colleagues also emphasize the 1891 amendment to s. 110 of *The North-West Territories Act*, which placed legislative bilingualism under the jurisdiction of the territorial legislature (see para. 76). In our view, that amendment did not reflect a proper understanding of the compromise that had been reached in 1870. Initially, it appeared in a bill introduced in 1890 by D’Alton McCarthy that “was viewed by its sponsor as simply the first step in a process the ultimate goal of which was the elimination of the French language throughout the country, a process which incidentally included the attempted abolition by Manitoba of the language guarantees in s. 23 of the *Manitoba Act, 1870*”: *Mercure*, at p. 254. Just as the *de facto* abolition of legislative bilingualism in Manitoba cannot be said to reflect an accurate understanding of the historic compromise reached in 1870, its purported abolition in the territories cannot be said to have extinguished legislative bilingualism in Alberta. As this Court recently observed, “[t]he Constitution is the supreme law of our country, and it demands that courts be empowered to protect its substance and uphold its promises”: *Manitoba Metis Federation*, at para. 153. The fact that a constitutional promise has been ignored for over a century takes nothing away from it. The passage of time does not remedy this injustice — it remains an injustice today.
   * 1. Legislative Bilingualism Was Part of the Deal for the Whole of the Territories
2. Regardless of the fact that legislative bilingualism was explicitly provided for in the *Manitoba Act, 1870*, it was part of the deal for the North-Western Territory and not only for the province of Manitoba.
3. Throughout the negotiations, the French- and English-speaking inhabitants from across the territories had been resolute in their demands. Their representatives met with each other and deliberated together for the benefit of the territories as a whole. In their interactions with Canadian and British officials, they held themselves out as — and were received as — representatives of the people of Rupert’s Land and the North-Western Territory. This made perfect sense given the strong family and economic ties that linked the Métis community across the vast region.
4. The compromise between the inhabitants and the Canadian government led to the addition of two new regions to the Dominion: a province and a territory. However, the negotiations leading up to the annexation had not been bifurcated; the conditions demanded by the inhabitants that were enumerated in the lists of rights had applied in respect of both regions. At no time were separate delegates selected for each of the two regions, and in agreeing to enter into the Dominion, the provisional government had explicitly acted on behalf of all “the people of the North-West”.
5. Understanding the geographical context is critical to interpreting the historic constitutional events. The Red River Colony was undoubtedly the *de facto* capital of Rupert’s Land and the North-Western Territory. It was where the majority of the population lived, and it served as the administrative centre of the territories, being where the governor’s residence, the Assiniboia Council and the General Court were located (Prov. Ct. reasons, at para. 170). The remainder of the settlements in the territories consisted of “isolated outposts . . . scattered along the lonely waterways of the North-West, from the international boundary to the Arctic Ocean and from Lake Winnipeg to the Rockies”: L. H. Thomas, *The Struggle for Responsible Government in the North-West Territories: 1870-97* (2nd ed. 1978), at p. 21, cited by Wenden Prov. Ct. J., at para. 171. Nonetheless, as we mentioned above, the bilingual practices of the council and the court, including the application of ordinances and the exercise of judicial authority, extended beyond the Red River Colony.
6. Around the time of the negotiations, the Métis population of the Red River Colony numbered roughly 9,000. The Métis population in the territories outside the Colony, though smaller, was still significant; it numbered more than 2,000: *Historical Atlas of Canada*, vol. II, *The Land Transformed: 1800-1891* (1993), at plate 35; Prov. Ct. reasons, at para. 303. The Métis communities outside the Colony included Lac-la-Biche, Peace River, Saint-Albert and Slave Lake, which were well-established and dynamic (Prov. Ct. reasons, at para. 303). The Métis who settled in these outlying areas maintained strong family ties to the settlement in Red River and travelled frequently to the Colony. In fact, there was extensive travel throughout the territories generally, as trading activities, along with the bison hunt, were mainstays of the economy. The Métis often wintered in different locations across the territories (Prov. Ct. reasons, at para. 305).
7. The Métis community extended throughout the annexed territories. At the time, they had a highly mobile way of life and extensive family networks (Prov. Ct. reasons, at paras. 303-5). They relied on these relationships for their survival. An interpretation of the *1867 Address* that suggests the Métis consented to safeguarding legislative bilingualism in only a small portion of the annexed territories ignores this reality and is implausible. Such consent would have amounted to their abandoning the concerns of their kin who lived in the outlying regions.
8. Aside from how unlikely it is that the Métis would have sought constitutional protection for rights in only one part of the territories, it is even less realistic to conclude that legislative bilingualism was the condition that would have been renounced. Legislative bilingualism was not a contentious demand, but it was one that the inhabitants’ representatives consistently made. There is no evidence to support a proposition that Canada pressed for a concession in this regard. Moreover, statutory protection for such rights was well established in the territories. As the evidence with respect to the negotiations shows, linguistic rights were accepted as a *fait accompli* (Prov. Ct. reasons, at para. 487).
9. The result of the negotiations was the addition of two new regions to the Dominion. That these new regions entered the Dominion pursuant to different instruments is no reason to ignore the singular context of the negotiations. The creation of the Province of Manitoba and the explicit protection of minority language rights in that province cannot lead to an inference that no such rights existed in the North-Western Territory. As we will explain below, such an interpretation is inconsistent with fundamental principles of constitutional interpretation. Moreover, there is no evidence that the delegates simply capitulated and renounced their conditions as regards the extensive territory beyond the Red River Colony. As the above discussion shows, the annexation was achieved not by conquest, but by negotiation.
10. We therefore disagree with the contention that the end result of the negotiations regarding legislative bilingualism was the enactment of the *Manitoba Act, 1870* alone. This contention rests on the contrast between the *Manitoba Act, 1870* and the *1870 Order* and, in particular, on the fact that the latter contained no express reference to legislative bilingualism. In our view, this contrast is a “red herring” and is of no help in this case. First, these two instruments are not really comparable, as they did not come from the same legislative authorities — the *Manitoba Act, 1870* was passed by the Canadian Parliament, while the *1870 Order* was issued by Imperial authorities. Second, the *1870 Order* contained an explicit promise to respect the “legal rights” of the inhabitants set out in the *1867 Address*. As we mentioned above and will explain in detail below, this promise encompassed the protection of legislative bilingualism. Third, the *Manitoba Act,* *1870* not only dealt with matters arising in the new province, but was also intended to “make provision for the Civil Government of the remaining part of the said Territories, not included within the limits of the Provinceˮ: preamble. Therefore, a proper understanding of the safeguards for legislative bilingualism set out in the *Manitoba Act, 1870* is that they effectively extended to the newly created territories. Finally, the annexed territories fell under federal authority. It was therefore guaranteed pursuant to s. 133 of the *Constitution Act, 1867* that federal Acts applicable to the territories would be printed and published in both languages as a consequence of their being Acts of the Parliament of Canada.
11. In sum, after the annexation, there were two Canadian legislatures that were competent to pass laws in the annexed territories — the new Manitoba legislature and the Parliament of Canada. Both were under a constitutional obligation to publish laws in English and French. This raises the question of what additional obligations the *1870 Order* might have imposed. When a legislative body was eventually created for the North-West Territories in 1875 without an explicit guarantee of legislative bilingualism, Senator Girard, who was a representative of the territories, promptly introduced the amendment discussed above to rectify that oversight on the ground that Francophones in the territories had as much right to legislative bilingualism as those in Quebec and Manitoba.
    1. Application of the Principles of Constitutional Interpretation to the 1867 Address
12. As we mentioned above, there are three principles of constitutional interpretation that must guide our interpretation of the promise made in the *1867 Address* to respect the inhabitants’ “legal rights”. These principles are that the Constitution must be interpreted contextually, that its provisions must be given a broad and purposive reading, and that its nature — as an expression of the will of the people governed by it — is relevant.
13. Any interpretation of the Constitution must clearly be rooted in the words of the provision in question.However, as this Court cautioned in the closely related case of *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721,

[t]his Court cannot take a narrow and literal approach to constitutional interpretation. The jurisprudence of the Court evidences a willingness to supplement textual analysis with historical, contextual and purposive interpretation in order to ascertain the intent of the makers of our Constitution. [p. 751]

1. Constitutional provisions must therefore be “interpreted in a broad and purposive manner and understood in their proper linguistic, philosophic and historical context”: *Reference re Supreme Court Act*, at para. 19; *Manitoba Metis Federation* (S.C.C.), at para. 75. Moreover, the Constitution is a product of political agreements and historic compromises: *Secession Reference*, at paras. 35-41; *Reference re Manitoba Language Rights*, [1992] 1 S.C.R. 212, at p. 222; *Adler v. Ontario*, [1996] 3 S.C.R. 609, at para. 29; *Reference re Supreme Court Act*, at para. 48. In the instant case, it is essential to fully understand the context of the *1867 Address* in order to interpret its words in a purposive and historically accurate manner. The purpose of the *1870 Order* was to establish Canadian sovereignty over the territories in accordance with the terms and conditions set out in the addresses. The inhabitants were thereby brought into the Canadian constitutional order following extensive negotiations and, ultimately, an agreement between their representatives and the Government of Canada. The perspective of the inhabitants cannot be ignored in interpreting the words of the *1867 Address*. As this Court has repeatedly stressed, “[t]he Constitution of a country is a statement of the will of the people to be governed in accordance with certain principles held as fundamental and certain prescriptions restrictive of the powers of the legislature and government”: *Secession Reference*, at para. 85 (emphasis added), quoting *Reference re Manitoba Language Rights* (1985), at p. 745. Where one of the parties at the constitutional negotiating table submits to Crown sovereignty in exchange for constitutional guarantees, due weight must be given to the perspective of the people that party represents.
2. If properly interpreted in accordance with the above principles, the *1867 Address* contains a promise of legislative bilingualism throughout the territories that were annexed in 1870. The historical context supports this conclusion. The inhabitants of the territories had secured a right to legislative bilingualism before the annexation. In the negotiations leading up to the annexation, the inhabitants demanded a guarantee of that right as a condition of their entry into the Confederation, and this demand met no resistance. Indeed, they were assured that legislative bilingualism would unquestionably be provided for, and there is no indication that Canadian representatives ever qualified their acceptance of this demand or raised the slightest objection to it in the course of the negotiations. Moreover, other documents, such as the *Royal* *Proclamation* of 1869, support the view that the inhabitants were promised a guarantee of legislative bilingualism upon the annexation of the territories. Given a broad and purposive reading, the language of the *1867 Address* supports such a guarantee. Finally, in assessing the historical context of the promise contained in the *1867 Address*, due weight must be given to the perspective of the people who, through their representatives, concluded a historic compromise that resulted in the peaceful entry of their territories into Canada. As the historical record discussed above demonstrates, they had every reason to believe that they had secured the right to legislative bilingualism as a condition for their entry into the union.
3. Applying the relevant principles of constitutional interpretation to the *1867 Address*, we have no difficulty concluding that it enshrined a constitutional guarantee of legislative bilingualism that applied throughout the territories annexed in 1870. We will now discuss the three applicable principles in turn.
   * 1. Interpreting the Constitutional Promise to Protect “Legal Rights” in Light of the Historical Context
4. The extensive historical discussion set out above provides the basis for a contextual interpretation. We emphasize here that the annexation came about following extensive negotiations in which the inhabitants’ representatives unwaveringly stressed the importance of legislative bilingualism. Our interpretation is also aided by documents from that period, including the French versions of the *1867 Address* and the *Royal* *Proclamation* of 1869.
   * + 1. Historic Compromise
5. The Constitution of Canada was formed through a series of compromises made in the context of negotiations. In *Reference re Supreme Court Act*, this Court held that it was necessary to interpret the *Supreme Court Act*, R.S.C. 1985, c. S-26, in light of the historic compromise that had led to the creation of the Supreme Court of Canada. In our view, a similar exercise must guide the analysis in the case at bar. The context of the negotiations makes clear that the annexation was achieved by way of a compromise between the Canadian government and the territories’ inhabitants. This historic compromise shapes the interpretation of the *1867 Address*.
6. As we have seen, in the period leading up to the annexation, the Canadian government was motivated to negotiate. The correspondence between Governor General Young and Earl Granville indicates that Canada was unwilling to proceed with the annexation in other than peaceful circumstances. Prime Minister Macdonald also made his hesitation to annex the territories known to the British government, suggesting that matters remain as they were until quiet was restored. Despite the Canadian government’s reluctance, the British government pushed for annexation, requiring that Canadian officials make every effort to “conciliate the good-will” of the inhabitants and that they grant them reasonable terms.
7. For their part, the inhabitants’ representatives consistently demanded protection for the linguistic rights that the inhabitants had come to enjoy in the territories, including legislative bilingualism. This demand was never contested, and was dealt with in such a way that it seemed to be taken for granted that it would be provided for. Canadian officials assured the inhabitants’ representatives that “its propriety is so very evident, that it will unquestionably be provided for”: *The New Nation*, February 11, 1870, at p. 4; Aunger testimony, at para. 20.
8. The commitments made in the *1870 Order* are not the only relevant promises that were made. The object of the *1870 Order* was to ensure that the annexation of the territories would be carried out in a manner that was both peaceful and consistent with the agreements between Canada, the HBC and the inhabitants. The Canadian government made numerous promises over the course of the negotiations with regard to continuity and to respect for existing rights. It is only by taking into consideration the entirety of the promises made in it that the *1867 Address* can be properly understood.
   * + 1. French Version of the 1867 Address
9. As we mentioned above, the Parliament of Canada delivered the *1867 Address* in both languages. In the initial French version, the equivalent of the expression “legal rights” was “*droits acquis*”. This initial translation is significant because it provides insight into the drafters’ intent. The French term “*droit* *acquis*” is more naturally translated into English as “vested right”. Such a right can be defined as one based on [translation] “very strong expectations the fulfilment of which citizens had just cause to count on”: P.-B. Mignault, *Le droit civil canadien*, t. I, (1895), at p. 69. This description of the rights that were to be respected and protected by Canada upon the transfer of the region is apt given the historical context. Canada was making a commitment in relation to the annexation of the territories. The meaning of the term “legal rights” is therefore anchored in the context of the transfer — it refers to the “vested rights” of the inhabitants. As we have seen, legislative bilingualism was one of these vested rights. It was statutorily guaranteed by virtue of the 1845 ordinance, and was also well established in the practices of the Assiniboia Council.
   * + 1. Royal Proclamation of 1869
10. The *Royal* *Proclamation* of 1869provides another interpretive aid. It assured the territories’ inhabitants that “all your civil and religious rights and privileges will be respected”. This guarantee is, on its face, broad enough to include linguistic rights. As we explained above, before the annexation, the inhabitants’ representatives had repeatedly, and successfully, insisted on the inhabitants’ rights to legislative and judicial bilingualism throughout the territories. On the basis of a liberal and generous interpretation — or even a plain reading — of the promises set out in the *Proclamation*, we find that it contained a guarantee of legislative bilingualism.
11. Alberta argues that at the time in question, the expression “civil rights” was generally understood to refer only to legal rights between individuals, as opposed to public law rights, because that was the meaning assigned to the expression “property and civil rights” in certain contemporaneous documents (Caron, R.F., at paras. 84-85). Even if this is true of the conjunction of “property and civil rights”, the same logic clearly cannot be applied to the combination of “civil and religious” rights. Religious, or denominational, rights are not private law rights governing relationships between individuals, as is clear from the fact that they are dealt with separately in the *Constitution Act, 1867*, s. 93, for instance. Religious rights are similar in nature to linguistic rights insofar as they encompass rights related to the identity of a group. This Court has found that language, like religion, is of considerable cultural importance and is “not merely a means or medium of expression; it colours the content and meaning of expression”: *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712, at p. 748. Moreover, property rights were set apart from civil rights in the *Proclamation*, which also ensured that the inhabitants’ property rights would be protected.
12. In providing for the protection of religious rights, the British government recognized the cultural needs of the Métis. Moreover, the *Proclamation* came on the heels of the granting of religious and linguistic protections to minorities in the context of the Confederation. There is no evidence that would support an interpretation of the guarantee that excludes language rights.
13. The *Proclamation*, read in light of its historical, philosophical and linguistic context, guaranteed the inhabitants the linguistic rights they then held, which included legislative bilingualism throughout the territories. Neither the Government of Canada nor the Imperial Parliament ever disavowed the *Proclamation* or indicated that the Governor General had exceeded his mandate in issuing it. Quite the contrary, as the historical evidence discussed above illustrates, Canada accepted that the *Proclamation* had helped set the stage for detailed negotiations with the territorial representatives. The *Proclamation* is thus particularly relevant for the purpose of interpreting the promise set out in the *1867 Address* to respect the inhabitants’ “legal rights”.
    * 1. Broad and Liberal Interpretation of “Legal Rights”
14. The fact that legislative bilingualism was explicitly provided for elsewhere in the Constitution does not support a narrow construction of the constitutional promise to protect “legal rights”. This Court has embraced a generous and liberal interpretation of the Constitution, as opposed to a narrow and legalistic one: *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145, at pp. 155-56; *R. v. Big M Drug Mart Ltd.*,[1985] 1 S.C.R. 295,at p. 344. As we explained above, our colleagues, together with the respondent and the Attorney General of Canada, point to s. 23 of the *Manitoba Act, 1870* and s. 133 of the *Constitution Act, 1867*, which expressly guarantee legislative bilingualism, and assert that because there was no analogous explicit written protection in the *1870 Order* or the *1867 Address*, no constitutional obligation exists in Alberta. With respect, a just interpretation of “legal rights” must take the context of the negotiations set out above into account and must be compatible with the broad and generous approach to constitutional interpretation that this Court has repeatedly taken.
15. We should add thatsuch an interpretation will be true to the liberal approach to interpretation that this Court has taken in the specific context of language rights. The Court has held that language rights must be interpreted purposively, and in a manner consistent with the preservation and development of such rights: *R. v. Beaulac*, [1999] 1 S.C.R. 768, at para. 25.
16. Moreover, the fact that the framers did not explicitly mention legislative bilingualism is not an obstacle to a generous interpretation of the Constitution. Leading up to the annexation, the British government did not ask for an additional address after being informed by the Governor General that the territorial “delegates considered the terms accorded to them such as would satisfy the people and ensure peace” (*Correspondence*, at p. 133, cited in Aunger testimony, at para. 22). As the evidence canvassed above clearly demonstrates, legislative bilingualism was a peremptory condition. Therefore, the guarantees being demanded, which the Canadian government forwarded to the British, necessarily included an implicit assurance that rights such as legislative bilingualism would be protected.
17. A broad interpretation of “legal rights” is also consistent with the legislative intent of the drafters of the *1867 Address* in the lead-up to its being entrenched in the Constitution. In the debate leading up to the *1867 Address*, parliamentarians attributed a large and expansive meaning to these rights. They tended to refer to them using language that was indefinite or comprehensive. There was no suggestion that the scope of the concept of “legal rights” was too narrow to include protection for legislative bilingualism: Aunger, “Pourvoir à ce que les droits acquis soient respectésˮ, at p. 66. Instead, the promise in the *1867 Address* was a forward-looking undertaking that was meant to be shaped by the subsequent negotiations. 
    * 1. Constitutional Legitimacy: Importance of Legislative Bilingualism to the People Consenting to Crown Sovereignty
18. The Constitution of Canada emerged from negotiations and compromises between the founding peoples, and continues to develop on the basis of similar negotiations and compromises. Such compromises are achieved when parties to the negotiations make concessions in pursuit of a mutual agreement and reach a meeting of the minds. Therefore, our reading of constitutional documents must be informed by the intentions and perspectives of all the parties, as revealed by the historical evidence. It is in this context that we will apply the third interpretive principle regarding the nature of a constitution as a statement of the will of the people.
19. When engaging in constitutional interpretation, this Court has repeatedly emphasized the importance of the minority perspective in constitutional negotiations: see e.g. *Reference re Supreme Court Act*; *Secession Reference*,at paras. 79-82; *Reference re Authority of Parliament in relation to the Upper House*,[1980] 1 S.C.R. 54,at p. 71; and *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 257,at para. 34. Moreover, to understand the terms upon which minority peoples joined the Confederation, we must be mindful that “[t]he consent of the governed is a value that is basic to our understanding of a free and democratic society”: *Secession Reference*,at para. 67. The story of our nation’s founding therefore cannot be understood without considering the perspective of the people who agreed to enter into Confederation. If only the Canadian government’s perspective is taken into account, the result is a truncated view of the concessions made in the negotiations.
20. The perspective of the minority in the negotiations was considered in *Reference re Supreme Court Act*, in which the majority judges took note of the fact that in the negotiations leading up to Confederation, Quebec was reluctant to agree to the creation of a Supreme Court. They concluded on this basis that the provision at issue should be interpreted in a manner that gave weight to Quebec’s interests at the time of the negotiations and to the underlying historic compromise: para. 59. More specifically, the majority remarked that “[j]ust as the protection of minority language, religion and education rights were central considerations in the negotiations leading up to Confederation ([*Secession Reference*],at paras. 79-82), the protection of Quebec through a minimum number of Quebec judges was central to the creation of this Court”: *Reference re Supreme Court Act*, at para. 48.
21. The annexation of the territories took place not long after Confederation, and it, too, resulted from negotiations between a dominant English-speaking party and a party with a strong interest in protecting the French language. Like the French-speaking minority in the negotiations that resulted in Confederation, the inhabitants sought to have the protection of their linguistic rights entrenched in the Constitution, and this was granted to them.
22. It can be seen from the record that there was a widespread commitment to bilingualism throughout Rupert’s Land and the North-Western Territory in the period leading up to the annexation. The 1845 council ordinance, the 1847 memoranda and the Sayer affair provide examples of how the territories’ inhabitants consistently made demands for legislative and judicial bilingualism, which were consistently granted. Similar demands were included in the conditions for annexation, and were set out in all the lists of rights. These were peremptory conditions of the territorial delegation to Ottawa, and they met no resistance from the Canadian government.
23. The promises extended to the territories’ inhabitants in the *1870 Order*, by virtue of its incorporation of the *1867 Address*, resulted from a series of negotiations that led to the annexation of the territories. There was considerable opposition to the annexation among the inhabitants. This is evidenced not only by the Red River Rebellion, but also by the demands their representatives made of the Canadian government. The meaning given to the expression “legal rights” as used in the *1867 Address* must give due weight to the perspective of the inhabitants and to the interests they sought to protect. It is inconceivable that the inhabitants of what became the North-Western Territory would have accepted the transfer of the territories without a promise that their linguistic rights, which the historical context shows were extremely important to them, would be resolutely protected. Their unwavering demand for legislative bilingualism, coupled with the facts that the Canadian government did not object to this demand and that the annexation included the whole of the territories, dictates an interpretation of “legal rights” that recognizes this promise.
24. The continuity that characterized the post-annexation situation also evidences the promises that were made and what the inhabitants understood. In the North-West Territories, legislative and judicial bilingualism initially prevailed through the joint system of administration under the *Manitoba Act, 1870*. These practices were subsequently codified by the Canadian government, without objection, in s. 110 of *The North-West Territories Act*.
25. For the reasons set out above, we find that the promise made in the *1867 Address* to respect the inhabitants’ “legal rights” encompasses a constitutional obligation to protect legislative bilingualism in the annexed territories, part of which would later become Alberta. That province therefore has a constitutional duty to enact, print and publish all its laws in French as well as in English.
26. We pause here to note that bedlam will not ensue from this conclusion. Our colleagues caution that “[i]t has never been the case in our constitutional history” that such a right has been found to exist implicitly (para. 103), and that our reasons have “far-reaching” consequences (para. 102). But our conclusion does not contradict a voluminous body of jurisprudence. Rather, as can be seen from our discussion of the historical context, it is drawn from a unique set of historical facts. Moreover, the practical spillover into the jurisdictions our colleagues list would be quite limited — all but Saskatchewan already publish their laws in both French and English, and Saskatchewan has already gone some way toward doing so. Finally, we note that the question before us is fundamentally one of law, and not a political issue that can be left up to the government.
27. Conclusion
28. We would allow the appeals and answer the constitutional questions as follows:
29. Is the *Languages Act*, R.S.A. 2000, c. L-6, *ultra vires* or inoperative insofar as it abrogates a constitutional duty owed by Alberta to enact, print and publish its laws and regulations in English and in French in accordance, *inter alia*, with the *Rupert’s Land and North-Western Territory Order* of June 23, 1870, R.S.C. 1985, App. II, No. 9?

Yes.

1. If the answer to question 1 is affirmative, are the *Traffic Safety Act*, R.S.A. 2000, c. T-6, and any other laws and regulations that have not been enacted, printed and published by Alberta in English and French inoperative?

Yes.

*Appeals dismissed with costs,* Abella*,* Wagner *and* Côté JJ. *dissenting.*

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1. There is some disagreement as to the constitutional status of the French version of the *1867* *Address*. However, in our view, the analysis does not change if one looks to the French version. [↑](#footnote-ref-1)
2. Riel was left unsatisfied with Smith’s representations on the part of the Canadian government, stating to Smith: “You are embarrassed. I see you are a gentleman and do not wish to press you. I see that the Canadian Government has not given you all the confidence which they ought to have put in your hands. At the same time we will hear your opinion, although we are satisfied you cannot grant us, nor guarantee us anything by the nature of your commission” (*The New Nation*, February 11, 1870, at p. 4). [↑](#footnote-ref-2)