



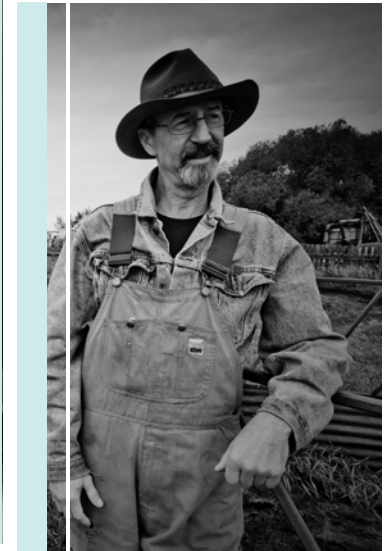
Office of the
Commissioner of
Official Languages

Commissariat
aux langues
officielles

BEYOND OBLIGATIONS

ANNUAL REPORT 2009–2010

VOLUME II



ANNUAL REPORT 2009–2010: BEYOND OBLIGATIONS—VOLUME II

**THE OFFICE OF THE COMMISSIONER WOULD LIKE
TO THANK THE FOLLOWING PHOTOGRAPHERS:**

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THE SPEAKER OF THE SENATE

Ottawa

Mr. Speaker,

Pursuant to section 66 of the *Official Languages Act*, I hereby submit to Parliament, through your good offices, volume II of the annual report of the Commissioner of Official Languages covering the period from April 1, 2009 to March 31, 2010.

Yours respectfully,

A handwritten signature in black ink, appearing to read "Graham Fraser". The signature is written in a cursive, flowing style.

Graham Fraser

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TABLE OF CONTENTS

FOREWORD BY GRAHAM FRASER

From knowledge to assessment: A virtuous circle for linguistic dualityII

INTRODUCTION

A model for implementing the *Official Languages Act* 2

CHAPTER 1

Service to the public: More than just a pictogram 6

Canadians' expectations 6

Shortcomings to overcome 8

Federal institutions are missing the boat 12

The Official Languages Act.

Sometimes unfamiliar, often misunderstood 12

Where there's no will... 12

Lack of planning: Frequent cause of major problems 15

Setting goals and achieving them 17

The importance of follow-up 17

Aiming higher 18

Learning from experience 18

Going the extra mile 19

Respecting the spirit of the law 20

More than just a pictogram 20

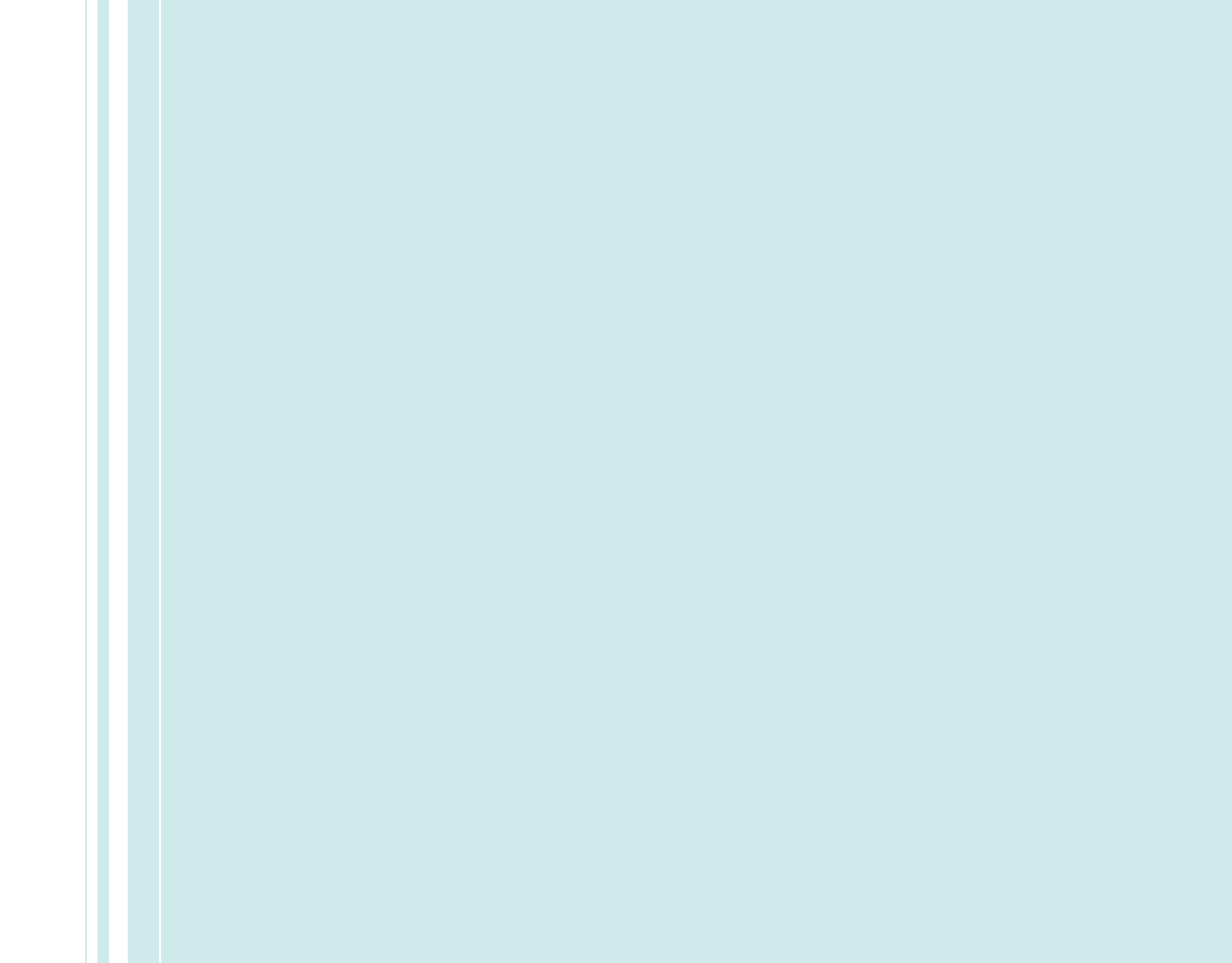
CHAPTER 2

Language of work: In writing and in person	22
From vision to action	22
Problems persist	23
Causes of inertia	28
Lack of knowledge	28
Ineffective leadership	29
Insufficient planning	30
Inadequate follow-up	31
Best practices and model institutions	32
Reminders that work	32
Clear demonstration of leadership	32
Thorough planning: Within reach for small institutions	33
Thinking outside the box	34
Taking the pulse of employees	34
In writing and in person	35

CHAPTER 3

Community vitality and promotion of official languages: Not enough A's	36
Positive measures: Objectives and implementation	36
Less than stellar results	37
Federal institutions at a standstill	38
Advancement of English and French: The responsibility of all federal institutions	38
Developing the Part VII reflex	39
Complying with Part VII takes planning	40
Walking the talk	41
The importance of effective follow-up	41

Exemplary corrective measures	43
The art of problem solving	43
Listening is its own reward	43
Good planning is good business	44
Supporting French-speaking immigrants	45
Honouring the contribution of English-speaking Quebecers	45
The impact of decisions on official language communities	45
Not enough A's	46
 CONCLUSION	
A virtuous circle	48
 RECOMMENDATIONS	51
 APPENDICES	
Appendix A: Admissible complaints in 2009–2010	52
Appendix B: Report cards for 16 federal institutions	54
Evaluation process	54
Results of observations	56
Appendix C: 2008 Public Service Employee Survey results on language of work in designated bilingual regions ...	58
Appendix D: Key legal proceedings involving the Commissioner of Official Languages	60
Recourse involving CBC/Radio-Canada	60
Recourse involving Air Canada	61
Appendix E: Important language rights decisions	62
The <i>VIA Rail</i> Case	62
<i>Picard v. The Canadian Intellectual Property Office et al.</i>	63





GRAHAM FRASER

FOREWORD

FROM KNOWLEDGE TO ASSESSMENT: **A VIRTUOUS CIRCLE FOR LINGUISTIC DUALITY**

It is a cliché of management theory that what can be measured can be managed. But what about the intangible? If linguistic duality is a Canadian value, how can it be instilled in the federal public service? How can it be measured and managed? How can it become a defining characteristic of the federal workplace, as natural as gender equity, a smoke-free environment and workplace safety have become? And how can the requirements of the *Official Languages Act* help federal departments, institutions and agencies move beyond their current attitude towards their black-letter statutory obligations to one of making linguistic duality a source of identity and pride in the workplace?

One thing is clear. Success in any endeavour does not happen by accident. It requires understanding, leadership, planning, execution and assessment. Or, as we have developed in this report, a virtuous circle in which each element reinforces and acts upon the other: Know (knowledge of what is required), Want (the will, or leadership, to achieve it), Plan (a clearly elaborated process to achieve it), Do (putting the plan into effect), and Check (an evaluation to see what has been achieved).

This seems self-evident at first glance. It is actually a demanding but rewarding sequence. Each step depends upon the other. Leadership can only be effective if those being inspired have the knowledge and information they need to plan subsequent actions. A plan cannot work without leadership and knowledge behind it. Determination to achieve results in the course of implementing the plan is only wasted energy without knowledge, planning and leadership. And evaluating the process, if no-one has understood it, wanted it, or known how to put it in place, simply creates frustration and bitterness.

In that sense, respecting language rights is comparable to respecting workplace safety. No responsible employer intentionally operates an unsafe workplace, and no employee intentionally puts his or her colleagues at risk. However, it often takes a safety inspection for an institution to realize that its employees do not have a common understanding of what they should do in the case of an emergency.

In the same spirit, scrutiny by the Office of the Commissioner of Official Languages can be very salutary for an institution.

A year ago, we marked the 40th anniversary of the *Official Languages Act* and yet it is clear that, after four decades, the goals, methods and requirements of the legislation are still misunderstood.

Some Canadians still believe that the purpose of the legislation is to make all Canadians bilingual, and use this misunderstanding to try to prove that the legislation has been a failure. On the contrary: the goal of the legislation has always

been to ensure that Canadians can get services from the federal government in the official language of their choice and that official language minority communities can flourish.

Some public servants believe that active offer—greeting Canadians at counters, wickets or security gates with the phrase “Hello, bonjour”—is a voluntary exercise that is available for bilingual employees to use at their discretion. Wrong. It is a legal obligation for employees—and it is an equally binding obligation for employers to provide their staff with clear directions on how to provide service to Canadians in the other official language if they do not speak it themselves.

Some public servants believe that it is the job of the Office of the Commissioner to apply the law. No—it is the responsibility of each department, agency and organization that falls under the Act (and their leaders and managers) to ensure that they are meeting their requirements under the law. Our job is to engage in the protection and promotion of language rights through the range of tools available: responding to complaints, evaluating the performance of institutions, conveying our concerns either privately or publicly, reporting to Parliament, intervening before the courts.

The Commissioner of Official Languages is one of the agents of Parliament—positions that were created to be the guardians of values that transcend the political objectives and partisan debates of the day. These values include the responsible handling of taxpayers’ dollars, the integrity of elections, transparency, privacy, the integrity of public servants and

lobbyists—and, of course, linguistic duality. In that sense, just like the Auditor General, the Chief Electoral Officer, the Information Commissioner, the Privacy Commissioner, the Public Sector Integrity Commissioner, the Conflict of Interest and Ethics Commissioner and the Lobbying Commissioner, I have the mandate to respond to questions and requests from parliamentarians on all issues concerning the rights of Canadians, and the responsibility to work to change the behaviour of federal institutions that fail to live up to the letter and spirit of an act.

The process of responding to complaints can have a far-reaching impact. As we describe in Chapter 3 of this volume, when CBC/Radio-Canada eliminated French-language programming at CBEF Windsor, we received 876 complaints. The subsequent investigation led to an examination of CBC/Radio-Canada's obligation to consult official language communities before making decisions that have a negative impact on those communities. In this case, having concluded that CBC/Radio-Canada failed to satisfy its obligations, I decided to take the matter to federal court.

In other cases, doing evaluations and audits of federal institutions has led us to take a more far-reaching approach than limiting ourselves to the reactive case-by-case complaints process. So, for example, our investigation into complaints about the Opening Ceremony of the Olympic Winter Games has led us to reflect on the symbolic nature of Canada's presentation of self at major international events. Work is already underway to prepare for the Pan American Games and Parapan American Games in Toronto in 2015.

Similarly, the audit of the Department of National Defence's individual training and education system has led to an agreement on the need to change the approach taken by the Department. The experience was positive and beneficial for the institution, which has made commitments to improve its processes and address the problems that we identified.

However, other institutions continue to have significant difficulties in conveying to their employees or their tenants the importance of serving the public in both official languages. Air Canada proved that it could meet the challenge of being the official carrier of the Winter Olympic Games by investing the resources that were needed, but there continue to be chronic problems in serving French-speaking passengers. The airport authorities have been inconsistent in their understanding, interpretation and application of their linguistic responsibilities.

Despite the key role played by my office, it must not be forgotten that the scrutiny of the government's performance in meeting its obligations under the *Official Languages Act* is a triangular responsibility, shared by the Office of the Commissioner, parliamentarians and the general public. Other aspects of responsibility for the application of the Act have been given to Canadian Heritage and Treasury Board, and deputy ministers and heads of federal agencies are increasingly responsible for ensuring that their organizations live up to their responsibilities.

When there is a spirit of collaboration and determination to go beyond a minimalist interpretation of the Act, federal institutions can succeed in integrating linguistic duality as a value. The greatest successes have occurred when all sides have worked to reinforce each other; the failures represent a lack of knowledge, leadership, planning, application or evaluation.

Four decades ago, Parliament first demonstrated its commitment to the equality of Canada's two official languages with the passage of the *Official Languages Act*. That commitment was both broadened and deepened with the 1988 revisions and then, five years ago, with the amendment of Part VII. Parliamentarians of all parties—individually, collectively and in committee—have used the Act and the Office of the Commissioner to promote the value of linguistic duality. At this midpoint in my mandate, let me reiterate my commitment to use all the tools at my disposal—investigations, audits, studies, reports, speeches, parliamentary testimony, court interventions—to achieve the goal of respect for linguistic duality and official language communities.



GRAHAM FRASER
COMMISSIONER OF OFFICIAL LANGUAGES

INTRODUCTION

A MODEL FOR IMPLEMENTING THE *OFFICIAL LANGUAGES ACT*

Volume II of the Commissioner of Official Languages' 2009–2010 annual report deals with federal institutions' compliance with the *Official Languages Act*.

This volume reports on the complaints received by the Office of the Commissioner of Official Languages in 2009–2010 and analyses the performance report cards of 16 federal institutions. It also includes the follow-up on the language-of-work recommendation the Commissioner made in his 2007–2008 annual report and discusses the results of selected audits and investigations conducted in 2009–2010.

The Office of the Commissioner found that the message the Commissioner has been giving the elected officials of the Government of Canada over the past several years also applies to federal institutions: to ensure equal status of English and French in Canada, each institution must demonstrate coherence and leadership.

To accomplish this, federal institutions must understand that, by serving the public in both English and French, by creating a workplace where their employees feel comfortable using the official language of their choice, and by supporting the development of official language minority communities,² they strengthen each of the components of linguistic duality. Conversely, by neglecting any particular part of the Act, they weaken the chain as a whole.

In terms of official languages, federal institutions can only achieve the desired results if they take into account the five key elements that form the virtuous circle of implementing the Act. As Diagram 1 shows, they must demonstrate leadership to ensure the following.

1 Throughout this report, the term “federal institutions” is used to designate federal institutions and organizations that are subject to the *Official Languages Act*.

2 Throughout this report, official language minority communities is designated by the term “official language communities”.

KNOW

All their employees and managers know and understand their obligations under the Act (for example, employees who must greet all visitors in both English and French need to know that they have this duty and need to understand why it is important for members of official language communities);

WANT

All their employees show a strong determination to apply the Act—“walk the talk”—in order to counteract the adverse effects of factors such as a lack of understanding, a minimalist interpretation of the Act, and a lack of incentives;

PLAN

Their official languages interventions are well-planned (because success rarely happens by accident);

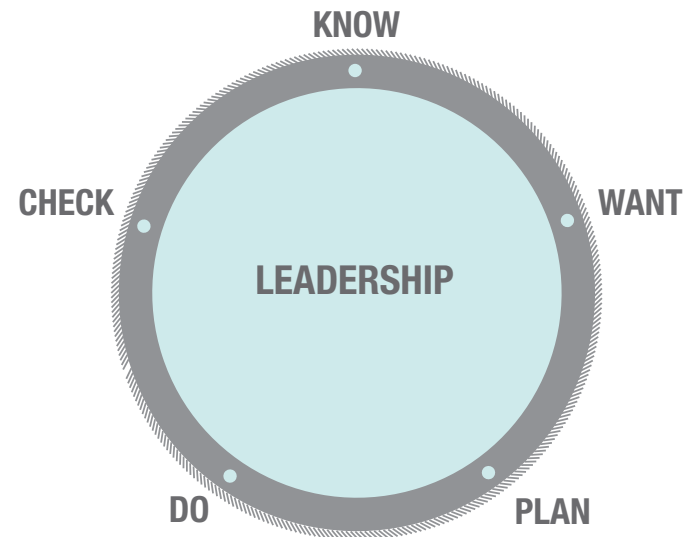
DO

Their plans are carried out thoroughly and carefully, and supervised closely by senior managers (because in practice, even simple things often end up being more complicated than expected); and

CHECK

Results are carefully monitored, so that any necessary corrective measures can be taken in a timely manner (for example, it is pointless for an agreement to include a clause protecting language rights if no one is checking to see whether it is being respected).

DIAGRAM 1 IMPLEMENTING THE *OFFICIAL LANGUAGES ACT*: A VIRTUOUS CIRCLE



As the three chapters of this volume show, federal institutions still have a lot of difficulty taking all five elements into consideration. Some adopt good measures to ensure that their employees understand what they have to do, but do not properly plan their activities with respect to official languages. Others carry out their policies effectively, but do not evaluate their impact carefully enough. Sometimes there are even variations within an organization; for example, when one office or division is strongly committed to applying the Act, while another does only the bare minimum.

The result, as the Office of the Commissioner's work shows, is that too many Canadians are still having difficulty obtaining federal services in the official language of their choice; too many federal employees are not able to work in the official language of their choice; and, too often, official language communities are not receiving the support they need to reach their full potential.

The Commissioner firmly believes that federal institutions can improve compliance with the *Official Languages Act* by focusing on all five of the key elements of implementing the Act.

Examples of good practices are presented in each chapter of this volume and illustrate that implementing the Act is well within the reach of all federal institutions. In other words, regardless of their size, how frequently they interact with the public, or how often they provide services through third parties, all institutions should be able to improve their performance.

THE COMMISSIONER'S ROLE: PREVENT WHERE POSSIBLE, REACT WHEN NECESSARY

As an ombudsman, the Commissioner of Official Languages is responsible for ensuring that federal institutions respect the language rights of their employees and the public.

Ideally, this is achieved through preventive action to help federal institutions and their partners better heed all five elements of the virtuous circle of implementing the *Official Languages Act* and eliminate the problem at the source.

For example, prior to the 2010 Olympic Games, interventions by the Office of the Commissioner and by official languages parliamentary committees with the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games, Canadian Heritage and other institutions providing services to visitors and athletes helped to ensure that all aspects of this large-scale event reflected Canada's linguistic duality.

It is regrettable, however, that the Commissioner still often has to intervene in reaction to problems that arise, despite his increasingly frequent proactive measures.

When the Office of the Commissioner receives a complaint, an investigation is conducted—with the consent of the complainant and the institution involved—based on a facilitated complaint resolution process to help the federal institution resolve the situation. If this approach is not

productive, a formal investigation is conducted to determine whether the complaint is founded. If it is founded, the Commissioner issues recommendations for the federal institution, as needed, so it can take measures to correct the situation.

If a federal institution that is the subject of a complaint does not follow up on the Commissioner's recommendations, the complainant and the Commissioner may seek legal recourse before the courts. If the courts conclude that the Act has been contravened, they can order the institution to take corrective measures. In 2010, the Commissioner decided to use this strategy in the case of CBC/Radio-Canada, which made a decision that had a negative impact on the development and vitality of the southwestern Ontario French-speaking community.

When an institution appears to be struggling with systemic problems, the Commissioner may decide to conduct an audit, based on which he will issue recommendations. In 2007, the Office of the Commissioner conducted an audit of the Canadian Radio-television and Telecommunications Commission (CRTC) regarding its compliance with section 41 of Part VII of the Act. As Chapter 3 shows, the audit had considerable impact, and the CRTC is now setting an example of how to promote English and French.

Unfortunately, the Commissioner sometimes has no choice but to resort to firm intervention to correct a failure to comply with the Act. For Canadians, and especially for members of official language communities, it would be preferable if federal institutions cooperated willingly with the Commissioner and with other authorized parties, such as Parliament's official languages committees, in working towards the vision of a Canada where linguistic duality is a core value.

Making this vision a reality requires ongoing effort and continuous improvement from everyone in order to improve compliance with the letter and the spirit of the *Official Languages Act*.



CHAPTER 1

SERVICE TO THE PUBLIC: MORE THAN JUST A PICTOGRAM

CANADIANS' EXPECTATIONS

Under the *Official Languages Act* and according to a recent Supreme Court decision,¹ federal institutions must ensure that members of the public are at ease communicating with employees in the official language of their choice and that they receive services of equal quality in English and French.

This means that employees who work in government offices that have obligations in terms of bilingual service delivery and communications must always inform citizens that they can obtain the desired information or service in the official language of their choice. This signal can be conveyed visually, with a pictogram for example, and verbally, with a bilingual greeting such as "Hello, bonjour." It is important for all front-line employees to provide an active offer of their services in both English and French.

"When I walk through the door at the Economic Development Agency of Canada for the Regions of Quebec or the Fisheries and Oceans Canada office in Gaspé and hear the greeting 'Hello, bonjour', I feel respected and comfortable to use the official language of my choice," said Cathy Brown, Executive Director of

¹ See *DesRochers v. Canada (Industry)*, 2009 SCC 8.

the Committee for Anglophone Social Action, of New Carlisle, Quebec. “ This simple welcome makes all the difference in the world, especially when you live in a minority community. ”²

Of course, the active offer is only the tip of the iceberg when it comes to serving the public. After being greeted in both English and French, citizens still need to obtain the information or service in the official language of their choice in a timely manner.

“As legal entities, non-profit Francophone organizations want—and have every right—to receive services in French from federal institutions,” said Rolande Smith, president of the Société d’histoire de Toronto. “ But these services must still be able to be provided promptly. It is not normal for a government department to be late processing an application in French because no one understood French in the office where it was received. [translation]”³

Nor is it enough for federal services to be provided in both official languages. Institutions may be required to adapt their services to the specific needs of official language communities so that, ultimately, their services are of equal quality in English and French.⁴

2 Comments by Cathy Brown in a telephone interview on July 14, 2010.

3 Comments by Rolande Smith in a telephone interview on July 15, 2010.

4 See *DesRochers v. Canada (Industry)*, 2009 SCC 8.



ROLANDE SMITH, TORONTO

SHORTCOMINGS TO OVERCOME

Data gathered by the Office of the Commissioner of Official Languages in 2009–2010 shows that there are still problems regarding compliance with the obligations to communicate with the public and deliver services in both official languages.

As shown in Table 1.1, the number of admissible complaints filed this year regarding services to Canadian citizens in the language of their choice has stayed essentially the same as in previous years. After a dip in 2008–2009, the number of complaints this year is at the same level as in 2005–2006.

1.1 NUMBER OF ADMISSIBLE COMPLAINTS REGARDING SERVICE TO THE PUBLIC

Year	Number of complaints
2004–2005	587
2005–2006	456
2006–2007	425
2007–2008	432
2008–2009	382
2009–2010	451

The Office of the Commissioner reviewed 16 federal institutions for the 2009–2010 report card exercise. Observations made during this exercise show that too many of them are still having difficulty providing active offer in both official languages where there is significant demand.

WHAT IS AN “ADMISSIBLE” COMPLAINT?

The Office of the Commissioner of Official Languages considers a complaint “admissible” when it meets the following three criteria:

- it relates to an obligation set forth in the *Official Languages Act*;
- it involves an institution subject to the Act; and
- it concerns a specific incident.

If a complaint is deemed admissible, it is investigated.

An active offer by telephone is not provided on a regular basis. Out of 16 federal institutions, only 3 (Library and Archives Canada, Citizenship and Immigration Canada and Passport Canada) scored 100% in this area (Table 1.2).

Results are even poorer with regard to active offer in person. The Office of the Commissioner’s observations show that only 2 out of 16 institutions—the Canadian International Development Agency and Fisheries and Oceans Canada—greeted the public in both English and French more than 60% of the time (Table 1.2).

1.2 RESULTS OF 2009–2010 OBSERVATIONS ON ACTIVE OFFER⁵

	Visual active offer (%)	Active offer in person (%)	Active offer by telephone (%)
CANADA BORDER SERVICES AGENCY	98	46	80
CANADA SCHOOL OF PUBLIC SERVICE	91	40	57
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	95	62	81
CITIZENSHIP AND IMMIGRATION CANADA	100	56	100
CORRECTIONAL SERVICE CANADA	86	32	70
FISHERIES AND OCEANS CANADA	96	61	88
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	97	56	69
HEALTH CANADA	86	30	89
INDUSTRY CANADA	87	40	81
LIBRARY AND ARCHIVES CANADA	100	56	100
NATURAL RESOURCES CANADA	79	35	71
PASSPORT CANADA	98	48	100
PUBLIC SAFETY CANADA	84	48	74
PUBLIC SERVICE COMMISSION OF CANADA	98	52	86
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	96	50	71
TRANSPORT CANADA	98	47	68
Average	93	45	79

N.B.: For more information on how institutions were evaluated, please see the rating guide on the Office of the Commissioner of Official Languages Web site at www.officiallanguages.gc.ca.

Both English-speaking Quebecers and French-speaking Canadians in other provinces are faced with the unacceptable situation that government services are not always provided in the language of their choice.

Only 10 out of 16 institutions were able, in 80% or more of cases, to provide service in the preferred language of official language community members who visited their offices (Table 1.3).

⁵ Methodology available upon request.

The situation is similar for service by telephone—only 10 out of 16 institutions used the language preferred by official language community members in at least 80% of cases. It is worth noting that Citizenship and Immigration Canada

obtained a much lower score in this area than the other 15 institutions. The department answered less than one third of all calls from English-speaking Quebecers and French-speaking Canadians in other provinces in the official language of their choice (Table 1.3).

1.3 RESULTS OF 2009–2010 OBSERVATIONS ON SERVICE TO THE PUBLIC⁶

	Service in person (%)	Service by telephone (%)
CANADA BORDER SERVICES AGENCY	89	81
CANADA SCHOOL OF PUBLIC SERVICE	70	54
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	90	100
CITIZENSHIP AND IMMIGRATION CANADA	86	29
CORRECTIONAL SERVICE CANADA	72	53
FISHERIES AND OCEANS CANADA	86	78
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	92	80
HEALTH CANADA	74	91
INDUSTRY CANADA	73	74
LIBRARY AND ARCHIVES CANADA	100	100
NATURAL RESOURCES CANADA	76	82
PASSPORT CANADA	96	100
PUBLIC SAFETY CANADA	75	84
PUBLIC SERVICE COMMISSION OF CANADA	97	82
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	80	100
TRANSPORT CANADA	88	77
Average	82	75

The situation was almost identical for services that federal institutions provide by e-mail. According to observations made by the Office of the Commissioner this year, only 7 out of 11 federal institutions⁷ responded in the preferred language of the sender in at least 80% of cases when answering e-mails from official language community members. Also troubling is the fact that 8 institutions out of 11 answered most of these e-mails much more slowly than those received from members of the official language majority community.

N.B.: For more information on how institutions were evaluated, please see the rating guide on the Office of the Commissioner of Official Languages Web site at www.officiallanguages.gc.ca.

⁶ Methodology available upon request.

⁷ This total is less than 16 because reliable statistics could not be gathered in 5 of the institutions observed this year.

1.4 RESULTS OF 2009–2010 OBSERVATIONS ON SERVICE TO THE PUBLIC BY E-MAIL⁸

	Service by e-mail (%)	Appropriate e-mail response time (%)
CANADA BORDER SERVICES AGENCY	75	53
CANADA SCHOOL OF PUBLIC SERVICE	***	***
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	100	41
CITIZENSHIP AND IMMIGRATION CANADA	91	63
CORRECTIONAL SERVICE CANADA	**	**
FISHERIES AND OCEANS CANADA	75	38
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	100	94
HEALTH CANADA	89	95
INDUSTRY CANADA	80	20
LIBRARY AND ARCHIVES CANADA	88	30
NATURAL RESOURCES CANADA	100	88
PASSPORT CANADA	*	*
PUBLIC SAFETY CANADA	78	37
PUBLIC SERVICE COMMISSION OF CANADA	75	41
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	***	***
TRANSPORT CANADA	***	***
Average	86	55

N.B.: For more information on how institutions were evaluated, please see the rating guide on the Office of the Commissioner of Official Languages Web site at www.officiallanguages.gc.ca.

- * The Office of the Commissioner of Official Languages was not able to make anonymous e-mail observations for this institution.
- ** The Office of the Commissioner of Official Languages was not able to make e-mail observations for this institution, because it does not communicate with the public by e-mail.
- *** Given the low number of responses obtained during the Office of the Commissioner of Official Languages' observations by e-mail, the results of these observations are not available.

⁸ Methodology available upon request.

In conclusion, the report card exercise reveals again this year that too many institutions are failing to make an active offer and provide services to Canadians in English and French.

In concrete terms, this means that each year, thousands of Canadians are still being denied their rights under the *Official Languages Act* when communicating with federal institutions.

FEDERAL INSTITUTIONS ARE MISSING THE BOAT

Why is the active offer still so rarely provided by federal institutions, and why is it all too often still difficult for Canadians to obtain federal services in the language of their choice? There are many possible reasons.

THE OFFICIAL LANGUAGES ACT: SOMETIMES UNFAMILIAR, OFTEN MISUNDERSTOOD

In some cases, federal employees appear to lack information on their obligations regarding service to the public under Part IV of the Act.

Interviews conducted by the Office of the Commissioner as part of an audit⁹ into the management of Halifax International Airport Authority's Official Languages Program showed that some of the airport's contracted service providers, and employees as well, did not have sufficient knowledge of their language obligations with respect to service to the public.

In the case of the Canada Revenue Agency, professionals representing taxpayers filed complaints with the Office of the Commissioner because the Agency communicated with them and sent them information in the language of the taxpayer's choice, not theirs.

Although this problem was resolved by the Agency, the Commissioner wishes to reiterate that professionals representing Canadians have rights, and when their preferred language is not known, federal institutions should communicate with them in both official languages.

A misunderstanding of the requirements of the Act also seems to explain why in 2009, during a major advertising campaign, the Canadian Tourism Commission chose not to use both English and French in every region in Canada. When the Commissioner of Official Languages asked for an explanation, the Commission's representatives argued that marketing campaigns are not communications per se. They also insisted that, because of its target audience, the Commission is different from other Crown corporations and can consequently promote the country's tourist attractions in whatever language it chooses. Therefore, the Commission simply advertised in French in Quebec and in English outside of Quebec.

⁹ Office of the Commissioner of Official Languages, *Audit of the Management of the Official Languages Program at the Halifax International Airport Authority*, Ottawa, 2010, on-line version (www.officiallanguages.gc.ca/html/audit_verification_012010_e.php) consulted August 10, 2010.

The Office of the Commissioner, however, has more than once indicated to the Commission that marketing campaigns of federal institutions are indeed a form of communication with the general public governed by the *Official Languages Act*. When a federal institution communicates with the general public, it must comply with Part IV of the Act.

WHERE THERE'S NO WILL...

Sometimes federal institutions, their employees and their partners are well aware of their obligations, but fail to be diligent in meeting them.

Canada Post uses third parties to operate postal outlets in many locations and cities across the country. Unfortunately, some of these third parties do not comply with the requirements of active offer and service delivery in both official languages, often despite numerous reminders.

This problem particularly affects clients from official language communities. This year, the Commissioner intervened with Canada Post to ensure that the post office operator in St. Boniface, Manitoba, complies with its language obligations.

Air Canada lacked official languages leadership again this year. In fact, as complaints filed with the Office of the Commissioner show, users of Air Canada's services in the country's major

airports, particularly Toronto Pearson International Airport and Halifax Stanfield International Airport, did not have access to bilingual services.

Many travellers complained that Air Canada's boarding announcements were made in only one official language, even though the facilities are equipped with systems for making these announcements automatically in English and French. Furthermore, Air Canada staff often made last-minute boarding announcements in English only, without regard to passengers' preferred language. What is more, travellers who must print their own boarding pass or check their luggage sometimes had difficulty obtaining the service in French to which they are entitled from Air Canada's ground handling team.

The Office of the Commissioner also received complaints showing that it is sometimes difficult for travellers returning to Canada by land to be served in their preferred language by the Canada Border Services Agency. For example, a French-speaking Canadian had her vehicle and the horse that she was importing from the United States seized at the Lansdowne, Ontario, border crossing, which has been the object of frequent complaints. The cause of the seizure was a language-related misunderstanding that could have been avoided had she been served by a French-speaking border services officer, as was her right, instead of a unilingual English-speaking officer.

“I didn’t know that I could ask for service in French at a border crossing in Ontario and none of the five or six officers in front of me at the main building gave me any indication by saying ‘Bonjour’ or informing me that I did indeed have this right,” complained Pascale Houle, a horse breeder from Quebec. “It’s intimidating enough to go through customs,” Houle continued, “but when you have to sort out a misunderstanding in your second language while dealing with a unilingual customs officer who doesn’t ask for help from a bilingual colleague, it becomes downright frightening. [translation]”¹⁰

The Office of the Commissioner made observations in March 2010 to determine whether the appointment, six months previously, of two official languages champions at the Lansdowne crossing led to improved official languages performance. Nothing indicated any such improvement. Representatives of the Office of the Commissioner were greeted in English only when they came to the crossing’s primary inspection line. When they asked to be served in French, they were told to report to the main building, while English speakers crossed the border quickly and smoothly.

The difficulties experienced again this year by the Royal Canadian Mounted Police regarding compliance with the Act are partly due to the fact that some of the institution’s senior officers have not demonstrated the required leadership. For example, officials of the Surrey, British Columbia, detachment have yet to translate some unilingual English sections of the organization’s Web site.

¹⁰ Comments by Pascale Houle in a telephone interview on July 17, 2010.



PASCALE HOULE, LASALLE

LACK OF PLANNING: FREQUENT CAUSE OF MAJOR PROBLEMS

In many cases, inadequate planning or preparation is the root cause of problems experienced by institutions when implementing the service-to-the-public provisions of the *Official Languages Act*.

For example, the Office of the Commissioner notes that there have been issues at the Canada Border Services Agency's southern Ontario crossings for years, in part because the Agency has not developed a formal action plan to improve the quality of its French-language services in this region. Specifically, the Agency has not set up oversight or follow-up mechanisms in order to evaluate the official languages performance of each border crossing.

It also appears that institutions that are having difficulty recruiting bilingual employees, or ensuring that enough staff are available at a given service point, have not always taken the proactive measures required to make this possible.

Investigations by the Office of the Commissioner revealed that, for too many federal institutions, the language profiles of designated bilingual positions are not defined to correspond with the actual duties that the incumbents of these positions are required to perform; this contravenes section 91 of the Act. Lowering the language profiles of the positions in an institution

may help solve recruitment problems temporarily, but it often has unfortunate repercussions on the institution's ability to serve Canadians in the language of their choice.

For example, the Office of the Commissioner has noticed that the importance of bilingual second-line employees, especially team leaders, is often underestimated at Service Canada's bilingual service points.

Similarly, this year saw an increase in the number of people complaining to the Office of the Commissioner that they were not served in the official language of their choice at Parks Canada's points of service. According to the Agency's senior management, this situation results mainly from the difficulty in attracting bilingual employees to sites that are often remote.

The Office of the Commissioner observed a worrisome trend at Parks Canada. Since the major restructuring of the Visitor Experience directorate, the language requirements for a position have been set at a level that does not match the complexity of the tasks that the incumbent of this position is required to perform in English and French. It is also regrettable that this institution, like others, is not considering reimbursing the relocation costs of front-line employees recruited from outside the region.

SECTION 91 OF THE *OFFICIAL LANGUAGES ACT*

Section 91 reads as follows: “Nothing in Part IV or V authorizes the application of official language requirements to a particular staffing action unless those requirements are objectively required to perform the function for which the staffing action is undertaken.” In concrete terms, this means that federal institutions must objectively determine whether the position must be designated unilingual or bilingual, and establish the level of English and French that the incumbent of the position must have to perform his or her duties.

The Office of the Commissioner has found that a number of federal institutions do not provide all of their employees with the second-language training they need to effectively communicate information on federal government programs in the preferred official language of Canadians. This is a serious problem, since the services provided by federal institutions must always be of equal quality in English and French.

Other planning problems may explain an institution’s difficulties in mobilizing enough bilingual personnel to meet its obligations. For example, Jazz, an air carrier that provides services on behalf of Air Canada, tries to assign one bilingual flight attendant to each of its designated bilingual flights. Unfortunately, when a bilingual flight attendant is absent, it is Jazz’s policy to replace that attendant with the next available employee, bilingual or not. Unlike the collective agreement

that Air Canada negotiated with its employees, the agreement signed between Jazz and its personnel does not take official languages into account. This may explain why Jazz continues to struggle, year after year, to provide bilingual services to passengers travelling within Canada.

This situation is unacceptable, and it is further complicated by the fact that the Office of the Commissioner cannot directly investigate Jazz. As opposed to Air Canada, Jazz is not directly subject to the *Official Languages Act*. When Jazz provides services on behalf of Air Canada, the Commissioner can make recommendations regarding Air Canada if the Act’s provisions are contravened, but Air Canada remains responsible for ensuring that Jazz takes corrective measures. Should legal proceedings be initiated by complainants or the Commissioner, only Air Canada, as the responsible federal institution, can be targeted by the proceedings and force Jazz to provide services to the public in both official languages. This is neither practical nor promising in terms of achieving tangible results with regard to the language rights of the travelling public.

RECOMMENDATION

The Commissioner of Official Languages recommends that the Minister of Transport table a new bill as quickly as possible to protect and uphold the language rights of the travelling public and Air Canada employees, and make Jazz directly subject to the *Official Languages Act*.

SETTING GOALS AND ACHIEVING THEM

In terms of official languages, as in other areas, developing detailed plans and having the determination to implement them is not enough to achieve the expected results. Plans need to be carried out every day without fail. However, considerable challenges remain in this regard.

For example, Service Canada, which serves upwards of 800,000 clients a month at its service points, answers more than a million calls a week and receives 55 million visits a year on its Web site, has worked diligently since September 2008 to apply its *Directive on Active Offer of Service in Both Official Languages in Service Canada Centres and Outreach Sites*. This organization also strives to surpass the minimum obligations set out in the *Official Languages (Communications with and Services to the Public) Regulations* and comply with the spirit and the objectives of the *Official Languages Act*.

The Office of the Commissioner continues to receive complaints, however, from citizens dissatisfied with the quality of English- or French-language services that they have received from Service Canada. In particular, Service Canada needs to improve coordination of everyone who works on the same file to ensure service continuity with respect to language. This means guaranteeing that citizens can always receive the information or service they require in the language of their choice, regardless of which employee, office, division or service channel they deal with.

THE IMPORTANCE OF FOLLOW-UP

The Office of the Commissioner's work shows that too many federal institutions have difficulty fulfilling their language obligations regarding service to the public because they fail to adequately follow up on the plans they have developed or agreements they have signed, or because they fail to monitor the impact of their actions.

The Web sites of several Canadian organizations dedicated to the advancement of winter sports and the development of high-performance athletes have less French content than English. Moreover, the quality of the French version is often inferior to that of its English counterpart.

Although these organizations are not subject to the Act directly and their resources for functioning in English and French are often limited, they do have official languages obligations because they receive financial support from Sport Canada's Sport Support Program. Sport Canada has not ensured that these organizations are fulfilling their obligations and providing information of equal quality in English and French on their Web sites.

AIMING HIGHER

Although federal institutions sometimes have a hard time serving Canadians in the language of their choice, some government organizations perform better than others.

For example, federal institutions that have demonstrated leadership by establishing best practices can sometimes overcome significant official languages challenges more effectively than comparable entities facing similar difficulties.

VIA RAIL REACTS QUICKLY TO CONTRAVENTION OF OFFICIAL LANGUAGES ACT

The Office of the Commissioner of Official Languages received excellent cooperation from VIA Rail officials after complaints were filed regarding the unilingual English announcements made when a Toronto-Ottawa train caught fire on August 16, 2009. Not only did VIA Rail promptly admit to having failed to meet its language obligations during the incident, it also developed an “official languages” module that it incorporated into its staff training for emergencies and evacuation operations.

LEARNING FROM EXPERIENCE

According to the Office of the Commissioner, Fisheries and Oceans Canada is one of the institutions that has succeeded this year in using the results of past performance evaluations to greatly improve its services to the public in both official languages.

To ensure that employees are fully aware of their language obligations, the department’s senior management produced an active offer kit. The kit provides some key sentences to use when



REGAN FLOWERS, VANCOUVER

greeting Canadians in the language of their choice, explains the *Official Languages Act*, and includes some active offer promotional stickers. The department also monitors service delivery to ensure that the public actually receives services in both English and French.

GOING THE EXTRA MILE

The Office of the Commissioner recognizes that the Canada Border Services Agency has difficulty meeting its language obligations in some regions, especially Ontario. However, that

does not mean that the Agency's report was negative across the board. In fact, like most institutions, sometimes things go well, sometimes not.

In the past year, the Agency developed the tools and training materials needed by its officers to serve Canadian and foreign visitors effectively in both official languages during the 2010 Olympic Games in Vancouver. The Agency should try to extend the use of these resources to all service points and measure their effectiveness. It should also consider sharing them with other institutions.

A COMMITTED EMPLOYEE...THROUGH AND THROUGH!

Regan Flowers is a young English-speaking woman from British Columbia who taught herself French and pursued her learning by living in Chicoutimi, Quebec, for six weeks in 2005. She works in Vancouver for the Canada Border Services Agency.

Prior to the 2010 Olympic and Paralympic Winter Games in Vancouver, her superiors asked her to be the official languages representative for Vancouver International Airport. In this role, she supported the Agency's official languages advisor in planning and coordinating awareness and training sessions designed to ensure that airport staff could greet and serve French-speaking visitors in French. "They gave me this job because I firmly believe that official bilingualism forms part of who we are. It was also because I'm enthusiastic and... my French is far from perfect," said the young woman.¹¹

Offered to small groups of four to six employees with the help of a teacher from the Canada School of Public Service, "these sessions were a great success," declared Ms. Flowers. "They allowed border officers to acquire the basic French they needed in a non-threatening environment."

Regan Flowers, or "Les Fleurs" as her friends now frequently call her, added, "when employees don't provide an active offer in both languages, it's usually because they don't feel comfortable doing so. If you show them it's okay to make mistakes, that they won't be ridiculed for saying 'Bonjour' or 'I'll get a bilingual officer' in French, albeit with some hesitation, there's a good chance you'll help them make positive and lasting changes. [translation]"

¹¹ Comments by Regan Flowers in a telephone interview on July 9, 2010.

RESPECTING THE SPIRIT OF THE LAW

While some Canadian airport authorities seem to be waiting for clearer guidelines from the federal government before taking a less minimalist approach to complying with the *Official Languages Act*, others are already enthusiastically implementing it.

For example, although the Ottawa Macdonald-Cartier International Airport Authority has had some problems regarding official languages, its Web site is an inspiring example for other airport authorities. The site is entirely bilingual—for the travelling public and the general public alike.

Furthermore, this airport authority reacted quickly to a proactive intervention by the Office of the Commissioner by persuading the manager of the airport bookstore to offer enough French-language books and magazines for Francophone and francophile travellers. This decision goes beyond the letter of the Act but it demonstrates an inspiring understanding of the spirit of the Act and deserves to be recognized.

MORE THAN JUST A PICTOGRAM

As the Office of the Commissioner has noted, problems in understanding, leadership, planning, implementation and follow-up account for the fact that too many Canadians still have difficulty obtaining services in English and French to which they have a right under the *Official Languages Act*.

Federal institutions should never stop working on developing and implementing solutions to remove these barriers and offer all Canadians services in English and French where they have every right to them. Unfortunately, too many of these institutions still wait until a complaint has been brought against them or until they receive a very poor score on their report card before expending any effort on this task.

As a result, given the mediocre active-offer scores of the 16 institutions evaluated by the Office of the Commissioner this year, these institutions should take prompt and serious action to make improvements in this area.

Too many federal institutions still fail to take steps to explicitly inform the public that they provide services in both official languages. Many seem to think that displaying an “English/ Français” pictogram is a valid substitute for in-person active offer.

RECOMMENDATION

The Commissioner of Official Languages recommends that the deputy heads of federal institutions take all of the necessary measures to ensure that people who contact offices with bilingual service delivery obligations are informed, unequivocally, that they have the right to use English or French. Institutions should evaluate, in particular, whether new active-offer strategies allow them to better inform Canadians of their language-of-service rights.





JEANNE LANTEIGNE, NOUVEAU-BRUNSWICK

CHAPTER 2

LANGUAGE OF WORK: IN WRITING AND IN PERSON

FROM VISION TO ACTION

Part V of the *Official Languages Act* gives employees of federal institutions the right to work in the official language of their choice in regions that are designated bilingual for language-of-work purposes.

The Commissioner of Official Languages believes that public servants should take pride in working in an environment where the use of both official languages is valued and encouraged. When employees are proud of their bilingual workplace, English- and French-speaking Canadians receive high-quality government services in the official language of their choice.

Respecting the right of federal employees to work in the official language of their choice also contributes to their professional development and well-being. For employees from official language communities, this right is crucial.

“I come from a small French-speaking village in New Brunswick where everything is in French, and it was essential for me to be able to use my language at work,” said Jeanne Lanteigne of Bathurst. “Because I worked in a federal office that was very open to the use of French, I was able to progressively gain the confidence I needed to learn English and climb the ladder,” the recent retiree declared. “And because of this openness, I was able to fully develop my skills and make meaningful contributions. Ultimately, it was my Department’s clients who benefited. [translation]”¹

By operating in both official languages, in accordance with the requirements of the Act, the Government of Canada is able to develop and apply policies and programs that meet the needs of all Canadians, including members of official language communities.

For example, “in the fields of defence and international relations, how can they make policies that take into account the actual perspective of French-speaking Canadians, rather than simple clichés, when they can’t even read or understand French? [translation]”² asked Stéphane Roussel, Associate Professor in the Political Science Department at the Université du Québec à Montréal, and Canada Research Chair in Canadian Foreign and Defence Policy.

1 Telephone interview with Jeanne Lanteigne July 16, 2010.

2 Interview with Stéphane Roussel July 16, 2010.

3 Section 91 stipulates that in a staffing action, language requirements set by federal institutions must be objectively required to perform the functions for which the staffing action is undertaken.

PROBLEMS PERSIST

In 2009–2010, the work of the Office of the Commissioner of Official Languages showed that the vision of a public service where English and French enjoy equal status as languages of work has still not been achieved.

Although, as Table 2.1 shows, there have been fewer complaints regarding language of work or section 91³ of the *Official Languages Act* than in the past, this decrease may be attributable to a number of factors and is therefore not necessarily representative of the actual official languages situation in federal institutions.

2.1 NUMBER OF COMPLAINTS REGARDING LANGUAGE OF WORK AND SECTION 91 OF THE *OFFICIAL LANGUAGES ACT*

Year	Complaints regarding language of work	Complaints under section 91 of the Act	Total
2004–2005	115	56	171
2005–2006	111	64	175
2006–2007	108	80	188
2007–2008	112	39	151
2008–2009	107	71	178
2009–2010	71	33	104

INTERPRETING THE 2008 PUBLIC SERVICE EMPLOYEE SURVEY DATA ON LANGUAGE OF WORK

In interpreting the national data from the 2008 Public Service Employee Survey, some senior managers may conclude that their institution is adequately complying with Part V of the *Official Languages Act* because the data covers all public servants. To get a realistic portrait, however, the opinions of English- and French-speaking employees in designated bilingual regions must be considered separately. This is why the Office of the Commissioner of Official Languages has chosen to present data on the satisfaction of each language group separately in the tables in this report.

The results of the 2008 Public Service Employee Survey⁴ show that too few employees are satisfied with the official languages situation in their workplace.

This year, the Office of the Commissioner examined the language-of-work situation in 16 federal institutions that were reviewed in its report cards. In several of them, less than 80% of minority English- or French-speaking employees in designated bilingual regions reported being satisfied with the way they were able to use their preferred language at work (Appendix C).

The situation is particularly troubling at 2 of the 16 institutions—the Canada Border Services Agency and Health Canada. In these institutions, according to the 2008 Public Service Employee Survey, over 30% of minority English- and French-speaking employees reported being dissatisfied with their ability to use the official language of their choice at work (Table 2.2).

⁴ Statistics Canada conducted the 2008 Public Service Employee Survey to learn what employees thought about their workplace. It included five questions about language of work. This survey was not conducted in 2009.

2.2 RESULTS OF 2008 PUBLIC SERVICE EMPLOYEE SURVEY⁵ ON LANGUAGE OF WORK FOR DESIGNATED BILINGUAL REGIONS: PERCENTAGE OF EMPLOYEES WHO AGREE WITH THE STATEMENTS

	English-speaking employees (Que.) (%)	French-speaking employees (N.B., Ont., NCR) (%)
CANADA BORDER SERVICES AGENCY	67	65
CANADA SCHOOL OF PUBLIC SERVICE	**	87
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	*	83
CITIZENSHIP AND IMMIGRATION CANADA	86	74
CORRECTIONAL SERVICE CANADA	58	74
FISHERIES AND OCEANS CANADA	**	77
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	**	74
HEALTH CANADA	53	67
INDUSTRY CANADA	64	75
LIBRARY AND ARCHIVES CANADA	**	82
NATURAL RESOURCES CANADA	**	72
PASSPORT CANADA	95	84
PUBLIC SAFETY CANADA	**	79
PUBLIC SERVICE COMMISSION OF CANADA	85	87
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	78	81
TRANSPORT CANADA	66	75
Average	74	76

N.B.: Percentages represent the proportion of people who somewhat agree or strongly agree with the statements given.

For more information on the statements, please see Table 2.3 and Appendix C.

* The satisfaction rate of English-speaking employees could not be measured because the institution has no offices in Quebec.

** The data was withdrawn due to the low number of respondents.

⁵ Statistics Canada, *2008 Public Service Employee Survey*, Ottawa, 2009.

In particular, many minority-language employees complained of not having the opportunity to use the official language of their choice when preparing written materials, such as e-mails or reports. As Table 2.3 shows, none of the 16 institutions can claim that over 80% of their French-speaking employees in Ontario and New Brunswick are satisfied with the situation in this regard. English-speaking employees in Quebec were also dissatisfied with the status of English in written communications—their satisfaction rate exceeded 80% in only two out of nine⁶ institutions.

The language-of-work data from the 2008 Public Service Employee Survey is presented in Appendix C. The data includes information about the 16 institutions that received report cards from the Office of the Commissioner this year.

Several institutions also need to redouble their efforts to ensure that their employees feel comfortable communicating with their immediate supervisor in the official language of their choice. The proportion of minority French-speaking employees who feel free to do so was below 80% in 3 of the 16 institutions. The percentage of minority English-speaking employees who feel comfortable communicating with their immediate supervisor in the official language of their choice was above 80% in only two out of nine cases.

The language in which specialized training is provided to federal employees is also a concern in the majority of institutions located in Montréal, Estrie and the Gaspé Peninsula. In these regions, the percentage of English-speaking employees satisfied with the current availability of courses in English exceeded 80% in only two cases: Passport Canada and the Public Service Commission of Canada. Three institutions—the Canada Border Services Agency, Correctional Service Canada and Health Canada—have difficulty meeting the needs of their minority English-speaking employees in this area; they also have similar difficulty meeting the needs of minority French-speaking employees.

There is a significant gap between the perceptions of minority English- and French-speaking employees with regard to two other issues: work tools and meetings. Most of the institutions reviewed seem to be on the right track in terms of providing software and other work tools in French, and creating an environment conducive to the use of French in meetings. However, as Table 2.3 shows, the number of institutions in which over 80% of English-speaking employees are satisfied with the availability of English work tools or the use of English in meetings is still too low.

⁶ This data excludes the Canadian International Development Agency, which has no offices in Quebec, and six other institutions where there was not enough data to be statistically significant.

2.3 PERFORMANCE OF 16 FEDERAL INSTITUTIONS REGARDING RESPECT FOR OFFICIAL LANGUAGES IN THE WORKPLACE

	Number of institutions* with 80% or more English-speaking employees satisfied with the situation (Que.)	Number of institutions with 80% or more French-speaking employees satisfied with the situation (N.B., Ont., NCR)
TOOLS (available in official language of employee's choice)	5 out of 9	14 out of 16
WRITING (feels free to use preferred official language)	2 out of 9	0 out of 16
SUPERVISION (can use preferred official language with supervisor)	2 out of 9	3 out of 16
MEETINGS (can use preferred official language)	4 out of 9	13 out of 16
TRAINING (available in official language of employee's choice)	2 out of 9	13 out of 16

* The data in this column excludes the Canadian International Development Agency, which has no offices in Quebec, and six other institutions where there was not enough data to be statistically significant.

Qualitative information collected by the Office of the Commissioner over the past year suggests that federal employees who need or want to master their second official language for professional reasons are still having difficulty accessing the courses they need. Several public servants in this situation, determined to perfect their English or French, are taking language training in the evening or on weekends and assuming the cost themselves.

In summary, the report cards show that many minority-language employees are not able to use the official language of their choice at work. This is unacceptable, because the *Official Languages Act* gives federal employees certain rights in this regard.

CAUSES OF INERTIA

Once again, insufficient knowledge or understanding of the Act, lack of will, planning/execution problems, and inadequate follow-up are some of the reasons a truly bilingual workplace within federal institutions is still a problem.

LACK OF KNOWLEDGE

To comply with Part V of the Act, which deals with language of work, federal institutions must ensure that employees have a thorough knowledge and understanding of their rights and obligations in this context. They must also frequently remind their staff that employees should be able to use the official language of their choice at work as a matter of course.



STÉPHANE ROUSSEL, MONTRÉAL

Some institutions fail to apply Part V as diligently as required. For example, given how difficult it is for Public Safety Canada employees to be able to write and to communicate with their superiors in French, the Commissioner believes that this Department's information and awareness campaign, whose launch is planned for 2011, comes not a moment too soon.

The Office of the Commissioner's audit of the Canadian Forces Individual Training and Education System found that the Navy and Air Force feel that instruction in piloting ships or aircraft should be in English for safety and efficiency reasons. Consequently, they train their French-speaking personnel in English and do not translate the instruction material provided by the firms giving the training. However, "in countries where English is not the everyday language . . . candidates mostly learn the theory in their own language until it is necessary to execute manoeuvres and techniques in real time by using designated equipment."⁷

The Commissioner of Official Languages therefore recommended that the Canadian Forces offer members of the aviation and naval occupations governed by international conventions, such as aircraft crewmembers and operations and communications officers on ships, basic training in the candidates' preferred official language and, during this training, provide French-speaking personnel with access to the pertinent English phraseology.

INEFFECTIVE LEADERSHIP

In 2007–2008, Recommendation 7 of the Commissioner's annual report proposed "that deputy heads of all federal institutions take concrete steps, by December 31, 2008, to create a work environment that is more conducive to the use of both English and French by employees in designated regions."⁸

In 2009–2010, the Office of the Commissioner analyzed the responses of 117 federal institutions to the Commissioner's recommendation.

In examining these responses, it was found that 30% of the institutions did not take concrete measures to create a workplace that is more conducive to the use of both English and French.

The Commissioner found that Air Canada, in particular, has not demonstrated the necessary resolve to act on Recommendation 7 and correct the significant language-of-work problems that have persisted for years. He also found that the Royal Canadian Mounted Police are in the same situation and have not made any real progress since receiving a "D" for language of work on their 2007–2008 report card. In fact, the organization simply has not done anything concrete to address language-of-work issues.

7 Office of the Commissioner of Official Languages, *Linguistic Audit of the Individual Training and Education System: Canadian Forces, Department of National Defence*, Ottawa, 2010, p. 16. On-line version (www.officiallanguages.gc.ca/docs/e/Forces_e.pdf) consulted September 30, 2010.

8 Office of the Commissioner of Official Languages, *Annual Report 2007–2008*, Ottawa, 2008, p. iv. On-line version (www.officiallanguages.gc.ca/docs/e/2007_08_e.pdf) consulted September 30, 2010.

In early 2009, the Royal Canadian Mounted Police announced that courses would be provided in both English and French to allow personnel in certain regions to improve some of their qualifications. Because availability of training in French is still limited, however, many employees are forced to take training in their second language, which can be a professional disadvantage.

Table 2.3 shows that the use of an employee's preferred language when preparing written materials is by far the most significant problem faced by minority-language federal employees. The Office of the Commissioner's follow-up to Recommendation 7 found that this issue received the least attention from senior management.

Since 2007, less than a quarter of institutions (24%) report having taken measures to ensure that employees feel comfortable using the official language of their choice to write e-mails, reports or memos (Table 2.4). Furthermore, a summary examination of what measures were taken suggests that very few institutions will be making a radical improvement in this area.

INSUFFICIENT PLANNING

To create a workplace conducive to the use of both English and French, federal institutions' senior management must ensure proper planning. Some major problems can often only be resolved if they are addressed at the source.

When employees are not able to use the official language of their choice at work, it is often because their supervisors do not have sufficient second-language skills. This situation is often the result of section 91 of the *Official Languages Act*, which relates to staffing, not being sufficiently taken into account, or poor planning of the institution's training needs.

2.4 PROPORTION OF FEDERAL INSTITUTIONS THAT TOOK MEASURES TO IMPROVE THE USE OF ENGLISH AND FRENCH IN THE WORKPLACE

	Proportion of institutions that took measures (%)
TOOLS (available in official language of employee's choice)	40
WRITING (feels free to use preferred official language)	24
SUPERVISION (can use preferred official language with supervisor)	52
MEETINGS (can use preferred official language)	40
TRAINING (available in official language of employee's choice)	68

For example, at Public Safety Canada, too many management positions are arbitrarily designated “English essential” or BBB/BBB bilingual. This limits employees’ opportunities to use French at work. A recent investigation by the Office of the Commissioner found that many of Public Safety Canada’s PM-06 positions in the National Capital Region are designated “English essential”, even though their incumbents directly supervise employees who have the right to use French at work. The Department is working to correct this situation and has already committed to ensuring that, in regions that are designated bilingual for language-of-work purposes, the language profiles of all EX minus 1 positions with supervision responsibilities are designated bilingual CBC/CBC. Public Safety Canada plans to meet this commitment in 2010–2011.

The Office of the Commissioner’s audit of the Canadian Forces Individual Training and Education System found some human resources planning issues that explain the difficulties experienced by the organization in offering all required specialized courses in English and French.

The process used to forecast human resource requirements does not take linguistic needs into account. “For example, it may be foreseen that 250 new resource management systems (RMS) clerks will be needed over the next few years,”⁹ but this forecast does not take into account how many unilingual and

bilingual clerks will be required to meet the linguistic needs of the various units. If this information were available, it would enable the organization to better anticipate future specialized training needs.

This finding led the Commissioner to recommend that Canadian Forces “use the data from the annual needs analysis process by occupational category in combination with the language designation of the various work units to better plan the number of courses required and to better establish the training schedules of the various establishments in French and English to accommodate language of preference.”¹⁰

INADEQUATE FOLLOW-UP

It is difficult to identify and resolve a problem without adequate follow-up. The Commissioner is therefore particularly concerned that the Government of Canada has not expressed any intention of conducting a new language-of-work survey of federal employees.

The most recent language-of-work data is from 2008, because the survey was not conducted this year. If a new survey is not done soon, it will become difficult to determine whether federal institutions are fulfilling their language-of-work obligations.

9 Office of the Commissioner of Official Languages, *Linguistic Audit of the Individual Training and Education System: Canadian Forces, Department of National Defence*, Ottawa, 2010, p. 9. On-line version (www.officiallanguages.gc.ca/docs/e/Forces_e.pdf) consulted September 30, 2010.

10 Office of the Commissioner of Official Languages, *Linguistic Audit of the Individual Training and Education System: Canadian Forces*, p. 31.

BEST PRACTICES AND MODEL INSTITUTIONS

Many problems are still hindering the use of English and French as languages of work in the federal public service. However, several institutions have implemented promising measures to improve the situation. Unfortunately, these institutions sometimes have difficulty fostering bilingualism in the workplace in certain respects.

REMINDERS THAT WORK

The results of the 2008 Public Service Employee Survey found a significant increase in English-speaking employees' satisfaction with the status of English in Citizenship and Immigration Canada offices in Quebec. The percentage of workers satisfied with the situation rose from 59% in 2007–2008 to 86% in 2008–2009.

Data collected by the Office of the Commissioner for the report card exercise shows that Citizenship and Immigration Canada implemented a variety of measures to resolve the problems in its Quebec offices. Its official languages team conducted a campaign to remind workers in designated bilingual offices of their language rights and obligations. The Department also appointed an official languages champion dedicated exclusively to the Quebec Region to raise awareness and understanding of linguistic duality in the public service.

Other federal institutions worked to improve the use of English and French in the workplace by raising employee awareness and providing them with information on official languages. For example, Public Works and Government Services Canada aimed to improve compliance with Part V of the Act by offering its supervisors language maintenance courses and reminding them that they have a duty to communicate in the official language of the employee's choice.

CLEAR DEMONSTRATION OF LEADERSHIP

The Commissioner would like to highlight the Canadian Forces' demonstration of leadership with respect to the linguistic designation of all dean positions as well as the position of principal at the Royal Military College of Canada in Kingston, Ontario. Canadian Forces has decided that, by the end of fall 2010, all of these positions will be evaluated to determine whether they should be bilingual.

This decision, in accordance with the provisions of the *Official Languages Act* and the Treasury Board Secretariat's official languages policies, was made in response to a complaint that the linguistic designation of the Dean, Division of Continuing Studies, Royal Military College of Canada, was not made objectively.

THOROUGH PLANNING: WITHIN REACH FOR SMALL INSTITUTIONS

Communications Security Establishment Canada is one of the federal institutions that has taken the most concrete measures to address Recommendation 7 of the Commissioner's 2007–2008 annual report. The organization has shown that small institutions can also achieve success in language-of-work planning.

First, it developed an action plan to create a workplace conducive to the use of both English and French in designated bilingual regions. It also ensured that its official languages champion sits on the Executive Committee.

CANADA SCHOOL OF PUBLIC SERVICE: SERVING FEDERAL INSTITUTIONS

The Canada School of Public Service has signed agreements with various federal institutions, such as Library and Archives Canada, Statistics Canada, and Public Works and Government Services Canada. These agreements stipulate that instructors from the Canada School of Public Service can offer customized language training to employees in the workplace. By helping federal employees achieve or maintain the language skills required for their positions, the instructors are helping to create and maintain a bilingual organizational culture. In 2009–2010 in the National Capital Region, 80 instructors from the Canada School of Public Service helped train more than 2,500 public servants in the workplace.

As part of its long-term planning, the organization launched the first phase of its Second Language Learning for Professional Development and Maintenance Program. This initiative aims to ensure that the process for accessing second-language courses is fair and transparent, and that employees are well-prepared to hold designated bilingual positions when needed.

As set out in the Program, Communications Security Establishment Canada organizes information sessions to help its employees choose and use online tools adapted to their skill level in their second official language. Also, an instructor from the Canada School of Public Service hosts a reading club and lunch-and-learn sessions to help employees who have reached an intermediate or advanced level in French improve their communication skills in that language.

By 2011, Communications Security Establishment Canada also plans to review some of its bilingual positions. Through this review, the organization will ensure that the language requirements of these positions are sufficient and that the incumbents are able to fulfill their obligations under the *Official Languages Act*.

Communications Security Establishment Canada will soon be launching the second phase of its language training program, which involves creating a service where employees can work with a French instructor on oral presentations intended for management or committees.

THINKING OUTSIDE THE BOX

To foster the advancement of official languages in the public service, “creativity and innovation must be liberated.”¹¹ This year, some institutions have been creative and innovative in providing a work environment that is more conducive to the use of both official languages.

For example, according to information collected by the Office of the Commissioner, Citizenship and Immigration Canada has distinguished itself by establishing a buddy system where English- and French-speaking employees in Quebec offices speak in English at certain times and in French at other times to consolidate bilingualism among the members of each group and improve their sense of belonging. This promising project will also be implemented in the Department’s New Brunswick offices in 2010–2011.

In a report commissioned by the Clerk of the Privy Council and Secretary to the Cabinet,¹² Monique Colette noted that Service Canada has developed an interesting program that enables middle managers from Quebec and Ontario to fully immerse themselves in their second language. When they are nearing

completion of their language training, the managers have the opportunity to work in their field in the other region. Other institutions would benefit from implementing this type of initiative.

TAKING THE PULSE OF EMPLOYEES

The Office of the Commissioner’s work showed that the National Film Board of Canada is one of those rare federal institutions that have been working since 2007 to improve the five language-of-work indicators in the 2008 Public Service Employee Survey. The National Film Board of Canada has set up specific monitoring mechanisms to determine whether employee satisfaction with language of work has increased or decreased.

At Communications Security Establishment Canada, the official languages champion visits employees who are taking language courses, encourages them to continue their training and solicits suggestions on how that training could be improved.

11 Monique Collette, *Workplace and Workforce Task Force. Compendium of Practical Approaches*, Ottawa, 2009, p. 8. On-line version (www.cspc-efpc.gc.ca/pbp/pub/pdfs/www-cpa-eng.pdf) consulted on September 30, 2010.

12 Monique Collette, *Workplace and Workforce Task Force. Compendium of Practical Approaches*, p. 14.

IN WRITING AND IN PERSON

The work of the Office of the Commissioner of Official Languages shows that various factors—such as a lack of understanding by managers and inadequate staffing practices—explain why federal employees in designated bilingual regions continue to have difficulty exercising their right under the *Official Languages Act* to work in the official language of their choice.

Some federal institutions have implemented useful measures to correct the problems they face in strengthening the use of English and French in the workplace. However, these types of measures need to be implemented in all federal institutions for the situation to improve and for the letter and spirit of the Act to be truly respected.

Preparing written materials in the official language of the employee's choice seemed to cause the most problems at the institutions evaluated by the Office of the Commissioner in its report card exercise this year. Moreover, according to the Office of the Commissioner's follow-up on federal institutions' response to Recommendation 7 of the 2007–2008 annual report, federal senior managers have not given nearly enough attention to this issue in their efforts to create a workplace conducive to the use of English and French.

RECOMMENDATION

The Commissioner of Official Languages recommends that deputy heads of federal institutions take specific and long-term measures to ensure that their employees are able to use the official language of their choice in written communications.

CHAPTER 3

COMMUNITY VITALITY AND PROMOTION OF OFFICIAL LANGUAGES: NOT ENOUGH A's

POSITIVE MEASURES: OBJECTIVES AND IMPLEMENTATION

Part VII of the *Official Languages Act* requires federal institutions to promote the use of English and French across Canada. They are also required to assist official language communities in developing their full potential in all areas of society by providing them with the means to thrive rather than simply exist.

Part VII stipulates that every federal institution must ensure that positive measures are taken to achieve these objectives. To guide them in the implementation of these measures, the Commissioner of Official Languages proposed three principles in his 2006–2007 annual report.

First, every federal institution has a duty to create an organizational culture and instil in its workforce a reflex to take the specific needs of official language communities into consideration in the development of its policies and programs.



MARIETTE CARRIER-FRASER, OTTAWA

Second, every federal institution has a duty to consult official language communities about their needs. The citizens that participate in these consultations will help federal institutions define the courses of action that best promote the development of their communities.

“Some institutions fail to consult the communities when they should,” noted Mariette Carrier-Fraser, President of the Assemblée de la francophonie de l’Ontario. “Others act like it’s enough to speak to two or three people on the street to get an idea of what our needs are. And some hold actual consultations but, at the end of the day, don’t take our opinions into account. These institutions need to understand that we can really help them implement the Act effectively,” she said. “We don’t expect that everything we suggest will be used. We just want to feel like someone is listening and that we are making a meaningful contribution. [translation]”¹

Third, every federal institution has a duty to ensure a systematic evaluation of the impact of its policies and programs designed to support the development of official language communities. Without this follow-up, it is impossible to measure performance and improve on it.

LESS THAN STELLAR RESULTS

The Office of the Commissioner of Official Languages’ work in 2009–2010 shows that many federal institutions have yet to make any progress on the three principles outlined in the 2006–2007 annual report. These institutions are not meeting their obligations under the *Official Languages Act* regarding the advancement of English and French.

3.1 NUMBER OF ADMISSIBLE COMPLAINTS UNDER PART VII OF THE *OFFICIAL LANGUAGES ACT*

Year	Number of complaints
2006–2007	137 ²
2007–2008	36
2008–2009	29
2009–2010	904

Table 3.1 shows that 904 admissible complaints were filed with the Office of the Commissioner this year under Part VII of the Act. These complaints are often very complex to process.

One major incident triggered most of the complaints filed in 2009–2010. The elimination of some programming produced by CBC/Radio-Canada in Windsor, Ontario, resulted in 876 admissible complaints.

Once again, however, the number of complaints received by the Office of the Commissioner does not tell the whole story.

¹ Statements made by Mariette Carrier-Fraser on August 11, 2010.

² Among the 137 complaints filed in 2006–2007, 117 concerned the Government of Canada’s decision to make cuts in the programs that the complainants considered important to maintaining the vitality of official language communities, particularly the Court Challenges Program.

An analysis of the report cards released this year reveals that too few federal institutions properly implement Part VII of the Act. In fact, out of the 16 federal institutions reviewed in 2009–2010, 10 received a D or an E. Only four—Citizenship

and Immigration Canada, Fisheries and Oceans Canada, Health Canada, and Public Works and Government Services Canada—received an A.

3.2 RATINGS OF FEDERAL INSTITUTIONS: ADVANCEMENT OF ENGLISH AND FRENCH

	Rating		
CANADA BORDER SERVICES AGENCY	E		
CANADA SCHOOL OF PUBLIC SERVICE	C		
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	E		
CITIZENSHIP AND IMMIGRATION CANADA	A		
CORRECTIONAL SERVICE CANADA	E		
FISHERIES AND OCEANS CANADA	A		
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	E		
HEALTH CANADA	A		
INDUSTRY CANADA	B		
LIBRARY AND ARCHIVES CANADA	E		
NATURAL RESOURCES CANADA	E		
PASSPORT CANADA	E		
PUBLIC SAFETY CANADA	E		
PUBLIC SERVICE COMMISSION OF CANADA	D		
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	A		
TRANSPORT CANADA	D		

Note: The institutions' results are given as letters that correspond to the following scale: A = Exemplary; B = Good; C = Fair; D = Poor; E = Very poor. A detailed rating guide describing the methodology can be found on the Office of the Commissioner's Web site at: www.officiallanguages.gc.ca.

FEDERAL INSTITUTIONS AT A STANDSTILL

Effective implementation of Part VII of the *Official Languages Act* requires federal institutions to pay attention to all aspects of the key elements in the diagram presented in the introduction. Without a thorough understanding of the Act, steadfast determination, careful planning, systematic implementation and conscientious follow-up, it is difficult to effectively advance English and French in Canada.

ADVANCEMENT OF ENGLISH AND FRENCH: THE RESPONSIBILITY OF ALL FEDERAL INSTITUTIONS

In 2009–2010, some federal institutions were still interpreting Part VII of the Act too narrowly in relation to their activities.

For example, in June 2009, CBC/Radio-Canada made major budget cuts that resulted in the elimination of all French-language radio programs produced and broadcast by radio station CBEF in Windsor, Ontario.

The French-speaking community of this region was strongly opposed to this decision. As mentioned earlier in this chapter, the Office of the Commissioner received 876 complaints claiming that this will adversely affect the development of the Franco-Ontarian community in southwestern Ontario. These complaints were made under Part VII of the Act. “[CBEF] was the only way to get local French-language news here in southwestern Ontario, [translation]”³ said SOS CBEF President Nicole Larocque.

After investigating the complaints, the Commissioner concluded that CBC/Radio-Canada did not comply with the requirements under Part VII of the *Official Languages Act*. The Crown corporation did not take into account the impact that its decision might have on the French-speaking community of southwestern Ontario, nor did it take any measures to mitigate the negative effects of this decision on the vitality of the community.

During the investigation, CBC/Radio-Canada maintained that the Commissioner did not have the authority under Part VII of the Act to investigate complaints on decisions related to programming. According to CBC/Radio-Canada, these decisions fall under the *Broadcasting Act* and are therefore under the exclusive jurisdiction of the Canadian Radio-television and Telecommunications Commission (CRTC).

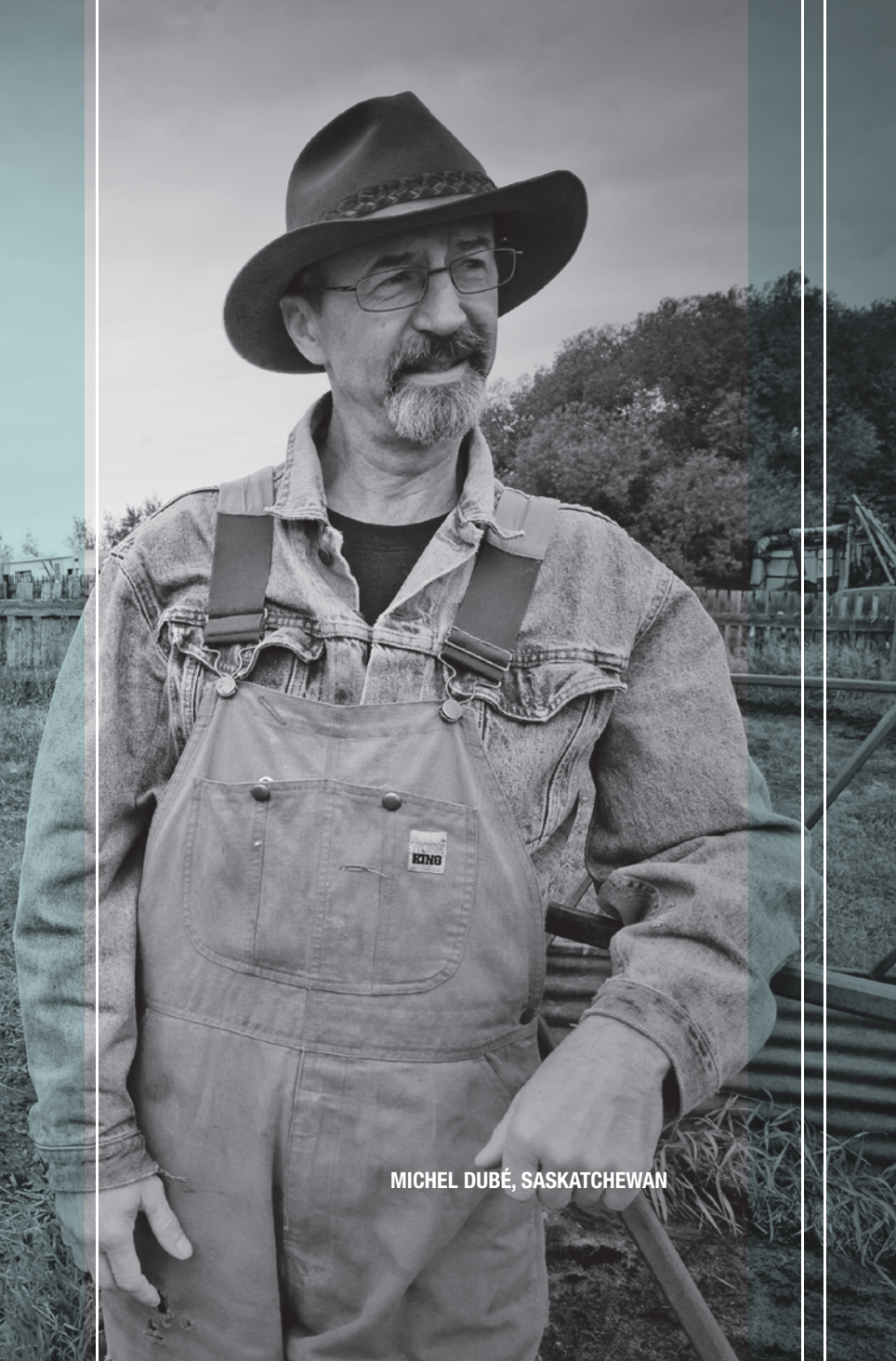
The Commissioner disagreed with the position taken by CBC/Radio-Canada and decided to seek legal recourse before the Federal Court in order to have his authority to investigate this type of complaint recognized and also to obtain an order from the Court requiring CBC/Radio-Canada to review its decision in light of its obligations under Part VII of the Act.

DEVELOPING THE PART VII REFLEX

As mentioned at the beginning of this chapter, in order to respect the letter and spirit of the *Official Languages Act*, federal institutions must develop a Part VII reflex to support the vitality of official language communities and promote both official languages. This reflex is often only sporadic, if it exists at all. “It is clear to us that there is not adequate leadership across the federal administration,” said Michel Dubé, President of the Assemblée communautaire fransaskoise. “nor is there evidence of a clear desire to work with the minority community. Based on our experience, some officials are willing to comply with the spirit of Part VII, but it depends on the individual who has the position. When that person leaves, what has already been accomplished is called into question or everything has to be started again from scratch.”⁴

³ CBC/Radio-Canada, “Fraser dénonce les compressions”, *Régional/Ontario*, February 25, 2010. On-line version (www.radio-canada.ca/regions/Ontario/2010/02/25/003-cbef-fraser.shtml) consulted September 30, 2010. In French only.

⁴ Standing Senate Committee on Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, Issue 4, Ottawa, May 10, 2010. On-line version (www.parl.gc.ca/40/3/parlbus/commbus/senate/com-e/offi-e/04evc-e.htm?Language=E&Parl=40&Ses=3&comm_id=595) consulted October 5, 2010.



MICHEL DUBÉ, SASKATCHEWAN

In 2007, the Commissioner released the report of an audit⁵ on the CRTC, an institution that needed to develop more of a reflex for promoting English and French. Since the audit, the situation has improved considerably. According to the Commissioner's follow-up⁶ in 2009, the CRTC has made considerable efforts to implement the 10 recommendations included in the 2007 audit report.

COMPLYING WITH PART VII TAKES PLANNING

Many federal institutions are not meeting their obligations to promote the use of English and French because they are not effectively targeting their actions.

The Office of the Commissioner's work shows that, in 2009–2010, the Canadian International Development Agency created a list of official language communities affected by its actions. However, because the Agency did not determine the specific needs of these communities, it was unable to take them into account when developing its programs and services.

The situation at Passport Canada is even worse. Not only did the organization fail to consult the official language communities that could be affected by its actions, it has yet to identify them.

⁵ Office of the Commissioner of Official Languages, *Implementation of Section 41 of Part VII of the Official Languages Act at the Canadian Radio-television and Telecommunications Commission*, Ottawa, 2007. On-line version (www.officiallanguages.gc.ca/html/crtc_2007_1_e.php) consulted September 30, 2010.

⁶ Office of the Commissioner of Official Languages, *Audit of the Implementation of Section 41 of Part VII of the Official Languages Act at the Canadian Radio-television and Telecommunications Commission—Follow-up*, Ottawa, 2009. On-line version (www.officiallanguages.gc.ca/html/audit_verification_102009_e.php) consulted September 30, 2010.

Likewise, Foreign Affairs and International Trade Canada and Library and Archives Canada still do not have mechanisms to determine how their major decisions—such as the addition or elimination of policies or programs—will affect official language communities and what impact these will have on the advancement of English and French.

WALKING THE TALK

While certain institutions followed some of the fundamental principles designed to help them better promote Canada's two official languages, their efforts did not produce long-term positive measures. This is the case at Transport Canada.

The Office of the Commissioner's report cards show that this Department has developed mechanisms to identify the possible effects of its programs on official language communities. After lengthy consultations with its branch and regional personnel as well as official language communities, Transport Canada also produced an action plan on Part VII.

Unfortunately, this plan was never implemented and Transport Canada did not take any real positive measures to promote linguistic duality.

THE IMPORTANCE OF EFFECTIVE FOLLOW-UP

In early 2010, Canada welcomed the world to the Vancouver 2010 Olympic and Paralympic Winter Games. It was a unique chance to show Canadians, visitors and viewers from around the world how deeply rooted linguistic duality is as a value in Canadian society.

Various proactive measures taken before the Games, including those of the Commissioner, ensured that the French language was generally very visible throughout this extraordinary event. In spite of its successes, however, the Games also had some failures. Printed copies of the French version of the official Vancouver 2010 souvenir program were hard to come by at the Games, whereas the English version was widely available. Bilingual volunteers were also sometimes hard to find. But the main issue was that there was not enough French heard during the cultural component of the official opening ceremony of the Olympic Games.

The use of French sparked a passionate debate, as was evident in the volume of letters sent to newspapers across the country, the number of comments that appeared on social media sites like Twitter and the amount of correspondence addressed to the Office of the Commissioner of Official Languages on this topic.⁷

⁷ The Office of the Commissioner of Official Languages received 89 opinion letters about the Vancouver 2010 Winter Olympic Games. Most concerned the use of French during the Games.

THE IMPORTANCE OF UNDERSTANDING NEEDS

Federal institutions should regularly check that their practices, policies and programs properly support the optimal development of official language minority communities. In fact, at any given time, some measures already in place might no longer meet the needs of these communities.

For example, Linda Leith, member of the Board of Directors for the Quebec Community Groups Network said that “federal institutions play an important part in communities getting the funding they need to undertake new projects. However, they are generally hesitant to support the continuation or repetition of projects that worked well in the past. In a situation where the strengths and weaknesses of these old projects were identified by communities and where the results of these projects could be seen, is it still necessary for the rules of federal institutions to constantly force us to reinvent the wheel? Couldn’t we sometimes just be allowed to repeat what we know works well? [translation]”⁸ asked Ms. Leith.

Between February 12 and February 28, 2010, the Office of the Commissioner received 46 complaints regarding official languages at the Games. Of this number, 38 were specifically about the presence of French during the opening ceremony. According to the complainants, the organizers of this event did not properly reflect the fact that Canada is an officially bilingual country.

The Office of the Commissioner determined during the investigation that these 38 complaints were founded under Part VII of the *Official Languages Act*. In the financial contribution agreement between Canadian Heritage and the Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games, there was a clause to ensure that the opening ceremony would be organized in a way that took into account the obligations set out in the Act.

How, then, can we explain the obvious inequality of the place given to each of the official languages during the opening ceremony? It appears that the Vancouver Organizing Committee believed that the mere presence of Francophone artists during the opening ceremony was enough to appropriately reflect Canada’s linguistic duality, even though they did not say a word.

⁸ Statements made by Linda Leith during a telephone interview on July 23, 2010.

The Commissioner recognizes the complexity of organizing this type of celebration and the limited influence of Canadian Heritage on the content of the show. However, he deplors the fact that the language clauses negotiated by Canadian Heritage in the contribution agreement were not more explicit regarding both the presence of French in the cultural part of the opening ceremony and the proper representation of official language communities.

EXEMPLARY CORRECTIVE MEASURES

Some federal institutions have found a way to distinguish themselves by the quality of the actions they take to promote the use of English and French.

THE ART OF PROBLEM SOLVING

In 2009–2010, Canadian Heritage provided more than \$30 million in funding to some 350 organizations representing Canada’s official language communities. During that year, as in past years, a number of these organizations suffered because the Department was slow to inform them as to whether they would receive funding and was late in the payment of the agreed-upon funds.

To rectify the situation, Canadian Heritage developed a two-year action plan that takes into consideration the recommendations of the House of Commons Standing Committee on Official Languages.⁹ This plan defines new service standards under which Canadian Heritage will communicate its decision to accept or reject a funding application within 24 weeks. The funding committed to an organization will then be provided within 28 working days. According to the Commissioner, Canadian Heritage should build on this initiative by consulting official language communities on how to improve procedures to process funding applications and by keeping community organizations informed on the status of their applications.

LISTENING IS ITS OWN REWARD

According to the principles of good public governance, it is up to federal institutions to consult the official language communities that will be affected by their activities. According to the Office of the Commissioner’s work, Health Canada is among the institutions that are most active in consulting these communities.

In 2009, in addition to holding annual regional consultation panels, Health Canada organized a conference that focused specifically on health issues within official language communities. One of the conference’s objectives was to discuss trends that might affect the health of community members, access to health care in their language and the teaching of health sciences in the community.

⁹ House of Commons Standing Committee on Official Languages, *The Impact of Approval and Payment Delays on Department of Canadian Heritage Recipient Organizations*, Ottawa, 2009. On-line version (<http://publications.gc.ca/site/eng/362521/publication.html>) consulted September 30, 2010.

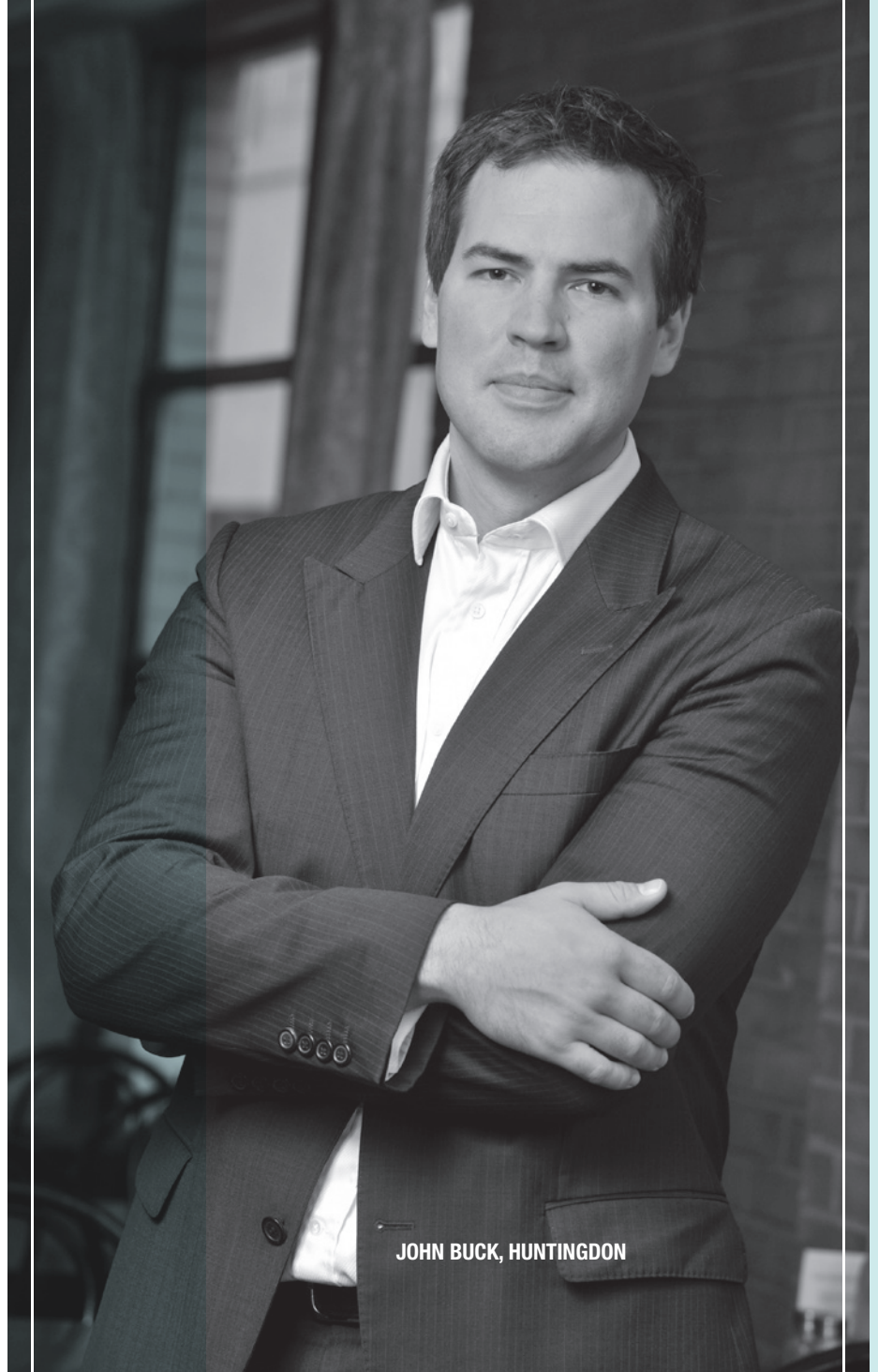
GOOD PLANNING IS GOOD BUSINESS

This year, Public Works and Government Services Canada is one of four institutions that received an A on their report card for their efforts in promoting English and French. It received this rating because its Secretariat for Official Language Minority Communities ensures that it is fully aware of the needs of official language communities and takes them into consideration at each step of the decision-making process.

By establishing quality consultation mechanisms, the Department was able to improve its service delivery to entrepreneurs in official language communities this year.

“Having access to bilingual resources in both official languages is only a starting point for community economic development for the English-speaking community in Quebec,” said John Buck, Executive Director of the Community Economic Development and Employability Corporation. “Federal departments and agencies have a great opportunity to directly and creatively respond to communities’ expectations and needs while meeting their own objectives and working together to achieve mutually desirable goals. A proposal from the Public Works Office of Small and Medium Enterprises to provide seminars to English-speaking entrepreneurs on how to become federal government suppliers is such an example of a win-win active outreach initiative.”¹⁰

10 Statements made by John Buck on July 23, 2010.



JOHN BUCK, HUNTINGDON

SUPPORTING FRENCH-SPEAKING IMMIGRANTS

According to information gathered by the Office of the Commissioner, Citizenship and Immigration Canada is one of the federal institutions that are most successful in taking into account the development of official language communities when implementing key intervention programs.

In cooperation with the Réseau de développement économique et d'employabilité, the Department developed a pilot project to study the hiring needs of businesses outside of Quebec with respect to French-speaking immigrants, evaluate the ability of these businesses to integrate this workforce, and establish a pool of immigration candidates in partnership with Pôle emploi international, a French organization.

It should be pointed out, however, that Citizenship and Immigration Canada still has difficulty promoting the equal status and use of English and French at citizenship ceremonies when new citizens are sworn in. The Department must find a solution to this problem, which affects new French-speaking citizens in particular.

HONOURING THE CONTRIBUTION OF ENGLISH-SPEAKING QUEBECERS

Fisheries and Oceans Canada received an A on its 2009–2010 report card for its measures to support the promotion of English and French. The Department particularly distinguished itself by the quality of the relationships it established with official language communities.

In Quebec, Fisheries and Oceans Canada went the extra mile by covering the transportation costs for representatives from English-speaking community fishermen's associations to attend consultation committee meetings on resource management. For Gaspé's 475th anniversary, the Department honoured the contribution of the city's English-speaking residents to the history of the Maritimes by working with the Committee for Anglophone Social Action and the Community Economic Development and Employability Corporation to prepare an audio guide on William Wakeham¹¹ and the development of commercial fishing.

THE IMPACT OF DECISIONS ON OFFICIAL LANGUAGE COMMUNITIES

Various federal institutions have developed promising methods to evaluate the effects of their programs and decisions on the development of official language communities. Western Economic Diversification Canada wants to ensure that French-speaking Westerners benefit from equal access to government programs and services. The Department accomplishes this by ensuring that its due diligence reports take into account the specific impacts of its projects and programs on French-speaking communities.¹²

¹¹ In 1879, William Wakeham was appointed fisheries inspector in the Gulf of St. Lawrence and Labrador.

¹² Standing Senate Committee on Official Languages, *Implementation of Part VII of the Official Languages Act: We can still do better*, Ottawa, 2010, p. 26. On-line version (www.parl.gc.ca/40/3/parlbus/commbus/senate/com-e/ofi-e/rep-e/rep03jun10-e.pdf) consulted September 30, 2010.

NOT ENOUGH A's

The Office of the Commissioner's work shows, once again this year, that implementing Part VII of the *Official Languages Act* is a slow process. Various factors can explain this situation. Some federal institutions still do not understand their obligations under the Act that pertain to the advancement of English and French, whereas others do not plan properly for related activities.

The Commissioner truly believes that strong leadership will enable federal institutions to address these types of shortcomings and better contribute to the use of our two official languages and the development of official language communities.

The Commissioner is very interested in the federal government's response to the Standing Senate Committee on Official Languages' report, *Implementation of Part VII of the Official Languages Act: We can still do better*,¹³ released in June 2010 following a major undertaking in which the Committee heard from more than 50 witnesses between 2007 and 2010.

In the coming months, and in his 2010–2011 annual report, whose main theme will be the promotion of the use of English and French and the development of official language communities, the Commissioner will analyze the federal government's reaction to the recommendations in the report of the Standing Senate Committee on Official Languages.

¹³ Standing Senate Committee on Official Languages, *Implementation of Part VII of the Official Languages Act: We can still do better*.



CONCLUSION

A VIRTUOUS CIRCLE

A little over 40 years ago, the Parliament of Canada adopted one of the most important pieces of legislation in the country's history: the *Official Languages Act*. Every year since the country took this pivotal step, the Commissioner of Official Languages has reported on the way federal institutions comply with the Act and how, in so doing, they fulfill the vision of a Canada where English and French have equal status.

All too often, the Commissioner's findings have been negative. Although definite progress has been made in official languages over the years, a number of problems remain. Every year, too many Canadians who file legitimate complaints indicate that they did not receive the services in English or French to which they are entitled; that the federal institution that employs them does not enable them to work in the language of their choice; or that their official language community does not get the support it needs to reach its full potential.

In addition, there have been many missed opportunities in the application of the Act, as shown by the federal institutions' report cards, the results of audits and observations by the Office of the Commissioner of Official Languages, and data collected with tools such as the 2008 Public Service Employee Survey.

Some people feel that, because of federal institutions' poor performance with regard to compliance, substantial revisions need to be made to the Act, the *Official Languages (Communications with and Services to the Public) Regulations* and current models of linguistic governance.

For example, the President of the Fédération des communautés francophones et acadienne du Canada, Marie-France Kenny, deplores the fact that, lacking any political or administrative will, "several federal institutions are not even complying with the bare minimum"¹ in applying the Act. This observation led the Fédération to propose a review of the regulation that defines the public's right to services in French, as well as the federal linguistic governance model, federal institutions' duty to support official language communities and the role of the Commissioner.

¹ Fédération des communautés francophones et acadienne du Canada, *FCFA Unveils a New Approach for the Full Implementation of the Official Languages Act*, Ottawa, 2010. On-line version (www.fcfa.ca/index.cfm?Voir=comm_autre&id=2085&Repertoire_No=-786718320) consulted September 30, 2010.

Senator Maria Chaput recently tabled Bill S-220, which aims to update the provisions of the Act regarding communications with and services to the public. The senator feels that, “it is crucial that Canada’s linguistic regime fully take into account the remedial purposes of linguistic rights, the substantive equality of our two official languages, Canada’s sociolinguistic reality right now, as well as the assimilative pressures that threaten our official language minority communities.”² To this end, Bill S-220³ proposes to modify the criteria used to determine which federal offices are required to serve the public in English and French. It also seeks to guarantee that services of equal quality are provided to the public in both official languages, a principle that has been recognized by the Supreme Court of Canada in the *DesRochers* case.

The Commissioner is closely monitoring the progress of these two initiatives. However, he strongly believes that every institution is currently capable of making better use of the five key elements of implementing the Act (know, want, plan, do, check) and, in doing so, fostering the equality of English and French and promoting linguistic duality in Canada.

For example, in Vancouver, British Columbia, the Canada Border Services Agency clearly showed that, within an office, the leadership of a few employees or managers is often enough to increase the extent to which both official languages are taken into account in the delivery of services to the general public.

Communications Security Establishment Canada demonstrated that through effective planning, all federal institutions—large and small—are capable of providing their staff with better opportunities to work in the language of their choice.

In the matter of French-speaking immigrants, Citizenship and Immigration Canada proved that it is possible to use creative approaches to consider the needs of official language communities and institute measures to support their development.

All institutions will need to work hard to pursue these kinds of measures in the coming years with both determination and enthusiasm.

² Senate, *Debates of the Senate*, 3rd Session, 40th Parliament, Volume 147, Issue 38, Ottawa, June 15, 2010. On-line version (www.parl.gc.ca/40/3/parlbus/chambus/senate/deb-e/038db_2010-06-15-e.htm?Language=E&Parl=40&Ses=3) consulted September 30, 2010.

³ Senate, Bill S-220, *An Act to amend the Official Languages Act (communications with and services to the public)*, 3rd Session, 40th Parliament, Ottawa, 2010. On-line version (www2.parl.gc.ca/content/Senate/Bills/403/public/S-220/S-220_1/s-220_text-e.htm) consulted September 30, 2010.

Of course, it will always be a challenge to adopt these kinds of measures and ensure optimal application of the *Official Languages Act*: the economic climate will never be ideal; other priorities might take precedence; the requisite leadership may not always be in place; and complex challenges will be encountered.

However, this in no way changes the fact that federal institutions should willingly, instinctively and proactively fulfill their responsibilities under the Act by fostering the use of both official languages and promoting linguistic duality at every opportunity.

This is not only in the best interest of the Canadian public, official language communities and employees of federal institutions, it is also in the best interest of the institutions themselves. Creating an environment conducive to the use and promotion of English and French will greatly enhance their capacity to provide effective services and to develop better public policies.

Above all, living up to our official languages responsibilities is in the best interest of the country, for it is Canada that would suffer irreparably if linguistic duality—one of its core values—were to become eroded.



RECOMMENDATIONS

- The Commissioner of Official Languages recommends that the Minister of Transport table a new bill as quickly as possible to protect and uphold the language rights of the travelling public and Air Canada employees, and make Jazz directly subject to the *Official Languages Act*.
- The Commissioner of Official Languages recommends that the deputy heads of federal institutions take all of the necessary measures to ensure that people who contact offices with bilingual service delivery obligations are informed, unequivocally, that they have the right to use English or French. Institutions should evaluate, in particular, whether new active-offer strategies allow them to better inform Canadians of their language-of-service rights.
- The Commissioner of Official Languages recommends that deputy heads of federal institutions take specific and long-term measures to ensure that their employees are able to use the official language of their choice in written communications.

APPENDICES

APPENDIX A: ADMISSIBLE COMPLAINTS IN 2009–2010

The Office of the Commissioner of Official Languages received 1477 admissible complaints this year. Table 1 shows the proportion of complaints according to province/territory and the relevant part/section of the *Official Languages Act*.

The 876 complaints against CBC/Radio-Canada regarding budget cutbacks in Windsor are included in the “Advancement of English and French” column.

TABLE 1 ADMISSIBLE COMPLAINTS IN 2009–2010,
BY PROVINCE/TERRITORY AND CATEGORY

	Admissible complaints (%)	Service to the public (%)	Language of work (%)	Equitable participation (%)	Advancement of English and French (%)	Language requirements (%)	Other (%)
NEWFOUNDLAND AND LABRADOR	0.7	2.4	0	0	0	0	0
PRINCE EDWARD ISLAND	1.2	3.5	0	0	0	3	0
NOVA SCOTIA	2.5	4.9	4.2	18.2	0	30.3	0
NEW BRUNSWICK	2.9	5.5	11.3	18.2	0.2	18.2	0
QUEBEC	4.6	10	21.1	18.2	0.1	12.1	14.3
NATIONAL CAPITAL REGION (QUEBEC)	6.3	16	11.3	0	1.2	6.1	0
NATIONAL CAPITAL REGION (ONTARIO)	9.5	19.5	43.7	45.5	0.7	21.2	57.1
ONTARIO	64.7	14.2	7	0	97.6	9.1	28.6
MANITOBA	1.8	5.5	0	0	0.2	0	0
SASKATCHEWAN	0.5	1.6	1.4	0	0	0	0
ALBERTA	1.7	5.5	0	0	0	0	0
BRITISH COLUMBIA	2.6	8.4	0	0	0	0	0
YUKON	0.1	0.2	0	0	0	0	0
NORTHWEST TERRITORIES	0.1	0.4	0	0	0	0	0
NUNAVUT	0	0	0	0	0	0	0
OUTSIDE CANADA	0.7	2.2	0	0	0	0	0
TOTAL	100	100	100	100	100	100	100
(Total number of complaints)	(1477)*	(451)	(71)	(11)	(904)	(33)	(7)

* Total number of complaints including the 876 complaints related to the CBC/Radio-Canada budget cuts in Windsor, Ontario.

APPENDIX B: REPORT CARDS FOR 16 FEDERAL INSTITUTIONS

EVALUATION PROCESS

Report cards were issued for 16 federal institutions. In 2009–2010, six institutions that had never received report cards were added to ensure that a variety of institutions are evaluated every year. Some 200 institutions are subject to the *Official Languages Act*.

The institutions were chosen on the basis of their mandate, their size and the number of admissible complaints, particularly those concerning language of work. The selection also took into account previous report card results and the need to achieve a balance among different types of institutions.

Some new criteria were introduced this year for evaluating institutional performance:

- Federal institutions' obligation, following the ruling in *DesRochers v. Canada (Industry)*, to take the needs of official language communities¹ into consideration when delivering their services;
- Action taken with regard to language of work since the most recent Public Service Employee Survey was conducted in 2008.

As it was last year, performance evaluation is based on quantitative results. This year, the report cards reflect the annual report's main theme—language of work—and so more weight has been given to the language-of-work data than in the past.

A qualitative assessment was also conducted of the implementation of the institutions' official languages programs and of Part VII of the Act concerning the vitality of official language communities and the advancement of English and French.

Full report cards for the 16 institutions that were evaluated are posted on the Office of the Commissioner of Official Languages Web site at www.officiallanguages.gc.ca.

¹ The term "official language communities" is used to designate official language minority communities.

TABLE 2 RATINGS*
TABLE

	Program management	Service to the public	Language of work	Equitable participation	Advancement and support	Overall rating
CANADA BORDER SERVICES AGENCY	E	C	E	B	E	E
CANADA SCHOOL OF PUBLIC SERVICE	C	E	C	A	C	C
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	D	C	C	D	E	D
CITIZENSHIP AND IMMIGRATION CANADA	C	D	D	A	A	C
CORRECTIONAL SERVICE CANADA	B	D	D	D	E	D
FISHERIES AND OCEANS CANADA	A	C	C	D	A	B
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	D	C	E	A	E	E
HEALTH CANADA	A	B	D	E	A	C
INDUSTRY CANADA	B	D	D	D	B	C
LIBRARY AND ARCHIVES CANADA	D	C	B	E	E	D
NATURAL RESOURCES CANADA	E	C	E	D	E	E
PASSPORT CANADA	E	B	B	A	E	C
PUBLIC SAFETY CANADA	C	D	C	A	E	C
PUBLIC SERVICE COMMISSION OF CANADA	C	C	C	A	D	C
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	A	B	B	D	A	B
TRANSPORT CANADA	A	B	B	C	D	C

* The institutions' results are given as letters that correspond to the following scale:
A = Exemplary, B = Good, C = Fair, D = Poor, E = Very poor. For more information on how institutions were evaluated, please see the rating guide on the Office of the Commissioner of Official Languages Web site at www.officiallanguages.gc.ca.

RESULTS OF OBSERVATIONS

The Office of the Commissioner of Official Languages made observations in person, by telephone and by e-mail of the institutions that were evaluated.

Most of the observations were made between January and March 2010. Each institution provided a list of its bilingual offices from which a sample was chosen by Statistics Canada for observation.

The observations in person assessed the availability of bilingual visual active offer (posters, pictograms, publications), active offer in person (bilingual greeting such as “Hello, bonjour”) and the availability of service in the language of members of the official language community.

The observations by telephone assessed the availability of bilingual active offer by an automated system or an employee (“Hello, bonjour”), and the availability of service in the language of members of the official language community.

The observations by e-mail assessed the availability of service in both official languages, based on the number of e-mails sent. The number of replies in one language was compared with the number of replies in the other language, for the same number of requests. Also observed was the average time taken to reply in one language as compared to the other, in order to determine whether the response time was similar.

TABLE 3 RESULTS OF OBSERVATIONS
ON SERVICE 2009–2010

	IN PERSON		BY TELEPHONE			BY E-MAIL		Rating
	Active visual offer (%)	Active offer (%)	Availability of service (%)	Active offer (%)	Availability of service (%)	Appropriate response time (%)	Rating	
CANADA BORDER SERVICES AGENCY	98	46	89	80	81	75	53	C
CANADA SCHOOL OF PUBLIC SERVICE	91	40	70	57	54	***	***	E
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	95	62	90	81	100	100	41	C
CITIZENSHIP AND IMMIGRATION CANADA	100	56	86	100	29	91	63	D
CORRECTIONAL SERVICE CANADA	86	32	72	70	53	**	**	D
FISHERIES AND OCEANS CANADA	96	61	86	88	78	75	38	C
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	97	56	92	69	80	100	94	C
HEALTH CANADA	86	30	74	89	91	89	95	B
INDUSTRY CANADA	87	40	73	81	74	80	20	D
LIBRARY AND ARCHIVES CANADA	100	56	100	100	100	88	30	C
NATURAL RESOURCES CANADA	79	35	76	71	82	100	88	C
PASSPORT CANADA	98	48	96	100	100	*	*	B
PUBLIC SAFETY CANADA	84	48	75	74	84	78	37	D
PUBLIC SERVICE COMMISSION OF CANADA	98	52	97	86	82	75	41	C
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	96	50	80	71	100	***	***	B
TRANSPORT CANADA	98	47	88	68	77	***	***	B

* The Office of the Commissioner of Official Languages was not able to make anonymous e-mail observations for this institution.

** The Office of the Commissioner of Official Languages was not able to make e-mail observations for this institution, because it does not communicate with the public by e-mail.

*** Given the low number of responses obtained during the Office of the Commissioner of Official Languages' e-mail observations, the results of these observations are not available.

N.B.: For more information on how institutions were evaluated, please see the rating guide on the Office of the Commissioner of Official Languages Web site at www.officiallanguages.gc.ca.

APPENDIX C: 2008 PUBLIC SERVICE EMPLOYEE SURVEY RESULTS ON LANGUAGE OF WORK IN DESIGNATED BILINGUAL REGIONS

For the 2009–2010 report card exercise, the Office of the Commissioner of Official Languages used data from the 2008 Public Service Employee Survey, obtained directly from Statistics Canada. The survey sought to assess the satisfaction of employees of federal institutions with respect to language of work.

Specifically, employees were asked to state their level of satisfaction for each of the following five statements:

1. The material and tools provided for my work, including software and other automated tools, are available in the official language of my choice.
2. When I prepare written materials, including electronic mail, I feel free to use the official language of my choice.

3. When I communicate with my immediate supervisor, I feel free to use the official language of my choice.
4. During meetings in my work unit, I feel free to use the official language of my choice.
5. The training offered by my work unit is in the official language of my choice.

The survey data reflect the satisfaction of French-speaking employees in the designated bilingual regions of Ontario, in the National Capital Region and in New Brunswick, as well as the satisfaction of English-speaking employees in the designated bilingual regions of Quebec.

The report cards of the 16 institutions that were evaluated are posted on the Office of the Commissioner of Official Languages Web site at www.officiallanguages.gc.ca.

TABLE 4 RESULTS OF 2008 PUBLIC SERVICE EMPLOYEE SURVEY² ON LANGUAGE OF WORK FOR DESIGNATED BILINGUAL REGIONS: PERCENTAGE OF EMPLOYEES WHO AGREE WITH THE STATEMENTS

	English-speaking employees (Que.) (%)	French-speaking employees (N.B., Ont., NCR) (%)
CANADA BORDER SERVICES AGENCY	67	65
CANADA SCHOOL OF PUBLIC SERVICE	**	87
CANADIAN INTERNATIONAL DEVELOPMENT AGENCY	*	83
CITIZENSHIP AND IMMIGRATION CANADA	86	74
CORRECTIONAL SERVICE CANADA	58	74
FISHERIES AND OCEANS CANADA	**	77
FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA	**	74
HEALTH CANADA	53	67
INDUSTRY CANADA	64	75
LIBRARY AND ARCHIVES CANADA	**	82
NATURAL RESOURCES CANADA	**	72
PASSPORT CANADA	95	84
PUBLIC SAFETY CANADA	**	79
PUBLIC SERVICE COMMISSION OF CANADA	85	87
PUBLIC WORKS AND GOVERNMENT SERVICES CANADA	78	81
TRANSPORT CANADA	66	75
AVERAGE	74	76

N.B.: Percentages represent the proportion of people who somewhat agree or strongly agree with the statements given.

For more information on the statements, please see the preceding page as well as Table 2.3 in Chapter 2.

* The satisfaction rate of English-speaking employees could not be measured because the institution has no offices in Quebec.

** The data was withdrawn due to the low number of respondents.

² Statistics Canada, 2008 Public Service Employee Survey, Ottawa, 2009.

APPENDIX D: KEY LEGAL PROCEEDINGS INVOLVING THE COMMISSIONER OF OFFICIAL LANGUAGES

“However, to ensure that the *Official Languages Act* has some teeth, that the rights or obligations it recognizes or imposes do not remain dead letters, and that the members of the official language minorities are not condemned to unceasing battles with no guarantees at the political level alone, Parliament has created a “remedy” in the Federal Court”³

The Commissioner of Official Languages is mandated to take all actions necessary to ensure the full recognition of the equality of the use and status of the two official languages and to ensure compliance with the spirit and intent of the *Official Languages Act*.

As an ombudsman, the Commissioner promotes dialogue and cooperation in order to encourage federal institutions and other organizations subject to the Act to fulfill their obligations. There are times, however, when the Commissioner or the complainants must apply to the courts to deal with federal institutions that do not recognize their obligations, or that do not take appropriate action to fulfill them.

The Commissioner may participate in court proceedings—either as a party or as an intervenor—when other means at his disposal have not been successful or when an action initiated by a complainant raises important issues with regard to the interpretation of the Act or the implementation of federal institutions’ obligations. The Commissioner is currently involved in two proceedings before the Federal Court pertaining to the Act.

RECOURSE INVOLVING CBC/RADIO-CANADA

In March 2009, following the announcement of budget cuts to CBEF Windsor that led to the elimination of local French-language programming for Windsor and southwestern Ontario, the Commissioner received 876 complaints regarding CBC/Radio-Canada’s failure to meet its linguistic obligations to the French-speaking community in southwestern Ontario.

For a number of years now, CBC/Radio-Canada has maintained that issues affecting its programming are not subject to the *Official Languages Act* and may not be investigated by the Commissioner of Official Languages. According to CBC/Radio-Canada, such issues are exclusively regulated by the Canadian Radio-television and Telecommunications Commission under the *Broadcasting Act*.

The Commissioner believes that he has authority to investigate since CBC/Radio-Canada must respect the obligations set out in Part VII of the *Official Languages Act* concerning the promotion of linguistic duality and the development of English and French linguistic minority communities in Canada. The Commissioner also disagrees with CBC/Radio-Canada’s definition of activities that fall under its programming.

Despite numerous attempts to resolve this conflict regarding the application of the Act, CBC/Radio-Canada maintained its position and refused to participate in the Office of the Commissioner’s investigation. In his investigation report, the

³ *Forum des maires de la Péninsule acadienne v. Canada (Canadian Food Inspection Agency)*, 2004 FCA 263, [2004] F.C.J. No. 1235 at para. 17.

Commissioner concluded that CBC/Radio-Canada had not respected its obligations under Part VII of the *Official Languages Act*. He therefore recommended that CBC/Radio-Canada take action to comply with that part of the Act.

Given CBC/Radio-Canada's position towards its obligations under Part VII of the Act, the Commissioner filed an application asking the Federal Court to order CBC/Radio-Canada to review its decision regarding CBEF Windsor in light of its obligation to support the development of southwestern Ontario's French-speaking community, and to take the necessary steps to mitigate the negative impact of its decision on that community.

RECOURSE INVOLVING AIR CANADA

On March 26, 2010, Michel and Lynda Thibodeau filed an application in Federal Court against Air Canada pursuant to Part X of the *Official Languages Act*. The application follows a number of complaints that they had filed with the Office of the Commissioner of Official Languages regarding the lack of French service by Air Canada and Air Canada Jazz during two trips they had taken. After conducting an investigation, the Commissioner deemed several of the complaints to be founded.

In their legal proceedings, Mr. and Mrs. Thibodeau are asking the Court to rule that the airline company did not respect their language rights and has been systematically failing to meet its obligations for a number of years. They are also asking the Court to order Air Canada to comply with Part IV of the Act, to provide them with a formal letter of apology and to pay them punitive and exemplary damages.

Given the importance of the issues raised in this matter, particularly with regard to the scope of Air Canada's obligations and the systemic nature of the alleged violations, the Commissioner of Official Languages was granted intervenor status before the Federal Court on June 11, 2010.

The case is proceeding and will probably be heard in the coming year.

APPENDIX E: IMPORTANT LANGUAGE RIGHTS DECISIONS⁴

The Commissioner of Official Languages monitors language rights cases that are brought before the courts, particularly those involving the interpretation of the provisions of the *Official Languages Act*. The Commissioner also uses the statutory powers conferred on him to participate in certain cases in order to ensure a coherent interpretation of language rights.

The courts play a key role in the evolution of language rights. Their decisions help to clarify the nature and scope of federal institutions' obligations under the Act. As such, case law constitutes an important tool for advancing linguistic duality in Canadian society.

In 2009–2010, the Federal Court handed down two important decisions that clarified the obligations of institutions with regard to both the language designation of positions and the implementation of their commitment to the development of official language communities.

THE VIA RAIL CASE

This application was brought pursuant to complaints filed by a group of 39 VIA Rail employees regarding their employer's language policy and its impact on their opportunities for advancement. This policy sought to impose, among other things, language requirements for some positions on certain routes in Western Canada. Under the *Official Languages (Communications with and Services to the Public) Regulations*, VIA Rail was not

obligated to serve the travelling public in one or the other official language on these routes. The Office of the Commissioner of Official Languages investigated the complaints and concluded that some were founded.

Some of the employees who had complained to the Office of the Commissioner applied to the Federal Court for an order forcing VIA Rail to implement the recommendations issued by the Commissioner in his investigation report. VIA Rail challenged the application on the grounds that the matter fell within the exclusive jurisdiction of the arbitrator under the collective agreement. The Commissioner intervened in this matter to argue that the Federal Court had jurisdiction to rule on the application.

The Court affirmed the Commissioner's position that the Federal Court had jurisdiction to hear and rule on the matter pursuant to section 77 of the *Official Languages Act* and, if applicable, to award such remedy as it deemed appropriate and fair under the circumstances. As for the issue of whether VIA Rail had respected section 91 of the Act in designating positions as bilingual on routes not mentioned in the Regulations, the Court confirmed that:

“... a federal institution cannot, in the guise of purportedly giving effect to its obligations under Part IV or V of the *Official Languages Act*, set language requirements that are not objectively related to the provision of bilingual services in the particular setting where those functions are performed by the employee.”⁵

⁴ Other language rights decisions on issues other than the compliance of federal institutions are reported in Volume I of the 2009–2010 annual report of the Office of the Commissioner of Official Languages.

⁵ *Brian Norton v. VIA Rail Canada Inc.*, 2009 FC 704, [2009] F.C.J. No. 1043 at para. 79.

However, the Court stated that the criteria set out in the Regulations for identifying routes where there is significant demand for services in the language of the minority should not be rigidly adhered to, and that an institution could exceed the minimal obligations provided for in the Regulations.

“ . . . [The] Regulations establish a legal presumption facilitating the proof that the Charter or *Official Languages Act* criteria are met. This is their basic purpose but they are not exhaustive and should not be rigidly interpreted and applied.”⁶

The Court added that the objectivity criterion mentioned in section 91 of the Act must be examined according to the language designation of individual positions in order to determine whether a language designation might be required to meet a demand for bilingual services. In order to advance both official languages, the analysis must also take into account the proactive obligations imposed on federal institutions by section 41 of the Act.

PICARD V. THE CANADIAN INTELLECTUAL PROPERTY OFFICE ET AL.

Following an investigation by the Commissioner, Mr. Frédéric Picard made an application to the Federal Court pursuant to the Act against the Canadian Intellectual Property Office and the Commissioner of Patents.

He maintained that all documents accompanying a patent issued by the Office should be in both official languages, rather than only certain information such as the name or title of the invention and the dates the application was filed and the patent granted.

The Federal Court studied various provisions of the Act to determine whether the Commissioner of Patents had respected his linguistic obligations under sections 7, 12 and 22 and Part VII of the *Official Languages Act*. The Court initially concluded that section 7 of the Act⁷ did not apply to patents. As for section 12 of the Act,⁸ the Court concluded that patents are not issued by federal institutions, but rather by the inventors, who themselves define the scope of their right in formulating their claims. The Commissioner of Patents only confirms the inventor's right by verifying that the patent application meets the conditions of the *Patent Act*. As a result, section 12 of the *Official Languages Act* does not apply. Based on its conclusion that the Patent Office's Web site simply provides a partial reproduction of the text of patents as written by the inventors, the Court concluded that there was no violation of section 22 of the Act,⁹ or of the Charter.

The Court did, however, conclude that the Patent Office had not respected the provisions of Part VII of the Act, which impose specific obligations on federal institutions to take positive measures to implement the government's commitment

6 *Brian Norton v. VIA Rail Canada Inc.*, 2009 FC 704, [2009] F.C.J. No. 1043 at para. 98.

7 Section 7 of the *Official Languages Act* provides that certain legislative instruments or instruments made in the exercise of a prerogative must be made in both official languages.

8 Section 12 of the *Official Languages Act* provides that instruments directed to or intended for the public purporting to be issued by a federal institution must be made and issued in both official languages.

9 Section 22 of the *Official Languages Act* provides the circumstances in which the communications and services of federal institutions must be in both official languages.

to official language communities and the use of both official languages. The Court rejected the restrictive interpretation presented by the Attorney General of Canada to the effect that Part VII does not guarantee specific measures and does not confer on the Court the power to award a remedy. The Court stated:

“Deciding that the courts do not have the power to make orders forcing the government to take specific measures to remedy violations of its obligations under Part VII would make Parliament’s choice to ‘give it teeth’ by making it enforceable pointless and ineffective.”¹⁰

The Court concluded that the Patent Office must make abstracts of patents available in both official languages, as recommended by the Commissioner of Official Languages in his investigation report.

This is the first time that a court has ruled on the rights and obligations defined in Part VII of the Act since it was amended by Parliament in 2005. The Attorney General decided not to appeal the decision. This decision creates a precedent that could have consequences for the vitality of official language communities in Canada and the advancement of English and French in Canadian society.

¹⁰ *Frédéric Picard v. the Commissioner of Patents and the Canadian Intellectual Property Office*, 2010 FC 86, [2010] F.C.J. No. 88 at para. 76.