Reply to the Rejoinder

In a wide-ranging and multi-faceted "rejoinder", Mr. Neitsch extols Alberta's supposed tradition of inclusiveness, equality and multiculturalism, and derides Canada's alleged policy of privilege, hierarchy and bilingualism. He argues, erroneously, that the *Constitution Act, 1867* places "language rights largely at the discretion of the provinces" and, consequently, that the courts should recognize Alberta's democratic and prerogative powers to determine its official language. Somewhat incongruously, however, after observing that Chinese, German, French, Punjabi, Filipino, Ukrainian, Spanish, Polish, Arabic and Dutch are Alberta's top-ten minority languages, he calls upon the courts to give them equal protection "even if it means 'reading' them into legislation and the Constitution".

While I am pleased that my research has stimulated discussion of Alberta's language policies, I am disappointed that Mr. Neitsch has misconstrued and misrepresented the important constitutional issues at the heart of my article. Nowhere is this more evident than in his ingenuous questioning of French language rights: "While it is admirable that Aunger defends the language rights of the Métis, why the focus is solely on French, rather than the widely spoken Aboriginal languages of the Métis? In the Caron case why has the issue of the Cree language not come up with respect to the *Alberta Traffic Safety Act*?"

In the wake of a 2003 traffic accident, Gilles Caron, a French-speaking Albertan, pleaded not guilty to a charge that he had failed "to make a left turn in safety". In his defense, he claimed that Alberta's *Traffic Safety Act* was invalid since it had been passed only in English, and not, as the Constitution of Canada required, in both English and French. The Alberta Provincial Court agreed and, in 2008, Judge Leo Wenden ruled that the *Rupert's Land and North-Western Territory Order* – an integral part of the Constitution of Canada, as defined by the *Constitution Act, 1982* – did indeed guarantee the official status of the French language in Alberta.

In this 1870 Order in Council, Queen Victoria granted Canada's longtime request to annex Rupert's Land and the North-Western Territory, and entrenched Canada's solemn commitment to protect existing "legal rights". This commitment had been repeatedly communicated to the North-Western population, and it was a key element in obtaining their consent. Thus, Governor General Sir John Young, acting on the "direct command of Her Majesty", had previously issued a Royal Proclamation assuring the inhabitants that "on the union with Canada, all your civil and religious rights and privileges will be respected".

As an expert witness in the Caron trial, my principal contribution was to submit new and conclusive proof that these "legal rights" included the official use of the English and French languages in both the legislative and judicial institutions. For example, during the 1835-1870 period, after a concerted political struggle, the Métis population was successful in winning a recognized and well-established right to French-language trials before a French-speaking judge and a French-speaking jury.

In all probability, these constitutionally-guaranteed rights are not limited to English and French, and may very well include Métis land-use and property ownership. Therefore, given his expressed interest, I would certainly encourage Mr. Neitsch to actively pursue this line of research. Nevertheless, in spite of his best efforts, he is unlikely to discover any custom or practice that, in the period prior to 1870, recognized a right to the official use of Chinese, German, Ukrainian, or even Cree.

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