

Office of the
Commissioner of
Official Languages



Commissariat
aux langues
officielles



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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, the annual report of the Commissioner of Official Languages covering the period from April 1, 2013, to March 31, 2014.

Yours respectfully,

A handwritten signature in black ink, appearing to read "Graham Fraser". The signature is fluid and cursive, with the first name "Graham" being more prominent than the last name "Fraser".

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PREFACE **COMPLAINTS GET RESULTS**

GRAHAM FRASER

The Office of the Commissioner of Official Languages was created as a result of a recommendation of the Royal Commission on Bilingualism and Biculturalism, which saw the role as one of an “active conscience” of government. The commissioners were clear:

[The Commissioner of Official Languages’] duty will be to examine particular cases in which the federal authorities have failed to respect the rights and the privileges of individuals or groups of Canadians. The Commissioner will in a sense play the role of a federal ‘linguistic ombudsman’ by receiving and bringing to light the grievance of any residents concerning the official languages.¹

While the idea of a “linguistic ombudsman” was a new one, the position of ombudsman was not. The role of ombudsman was inspired by the example of the Swedish institution of the ombudsman. The position was created in the 18th century and used by Swedish monarchs to report on how their government institutions were treating citizens. When King Gustav Adolf IV was deposed in 1809, the Swedish Parliament created its own independent agency: a Parliamentary Ombudsman whose function was to protect the rights of citizens by investigating complaints about government institutions.

Section 58 of the *Official Languages Act* is explicit: “the Commissioner shall investigate any complaint made to the Commissioner arising from any act or omission” that results in the status of an official language not being recognized, that results in a provision of any Act related to official languages not being complied with, or that results in the spirit of the Act not being complied with.

It is a sweeping provision that makes it clear that the Commissioner cannot pick and choose. Unless a complaint is trivial, frivolous, vexatious or not made in good faith, it must be investigated.

Nevertheless, the ombudsman’s role has evolved over the years. As the Swedish Ombudsman’s office puts it, “The development of the role of the Ombudsman institution . . . has resulted in a gradual shift in the thrust of these activities from a punitive to an advisory and consultative function.”² Prevention has taken precedence over prosecution.

A similar evolution has occurred with the Office of the Commissioner of Official Languages. Following up on work that began under my predecessor Dyane Adam, the Office of the Commissioner introduced a facilitated resolution process for dealing with complaints. This makes for a less cumbersome, less formal process of solving problems that have been identified by

1 *Report of the Royal Commission on Bilingualism and Biculturalism, Book I: The Official Languages*, Ottawa, The Queen’s Printer, 1967, p. 140. On-line version (<http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/dunton1967-1970-ef/dunton1967-70-vol1-eng/dunton1967-70-vol-part2-eng.pdf>) accessed March 31, 2014.

2 *History of the Office of the Parliamentary Ombudsman*, 2013. On-line version (www.jo.se/en/About-JO/History/) accessed March 31, 2014.

people who have filed complaints. It also gives people who file complaints the option to switch to a formal investigation process at any time before the conclusion of the investigation.

The preamble to the 1988 Act—and section 56, which requires the Commissioner “to take all actions and measures . . . with a view to ensuring recognition of the status of each of the official languages”—makes it clear that there is a promotion function as well as a protection, or ombudsman, function. Since assuming this position in 2006, I have travelled to every province and territory and spoken to community groups, students, academic conferences, professional organizations, editorial boards, ambassadors and foreign delegations, premiers and provincial ministers, and federal ministers and public servants about the evolution of Canadian language policy, linguistic duality as a Canadian value, and mastery of both official languages as a leadership skill.

However, the process of receiving, investigating and reporting on complaints remains a critical part of the Commissioner’s responsibilities. The role of ombudsman is one in which the qualities of independence, fairness, impartiality and non-partisanship are essential.

There have been expressions of concern in the House of Commons to the effect that parliamentarians need assurance that agents of Parliament and their employees are non-partisan. I think this concern is misplaced. It undermines the value of partisan experience and implies that those who have worked for politicians in the past cannot be trusted to act fairly and judiciously in the future. In fact, some of Canada’s most distinguished public servants began their careers as political aides. Their political experience did not diminish their skills and value to the public service; rather, it enhanced them.

In carrying out my responsibility as Commissioner of Official Languages over the past eight years, I have never observed partisanship as a factor in our work. There have been vigorous internal debates over many issues: whether a complaint is admissible, whether

it is founded, what recommendations would be most effective, whether I should intervene in a court case or whether I should speak out publicly on a current issue. Some have taken a narrow interpretation of the Act, while some have taken a broader one—but always there have been sincere and candid exchanges of opinion on how the Act should be interpreted and applied. The key to all of these discussions has been how we can achieve positive results.

There is a lot of evidence to confirm that the compliance function is an extremely useful tool for achieving change and ensuring that institutions meet their obligations.

Planning is a critical factor in the success of organizations’ respecting not only the letter but the spirit of the Act. A good example was the Vancouver 2010 Olympic Winter Games. Thanks to careful preparations by 17 federal institutions, the Games were a remarkable success in terms of signage, announcements, greeting visitors and related cultural events.

The one exception was the opening ceremony, which resulted in a significant number of complaints. Not only did my office conduct an investigation, but we also developed a guide for organizers of sporting events that helped the organizers of the 2013 Canada Summer Games in Sherbrooke, Quebec, plan and deliver a remarkable example of events presented in both official languages. In fact, by developing relationships with the English-speaking minority community in the region and by taking official languages into consideration at every stage of the process, the Sherbrooke Games have become a model for other host communities. The guide developed by my office has been used as a template for a similar document intended for organizers of events commemorating the 150th anniversary of Confederation in 2017, so that they can ensure that linguistic duality is not only included but celebrated as an integral part of both the challenges and the successes of Confederation.

Similarly, a failure to take language into effect in the planning process can have a negative impact. One recent example is the case of the government's plan to close the Marine Rescue Sub-Centre in Quebec. Following a rigorous investigation, it became clear—both to my office and to the Canadian Coast Guard and National Defence—that it would not be possible to ensure that boats in distress on the St. Lawrence River and in the Gulf of St. Lawrence would be able to have immediate service in French from the search and rescue centres in Trenton and Halifax. At first, the closure was suspended until service in an emergency could be guaranteed at all times. Then, in January 2014, the government announced that the Marine Rescue Sub-Centre would not be closed. It was a positive example of how the process of investigation into a number of complaints helped a government department to realize the unintended consequences of a decision and to reverse it.

Many complaints often deal with two kinds of problems: ignorance and contempt. Often, employees are not aware of the language rights that all citizens and some federal employees enjoy: the right to receive services in the official language of their choice and the right to work in the official language of their choice. Often, out of ignorance or thoughtlessness, an organization will make decisions without considering the impact on official language minority communities or on its ability to deliver services in both official languages.

The other category of complaint is more disturbing. Too often, Canadians who ask for service in the official language of their choice are treated with contempt, as if this were an outrageous demand and an impossible imposition. For people who file complaints, it is often that display of contempt that motivates them as much, if not more, than the absence of service. Government departments and other institutions subject to the

Official Languages Act need to instill a culture of service so that every employee understands that serving Canadians in the official language of their choice is neither a burden nor the granting of a special privilege, but a right and a value.

There is a third category of complaint that appears to be on the increase. Faced with shrinking resources, some departments establish the language requirements for positions without considering carefully the work that needs to be done by the person in that position. Similarly, some organizations treat the language requirements of a position simply as a box that needs to be ticked rather than as a professional skill that is required.

In a public service where thousands of employees have the right to work in French, and many more have the right to work in English, it is essential that language skills be understood as a service requirement and a leadership skill and not simply as an irrational and irrelevant test that needs to be passed.

Department heads and heads of federal agencies are successful people who work hard to make sure that their organizations meet their responsibilities. Complaints are usually taken seriously and often provide executives with an insight into how their services are actually being delivered.

Thus, the “active conscience” that the Royal commissioners referred to 47 years ago is not only an essential characteristic of the Commissioner of Official Languages, but of all leaders in the public sector.

When leaders convey that linguistic duality is a value and an intrinsic part of Canada's identity and of the service that federal institutions provide to Canadians, they not only reduce the number of complaints that their institution receives, they help make the country stronger.

AWARD OF EXCELLENCE



Photo credit: Louis-Philippe Chiasson

AWARD OF EXCELLENCE **PROMOTION OF LINGUISTIC DUALITY**

The Commissioner of Official Languages' Award of Excellence—Promotion of Linguistic Duality recognizes an individual or organization that is not subject to the *Official Languages Act* but that promotes linguistic duality in Canada or abroad or contributes to the development of Canada's official language minority communities.

This year's recipient of the Award of Excellence is the Frye Festival, in Moncton, New Brunswick. Created in 1999, the Frye Festival is Canada's only bilingual international literary festival and is the largest literary event in Atlantic Canada. The Festival was created to commemorate Northrop Frye (1912–1991), who spent his formative years in Moncton. Frye was one of Canada's foremost literary critics and one of the leading literary theorists of the 20th century.

Every April, the Frye Festival celebrates New Brunswick's unique community by creating a bilingual celebration of words. The Festival showcases a rich mixture of local, Canadian and international authors, poets, playwrights, graphic novelists, spoken word artists and storytellers in a variety of community venues in Moncton.

The Festival's mission is to foster the discovery and enjoyment of reading and writing. It promotes its values of fun, discovery, accessibility and tolerance by ensuring that the event is an expanding and rewarding multicultural experience that engages audiences of all ages.

The Frye Festival's school-youth program helps students discover the magic of the written word through their interactions with authors from Canada and around the world. Authors meet with students in their classrooms and auditoriums, inspiring them to see the power and playfulness of words in both official languages.

The Commissioner of Official Languages congratulates the Frye Festival for its inspiring contribution to promoting Canada's linguistic duality.



INTRODUCTION

The Commissioner of Official Languages has served as an ombudsman for language rights in Canada since 1969. As ombudsman, the Commissioner listens to citizens' concerns and encourages federal institutions¹ to comply with the *Official Languages Act*.

Although the Commissioner has a formal investigation process for examining the complaints he receives, many of them are resolved using the facilitated resolution process, which was introduced in 2009. The objective of the facilitated process is not to determine whether a complaint is founded, but to encourage institutions to address issues, as needed. While this is the option the Commissioner suggests, he will use the formal investigation process if it is better suited to the situation or if it is preferred by the person who filed the complaint.

The Commissioner conducts audits to determine to what extent selected federal institutions are meeting specific obligations under the Act. Institutions are selected based on the scope or nature of their activities. The aim of these audits is prevention, which means that they seek to identify institutions' shortcomings so that the Commissioner can recommend ways in which they can be addressed.

The Commissioner also assesses selected federal institutions' overall compliance with the Act and presents the results in the form of report cards, whose content is both strategic and results based. These report cards are the subject of regular discussions with officials of the institutions and help them identify their institution's strengths and weaknesses in meeting its language obligations.

In addition, the Commissioner intervenes before the courts to clarify or protect Canadians' language rights.

The 2013–2014 annual report deals exclusively with how the Commissioner used the strategies and tools described above to ensure compliance with the Act during the past fiscal year. The Commissioner's decision to focus on compliance stems from his desire to examine the impact of government reorganization in recent years on the language rights of the Canadian public and federal government employees, and on the vitality of the official language communities.² This report is not a definitive account of these issues. Rather, it presents a number of situations that appear to be representative of existing challenges.

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

2 In this report, official language minority communities are designated by the term "official language communities."

The first section of the report presents situations that prompted hundreds of Canadians to file complaints in 2013–2014 and briefly describes how the Commissioner investigated these complaints. Through specific examples, it illustrates how people who file complaints have the power to make things change.

The second section examines the details of the Commissioner's audit of the accountability mechanisms of three federal institutions and summarizes the other audits and audit follow-ups conducted in 2013–2014.

The third section presents an analysis of the most recent report cards issued by the Office of the Commissioner of Official Languages. Federal institutions assessed in 2013–2014 were selected based on the fact that most interact frequently with the public.

The fourth section highlights a legal proceeding in which the Commissioner appeared as an intervener in an attempt to strengthen the equality of English and French before the courts.

The 2013–2014 annual report concludes with the Commissioner's two recommendations for the federal government.



CHAPTER 1 INVESTIGATIONS

ANALYSIS OF ADMISSIBLE COMPLAINTS, 2013–2014

In 2013–2014, the Commissioner of Official Languages received 476 complaints that were deemed admissible and were therefore subject to investigation. In comparison, 415 admissible complaints were received in 2012–2013. Most complaints (59%) in 2013–2014 were related to communications with and services to the public (Part IV of the *Official Languages Act*). Rounding out the categories, 22% of complaints involved language of work (Part V), 9% pertained to the language requirements of positions (Part XI, section 91), 6% concerned the advancement of English and French (Part VII) and 3% were related to equitable participation (Part VI).

The number of Part V complaints increased from 83 in 2012–2013 to 103 in 2013–2014, as did the number of section 91 complaints (from 30 in 2012–2013 to 44 in 2013–2014). Part IV complaint numbers also saw an increase, from 252 in 2012–2013 to 282 in 2013–2014, while Part VII complaint numbers decreased from 39 in 2012–2013 to 30 in 2013–2014.

In 2013–2014, most incidents generating Part IV complaints occurred in the Ontario part of the National Capital Region and in the province of Ontario, followed by the provinces of Quebec and Manitoba. Almost half of the incidents resulting in Part V complaints were also recorded in the Ontario part of the National Capital Region. Many of the remaining Part V complaints came from the provinces of Quebec and Ontario. And almost 80% of section 91 complaints resulted from incidents in the Ontario part of the National Capital Region. Incidents in both the Ontario and the Quebec parts of the National Capital Region generated over 95% of Part VII complaints. Few Part VI complaints were filed with the Commissioner in 2013–2014.

The overall regional distribution of complaints received in 2013–2014, based on the location of the incidents, was consistent with recent trends. The vast majority of complaints came from four regions: the Ontario part of the National Capital Region (38%), the province of Ontario (16%), the province of Quebec (12%) and the Quebec part of the National Capital Region (8%). The rest of the regions combined accounted for only 26% of all admissible complaints, with most of them coming from New Brunswick and Manitoba. Only one incident was reported in the territories, and very few generated complaints in Prince Edward Island, Nova Scotia, Saskatchewan, Alberta and outside of Canada.

FIGURE 1 **ADMISSIBLE COMPLAINTS IN 2013–2014**
BY PART OF THE *OFFICIAL LANGUAGES ACT*

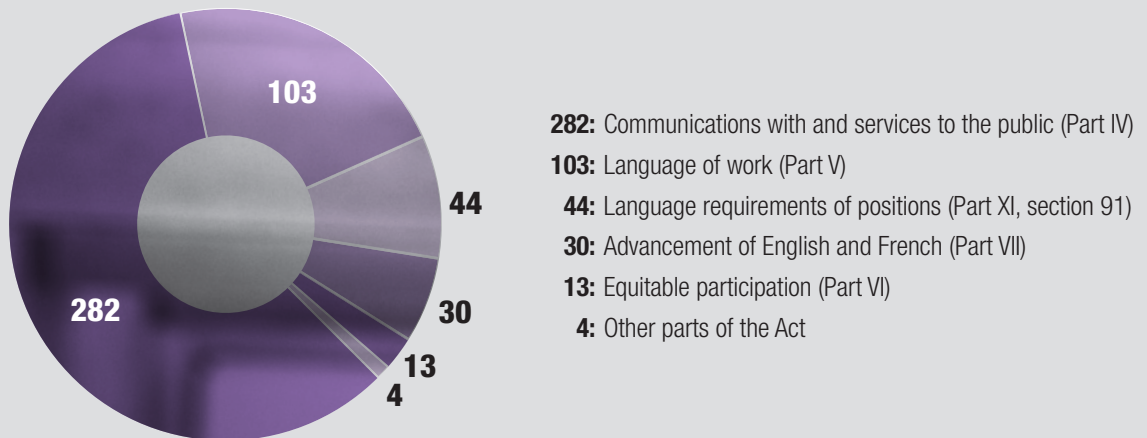


TABLE 1 **ADMISSIBLE COMPLAINTS IN 2013–2014**
BY PROVINCE/TERRITORY AND BY PART/SECTION OF THE *OFFICIAL LANGUAGES ACT*

	SERVICE TO THE PUBLIC	LANGUAGE OF WORK	EQUITABLE PARTICIPATION	ADVANCEMENT OF ENGLISH AND FRENCH	LANGUAGE REQUIREMENTS	OTHERS	TOTAL
Newfoundland and Labrador	18	-	-	-	-	-	18
Prince Edward Island	4	-	-	-	-	-	4
Nova Scotia	5	2	1	-	-	-	8
New Brunswick	13	8	4	-	6	-	31
Quebec	39	17	2	-	1	-	59
National Capital Region (Quebec)	13	10	1	10	2	1	37
National Capital Region (Ontario)	74	50	2	19	35	2	182
Ontario	59	12	2	1	-	1	75
Manitoba	20	-	-	-	-	-	20
Saskatchewan	8	-	-	-	-	-	8
Alberta	8	1	-	-	-	-	9
British Columbia	15	3	1	-	-	-	19
Yukon	-	-	-	-	-	-	-
Northwest Territories	1	-	-	-	-	-	1
Nunavut	-	-	-	-	-	-	-
Outside Canada	5	-	-	-	-	-	5
TOTAL	282	103	13	30	44	4	476

SECTION 1.1 INVESTIGATIONS INVOLVING THE DEFICIT REDUCTION ACTION PLAN

LINGUISTIC DUALITY AND DEFICIT REDUCTION

Think twice about the impact on official language communities

The federal government's 2012 budget contained measures to implement the Deficit Reduction Action Plan, which aims to achieve \$4 billion in savings by 2015–2016. Under the Plan, federal institutions have to reduce their operating expenditures. Following these spending cuts, the Commissioner of Official Languages received 23 complaints alleging that the institutions' deficit-reduction decisions were having a negative impact on linguistic duality.

The complaints led the Commissioner to conduct eight investigations. Two of these investigations—into Citizenship and Immigration Canada's major cuts to the Destination Canada budget, and Agriculture and Agri-Food Canada's closing of the Hervé J. Michaud Research Farm in Saint-Joseph-de-Kent, New Brunswick—are used to illustrate this type of complaint.

Destination Canada budget cuts

Since 2003, Citizenship and Immigration Canada has been providing support to Destination Canada, an annual job fair that has been held in Paris, Brussels and Tunis. The event serves to promote Canada as a preferred destination for Francophones from Europe, Africa and the Middle East who are thinking

about emigrating to Canada. In 2011, school boards in British Columbia and Alberta were among the organizations that took part in Destination Canada in the hope of recruiting teachers and speech therapists for French schools and immersion classes.

Francophone communities see Destination Canada as a success story.¹ The House of Commons Standing Committee on Official Languages also highlighted the value of this event in its report called *Recruitment, Intake and Integration: What Does the Future Hold for Immigration to Official Language Minority Communities?*

In 2012, however, Citizenship and Immigration Canada slashed its Destination Canada budget in response to the Deficit Reduction Action Plan. As a result, communities and provinces can no longer turn to this federal institution to obtain the funding required for travel to the Francophone countries hosting the event.

The Commissioner's investigation revealed that Citizenship and Immigration Canada had not consulted French-speaking communities or taken their specific circumstances into account when it decided to reduce its operating expenditures. As a result of the cuts, some community representatives could not attend Destination Canada in 2012. Their presence at an event like this is important, because they are in a unique position to attract French-speaking immigrants.

1 Fédération des communautés francophones et acadienne, *Tournée Destination Canada 2010 : la FCFA et les communautés se démarquent auprès de plus de 3 000 immigrants potentiels*, News Release, Ottawa, November 23, 2010. On-line version (www.fcfa.ca/fr/Archives_121#23 novembre 2010) accessed March 31, 2014.

The Commissioner recommended that Citizenship and Immigration Canada establish mechanisms to assess the impact of its decisions on official language communities. The Commissioner also recommended that Citizenship and Immigration Canada consult with the French-speaking communities taking part in Destination Canada in order to determine whether the new formula that was implemented could adversely affect the development of those communities and, if so, to take steps to lessen the impact of the budget cuts.

Acadian agriculture loses a key ally

One of the actions taken by Agriculture and Agri-Food Canada to implement the Deficit Reduction Action Plan was to close the Hervé J. Michaud Research Farm and eight other research facilities across Canada.

The Research Farm, which was created in 1982 following a Senate report on the dire socio-economic conditions in Kent County, New Brunswick, supported the growth of the agri-food sector in the mostly Francophone county. Researchers at the facility engaged in scientific research and outreach, and worked with local farmers.

Following three complaints, the Commissioner investigated and determined that Agriculture and Agri-Food Canada had not assessed the potential impact of the facility's closure on the Francophone community in Kent County. The assessment was important, because the Research Farm supported economic development in the region. In addition, Agriculture and Agri-Food Canada's decision left a significant void in the community that the other facilities having to step in will not necessarily be able to fill, since they are too far away from Kent County to provide direct and personal support to local farmers. Researchers at the other facilities do not all have the same scientific knowledge as their counterparts at the Research Farm, and they are not all able to communicate in French.

The Commissioner therefore recommended that Agriculture and Agri-Food Canada take immediate steps to ensure that the Research Farm's clients receive quality services in French and have access to scientific expertise in French that meets their specific needs. Agriculture and Agri-Food Canada will have to work with Kent County's French-speaking community to assess the repercussions of closing the Research Farm, and will have to take steps to mitigate them. It will then have to follow up on the situation with the community. It will also have to take immediate steps to ensure that its expenditure reviews are conducted in accordance with the requirements set out in the Act.

Reducing the deficit: At what price?

In his investigations related to the Deficit Reduction Action Plan, the Commissioner found that several federal institutions had conducted their expenditure reviews without taking into account all of their obligations under Part VII of the Act. In changing programs or closing facilities, five institutions failed to take the circumstances of the official language communities into account and assess the potential impact on the vitality of those communities. Since federal institutions are required to take positive measures to enhance the vitality of official language communities, they are also required not to undermine it.

The federal government can try to reduce the deficit, but the actions it takes to do that must still be in accordance with the obligations set out in the Act, including those in Part VII. Non-compliance often has long-term repercussions that are usually difficult to undo.

In his 2012–2013 annual report, the Commissioner made the following recommendation regarding the steps to be taken for decisions made under the Deficit Reduction Action Plan.

The Commissioner of Official Languages recommends that, starting in 2013–2014, the President of the Treasury Board and the Minister of Canadian Heritage and Official Languages add questions to their assessments in order to determine the impact of budget cuts as a result of the 2011 Deficit Reduction Action Plan. These questions should reveal:

- the changes to resources and governance structures of federal institutions' official languages programs, at both the regional and national level; and

- the impact of budget cuts on federal institutions' ability to fulfill their official languages obligations under each part of the Act.

The Commissioner will follow up on this recommendation in 2014–2015.

SUMMARY OF OTHER COMPLAINTS

In his investigations this year, the Commissioner of Official Languages examined four other decisions related to the Deficit Reduction Action Plan:

- closure of the Fisheries and Oceans Canada science libraries in Québec City and Mont-Joli, Quebec, and in Moncton, New Brunswick;
- gradual elimination of the Agriculture and Agri-Food Canada Co-operative Development Initiative, which helped Canadians establish co-ops;
- closure of the Foreign Affairs, Trade and Development Canada regional office in Moncton;
- decision to offer on-line courses to Library and Archives Canada employees in English only.

Using the facilitated resolution process, the Commissioner worked with Library and Archives Canada to remedy its situation. Using the formal investigation process, the Commissioner determined that the other complaints related to the Deficit Reduction Action Plan were founded.² Following the formal investigations, the Commissioner made 15 recommendations to Fisheries and Oceans Canada, Agriculture and Agri-Food Canada, and Foreign Affairs, Trade and Development Canada, whose decisions were deemed to be contrary to the letter and spirit of the Act.

² Two investigations concerning Agriculture and Agri-Food Canada's application of the Deficit Reduction Action Plan are not included in this box, because the Commissioner had not concluded his investigations before March 31, 2014.

SECTION 1.2 **FORMAL INVESTIGATION PROCESS**

VITALITY OF OFFICIAL LANGUAGE COMMUNITIES

Quebec's English TV and film producers also need support

Background

To reach their full potential, Canada's English- and French-speaking communities need to be seen and heard both within their own region and outside of it. The support that federal institutions give to official language communities and their institutions helps them achieve that potential.

In 2010, however, the Quebec English-language Production Council felt that Canadian Heritage could do more to strengthen the position of Quebec's English-speaking television and film producers. According to the Council, Canadian Heritage had failed to take steps to help stop the industry's rapid decline. The Council also felt that the Canada Media Fund, a corporation that receives funding from Canadian Heritage, did not treat Quebec's English-speaking communities fairly. In August 2010, the Council filed a complaint with the Commissioner of Official Languages.

"The English-speaking community of Quebec is behind in taking advantage of the *Official Languages Act*," said the Council's executive director, Kirwan Cox.³ "It took me a year, prior to 2010, to convince my colleagues that we should lodge a complaint, that the Act was put in place to help our community, too, and that the only way to put that legislation to work was to make a complaint."⁴

Commissioner's investigation

The Commissioner conducted his investigation under Part VII of the Act, which concerns the advancement of English and French.

One aspect of the complaint was resolved when the Canada Media Fund changed the definition of the expression "regional production" to include all English-language productions created in Quebec. That modification, which was in line with the Commissioner's position, ensured that English-language productions crafted in Montréal would receive the status and benefits given to English-language productions created outside of Toronto and Vancouver.

In his investigation, the Commissioner found that the Canada Media Fund guaranteed a certain amount of funding each year to French-speaking communities through a program called the Francophone Minority Program, whereas no similar program supported the production of television shows and films by the English-language communities in Quebec. Canadian Heritage responded to this finding by suggesting that another program targeting English-language productions—the English Production Incentive—could benefit Quebec's English-speaking communities. However, the Commissioner concluded that, because Quebec's English-language producers did not have guaranteed access to the Incentive, they would not be able to plan their activities effectively, which would ultimately affect their competitiveness.

3 All information gathered by the Office of the Commissioner of Official Languages when a complaint is filed is kept confidential before, during and after processing. However, some of the individuals involved in the complaints described in this annual report have agreed to tell their story and to be identified. Please note that the inclusion of personal accounts in this report in no way implies that the Commissioner approves their content.

4 All quotations cited in this report were obtained by e-mail or during telephone interviews conducted between January 27 and March 31, 2014.

Outcome

In his final investigation report, the Commissioner recommended that Canadian Heritage take measures before April 1, 2013, to mitigate the negative impact the uncertainty in annual funding could have on Quebec's English-language film and television producers and on the vitality and development of their community. He also recommended that Canadian Heritage's next contribution agreement with the Canada Media Fund include a provision recognizing Quebec's English-speaking community.

In April 2013, in response to the Commissioner's second recommendation, the Canada Media Fund announced the creation of the Anglophone Minority Incentive, a program "designed to encourage television convergent production for English-language production in Québec."⁵

"There are two great things about the announcement the Canada Media Fund made as a result of our complaint," said Mr. Cox. "First, although the \$3 million allocated to the Incentive is not enough, we should get that amount or more every year from now on. Our funding should remain stable. It should not disappear because of some strange formula. The second great thing is that the Canada Media Fund designed the Anglophone Minority Incentive after consulting us. Usually institutions ask for our opinion and ignore it, but this time, the Canada Media Fund really listened to us. We were paid attention to, and that is something that does not happen that often. Let's hope we will see this collaborative attitude in all federal cultural institutions in the future."

LANGUAGE OF COMMUNICATIONS AND DIRECT MAIL

Reading *Maclean's* doesn't make you an Anglophone

Background

In March 2012, Jacques Thibault, of Bathurst, New Brunswick, received a letter from the Canadian Museum of History⁶ asking for donations to fund various activities. The letter was written in English, save for 12 words in French at the very end. Those few words explained the procedure for requesting that all future communications from the Museum be in French instead of English. Mr. Thibault was unhappy about this and decided to file a complaint with the Commissioner of Official Languages.

"The Museum of Civilization isn't the first federal agency to write to me just in English," said Mr. Thibault. "But the letter was so inexcusable that this time I decided to file a complaint with the Commissioner. Twice it stated, 'What does it mean to be a Canadian?' Well, being a Canadian means living in a country where both Francophones and Anglophones deserve respect! That means being addressed in both English and French by federal institutions right from the start. Unfortunately, when the Museum asked for my support, it forgot part of the answer to its own question. [translation]"

5 Canada Media Fund, *A New Incentive for English Language Production in Québec*, April 24, 2013. On-line version (www.cmf-fmc.ca/industry-advisory/article/2013/04/a-new-incentive-for-english-language-production-in-quebec/?setLocale=1) accessed March 31, 2014.

6 When Mr. Thibault filed his complaint, the Canadian Museum of History was called the Canadian Museum of Civilization.

Commissioner's investigation

The Commissioner conducted his investigation under Part IV of the Act, which concerns communications with and services to the public. Under the provisions of Part IV, members of the public have the right to expect federal institutions to communicate with them in the official language of their choice without prompting and without delay.

The Commissioner's investigation revealed that the Canadian Museum of History purchases lists of subscribers to various publications to find donors. It then assumes that subscribers to French-language magazines prefer to receive communications in French and that subscribers to English-language magazines prefer to receive communications in English. The letter to Mr. Thibault was in English because he subscribed to an English-language magazine.

To determine a person's language preference, federal institutions have to go by information provided by that person, not the language of publications to which he or she subscribes. If the language preference is not known, the institutions must ensure that all communications are in both English and French.

The Commissioner dismissed the Museum's argument that direct mail is not a communication within the meaning of the Act. Furthermore, the additional cost of sending out bilingual solicitation letters is not a valid reason to ignore the Act. Federal institutions must take their language obligations into account when doing their financial planning.

Outcome

The Commissioner recommended that the Canadian Museum of History take steps to ensure that all of its communications, including direct mail, are in both official languages until the recipients' language preferences have been confirmed.

Pending action on the Commissioner's recommendations, Mr. Thibault said he was completely satisfied with the process: "It's not the English that offends me. It's the fact that it's only in English that offends me. To tell you the truth, I'd be very happy to receive information in both languages all the time, because then I'd know that my fellow Anglophone citizens are also being exposed regularly to French, regardless of where they live in Canada. That's how you change perceptions. In my opinion, using only one language all the time can have a negative impact—making people forget that there are two official languages in Canada. [translation]"

LINGUISTIC DESIGNATION OF POSITIONS

Environment Canada raises the linguistic profile of a position

Background

In 2012, Environment Canada posted a job ad for a manager in Nova Scotia whose duties would cover the Atlantic and Quebec regions.

The ad indicated that the manager's skills in English and French had to meet a linguistic profile of BBB/BBB. This means that the person has to be able to grasp the main idea of texts, write basic information and discuss concrete topics or provide facts in his or her second official language. A person with this level

of language skills may have difficulty reading texts that have complex grammar and vocabulary. That person's written work may also have deficiencies. A person speaking at this level may have difficulty understanding or expressing abstract or subtle ideas.⁷

In October 2012, the Commissioner of Official Languages received a complaint about the linguistic profile of the advertised managerial position. The person who filed the complaint argued that Environment Canada should raise the profile because of the complex nature of the duties to be performed.

LEVELS OF PROFICIENCY FOR GENERAL SECOND OFFICIAL LANGUAGE QUALIFICATIONS

Three areas	Written comprehension, written expression and oral interaction
Three levels	A: Lowest; B: Intermediate; C: Highest
One example	CBC/CBC: In English and French, the candidate must have a high level of proficiency in written comprehension, an intermediate level in written expression and a high level in oral interaction.

Commissioner's investigation

The Commissioner conducted his investigation under section 91 of the Act, which stipulates that federal institutions have to determine the language requirements of positions objectively. The requirements must be established based on the duties of the position to ensure that the incumbent is able to serve the public in both official languages and create a bilingual work environment.

Environment Canada responded to this complaint by reviewing the language requirements of the position using the tool called *Determining the linguistic profile of bilingual positions: The ABCs of linguistic profiles*

at your fingertips, developed by the Treasury Board of Canada Secretariat. Environment Canada then said that it was prepared to raise the linguistic profile of the position to BBC/BBC.

In his investigation, the Commissioner found this new profile to be incorrect. Although Environment Canada had done well to use the Treasury Board of Canada Secretariat tool, the simple act of using it does not relieve managers of their duty to determine the language requirements of the position objectively.

Had the institution used the tool effectively, it would have concluded that CBC/CBC was the correct linguistic profile for the position. The position would thus require a high level of proficiency in written comprehension and oral interaction, which would enable the incumbent

to fulfill the duties of the position, including leading the development of strategies and partnerships with various stakeholders, understanding the positions of all stakeholders, ensuring a departmental response or position is prepared and representing Environment Canada as a subject matter expert on inter-departmental committees or working groups and at national or international conferences and meetings.

Following his investigation, the Commissioner underscored the important role played by Environment Canada managers in determining the language requirements of positions under their responsibility. To do so, they must have a sufficient knowledge of the Act and the obligations arising from it.

⁷ Treasury Board of Canada Secretariat, "Qualification Standards in Relation to Official Languages," Section 3 in *Qualification Standards*, Ottawa, 2013. On-line version (www.tbs-sct.gc.ca/gui/squn03-eng.asp) accessed March 31, 2014.

Outcome

In response to the Commissioner's report, Environment Canada raised the linguistic profile of the position to CBC/CBC and informed all the applicants about the change.

Environment Canada also agreed to implement both of the Commissioner's recommendations to avoid this kind of problem in the future. First, it committed to establish a follow-up mechanism by March 31, 2014, to ensure that the language requirements of positions subject to staffing, reorganization or reclassification are established objectively. Second, it committed to hold 12 training sessions by that date to give 200 sub-delegated managers the opportunity to acquire the knowledge they need to comply with section 91 of the Act.

In some areas, Environment Canada is having considerable difficulty establishing the correct language requirements of its positions. However, during the investigation, the institution showed that it was determined to find a lasting solution for the problem.

LANGUAGE OF COMMUNICATIONS AND THE INTERNET

International bridge managed by Michigan is getting a bilingual Web site

Background

The Sault Ste. Marie International Bridge connects the twin cities of Sault Ste. Marie, Ontario, and Sault Ste. Marie, Michigan. A person looking for information on-line about the Bridge and its operations noted that the information was in English only. That prompted the person to file a complaint with the Commissioner of Official Languages.

Commissioner's investigation

The Commissioner investigated the complaint, taking into account the letter and spirit of Part IV of the Act, which concerns communications with the public by federal institutions. Under Part IV, members of the public have the right to access information from federal Web sites in the official language of their choice.

During his investigation, the Commissioner found that the Sault Ste. Marie International Bridge consists of two parts. The first belongs to the Michigan Department of Transportation, and the second, to the St. Mary's River Bridge Company, a wholly owned subsidiary of the Federal Bridge Corporation Limited. Since both of the latter corporations are subject to the Act, and since half the International Bridge belongs to Canada, information for its users must be in English and French. However, the St. Mary's River Bridge Company and the Michigan Department of Transportation have delegated management of the Bridge to the International Bridge Administration, a U.S. agency whose Web site was in English only at the time of the investigation.

The Commissioner issued his preliminary investigation report in 2012. In it, he recommended that the St. Mary's River Bridge Company take immediate steps to provide its users with bilingual information about the Sault Ste. Marie International Bridge.

Outcome

To comply fully with the Act, the St. Mary's River Bridge Company created a bilingual Web site containing information that Sault Ste. Marie International Bridge users would typically want to know. The Commissioner, satisfied with the corrective action taken, closed this file in November 2013.

André Girard, Vice-President of Communications for the Federal Bridge Corporation Limited, said, "We were quickly able to rectify the problem raised by the complainant, since we had already started working

on the layout for the future Canadian Web site for the Sault Ste. Marie International Bridge.” He went on to say, “But the most interesting part of all of this was that when we called the Americans to get the information that we wanted to put on this new bilingual site, they told us they would be delighted to add French-language content to their site! Of course, we wasted no time in helping them with that.” Mr. Girard concluded, “This is just the beginning. The same scenario is currently playing out for the U.S. Web site for the Thousand Islands International Bridge. [translation]”⁸

LANGUAGE OF WORK AND HEALTH CARE

Language preferences of employees and retirees must be respected

Background

John Smith⁹ is a federal public servant whose preferred language is English. Following a visit to his dentist, whose fees are covered by the Public Service Dental Care Plan, Mr. Smith received correspondence in French from the Great-West Life Assurance Company, the insurer. This was not the first time Mr. Smith had received a letter in French and, despite reminding the insurer’s agents several times about his preference, he continued to receive his correspondence in French, because his dentist is a Francophone.

At the same time, retired Air Canada employee Carmen Lebrun could not get service in French from Pacific Blue Cross, the company chosen by the airline to provide her with group insurance services. “Whenever I need to write to them to challenge a decision they made concerning my drug plan, I hire a translator, [translation]” explained Ms. Lebrun.

Commissioner’s investigation

In 2012, Mr. Smith and Ms. Lebrun each filed a complaint with the Commissioner of Official Languages against the Treasury Board of Canada Secretariat and Air Canada, respectively. The Commissioner’s two investigations served to remind the institutions about their obligations under Part V of the Act, which concerns language of work. Health services must be provided to their employees in English and French, regardless of whether the services are provided directly by the institution or indirectly through a third party, and regardless of whether the employees are still working or have retired.

In the first instance, the investigation uncovered the source of the problem: the way in which the Great-West Life Assurance Company determines the language preference of federal employees. The company automatically assigns French to insured persons who live in Quebec and to those whose dentists use French claim forms, when no information on the person’s language preference is available. The investigation also revealed that the Treasury Board of Canada Secretariat is required to choose a suitable method for determining and following up on public servants’ language preferences.

The second investigation established that Air Canada had failed to meet its obligations by neglecting to check whether Pacific Blue Cross was able to serve Ms. Lebrun and other retired employees in French.

8 The U.S. Web site will be the only site to provide information about the Thousand Islands Bridge, pending the complete overhaul of the www.pontscanadabridges.ca/en/ site.

9 Name changed to protect the identity of the person who filed the complaint.

Outcome

The Commissioner recommended that the Treasury Board of Canada Secretariat take the necessary steps to ensure that the Great-West Life Assurance Company is aware of and respects the language preferences of public servants. The Treasury Board of Canada Secretariat will also be expected to systematically monitor whether the insurer is honouring those preferences, and to include language provisions in its agreement with the company.

Air Canada responded quickly to Ms. Lebrun's complaint by assigning her a new insurer, Medavie Blue Cross. The company, based in eastern Canada, provides services in English and French, and has bilingual forms and a bilingual Web site.

"I experienced 10 years of frustration and stress, because Pacific Blue Cross would not serve me in the official language of my choice," said Ms. Lebrun. "Had I known that my complaint to the Commissioner would see this situation resolved in just four months, I would have filed it a lot sooner!" Joked the retiree, "Some of my former colleagues, who also benefited from Air Canada's insurer switch, now see me as a real mover and shaker! [translation]"

FAMILY SERVICES FOR OFFICIAL LANGUAGE COMMUNITIES

Community development starts with child development

Background

Since 1993, the Public Health Agency of Canada and its provincial and territorial partners have been managing the Community Action Program for Children, which has an annual budget of \$50 million. The Program offers support to families and children in difficulty in communities across Canada. In 2012,

none of the 14 organizations chosen to receive funding in Nova Scotia were in Francophone communities, and none of them could apparently provide quality service in French. In the winter of 2012, a complaint about the situation was filed with the Commissioner of Official Languages.

Commissioner's investigation

The investigation sought to determine whether the Public Health Agency of Canada had provided services in English and French to Nova Scotia families and children under the Program, as required under Part IV of the Act, and whether it had supported the development of the French-speaking community, as required under Part VII.

The investigation showed that the Program provides funding to agencies acting on behalf of the Public Health Agency of Canada. The Public Health Agency of Canada has to ensure that services provided to at-risk families and children in Nova Scotia are of equal quality in English and French. Only one agency, La Pirouette, is able to provide early childhood services to Francophones in Nova Scotia, but it has never received any funding under the Program. In fact, agencies that do receive support from the Program have been advising the public to contact La Pirouette for services in French. The Public Health Agency of Canada is therefore not complying with Part IV of the Act.

With regard to Part VII, the investigation showed that the Public Health Agency of Canada could do more to support the vitality of the French-speaking community in Nova Scotia. For example, since the creation of the Program, the institution has not increased the \$2 million annual budget for Nova Scotia, nor has it reviewed the list of recipients or launched new initiatives to strengthen support services for Francophone families and children in the province. In other words, Francophone agencies that did not apply for funding the first year have never had the opportunity to do so in following years.

Outcome

Since federal institutions are required to honour the federal government's commitments to English- and French-speaking communities across Canada under Part VII of the Act, the Commissioner recommended that the Public Health Agency of Canada better address the circumstances of parents and children in Nova Scotia's Francophone community by consulting with them, for example. He also recommended that some of the agencies currently funded by the Program be designated as bilingual to ensure that their clients receive quality services in their language. He further recommended that the language obligations of the organizations that receive funding be clearly defined in their agreements with the Public Health Agency of Canada and that the latter follow up appropriately "in the field."

"We are delighted with the recommendations in the Commissioner's final report," said Natalie Aucoin, Director of the Fédération des parents acadiens de la Nouvelle-Écosse. "We followed up on the report by reaching out to the Public Health Agency of Canada. We are eager to see if the institution will be willing to work with us to ensure that Francophone families and children in Nova Scotia have access to services in their language and that these services are of the same quality as those already being received by Anglophone families and children." Explained Ms. Aucoin, "This is a critical issue. It is essential to help young Francophones develop a sense of belonging to their communities. [translation]"

SECTION 1.3 FACILITATED RESOLUTION PROCESS

LANGUAGE OF COMMUNICATIONS AND TELEPHONE SERVICES

Please call back later

Background

In January 2013, a member of the public dialed the toll-free number for Service Canada's Employer Contact Centre several times. The caller pressed "2" for service in French and got a recorded message saying that the Centre was currently handling a high volume of calls and that the caller should try again later.

Tired of waiting, the caller pressed "1" for service in English, and an agent answered right away. This prompted the caller to file a complaint with the Commissioner of Official Languages, because Service Canada's telephone services in French were not provided as quickly as those in English.

Investigation

The Commissioner investigated the complaint using the facilitated resolution process and taking into account Part IV of the Act, which concerns communications with and services to the public. For an institution's services to be of equal quality in both official languages, wait times in English and French must be similar.

In response to the complaint, Service Canada said that the person had called at a time when there were not enough bilingual agents.

Outcome

Poor planning or preparation can make it difficult for federal institutions to comply with the Act.

Service Canada provided a lasting solution to the problem raised by the person who filed the complaint by hiring some 20 bilingual agents.

LANGUAGE OF COMMUNICATIONS AND THIRD PARTIES

Citizenship and Immigration Canada imposes new requirements on a supplier

Background

Citizenship and Immigration Canada publishes numerous documents that Canadians and foreigners can download from its Web site.¹⁰ Paper copies can be ordered from Gilmore Global Logistics Services, the Department's supplier, whose contact information is given on-line.

In April 2013, a member of the public called the supplier's number to order a publication. The person who answered spoke English only, did not actively offer service in both official languages and could not provide service in French at that time.

The caller decided to file a complaint with the Commissioner of Official Languages and gave him permission to investigate the matter using the facilitated resolution process.

10 See www.cic.gc.ca/english/resources/publications/index.asp.

Investigation

The Commissioner conducted his investigation under Part IV of the Act, which concerns communications with the public. The Commissioner found that the contract between Citizenship and Immigration Canada and its service provider did not contain any provisions for service in both official languages.

Outcome

Citizenship and Immigration Canada reported that it had taken the following four steps to rectify the issue raised in the complaint:

- Added official languages requirements and objectives in the institution's contract with its supplier;
- Ensured that the supplier activated two separate toll-free numbers—one listed on the Department's English Web site and the other listed on the French Web site—with English-speaking and French-speaking agents assigned to each respective telephone line;
- Made periodic test calls to the toll-free numbers to ensure full compliance with the Act;
- Created a bilingual system to take orders for paper publications on-line.

MEETING THE LANGUAGE REQUIREMENTS OF A POSITION

Canada School of Public Service manager has to take a language course

Background

In November 2012, a federal public servant filed a complaint with the Commissioner of Official Languages, alleging that a Canada School of Public Service manager did not meet the language requirements of his position. The manager in question could therefore not perform his duties properly.

Investigation

The Commissioner conducted his investigation under Part V of the Act, which concerns language of work. Part V stipulates, among other things, that employees of federal institutions located in the National Capital Region and in regions designated as bilingual for language-of-work purposes have the right to be supervised in the official language of their choice.

Outcome

Shortly after the start of the investigation, the Commissioner learned that the manager named in the complaint had just begun a full-time language training course. The Canada School of Public Service also informed the Commissioner that it had taken steps to fill the managerial position temporarily with an employee who meets the language requirements. It pledged that the manager would not come back to work without having passed a second-language exam and attained the language level required for the position.

CONCLUSION

Three main conclusions can be drawn from the complaints described in this chapter. First, the expectations of people who file complaints are generally not unreasonable. For example, it is not unreasonable for English TV producers in Quebec to want Canada's cultural institutions to acknowledge that their situation is very different from that of producers in Toronto or Vancouver. It is also not unreasonable to expect a federal government manager to have the language skills necessary to supervise employees who have the right to work in the official language of their choice.

Second, many of the complaints filed with the Commissioner of Official Languages could have been avoided had the institutions involved taken the realities of official language communities into account before making decisions. For example, if Agriculture and Agri-Food Canada officials had consulted Francophone farmers in Kent County before closing the Hervé J. Michaud Research Farm, they would have quickly understood the concerns that this decision was bound to raise, as well as the negative impact it would have.

Third, federal institutions would not have complaints filed against them if they planned their actions properly. For example, Service Canada's Employer Contact Centre would have served the public better by determining in advance the number of calls likely to be received in each official language, and then hiring enough agents from each of those groups. Similarly, the Canadian Museum of History would have had the money it needed to send out bilingual communications to Canadians whose language preferences were not known had it planned for that cost when drawing up its budget.

In short, it is entirely possible for institutions to succeed in complying with the *Official Languages Act* if they are mindful of the letter and spirit of the Act and focus on leadership and vision at every stage in the decision-making process.



CHAPTER 2 **AUDITS**

Audits are an important tool because they help the Office of the Commissioner of Official Languages to monitor federal institutions' compliance with the *Official Languages Act*. Audit follow-ups are just as important because they measure the extent to which audited institutions have made or have committed to make all changes recommended in the audit reports.

A MAJOR AUDIT: ACCOUNTABILITY AND OFFICIAL LANGUAGES

Funds transferred by federal institutions to provincial and territorial governments to ensure the vitality of official language communities and to promote English and French in Canadian society must be used for those purposes. They must also be spent efficiently.

The Act does not give the Commissioner of Official Languages the mandate to examine how the provinces and territories actually spend the funds. However, in 2012–2013, the Commissioner responded to concerns expressed by members of the House of Commons Standing Committee on Official Languages¹ by undertaking [an audit](#) to examine the accountability mechanisms implemented by three federal institutions. The institutions—Health Canada, Canadian Heritage and Citizenship and Immigration Canada—had negotiated transfer agreements with provincial and territorial governments. The agreements cover issues that are important for the future of official language communities.

Of the three institutions, Health Canada has been the most successful in monitoring its transfer payments. A review of the agreement between the institution and the Government of New Brunswick shows that Health Canada's senior management established formal accountability mechanisms when federal funds were transferred to support health care for students from New Brunswick's official language communities. Health Canada rightfully requires frequent reports from its provincial counterpart, and its representatives conduct field visits to validate the content of the reports. The agreement also contains the necessary performance indicators.

Canadian Heritage uses several best practices when making transfer payments to promote second-language instruction and minority-language education. The Commissioner recommended that the institution have staff conduct field visits to validate the information provided by the provinces and territories. He also recommended that Canadian Heritage “use its next internal audit on the modernization of grants and contributions to integrate all accountability activities related to transfer payments to the provinces and territories, and governed by official languages support programs, into its audit objectives.”²

1 Parliament of Canada, House of Commons Standing Committee on Official Languages, *Minutes of Proceedings and Evidence*, 41st Parliament, 1st Session, Number 032, March 15, 2012. On-line version (www.parl.gc.ca/HousePublications/Publication.aspx?Mode=1&Parl=41&Ses=1&DocId=5466532&File=0&Language=E) accessed March 31, 2014.

2 Office of the Commissioner of Official Languages, *Horizontal Audit of Accountability for Official Languages Transfer Payments to the Provinces (Part VII of the Official Languages Act)*, Ottawa, 2013, p. 13. On-line version (www.officiallanguages.gc.ca/en/publications/audits/2013/cic_hc_ch) accessed March 31, 2014.

Citizenship and Immigration Canada needs to redouble its efforts in terms of its accountability requirements. To address this shortcoming, the institution was quick to implement the Commissioner's recommendation that it ask the Government of British Columbia to be much more detailed in its 2014 report on support activities for Francophone newcomers funded through Citizenship and Immigration Canada's transfer payments.

It should be noted that the onus for monitoring the use of transfer payments for official languages programs rests primarily with the deputy heads of the federal institutions that make the transfers and with those of the provincial and territorial governments that receive them.

OTHER AUDITS

In 2013–2014, the Office of the Commissioner began planning the audits of the Treasury Board of Canada Secretariat and the Canada Border Services Agency. The objective of the first audit is to examine how the Treasury Board of Canada Secretariat fulfilled its responsibilities as a central agency under Part VII of the Act during the Strategic and Operating Review and the subsequent implementation of the Deficit Reduction Action Plan. The second audit will evaluate how the Canada Border Services Agency is fulfilling its obligations under Part IV of the Act and will focus on service to the travelling public at border crossings and international airports across Canada.

In 2013–2014, the Office of the Commissioner also began follow-ups to two audits: the 2011 [*Audit of Service Delivery in English and French to Air Canada Passengers*](#) and the 2012 [*Audit of the Implementation of Part VII of the Official Languages Act at Industry Canada*](#).

In June and December 2013, respectively, the Commissioner published follow-ups to two audits conducted in 2010: the [*Linguistic Audit of the Individual Training and Education System of the Canadian Forces, Department of National Defence*](#), and the [*Audit of the Management of the Official Languages Program at the Halifax International Airport Authority*](#).

In the spring of 2014, the Commissioner published the follow-up to the [*Audit of the Delivery of Bilingual Services to the Public by Service Canada*](#). The goal of that follow-up was to examine and report on the measures taken by Service Canada to implement the recommendations contained in the 2010 audit. The audit follow-up showed that Service Canada satisfactorily implemented six of the Commissioner's seven recommendations to improve its compliance with Part IV of the Act. The follow-up also revealed that Service Canada still has to improve the way in which it consults official language communities about their needs. The institution also has to move beyond changes to policies and procedures and ensure that there are more bilingual front-line service providers at designated bilingual service points across Canada.

CONCLUSION

The results of the audits and audit follow-ups conducted by the Commissioner of Official Languages in 2013–2014 show that federal managers and executives have become more aware of their institutions' language obligations and of the challenges they face. Generally speaking, institutions are willing to implement the recommendations contained in the Commissioner's audit reports, and federal institutions are changing their behaviours and attitudes toward official languages obligations.



CHAPTER 3 **REPORT CARDS**

The report card is a performance measuring tool used by the Office of the Commissioner of Official Languages to evaluate how federal institutions that are subject to the *Official Languages Act* are complying with their language obligations. Each year, the Office of the Commissioner selects a number of institutions to evaluate based on factors such as their size, their impact on Canadians, the number of admissible complaints against them and the Office of the Commissioner's strategic objectives.

As in previous years, the 2013–2014 report cards consisted of five distinct sections: Official Languages Program Management, Service to the Public (Part IV of the Act), Language of Work (Part V), Participation of English-speaking and French-speaking Canadians (Part VI) and Development of Official Language Minority Communities and Promotion of Linguistic Duality (Part VII).

The 2013–2014 report cards continued to focus on results. The points were therefore weighted in favour of institutions' performance with regard to Parts IV, V and VII of the Act. Because the way in which federal institutions comply with Part IV affects a great number of Canadians on a daily basis, the institutions' performance in that area carried more weight in the report cards.

Since the 2009 Supreme Court of Canada's *DesRochers v Canada (Industry)* ruling, the Office of the Commissioner has included an additional criterion in the report cards. This criterion evaluates to what extent institutions are applying the principle

of substantive equality and taking the specific needs of official language communities into account when delivering services, depending on the nature and purpose of the services.

[Seven federal institutions were evaluated during the 2013–2014 report card exercise:](#) the Canada Post Corporation, the Canada Revenue Agency, Correctional Service Canada, the Public Health Agency of Canada, the Royal Canadian Mounted Police, Statistics Canada and VIA Rail Canada. These institutions were chosen based on the fact that they either have significant contact with the public or provide important services to the public.

For the 2013–2014 report card exercise, the Office of the Commissioner compiled its information from statistical data—including results from its anonymous observations—documentation provided by the institutions and interviews conducted with representatives of the institutions.

THE 2013–2014 REPORT CARDS

Following are descriptions of the various sections of the report cards and a general analysis of the results. Detailed results are shown in Tables 1 and 2.

OFFICIAL LANGUAGES PROGRAM MANAGEMENT (10%)

Evaluate the federal institution's official languages action plan (which should include all parts of the Act), how it handles the Office of the Commissioner's complaint investigations and how it takes Part VII of the Act into consideration when making decisions such as eliminating a program or closing an office.

This year, the institutions performed well with regard to official languages program management (see Table 1). Most obtained a rating of “exemplary” or “good.” However, areas for improvement were identified for several institutions, such as the need for a formal annual review of the action plan by senior management or the need to include implementation timelines and responsible individuals or branches in the action plan.

The evaluation revealed that all institutions have developed tools and procedures to take into account the impact of major decisions on official language communities. This is a welcome improvement as compared to previous report card exercises, and institutions are encouraged to continue their efforts in this area.

SERVICE TO THE PUBLIC — PART IV OF THE ACT (30%)

Conduct anonymous observations made in person, by e-mail and by telephone at bilingual service points sampled by Statistics Canada. Observe whether the federal institution actively offers its services to the public in English and French, both visually and verbally, and whether the institution's services are available in both official languages. Also observe to what extent the institution takes the needs of official language communities into account when delivering services, depending on the nature and purpose of these services.

The overall results for the evaluation of service to the public were mixed. All federal institutions evaluated received excellent scores for visual active offer, and they are commended for their efforts in this area.

Active offer in person, in particular, remains the weakest link for most organizations. This shortcoming has been consistent with various observation exercises conducted by the Office of the Commissioner over the past few years.

The Canada Revenue Agency obtained exemplary results for service in person. However, for institutions such as the Royal Canadian Mounted Police and Correctional Service Canada,¹ the availability of service in person proved to be problematic. Service in person was not evaluated for Statistics Canada because it does not interact significantly with the public, and no results for service in person were published for the Public Health Agency of Canada because of the low number of data obtained during the observations.

1 Correctional Service Canada provides services to a variety of clients, including inmates; however, for the purposes of this report card exercise, services to inmates were not evaluated.

Telephone service overall was good for most institutions. During the e-mail observations, it was noted that responses in French took longer than those in English.

To address identified shortcomings, institutions were encouraged to implement effective measures to ensure that an active offer in person is made systematically and that service is available in both official languages at all times. Institutions were also encouraged to ensure that e-mail response times are equal for English and French enquiries.

With regard to applying the principle of substantive equality (as recognized by the Supreme Court of Canada in its *DesRochers* decision), most institutions have successfully completed the review of their programs and services and have made the necessary adjustments. This is a marked improvement over previous report card results, where most institutions did not fully understand the concept of substantive equality and therefore hesitated in applying it.

LANGUAGE OF WORK — PART V OF THE ACT (25%)

The Office of the Commissioner normally uses the Public Service Employee Survey to evaluate the satisfaction level of English-speaking federal workers in Quebec and French-speaking federal workers in the rest of Canada. Because the most recent results of the Survey (which dates from 2011) had been analyzed in its 2012–2013 annual report, the Office of the Commissioner asked federal institutions to describe the measures they take to promote the use of English and French in the workplace in regions designated as bilingual for language-of-work purposes.

In 2013–2014, all federal institutions evaluated demonstrated that they take measures to create an environment conducive to the use of both official languages and to encourage the use of English and French in the workplace in regions designated as bilingual for language-of-work purposes. They all received a rating of “exemplary” or “good” for the Part V evaluation. Some of the measures that institutions have put in place include a registry of employees’ language preferences, a Language Buddy program, communication plans, Part V guides, e-mail reminders, checklists for bilingual meetings, bilingual e-mail templates and language objectives in supervisors’ performance agreements. Initiatives related to second-language training and maintenance are also being implemented in several institutions.

Although all evaluated institutions have Part V measures in place, few of them assess the impact of these measures systematically. They were all encouraged to take a proactive and consistent approach to impact assessment, which should result in even more effective tools to foster the use of both official languages in the workplace in regions designated as bilingual for language-of-work purposes.

PARTICIPATION OF ENGLISH-SPEAKING AND FRENCH-SPEAKING CANADIANS — PART VI OF THE ACT (10%)

Using staffing data provided by the Treasury Board of Canada Secretariat and data extracted from the most recent census, determine whether official language communities are equitably represented within the federal institution's workforce. Also assess the different recruitment activities conducted by the institution among official language communities. Focus on the participation rates of French-speaking employees working in the National Capital Region, French-speaking employees working outside the National Capital Region and Quebec, and English-speaking employees working in Quebec outside the National Capital Region.

Federal institutions must adhere to the principle of selecting personnel according to merit and therefore cannot address the issue of equitable participation through staffing actions. There are other ways to maintain a representative balance of English- and French-speaking employees within the workforce, including proactively targeting official language communities during recruitment campaigns or advertising job openings in the minority-language press.

Similar to the section on service to the public, the results for the evaluation of equitable participation were mixed. Two institutions received an excellent rating (the Canada Revenue Agency and VIA Rail Canada) and

one received a good rating (the Royal Canadian Mounted Police). There was ample room for improvement for the remaining institutions. Achieving a fair representation of English-speaking employees in Quebec (excluding the National Capital Region) proved to be particularly challenging for most institutions. Several institutions could not demonstrate that they conduct recruitment activities targeting English- and French-speaking minority communities. Examples of best practices to encourage participation of members of official language communities include taking part in career fairs, liaising with post-secondary institutions, advertising job openings in the minority-language press and coordinating outreach with official language communities.

DEVELOPMENT OF OFFICIAL LANGUAGE MINORITY COMMUNITIES AND PROMOTION OF LINGUISTIC DUALITY — PART VII OF THE ACT (25%)

Evaluate how the federal institution's official languages program integrates its obligations under Part VII, whether the institution has consulted or met with official language communities to identify their needs, whether it has implemented positive measures to foster the development of these communities, and how it monitors the impact of these measures on the communities and on linguistic duality.

Most federal institutions evaluated this year demonstrated a strong commitment to implementing Part VII of the Act, which, it is important to note, is an improvement over previous report card results. These institutions are commended for their efforts in this area.

With respect to the development of official language communities, all federal institutions identified and consulted with these communities, and most identified the specific needs of the communities.

Institutions used their consultations to develop positive measures to support the vitality of official language communities. These measures included delivering presentations tailored to the needs of official language communities, conducting research into the nature of French-speaking Canadians and their communities, working with official language communities to support literacy, developing community partnerships and sponsorships with official language communities, and conducting outreach activities.

Several federal institutions were still struggling with designing measures to promote both official languages across the country, an observation that is consistent with previous report card exercises. For example, certain initiatives remained limited in scope, such as promoting Linguistic Duality Day and the Journée de la Francophonie within the institution and encouraging employees to participate. And although participating in these activities is a good start, institutions need to be proactive and direct their promotional efforts toward the general public to raise awareness about the importance of linguistic duality in Canadian society as a whole. Some institutions did implement measures of a broader scope, such as Canada Post's Stamp Program and VIA Rail Canada's On-board Entertainment initiative. These institutions are commended for their efforts.

Most institutions had no formal mechanisms to assess the impact of the positive measures they have put in place to support the vitality of official language communities and to promote linguistic duality in Canada. Instead, they relied on verbal or written feedback received from the communities. Some institutions developed other assessment tools, such as surveys, questionnaires and informal consultations, to evaluate the impact of their initiatives; however, most of these tools were used on a case-by-case basis rather than systematically. Assessing the impact of positive measures on the promotion of linguistic duality was a particularly weak point for all institutions, none of which had a formal or consistent approach in this area. It is important that institutions develop formal mechanisms to assess the impact of their positive measures. This would ensure that the measures are effective and maximize their value in supporting the development of official language communities and fostering the full recognition of English and French in Canadian society.

CONCLUSION

In general, the federal institutions that were evaluated in the 2013–2014 report card exercise either maintained or improved their ratings as compared with previous results. In particular, Statistics Canada and VIA Rail Canada stood out for their exemplary overall performance, demonstrating a strong commitment to complying with the *Official Languages Act* in most of the areas evaluated. Statistics Canada and VIA Rail Canada are encouraged to continue to strive for excellence.

The rest of the institutions received an overall rating of “good” for their performance, with the exception of the Public Health Agency of Canada, which obtained a “fair” rating. These institutions need to demonstrate a stronger commitment and make sustained efforts in certain areas.

The most noticeable area for improvement common to all institutions was assessing the impact of positive measures to support the development of official language communities and especially to promote both official languages. Although some institutions were using assessment tools on a case-by-case basis, none had established a formal and consistent approach to assess the impact of their positive measures. This is a shortcoming that could be detrimental to the effectiveness of the measures. The Commissioner of Official Languages strongly encourages institutions to develop a formal impact assessment mechanism for positive measures in order to ensure transparency and uniformity in their dealings with official language communities and to enable cross-departmental comparison in the future.

Similarly, despite the fact that all institutions have introduced various measures related to language of work, only one institution implemented a permanent, results-oriented mechanism to assess the impact of its measures. As a separate employer, VIA Rail Canada

is not required to participate in the Public Service Employee Survey. It therefore conducted its own employee survey regarding the language-of-work environment and included the survey results in its integrated action plan to make sure that the necessary corrections were made. The Commissioner encourages all institutions to establish a consistent and proactive approach to evaluate the impact of language-of-work measures.

The observations of service to the public made by the Office of the Commissioner revealed that most of the federal institutions that were evaluated are still struggling to meet their commitment regarding active offer in person. Year after year, this Part IV obligation remains a challenge for most institutions, which undermines their efforts to make their services available in both official languages. Institutions must demonstrate leadership in this area by implementing effective measures to ensure that employees systematically make the active offer in person.

TABLE 1 REPORT CARD RESULTS (2013–2014)

	PROGRAM MANAGEMENT	SERVICE TO THE PUBLIC	LANGUAGE OF WORK	EQUITABLE PARTICIPATION	DEVELOPMENT AND PROMOTION	OVERALL RATING
Canada Post	B	B	B	E	A	B
Canada Revenue Agency	A	A	B	A	B	B
Correctional Service Canada	A	B	A	C	D	B
Public Health Agency of Canada	C	A	B	D	C	C
Royal Canadian Mounted Police	B	C	B	B	B	B
Statistics Canada	B	A	A	D	A	A
VIA Rail Canada	A	B	A	A	B	A

Note: The Office of the Commissioner of Official Languages evaluated federal institutions based on six variables, each worth between 10% and 30% of the overall rating. The results of the evaluations 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's Web site at www.officiallanguages.gc.ca.

TABLE 2 RESULTS OF OBSERVATIONS OF SERVICE TO THE PUBLIC (2013–2014)

	IN PERSON			BY TELEPHONE		BY E-MAIL	
	VISUAL ACTIVE OFFER (%)	ACTIVE OFFER (%)	AVAILABILITY OF SERVICE (%)	ACTIVE OFFER (%)	AVAILABILITY OF SERVICE (%)	AVAILABILITY OF SERVICE* (%)	RESPONSE TIME** (%)
Canada Post	100	36	86	91	99	Not evaluated	Not evaluated
Canada Revenue Agency	99	70	90	90	96	Not evaluated	Not evaluated
Correctional Service Canada	94	46	63	91	75	100	66
Public Health Agency of Canada	***	***	***	82	94	100	96
Royal Canadian Mounted Police	92	30	77	66	76	50	46
Statistics Canada	N/A	N/A	N/A	100	100	90	89
VIA Rail Canada	99	27	81	87	93	100	75

*Availability of service by e-mail indicates the difference between the response rates for English e-mails and the response rates for French e-mails. The smaller the difference is between response rates, the higher the score.

**E-mail response time indicates the difference between the average response times for English and French e-mails. The smaller the difference is between the average response times, the higher the score.

***Given the low number of data obtained during the observations, the results are not published.

Note: 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.



CHAPTER 4 **COURT REMEDIES**

As in previous years, the Commissioner of Official Languages played a major role in defending language rights by intervening before the courts. For example, he appeared before the Supreme Court of Canada as a co-appellant in the *Michel Thibodeau et al. v Air Canada et al.* case, which focused on the status of the *Official Languages Act* in relation to an international convention incorporated into domestic law. The case was heard by the country's highest court on March 26, 2014.

The Commissioner also appeared before the Supreme Court of Canada in *Conseil scolaire francophone de la Colombie-Britannique v British Columbia* by virtue of his power to intervene in any court action involving the status of English or French in Canada. The judgment, which was handed down by the Court on July 26, 2013, is summarized below.

CONSEIL SCOLAIRE FRANCOPHONE DE LA COLOMBIE-BRITANNIQUE¹

BACKGROUND

In 2010, the Conseil scolaire francophone de la Colombie-Britannique, the Fédération des parents francophones de Colombie-Britannique and 33 French-speaking parents took legal action to defend the right to a French-language education in British Columbia. In the case, the school board petitioned the Supreme Court of British Columbia² for permission to introduce into evidence documents written solely in French.

The British Columbia judge who heard the case ruled that the school board could not introduce the documents without an English translation. The British Columbia Court of Appeal upheld that ruling. Both concluded that under an old English statute from 1731³ (1731 Act) received into British Columbia law through the *Law and Equity Act*, civil court proceedings in British Columbia must be conducted in English.

The school board, the federation and the parents responded to these judgments by appealing to the Supreme Court of Canada. The Commissioner decided to appear as an intervener in the case. He argued that a contextual interpretation of the *Law and Equity Act* and the 1731 Act—that is, an interpretation based on

1 *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2013 SCC 42.

2 Please note that the Supreme Court of British Columbia is a superior trial court.

3 *An Act that all Proceedings in Courts of Justice within that Part of Great Britain called England, and in the Court of Exchequer in Scotland, shall be in the English Language*, (U.K.), 1731, 4 Geo. II, c. 26.

unwritten constitutional principles and the values set out in the *Canadian Charter of Rights and Freedoms*—supports the conclusion that a British Columbia Supreme Court judge has the discretion to allow documents written solely in French to be admitted into evidence.

SUPREME COURT OF CANADA JUDGMENT

In a four-to-three decision, the Supreme Court of Canada upheld the earlier rulings. Exceptionally, the Court awarded costs to the school board, the federation and the parents, declaring that they had raised a novel issue in the context of a broader challenge under the Charter.

The majority of the Supreme Court of Canada judges found that the 1731 Act rendered documents written solely in French inadmissible as evidence in British Columbia courts. For a document to be admissible, it must be drafted in English or be accompanied by an English-language translation. The judges ruled that the British Columbia legislature had neither expressly repealed nor modified the 1731 Act and had therefore eliminated the British Columbia Supreme Court's discretion to admit documents written in a language other than English without an English translation.

The four judges also held that the British Columbia legislature's decision to restrict the language of court proceedings to English is not inconsistent with the values of the Charter. They maintained that the Charter does not require any province other than New Brunswick to provide for court proceedings in both official languages. Although the Charter reflects the importance of Canadians' language rights, it also reflects the importance of respect for federalism and the provinces' constitutional powers.

The three dissenting Supreme Court of Canada judges expressed the view that the 1731 Act does not explicitly prohibit the introduction of evidence in French. They noted that in the absence of clear and precise statutory language, British Columbia courts still have the jurisdiction to admit untranslated documents in French where appropriate. In view of the fundamental role of bilingualism in the Canadian constitutional context, they concluded that the Supreme Court of British Columbia's inherent jurisdiction therefore gives it the discretion, in appropriate situations, to admit into evidence documents written solely in French.

Following the Supreme Court of Canada's ruling, hearings on the merits commenced before the Supreme Court of British Columbia in December 2013. The school board, the federation and the parents claimed that, under the current funding formula, minority French-language schools were not able to provide the same level of service for their students as English-language schools.



CONCLUSION **IF YOU SUCCEED IN PLANNING, YOU ARE PLANNING TO SUCCEED**¹

This annual report, which focuses exclusively on the results achieved by the Commissioner of Official Languages in his role as ombudsman, shows that several federal institutions that were the subject of complaints and audits seek to implement the Commissioner's recommendations and improve their compliance with the *Official Languages Act*.

At the same time, a number of federal institutions still have a way to go before their compliance can be qualified as exemplary. For want of proper planning and monitoring, some of these institutions failed to meet their language obligations when they made major budget cuts or reorganizations.

As shown by the performance of the institutions cited in this report, when it comes to respecting official languages, success is no accident. To succeed, not only must institutions demonstrate specific behaviours, they must also take particular care to plan their actions, incorporating official languages into all of their processes and systematically measuring the outcome of their activities.

Every federal institution is capable of adopting and implementing these practices—and complying with the Act—by taking official languages into account before, during and after decision making. Institutions can also count on meaningful support to help them meet all of their obligations under the Act.

For example, in 2007, Canadian Heritage developed the *Guide for Federal Institutions, Official Languages Act, Part VII – Promotion of English and French*, which outlines the key questions that federal institutions should ask before making any major decisions, implementing any new plans and assessing their impact on official language communities. By using this guide and other similar tools, institutions are more likely not only to fully meet their language obligations under Part VII of the Act, but also to ensure that they do not compromise the vitality of the official language communities. The Treasury Board of Canada Secretariat has also created a tool to help institutions determine linguistic profiles when staffing bilingual positions. It is called *Determining the linguistic profile of bilingual positions: The ABCs of linguistic profiles at your fingertips*. The effective use of this tool—which asks specific questions related to the position—in conjunction with the *Qualification Standards in Relation to Official Languages*, can help institutions ensure that the language requirements for a position are established objectively.

¹ Title inspired by the old saying, “If you fail to plan, you plan to fail.”

All federal institutions should therefore take the necessary steps to comply fully with the Act right from the outset—not after a complaint, an unsatisfactory audit, a disappointing report card grade or a court case. Institutions need to understand that it is always easier to prevent problems than to fix them.

In that spirit, federal institutions should start taking linguistic duality into account now as they prepare to participate in a momentous event that is just around the corner—the 150th anniversary of Confederation.

In 2017, the festivities will provide a unique opportunity to show Canadians and the rest of the world that, a century and a half after this historic

agreement, linguistic duality continues to be one of the pillars of Canada's identity.

Federal institutions should not miss out on this opportunity. They can start asking themselves now—instead of waiting until the last minute—what they can do to celebrate the equality of English and French in every aspect of their work.



RECOMMENDATIONS

RECOMMENDATION 1

Whereas:

- Canada will be celebrating the 150th anniversary of Confederation in 2017;
- the festivities in 2017 will be a unique opportunity to showcase linguistic duality;
- federal institutions that have successfully taken advantage of opportunities to promote linguistic duality during major events, such as the Vancouver 2010 Olympic Winter Games, are those that have ensured careful planning and follow-up of their activities;
- Canadian Heritage is responsible for coordinating all activities in connection with the anniversary festivities in 2017;

Therefore, the Commissioner of Official Languages recommends that the Minister of Canadian Heritage and Official Languages:

- provide leadership by encouraging federal institutions participating in Canada's 150th anniversary celebrations in 2017 to take linguistic duality into account when planning their activities; and
- submit two progress reports—the first by March 31, 2015, and the second by March 31, 2016—on the measures federal institutions are implementing to ensure linguistic duality throughout the festivities marking the 150th anniversary of Confederation.

RECOMMENDATION 2

Whereas:

- the linguistic identification of positions affects services to the public in offices designated as bilingual (Part IV of the *Official Languages Act*) and language of work in regions designated as bilingual for language-of-work purposes (Part V of the Act);
- public servants must, on commencing employment in the federal public service, be aware of the importance of official languages for providing services to Canadians and for the internal functioning of the public service;
- human resources advisors must be sufficiently trained and able to provide comprehensive advice to managers on language requirements;
- managers in federal institutions have a sub-delegated responsibility to determine objectively whether positions are bilingual and, if they are, to identify their linguistic profiles (language requirements of positions must be reviewed during any staffing, reclassification or reorganization activities);
- federal institutions and the Treasury Board of Canada Secretariat have a responsibility to ensure that managers receive sufficient training with regard to their duties under the *Official Languages Act*;
- federal institutions and the Treasury Board of Canada Secretariat have a responsibility to ensure that human resources specialists receive in-depth training in order to be able to provide comprehensive advice on the importance of taking both official languages into account in staffing processes;
- federal institutions and the Treasury Board of Canada Secretariat have a responsibility to ensure that new public servants are made aware of the importance of Canada's official languages for providing services to Canadians and for the internal functioning of the public service;
- the Canada School of Public Service responds to the learning and training needs established by the Treasury Board and plays a key role in official languages training and in raising awareness of official languages;

Therefore, the Commissioner of Official Languages recommends that the President of the Treasury Board—in his capacity as minister responsible for the Canada School of Public Service and being responsible for establishing policies and issuing directives to give effect to Parts IV, V and VI of the *Official Languages Act*—ensure that the Treasury Board of Canada Secretariat and the Canada School of Public Service review and enhance, by October 15, 2015, any training on responsibilities related to official languages for:

- new managers with sub-delegated staffing authority,
- human resources specialists who advise managers, and
- public servants at the beginning of their career.

