

## **Defending Minority Language Rights in Quebec and Latvia**

**By Shane Kelleher<sup>1</sup>**

### *Introduction*

When taking measures to secure the long term viability of a language, to what extent does the end justify the means? At what point do restrictions on the use of other languages cross the line between the legitimate defence of a vulnerable language and unlawful infringement of the rights of other language speakers? This paper will consider these issues using examples from Quebec and Latvia, where restrictions on the use of *minority* languages were introduced to safeguard the long term survival of the *majority* language of the territory, itself a minority language in a wider region.

The first part of this paper will demonstrate that language disputes in ethnically divided societies rarely concern mere verbal communication. Language is at the very heart of human identity and "a different language is a different vision of life."<sup>2</sup> A language policy which has the official aim of protecting a vulnerable language may be influenced by a vast array of stated and unstated fears (including those relating to identity and demography) and interests (such as nation-building, the assimilation of ethnic minorities and the symbolic settling of scores between ethnic groups). Examples from Quebec and Latvia will show how similar fears and interests can converge to shape language laws aimed at protecting a majority language by curtailing the use of minority languages. Understanding the concerns and interests of the majority that underlie a restrictive language policy is critical for linguistic minorities if they are to develop effective arguments and strategies to challenge restrictions on the use of minority languages.

In the second part of this paper, I will show how a line of argument based on the principle of proportionality can be employed as an effective basis for defending minority language rights, especially where a minority language lacks adequate constitutional protection.<sup>3</sup> According to this principle, the validity of a language restriction is judged on whether or not it causes the least possible infringement to the rights of minority language speakers in order to achieve the desired aim of safeguarding the vulnerable majority language. Using case law from Quebec, Latvia and the European Court of Human Rights (ECHR), I will argue that a proportionality-based argument has three principal advantages. Firstly, it is ethnically sensitive: whilst it acknowledges the need of the majority language group to preserve its language and identity, it also seeks a reasonable balance between this need and the rights and identities of minority language speakers. Secondly, from a purely practical perspective, it is an effective line of argument: its potential persuasiveness in the courts has been demonstrated by successful legal challenges in Quebec and Latvia and before the ECHR, which employed proportionality-based arguments. Finally, it

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<sup>2</sup> This quotation is attributed to Federico Fellini, the Italian film director (1920–1993) on the website of the American Society of Authors and Writers <[www.amsaw.org](http://www.amsaw.org)>. Descriptions of language by artists offer useful insights into the importance of language. The English novelist Angela Carter (1940-1992) observed that "language is power, life and the instrument of culture, the instrument of domination and liberation," according to the website of the leading feminist publishing house in Britain, Virago <[www.virago.co.uk](http://www.virago.co.uk)>. See also footnote 12.

<sup>3</sup> If the territory has more than one official language and any attempt is made to restrict the use of an official minority language, such restrictions may also be challenged on the basis of a separate argument that each official language must be afforded equal status, treatment and respect. A discussion of this argument is beyond the scope of this paper.

helps to expose false claims that a particular restriction is "essential" in order to protect a threatened majority language in cases where such claims are not borne out by empirical evidence.

### *Factors Influencing Minority Language Restrictions in Quebec*

Quebec is a predominately French-speaking province in mostly English-speaking Canada. It has a population of approximately 7.24 million people and is the only significant haven for the French language in North America. A striking feature of Canada's ethnic composition is the territorial concentration of French-Canadians in Quebec. French-Canadians comprise approximately 23% of the population of Canada. At least 85% of them reside in Quebec province, where they account for approximately 80% of the population. The territorial concentration of French-Canadians, combined with the high degree of autonomy granted to Quebec under Canada's federal system of government, has made it possible for French-Canadians to preserve the French language and a rich and distinct culture within Canada. The province's ethnic minorities include a well-established English-speaking Anglo-Canadian community (approximately 8%), Native Americans (approximately 1%) and a diverse spectrum of smaller minorities most of whom migrated to Quebec in the twentieth century (approximately 11%). Since 1974, the sole official language of Quebec province has been the French language.

*La Chartre de la Langue Francaise* (or "Charter of the French Language") was enacted in 1977. Its declared purpose, to make French "the language of government and the law, as well as the normal and everyday language of work, instruction, communication, commerce and business," reflected concerns of French-Canadians over the long-term future of the French language in Quebec. However, the evidence suggests that the law was influenced by a wide range of fears and interests of French-Canadians besides the simple preservation of the French language.<sup>4</sup> These included demographic fears, anxieties about identity, socio-economic concerns and nationalist goals. Firstly, demographic fears arose from a dramatic decline in the birth rate of French-Canadians from the 1960s onwards. As a result, the percentage of French-Canadians as a proportion of the total Canadian population has fallen from approximately 30% in the 1960s to approximately 23% today.<sup>5</sup> Secondly, and closely linked to the demographic factor, was an anxiety about the continuing French-Canadian identity and character of the province, as evidenced by a reference to the French language as "the instrument by which [the French-Canadian] people has articulated its identity" in the preamble to the Charter of the French Language. This reference suggests that the Charter was designed to bolster not only the language, but also the identity of French-Canadians. Thirdly, socio-economic concerns of French-Canadians were aroused when a long-awaited 1969 report of the Royal Commission on Bilingualism and Biculturalism produced evidence that the salaries of French-Canadian males ranked twelfth out of Quebec's fourteen major ethnic groups, behind every other group except Italian-Canadians and Native Americans.<sup>6</sup> Finally, the new language regime was preceded by a sharp rise in nationalism in Quebec,

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<sup>4</sup> See Carol Schmid, Brigita Zepa and Arta Snipe, "Language Policy and Ethnic Tensions in Quebec and Latvia," in *International Journal of Comparative Sociology*, Volume 45:3-4 (2004) p.231.

<sup>5</sup> Gisele Delage and Guy Dumas, "Politiques Linguistiques: Le Modele Quebecois," paper presented at the World Congress on Language Policy, Barcelona, 2002.

<sup>6</sup> See also Milton J. Esman, "The Politics of Official Bilingualism in Canada," in *Political Science Quarterly*, Volume 97:2 (1982) p. 233.

which found expression in a separatist movement,<sup>7</sup> fuelled by the aforementioned fears and anxieties. The 1976 provincial elections brought the separatist *Parti Quebecois* to power in the province. French-Canadian voters made clear their desire to be *Maitres Chez Nous* ("Masters in Our Own House") and the Charter of the French Language expressed the nationalist mood of the times.

### *Factors Influencing Minority Language Restrictions in Latvia*

Latvia is a small Baltic state with a population of approximately 2.3 million people. Although Latvia originally gained its independence in 1918, the Second World War heralded half a century of occupation by the Soviet Union. Ethnic Latvians represent approximately 58.2% of the population and their mother tongue is the Latvian language. The largest ethnic minorities are mostly Russian speaking and include Russians (29.2%), Belorussians (4%) and Ukrainians (2.6%). Ethnic groups representing less than 2.5% of the population include Poles, Lithuanians, Roma and Estonians.<sup>8</sup> When Latvia regained its independence in 1991, it granted automatic citizenship only to those residents who were citizens prior to the commencement of the Soviet occupation in 1940 and their descendants. A large proportion of Latvia's significant Russian-speaking minority have not yet been afforded Latvian citizenship. Since 1999, Latvia's official languages have been the Latvian language and the Liv language, the latter being an indigenous language perilously close to extinction. Any other language used in Latvia, significantly Russian, is deemed a "foreign language."

The State Language Law of 1999 was heavily influenced by Quebec's language laws.<sup>9</sup> Its declared purposes include "the preservation, protection and development of the Latvian language," and "the integration of national minorities into Latvian society." Although there was reason to be concerned for the long-term prospects of the Latvian language (which was itself heavily suppressed before the country regained its independence in 1991), the new law was influenced by many other fears and interests of ethnic Latvians. Firstly, and chief among these concerns, were the demographic fears of ethnic Latvians arising from half a century of Soviet occupation. At the end of the Second World War, ethnic Latvians comprised 83% of Latvia's population. However, between 1940 and 1991, Latvia experienced mass immigration from Soviet territory. By 1989, ethnic Latvians comprised just 52% of Latvia's population and seemed on the brink of becoming a minority.<sup>10</sup> Secondly, as a recently independent state, reassertion of the Latvian language in the public sphere played an important role in nation-building and the symbolic settling of scores with the ethnic minorities from the former Soviet Union. The status of the Russian language was very pointedly relegated from that of an official language to that of an unofficial "foreign language," despite the fact that Russian-speakers accounted for approximately 36% of the population, while the Liv language, which retained its official status, is the first language of approximately 200 speakers.<sup>11</sup> Thirdly, fears about identity, and specifically about the preservation of a distinct Latvian culture, are evidenced by another of the official aims of the State Language Law of 1999: the

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<sup>7</sup> Quebecois separatists advocate the secession of Quebec from Canada and the establishment of Quebec as an independent state. Quebec's voters rejected referenda proposing Quebec's secession from Canada in 1980 and again, albeit by a margin of less than 1%, in 1995.

<sup>8</sup> Demographic Yearbook of Latvia, 2002.

<sup>9</sup> See Ina Druviete, "Language Policy and the Protection of the State Language in Latvia," paper presented at the World Congress on Language Policy, Barcelona, 2002.

<sup>10</sup> See footnote 4.

<sup>11</sup> See Boris Tsilevich, "The Development of the Language Legislation in the Baltic States," in *International Journal on Multicultural Societies*, Volume 3:2 (2001) p.137.

"preservation of the cultural and historical heritage of the Latvian nation." Finally, many ethnic Latvians felt resentment towards Russian speakers because of the comparatively adverse economic position of ethnic Latvians relative to ethnic Russians, whose language dominated the economy and the administration prior to 1991 and for some time afterwards.

In the remainder of this paper I will show how the principle of proportionality is particularly well suited to resolving language disputes, as there are usually many possible solutions that could safeguard a majority language without requiring its exclusive use in any given situation (e.g, multi-lingual public signs, interpretation facilities in parliaments, translation of official documents, sub-titling of broadcasts, etc).

*The Ethnic Inclusiveness of Arguments Based on Proportionality in Language Disputes – Commercial Signage in Quebec*

The first example will demonstrate how an argument based on the principle of proportionality encourages an *ethnically inclusive* solution to a language rights dispute, which affords some cause for satisfaction to both the majority and the minority linguistic communities. This approach is ethnically sensitive because it respects the right of the majority linguistic community to take measures to preserve its language to the extent that it is genuinely threatened and provided that the rights of other language speakers are infringed to the minimum possible extent. This encourages solutions to language disputes which strive to accommodate the rights and identities of both majority and minority language speakers.

The example is taken from a Canadian Supreme Court ruling concerning traders in Quebec who displayed commercial signage containing words in both French and English.<sup>12</sup> The traders received notices that the signs violated Sections 58 and 69 of the Charter of the French Language, which provided that "public signs and posters and commercial advertising shall be solely in the [French] language," and that "only the French version of a firm name may be used in Quebec." The traders sought a court order declaring these provisions inoperative on the grounds that they limited freedom of expression as guaranteed by Section 2(b) of the Canadian Charter of Rights and Freedoms. The traders argued that any limits on freedom of expression were unlawful unless they were "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society," and that the limits under consideration failed to meet this requirement because they were disproportionate to the aim of preserving the French language in Quebec. The Court applied an established two-part test that incorporates the principle of proportionality:

Two requirements must be satisfied ... first, the legislative objective which the limitation is designed to promote must be of sufficient importance to warrant overriding a constitutional right. It must bear on a "pressing and substantial concern." Secondly, the means chosen to attain those objectives must be

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<sup>12</sup> *Ford v. Quebec (Attorney General)* [1988] 2.C.R. The long experience of Canadian federal judges in dealing with language issues with consideration and sensitivity is evident from this decision, which merits reading in full. One passage explains the importance of language to human identity: "Freedom of expression ... includes the freedom to express oneself in the language of one's choice. Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice. Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is a means by which a people may express its cultural identity. It is also the means by which one expresses ones personal identity and sense of individuality".

proportional or appropriate to the ends. The proportionality requirement in turn has three aspects: the limiting measures must be carefully designed, or rationally connected, to the objective; they must impair the right as little as possible; and their effects must not so severely [infringe] individual or group rights that the legislative objective, albeit important, is nevertheless outweighed by the abridgement of rights.

The Court held that the objective of the restrictions – the survival of the French language in Quebec – met the required threshold of "pressing and substantial concern," as the government of Quebec had proven the vulnerable status of the French language.<sup>13</sup> Furthermore, the restrictions were rationally connected to that objective, ensuring that the *visage linguistique* (the "linguistic face") of Quebec reflected the predominance of the French language. Nevertheless, the restrictions failed the crucial test of proportionality since they had not been adequately "tailored" to cause minimal infringement to freedom of expression. The Court observed that a commercial signage law requiring the "predominant" display of French, or even its "marked predominance," would have been proportionate to the objective of maintaining a French *visage linguistique* in Quebec. However, requiring the "exclusive" display of French was both disproportionate and unlawful. As a result of this ruling, Quebec amended its law on commercial signage to permit the inclusion of languages other than French, provided that the French language is "markedly predominant."<sup>14</sup>

*The Practical Effectiveness of Arguments Based on Proportionality in Language Disputes – Candidacy for Election to Parliament in Latvia*

The second example will show how an argument based on the principle of proportionality is much more likely to be effective in a court challenge than a line of argument that questions whether the declared legislative aim of a language restriction is in fact the true aim or whether it conceals hidden aims which may be illegitimate. Courts are instinctively reluctant to undermine the legislature by probing the declared aim of legislation. This reticence originates from the classic constitutional principle of the separation of powers. Indeed, such reluctance is likely to be intensified in language disputes which, as we have seen in the first part of this paper, are inextricably linked to highly charged issues of politics, identity and history. However, courts are much more open to persuasion through arguments based on the principle of proportionality, as this is a principle which courts are accustomed to applying in an effort to balance competing rights and interests in many contexts.

This example involves a ruling of the European Court of Human Rights<sup>15</sup> in a case concerning a provision of Latvia's Parliamentary Elections Act of 1995, which barred persons who did not have a command of the Latvian language at the highest level of proficiency from standing for election to the Latvian parliament. The applicant, a Latvian citizen and a member of the Russian-speaking minority, was struck off the official list of candidates by the Central Election Commission. She was disqualified on the basis of the results of a summary oral examination in the Latvian language, despite producing other evidence that she had the required linguistic knowledge. The

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<sup>13</sup> Such evidence included statistics concerning the relatively low birth rate of French-Canadians and the propensity of immigrants to adopt the English language rather than the French language.

<sup>14</sup> If English had been an official language of Quebec, the traders might have employed a separate argument that the English language was entitled to equal prominence with the French language on multi-lingual signage by virtue of its official status. See also footnote 3.

<sup>15</sup> *Podkolzina v. Latvia*, Application Number 467266/99, judgment delivered on 9 April 2002.

applicant claimed that her removal from the list violated her right to stand for election, as guaranteed in the First Protocol of the European Convention of Human Rights and Fundamental Freedoms. The Latvian government argued that, because the Latvian language was the working language of the legislature, the restriction was necessary to ensure the proper functioning of parliament and to guarantee that members of parliament could properly represent their constituents. The applicant argued that the decision to disallow her candidacy was a disproportionate response to this legislative aim, because most of her constituents were members of Latvia's Russian-speaking minority, who comprised approximately 36% of the country's population. Further, even if her command of the Latvian language was not perfect, she was sufficiently proficient to carry out her duties as a parliamentarian.

The Court showed a marked reluctance to question the legislative aim of the restriction through judicial review, but demonstrated a clear willingness to scrutinize the language requirement in order to determine whether or not it was proportionate to the declared legislative aim. Regarding the legislative aim, the Court observed that it was "not required to adopt a position on a national parliament's working language ... which is determined by historical and political considerations." However, the Court also held that the removal of the applicant from the list of candidates, despite evidence of her reasonable proficiency in the Latvian language, could not be regarded as proportionate to any legitimate aim pleaded by the Latvian government, and as such was unlawful. Shortly after this ruling, Latvia repealed the language requirement for candidates seeking election to the Latvian parliament.

*The Capacity of Arguments Based on Proportionality to Expose False Claims in Language Disputes – Broadcasting in Latvia*

The third and final example will demonstrate how developing arguments to challenge restrictions on minority language rights based on the principle of proportionality can help to expose false claims that a particular language restriction is essential to the furtherance of a legislative objective where there is no evidence to support such a claim or, as in this example, the evidence suggests that the restriction actively impedes the declared legislative aim.

The example concerns a ruling of the Constitutional Court of Latvia<sup>16</sup> in relation to a provision of Latvian law which restricted the proportion of a broadcaster's "foreign language" programmes to 25% of the total airtime in any 24 hour period. As we have seen, any language used in Latvia other than the Latvian language and the indigenous Liv language is regarded as a "foreign language" under the State Language Law of 1999, notably the Russian language. A petition was brought by 24 members of the Latvian parliament, requesting the Court to review the broadcasting law's conformity with the Latvian Constitution and Latvia's international human rights treaty obligations. Latvia argued that the restriction pursued the legitimate legislative aims of securing the use of the Latvian language in the public sphere and promoting the integration of minorities. It further argued that any restrictions on freedom of expression were proportionate to these legislative aims, as the law recognized a right to broadcast in foreign languages subject to the specified time limitations.

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<sup>16</sup> Case No. 2003-02-0106, "On the Compliance of Article 19 (the Fifth Part) of the Radio and Television Law with Articles 89, 91, 100 and 114 of the Republic of Latvia Satsversme (Constitution) as well as with Articles 10 and 14 (read together with Article 10) of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Articles 19 and 27 of the International Covenant on Civil and Political Rights," Riga, 5 June 2003.

The Court upheld the validity of the state's legislative aims, but also held that the language restriction was unlawful because evidence was produced to show that the restriction neither furthered the aim of encouraging greater use of the Latvian language, nor contributed to the aim of integrating national minorities. Rather than encouraging wider use of the Latvian language, the restriction encouraged Latvian residents unable to access foreign language programmes from local broadcasters to switch to the services of foreign broadcasters, in particular Russian television channels. Similarly, in relation to the aim of national integration, the Court was persuaded by evidence from Estonia that the integration of ethnic minorities was boosted by encouraging, rather than restricting, broadcasting in foreign languages. Such broadcasting provides a local platform for the discussion of questions relating to integration. Accordingly, the Court held that it was possible to further the desired legislative aims by other means, which infringe the rights of linguistic minorities to a lesser extent and, therefore that the restrictions were disproportionate and unlawful. The offending language restrictions were lifted as a result of this ruling.

### *Conclusion*

In an ethnically divided society, in which the ethnic majority holds all the levers of power, any language policy that restricts the use of minority languages with the declared aim of protecting the language of the majority ethnic group should be regarded with some scepticism. As this paper has demonstrated, language policy in an ethnically divided society may be used to further a multitude of goals beyond the mere preservation of a particular language. Further, such a policy suggests that the survival of one ethnic group's language and cultural identity can only be safeguarded at the expense of another ethnic group's language and cultural identity. This inference, however, is not borne out by the case law from Quebec, Latvia and the ECHR discussed in this paper.