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MODERNIZATION OF THE *OFFICIAL LANGUAGES ACT*

Report of the Standing Committee on Official Languages

The Honourable Denis Paradis, Chair

**JUNE 2019
42nd PARLIAMENT, 1st SESSION**

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NOTICE TO READER

Reports from committee presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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THE STANDING COMMITTEE ON OFFICIAL LANGUAGES

has the honour to present its

SEVENTEENTH REPORT

Pursuant to its mandate under Standing Order 108(3)(f), the Committee has studied the modernization of the *Official Languages Act* and has agreed to report the following:

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LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1

That the Government of Canada, as part of its modernization of the *Official Languages Act*, add an interpretative clause seeking to prioritize the goals and objectives of the Act; define and reinforce the concept of positive measures and other key concepts related to the effective application of the Act; and recognize the constitutional specificity of New Brunswick..... 65

Recommendation 2

That the Government of Canada introduce a bill to modernize the *Official Languages Act* to redefine the roles and responsibilities of the Commissioner of Official Languages, prioritizing, without being limited to, the following:

- a) giving the Commissioner the authority to impose monetary sanctions;
- b) giving the Commissioner the authority to require institutions that are subject to the Act to submit compliance reports and having the Commissioner issue statutory requirements; and
- c) creating an administrative tribunal and defining its role and mandate..... 65

Recommendation 3

That the Government of Canada introduce a bill to modernize the *Official Languages Act* with new provisions, including but not limited to the following, to:

- a) establish a formal consultation framework with official language minority communities (OLMCs);

- b) require the Government of Canada to develop a multi-year horizontal strategy for official languages with targets and performance indicators developed in collaboration with OLMCs and that is subject to both a mid-term and a final review made available to the public;
- c) require federal institutions to develop a multi-year strategy to implement the *Official Languages Act*;
- d) require federal institutions to include language variables in research it carries out and funds, particularly in sample selection for studies, as well as to produce and publish compelling data on OLMCs; and
- e) require Statistics Canada to collect data on OLMCs, including whether children are eligible to receive their education in the minority language, with the goal of accurately counting how many rights-holders could potentially attend English and French minority-language schools, pursuant to section 23 of the *Canadian Charter of Rights and Freedoms* and respecting provincial and territorial jurisdiction. 66

Recommendation 4

That the Government of Canada introduce a bill to modernize the *Official Languages Act* with clear objectives and obligations respecting language rights in francophone immigration and health..... 67

Recommendation 5

That the government of Canada, in future negotiations on the Official Languages in Education Program (OLEP), work with the provinces and territories to support French first-language education and to strengthen education rights, as set out in the strategic education agreement between the Government of Canada, the Fédération nationale des conseils scolaires francophones (FNCSF), the Fédération des communautés francophones et acadienne du Canada (FCFA) and the Commission nationale des parents francophones (CNPF)..... 67

Recommendation 6

That the Government of Canada, in future negotiations on the Official Languages in Education Program (OLEP), work with the provinces and territories to support second-language instruction and strengthen education rights. 67

Recommendation 7

That the Government of Canada introduce a bill to modernize the *Official Languages Act* that includes a new section on the Government of Canada’s role in minority-language education. This new section should include, but not be limited to, the following:

- a) a provision ensuring the enumeration of rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*; and**
- b) a provision ensuring that the educational and cultural infrastructure needs of official language minority communities are identified as a priority in the Government of Canada’s disposal process for surplus real property under subsection 16.1(1) as it applies to New Brunswick and section 23 of the *Canadian Charter of Rights and Freedoms*..... 67**

Recommendation 8

That the Government of Canada consider, as part of its efforts to modernize the *Official Languages Act*, including new provisions seeking to:

- a) require the inclusion, in any agreement between the Government of Canada and a province or territory that provides for a transfer of funds, of enforceable language clauses that encourage progress toward equality of status and use of English and French, as well as the vitality and development of official language minority communities, through the establishment of consultations and transparency and accountability mechanisms;**
- b) give the Minister of Official Languages the authority to ensure that all federal departments and institutions comply with the language clauses;**

- c) make available, in both official languages, all federal–provincial/territorial agreements; and
- d) ensure that members of official language minority communities eligible to receive their education in the language of the minority can do so, if they so choose, and that spaces are allocated for them in public schools, particularly in the case of Quebec..... 68

Recommendation 9

That the Government of Canada transfer the official languages file to a central agency and entrust the implementation of the *Official Languages Act* to that agency. 69

Recommendation 10

That the new *Official Languages Act* include a chapter on promoting the French language both in Canada and at the international level, particularly in the Americas. 69

Recommendation 11

That the new *Official Languages Act* promote bilingualism in Canada. 69



THE MODERNIZATION OF THE *OFFICIAL LANGUAGES ACT*

INTRODUCTION

In November 2018, the Standing Committee on Official Languages undertook a study on the modernization of the *Official Languages Act* (OLA). Other institutions—the Office of the Commissioner of Official Languages and the Standing Senate Committee on Official Languages—have also considered the matter.¹ The Committee’s study aims to complement other parliamentary work.²

The Committee believes that the modernization of the Act is an opportunity to correct systemic problems that affect the advancement of English and French in Canadian society and the vitality of official language minority communities (OLMCs). For this report, the Committee chose to study three specific aspects of the Act’s modernization: oversight, Part VII and the Act as a tool for social cohesion. During its study, the Committee heard from 44 witnesses and received 12 briefs.

A. ENSURING BETTER COMPLIANCE WITH THE *OFFICIAL LANGUAGES ACT*

In the following section, the Committee examines the evidence on strengthening the Act’s oversight. It discusses the role, duties and functions of the Commissioner of Official Languages, the creation of an administrative tribunal for official languages and the changes that such a tribunal could make to Canada’s language regime.

1 In April 2017, the Standing Senate Committee undertook a study to examine and report on Canadians’ views about modernizing the *Official Languages Act*. To date, four reports from this comprehensive study have been published: *Modernizing the Official Languages Act: The Views of Young Canadians*; *The Views of Official Language Minority Communities*; *The Views of Stakeholders Who Have Witnessed the Evolution of the Act* and *The Views of the Justice Sector*.

2 The Hon. René Cormier, Chair of the Standing Senate Committee on Official Languages, met with the LANG Committee to discuss work on the OLA’s modernization, including topics that the Senate Committee did not cover in depth. See: LANG, *Evidence*, 1st Session, 42nd Parliament, 22 November 2018.



1. Reviewing the role, duties and functions of the Commissioner of Official Languages

The role, duties and functions of the Commissioner of Official Languages are described in Part IX of the Act: he or she ensures that federal institutions comply with the spirit and letter of the Act, acts as ombudsman and investigator, promotes official bilingualism and advises on language matters.

a. Enforcement powers: for or against?

Unlike language commissioners elsewhere, Canada's Commissioner of Official Languages does not have any power to enforce the Act. Raymond Th  berge, Canada's Commissioner of Official Languages, said the Commissioner should be given the power to enter into enforceable agreements and impose administrative monetary penalties.³ Beno  t Pelletier, a professor at the University of Ottawa's Faculty of Law, agrees:

I think the time has come to focus on that gap in the Official Languages Act and give the commissioner the power to impose sanctions.⁴

(i) The Welsh model

In Wales, United Kingdom, the language commissioner has a dual role. He or she is responsible for both promoting the Welsh language and enforcing the regulations made under the enabling legislation, the *Welsh Language (Wales) Measure, 2011*.

As to the regulatory role, Meri Huws, Wales' first language commissioner (2012–2019), said that the Welsh commissioner has "extremely robust enforcement and compliance powers."⁵ For example, the commissioner can impose a fine of up to  5,000 (an option she has never used).⁶ If the commissioner issues statutory requirements that are not complied with, he or she can apply directly to the courts for an injunction against the non-compliant institution.

3 LANG, *Evidence*, 1st Session, 42nd Parliament, 2019, 18 October 2018, 0950 (Raymond Th  berge, Commissioner, Office of the Commissioner of Official Languages).

4 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1110 (Beno  t Pelletier, Professor, Faculty of Law, University of Ottawa, As an individual).

5 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1215 (Meri Huws, Welsh Language Commissioner, Wales).

6 *Ibid.*, 1225.

During her seven-year term, Ms. Huws emphasized conciliation and persuasion over coercion. She adopted a policy of escalation in which punitive measures were used as a last resort.⁷ She believes that these types of measures, including monetary penalties, do not have as much impact on an institution's behaviour as one might think because, as she explained: "There is always a danger that an organization pays a fine and continues not to comply."⁸ The former commissioner also said that "one thing we've found to be useful is requiring a work plan that we monitor to ensure that they achieve compliance."⁹

The commissioner's dual role seems well suited to Wales. During her term, Ms. Huws was able to reconcile both roles: "During the past seven years, I've welcomed having that duality of role, and I see that as working very well together."¹⁰ She also said that her promotional role "has been, as I said, very useful set side by side with my regulatory role."¹¹ She finds that they are "two sides of the same coin" and "very useful to sit together."¹²

However, they "have had to debate in Wales as to whether [they] can have both roles within one person."¹³ Although the Welsh government has granted considerable powers to the language commissioner, it set up an administrative tribunal to counterbalance the commissioner's powers. Stéphanie Chouinard, Assistant Professor of Political Science at the Royal Military College of Canada in Kingston and at Queen's University, commented on this aspect of the Welsh language regime:

The tribunal, on the other hand, has the role of hearing appeals against the Office of the Commissioner's decisions...In other words, the tribunal is not responsible for ensuring that violations of the Welsh Language Measure are punished, but rather for monitoring the actions of the office that is responsible for the punishment.¹⁴

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid., 1220.

11 Ibid., 1225.

12 Ibid., 1215.

13 Ibid., 1235.

14 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1210 (Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada and Department of Political Studies, Queen's University, As an individual).



(ii) Canadian language commissioners' opinions

Although the current Commissioner of Official Languages would like Parliament to grant him punitive powers, he believes that “it’s always better to ensure compliance through discussions and agreements.”¹⁵

The provincial language commissioners agree with Ms. Huws and Mr. Th  berge with respect to the importance of promotion first. However, Fran  ois Boileau, the former French Language Services Commissioner for Ontario, and Michel Carrier, interim Commissioner of Official Languages for New Brunswick, do not support the use of punitive powers. Mr. Boileau argued that the “commissioner ceases to be a mediator the moment he reports that the [A]ct has been contravened. Since he must hear all parties, that vastly complicates the commissioner’s work. Be careful there.”¹⁶

Mr. Carrier agrees. He believes that assigning a dual role could jeopardize the commissioner’s role of bringing people together:

[A] commissioner’s work is that of a diplomat, advisor and convenor. It’s up to the political wing to act on recommendations and to the public to react as well if recommendations are not followed.

It would really be hard to engage and, especially, appeal to the majority community if we had those kinds of powers. I think we can manage to do this work in accordance with the mandate given us without having more power.¹⁷

Like Mr. Carrier and Mr. Boileau,   ric Forgues, Executive Director of the Canadian Institute for Research on Linguistic Minorities, says that a punitive approach does not encourage people to internalize bilingualism and linguistic duality as individual, institutional and shared values:

When people change their behaviour, not because they are forced to do so, but because they have internalized the standards underlying the behavioural changes, it leads to better outcomes.¹⁸

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- 15 LANG, *Evidence*, 1st Session, 42nd Parliament, 2019, 18 October 2018, 0950 (Raymond Th  berge, Commissioner, Office of the Commissioner of Official Languages).
- 16 LANG, *Evidence*, 1st Session, 42nd Parliament, 29 November 2018, 0925 (Fran  ois Boileau, Commissioner, Office of the French Language Services Commissioner).
- 17 LANG, *Evidence*, 1st Session, 42nd Parliament, 29 November 2018, 0910 (Michel Carrier, Interim Commissioner, Office of the Commissioner of Official Languages for New Brunswick).
- 18 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1115 (  ric Forgues, Executive Director, Canadian Institute for Research on Linguistic Minorities).

b. Maximizing the Commissioner's existing powers

François Larocque, a professor at the University of Ottawa's Faculty of Law, believes that successive official languages commissioners have not maximized the powers at their disposal (compelling witnesses to appear, producing documents, etc.). This may be because "the individuals who occupy these positions see their role in a certain way."¹⁹ As Mr. Larocque explains, "On an idiosyncratic level, it may be that they just behave that way. They prefer to act more strategically and they tell themselves that they will not insist too much on one thing because they will ask for more on something else."²⁰ He therefore suggested proceeding "in a more prescriptive fashion through the [A]ct, by using a wording that would encourage the commissioner not to hesitate to use the powers conferred by the [A]ct."²¹

c. Recommendations or statutory requirements?

Aside from punitive powers, modernizing the Act also presents an opportunity to strengthen the Commissioner's duties and functions to ensure fuller compliance with the Act.

Currently, the Commissioner of Official Languages makes recommendations, but federal institutions are not legally required to follow them. Mr. Théberge explained that, "in 80% of cases, federal institutions implement the recommendations."²² However, "in 20% of cases, taking action is difficult."²³ The Commissioner also said that "it is too often the case that the measures put in place by federal organizations do not last long and do not solve the problem."²⁴

19 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1240 (François Larocque, Professor, Faculty of Law, Common Law Section, University of Ottawa, As an individual).

20 Ibid.

21 Ibid., 1255.

22 LANG, *Evidence*, 1st Session, 42nd Parliament, 2019, 2 April 2019, 1125 (Raymond Théberge, Commissioner, Office of the Commissioner of Official Languages).

23 Ibid.

24 Ibid.



The problem appears to be inherent in the Act. As Mr. Théberge explained, “Right now, the [A]ct gives the commissioner significant investigation powers, but says practically nothing about following up on our recommendations.”²⁵

The Quebec Community Groups Network (QCGN) recommended adding a requirement to the Act that federal institutions respond to reports by the Commissioner.²⁶

Mr. Larocque was more specific, saying that “the duty of federal institutions to respond to the recommendations in writing should be codified and describe how the federal institution intends to comply, or not, with the recommendation.”²⁷

In its proposed bill to update the Act, released in March 2019, the Fédération des communautés francophones et acadienne du Canada (FCFA) asked that the Act “require the government to respond publicly to the reports and recommendations of the Commissioner following systemic investigations.”²⁸

The Welsh language regime offers an interesting alternative that could be applied in Canada. The Welsh Language Commissioner does not make simple recommendations. He or she imposes statutory (or legal) requirements with which institutions under the Commissioner’s jurisdiction must comply. Ms. Huws explained the Welsh process as follows:

The initial difference would be that, if I were to investigate following a complaint, I would have requirements rather than recommendations made of the organization, so my judgment would lead to statutory requirements with which they are required to comply. If they do not comply, I can then escalate within...the commissioner’s office. We can move to a position where I impose a fine or I move the case forward immediately to a court to obtain an injunction. Rather than having a series of recommendations, I have a series of legal requirements that I can impose[.]

That role has greater teeth than recommending change; I “require” change.²⁹

25 LANG, *Evidence*, 1st Session, 42nd Parliament, 2019, 18 October 2018, 0900 (Raymond Théberge, Commissioner, Office of the Commissioner of Official Languages).

26 Quebec Community Groups Network (QCGN), *English-speaking Quebec and the Modernization of the Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 27 November 2018, p. 37.

27 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1220 (François Larocque, Professor, Faculty of Law, Common Law Section, University of Ottawa, As an individual).

28 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 50.

29 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1240 (Meri Huws, Welsh Language Commissioner, Wales).

d. Mandatory participation by the Commissioner before the courts

Several witnesses would like the new Act to clarify the Commissioner's duties, particularly the right to go to court. This is an important issue because it relates directly to the representation of complainants before the courts.

A number of witnesses criticized past commissioners' hands-off approach. Ms. Chouinard deplored the "notorious reluctance of the Office of the Commissioner of Official Languages to go to court."³⁰ She added: "cases that the Office of the Commissioner decided to take to court itself are few and far between. It prefers to seek intervener status in cases brought by individuals or civil society groups before the Federal Court."³¹

The FCFA argued that, where an individual's complaint leads to court proceedings, the Act "should also give the Commissioner a right and a duty, in certain circumstances, to participate as a party to the proceeding (without having to ask permission), in order to present his or her evidence and observations."³²

The FCFA also said that the Act should "require the Commissioner to participate as a party where the complainant is unrepresented."³³ The QCGN agrees, recommending that a modernized Act could require the Commissioner "to intervene or act as an *amicus curiae* (friend of the Court) at the Federal Court or Federal Court of Appeal when an individual applicant is unrepresented."³⁴ Where a complainant is represented, the FCFA said that "the Commissioner should also be entitled to participate as a party, where he or she believes it is in the public interest to do so, for example, if the case is liable to lead to important legal developments."³⁵

30 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1205 (Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada and Department of Political Studies, Queen's University, As an individual).

31 Ibid.

32 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 50.

33 Ibid.

34 QCGN, *English-speaking Quebec and the Modernization of the Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 27 November 2018, p. 42.

35 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 50.



Currently, the burden of proof rests with the complainant. Several witnesses therefore asked that the Act require the Commissioner to prepare investigation files.³⁶ These files would contain the Commissioner’s conclusions and set out all evidence, including evidence that could lead to a contrary conclusion. The FCFA said that the files should also include the comments of the individual or institution that is the subject of the complaint. The FCFA also proposed a new idea by adding a provision under which the Commissioner would be required to include in the investigation file “information relating to similar complaints where recurrent violations of language rights are at issue.”³⁷ The courts would be required to accept the Commissioner’s investigation file as evidence. The FCFA noted that the court could not, “without valid reason, set aside the conclusions of fact contained in the investigation file.”³⁸ Lastly, it asked that the next version of the Act protect complainants against reprisals, as does New Brunswick’s Official Languages Act.³⁹

2. Proposing an official languages administrative tribunal

A second major theme relating to compliance is the creation of an official languages administrative tribunal to hear cases related to the Act.⁴⁰

Many witnesses believe an official languages administrative tribunal should be similar in structure, operation and powers to the Canadian Human Rights Tribunal.⁴¹

a. Powers of an official languages administrative tribunal

The FCFA proposes granting the tribunal the following powers: declaratory relief; orders directing a party to act or refrain from taking actions (injunctions); orders maintaining

36 LANG, *Evidence*, 1st Session, 42nd Parliament, 20 November 2018, 1025 (Mark Power, Lawyer, Power Law, As an individual).

37 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 50.

38 *Ibid.*, p. 83.

39 *Ibid.*, p. 71.

40 *Ibid.*, p. 46.

41 The Human Rights Commission receives approximately 1,100 complaints per year and refers on average 5% to 10% of them to the Canadian Human Rights Tribunal. The Human Rights Tribunal has a dozen members, some full-time, others part-time. The Administrative Tribunals Support Service of Canada invests \$3.7 million per year in the tribunal’s operations. Source: LANG, *Evidence*, 1st Session, 42nd Parliament, 2 May 2019, 1225 (Marie-France Pelletier, Chief Administrator, Administrative Tribunals Support Service of Canada).

the tribunal's jurisdiction over the parties or requiring the parties to report periodically; awards of compensatory damages; and monetary penalties.⁴²

Under the current system, damages can be claimed under section 24 of the *Canadian Charter of Rights and Freedoms*. To do so, the complainant must apply to the Federal Court.⁴³ However, there is no range of damage awards or scale to determine the fine to be imposed based on the type and severity of the non-compliance.

With respect to monetary penalties, Pierre Foucher, a professor at the University of Ottawa's Faculty of Law, told the Committee that they are "automatic fines that do not rely on the discretion of a judge. They are imposed by the organization overseeing legislative compliance."⁴⁴ In this case, it would be the official languages administrative tribunal.

The power to impose monetary penalties goes hand in hand with the responsibility to collect fines. In Wales, the money collected must be put into a consolidated fund. A Canadian equivalent already exists in Nunavut's *Official Languages Act*. The purpose of that fund is to recognize and advance the equal status, rights and privileges of the official languages; empower linguistic and cultural expression in the official languages;⁴⁵ revitalize and develop the Inuit language in both private and public spheres through various means; strengthen the vitality of the francophone and Inuit language communities; and create a positive environment for their cultural expression and collective life in Nunavut.⁴⁶ Based on Nunavut's *Official Languages Act*, the FCFA recommends that any administrative monetary penalty imposed by an official languages tribunal be credited to the new "Fund for the Promotion of Official Languages."⁴⁷ Established as a special account, the fund would be placed under the responsibility of

42 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 47.

43 "24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute." Source: *Canadian Charter of Rights and Freedoms*.

44 LANG, *Evidence*, 1st Session, 42nd Parliament, 3 October 2017, 1640 (Pierre Foucher, Professor, Faculty of Law, Civil Law Section, University of Ottawa, As an individual).

45 Government of Nunavut, *Official Languages Act*, S.Nu. 2008, c. 10.

46 Ibid.

47 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 47.



the Minister of Official Languages⁴⁸ and used to “promote official languages.”⁴⁹ Mark Power believes the funds could be used as a “community development tool.”⁵⁰

b. Advantages of an administrative tribunal

According to University of British Columbia Professor Hoi Kong, an administrative tribunal has three main advantages. First, an administrative tribunal has a greater ability to order remedies than a court of law:

[S]eparation of powers [legislative, executive and judicial] considerations act as a limit, in principle, on what remedies a court may order. By contrast, administrative tribunals are not limited by such considerations. They are therefore comparatively freer to order remedies.⁵¹

Second, an “official languages tribunal modelled on human rights tribunals in the provinces and at the federal level would have simplified procedures.”⁵² Mr. Power agrees:

At this time, the law requires that a complaint first be filed with the Commissioner of Official Languages, and in almost all cases, that people wait for the result of the investigation before going to Federal Court. That process is cumbersome for the complainants and the organizations, and involves difficult evidentiary rules. The idea behind an administrative tribunal is to facilitate, accelerate and generalize access to justice.⁵³

As well, Mr. Power believes an administrative tribunal could reduce the number of cases before the courts:

48 Ibid., p. 41.

49 LANG, *Evidence*, 1st Session, 42nd Parliament, 4 April 2019, 1120 (Jean Johnson, President, Fédération des communautés francophones et acadienne du Canada).

50 LANG, *Evidence*, 1st Session, 42nd Parliament, 20 November 2018, 1010 (Mark Power, Lawyer, Power Law, As an individual).

51 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1105 (Hoi Kong, Holder of The Right Honourable Beverley McLachlin, P.C., Professorship in Constitutional Law, Peter A. Allard School of Law, University of British Columbia, As an individual).

52 Ibid.

53 LANG, *Evidence*, 1st Session, 42nd Parliament, 20 November 2018, 0915 (Mark Power, Lawyer, Power Law, As an individual).

That would represent a very significant change for access to justice and...would reduce the need to put the matter before a tribunal. The quality of the evidence would be better, which would encourage transactions.⁵⁴

Mr. Larocque echoed those comments:

An administrative mechanism could be faster and more accessible. It could have powers that would be very satisfactory for complainants and could also support the commissioner in his duties. It would be complementary to the commissioner's role but would serve a distinct function.⁵⁵

Third, an official languages tribunal would, "through repeated exposure to disputes under the *Official Languages Act*, develop expertise in the application and interpretation of its provisions."⁵⁶ Ms. Chouinard added that a tribunal could enrich jurisprudence: "There would be more sanctions for direct violations of the act than decisions based on fundamental legal principles, which are more common in the Federal Court."⁵⁷ Her remarks echo those of Mr. Doucet:

The principle, object and nature of language rights are now well established.⁵⁸

[However, Canada has yet] to establish the existence of a right and to apply for declaratory orders from the courts. We haven't really evolved on damages for violations of language rights.⁵⁹

c. Disadvantages of an administrative tribunal

Creating an administrative tribunal for official languages could also cause problems. As Mr. Foucher explained, an administrative tribunal could create "potential conflicts with

54 Ibid., 1025.

55 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1220 (François Larocque, Professor, Faculty of Law, Common Law Section, University of Ottawa, As an individual).

56 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1105 (Hoi Kong, Holder of The Right Honourable Beverley McLachlin, P.C., Professorship in Constitutional Law, Peter A. Allard School of Law, University of British Columbia, As an individual).

57 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1210 (Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada and Department of Political Studies, Queen's University, As an individual).

58 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 0855 (Michel Doucet, As an individual).

59 Ibid., 0905.



other administrative tribunals that can deal with official languages”⁶⁰ and lead to “legal debates over which body has the power to rule in a particular case.”⁶¹

While an administrative tribunal could increase access to justice, it could also cause problems with access at the appeal stage. That argument is based on the fact that, “when courts are conducting a judicial review of an administrative body, they tend to respect the administrative tribunal’s jurisdiction and decline to intervene unless something unreasonable was done.”⁶² This statement differs from Mr. Larocque’s comments regarding a tribunal’s jurisdiction in terms of creating an administrative tribunal for official languages:

The next *Official Languages Act* could grant this power [to retain jurisdiction] to an administrative official languages tribunal, if it creates one. That would allow the tribunal to retain its jurisdiction, remain seized of certain cases, and require periodic reports. The House of Commons has the power to write that into a bill, and I encourage you to do so.⁶³

Language commissioners in Canada call for caution. Mr. Carrier said he is “not convinced that [an administrative tribunal] would add anything.”⁶⁴ Mr. Boileau agreed: a “tribunal would burden the process and potentially result in less accountability for certain departments, which would turn to the courts and wait to be told what to do.”⁶⁵ In his opinion, compliance is first and foremost a governance issue:

If work was done upstream by a central agency that’s well versed in the *Official Languages Act*, related regulations and what must be done to ensure genuine compliance with the obligations under the act, there would be fewer complaints downstream and we’d have less work to do.⁶⁶

In addition to improving the management framework, Mr. Boileau argued that legislation must be strengthened: “We would need very clear directives and strong

60 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1115 (Pierre Foucher, Professor, Faculty of Law, University of Ottawa, As an individual).

61 Ibid.

62 Ibid.

63 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1255 (François Larocque, Professor, Faculty of Law, Common Law Section, University of Ottawa, As an individual).

64 LANG, *Evidence*, 1st Session, 42nd Parliament, 29 November 2018, 0915 (Michel Carrier, Interim Commissioner, Office of the Commissioner of Official Languages for New Brunswick).

65 LANG, *Evidence*, 1st Session, 42nd Parliament, 29 November 2018, 0915 (François Boileau, Commissioner, Office of the French Language Services Commissioner).

66 Ibid.

regulations that, when implemented, would leave no doubt, and there would have to be consequences if they weren't implemented."⁶⁷

3. Changes to the Office of the Commissioner of Official Languages and the role of the Federal Court with respect to the *Official Languages Act*

If Parliament created an official languages administrative tribunal, it would have to review the duties and functions of the Office of the Commissioner of Official Languages and the role of the Federal Court.

a. Two possible models

Mr. Kong presented two possible models for a new oversight framework for the Act that include an office for the commissioner of official languages and an official languages administrative tribunal.

The models are based on the complainant's access to the court. The indirect access model directs the complainant first to the Commissioner of Official Languages, while the direct access model allows the complainant to go directly to court without an intermediary.

(i) Indirect access model

As mentioned above, the indirect access model requires the intervention of the Office of the Commissioner of Official Languages. Mr. Kong explained that the Commissioner "acts as a gatekeeper" to the tribunal.⁶⁸ He or she receives complaints from the public, and, as is currently the case, investigates and tries to find solutions that are satisfactory to both the complainant and the institution. In the case of unresolved complaints, the "Office of the Commissioner of Official Languages...would refer to the language rights tribunal cases in which it couldn't secure the cooperation of federal institutions."⁶⁹ Once

67 Ibid., 0925.

68 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1110 (Hoi Kong, Holder of The Right Honourable Beverley McLachlin, P.C., Professorship in Constitutional Law, Peter A. Allard School of Law, University of British Columbia, As an individual).

69 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 0855 (Michel Doucet, As an individual).



a case is before a tribunal, the Commissioner can “offer assistance to a claimant, represent a claimant or represent the public interest.”⁷⁰

The model described above is the one recommended by the FCFA (it gives the Office of the Commissioner of Official Languages “a ‘filtering’ role in relation to the Official Languages Tribunal”⁷¹) and the QCGN.⁷² However, the FCFA provides for a complainant to apply directly to the court in certain cases. Applying for a remedy would be possible if a complainant has not received a response from the Office of the Commissioner within six months of filing a complaint, or earlier if the complaint is liable to become moot if not addressed promptly.⁷³

Establishing a tribunal would likely have an impact on the Commissioner’s practices. Ms. Chouinard believes that “the Office of the Commissioner’s mandate should also be revised to specify when the Commissioner of Official Languages should take legal action and submit evidence in court, rather than leaving the decision to the discretion of the commissioner.”⁷⁴ On that point, the FCFA recommends making the production of an investigative file a legal requirement.⁷⁵ It also recommends that the Act should set a “a clear deadline by which the Commissioner would be required to submit an investigation report once a complaint is filed.”⁷⁶ Finally, in the investigative file, the Commissioner would be required to “put into evidence any similar complaints in order to demonstrate recurring violations of language rights.”⁷⁷

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- 70 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1110 (Hoi Kong, Holder of The Right Honourable Beverley McLachlin, P.C., Professorship in Constitutional Law, Peter A. Allard School of Law, University of British Columbia, As an individual).
- 71 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 48.
- 72 QCGN, *English-speaking Quebec and the Modernization of the Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 27 November 2018, p. 42.
- 73 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 48.
- 74 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1210 (Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada and Department of Political Studies, Queen’s University, As an individual).
- 75 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 48.
- 76 FCFA, *Giving New Momentum to Canada’s Linguistic Duality! For a Modern and Respected Official Languages Act*, Brief Submitted to the Standing Committee on Official Languages, February 2019, p. 30.
- 77 Ibid.

Ms. Chouinard’s comments below summarize how the various parts of the Act’s oversight framework work in an indirect access model:

[T]he Commissioner of Official Languages of Canada would retain his role as ombudsman and investigator, and the punitive role would be assigned to the administrative tribunal set up to hear cases dealing with the various parts of the *Official Languages Act* that are binding. The Federal Court could certainly be given a role as a court of appeal for decisions of the administrative tribunal.⁷⁸

(ii) Direct access model

In the second model presented by Mr. Kong, the complainant can apply directly to the administrative tribunal without first filing a complaint with the Office of the Commissioner of Official Languages. As a result, the “tribunal itself processes the application, offers mediation services and adjudicates on the merits of a dispute.”⁷⁹

Of course, such a model would change the role of the Office of the Commissioner of Official Languages. The Commissioner would “focus on systemic concerns rather than individual complaints, and would not have investigative or gatekeeping functions.”⁸⁰ Mr. Kong pointed out that the Commissioner could “retain the power to participate in a tribunal hearing to advance public interest arguments.”⁸¹ The Commissioner could also “retain the power to participate in a tribunal hearing to advance public interest arguments” but would focus on “developing policies, providing information and promoting compliance”⁸² with the Act.

According to Mr. Kong, “This model addresses the concerns about contradictory roles...as the commission would no longer have gatekeeping, settlement and investigative functions.”⁸³

78 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1210 (Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada and Department of Political Studies, Queen’s University, As an individual).

79 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1110 (Hoi Kong, Holder of The Right Honourable Beverley McLachlin, P.C., Professorship in Constitutional Law, Peter A. Allard School of Law, University of British Columbia, As an individual).

80 Ibid.

81 Ibid.

82 Ibid.

83 Ibid.



However, this model has its issues.⁸⁴ Mr. Kong explained that the lack of a trial court to determine the admissibility of a complaint can make the tribunal's work more cumbersome. He gave the example of the Human Rights Tribunal in British Columbia, which "spends more time vetting complaints...than adjudicating the merits of human rights complaints."⁸⁵

Mr. Kong also addressed the issue of access to justice in a direct access model. While it is true that, "in some jurisdictions, the direct access model has resulted in significantly reduced wait times,"⁸⁶ because "tribunals do not conduct investigations or provide representation for complainants" this model is "perceived to be less accessible."⁸⁷ He explained the problem as follows:

If this model were adopted, there would have to be sufficient commitment of resources to ensure that claimants would be able to present informed and competent complaints before the tribunal. There are models for providing this kind of support, whether through clinics or through support centres.⁸⁸

To ensure access in a direct access model, the Office of the Commissioner of Official Languages and the court must have the necessary resources to support complainants. Otherwise, "the gains in accessibility...will essentially be lost."⁸⁹ As Mr. Kong explained:

I think if you have sufficient resources to support claimants in front of a direct access tribunal, and then you ensure that the commissioner has all the resources necessary to do the kind of systemic work...to support communities, then I think you can allow the commissioner to focus on larger systemic questions rather than spend all of the time on specific complaints. Assuming sufficient resources and assuming that the commissioner is going to be freed up and given powers to do systemic inquiries and the kinds of cultural changes that Monsieur Forgues has mentioned, I think that a direct access tribunal would be a good model to proceed with.⁹⁰

84 ibid.

85 ibid.

86 ibid.

87 ibid.

88 ibid.

89 ibid., 1140.

90 ibid.



b. The Federal Court

Creating an administrative tribunal for official languages would require Parliament to review the role of the Federal Court in language matters. The FCFA believes that “Parliament should consider mandating the Federal Court to review the decisions of whatever official languages tribunal is established.”⁹¹ It further added that “Parliament should legislate the standards of review.”⁹²

B. PART VII OF THE *OFFICIAL LANGUAGES ACT*

Part VII of the Act has two objectives. It aims to enhance the vitality of the English and French linguistic minority communities in Canada and support and assist their development and foster the full recognition and use of both English and French in our society.

Modernizing the Act presents an opportunity to strengthen the federal government’s commitments in Part VII. The FCFA, like other witnesses, calls for the Act to “include an obligation rather than a simple commitment to take the necessary positive measures.”⁹³ But what is meant by positive measures?

1. Defining positive measures

In 2018, the Federal Court handed down its decision in *Fédération des francophones de la Colombie-Britannique (FFCB) v. Canada (Employment and Social Development)*. The FFCB alleged that Employment and Social Development Canada (ESDC) and the Canada Employment Insurance Commission failed to meet their obligations to the francophone community by not including language clauses in the Canada–British Columbia Labour Market Development Agreement (20 February, 2008). In short, it argued that devolving federal powers to the province would result in a decrease in French-language services in British Columbia.

The Federal Court had to look at the duty of federal institutions to comply with the requirements set out in subsections 41(1) and 41(2) of the Act with respect to transfer

91 FCFA, *Giving New Momentum to Canada’s Linguistic Duality! For a Modern and Respected Official Languages Act*, Brief Submitted to the Standing Committee on Official Languages, February 2019, p. 29.

92 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 47.

93 LANG, *Evidence*, 1st Session, 42nd Parliament, 4 April 2019, 1130 (Alain Dupuis, Director General, Fédération des communautés francophones et acadienne du Canada).



arrangements.⁹⁴ In his decision, Justice Gascon upheld that, “[i]n short, section 41 does not impose specific and particular duties on federal institutions. The language used in subsection 41(2) is devoid of all specificity.”⁹⁵

As Mr. Théberge explained, that decision called Part VII of the Act into question, particularly the interpretation of what constitutes positive measures:

Pursuant to the Gascon decision, anything can constitute positive measures. It does not necessarily have to be a program or anything else in particular. Creating a committee can be considered a positive measure. That is problematic.⁹⁶

Many witnesses called for regulations to define key concepts such as “enhancing the vitality,” “supporting the development,” “vitality”⁹⁷ and, most notably, the concept of “positive measures.” As the Townshippers’ Association argued, these terms must be “defined by the communities that they affect and cannot be externally imposed.”⁹⁸ Former Supreme Court Justice Michel Bastarache said that not only must “positive measures” be defined but also “how government organizations that have the duty to adopt positive measures should be overseen.”⁹⁹

94 “41 (1) The Government of Canada is committed to (a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and (b) fostering the full recognition and use of both English and French in Canadian society. 41 (2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.” *Official Languages Act* (R.S.C., 1985, c. 31 (4th Supp.)).

95 Federal Court, *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, 2018 FC 530, T-1107-13, para. 216.

96 LANG, *Evidence*, 1st Session, 42nd Parliament, 18 October 2018, 0905 (Raymond Théberge, Commissioner, Office of the Commissioner of Official Languages).

97 According to Lorraine O’Donnell, researcher Richard Bourhis “helped develop the concept...that the more vitality a group is assessed to have, the more likely it is expected to survive collectively as a distinctive linguistic community. Using a vitality framework, researchers look at factors such as demography and institutional support.” She recommends Parliament include vitality in the Act, define it and detail how the government would enhance it. Source: LANG, *Evidence*, 1st Session, 42nd Parliament, 9 April 2019, 1200 (Lorraine O’Donnell, Coordinator-Researcher, Quebec English-Speaking Communities Research Network (QUESCREN), Concordia University).

98 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 February 2019, 1105 (Rachel Hunting, Executive Director, Townshippers’ Association).

99 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 1035 (Michel Bastarache, Legal Counsel, As an individual).

Few witnesses, however, attempted to define what positive measures are. The Committee therefore proposes an outline of the core elements that make up a positive measure:

A positive measure is a measurable action taken by institutions subject to the *Official Languages Act*. It aims to:

- a) foster the use of both English and French in Canadian society; and/or
- b) enhance the vitality of OLMCs.¹⁰⁰

A positive measure is:

- a) the result of a broad and liberal interpretation that ensures the purposes of the *Official Languages Act* are achieved;¹⁰¹
- b) a solution to repair past wrongs;
- c) a reflection of the principle “by”, “for” and “with” OLMCs;^{102;103;104}
- d) linked to an obligation of measurable results; and

100 These are the two current objectives of Part VII of the *Official Languages Act*.

101 LANG, *Evidence*, 1st Session, 42nd Parliament, 1 November 2018, 0915 (Mélanie Joly, Minister of Tourism, Official Languages and La Francophonie): “...for our official language minority communities to really have some vitality, we need Part VII to be strong. The Supreme Court tells us that our interpretation of Part VII must be broad and liberal.”

102 QCGN, *English-speaking Quebec and the Modernization of the Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 27 November 2018, p. 40.

103 FCFA, *Giving New Momentum to Canada’s Linguistic Duality! For a Modern and Respected Official Languages Act*, Brief Submitted to the Standing Committee on Official Languages, February 2019, p. 23.

104 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 November 2018, 0945 (Martin Théberge, President, Fédération culturelle canadienne-française): “First, we’re obviously in complete agreement on the “by and for,” but we’re taking it further and making it “by, for and with.”



- e) intrinsically linked to the principle of substantive equality.¹⁰⁵

Mr. Bastarache explained the importance of including a rigorous analysis of the impact of departmental decisions on OLMCs:

I think that the very first step in a positive measure is to take into account the consequences on minority communities of all decisions that are made, and of all programs that are put into effect. Things should be considered upstream...We should be avoiding the mistakes right from the outset. When a department has a program...the positive measure consists in studying the positive impact that program will have on the community, and ensuring that some elements of the program will meet the specific needs of that community.¹⁰⁶

Federal institutions must submit the development, implementation, proposed amendment or elimination of a positive measure to the Analytical Grid (Substantive Equality), an analytical tool developed by the Treasury Board in response to the Supreme Court of Canada's decision in *Desrochers v. Canada (Industry)* (the CALDECH case).

A positive measure is also:

- f) the result of meaningful consultation. The FCFA proposes the expression "meaningful consultation." It would require the government to "(a) gather information to test these policies, decisions or programs; (b) propose policies, decisions and programs that have not been finalized; (c) seek the opinions of individuals and organizations consulted with regard to these policies, decisions or programs; (d) provide the individuals and organizations consulted with all relevant information on which these policies, decisions or programs are based; (e) listen with an open mind to what the individuals and organizations consulted have to say; (f) be prepared to alter the policies, decisions or programs that are the subject of the consultation; (g) provide feedback to the

105 "Substantive equality is achieved when one takes into account, where necessary, the differences in characteristics and circumstances of minority communities and provides services with distinct content or using a different method of delivery to ensure that the minority receives services of the same quality as the majority. This approach is the norm in Canadian law." Government of Canada, Home, How government works, Policies, directives, standards and guidelines, Policy on Official Languages.

106 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 1035 (Michel Bastarache, Legal Counsel, As an individual).

individuals and organizations consulted, both during the consultation process and after the decision has been taken.”¹⁰⁷

Meaningful consultation is critical to developing, implementing, amending or eliminating a positive measure. Graham Fraser, Canada’s former Commissioner of Official Languages, emphasized this point:

All the successes [under Part VII], therefore, came as the result of consultations and of a greater commitment from the departments to the communities, often at a very local level.

I used to say to myself that this is not the kind of success that one could imagine coming from a deputy minister’s office, that is to say, a directive addressed to all a department’s regional offices. It comes instead from the imagination, the innovation and the openness of spirit of the federal employees on site.¹⁰⁸

Federal institutions must also take the results of their consultations into account and provide feedback.¹⁰⁹

In concrete terms, a positive measure could be:

- a) a program that achieves the objectives of Part VII of the Act;
- b) an entity – a secretariat, an office, a branch, etc. – within an institution subject to the *Official Languages Act* whose objective is to ensure departmental, interdepartmental and/or intergovernmental coordination of the *Official Languages Act*;

107 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 39.

108 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 May 2019, 1200 (Graham Fraser, Senior Fellow, University of Ottawa, As an individual).

109 These duties result from the Supreme Court of Canada’s decision in *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73. Source: FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 34.



- c) an advisory or working committee, permanent or ad hoc, on an official languages file within an institution subject to the *Official Languages Act*;
- d) the engagement of minority community organizations to provide certain services and programs¹¹⁰ to ensure that services are provided in the minority language and are of equal quality to those provided to the majority.

2. Overhauling Part VII

In addition to making positive measures mandatory and making regulations to clearly define positive measures and other key concepts, most witnesses would like Parliament to add new elements to Part VII of the Act.

a. New consultation duties

The 1988 Act required the federal government to foster the development of OLMCs. Yet it did not give these communities the right to participate. Because the right to participate is closely linked to consultation, the FCFA recommends making regulations prescribing the manner in which consultations are to be carried out, including the situations in which OLMCs must be consulted by federal institutions. The regulations must also set out a list of organizations to be consulted “in specific contexts.”¹¹¹ As mentioned above, federal institutions would have a duty to consider the results of consultations with OLMCs, and even to “provide reasons for certain decisions.”¹¹²

The QCGN supports all of the FCFA’s consultation-related recommendations while stressing that a well-established consultation process must promote flexible programs and initiatives that meet the specific needs of Quebec’s English-speaking communities. This is an essential condition for achieving substantive equality. Lorraine O’Donnell,

110 Government of Canada, *Guide for Federal Institutions on Part VII (Promotion of French and English) of the Official Languages Act*, 2019, p. 7.

111 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 34.

112 FCFA, *Giving New Momentum to Canada’s Linguistic Duality! For a Modern and Respected Official Languages Act* Brief Submitted to the Standing Committee on Official Languages, February 2019, p. 25.

Coordinator of the Quebec English-Speaking Communities Research Network (QUESCREN) at Concordia University, explained the issue as follows:

A modernized [A]ct should, in my view, continue to support official language minority community development while also explicitly acknowledging the distinctiveness and equal importance of both official language minority communities, and addressing the distinct needs and profiles of both. For the English-speaking communities, this may mean addressing vitality issues and challenges faced by vulnerable multiple minorities while also supporting the communities' unique strengths, such as their heritage of welcoming immigrant initiatives...

Each of Canada's official language minority communities faces unique challenges, which is why consultation is so critical to designing positive measures that enhance their individual vitality.¹¹³

The QCGN also stressed that OLMCs must have the financial and human resources for meaningful consultations to be held.¹¹⁴

b. Creating a national OLMC advisory council

Federal institutions must consult with OLMCs at the local, regional, provincial/territorial and national levels. To give OLMCs a right of participation, the FCFA and the QCGN propose creating a federal government–OLMC advisory council to allow these communities to be involved in official languages issues at the most senior levels of government. FCFA President Jean Johnson explained the role of the proposed council:

The creation of an advisory council would allow the communities to have their word to say in the implementation of federal institutions' language obligations. It would allow them to take part in the development of a five-year official languages plan and in the ten-year review of the act we are proposing. This council, made up of representatives of the various organizations that speak for the communities, but also of other citizens, would bring the act into the 21st century. In fact, it would include some very current approaches to the relations between the government and minorities.¹¹⁵

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- 113 LANG, *Evidence*, 1st Session, 42nd Parliament, 9 April 2019, 1205 (Lorraine O'Donnell, Coordinator-Researcher, Quebec English-Speaking Communities Research Network (QUESCREN), Concordia University).
- 114 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 0955 (Stephen Thompson, Director, Policy, Research and Public Affairs, Quebec Community Groups Network).
- 115 LANG, *Evidence*, 1st Session, 42nd Parliament, 4 April 2019, 1105 (Jean Johnson, President, Fédération des communautés francophones et acadiennes du Canada).



For Quebec’s English-speaking communities, putting such a formal consultation mechanism in place is needed to ensure that their voices are heard on the national stage:

This is a major concern of English-speaking Quebec, which is not equipped to equally participate in national-level official languages discussions; nor is its presence adequately felt or seen here despite the size of our community.¹¹⁶

The QCGN also wants to make sure that the “individuals on this Council are truly connected and rooted in their official language minority community.”¹¹⁷ It therefore recommends that the composition of the advisory council be prescribed in the Act. In its bill, the FCFA calls for the advisory council to be composed of at least one member of the FCFA; one member of the QCGN; one member of the francophone minority communities and one member of the anglophone minority communities who have demonstrated their commitment to enhancing the vitality of these communities; two deputy ministers or their designates (the FCFA did not specify from which departments); the President of the Treasury Board and the Minister of Official Languages.¹¹⁸

The expressions “member of the FCFA” and “member of the QCGN” can be confusing. They may refer to a representative of an organization that is a member of one of the two organizations or to a member of the board of directors of the FCFA or the QCGN. It should also be noted that the two members “who have demonstrated their commitment to official language minority communities” would be appointed by the Treasury Board on the recommendation of the FCFA and the QCGN.¹¹⁹

Over the years, OLMCs have established a governance structure that includes local, regional and provincial/territorial advocacy groups as well as two national advocacy groups: the FCFA and the QCGN. Because of this, the Committee, like other parliamentary and government bodies, often engages with the same stakeholders. Mr. Forgues believes it is important to be able to hear from “individuals who do not

116 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 0955 (Stephen Thompson, Director, Policy, Research and Public Affairs, Quebec Community Groups Network).

117 QCGN, *English-speaking Quebec and the Modernization of the Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 27 November 2018, p. 41.

118 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 42.

119 *Ibid.*, p. 42.

necessarily belong to organizations.”¹²⁰ It is also why he criticized the advisory council proposed by the FCFA:

I would have included more community representation. As the proposal stands, the membership of the advisory council would include an FCFA representative, a Quebec Community Groups Network, or QCGN, representative, and a representative from each community. I would have liked to see a truly representative advisory council, one that couldn't serve as a pretext not to consult communities when creating policies.¹²¹

c. Research: just as important as consultations!

Some witnesses highlighted the lack of research and evidence on OLMCs. Mr. Forgues noted that the “government holds extensive consultations, mainly at the organization level, but invests little in public policy research to support official languages.”¹²² He believes that the government should invest more in professional research to establish “tools for rigorous analysis—tools that would allow the government to identify communities’ needs clearly and adequately measure the impact of its investments on communities.”¹²³ Otherwise, the “process to determine language policies will essentially amount to adjudicating the various interests expressed by the organizations.”¹²⁴

Research and access to evidence are also essential to implementing the Act, particularly Part VII. Legal duties are not enough to make sure that federal institutions comply with the Act.¹²⁵ As Mr. Forgues explained, the government “needs to...give departments and agencies the expertise and resources they need to better support their implementation efforts.”¹²⁶ He believes that a number of factors must be taken into account in research on official languages and OLMCs, including an “understanding of sociolinguistic dynamics in the workplace” and “service delivery.”¹²⁷ This expertise can only result from greater cooperation between the research community and government.¹²⁸

120 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1115 (Éric Forgues, Executive Director, Canadian Institute for Research on Linguistic Minorities).

121 *Ibid.*, 1125.

122 *Ibid.*, 1115.

123 *Ibid.*

124 *Ibid.*

125 *Ibid.*, 1130.

126 *Ibid.*, 1115.

127 *Ibid.*

128 *Ibid.*



To illustrate how unfounded policies can have an impact on the vitality of OLMCs, Mr. Bastarache cited the calculation method in the *Official Languages (Communications with and Services to the Public) Regulations*:

The old official languages regulations had been adopted without any consultation with Canadians and had not been revised or consulted on since 1992. According to the SFM, the incompatibility of thresholds with section 20 of the [C]harter is noted on two levels. First, the thresholds vary in a manifestly arbitrary fashion. The regulations say that it's 5,000 inhabitants for a service area and 500 inhabitants for a village. I have met with the four officials who established those thresholds and I asked them how they came up with the figures. I asked them whether a scientific study had established certain criteria. They said no, the figures were just nice...I asked those four officials how that was justified and what the federal principles in bilingualism and access to services were based on. They could not answer me, as there had been no studies and they had made the decision themselves. Second, the government has submitted no evidence that this is grounded in any criteria based on rationality of service. In its opinion, it was just a matter of proportionality.¹²⁹

For all these reasons, Michel Tremblay, General Director of the Société Santé en français, like other witnesses, said that the Act should require “federal institutions to collect data on official languages and ensure that they are analyzed in way that is useful to the communities.”¹³⁰ He also suggested that the federal government could encourage the provinces and territories to collect language statistics by offering them financial incentives.¹³¹ To address these demands, the FCFA proposed adding the following provision to the Act:

Every federal institution has the duty to collect, compile and publish data on official languages and on official language minority communities in support of the implementation of their obligations under this Act.¹³²

129 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 0955 (Michel Bastarache, Legal Counsel, As an individual).

130 LANG, *Evidence*, 1st Session, 42nd Parliament, 9 April 2019, 1115 (Michel Tremblay, General Director, Société Santé en français).

131 Ibid.

132 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 146.

3. Making a five-year strategy for official languages a requirement in the Act

For many witnesses, developing a multi-year official languages strategy should be a requirement of the Act.¹³³ The FCFA drafted a provision to this effect, stating that the strategy must include programs or initiatives in priority areas for OLMCs, such as “job creation, employability and economic development, community development, education, immigration, culture, health, offer of services, justice, language of work and support for community media.”¹³⁴

Mr. Forgues, like several witnesses, welcomed this proposal. He suggested that the Act mandate that OLMCs participate in the strategy’s development to ensure that they do not “become nothing more than agents executing the government’s plans.”¹³⁵ On this point, the FCFA’s bill provides for creating “mechanisms that could reasonably be expected to allow official language minority communities to take charge of their development.”¹³⁶

4. Duty to develop plans to implement Part VII of the *Official Languages Act*

In addition to calling for the Act to require that the federal government adopt a multi-year official languages strategy, the FCFA also called for federal institutions to be required to “produce an action plan setting out the ways in which this duty [enhancing the vitality of official language minority communities and assisting their development] is to be carried out, as is the case under New Brunswick’s *Official Languages Act*.”¹³⁷ Some federal institutions already develop plans to implement the Act, even though the Act

133 Association franco-yukonnaise (AFY), *The Action Plan for Official Languages 2018-2023 and the modernization of the Official Languages Act: an opportunity to bring about generational changes for the Yukon Francophone community*, Brief submitted to the House of Commons Standing Committee on Official Languages, Whitehorse, Yukon, 25 September 2018, p. 7.

134 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 134.

135 LANG, *Evidence*, 1st Session, 42nd Parliament, 19 March 2019, 1115 (Éric Forgues, Executive Director, Canadian Institute for Research on Linguistic Minorities).

136 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 144.

137 *Ibid.*, p. 135.



does not prescribe it. Establishing this duty in the Act, as proposed by the FCFA, would simply provide a framework for a common practice.

In terms of departmental planning, Wales could, once again, serve as a model for Canada. The *Welsh Language (Wales) Measure, 2011*, requires the development of Welsh language schemes, a set of standards with which institutions must comply. According to Ms. Chouinard, the Welsh language schemes “are developed in conjunction with the Welsh language commissioner in each of the institutions.”¹³⁸ As she explains, “based on the text of the *Welsh Language Act*, each of the institutions must sit down with the Welsh language commissioner and say how it will meet its obligations. In the end, each of the institutions is a kind of roadmap.”¹³⁹

5. Overseeing funds to provinces and territories

Because of its spending power, the federal government can, through transfer payments, invest in several areas.

Transfer payments are subject to a bilateral agreement between the federal government and the province/territory. They describe the objectives of both levels of government, their respective duties and responsibilities and include an action plan.

The evidence brought before the Committee shows that, in terms of language rights, these transfers are problematic. QCGN President Geoffrey Chambers explains:

We are reminded, in the year of the [A]ct’s 50th anniversary, that, sadly, we are a long way from realizing the dream of ensuring respect for English and French as official languages across Canada. We are also reminded of the inherent limitations of a federal act to make this goal a reality in a federal system, where the provinces have jurisdiction over so many areas critical to the vitality of our official language minority communities. We, Canada’s English and French minority communities, continue to face provincial governments who do not always respect their constitutional language rights obligations and who make decisions, within the bounds of their own legislative powers, that negatively impact the ability of French and English Canadians to receive critical services in their official language.¹⁴⁰

138 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1240 (Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada and Department of Political Studies, Queen’s University, As an individual).

139 Ibid.

140 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 February 2019, 1100 (Geoffrey Chambers, President, Quebec Community Groups Network).

This problem is not new. As Mr. Bastarache explained, “[f]or years, minority representatives have been complaining about the fact that some provinces are not complying with the agreements and are diverting the funds to other areas, and that the government is doing nothing to correct the situation.”¹⁴¹ Even Graham Fraser, the former Commissioner of Official Languages, had difficulty tracking federal investments:

I discovered that it was difficult to find out what the provinces were doing with the money that Ottawa was distributing to them. When I was commissioner, one provincial education minister even told me that, when he received a federal cheque, he did not read the covering letter. That was tongue in cheek; his officials certainly read it. However, the provinces have a way of thinking that they decide how to spend the federal money they receive.¹⁴²

Mr. Pelletier also commented on the lack of transparency, particularly by the provinces and territories, in bilateral agreements:

[A] number of provinces...are very resistant to accountability. What that means is that, when the federal government spends money to help the provinces help official language communities, Ottawa can ask for accountability. Many of the provinces take a pretty vague approach to accountability, and some are downright opposed to the idea of the federal level requiring accountability for areas under provincial jurisdiction.¹⁴³

Examples of problematic bilateral agreements abound. According to Mr. Tremblay, a recent bilateral health agreement would leave service delivery in French to the goodwill of the provinces and territories:

[D]uring recent negotiations between the federal, provincial and territorial governments on agreements pertaining to mental health care, home care, and palliative and end-of-life care, the CNFS and the SSF jointly recommended that Health Canada incorporate performance measures into its obligations toward our communities because communication and language issues are particularly critical in these areas.

Under the current legal framework, these services, which are made possible through federal funding, are delivered in both official languages only if the province so desires, and you know as well as I do that that does not happen in most cases.¹⁴⁴

141 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 0950 (Michel Bastarache, Legal Counsel, As an individual).

142 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 May 2019, 1205 (Graham Fraser, Senior Fellow, University of Ottawa, As an individual).

143 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1120 (Benoît Pelletier, Professor, Faculty of Law, University of Ottawa, As an individual).

144 LANG, *Evidence*, 1st Session, 42nd Parliament, 9 April 2019, 1110 (Michel Tremblay, General Director, Société Santé en français).



That being said, the *Multicultural Early Learning and Child Care Framework* (2017) demonstrates that it is possible to include clauses to protect the interests of official language minority communities in federal–provincial/territorial agreements.

Regulations governing language rights in the area of transfer payments are not enough to protect the interests of OLMCs. Like many other witnesses, Mr. Tremblay called for a modernized Act to include a “revision of the federal framework for funding allocated to the provinces for official languages.”¹⁴⁵

The QCGN argued that strengthening the “framework for federal-provincial/territorial agreements...means several things.”¹⁴⁶ The following section examines the main solutions witnesses proposed: putting an obligation in the Act to include enforceable language clauses in bilateral agreements, clarifying and expanding the scope of section 25 of the Act and operationalizing subsection 16(3) of the *Canadian Charter of Rights and Freedoms*.

a. Enforceable language clauses

Most of the time, bilateral agreements do not contain language clauses. Where they do, these clauses are vague and declaratory, with expressions such as “taking into account the needs of the minority.” OLMCs could not be clearer. The FCFA and the QCGN, supported by their respective networks, require that any agreement between the federal government and a province or territory that provides for a transfer of funds contain enforceable language clauses guaranteeing that federal funds will be spent in keeping with the provisions of the agreement. The Commissioner of Official Languages shares this view. He was clear: “we should have language provisions in all federal-provincial agreements. That is part of transparency and accountability principles.”¹⁴⁷

Marie-Andrée Asselin, Executive Director of the Fédération des parents francophones de Colombie-Britannique, said that OLMCs must be consulted before the clauses are written.¹⁴⁸ Otherwise, they are irrelevant. Ms. Asselin brought up the *Multilateral Early Learning and Child Care Framework* as a case in point. She said that the agreement

145 LANG, *Evidence*, 1st Session, 42nd Parliament, 20 November 2018, 0925 (Mark Power, Lawyer, Power Law, As an individual).

146 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 February 2019, 1110 (Sylvia Martin-Laforge, Director General, Quebec Community Groups Network).

147 LANG, *Evidence*, 1st Session, 42nd Parliament, 18 October 2018, 0920 (Raymond Thériège, Commissioner, Office of the Commissioner of Official Languages).

148 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 September 2018, 0930 (Marie-Andrée Asselin, Executive Director, Fédération des parents francophones de Colombie-Britannique).

“contains a language clause for francophone communities...However, what the clause specifies does not match the needs of the communities in the province. If we had been consulted in advance, we would have been able to suggest some good ideas that would have given the clause some teeth.”¹⁴⁹

The language clauses must have several objectives. They must ensure that the provinces and territories hold meaningful consultations with OLMCs in developing and implementing bilateral agreements, allocate funds specific to the needs of OLMCs and adopt rigorous accountability practices.¹⁵⁰

The QCGN therefore called on Parliament to establish “strict transparency mechanisms...to account for official languages investments.”¹⁵¹ It also insisted on “strict transparency provisions on federal investments made under part VII from all recipients, including provincial and territorial governments.”¹⁵²

The QCGN also raised other points that could be the subject of new obligations in a modernized Act. It argued that the minister responsible for official languages be given the authority to ensure that all signatories comply with the language clauses.¹⁵³ It also called on Parliament to ensure that these language clauses ensure “equality of status of English and French, and equal treatment of English- and French-speaking minority communities in Canada.”¹⁵⁴ On that point, the QCGN explained that the clauses must not allow “different thresholds for acceptable quality of services depending on whether English or French is the minority language at issue.”¹⁵⁵ Lastly, the QCGN asked that “all federal-provincial-territorial agreements be made in both official languages and be equally authoritative.”¹⁵⁶

149 Ibid.

150 LANG, *Evidence*, 1st Session, 42nd Parliament, 4 April 2019, 1105 (Jean Johnson, President, Fédération des communautés francophones et acadiennes du Canada).

151 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 February 2019, 1110 (Sylvia Martin-Laforge, Director General, Quebec Community Groups Network).

152 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 0955 (Stephen Thompson, Director, Policy, Research and Public Affairs, Quebec Community Groups Network).

153 Ibid.

154 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 February 2019, 1110 (Sylvia Martin-Laforge, Director General, Quebec Community Groups Network).

155 Ibid.

156 Ibid.



b. Clarify section 25 of the *Official Languages Act*

Section 25 of the *Official Languages Act* provides that “Every federal institution has the duty to ensure that, where services are provided or made available by another person or organization on its behalf, any member of the public in Canada or elsewhere can communicate with and obtain those services from that person or organization in either official language in any case where those services, if provided by the institution, would be required under this Part to be provided in either official language.”

In *Fédération des francophones de la Colombie-Britannique (FFCB) v. Canada (Employment and Social Development)*, the Federal Court had to decide whether section 25 (Part IV of the Act) applied to a province or territory under a bilateral agreement. The court ruled that “Part IV [of the Act] does not apply to the Agreement with British Columbia because the delivery of employment assistance services stipulated in the Agreement is a valid exercise of the province’s legislative authority and, therefore, British Columbia is not acting “on behalf of” a federal institution.”¹⁵⁷

Regardless of the Federal Court’s decision, Mr. Foucher believes that the language problems in bilateral agreements could be resolved if Parliament clarified section 25 of the Act. To do so, the scope of this section should be broadened “to say that provincial governments that sign agreements act on behalf of the federal government, which makes them responsible for accountability.”¹⁵⁸ The FCFA agrees and proposed including the following provision in the Act:

For the purposes of subsection (1), another person or public or private entity is considered to be acting on behalf of a federal institution if that institution exercises a sufficient degree of control over the person or entity. If the person or entity, through one of its activities, implements a specific policy, program or statutory scheme of the federal institution, it also acts on behalf of the federal institution in respect of that activity.¹⁵⁹

157 Federal Court, *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, 2018 FC 530, T-1107-13, para. 299.

158 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1130 (Pierre Foucher, Professor, Faculty of Law, University of Ottawa, As an individual).

159 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 120.



c. Operationalize subsection 16(3) of the *Canadian Charter of Rights and Freedoms*

Mr. Boileau believes that modernizing the Act provides Parliament with an opportunity to operationalize subsection 16(3) of the *Canadian Charter of Rights and Freedoms*.¹⁶⁰

This section reads as follows: “Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.”¹⁶¹

To this end, Mr. Boileau proposed adding new sections to Part VII of the Act.

Those sections would establish an “opt-in system of language rights and obligations for the provinces.”¹⁶² He explained the proposed regime as follows:

The new sections would contain standard clauses, which the provinces could decide to adopt, in whole or in part, to guarantee new language rights for their official language minority communities. The federal government, meanwhile, would be required under the new sections of the OLA [*Official Languages Act*] to guarantee some level of financial and logistical support for the provinces that accept the opt-in system to ensure greater consistency in the delivery and quality of provincial services provided in both languages. This would essentially be a framework for federal spending authority regarding certain measures.¹⁶³

Mr. Boileau added:

Such an opt-in regime under the OLA recognizes the province’s powers in their areas of jurisdiction and at the same time enlists them, in a more ordered fashion, in a common cause: the constitutional project of advancing the rights, status and privileges of English and French in Canadian society. Such an innovation would demonstrate the federal government’s moral authority in respect of official languages and strengthen the bonds of national unity.¹⁶⁴

160 Office of the French Language Services Commissioner of Ontario, *Modernizing the Official Languages Act: Seeking Areas of Interjurisdictional Harmonization*, Brief of the Office of the French Language Services Commissioner, submitted to the Standing Committee on Official Languages in connection with its study about modernizing the *Official Languages Act*, 29 November 2018, pp. 30 and 31.

161 Government of Canada, *Canadian Charter of Rights and Freedoms*.

162 Office of the French Language Services Commissioner of Ontario, *Modernizing the Official Languages Act: Seeking Areas of Interjurisdictional Harmonization*, Brief of the Office of the French Language Services Commissioner, submitted to the Standing Committee on Official Languages in connection with its study about modernizing the *Official Languages Act*, 29 November 2018, p. 31.

163 *Ibid.*, p. 31.

164 *Ibid.*, p. 34.



The equality of status of English and French and the operationalization of subsection 16(3) of the Charter are particularly important for Quebec’s English-speaking communities because of Quebec’s unilingual language regime. As the QCGN explained:

[T]he Act must provide a floor—not a ceiling—for minority language rights. [Subsection] 16(3) of the Charter clearly provides that Parliament can do more than the minimum to “advance the equality of status or use of English and French.” The Act can provide greater rights for linguistic minorities, but can leave no room for lesser rights to be accorded to minority official languages under the Act in particular provinces.¹⁶⁵

The FCFA fully agrees¹⁶⁶ and proposed that the Minister of Official Languages be given duties as follows:

The Minister of Official Languages shall take such measures as that Minister considers appropriate to advance the equality of status and use of English and French in Canadian society and, without restricting the generality of the foregoing, may take measures to: ... encourage provincial governments to adopt measures that foster progress toward the equality of status or use of English and French; [and] encourage and assist provincial governments to support the development of official language minority communities.¹⁶⁷

6. Sector-specific concerns

Several witnesses addressed the protection of language rights in strategic sectors such as education, health care, employment and social development, access to justice and immigration.

For some sectors, federal legislation provides a framework for the federal government. The *Canada Health Act* and the *Immigration and Refugee Protection Act* are examples. In such cases, it may be more strategic to amend the enabling legislation than the Act. The FCFA did note the consequential amendments that would have to be made to other acts if its proposals to amend the Act were adopted by Parliament. Moreover, proposed amendments to the Act that are general or systemic in nature would have a powerful impact on OLMCs, regardless of sector-specific needs.

165 QCGN, *English-speaking Quebec and the Modernization of the Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 27 November 2018, pp. 18–19.

166 FCFA, *Giving New Momentum to Canada’s Linguistic Duality! For a Modern and Respected Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 22 November 2018, p. 38.

167 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, pp. 147–148.

a. Health and immigration

Mr. Tremblay proposed that the bill to modernize the Act contain provisions to amend the *Canada Health Act*.¹⁶⁸ The Société Santé en français and its partners want linguistic duality to be a new criterion for federal health funding. This criterion would require provincial and territorial governments to develop programs to increase access to health services for OLMCs, respect federal language obligations in bilateral agreements and gather and publish data on the health of OLMCs.¹⁶⁹

Francophone immigration is closely linked to the demographic balance of francophones in the country, since the offer of federal services (Part IV of the Act) is determined based on numerical criteria (although a “vitality” criterion has been incorporated into the new version of the *Official Languages Communications with and Services to the Public Regulations*). It is therefore not surprising that francophone immigration is a key part of the FCFA’s proposal. In fact, francophone immigration must be taken into account in the development of the federal government’s multi-year strategy for official languages.¹⁷⁰ The FCFA also recommended that francophone immigration be included in a strategy to implement the Charter’s provisions on New Brunswick.¹⁷¹ The FCFA also seeks to give the Minister of Immigration, Refugees and Citizenship new duties with regard to francophone communities, particularly in New Brunswick, as well as to federal institutions involved in the immigration process.¹⁷²

Immigration is equally important to anglophone minority communities, as recognized by the Canadian Commissioner of Official Languages.¹⁷³ However, the *Canada–Quebec Accord relating to Immigration and Temporary Admission of Aliens* (Canada–Quebec Accord on Immigration), while taking into account the bilingual character of Canada, contains no provision to promote English-speaking immigration. The essential aim of the Accord is to provide Quebec with new means for preserving its demographic weight within Canada and ensuring the integration of immigrants that respects the distinct nature of Quebec society.

168 LANG, *Evidence*, 1st Session, 42nd Parliament, 9 April 2019, 1115 (Michel Tremblay, General Director, Société Santé en français).

169 Ibid.

170 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, p. 143.

171 Ibid., p. 151.

172 Ibid., p. 153.

173 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 December 2017, 1700 (Raymond Thériège, Commissioner, Office of the Commissioner of Official Languages).



The Canada–Quebec Accord on Immigration was signed in 1991 and has never been amended. Consequently, it does not take into account the obligations of Immigration, Refugees and Citizenship Canada (IRCC) to English-speaking communities in Quebec under the *Official Languages Act* and the *Immigration and Refugee Protection Act*. Furthermore, it does not seem to take into account the fact that anglophone communities in Quebec are among the most multicultural in the country and have high rates of English–French bilingualism, supporting integration into Quebec society for immigrants whose first language or first official language spoken is English.

As Ms. Stefanie Beck, the Assistant Deputy Minister for Corporate Services at IRCC, explained, under the 1991 Canada–Quebec Accord on Immigration, “the Government of Quebec has control over immigration selection and is responsible for providing settlement and integration services to all permanent residents destined for Quebec.”¹⁷⁴ IRCC’s role in recruitment and settlement services for anglophone communities in Quebec is limited. However, as Ms. Beck stated, that does not prevent the Department from “maintaining a dialogue on how to coordinate [its] efforts in order to better ensure the development of Quebec’s English-speaking communities.”¹⁷⁵ In addition, IRCC contributes to anglophone immigration in Quebec by supporting research activities in this area.¹⁷⁶ However, the QCGN would like IRCC to do more:

[S]pecial measures around immigration are needed. We have been talking about what IRCC can do in the English-speaking communities of Quebec. For years we have asked. We have come to committee. We have said we’ll help you figure it out and we understand that there’s [the Canada–Quebec Accord on Immigration], but what is your responsibility around the vitality of the English-speaking community with regard to immigration? Part VII is there for you as well.¹⁷⁷

When Mr. Jack Jedwab appeared before the Committee, he put forward the idea that the Government of Canada could support anglophone communities in Quebec, particularly those in the regions, by providing additional resources “in those areas to assist those communities in various ways to secure and continue to operate in their language without necessarily contravening the jurisdictional issues for Quebec.”¹⁷⁸ He

174 LANG, *Evidence*, 1st Session, 42nd Parliament, 24 November 2016, 0850 (Stefanie Beck, Assistant Deputy Minister, Corporate Services, Department of Citizenship and Immigration).

175 Ibid.

176 Ibid.

177 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 February 2019, 1210 (Sylvia Martin-Laforge, Director General, Quebec Community Groups Network).

178 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1255 (Jack Jedwab, President and Chief Executive Officer, Immigration and Identities, Association for Canadian Studies and Canadian Institute for Identities and Migration, As an Individual).

gave the example of investing in technologies “at least as far as federal services are concerned, and ensuring that [these] technologies ... are provided in both English and French as widely as possible.” Mr. Jedwab believes this will increase access to bilingual services no matter where people live.¹⁷⁹

Among the various sector-specific concerns, the Committee wanted to focus on minority language education. This choice is warranted because of its importance for the vitality of OLMCs and the role the government plays in Canada in education, for which there is no federal legislation. As Mr. Bastarache commented:

It is true that education comes under provincial jurisdiction, but don't forget that it was the federal government that passed legislation on official languages and education in the minority language in the three territories. It is also important to point out that Canadian Heritage funds a very large portion of minority language education in all provinces and territories.¹⁸⁰

b. Minority-language education

Canadian intergovernmental relations place limits on the vitality and development of OLMCs with regard to education. Alpha Barry, Chair of the Conseil des écoles francophones de la Saskatchewan (CÉF), denounced the fact that, in his opinion, the framework for managing federal financial support for minority-language education “contravenes the purpose of section 23 of the Charter.”¹⁸¹ By his account, the *Protocol for Agreements for Minority-Language Education and Second-Language Instruction*—the centrepiece of the management framework in question—has four fundamental problems:

First, the needs of the Fransaskois community as reflected in the MOU are determined by Saskatchewan, not the CEF. Second, the MOU does not require that Saskatchewan's Ministry of Education consult the CEF. Third, the MOU does not provide for adequate accountability mechanisms. Fourth, the MOU permits funding dedicated to education from kindergarten to grade 12 to be used to fund the essential costs of that education and not genuine additional costs.¹⁸²

179 Ibid.

180 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 0950 (Michel Bastarache, Legal Counsel, As an individual).

181 Ibid.

182 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 November 2018, 0850 (Alpha Barry, Chair, Conseil des écoles fransaskoises).



The Honourable Mélanie Joly, Minister of Tourism, Official Languages and La Francophonie, acknowledged the problem and said she had taken steps to improve the situation:

For a long time, school boards—principally francophone school boards, but also the anglophone school boards in Quebec—have told us that they are concerned by the lack of transparency in a number of provinces and territories in the way in which federal funds allocated to minority school systems are spent. For francophones, I am talking about teaching in French as a first language, not a second language. Basically, the provinces consult the school boards very little in order to establish their budgets and their funding. That has direct consequences on the attractiveness of francophone schools in minority situations and on the decision of families to send their children to them or not.

So we decided to take a strong position and require provinces and territories to be transparent with their francophone school boards and to consult them.¹⁸³

In fact, in July 2017, Canadian Heritage reached an agreement with the Fédération nationale des conseils scolaires francophones, the Fédération des communautés francophones et acadienne du Canada and the Commission nationale des parents francophones. This agreement states that minority school boards play a key role in fully implementing section 23 of the Charter.¹⁸⁴ Canadian Heritage also committed, on the federal government's behalf, to taking into account the priorities of francophone minority communities and taking certain positions during the negotiations with the Council of Ministers of Education, Canada for the next Protocol. Following the coming into force of this agreement, francophone minority school boards would be consulted by both the federal government and provincial/territorial governments; accountability mechanisms would be improved; the Protocol would recognize the role minority school boards play in all linguistic and cultural aspects of primary and secondary education; and it would be clear that federal funding must be used to enable provincial/territorial governments and francophone minority school boards to move beyond business as usual.¹⁸⁵ The Protocol proposes that a specific protocol for minority-language education, separate from second-language instruction, be developed. However, should the two

183 LANG, *Evidence*, 1st Session, 42nd Parliament, 4 April 2019, 1235 (Mélanie Joly, Minister of Tourism, Official Languages and La Francophonie).

184 Canadian Heritage, *Entente stratégique entre le gouvernement du Canada, la Fédération nationale des conseils scolaires francophones, la Fédération des communautés francophones et acadienne du Canada et la Commission nationale des parents francophones en matière d'éducation*, 19 July 2017, p. 1 [AVAILABLE IN FRENCH ONLY].

185 *Ibid.*, p. 2.

objectives remain in a single protocol, Canadian Heritage promised to consult francophone school boards before allowing a province or territory to transfer funding intended for minority-language education to second-language instruction. As regards early childhood education, Canadian Heritage committed to recommending that the Protocol be clarified to ensure it covers the full education continuum, from the early childhood level through to the post-secondary (college and university) level.

Education is also a priority issue for anglophone communities in Quebec. In the last year, some Government of Quebec decisions, such as transferring English-language schools to the majority-language school boards without prior consultation with the anglophone educational officials, or the proposal to eliminate school boards, put members of the anglophone community on alert. Mr. Théberge gave his opinion on the situation of anglophone school boards in Quebec, saying: “With respect to the Quebec English school boards, clearly they are covered by section 23 of the [C]harter. I’ve already written to indicate my support for that. We’ll have meetings in the subsequent months to talk about this file, and we’ll see what kind of legislation comes forward in the fall.”¹⁸⁶ The Commissioner also believes that including provisions about minority language education in the Act would help anglophone and francophone communities consolidate their education rights.¹⁸⁷

According to Mr. Chambers, the Government of Canada could contribute to minority language education in Quebec in a number of ways:

It’s quite correct that the direct granting of federal money to a school board would end up with a problem, but the school boards have an umbrella association that is not constrained by the same limitations. It doesn’t have constitutional status. There is a larger coalition inside Quebec to deal with the support of our school systems, with the participation of the teachers’ unions, the parent associations, ourselves and regional associations. It’s quite a broad coalition. It could be supported.

Just in the example of the education space, there are two very respectable, very well organized...that are already receiving some grant support indirectly. If they were enabled by some long-term contractual undertakings from the federal government, there would be nothing unconstitutional about it.¹⁸⁸

186 LANG, *Evidence*, 1st Session, 42nd Parliament, 2019, 30 May 2019, 1120 (Raymond Théberge, Commissioner, Office of the Commissioner of Official Languages).

187 Ibid.

188 LANG, *Evidence*, 1st Session, 42nd Parliament, 26 February 2019, 1245 (Geoffrey Chambers, President, Quebec Community Groups Network).



As part of Budget 2019, the Government of Canada allocated \$60 million in additional funding over four years for anglophone and francophone minority schools. Moreover, the 2018–2023 Action Plan provides for an additional investment of \$80 million for community and educational infrastructure in OLMCs. The Action Plan also provides \$5.3 million in funding for English-speaking communities in Quebec.¹⁸⁹ This funding will help anglophone communities, especially those outside of the Greater Montreal area, overcome challenges. Two new micro-grants will be introduced as well. The first micro-grant represents an investment of up to \$7.5 million over four years. It seeks to hold over 4,000 cultural activities in OLMC schools. The second micro-grant program, investing \$5.2 million over four years, will be used to hold approximately 2,100 identity-building activities for francophone students in minority communities (700 schools).

The problem is such that some witnesses even mentioned the possibility of excluding the provinces and territories from the agreements and having the federal government deal directly with school boards.¹⁹⁰ While it is legally possible for the federal government to invest directly in school boards, can it do so politically? Mr. Pelletier highlighted the problems this could create for Canadian intergovernmental relations:

It would look very bad if the Government of Canada were to intervene directly in matters under provincial jurisdiction against the wishes of a provincial government. I cannot overemphasize how bad that would look in terms of intergovernmental relations.¹⁹¹

The federal government has options other than direct intervention to address the above issues. That is why many witnesses called on Parliament to add a new section to the Act to set out the federal government's role and financial support with respect to early childhood and post-secondary minority-language education.¹⁹² The Association des collèges et universités de la francophonie argued that this protection is needed to

189 This fund will support community initiatives, including access to youth employment, home care, mental health services and end-of-life care.

190 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 November 2018, 0930 (Ali Chaisson, Executive Director, Société de l'Acadie du Nouveau-Brunswick).

191 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1120 (Benoît Pelletier, Professor, Faculty of Law, University of Ottawa, As an individual).

192 FCFA, *Giving New Momentum to Canada's Linguistic Duality! For a Modern and Respected Official Languages Act*, Brief Submitted to the Standing Committee on Official Languages, February 2019, p. 41.

guarantee the “equal status of the two official languages of our country.”¹⁹³ The Consortium national de formation en santé and the Société Santé en français agree.¹⁹⁴

A modernized Act could also include provisions relating to the recognition of minority school boards, subsection 16.1(1) of the *Canadian Charter of Rights and Freedoms*, the enumeration of rights-holders and access to surplus federal real property.

(i) Recognize minority school boards

The Act, adopted in 1988, precedes most of the Supreme Court of Canada’s landmark decisions on minority-language education. It therefore does not reflect the case law under section 23 of the Charter, particularly that relating to the authority of school boards. In fact, many francophone minority school boards did not exist in 1988.

Mr. Barry believes that the Act’s modernization is a time to “recognize and consider those governing bodies, the minority school boards, that were established under the minority’s constitutional right.”¹⁹⁵ He urged the government to “not make the mistake of adopting a new act that fails to consider the CEF [Conseil des écoles fransaskoises] and minority French-language school boards.”¹⁹⁶ Mr. Power agreed:

[T]here are now school governments. As you know, they recently signed a strategic agreement with the Department of Canadian Heritage, and not without reason. The official language minority communities that exercise schools management should have a say in the way the federal funding sent to the provinces and territories for their benefit is spent.¹⁹⁷

Recognizing the status of school boards inevitably requires them to be at the negotiating table and to sign agreements. The FCFA, in its proposed bill, includes the obligation to adopt a five-year tripartite agreement on minority-language education, from early

193 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 April 2019, 1230 (Lynn Brouillette, General Director, Association des collèges et universités de la francophonie canadienne).

194 Consortium national de formation en santé and Société Santé en français, *Brief to the House of Commons Standing Committee on Official Languages as part of its Study on the Modernization of the Official Languages Act*, 11 January 2019, p. 7.

195 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 November 2018, 0850 (Alpha Barry, Chair, Conseil des écoles fransaskoises).

196 Ibid.

197 LANG, *Evidence*, 1st Session, 42nd Parliament, 20 November 2018, 1010 (Mark Power, Lawyer, Power Law, As an individual).



childhood to post-secondary education.¹⁹⁸ Anticipating objections from some provinces and territories, Mr. Foucher proposed including:

[A] provision in the [A]ct to allow communities that feel their province has violated the linguistic conditions of a federal-provincial agreement to seek recourse. The problem is that communities themselves do not sign these agreements. Either they should be included in signing the agreements—which governments may not be open to—or the [A]ct must provide a mechanism for third parties that believe provisions directly affecting them have been violated to seek recourse. That would enable communities themselves to hold provinces accountable for violations of an agreement.¹⁹⁹

Mr. Foucher also put forward “the option of recognizing, as Judge Ouellette did in the case of the Yukon francophone school board, that the federal money is given in trust.”²⁰⁰

(ii) Recognize subsection 16.1(1) of the Canadian Charter of Rights and Freedoms

The Société de l’Acadie du Nouveau-Brunswick (SANB) stressed that the Act must reflect the rights guaranteed in subsection 16.1(1) of the Charter, which reads as follows:

The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.²⁰¹

In his brief, the interim Commissioner of Official Languages for New Brunswick argued that “this constitutional recognition, unique in Canada, is not reflected anywhere in the current OLA [Official Languages Act].”²⁰² He believes that “equal rights and privileges of New Brunswick’s official language communities must influence federal public policies generally and must also govern, more specifically, the exercise of federal spending power, particularly in education and culture.”²⁰³ He also pointed out the differences between subsection 16.1(1) and section 23 of the Charter. Under subsection 16.1(1),

198 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, p. 149.

199 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1130 (Pierre Foucher, Professor, Faculty of Law, University of Ottawa, As an individual).

200 *Ibid.*, 1145.

201 Government of Canada, *Canadian Charter of Rights and Freedoms*.

202 Office of the Commissioner of Official Languages for New Brunswick, *Brief of the Office of the Commissioner of Official Languages for New Brunswick on the Modernization of Canada’s Official Languages Act*, Submitted to the Standing Committee on Official Languages on 29 November 2018, p. 23.

203 *Ibid.*

“the right...to distinct educational institutions begins in early childhood, unlike in section 23...which deals with the right of citizens to have their children receive primary and secondary school instruction.”²⁰⁴ Moreover, subsection 16.1(1) provides that “each official language community has the right to its own cultural institutions.”²⁰⁵

To address these demands, the FCFA added a provision in the “Purpose” section of its bill to ensure that the Act’s interpretation and application “recognizes and affirms the historic, demographic and constitutional specificity of New Brunswick in matters of language, and in particular encourages compliance with [subsection] 16.1(1) and subsections 16(2), 17(2), 18(2), 19(2) and 20(2) of the *Canadian Charter of Rights and Freedoms*.”²⁰⁶ The FCFA further proposed the addition of a duty in Part VII to support, again pursuant to subsection 16.1(1) of the Charter, the collective rights of the language communities of New Brunswick.²⁰⁷

(iii) Enumerate rights-holders

In May 2017, the Committee tabled a report entitled *Issues Related to the Enumeration of Rights-Holders Under Section 23 of the Canadian Charter of Rights and Freedoms: Toward a Census that Supports the Charter*. In this report, the Committee noted that the Canadian census does not enumerate all rights-holders under section 23 of the Charter and that this failure seriously undermines English and French minority school boards in terms of managing enrolment and real property, allocating financial and human resources and government relations.

The Conseil scolaire francophone de la Colombie-Britannique (CSFCB), like many other witnesses, called for an amendment to the Act to legally require the collection of statistical data on rights-holders under section 23 of the Charter. The CSFCB also called for the questions on rights-holders to be included in the short-form census because it is sent to all Canadians.²⁰⁸

During his last appearance, the Commissioner of Official Languages made the following statement:

204 Ibid.

205 Ibid.

206 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, p. 95.

207 Ibid., p. 151.

208 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 November 2018, 0920 (Marie-France Lapierre, Outgoing Chair, Conseil scolaire francophone de la Colombie-Britannique).



[I]t's imperative that we be able to identify and count the number of eligible students in each province. We could identify a number of institutions in the regulation that have a specific impact on minority language communities. For example, Statistics Canada plays a very important role in terms of identifying [rights-holders]. That's an issue.²⁰⁹

Along the same lines, the FCFA's bill proposed the following:

When the Governor in Council prescribes by order, pursuant to section 21 of the *Statistics Act*, the questions to be asked in a census of the population taken under section 19 of that Act, it shall include questions that make it possible to enumerate all rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*; this provision shall be given such large and generous construction and interpretation as best ensures the attainment of its object.²¹⁰

The 2021 census is currently being developed. Statistics Canada, the federal agency in charge of the census, understands the issue. According to Statistics Canada's timeline, the 2021 census test took place in May 2019. The Committee believes that the questions that are needed to collect data on right-holders must be included in the census questionnaire. The Committee feels the need to remind Statistics Canada that it is a constitutional right.

(iv) Disposal of surplus real property

On its fact-finding trip to Vancouver in September 2018, the Committee learned that CSFCB officials were struggling to find buildings and land for new francophone schools. In Vancouver, like in other parts of British Columbia, enrolment in francophone schools is increasing, but existing school infrastructure cannot accommodate this growth.²¹¹ The CSFCB, like other school boards, therefore turned to the federal government to acquire real property. Ten years later, the CSFCB is still seeking solutions.

The disposal of surplus federal real property is a complex process involving the federal government (either Canada Lands Company, the federal institution that owns the property, or a third party acting on behalf of the "custodian"), the provincial or territorial government and the municipality where the surplus building or land is located. The Directive on the Sale or Transfer of Surplus Real Property provides a framework for this process. Under this directive, stakeholder interests must be taken

209 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 May 2019, 1120 (Raymond Th  berge, Commissioner, Office of the Commissioner of Official Languages).

210 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, p. 155.

211 LANG, *Evidence*, 1st Session, 42nd Parliament, 8 November 2018, 0935 (Marie-France Lapierre, Outgoing Chair, Conseil scolaire francophone de la Colombie-Britannique).

into account, including those of OLMCs.²¹² In the current process, the provinces and territories are responsible for promoting the needs of OLMCs. During her appearance, Jessica Sultan, Senior Director, Real Property and Materiel Policy Division, Treasury Board Secretariat, said that some changes could be made to the process:

[W]hat we are considering as part of our future directive is to specifically require notification of official language minority communities of potential disposals of surplus property. Right now the way that it works is that we, as you're probably aware, notify other federal departments, Crowns, provinces and municipalities. The expectation is that official language minority communities advance their interests through the provinces. As part of our new proposed directive, we recommended that, rather than have OLMCs working through provinces, they would be directly notified on a priority basis.²¹³

For its part, the FCFA has tried to respond to its members' demands by including in its draft bill a provision to ensure that the above-mentioned five-year tripartite agreement addresses, among other things, "capital asset needs in the area of minority official language instruction."²¹⁴

C. NEW ACT, NEW PARADIGM

In January 2019, Minister Joly sent a letter to the Committee with questions about the Act's modernization that she would like the Committee to consider. She wanted to hear, among other things, how the Act benefits Canadians and how it could bring francophones and anglophones from across Canada closer together.

1. Embracing a new way of thinking

For the Act to benefit Canadians, the Committee believes that it must embrace a new paradigm or way of thinking in which all of its parts are based on a new premise.

a. A renewed linguistic duality

Bilingualism, official bilingualism, institutional bilingualism, linguistic duality. It is sometimes difficult to fully understand the various terms that are used to refer to

212 Ibid.

213 LANG, *Evidence*, 1st Session, 42nd Parliament, 7 May 2019, 1220 (Jessica Sultan, Senior Director, Real Property and Materiel Policy Division, Acquired Services and Assets Sector, Office of the Comptroller General, Treasury Board Secretariat).

214 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, p. 149.



Canada's language regime. Sometimes they are used interchangeably when they do not have the same meaning.

“Linguistic duality” is different from the above terms because it leaves more room for interpretation. According to the Commissioner of Official Languages, linguistic duality is the “presence of two linguistic majorities cohabiting in the same country, with linguistic minority communities spread across the country.”²¹⁵ “Two linguistic majorities” refers to francophones in Quebec and anglophones in the other provinces and territories.

This definition, particularly the word “cohabiting,” does not capture the complexity of Canada's linguistic landscape. It does not reflect the reality of Canadians who speak both official languages, nor does it highlight the unique sociocultural dynamic that springs from the meeting of Canadians who choose to embrace official bilingualism as the historical and current foundation of our confederation, as a vehicle for social cohesion, as a shared value and as a symbol of Canadian identity.

This polarization of the “two linguistic majorities” is rooted in the current Act's purpose. Jérémie Séror, Director and Associate Dean, Official Languages and Bilingualism Institute, University of Ottawa, notes:

[The Act] is quite silent on the concepts of linguistic duality and bilingualism.

In fact, although Canada's bilingual character and identity are mentioned in the [A]ct, it often deals with French and English separately. It focuses specifically on minority francophone and anglophone communities. This approach reinforces a vision of bilingualism as parallel, but still separate, monolingualisms—the famous “two solitudes”—rooted in communities of native speakers that are often represented as homogeneous, uniform, and quite well defined.²¹⁶

Although the Act commits the Government of Canada to advancing both official languages and enhancing the vitality of OLMCs, it also protects an individual's right to be unilingual. Institutions must offer services in an individual's language of choice. The Commissioner of Official Languages explained this reality as follows:

215 Office of the Commissioner of Official Languages, Tools & resources, Frequently Asked Questions. The Standing Senate Committee on Official Languages added the following to the Office of the Commissioner's definition: “This principle is at the heart of Canadian identity and recognizes that official language minority communities are an integral part of Canada's social contract. Linguistic duality is a core value that has social, cultural and economic dimensions for all Canadians.” Source: Senate of Canada, Standing Senate Committee on Official Languages, *Modernizing the Official Languages Act: The Views of Young Canadians*, 1st Session, 42nd Parliament, February 2018, p. iv.

216 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 May 2019, 1215 (Jérémie Séror, Director and Associate Dean, University of Ottawa, Official Languages and Bilingualism Institute).

The federal government's approach to official languages is based on the principle of institutional bilingualism...

As outlined in the *Official Languages Act*, it is the federal government's responsibility to communicate with and serve Canadian citizens in the official language of their choice. The Canadian government recognizes that it must adjust to the language needs of the public, and that it is not up to citizens to adjust linguistically to the workings of government. Simply put, the Canadian federal government is required to be bilingual so citizens don't have to be.²¹⁷

It was important, especially in the early years of the Act, to make Canadians, particularly those who were resistant, understand that the purpose of the Act was not to force anyone to learn a second language. Yet, as Mr. Pelletier pointed out:

[W]e have put too much emphasis in Canada on the right of each individual to choose between English and French and not enough emphasis on the wealth and synergy that stems from the very coexistence of both official languages. In my view, the concept that best translates this dynamic between the two official languages is linguistic duality.²¹⁸

A survey conducted on behalf of the Office of the Commissioner of Official Languages in 2016 found that 16% of respondents believe that "Canada's language policy means that all Canadians must speak English and French."²¹⁹

However, there is every reason to believe that Canadians' views have changed. Support for institutional bilingualism and interest in official bilingualism seem to be on the rise. The 2016 survey found that 96% of respondents believed that Canadians should be able to receive federal government services in the official language of their choice, 86% felt that the Prime Minister of Canada should be bilingual, 84% were in favour of bilingualism for all of Canada and 84% agreed with the statement that "more efforts should be made so that young people become bilingual and can speak in both English and French."²²⁰

Mr. Théberge commented on Canadians' support for official languages and the role that the federal government must therefore play:

217 Office of the Commissioner of Official Languages, Tools & resources, Frequently Asked Questions.

218 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1140 (Benoît Pelletier, Professor, Faculty of Law, University of Ottawa, As an individual).

219 Office of the Commissioner of Official Languages, Official Languages and Bilingualism Survey Research Presentation.

220 Office of the Commissioner of Official Languages, *2016-2017 Annual Report*, Ottawa, 2017, p. 6.



In terms of Canadians' support for the official languages, a number of surveys have clearly shown that it is very strong right now. So it is accepted, but now we have to get to the next level. We have to achieve greater acceptance. We have to make sure it is vibrant.

We have to make sure that all Canadians buy into the concept of duality, not just the francophone communities outside Quebec and the anglophone community in Quebec.²²¹

Following Mr. Pelletier's reasoning, linguistic duality, as it is viewed today, far exceeds this representation of Canada's linguistic landscape of linguistic minorities existing in the presence of two cohabiting linguistic majorities. In fact, this vision leaves little room for bilingual Canadians.

A new definition of linguistic duality must focus on common ground between anglophones and francophones, particularly bilingual Canadians, and on reciprocity and mutual benefit between the majority and the minority. Ms. Joly made a similar argument: "Our linguistic duality can be preserved only if it is rooted in the vitality of dynamic communities, only if it is embraced and expressed by millions of people across the country."²²²

b. Linguistic duality: a driving force

From a language rights perspective, a new vision of the dynamics between linguistic majorities and linguistic minorities is needed. As stated above, this vision must focus on reciprocity and mutual benefit.

(i) Official language minority communities

To achieve this, OLMCs must have control over their destiny. They want to be heard, understood and, above all, involved. Ms. Joly emphasized the importance of OLMCs:

Canada cannot claim to be a bilingual country if its communities cannot live every day in the official language of their choice. In short, our population's bilingualism and the strength of our linguistic duality depend on the vitality and sustainability of our official language minority communities, and that is what we want to defend and promote.

221 LANG, *Evidence*, 1st Session, 42nd Parliament, 18 October 2018, 0905 (Raymond Th  berge, Commissioner, Office of the Commissioner of Official Languages).

222 LANG, *Evidence*, 1st Session, 42nd Parliament, 1 November 2018, 0850 (M  lanie Joly, Minister of Tourism, Official Languages and La Francophonie).

(ii) Linguistic majorities

While the Committee fully supports Ms. Joly’s statement, another group must be added to the equation: linguistic majorities. Canada’s current language regime suffers from its inability to reach the anglophone majority in Canada and the francophone majority in Quebec.

As Mr. Doucet explained, in Canada “[l]anguage rights and the *Official Languages Act* are perceived as solely a minority problem, whereas it concerns everyone, the majority as well as the minority.”²²³ He believes that the government “has to ensure that the majority in Canada realizes that recognition of the two official languages is a fundamental value in our federation.”²²⁴ He maintains that “[w]hat has to be changed in Ottawa and in certain provinces is the majority perception of linguistic equality. In other words, language rights are not merely the business of the minorities; they are also the business of the majority, whose perception must be changed.”²²⁵

According to Mr. Bastarache, this vision that language rights concern all Canadians must be reflected in practice and in institutional culture at all levels of government. Yet this is not the case:

It took a long time for them [language rights] to be recognized as fundamental rights that are rooted in the values we hold dear as a nation. In my opinion, we cannot continue resisting the application of these rights, as though it was taking something away from members of the majority.²²⁶

Mr. Jedwab agrees. He also argued that language rights are both a civic and government responsibility and that the majority must get involved and support OLMCs:

It is not only a need to provide services to official language minority communities. It is a collective responsibility of Canadians with respect to official language minorities. Sometimes, the impression is that it is offered to them, but it should be very clear that it is our leaders’ responsibility, and that it must be very clearly written into our laws and policies.²²⁷

223 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 0910 (Michel Doucet, As an individual).

224 Ibid.

225 Ibid.

226 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 1010 (Michel Bastarache, Legal Counsel, As an individual).

227 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1225 (Jack Jedwab, President and Chief Executive Officer, Immigration and Identities, Association for Canadian Studies and Canadian Institute for Identities and Migration, As an individual).



A new take on the dynamics between linguistic majorities and linguistic minorities is of particular importance to anglophones in Quebec. According to Mr. Chambers of the QCGN, the support and contribution of the linguistic majority is crucial for the development of Quebec’s English-speaking communities: “The challenge for us is to be accepted and to take part in community life in a way that enables the majority to consider us as full-fledged Quebecers.”²²⁸

Among anglophones, the decision to stay in Quebec “reflects a commitment to all the qualities of Quebec culture.”²²⁹ As Mr. Chambers explained, “[w]e haven’t gotten to the point where the two solitudes are entirely in the past, but we’re making enormous progress.”²³⁰ Indeed, a “modern perspective of English-speaking Quebec and the Official Languages Act recognizes that the vitality of a minority language community contributes to—and does not detract from—the cultural life of its province and the country as a whole.”²³¹

(iii) Bilingual Canadians

It is difficult to reach the linguistic majority when the Act, a cornerstone of the language regime, does not even recognize the contribution of bilingual Canadians—members of either linguistic majority who have chosen to learn their second official language.

The increase in official bilingualism among young people suggests greater use of both official languages in Canadian society in the years to come.²³² Francophiles and anglophiles must be included in Canada’s new linguistic paradigm. The FCFA, among others, argued that the “purpose clause [of the Act] needs to state that the OLA gives concrete form to the federal government’s obligation with respect to linguistic duality and bilingualism. It must recognize that, for a growing number of Canadians, bilingualism is an integral part of their identity.”²³³

228 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 1030 (Geoffrey Chambers, President, Quebec Community Groups Network).

229 Ibid.

230 Ibid.

231 Quebec Community Groups Network, *English-speaking Quebec and the Modernization of the Official Languages Act*. Brief Submitted to the House of Commons Standing Committee on Official Languages. Modernizing the Official Languages Act, 27 November 2018, p. 14.

232 Statistics Canada, *Elementary–Secondary Education Survey for Canada, the provinces and territories, 2016/2017*, *The Daily*, 2 November 2018.

233 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 88.

Recognizing that bilingual Canadians identify with bilingualism is not enough. According to Mr. Bentley, a member of the National Board of Directors of Canadian Parents for French (CPF), “the key lies in ensuring a modernized act does more than just protect minority communities. Continuing to work with the communities is fundamental. What they do is amazing, but it’s important to look broader and deeper when rethinking the [A]ct so that it applies to every single Canadian.”²³⁴

French for the Future agrees and recommends that Parliament amend the Act to commit to “recognizing Canadians who speak or learn the other official language...throughout the [A]ct.”²³⁵ To that end, it supports adding a right to participate in the Act’s implementation on the same basis as OLMCs, on an advisory council proposed by the FCFA.²³⁶

Many Canadians want to learn a second official language, but they face considerable problems accessing French-as-a-second-language programs. According to Mr. Bentley, “right now, almost 100,000 young people want to enrol in the programs, but they are not able to do so because there are not enough spots.”²³⁷ He added: “Even if all of them could suddenly be accepted, the shortage of well-trained teachers and quality programs would still be a problem.”²³⁸ Like other witnesses, he wants a modernized Act to ensure that everyone can learn a second official language:

In a Canada with two official languages, it simply seems logical that all Canadians should have access to this education. It should not be on youth and parents to be continuously advocating with schools, school boards and various government bodies to convince them of the importance of learning both of Canada's official languages.²³⁹

Like the CPF, French for the Future is asking that the Act be amended to make learning a second official language a right and, in order to strengthen linguistic duality nationwide, “recognize education as a key driver of linguistic duality.”²⁴⁰ Specifically, French for the

234 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1200 (Derrek Bentley, Board Member, National Office, Canadian Parents for French).

235 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1150 (Gabrielle Frédette Fortin, Executive Director, National Office, French for the Future).

236 Ibid.

237 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1210 (Derrek Bentley, Board Member, National Office, Canadian Parents for French).

238 Ibid.

239 Ibid., 1200.

240 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1150 (Gabrielle Frédette Fortin, Executive Director, National Office, French for the Future).



Future suggests that Part VII of the Act be amended to “clearly define the federal government’s role in supporting second language learning, as well as the implementation measures and overarching principles guiding those commitments.”²⁴¹ French for the Future asks that the government support learners by providing opportunities for them to have cultural and authentic language experiences outside the classroom and even after completing their studies.²⁴²

In its bill, the FCFA proposes amending Part VII of the Act to require the Minister of Official Languages to “support the learning of English and French.”²⁴³ To do so, the Minister must “encourage and assist provincial governments in offering everyone the opportunity to learn English and French.”²⁴⁴ The new provisions would also require the Minister to “take all necessary measures to fulfil this duty.”²⁴⁵ To that end, the Minister would be required to “consult the provincial governments and interested organizations and negotiate a five-year agreement” on instruction programs “at all levels in the second official language.”²⁴⁶ Lastly, the FCFA stated that, in developing the agreement, the principles of substantive equality, subsidiarity, responsibility, accountability, transparency and meaningful consultation would be applied.²⁴⁷

The CPF has the same concerns as minority school boards with respect to transparency and accountability in federal–provincial/territorial bilateral agreements. CPF representatives said that adding a section in the Act on French second-language programs must also include “consequences with teeth if these funds are used improperly and not for these programs.”²⁴⁸ The CPF added: “buying basketballs with money for French programs doesn’t necessarily help a student learn French.”²⁴⁹

241 Ibid.

242 Ibid.

243 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 150.

244 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 150.

245 Ibid.

246 Ibid., p. 145.

247 Ibid., p. 150.

248 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1200 (Derrek Bentley, Board Member, National Office, Canadian Parents for French).

249 Ibid.

On that point, the FCFA's bill would make the minister responsible for ensuring that "the funds transferred to the provinces are spent in the manner provided for in the negotiated agreement."²⁵⁰

The experience of bilingual Canadians is more than just learning a second official language in school. As mentioned earlier, they want to be able to live in the official language of their choice; this choice may be their second official language. To do so, they must have access to authentic linguistic and cultural experiences in French. That requires strong and vibrant OLMCs.

Bilingual Canadians also want to communicate and receive services from the Government of Canada in French. The CPF therefore recommends that the federal government's offer of bilingual services be based on the needs of bilingual Canadians: "They [linguistic minority communities] should include people who want access to French-language services and not be limited to rights holders, entitled to those services because French is their mother tongue."²⁵¹ For Mr. Bentley, this demand is bound up with a right of participation:

If we want Canada to be a place where Canadians speak both official languages, we need to make sure every Canadian has access to services in the language of their choice.

I believe Canada and CPF as well are at a point where we need to start accepting and acting on the fact that those of us who are part of la Francophonie do not all have French as their first language. There are many more people involved as well.²⁵²

The offer of bilingual services is also bound up with creating opportunities to practise the second language. The problem is that young learners associate learning French with benefits abroad, not in Canada. As Gabrielle Frédette Fortin, Executive Director, National Office, French for the Future, pointed out: "They say...that French is the third most spoken language in the world, that they are learning it so they can travel to Europe or...so they can work at the international level later. That's all well and good, but young people should be able...to participate regularly in Canada's francophone

250 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 150.

251 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1200 (Derrek Bentley, Board Member, National Office, Canadian Parents for French).

252 Ibid.



community...They need to be able to see that communities are vibrant and growing, that they are places of genuine opportunity for all young Canadians.”²⁵³

Mr. Bastarache highlighted the federal government’s inconsistent support for bilingualism:

Why do we want children in Canada to go to immersion schools to learn French if afterwards we tell them that they never ask for services in French, and that they don’t count? If they want to ask for services in French, that is their right.²⁵⁴

Mr. Bentley therefore said that “[f]ederal services in both official languages should be available for all Canadians where the request for services warrant.”²⁵⁵

As Mr. Bastarache explained, the *Official Languages (Communications with and Services to the Public) Regulations* do not take the needs of bilingual Canadians into account: “the Official Languages Regulations...divides the population into watertight compartments, one for francophones and one for anglophones. Yet only francophones from minority communities fall under the category of ‘francophones.’ An anglophone who is perfectly bilingual doesn’t count.”²⁵⁶ Mr. Bastarache suggested that this way of offering services is contrary to the *Canadian Charter of Rights and Freedoms*:

[The Charter] talks about a demand for services in French outside Quebec. It does not talk about a demand by the linguistic minority. So it is presumed that only the members of the linguistic minority will request services in French outside Quebec, and it is not taken into account that the demand is always low when the government does not provide an active offer.²⁵⁷

In short, the Charter “states that services must be provided when there is demand; it does not specify who makes the demand.”²⁵⁸

253 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1150 (Gabrielle Frédette Fortin, Executive Director, National Office, French for the Future).

254 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 1020 (Michel Bastarache, Legal Counsel, As an individual).

255 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1200 (Derrek Bentley, Board Member, National Office, Canadian Parents for French).

256 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 1000 (Michel Bastarache, Legal Counsel, As an individual).

257 Ibid., 0950.

258 Ibid., 1020.

The FCFA's proposal regarding the offer of services in both official languages deserves to be highlighted. In its bill, the organization requires that the Minister for Official Languages "negotiate a five-year agreement on the offer of provincial and municipal services in English and French that takes into account the needs of users."²⁵⁹ The word "users" is broad enough to take the interests and needs of bilingual Canadians into account.

In the consultations that led to the new *Official Languages (Communications with and Services to the Public) Regulations*, proposals to include French-as-a-second-language programs as a qualitative criterion were rejected.

c. Linguistic duality and official multiculturalism

The Royal Commission on Bilingualism and Biculturalism led to the first Act in 1969. It also drew attention to the fact that the ethnocultural diversity of Canadian society at the time made the idea of a bicultural Canada obsolete. Canada adopted an official multiculturalism policy in 1977.

As a result, "Canada is a country with two official languages, but no official culture."²⁶⁰ As unlikely as it may seem, Canada chose to separate language and culture. Of course, the government of the day recognized that "language and culture are profoundly related"²⁶¹ but it made a clear "distinction ... between them."²⁶² Official languages should enable all Canadians, regardless of their culture or mother tongue, to participate actively in Canadian society:

These languages [French and English] have official status in Canada as a means of communication, as languages that in each case are commonly used by a significant segment of the population, and also, of course, as the languages of cultural expression of the group from which each derives. However, insofar as a language has official status, it ceases to be the exclusive property of the cultural group from which it emanates. It becomes a public language, the property for purposes of the society, of all those who

259 FCFA, *Time for Action: The FCFA Proposes a New Wording of the Official Languages Act*, Ottawa, 5 March 2019, p. 151.

260 Canada, Privy Council Office, *A National Understanding: Statement of the Government of Canada on the Official Languages Policy*, Ottawa, 1977, p. 21.

261 *Ibid.*, p. 17.

262 *Ibid.*



... speak it, whatever their origin. The French and English languages are, in this sense, the public languages of Canada.²⁶³

How do we see official languages and institutional and individual bilingualism in a multicultural society today? Shaunpal Jandu, a consultant with the CPF's National Office, believes there is a link between linguistic duality and Canada's diversity: "After all, isn't it recognizing that there are two ways of saying something and realizing as well that there could be many ways of saying it?"²⁶⁴ Moreover, Mr. Jandu sincerely believes that "linguistic duality can be said to be the cornerstone of our diversity and inclusion."²⁶⁵

In the same vein, Mr. Jedwab believes it is important to renew the official discourse and remind Canadians that linguistic duality is "fundamental to a variety of programs,"²⁶⁶ including Canadian multiculturalism:

We need to be reminded that Canadian multiculturalism is situated within the context of those two official languages. I think that's something that needs to be quite explicit with regard to our Multiculturalism Act, so that there's no ambiguity about such things.²⁶⁷

Ms. O'Donnell of Concordia University believes that the next Act should reflect the diversity within OLMCs:

It would be beneficial for the modernized act to acknowledge that official language communities are complex and diverse. Their populations have multiple identities and may belong to multiple minorities.²⁶⁸

She therefore recommended that the Act's modernization promote the recognition of diversity, inclusiveness and rapprochement between different linguistic and cultural communities.²⁶⁹

263 Ibid., p. 22.

264 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 April 2019, 1200 (Shaunpal Jandu, Consultant, National Office, Canadian Parents for French).

265 Ibid.

266 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1225 (Jack Jedwab, President and Chief Executive Officer, Immigration and Identities, Association for Canadian Studies and Canadian Institute for Identities and Migration, As an individual).

267 Ibid.

268 LANG, *Evidence*, 1st Session, 42nd Parliament, 9 April 2019, 1205 (Lorraine O'Donnell, Coordinator-Researcher, Quebec English-Speaking Communities Research Network (QUESCREEN), Concordia University).

269 Ibid., 1210.

The Committee urges the Commissioner of Official Languages to examine his definition of linguistic duality with a view to renewing it to reflect Canada's linguistic reality.

2. Political will and leadership

Mr. Bastarache stated bluntly that the “real issue is the political will to truly implement legislation.”²⁷⁰ Ronald Caza agrees:

It's important to understand why...the Official Languages Act is so important. This legislation is not really necessary when a government believes in the importance of official languages. It becomes necessary when a government doesn't see official languages as all that important or as a priority, and doesn't believe they deserve to be treated differently than other languages. That is when we need these protections.²⁷¹

The Act is a legislative instrument. For the text and spirit of the Act to transcend all areas of activity and permeate the institutional culture of government, a vehicle is needed, namely firm political will. As Mr. Doucet explained:

In other words, if the political bodies aren't also convinced of the value of the [A]ct or of equality and don't make it a priority, we can't expect officials to do so or the public to understand. It has to come from above.²⁷²

It is therefore important that political will is shown and felt. According to Mr. Jedwab, committed official speeches are needed: “It's very important...in our messaging...that we're quite clear and unambiguous about our commitments.”²⁷³ As to the content of this messaging, he said, “one of the things that's very important in this area, with regard to language duality, is to remind Canadians that it's a foundational proposition. It's fundamental to our country, its continuity and its cohesion.”²⁷⁴ Mr. Pelletier stressed that it is “extremely important for linguistic duality to have more of a presence in major

270 LANG, *Evidence*, 1st Session, 42nd Parliament, 30 October 2018, 1005 (Michel Bastarache, Legal Counsel, As an individual).

271 LANG, *Evidence*, 1st Session, 42nd Parliament, 11 December 2018, 0925 (Ronald F. Caza, Lawyer, Caza Saikaley LLP).

272 LANG, *Evidence*, 1st Session, 42nd Parliament, 27 November 2018, 0920 (Michel Doucet, As an individual).

273 LANG, *Evidence*, 1st Session, 42nd Parliament, 2 April 2019, 1225 (Jack Jedwab, President and Chief Executive Officer, Immigration and Identities, Association for Canadian Studies and Canadian Institute for Identities and Migration, As an individual).

274 Ibid.



official speeches across government, including by the Prime Minister and not just in speeches by the minister responsible for the Canadian Francophonie.”²⁷⁵

3. A new governance structure

Effectively implementing the Act depends on a number of factors, including governance. The official languages governance model currently in place is widely criticized. Mr. Théberge did not hesitate to state that, “[f]or a number of years, our governance structure has not been the best.”²⁷⁶

Over the past fifteen years, two governance models have been put forward to ensure the Act’s implementation. Between 2001 and 2006, a minister for official languages monitored the horizontal coordination of official languages. The Minister “had the administrative support of the Privy Council Office, through its Official Languages Branch.”²⁷⁷ Cabinet, through the Privy Council Office’s Official Languages Branch, provided “political leadership for the Official Languages Program.”²⁷⁸

In February 2006, four major changes were made to the governance structure for official languages. First, the Official Languages Branch (or the Official Languages Secretariat) was transferred from the Privy Council Office to the Department of Canadian Heritage. The then Commissioner of Official Languages, Graham Fraser, questioned the strategic value of such a move:

The Privy Council Office is the nerve centre of the federal government, and the reason it was assigned responsibility for official languages was to ensure uniform implementation of the Official Languages Program. Was it wise, then, to remove the Clerk of the Privy Council from official languages—the person who is deputy minister to the Prime Minister, secretary to the Cabinet and head of the public service, all at the same time? The relevance of this administrative reform can also be questioned when considering the objective of implementing Part VII of the Act effectively, which implies a strong commitment and solid leadership from central agencies.²⁷⁹

275 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1140 (Benoît Pelletier, Professor, Faculty of Law, University of Ottawa, As an individual).

276 LANG, *Evidence*, 1st Session, 42nd Parliament, 2019, 18 October 2018, 0900 (Raymond Théberge, Commissioner, Office of the Commissioner of Official Languages).

277 Office of the Commissioner of Official Languages, 2006-2007 Annual Report, Ottawa, 2007, p. 19.

278 *Ibid.*, p. 18.

279 *Ibid.*, p. 20.

Second, the Prime Minister assigned a second role to the Minister for Official Languages. In addition to “coordinating all federal institution’s activities related to official languages and overall implementation of the Act,”²⁸⁰ she was put in charge of “managing the Canadian Heritage Official Languages Support Programs,”²⁸¹ which included support for official language communities. The Commissioner of Official Languages found this dual role “difficult to reconcile”²⁸² because the Minister did not have the authority to dictate the approach to her counterparts in other departments:

In fact, to adequately fulfil her role as coordinator for all of the federal institutions’ official languages activities, she must critically examine these institutions. Yet, if she herself is responsible for the official languages programs of one of these institutions, how can she be objective?²⁸³

The Commissioner would have liked that coordination to be given to a central agency:

For instance, history has shown that Canadian Heritage, as a sectoral and not a horizontal department, is not the best suited to issue guidelines to all federal institutions, hence the importance of a central agency to bring about the change in organizational culture needed to implement the Act effectively. Indeed, in her 2005–2006 annual report, Commissioner Adam praised the support given by the Privy Council’s administration to the Minister for Official Languages.²⁸⁴

The Committee has studied the governance of official languages on more than one occasion. In its report entitled *Toward a New Action Plan for Official Languages and Building Momentum for Immigration in Francophone Minority Communities* (December 2016), it recommended the adoption of a structure similar to that in place in 2003, in which the Privy Council Secretariat provided political leadership and support to lead departments. This is the model espoused by the FCFA:

We believe that that responsibility should be entrusted to Treasury Board, supported in that by a Minister of State responsible for official languages, and a secretariat. The Privy Council Office would play a complementary political role, by ensuring notably that federal ministerial mandate letters include strategic direction on official languages, and that an overarching plan for the development of our communities be adopted.²⁸⁵

280 Ibid.

281 Ibid.

282 Ibid.

283 Ibid.

284 Ibid.

285 LANG, *Evidence*, 1st Session, 42nd Parliament, 22 November 2018, 0905 (Jean Johnson, President, Fédération des communautés francophones et acadiennes du Canada).



Mr. Foucher agreed: “PCO is crucial to the machinery of government, and making it responsible for enforcement would be very efficient and effective.”²⁸⁶

Mr. Pelletier shares this view, adding the “Privy Council can also have a vision for the future of the Act. It is not just about enforcing the legislation, but also having an idea of what we want to do in the years to come. In that vein, the Privy Council Office could prepare a five-year development plan.”²⁸⁷

Mark Power disagrees. He does not believe the Privy Council Secretariat should be included in the governance model, as the proper functioning of such a model depends in large part on the relationship between the lead minister and the Prime Minister:

The official languages file should not depend on good relations between key ministers and the prime minister. Sometimes that works well, as in Mr. Pelletier’s time and that of Mr. Dion, but sometimes it works very poorly. The communities need certainty, which also benefits the Government of Canada and its institutions. That’s why, in my professional opinion, a central agency, the Treasury Board in this instance, should be empowered and given a mandate.²⁸⁸

Mr. Foucher does not believe that the Treasury Board has the authority to assume the role that Mr. Power would give it:

The Treasury Board only takes care of the financial aspect. The Privy Council Office has a much broader mandate, in other words, general government policy, the operation of the machinery of government.

I think matters surrounding the implementation of the Official Languages Act exceed simple budgetary considerations. That is why I think it would be better to give that role to the Privy Council Office.²⁸⁹

One thing is clear: many stakeholders agree that the implementation of the Act—even Part VII—must fall to the Treasury Board, because “it is a central agency that is able, as

286 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1115 (Pierre Foucher, Professor, Faculty of Law, University of Ottawa, As an individual).

287 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1135 (Benoît Pelletier, Professor, Faculty of Law, University of Ottawa, As an individual).

288 LANG, *Evidence*, 1st Session, 42nd Parliament, 20 November 2018, 1035 (Mark Power, Lawyer, Power Law, As an individual).

289 LANG, *Evidence*, 1st Session, 42nd Parliament, 28 February 2019, 1135 (Pierre Foucher, Professor, Faculty of Law, University of Ottawa, As an individual).

you know, to give other federal institutions their marching orders.”²⁹⁰ Finally, regardless of the model chosen, Mr. Power believes that the governance structure should be codified in the Act “so that it can’t be changed by decrees or alternating government cycles. We think the official languages question is important enough that we can move beyond that.”²⁹¹

D. RECOMMENDATIONS AND CONCLUSION

In light of the above, the Committee recommends as follows:

Recommendation 1

That the Government of Canada, as part of its modernization of the *Official Languages Act*, add an interpretative clause seeking to prioritize the goals and objectives of the Act; define and reinforce the concept of positive measures and other key concepts related to the effective application of the Act; and recognize the constitutional specificity of New Brunswick.

Recommendation 2

That the Government of Canada introduce a bill to modernize the *Official Languages Act* to redefine the roles and responsibilities of the Commissioner of Official Languages, prioritizing, without being limited to, the following:

- a) giving the Commissioner the authority to impose monetary sanctions;**
- b) giving the Commissioner the authority to require institutions that are subject to the Act to submit compliance reports and having the Commissioner issue statutory requirements; and**
- c) creating an administrative tribunal and defining its role and mandate.**

290 LANG, *Evidence*, 1st Session, 42nd Parliament, 20 November 2018, 0900 (Mark Power, Lawyer, Power Law, As an individual).

291 Ibid., 1020.



Recommendation 3

That the Government of Canada introduce a bill to modernize the *Official Languages Act* with new provisions, including but not limited to the following, to:

- a) establish a formal consultation framework with official language minority communities (OLMCs);**
- b) require the Government of Canada to develop a multi-year horizontal strategy for official languages with targets and performance indicators developed in collaboration with OLMCs and that is subject to both a mid-term and a final review made available to the public;**
- c) require federal institutions to develop a multi-year strategy to implement the *Official Languages Act*;**
- d) require federal institutions to include language variables in research it carries out and funds, particularly in sample selection for studies, as well as to produce and publish compelling data on OLMCs; and**
- e) require Statistics Canada to collect data on OLMCs, including whether children are eligible to receive their education in the minority language, with the goal of accurately counting how many rights-holders could potentially attend English and French minority-language schools, pursuant**

to section 23 of the *Canadian Charter of Rights and Freedoms* and
respecting provincial and territorial jurisdiction.

Recommendation 4

That the Government of Canada introduce a bill to modernize the *Official Languages Act* with clear objectives and obligations respecting language rights in francophone immigration and health.

Recommendation 5

That the government of Canada, in future negotiations on the Official Languages in Education Program (OLEP), work with the provinces and territories to support French first-language education and to strengthen education rights, as set out in the strategic education agreement between the Government of Canada, the Fédération nationale des conseils scolaires francophones (FNCSF), the Fédération des communautés francophones et acadienne du Canada (FCFA) and the Commission nationale des parents francophones (CNPF).

Recommendation 6

That the Government of Canada, in future negotiations on the Official Languages in Education Program (OLEP), work with the provinces and territories to support second-language instruction and strengthen education rights.

Recommendation 7

That the Government of Canada introduce a bill to modernize the *Official Languages Act* that includes a new section on the Government of Canada's role in minority-language education. This new section should include, but not be limited to, the following:

- a) a provision ensuring the enumeration of rights-holders under section 23 of
the Canadian Charter of Rights and Freedoms; and
- b) a provision ensuring that the educational and cultural infrastructure needs
of official language minority communities are identified as a priority in the



Government of Canada’s disposal process for surplus real property under subsection 16.1(1) as it applies to New Brunswick and section 23 of the *Canadian Charter of Rights and Freedoms*.

Recommendation 8

That the Government of Canada consider, as part of its efforts to modernize the *Official Languages Act*, including new provisions seeking to:

- a) require the inclusion, in any agreement between the Government of Canada and a province or territory that provides for a transfer of funds, of enforceable language clauses that encourage progress toward equality of status and use of English and French, as well as the vitality and development of official language minority communities, through the establishment of consultations and transparency and accountability mechanisms;**
- b) give the Minister of Official Languages the authority to ensure that all federal departments and institutions comply with the language clauses;**
- c) make available, in both official languages, all federal–provincial/territorial agreements; and**
- d) ensure that members of official language minority communities eligible to receive their education in the language of the minority can do so, if they so**

**choose, and that spaces are allocated for them in public schools,
particularly in the case of Quebec.**

Recommendation 9

That the Government of Canada transfer the official languages file to a central agency and entrust the implementation of the *Official Languages Act* to that agency.

Recommendation 10

That the new *Official Languages Act* include a chapter on promoting the French language both in Canada and at the international level, particularly in the Americas.

Recommendation 11

That the new *Official Languages Act* promote bilingualism in Canada.

In conclusion, the Committee would like to thank all the witnesses who participated in this study and in all its other work during the 42nd Parliament. It hopes that this report will inspire parliamentarians in drafting the next *Official Languages Act*: a quasi-constitutional act, the centrepiece of Canada's renewed linguistic duality and a symbol of the Canadian experience.

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the Committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the Committee's [webpage for this study](#).

Organizations and Individuals	Date	Meeting
Conseil scolaire francophone de la Colombie-Britannique Marie-France Lapierre, Outgoing Chair Marie-Pierre Lavoie, School Counsellor Southern Vancouver Island	2018/11/08	119
Conseil scolaire fransaskois Alpha Barry, Chair	2018/11/08	119
Fédération culturelle canadienne-française Martin Théberge, President Marie-Christine Morin, Executive Director	2018/11/08	119
Société de l'Acadie du Nouveau-Brunswick Ali Chaisson, Executive Director	2018/11/08	119
As individuals Darius Bossé, Lawyer Power Law Mark Power, Lawyer Power Law Perri Ravon, Lawyer Power Law	2018/11/20	120
Fédération des communautés francophones et acadienne du Canada Jean Johnson, President Alain Dupuis, Director General	2018/11/22	121
Hon. René Cormier, Senator	2018/11/22	121

Organizations and Individuals	Date	Meeting
Quebec Community Groups Network Geoffrey Chambers, President Stephen Thompson, Director Policy, Research and Public Affairs	2018/11/27	122
As an individual Michel Doucet	2018/11/27	122
Office of the Commissioner of Official Languages for New Brunswick Hugues Beaulieu, Executive Director Michel A. Carrier, Interim Commissioner	2018/11/29	123
Office of the French Language Services Commissioner François Boileau, Commissioner of Ontario Joseph Morin, Legal Counsel	2018/11/29	123
Quebec Community Groups Network Geoffrey Chambers, President Sylvia Martin-Laforge, Director General	2019/02/26	134
Townshippers' Association Rachel Hunting, Executive Director	2019/02/26	134
As individuals Pierre Foucher, Professor Faculty of Law, University of Ottawa François J. Larocque, Professor Faculty of Law, Common Law Section, University of Ottawa Benoît Pelletier, Professor Faculty of Law, University of Ottawa	2019/02/28	135
Canadian Institute for Research on Linguistic Minorities Éric Forgues, Executive Director	2019/03/19	136
Welsh Language Commissioner Meri Huws, Commissioner	2019/03/19	136

Organizations and Individuals	Date	Meeting
As an individual Hoi Kong, Professor Peter A. Allard School of Law, University of British Columbia	2019/03/19	136
As individuals Stéphanie Chouinard, Assistant Professor Department of Political Science, Royal Military College of Canada and Department of Political Studies, Queen's University Jack Jedwab, President and Chief Executive Officer Immigration and Identities, Association for Canadian Studies and Canadian Institute for Identities and Migration	2019/04/02	137
Fédération des communautés francophones et acadienne du Canada Jean Johnson, President Alain Dupuis, Director General	2019/04/04	138
Concordia University Lorraine O'Donnell, Coordinator-Researcher Quebec English-Speaking Communities Research Network (QUESCREN)	2019/04/09	139
Société Santé en français Michel Tremblay, General Director	2019/04/09	139
Canadian Parents for French Derrek Bentley, Board Member National Office Shaunpal Jandu, Consultant National Office	2019/04/11	140
French for the Future Gabrielle Frédette Fortin, Executive Director National Office Alec Boudreau, Board Member National Office	2019/04/11	140

Organizations and Individuals	Date	Meeting
Association des collèges et universités de la francophonie canadienne Lynn Brouillette, General Director Ronald Bisson, Director Justice	2019/04/30	141
Official Languages and Bilingualism Institute Jérémie Séror, Director and Associate Dean University of Ottawa Roger Farley, Executive in Residence University of Ottawa	2019/04/30	141
Administrative Tribunals Support Service of Canada Marie-France Pelletier, Chief Administrator	2019/05/02	142
As an individual Graham Fraser, Senior Fellow University of Ottawa	2019/05/02	142

APPENDIX B LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the Committee related to this report. For more information, please consult the Committee's [webpage for this study](#).

Association des communautés francophones d'Ottawa

Association québécoise de l'industrie du disque, du spectacle et de la vidéo (ADISQ)

Cardinal, Linda

Conseil des écoles fransaskoises

Conseil scolaire francophone de la Colombie-Britannique

Consortium national de formation en santé

Égalité santé en français

Fédération des communautés francophones et acadienne du Canada

Fédération des conseils d'éducation du Nouveau-Brunswick

Larocque, François

Office of the Commissioner of Official Languages for New Brunswick

Office of the French Language Services Commissioner

Quebec Community Groups Network

Regroupement des parents et amis des enfants sourds et malentendants franco-ontariens (RESO)

Société de l'Acadie du Nouveau-Brunswick

Société Santé en français

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the Committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 119 to 123, 134 to 142 and 148 to 151](#)) is tabled.

Respectfully submitted,

Hon. Denis Paradis, P.C., M.P.
Chair

