



Wednesday, May 28, 2003

**The Standing Senate Committee on Official Languages**  
has the honour to table its

### **THIRD REPORT**

On February 5, 2003, the Senate asked your Committee to study the report entitled *Environmental Scan: Access to Justice in Both Official Languages* (revised on July 25, 2002), which had been commissioned by Justice Canada. Your Committee was specifically mandated to study this report with a view to clarifying access to language rights and their exercise under the *Divorce Act*, the *Bankruptcy Act*, the *Criminal Code*, the *Contraventions Act* and other related acts where applicable. Your Committee was to report on its proceedings under this Order of Reference by May 31, 2003.

### **BACKGROUND**

Justice Canada commissioned the report entitled *Environmental Scan: Access to Justice in Both Official Languages* to track recent developments in language law. A revised version of the report was presented on July 26, 2002. It identifies the needs specific to each province and territory with respect to access to justice in both official languages in three areas under federal jurisdiction: criminal law, bankruptcy law, and divorce and support law.

The authors of the *Environmental Scan* found general dissatisfaction with legal services in French in these three areas in the nine provinces and three territories where French is the minority language. In Quebec, it appears that access to court and legal services in the minority language (English) in these three areas under federal jurisdiction is reasonably satisfactory.

The *Environmental Scan* proposes a variety of approaches to resolving the specific problems in each province and territory, because each is at a different stage regarding access to justice in both official languages. These approaches most notably involve compliance with the language obligations in the *Criminal Code*, a stronger coordinating role for Justice Canada, and the recruitment and training of bilingual legal practitioners.

## FOLLOW-UP TO THE *ENVIRONMENTAL SCAN*

In June 2002, the former Standing Joint Committee on Official Languages published a report entitled *The Justice System and Official Language Communities*, in which it recommended that the federal government:

- inform the Committee by September 30, 2002, of the measures it intended to take in following up on the *Environmental Scan* on access to justice in both official languages;
- examine, in cooperation with its provincial and territorial counterparts, models for the delivery of judicial services that are most likely to meet the needs of official language communities;
- assist provincial and territorial governments in implementing the appropriate institutional structures to ensure that parties to proceedings genuinely have access to the justice system in both official languages.<sup>1</sup>

In November 2002, the government of Canada responded officially to the report of the Standing Joint Committee on Official Languages. It said that the responsible Deputy Ministers of Justice had authorised in the summer of 2002 the creation of a federal/provincial-territorial working group (“FPT group”), participation in which would be on a voluntary basis. The FPT group, co-chaired by Justice Canada, was to determine the mechanisms that should be put in place to rectify the shortcomings identified in the *Environmental Scan*, while seeking to adapt the solutions to the unique circumstances prevailing in each province and territory.

Initially, the FPT group was made up of representatives from Justice Canada, Alberta, British Columbia, Manitoba, Ontario, New Brunswick and Yukon. Representatives of Nunavut and Saskatchewan, and government officials responsible for francophone affairs in these various jurisdictions have since joined the FPT group. Prince Edward Island has specifically asked to be kept abreast of the FPT group’s progress, without wishing for official membership at this time. Four other governments are still not represented on the FPT group: Newfoundland and Labrador, Nova Scotia, Quebec and the Northwest Territories.

The Justice Canada officials<sup>2</sup> who testified before your Committee on April 7, 2003, noted that the FPT group has met twice since its creation. Its mandate, which is for an indeterminate period, has been defined. In the short term, the FPT group’s activities will focus on bringing governments and the communities closer together through partnerships, and on consolidating what has been achieved to date. These activities will be facilitated by the introduction of a consultation mechanism designed to bring legal personnel and parties to proceedings closer together while formulating solutions tailored to the situation in each region. One of the FPT group’s priorities will be to support the full implementation of the language obligations contained in the *Criminal Code*.

Your Committee notes that the federal Action Plan for Official Languages, released on March 12, 2003, provides for \$45.5 million over five years for access to justice in both official languages. Of this amount, \$18.5 million will enable Justice Canada to invest in targeted measures designed to

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<sup>1</sup> Standing Joint Committee on Official Languages, *The Justice System and Official Language Communities*, Ottawa, Parliament of Canada, June 2002, p. 6.

<sup>2</sup> Andrée Duchesne, National Coordinator, POLAJ; Suzanne Poirier, General Counsel and Coordinator, Francophonie, Justice in Official Languages and Bijuralism; and Marc Tremblay, General Counsel and Director, Official Languages Law Group.

improve access to the justice system in both official languages: “funding for various projects to be carried out with the assistance of government and non-government partners; stable funding for French-speaking lawyers’ associations and their national federation; the creation of a mechanism for consultation with minority official language communities; and the development of tools for training the Department of Justice legal counsels on language rights.”<sup>3</sup> Justice Canada is also preparing to fund language and legal terminology training for Crown attorneys, provincially appointed judges and court personnel, on an *ad hoc*, decentralised basis, adapted to each region.

Your Committee is delighted by the work that the FPT group has begun on access to justice in both official languages to follow up on the findings of the *Environmental Scan*. Your Committee also applauds the funding recently announced in the Action Plan for Official Languages and the projects that Justice Canada intends to launch with this new funding. Your Committee notes, however, that these are only the first steps in the work that needs to be done and that the coming years will be decisive. In particular your Committee is concerned about specific aspects of access to justice in both official languages.

First of all, your Committee believes that it is essential for bilingual judges and court personnel to be available throughout Canada, to ensure access to justice in the language of minority. The government must work in collaboration with lawyers’ associations to find ways of encouraging bilingual law graduates to return to their home regions to practise law.

Further, your Committee considers that bilingualism should be one of the selection criteria in assessing candidates for new appointments to the bench. Because the lack of bilingual judges is a serious problem in a number of regions of this country, the eligibility lists drawn up by the various provincial committees should indicate which candidates meet the bilingualism criterion. This would give the Minister of Justice access to an eligibility list of functionally bilingual lawyers by province and territory, to which he could refer when undertaking the appointment of new judges. The Minister should definitely have the means to make better use of the pool of bilingual candidates.

Your Committee is delighted by Justice Canada’s promise to fund language and legal terminology training, to be provided on an *ad hoc*, decentralised basis, adapted to each region. Language and legal terminology training should also be made available to all judges and to all agents who represent the Minister before a court.

Your Committee finds it disturbing that only between 40 and 60 per cent of judges inform parties to proceedings, when they are not represented by a lawyer, of their right to be heard in the official language of their choice. To ensure the application of the provisions in section 530 of the *Criminal Code*, which guarantee accused persons the right to be tried in the official language of their choice, it is important to take steps to ensure a truly proactive offer of legal and judicial services in the language of the minority. It is important to bear in mind that in *Beaulac*, the Supreme Court ruled that language rights must be given a broad and generous interpretation by the courts. Justice Canada must see to it that judges are made more aware of these provisions in the *Criminal Code*, so that they consistently inform parties that they have the right to be heard in the official language of their choice. It would also be desirable that section 530 serve as a model for extending language rights to bankruptcy, divorce and support cases.

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<sup>3</sup> Government of Canada, *The Next Act: New Momentum for Canada’s Linguistic Duality. The Action Plan for Official Languages*, Ottawa, National Library of Canada, 2003, p. 45.

Two pilot projects have been set up in recent years in Manitoba and Saskatchewan, to improve access to judicial and legal services in both official languages. The single-window model (Manitoba), and the launch of a travelling provincial court staffed by bilingual personnel (Saskatchewan) have both led to notable improvements in the quality and equality of services offered in the two official languages. It is vital that the government make a commitment to support these two pilot projects over the long term, and that it investigate the possibility of introducing similar models in other provinces and territories.

Lastly, your Committee believes it is essential that all legal documentation, such as charges, be accessible in both official languages in those regions of the country where this is not already the case.

## **RECOMMENDATIONS**

Therefore, your Committee makes the seven following recommendations:

1. That the federal government encourage representatives of the governments of Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nova Scotia and Quebec to join the federal/provincial-territorial working group co-chaired by Justice Canada, because the problem of access to justice in both official languages also affects these jurisdictions.
2. That the federal/provincial-territorial working group develop incentives designed to encourage bilingual law graduates to return to their home regions to practise law.
3. That a candidate's bilingualism be one of the selection criteria in evaluating nominations for appointments to the bench, and that an eligibility list of functionally bilingual lawyers in each province and territory be available for reference purposes.
4. That the government offer language and legal terminology training to all judges and all agents of Justice Canada.
5. That judges be always required to inform parties to proceedings that they have the right to be heard in the language of their choice, and that section 530 of the *Criminal Code* be used as a model in extending language rights to bankruptcy, divorce and support cases.
6. That the government make a long-term commitment to support the single-window and travelling bilingual provincial court pilot projects in Manitoba and

Saskatchewan, and that it investigate the possibility of similar models in other provinces and territories.

7. That all legal documentation be available in both official languages in all regions of the country.

Respectfully submitted,

ROSE-MARIE LOSIER-COOL  
*Chair*