



SENATE | SÉNAT  
CANADA

## Interim Report of the Standing Senate Committee on Official Languages

The Honourable René Cormier, Chair  
The Honourable Rose-May Poirier, Deputy Chair



# MODERNIZING THE OFFICIAL LANGUAGES ACT

*The Views of Stakeholders  
Who Have Witnessed  
the Evolution of the Act*

FEBRUARY 2019



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# MEMBERS OF THE COMMITTEE



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*The Honourable Rose-May Poirier,  
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*The Honourable  
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## EX-OFFICIO MEMBERS OF THE COMMITTEE:

Peter Harder, P.C. (or Diane Bellemare or Grant Mitchell), Larry W. Smith (or Yonah Martin), Yen Pau Woo (or Raymonde Saint-Germain), Joseph A. Day (or Terry M. Mercer)

## OTHER SENATORS WHO HAVE PARTICIPATED IN THE STUDY:

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# ORDER OF REFERENCE

Excerpt from the *Journals of the Senate*, Thursday, 6 April 2017:

The Honourable Senator Tardif moved, seconded by the Honourable Senator Jaffer:

That the Standing Senate Committee on Official Languages be authorized to examine and report on Canadians' views about modernizing the *Official Languages Act*. Considering that the Act will be turning 50 in 2019 and that it affects various segments of the Canadian population, that the committee be authorized to:

- a) Examine and report on young Canadians' views about the advancement of both official languages, how they identify with the languages and related cultures, the motivations for learning the other official language, the employment opportunities and future of bilingual youth, and what can be done to enhance federal support for linguistic duality;
- b) Identify the concerns of official language minority communities — and their sector-based organizations (e.g., health, education, culture, immigration) — regarding the implementation of the *Official Languages Act*, and what can be done to enhance their vitality and to support and assist their development;
- c) Examine and report on the views of stakeholders who have witnessed the evolution of the *Official Languages Act* since it was enacted 50 years ago, with a focus on success stories, its weaknesses, and what can be done to improve it;
- d) Identify issues specific to the administration of justice in both official languages, potential shortcomings of the *Official Languages Act* in this regard, and what can be done to ensure respect for English and French as the official languages of Canada;
- e) Identify issues specific to the powers, duties and functions of federal institutions with respect to the implementation of the *Official Languages Act* — particularly the roles of the departments responsible (e.g., Canadian Heritage, Treasury Board Secretariat, Department of Justice, Public Service Commission of Canada) and the Office of the Commissioner of Official Languages — and what can be done to ensure the equality of both official languages in the institutions subject to the Act; and

That the committee submit interim reports on the aforementioned themes, that it submit its final report to the Senate no later than June 30, 2019, and that it retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

The question being put on the motion, it was adopted.

Charles Robert

*Clerk of the Senate*

# ACRONYMS

<b>ACFO</b>	<i>Association des communautés francophones d'Ottawa</i>
<b>CFRCLR</b>	Canadian Francophonie Research Chair in Language Rights
<b>CCP</b>	Court Challenges Program
<b>FCFA</b>	<i>Fédération des communautés francophones et acadienne du Canada</i>
<b>LANG</b>	House of Commons Standing Committee on Official Languages
<b>LRSP</b>	Language Rights Support Program
<b>NCC</b>	National Capital Commission
<b>NCR</b>	National Capital Region
<b>OCOL</b>	Office of the Commissioner of Official Languages of Canada
<b>OCOLNB</b>	Office of the Commissioner of Official Languages for New Brunswick
<b>OLLO</b>	Standing Senate Committee on Official Languages
<b>OFLSC</b>	Office of the French Language Services Commissioner of Ontario
<b>RCBB</b>	Royal Commission on Bilingualism and Biculturalism
<b>RCCFPP</b>	Research Chair in Canadian Francophonie and Public Policies



# PREFACE

With the tabling of this third interim report, the Standing Senate Committee on Official Languages is now halfway through its study on modernizing the *Official Languages Act* (the Act). Having consulted young Canadians and official language minority communities, the members of the Senate Committee wanted to hear from people who have witnessed the evolution of the Act.

In order to examine the Act's progress over the years, we held hearings with and received briefs from people who are familiar with its workings and who have felt the effects of its implementation on a daily basis. Our report presents the views of individuals from a variety of backgrounds: researchers, parliamentarians, commissioners, as well as former community organization representatives, judges and public servants.

As our work progresses, the proposals we have heard to modernize the Act multiply, become clearer and more fine-tuned. The fundamental issue that emerges from the testimony and briefs is that **effective and consistent implementation of the Act is essential**. Witnesses made recommendations to codify some existing practices in the Act and to dream big by adding new provisions. They want the Act to reflect current realities and have the necessary mechanisms to respond to challenges on the ground. At the same time, we were warned that the Act should focus on fundamentals, without getting lost in the details.

Since the tabling of our second interim report, there have been developments with the announcement of amendments to the *Official Languages (Communications with and Services to the Public) Regulations*. The government is proposing a series of measures to improve communications with and services to the public in both official languages. These amendments, which could come into force by 2023, take into consideration a number of concerns heard to date. Our committee will keep an eye on the debate surrounding the adoption and implementation of this new regulatory measure, which, let us not forget, concerns only Part IV of the Act.

Recent events in other legislatures show that constant vigilance is required to protect acquired language rights in every province and territory of the country. Some of the witnesses that we heard from in this part of the study are directly affected by these events. Our committee takes this opportunity to offer its support to the communities concerned. Canada's social contract is rooted in linguistic duality and must remain so from coast to coast to coast.

Our study will be completed in 2019 with a final report that will offer a series of recommendations to the federal government. We would like to thank the individuals who took the time to share their views with us for the third part of our study. We encourage the federal government to consider their suggestions to modernize the Act, which belongs to all Canadians.



The Honourable René Cormier  
*Chair*



The Honourable Rose-May Poirier  
*Deputy Chair*

# REPORT HIGHLIGHTS

The *Official Languages Act* turns 50 this year. With the tabling of this third interim report, the Standing Senate Committee on Official Languages is now halfway through its study on the modernization of the Act.

After hearing from young Canadians and representatives of official language minority communities, the committee wanted to take a look at how the Act has been implemented from its inception in 1969 to today. The committee therefore invited people who have witnessed its evolution to give testimony or submit a brief.

This report presents the views of individuals who are very familiar with how the Act works and have experienced the effects of its implementation on a day-to-day basis. It summarizes the perspectives of former community organization representatives, judges, commissioners and public servants as well as current politicians, researchers and representatives of the province of New Brunswick.

The committee notes that halfway through its study the proposals for modernizing the Act are multiplying, becoming more fine-tuned and, sometimes, contradictory. The fundamental issue that emerges from this third part of the study is that **effective and consistent implementation of the Act is essential**.

This report highlights a series of suggested measures to improve the Act while tracing the events that mark its history. For example, it looks at the work of the Royal Commission on Bilingualism and Biculturalism, which led to the adoption of the first Act, in 1969.

In addition to examining the federal context, the report examines the evolution of language regimes in provinces, territories and in the municipalities of Ottawa and Moncton over the past 50 years.

Witnesses said they want the Act to reflect current realities because it plays a vital role in ensuring real progress toward the equal status and use of English and French. Witnesses underlined the Act must have the necessary mechanisms to respond to challenges on the ground, including provisions that require its periodic review.

Similar proposals were made in each of the committee's previous reports, such as making a central agency responsible for the Act's implementation. While there was no consensus as to which institution this responsibility should be given, witnesses were adamant that departmental responsibilities be clearly defined.

Witnesses once again advocated strongly for incorporating the management of federal–provincial/territorial agreements in the Act. Cooperation should therefore be at the forefront of a modernized Act. The Act could include an opt-in regime with standard provisions that provinces and territories could adopt, in the spirit of harmonizing language regimes across the country.

The further the committee moves with its study, the more urgent it seems that the federal government define the key principles of the Act, particularly those on which the implementation of Part VII depend.

Witnesses reiterated the need to define “positive measures,” require consultation with official language minority communities and provide a framework for the active offer of services. In addition, the Act must include criteria for institutional vitality and define a minimum threshold for services to be provided to Canadians in both English and French. The Act's regulatory framework must also be strengthened.

The committee heard from four individuals who are, or have been, central to the Commissioner's role at either the federal or provincial level. This provided the ability to reflect further on the role and responsibilities to be given the Commissioner of Official Languages. Many witnesses did not believe the Commissioner should be given the power to impose sanctions, but others considered such a measure appropriate.

Support for creating an administrative tribunal was qualified: care must be taken not to reduce the Commissioner's leeway when moving forward with the creation of such a mechanism.

The witnesses also proposed codifying in the Act the existing practices and principles recognized in case law. The example set by New Brunswick should be followed in some respects. The Act could thus include a five-year plan for its implementation. It could also affirm the role of immigration in the development of communities.

Witnesses strongly agreed that the Act should provide a framework for the Court Challenges Program and require Supreme Court judges to be bilingual at the time of their appointment. This would ensure these measures are made permanent and attest to their symbolism in advancing language rights.

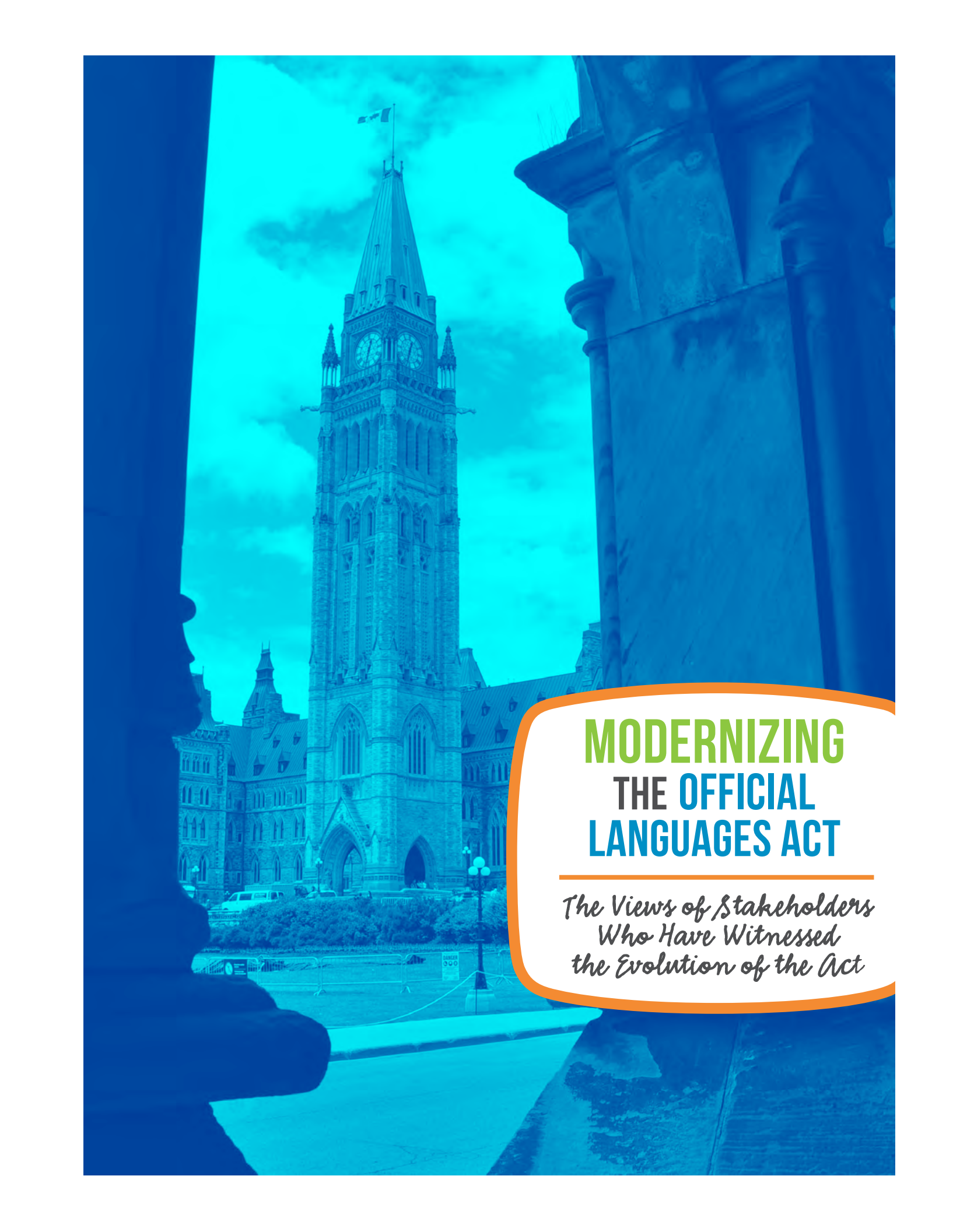
Modernizing the Act is an opportunity to look to the future by adding new provisions, which should include a comprehensive vision for advancing both official languages in the National Capital Region. The federal government plays an important role in promoting both official languages in the country's capital.

An updated Act could clarify language obligations in the more specific context of the federal public service. For example, witnesses presented proposals related to language of work provisions, managers' responsibilities and translation obligations.

As the committee moves forward with its study, witnesses have cautioned it that a modernized Act must deal with the essentials and not get lost in the details. The Act concerns all Canadians and its modernization must therefore ensure a balance in addressing the needs of all members of Canadian society. It must also remain balanced in its composition, language and scope.

## NEXT STEPS

The committee will consult with two other segments of the Canadian population over the next six months and report on their views. The study will be completed in June 2019 with the tabling of a final report containing specific recommendations to the federal government. The committee encourages the federal government to consider the views of people who have witnessed the evolution of the Act, as well as the views of previous and future witnesses.



## MODERNIZING THE OFFICIAL LANGUAGES ACT

*The Views of Stakeholders  
Who Have Witnessed  
the Evolution of the Act*

# INTRODUCTION

On 6 April 2017, the Standing Senate Committee on Official Languages (the Senate Committee) received Senate approval to study Canadians' views on modernizing the *Official Languages Act* (the Act). The study consists of five phases, which correspond to the five segments of the population that the Senate Committee has consulted or plans to consult:

- young people;
- official language minority communities;
- stakeholders who have witnessed the evolution of the Act;
- the justice sector; and
- federal institutions.

The Senate Committee's objective is to table a final report with specific recommendations for the federal government by June 2019, when Canada will mark the 50<sup>th</sup> anniversary of the adoption of the first Act. This third interim report provides an overview of the testimony heard during the third phase of the study.

From April to October 2018, the Senate Committee studied **the views of stakeholders who have witnessed the evolution of the Act** since it was enacted 50 years ago, with a focus on success stories, its weaknesses, and what can be done to improve it.

The Senate Committee held most of its public hearings in Ottawa. It also held some public meetings during its visit to New Brunswick in October 2018. In total, 19 witnesses, six briefs and two follow-ups were used as the basis for this interim report, which brings together the views of individuals from a variety of backgrounds:

- researchers;
- a long-time senator and politician;
- provincial language commissioners, from Ontario and New Brunswick;
- a former Commissioner of Official Languages of Canada;
- former representatives of francophone community organizations who are now self-employed;
- official languages consultants;
- a former justice of the Supreme Court of Canada (the Supreme Court);
- bilingual organizations from New Brunswick that are working to bring communities closer together; and
- municipal representatives.

Each phase of the Senate Committee's study brings forth new proposals to modernize the Act. Recommendations previously heard become clearer. Others are qualified or even contradicted.

However, a clear message emerged from the public hearings and briefs in this third phase of the study: **The Act must be implemented effectively and consistently.** To this end, some of its implementation and oversight mechanisms need to be strengthened. In addition, without getting lost in detail, an updated Act that meets the needs and challenges of the 21<sup>st</sup> century could contain new provisions.





*From left to right: The Honourable Lucie Moncion, Paul E. McIntyre, Marie-Françoise Mégie, Raymonde Gagné, Rose-May Poirier and René Cormier.*

This interim report is divided into two parts. The **first chapter** highlights the comments by individuals who shared their ideas with the Senate Committee against a historical background that traces the events that marked the evolution of the Act. The **second chapter** outlines proposals to modernize the Act. This report provides the federal government with food for thought to look at the

Act from the perspective of people who are familiar with its workings and who feel the effects of its implementation on a day-to-day basis.

Readers are encouraged to consult the glossaries in the first two interim reports to better understand the context and scope of the comments made in this third report.<sup>1</sup>

# CHAPTER 1

*The Evolution of the Act  
and the Views of  
Stakeholders Who Have  
Witnessed It*





From left to right: André Laurendeau and Davidson Dunton on the Royal Commission on Bilingualism and Biculturalism; The Right Honorable Pierre Elliott Trudeau and Her Majesty Queen Elizabeth II signing the Constitution Act, 1982.  
Photo credit: Library and Archives Canada, article numbers: 3592114, 5015381.

Since the first Act was passed in 1969, society, demographics, technology and jurisprudence in Canada have changed significantly. This is especially true since the overhaul of the Act in 1988. Chapter 1 traces the Act's evolution, highlighting the current challenges of its implementation.

## Then and now: The constitutional, legislative and regulatory framework governing official languages

To properly identify the issues raised during recent discussions about modernizing the Act, its objectives and scope must be understood in terms of the Canadian socio-political context of the 1960s from which it emerged.<sup>2</sup> The Act dates back to the Royal Commission on Bilingualism and Biculturalism (the Commission), co-chaired by André Laurendeau and Davidson Dunton. Its initial terms of reference were broader than merely adopting legislation to recognize the status of English and French as official languages.

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### Terms of Reference of the Royal Commission on Bilingualism and Biculturalism

*"... to inquire into and report upon the existing state of bilingualism and biculturalism in Canada and to recommend what steps should be taken to develop the Canadian Confederation on the basis of an equal partnership between the two founding races, taking into account the contribution made by the other ethnic groups to the cultural enrichment of Canada and the measures that should be taken to safeguard that contribution."*

***Book I: The Official Languages, 1967, p. xxi.***

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## Passage of the first Act in 1969

In its preliminary report, the Commission said that Canada was passing through “the greatest crisis in its history,” marked by the conflict between the English-speaking majority in Canada and the French-speaking majority in Quebec.<sup>3</sup> This report – supported by public hearings, hundreds of briefs and extensive research – was followed by six volumes that addressed the various aspects of the language rights needing protection.

### Reports of the Royal Commission on Bilingualism and Biculturalism

**February 1965:** The Commission submits its preliminary report, which describes the state of Canada’s linguistic situation.

**October 1967:** The Commission submits its first volume, entitled ***The Official Languages***, which contains proposals to recognize the equal status of English and French as Canada’s official languages.

**May 1968:** The Commission submits its second volume, entitled ***Education***, which deals with minority language education and the teaching of English and French as second languages.

**September 1969:** The Commission submits its third volume, entitled ***The Work World***, which examines issues related to the socio-economic status of Canadians, the federal administration and the private sector.

**October 1969:** The Commission submits its fourth volume, entitled ***The Cultural Contribution of the Other Ethnic Groups***.

**February 1970:** The Commission submits its fifth volume, entitled ***The Federal Capital***, which recommends that English and French be granted full equality status in the National Capital Region. It also submits its sixth volume, entitled ***Voluntary Associations***, which recognizes their role in the future of Canada’s linguistic duality.

In its first volume, the Commission presented its vision of what constitutes an officially bilingual country and the legislative and practical measures needed to ensure the future of Canada’s linguistic duality. To that end, it recommended that:

- English and French be formally declared the official languages of the Parliament of Canada, the federal courts, the federal government and the federal administration;
- the federal Parliament adopt a federal official languages act; and
- the Governor-in-Council appoint a Commissioner of Official Languages charged with ensuring respect for the status of French and English in Canada.<sup>4</sup>

In October 1968, the federal Parliament introduced Bill C-120, An Act respecting the status of the official languages of Canada. After heated debate across Canada, the very first *Act respecting the status of the official languages of Canada*, also known as the *Official Languages Act*, finally received Royal Assent in July 1969.<sup>5</sup> At that time, the Act:

- declared that **English and French are the official languages of Canada**;
- required **legislative documents** to be adopted in both official languages and recognized the equal authority of the English and French versions of federal legislation;
- governed the use of official languages in **federal courts** by establishing:
  - a criterion for the publication of a decision where it “determines a question of law of general public interest or importance or where the proceedings leading to its issue were conducted in whole or in part in both official languages;” and
  - the right to be heard in the official language of one’s choice, with interpretation offered when needed;

- established criteria for printing **notices and advertisements** in at least one publication in general circulation within a given region in the other language;
- required federal departments and agencies, Crown corporations and federal courts to provide **services to the public in both official languages** in the **National Capital Region** (NCR) and elsewhere where there is a “significant demand” and **services to the travelling public** in both official languages according to demand;
- provided for **bilingual districts** to be established;
- authorized the **making of regulations** to effect compliance with the Act;
- set out the duty of the **Public Service Commission** in relation to the appointment and advancement of personnel in positions in which services to the public in both official languages are required; and
- established the position of the **Commissioner of Official Languages** for Canada.

The scope of this first Act was more limited than that of the 1988 revised Act. Some of its provisions never came into force, as was the case with bilingual districts. Other provisions would eventually disappear from the legislation, such as those concerning the role of the Public Service Commission. It should be noted that, in this first Act, no ministerial authority was responsible for applying its provisions.<sup>6</sup> The following sections discuss the measures taken since the 1970s concerning the Office of the Commissioner of Official Languages, education and the federal public service.

## Creation of the Office of the Commissioner of Official Languages

The 1969 Act provided for a Commissioner of Official Languages (the Commissioner) to be appointed for a seven-year term, investigate complaints, make recommendations and report to Parliament each year. At the time, the Commissioner was not authorized to intervene before the Federal Court in cases of non-compliance with the Act. The first Commissioner, Keith Spicer, took office in April 1970. To date, seven people have held this position on a permanent basis and one on an acting basis.

### Official Languages Commissioners, Past and Present

**1970 to 1977:** Keith Spicer, first Commissioner of Official Languages.

**1977 to 1984:** Maxwell Yalden, second Commissioner of Official Languages.

**1984 to 1991:** D’Iberville Fortier, third Commissioner of Official Languages.

**1991 to 1999:** Victor C. Goldbloom, fourth Commissioner of Official Languages.

**1999 to 2006:** Dyane Adam, fifth Commissioner of Official Languages.

**2006 to 2016:** Graham Fraser, sixth Commissioner of Official Languages.

**2016 to 2018:** Ghislaine Saikaley, acting Commissioner of Official Languages.

**2018 to date:** Raymond Thériault, seventh Commissioner of Official Languages.

As noted later in this report, the Commissioner’s powers were somewhat expanded in 1988 with the new version of the Act, particularly with respect to court remedies.

## Support for education in both official languages

The first federal–provincial/territorial agreements to support official languages in education were introduced in 1970. In line with the recommendations of the Royal Commission on Bilingualism and Biculturalism, funding is managed through a Protocol for Agreements for Minority-Language Education and Second-Language Instruction, governing the federal government and the provincial and territorial governments, under the direction of the Council of Ministers of Education, Canada. The protocols are signed every four to five years for the purpose of funding the additional costs incurred for minority language education and the learning of the other official language by majority communities. Although, a dozen years later, the *Canadian Charter of Rights and Freedoms* (the Charter) would protect the right to minority language education, compulsory instruction in the other official language, however, would never be required for all Canadian students, as recommended by the Commission.<sup>7</sup> Calls to this effect were heard in previous phases of the study.<sup>8</sup>

Criticism was repeatedly levelled at gaps in the implementation of federal–provincial/territorial agreements, a mechanism that has never been covered by the Act. Young Canadians and official language minority communities made proposals to this effect to the Senate Committee.<sup>9</sup> This issue arose again in the testimony of those who have witnessed the evolution of the Act, as noted in the next chapter. Gino LeBlanc, former president of the *Fédération des communautés francophones et acadienne du Canada* (FCFA), sees the Act as a tool to strengthen the education continuum, from early childhood to the post-secondary level.<sup>10</sup>

## Language rights of federal public servants

The language rights of federal public servants, which were not included in the first Act, were governed through parliamentary measures, policies and directives set out in the 1970s and 1980s. This began with Parliament's adoption of a **Special Resolution on Official Languages** in June 1973 confirming the right of public servants to work in the official language of their choice. It provided for:

- the **designation of bilingual positions**;
- the provision of **language training** programs;
- the development of projects designed to enhance **bilingualism in the NCR**; and
- an **exemption for employees appointed to a bilingual position** who did not meet the requirements of their position and who agreed to take training to acquire the necessary language skills – this was made into an exemption order in 1981.<sup>11</sup>

In 1977, the federal government adopted a series of guidelines, including:

- the introduction of a **bilingualism bonus** for employees who met the language requirements of their position – this was intended to be a temporary measure but still exists today, though the \$800 annual bonus has never been increased; and
- the **designation of bilingual regions for language of work purposes**; these were listed in the 1988 Act but never revised.<sup>12</sup>

Other policies and directives were introduced in 1981 to govern the **staffing of bilingual positions, active offer** and the **availability of work instruments in English and French**. It was not until 1988 that some of these rights were codified in the Act. In their brief to the Senate Committee, two official languages consultants, also former federal government officials, proposed that provisions concerning official languages in the public service be strengthened.<sup>13</sup> Their proposals are detailed in Chapter 2.

## From the Charter to the overhaul of the Act in 1988

In April 1982, Canada adopted the Charter, which defines various language rights. This constitutional change forced the federal government to review the Act, the new version of which came into force in September 1988.<sup>14</sup> The 1969 statute was then repealed. The new Act:

- contained a **preamble** with 10 statements providing context for the Act's implementation;
- set out three objectives in its **purpose section** relating to:
  - the equality of status and use of both official languages;
  - the development of official language minority communities and advancement towards the equality of status and use of both official languages; and
  - the role of federal institutions with respect to official languages;
- set out **constitutional rights** related to:
  - the use of official languages in Parliament (**Part I**), by stating the right of parliamentarians to simultaneous interpretation;
  - the use of official languages in legislative and other instruments (**Part II**), by providing for the language of federal–provincial/territorial agreements and international treaties;
  - the use of official languages in federal court cases and proceedings (**Part III**), by including an obligation relating to the understanding of official languages by judges of federal courts, other than Supreme Court judges, and by requiring the simultaneous publication of their decisions “at the earliest possible time” based on the public interest criterion;
  - communications with and services to the public (**Part IV**), by extending this obligation to services provided on behalf of federal institutions, with specific provisions relating to active offer, signs identifying offices, the use of media reaching both English- and French-speaking audiences and the making of regulations; and
- advancement of English and French (**Part VII**), more specifically regarding the commitments to “enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development” and “fostering the full recognition and use of both English and French in Canadian society;”
- codified the language rights of federal public servants, for example regarding language of work (**Part V**) and equitable representation of anglophones and francophones within the federal public service (**Part VI**), and provided for the making of regulations in these two respects;
- expanded the Commissioner's powers (**Part IX**), by giving him or her the right to, among other things:
  - conduct investigations in private;
  - make recommendations and conduct follow-ups;
  - table special reports in Parliament; and
  - delegate his or her powers and responsibilities;
- introduced the right to court remedies (**Part X**) before the Federal Court of Canada that:
  - applied to certain provisions of the Act only, namely **sections 4 to 7, 10 to 13 and 91**, as well as **Part IV** and **Part V** – extended to **Part VII** in 2005;
  - authorized a remedy that was “appropriate and just in the circumstances;” and
  - governed the remedial power of the Commissioner, on his or her own initiative, on behalf of a complainant, as a party or as an intervener;



- affirmed the **precedence of parts I to V of the Act** over other federal statutes and regulations, with the exception of the *Canadian Human Rights Act*;
- set out its **regulatory powers**;
- designated a **parliamentary committee**, of the Senate, of the House of Commons, or of both houses, responsible for:
  - reviewing the administration of the Act and any regulations and directives made under it; and
  - reviewing the reports of the Commissioner, the President of the Treasury Board and the Minister of Canadian Heritage; and
- specifies official languages requirements for staffing (**section 91**).

It must be noted that the scope of the 1988 Act was much broader than that of 1969. The following sections deal specifically with the evolution of the right to remedy, the protection of language rights before the courts and the ministerial responsibilities set out in the Act.

### Language rights to be recognized: Court remedies

The coming into force of the Charter – supported by Part X of the Act – opened the door to a series of court remedies that would strengthen the interpretation of Charter language rights in the decades to come. The courts confirmed that the Act had quasi-constitutional status and ruled on several principles of case law. Readers are invited to consult the second interim report of this study to better understand the recognition of language rights by the courts.<sup>15</sup>

Once again, the Senate Committee has received requests that the Act take into account recent developments in case law and strengthen the powers of the Commissioner of Official Languages as a judicial intervener. However, the former commissioner of official languages of Canada, Graham Fraser, former commissioner of French language services of Ontario, François Boileau,<sup>16</sup> former commissioner of official languages for New Brunswick, Katherine d'Entremont, and Interim Commissioner of Official Languages for New Brunswick, Michel Carrier, cautioned the Senate Committee on the role to be given to the Commissioner.<sup>17</sup> We will come back to this in Chapter 2.



## Language rights to protect: The Court Challenges Program

The Court Challenges Program (CCP) was created in March 1978. Its purpose was to help official language minority communities to use the courts to clarify their language rights. Over time, the CCP has been amended, abolished and reinstated.

### History of the Court Challenges Program (CCP)

**1978:** The CCP is created and covers the language rights provided for in the *Constitution Act, 1867* and the *Manitoba Act, 1870*.

**1982:** The scope of the CCP is extended to cases involving sections 16 to 23 of the Charter.

**1985:** The scope of the CCP is further expanded, this time to cover the equality rights enshrined in the Charter.

**1992:** The CCP is abolished.

**1994:** The CCP is reinstated.

**2006:** The CCP is abolished again. This decision is challenged in court by the FCFA.

**2008:** An out-of-court settlement forces the restoration of financial support for remedies involving language rights.

**2009:** The Language Rights Support Program (LRSP) is launched.

**2017:** The government announces it will reinstate the CCP, which will once again cover equality rights and will now extend to parties subject to the *Official Languages Act*. The cases supported by the LRSP will be incorporated into the new program.

From 1985 to 2006, approximately 255 remedies were funded by the CCP, mainly concerning education rights.<sup>18</sup> Dozens of other remedies were supported by the LRSP starting in 2009, several of which are still pending. The reinstatement of the CCP – and its extension to some of the rights guaranteed by the Act – has been well received. According to recent announcements, the CCP is expected to be operational in 2019.<sup>19</sup> The Hon. Serge Joyal, a long-time senator and politician, strongly defended the need to enshrine this program in the Act to ensure its continued existence.<sup>20</sup> Political scientist Stéphanie Chouinard recommended extending the right to remedy to other parts of the Act.<sup>21</sup> Moreover, once in force, the CCP will extend to justiciable parts of the Act.

### Divided and non-binding departmental responsibilities

The 1988 Act set out the responsibilities of two ministers:

- those of the **President of the Treasury Board**, which relate to coordinating parts IV, V and VI, developing policies or guidelines in this regard, making regulations and publishing an annual report to Parliament; and
- those of the **Minister of Canadian Heritage**, which relate to coordinating Part VII, taking measures relating to the advancement towards the equality of status and use of English and French in Canadian society, and publishing an annual report to Parliament.

The ministerial responsibilities set out in parts VII and VIII of the Act were worded in a non-restrictive manner. The President of the Treasury Board “may” take measures to ensure the implementation of his or her obligations or delegate them to the deputy heads of federal institutions – a trend that has increased over the years. The Minister of Canadian Heritage shall “encourage,” “promote” and “take such measures as that Minister considers appropriate” to carry out his or her responsibilities. Author Françoise Enguehard argues that the terminology of the Act must be strengthened: it must require, force and punish, not encourage.<sup>22</sup>



## Restricted regulatory framework

To date, only one set of regulations governs the Act's implementation: the *Official Languages (Communications with and Services to the Public) Regulations* (the Regulations), made in 1991. The Regulations provide a framework for the application of Part IV and define the circumstances under which the public and the travelling public can receive services and communicate with federal institutions in the language of their choice. In October 2018, the President of the Treasury Board, the Hon. Scott Brison, and the Minister of Tourism, Official Languages and La Francophonie, the Hon. Mélanie Joly, announced amendments to the Regulations.<sup>23</sup> These take into consideration a number of concerns heard so far during discussions on modernizing the Act.

Since 1988, the Act has provided for the possibility of making regulations with respect to the application of parts V and VI, and since 2005, Part VII, but the federal government has never taken this up. Official language minority communities have called for the federal government to use this regulatory power to clarify the Act's provisions, particularly those in Part VII.<sup>24</sup> Witnesses heard during this phase of the study echoed this demand, as we will see in Chapter 2.<sup>25</sup>

## Strategic support from the federal government since 2003

Starting in 2003, the federal government began to focus on strategic support for official languages, based on five-year horizontal initiatives targeting key federal institutions. These institutions are in close contact with official language minority communities and can take more direct action regarding the advancement of English and French. This framework for action aimed to strengthen support for official languages in specific sectors.

The federal government, which has already published an action plan and two roadmaps, recently published the most recent version of its five-year commitments, summarized below.<sup>26</sup>

## Federal Government Strategic Support from 2003 to the Present

**2003 to 2008:** The *Action Plan for Official Languages* revolves around three major axes: education, community development and the federal public service. It includes targets to double the proportion of young Canadians aged 15 to 19 who have knowledge of both official languages (**50% by 2013**) and increase the number of rights-holders enrolled in francophone schools (**80% by 2013**).

**2008 to 2013:** The *Roadmap for Canada's Linguistic Duality* continues several of the initiatives in the previous plan and adds others in the areas of translation, youth, arts and culture.

**2013 to 2018:** *Canada's Roadmap for Official Languages* continues the initiatives of the previous plan, focusing on three priorities: education, immigration and communities. It eliminates other initiatives, such as those affecting the federal public service.

**2018 to 2023:** The *Action Plan for Official Languages* incorporates several of the initiatives from the previous plan in regular departmental programs. It provides more direct support to community organizations and strengthens support in some key areas, for example, community media, teacher recruitment and the development of a mobile application for learning both official languages. It sets targets to increase the national bilingualism rate (**20% by 2036**), particularly among young anglophones outside Quebec (**9% by 2036**), and to stabilize the demographic weight of francophone minority communities (**4%**).

In general, federal institutions participating in these five-year initiatives have a better understanding of their official languages obligations. However, responsibility for their implementation and coordination is not enshrined in the Act. Witnesses requested that it be, drawing inspiration from New Brunswick, whose *Official Languages Act* provides for the adoption of an implementation plan for the Act coordinated by the Premier.<sup>27</sup> We will return to this matter in the second part of this report.

### Evolving departmental responsibilities

In April 2001, the position of minister responsible for the horizontal coordination of official languages issues was created. The Hon. Stéphane Dion was the first to hold this position, supported by the Privy Council Office. It was not until the first action plan, in 2003, that these responsibilities were included in the Official Languages Accountability and Coordination Framework as an appendix.<sup>28</sup> These responsibilities have changed with each government and been shuffled among portfolios from the Privy Council Office to Canadian Heritage.

#### Evolution of the Position of Minister of Official Languages

**March 2003:** The Official Languages Accountability and Coordination Framework defines the responsibilities of the Minister of Official Languages.

**March 2003 to December 2003:** The Hon. Stéphane Dion, as President of the Queen's Privy Council for Canada, coordinates the official languages file.

**December 2003 to July 2004:** The Hon. Pierre Pettigrew is the Minister responsible for Official Languages.

**July 2004 to May 2005:** The Hon. Mauril Bélanger is the Minister responsible for Official Languages.

**February 2006 to July 2008:** The Hon. Josée Verner is Minister of La Francophonie and Official Languages, then Minister of Canadian Heritage and Official Languages.

**October 2008 to July 2013:** The Hon. James Moore is Minister of Canadian Heritage and Official Languages.

**July 2013 to November 2015:** The Hon. Shelly Glover is Minister of Canadian Heritage and Official Languages.

**November 2015 to July 2018:** No member of the Cabinet is designated as the Minister responsible for Official Languages. The Hon. Mélanie Joly, Minister of Canadian Heritage, is responsible for the portfolio.

**July 2018 to present:** The Hon. Mélanie Joly is Minister of Tourism, Official Languages and La Francophonie. The powers and duties provided for under the Act are transferred to her by order-in-council. The Official Languages Branch for which she is responsible still reports to Canadian Heritage.

The title of Minister responsible for Official Languages does not appear in the Act to this day. Its exclusion from the Act has led to confusion. Mechanisms have been created to support the Minister. Responsibility for official languages was transferred from a committee of deputy ministers of official languages, which reported directly to the Privy Council Office between 2003 and 2006, to a committee of assistant deputy ministers of official languages reporting to Canadian Heritage, starting in 2007. These mechanisms are not mentioned in the Act either. In addition to these challenges is the non-binding wording of the Act, as already mentioned, used to describe existing ministerial responsibilities. The bulk of the evidence from the third phase of the study – as well as that from the communities in the second phase<sup>29</sup> – calls for the Act to be clearer.<sup>30</sup> Chapter 2 sets out proposals to this end.

## 2005 Amendments to the Act

In November 2005, after many attempts, Senator Jean-Robert Gauthier succeeded in strengthening Part VII by adding the obligation to take “positive measures,” allowing for the making of regulations and making this part of the Act justiciable. Five years later, the Senate Committee found that implementation of Part VII was lacking and that federal institutions had a poor understanding of the obligation to take “positive measures.”<sup>31</sup> The federal government did not act on the Senate Committee’s proposal to consult official language minority communities to see if the regulatory framework established under the Act needed to be modernized.<sup>32</sup> In 2007, it published the *Guide for Federal Institutions on Part VII (Promotion of French and English) of the Official Languages Act* to assist institutions in implementing this obligation.

A Federal Court decision in the spring of 2018 confirmed the clear need to strengthen the implementation mechanisms in Part VII, as did the Senate Committee’s first two reports.<sup>33</sup> These calls were reiterated by witnesses in this third phase of the study.<sup>34</sup> Marie-France Kenny, as former president of the FCFA, put her name to a document in 2009 criticizing the Act’s implementation.<sup>35</sup> She noted, with disappointment, that little had changed and that the need to clarify Part VII was as strong as ever.<sup>36</sup> She pointed out the importance for the federal government to consider the proposals made by the communities and heard in the second phase of the Senate Committee’s study.<sup>37</sup>

## Other attempts to amend the Act

Although the Act has been amended only once since 1988, other bills have been introduced in Parliament to update its content. The following sections describe the most recent attempts to clarify the Act with respect to the provision of services, justice and air travel.

## Communications with and services to the public

Four bills have been introduced since 2010 to clarify obligations relating to communications with and services to the public.<sup>38</sup> In the fall of 2016, the federal government launched a process to modernize the regulations that set out in concrete terms the application of Part IV. Draft regulations were tabled in the House of Commons in October 2018.<sup>39</sup> Indeed, this matter was still before Parliament at the time of publication. While these regulatory amendments take into consideration a number of issues raised to date, witnesses urged the government to incorporate the principles of Bill S-209, An Act to amend the Official Languages Act (communications with and services to the public), which is still before Parliament, into the Act. They also called for greater consistency in the implementation of parts IV and VII of the Act.<sup>40</sup> Chapter 2 examines their arguments in detail.



## Justice

Since 2008, seven bills have been introduced in Parliament to require Supreme Court judges to understand English and French without the assistance of an interpreter at the time of their appointment. Some of these bills amend the Supreme Court Act.<sup>41</sup> Others amend the Official Languages Act.<sup>42</sup> For example, Bill C-411, An Act to amend the Official Languages Act (understanding of official languages) – which is still before Parliament – proposes to remove the exception in section 16(1) of the Act pertaining to the Supreme Court and add additional commitments to Part VII of the Act. This is in line with a recommendation made by the House of Commons Standing Committee on Official Languages in December 2017.<sup>43</sup> The current government has committed to appoint only judges who are functionally bilingual to the Supreme Court. But, echoing the young people and communities heard in previous phases of the study,<sup>44</sup> witnesses in this third phase also called for bilingualism at the time of appointment to be included in the Act.<sup>45</sup> The next chapter details their comments.

Another bill introduced in this Parliament aims to designate bilingual positions in the superior courts of the provinces and territories, to fill these positions with bilingual candidates and to give the Office of the Commissioner for Federal Judicial Affairs the mandate to evaluate the candidates' language skills.<sup>46</sup> This bill follows a joint study by the then language commissioners of Canada, Ontario and New Brunswick, Graham Fraser, François Boileau and Katherine d'Entremont, on the subject of access to justice, published in 2013, and a government action plan to improve the bilingual capacity of the superior court judiciary, published in 2017.<sup>47</sup> The next chapter contains proposals received in this regard.

## Air travel

Air Canada is a prime example when it comes to problems with implementing the Act. In response to the airline's multiple reorganizations, various bills were introduced in Parliament between 2005 and 2011 to try to clarify its language obligations and those of its partners – none passed.<sup>48</sup> The Senate Committee examined the case of Air Canada in a report it tabled in 2012.<sup>49</sup> The Commissioner of Official Languages devoted a special report to it in 2016.<sup>50</sup> This led him to propose new mechanisms to strengthen compliance with the Act, an idea raised in current discussions on its modernization. The House of Commons Standing Committee on Official Languages responded to the Commissioner's special report by tabling its own report in 2017, which recommended amending the Act to give the Commissioner enforcement powers applicable to all institutions subject to the Act.<sup>51</sup>

In 2011, the Federal Court stated in Thibodeau v. Air Canada that the Montreal Convention – governing international carriage by air – “does not impose linguistic duties.”<sup>52</sup> In 2014, the Supreme Court reaffirmed the quasi-constitutional status of the Act, but did not impose any language obligations for international air travel.<sup>53</sup> That is why, in 2015, a private member's bill was introduced to specify that the Carriage by Air Act does not restrict the fundamental rights guaranteed under the Official Languages Act.<sup>54</sup> The bill died on the *Order Paper*. In 2017, the House of Commons Standing Committee on Official Languages recommended that the federal government introduce a similar bill.<sup>55</sup> In its response, the government said that implementation of such a recommendation required “further analysis and consultation” to determine the possible impact on compliance with the Montreal Convention.<sup>56</sup> The Transportation Modernization Act, which Parliament passed in May 2018, does not address this issue.





From left to right: The Honourable Mobina S.B. Jaffer, Ghislain Maltais and Larry W. Smith.

## The evolution of provincial, territorial and municipal language regimes

Recognizing that effective implementation of the Act requires the collaboration of many partners is not new. Since the first Act came into force, the language regimes of the various levels of government have been constantly evolving. Some have argued in favour of harmonizing the various regimes.

### A need for intergovernmental collaboration

In its preamble, the 1988 Act commits the government to cooperating with provincial and territorial governments to:

- support the development of official language minority communities;
- provide services in both English and French; and
- respect the constitutional guarantees of minority language education rights and enhance opportunities for all to learn both English and French.

Under Part VII of the Act, the Minister of Canadian Heritage is responsible for taking action in these areas. However, a Federal Court decision in May 2018 weakened the implementation of the duties set out in this part of the Act, including in situations where powers are delegated to other authorities.<sup>57</sup> Over the years, the federal government has established mechanisms for intergovernmental collaboration, such as the federal–provincial/territorial education agreements mentioned earlier. It has also developed federal–provincial/territorial agreements to encourage provinces and territories to offer services to the public in the minority language. Once again, witnesses strongly supported better collaboration between the various levels of government to ensure optimal implementation of the Act and to strengthen the accountability mechanisms associated with the management of those agreements.<sup>58</sup>

## Toward harmonized language regimes

In its first volume, the Royal Commission on Bilingualism and Biculturalism:

- included recommendations for New Brunswick, Ontario and Quebec, encouraging them to take the lead by adopting language regimes that recognize English and French as official languages; and
- encouraged other provinces to amend their legislation to reduce barriers to the use of English and French in local governments.<sup>59</sup>

While New Brunswick acted quickly and became the only officially bilingual province, with many rights protected under the Charter, it took 15 years for Ontario to follow suit with its *French Language Services Act*. The language regimes of the provinces and territories then underwent major change. Today, only British Columbia has not put in place any legislation, regulations or policies on official languages. The language regimes of municipalities have also had to evolve thanks to the adoption

of bilingualism policies, including that of the City of Moncton, whose officials appeared before the Senate Committee.

Currently, some of the legislative frameworks in place across the country are more expansive than the federal regime. Moreover, the testimony heard in this third phase goes further than that heard previously. Witnesses demanded language regimes be harmonized across the country.<sup>60</sup> Consultant H  l  ne Asselin summarized this thought well.

*"In fact, could the language policies of the country's various governments not support each other rather than ignore each other?"*

Hélène Asselin, *Brief*, p. 10.

The language commissioners of Canada, Ontario and New Brunswick are already engaged in harmonizing their language regimes, having signed memoranda of understanding in 2012 promoting their cooperation.<sup>61</sup> These mechanisms are not formalized in the Act, and the testimony does not clearly show that they should be.

## The federal government: Leading the way to an Act that reflects the needs and realities of the 21<sup>st</sup> century

The federal government must lead the way by passing a law that reflects today's needs and realities. Suggestions were made with regard to policies that will have a practical impact on the implementation of a modernized Act and measures to promote it.

- include the content of the Act's preamble;
- present the elements constituting the fundamental *raison d'être* of Canada's language regime; and
- inform Canadians of their language rights under the Act and the vision behind them.<sup>62</sup>

## A national policy on official languages

It may not be realistic to think that the Act can deal with every detail. Good legislation is generally accompanied by good regulations and policies. It seems clear that some of the messages of the Act are poorly understood. H  l  ne Asselin suggested adding to the Act a national policy on official languages modelled after the Canadian broadcasting policy that is part of the Broadcasting Act. In her view, this policy could:

## A policy for the National Capital Region

A new element raised in the debate on modernizing the Act has rekindled some old demands. Some witnesses requested federal legislation to give official languages special status in the City of Ottawa and the NCR. This goes back to the ideas put forward at the time of the Royal Commission on Bilingualism and Biculturalism, which called for granting “full equality of status” to both official

languages throughout the region, ensuring the provision of a full range of services in English and French by the City of Ottawa, and giving the federal government an active role in promoting this reality.<sup>63</sup>

The federal government recognizes the challenges of promoting the bilingual character of the City of Ottawa, with a commitment of \$2.5 million over five years.<sup>64</sup> History shows that, over the years, governments were interested in defining bilingualism in this city.

### The Evolution of Bilingualism in Ottawa

**1867:** Section 16 of the *Constitution Act, 1867* (the Constitution) designates Ottawa as the “seat of government of Canada.”

**1959:** The National Capital Commission (NCC) is created.

**1969:** The first *Official Languages Act* sets out obligations for the provision of services in both official languages in the NCR.

**1970:** The Royal Commission on Bilingualism and Biculturalism tables its volume entitled *The Federal Capital*. The City of Ottawa proclaims its first by-law to promote the use of English and French in the activities of the city council and administration.

**1982:** The City of Ottawa adopts its first bilingualism policy.

**1985:** Section 10 of the *National Capital Act* defines the NCC’s mandate.

**1986:** The Ontario government passes the *French Language Services Act*, which designates Ottawa as one of the regions required to provide provincial services in both official languages to the public.

**1988:** Section 22 of the *Official Languages Act* requires federal institutions in the NCR to provide bilingual services and communications.

**1994:** Ottawa revises its bilingualism policy.

**1995:** Sections 4 and 5 of the *Department of Canadian Heritage Act* set out the responsibilities of the Minister of Canadian Heritage in the NCR.

**1999:** The Senate unanimously adopts a motion proposing: “That, in the opinion of the Senate of Canada, Ottawa, Canada’s capital city, should be officially bilingual.” The Standing Joint Committee on Official Languages adopts a resolution stating that “the Ontario legislature should determine,

by way of legislation, that the City of Ottawa, as Canada’s capital, has two official languages, English and French.”

**2001:** The newly amalgamated City of Ottawa is created. The new city adopts its *Bilingualism Policy* and its *Bilingualism By-law*.

**2003:** The Senate receives a notice of motion to authorize an amendment to section 16 of the Constitution to require the provision of services in English and French to the public. The Commissioner of Official Languages, Dyane Adam, recommends that “the Minister Responsible for Official Languages: examine and take all measures available to him so that the Capital of Canada will be declared officially bilingual.”

**2005:** The Standing Senate Committee on Legal Affairs holds public hearings to consider petitions from several thousand signatories to declare Ottawa a bilingual city.

**2006:** The Ontario Superior Court rules on the validity of the bilingualism policy.

**2012:** The Commissioner of Official Languages, Graham Fraser, devotes an entire chapter of his annual report to the provision of bilingual services in the City of Ottawa. Ontario’s French Language Services Commissioner, François Boileau, supports an officially bilingual declaration from the city. The *Sommet des États généraux de la francophonie d’Ottawa* is held at the same time and calls for the same measure.

**2017:** The Ontario government recognizes the bilingual character of the City of Ottawa in provincial legislation.

**2018:** The Government of Canada announces a five-year budget to promote the bilingual character of the City of Ottawa. Federal funding was made available to the city as early as 2002 but was used only sporadically by the city.



A brief signed jointly by two University of Ottawa research chairs and the *Association des communautés francophones d'Ottawa* (ACFO) recommended including in the Act an obligation to adopt a language policy for the NCR affirming the federal government's leadership.<sup>65</sup>

Legislative amendments, supported in public hearings by political scientist Linda Cardinal, are explained in more detail in Chapter 2.<sup>66</sup>

### **Persuading Canadians of the advantages of bilingualism**

Given the changing demographic landscape and the growing place of newcomers in the Canadian

mosaic, the federal government has a role to play in promoting both official languages to them. Such promotion must also involve the country's linguistic majorities. Dialogue New Brunswick argued that linguistic duality is a fundamental Canadian value; the federal government has a duty to promote this value and help Canadians understand its meaning, with clear direction.<sup>67</sup>

The Hon. Michel Bastarache, former Supreme Court justice, recommended finding ways outside the Act to convince Canadians and newcomers of the importance and benefits of bilingualism.<sup>68</sup>





# CHAPTER 2

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*proposals for  
Modernizing the Act*



*From left to right: Maxime Bourgeois and Nadine Duguay-Lemay share the experience of Dialogue New Brunswick during public hearings in Moncton on October 24, 2018, contributing to the study of the Senate Committee on Modernizing the Official Languages Act.*

Once again, the Senate Committee received numerous suggestions for adapting the Act to meet the realities of the 21<sup>st</sup> century, some new and some similar to those heard before. These suggestions are presented in Chapter 2. Four basic themes emerged from the testimony. The Act must:

- be applied effectively and consistently by strengthening its implementation and oversight mechanisms;
- codify certain existing practices to ensure their continuation or attest to their symbolism in advancing language rights;

- contain new provisions that are both rooted in real-life challenges and ensure true progress is made with respect to both official languages; and
- confirm its importance in advancing the equal status of both official languages, while ensuring a balanced approach to the needs of all Canadians.

This chapter clarifies and fine-tunes comments heard previously, which will help inform the Senate Committee's final report.

## The underlying issue: Ensuring the Act is implemented

One basic issue stands out from the testimony and submissions received so far: **The Act must be implemented effectively and consistently.** For the most part, the proposals below reflect ideas that have already been expressed. In some cases, they add nuances to the comments made and, in others, they go further.

### Giving the responsibility to a central agency and better defining departmental responsibilities

Witnesses strongly supported the idea of empowering a central agency to implement the Act. New Brunswick serves as model once again, as it gives this responsibility to the Premier.<sup>69</sup> Nevertheless, witnesses were divided on which institution should be given this mandate. Gino LeBlanc, Graham Fraser and Marie-France Kenny were in favour of the Privy Council Office.<sup>70</sup> Stéphanie Chouinard and François Boileau preferred the Treasury Board.<sup>71</sup> Political scientist Martin Normand believed the task should go to a new department of official languages.<sup>72</sup> Françoise Enguehard and Linda Cardinal did not specify an institution.<sup>73</sup> The Hon. Serge Joyal cautioned the Senate Committee against putting all its eggs in one basket.<sup>74</sup> The Hon. Michel Bastarache suggested that existing responsibilities be maintained but reinforced.<sup>75</sup>

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*"[A]s it stands today, the Official Languages Act isn't supported by anyone and doesn't require much. Too many aspects of the [A]ct are left to the discretion of individuals. ... [T]he review of the [A]ct must clearly give federal institutions the responsibility to enforce it."*

**Françoise Enguehard, *Evidence*, 1 October 2018.**

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One point on which witnesses agreed is that the Act needs to set out clear responsibilities for the implementation of Part VII.<sup>76</sup> Consultant Diane Desaulniers proposed assigning this responsibility to the Treasury Board, as did the community representatives consulted in the previous phase.<sup>77</sup> It was also suggested that the Act stipulate the responsibilities of the Minister of Justice.<sup>78</sup> More generally, it was proposed to improve the horizontal coordination of implementing the various parts of the Act within each federal institution.<sup>79</sup>

### Providing a framework for transfer payments and making accountability mandatory

Once again, it has become very clear that the current mechanisms for managing federal–provincial/territorial agreements under the Act are inadequate. Witnesses argued that the federal government must take a leadership role in managing these agreements – or in the devolution of powers to other entities – and reaffirm the importance of including language clauses and clarifying accountability requirements.<sup>80</sup> According to François Boileau, this approach – which could be incorporated into Part VII – should apply to all types of agreements and include mandatory consultation with official language minority communities.<sup>81</sup> Others thought that school boards should take part in negotiating education agreements.<sup>82</sup> From a more general perspective, it was suggested that Part VII set out measures for federal–provincial/territorial collaboration to strengthen Canada's linguistic duality. Without going into too much detail, these measures could include sharing good practices or looking at the role played by the Ministerial Conference on the Canadian Francophonie.<sup>83</sup> Dialogue New Brunswick also called for improved cooperation.<sup>84</sup>



## Defining key principles

Witnesses emphasized how vital it is to define the key principles of the Act. This step is all the more critical given the Federal Court decision in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*. This has been proposed before, but a new element emerged this time: defining a minimum threshold of service.

### "Positive measures"

The Act must define "positive measures." The following excerpts offer new insight into the debate.

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*"[T]he idea of positive measures could go even further and be included in the objectives concerning independence. A positive measure could be defined as having to provide official language minority communities with the tools necessary to define their own standards and the content of the rights to which they are entitled. In time, the government would recognize these communities' capacity for self-determination, and they would become responsible for their own well-being."*

**Martin Normand, *Evidence*, 30 April 2018.**

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*"I had decided not to insist on a specific definition for concrete measures. I thought a definition could be developed as examples were established and I think this was the case. This obligation for federal institutions has been in place for 13 years and perhaps it's time to see how to more clearly define what a positive measure is. I have previously seen institutions that, as a result of budget cuts, say they have implemented positive measures elsewhere, as if any positive measure could compensate for a reduction in services."*

**Graham Fraser, *Evidence*, 24 September 2018.**

## Consultation

The Act must make it mandatory to consult official language minority communities. It must set out formal consultation mechanisms that ensure these communities participate in the decision-making process and that guarantee their managerial autonomy. This is one way of ensuring the Act respects the "effective representation of official language minorities," a principle advocated by Martin Normand.<sup>85</sup> This principle should also be added to the purpose section of the Act.<sup>86</sup> Linda Cardinal also supported this.<sup>87</sup> Gino LeBlanc discussed a co-management model between the federal government and communities, in keeping with the principle of "by and for".<sup>88</sup> Marie-France Kenny stressed that there must be accountability for decisions taken following community consultations and recommendations.<sup>89</sup>

The principle of "**by and for**" refers to a community's ability to take control of its own development by participating actively in and making an ongoing commitment to a project, activity or program from the design stage to completion, within an overall vision for development.

### Active offer

The Act must spell out the obligations concerning active offer. This could be done by following the principle of culturally appropriate services, an idea that has been raised previously, and with the principle of "effective representation of official language minorities."<sup>90</sup> Martin Normand suggested that regulations be passed on this subject.

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*"Active offer is more than a management technique; it is also a dynamic principle that opens the door to innovations in the way that these services are offered. A new regulation for Part IV could focus on this representation in the active offer and give a glimpse of two possibilities: ...an obligation for consultation with feedback mechanisms ... and ... an active offer using the 'by and for' principle."*

**Martin Normand, *Brief*, 30 April 2018, p. 4.**



François Boileau also wanted to see the concept of active offer set out in regulations, by defining the following criteria:

- ensure the public is informed of the availability of services;
- make the offer of service at the time of the first contact;
- assure the person that he or she has the choice of using either language of service, and ensure that the person is comfortable with this choice;
- ensure that the service is provided in a culturally appropriate manner;
- provide services of equal quality and comply with the principle of substantive equality;
- allocate the human and financial resources necessary to actively offer services; and
- extend the requirement to third parties.<sup>91</sup>

Diane Desautniers called for more flexible criteria for the concept of active offer, as it does not always consist of a verbal and individual offer.<sup>92</sup>

### Definition of a francophone

The definition of a francophone in the Act must be reviewed. Various witnesses suggested that the requirements regarding services to the public be extended to potential users by introducing a more inclusive definition and following the example of other jurisdictions in Canada.<sup>93</sup>

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*“[P]eople are funded to learn another language, but they are not counted among those seeking services. The left hand is taking away what the right hand is doing. It is completely irrational.”*

**The Hon. Serge Joyal, *Evidence*, 30 April 2018.**

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The current Regulations set out formal mathematical thresholds that have been found unconstitutional.<sup>94</sup> The updated Regulations, which have been tabled in Parliament, propose

a calculation that includes immigrants and people who regularly speak the minority official language at home.<sup>95</sup> François Boileau emphasized that this new definition should appear in the Act and that the Governor-in-Council must take it into consideration when making regulations.<sup>96</sup>

### Institutional vitality

In its implementation, the Act must take into account the concept of institutional vitality, as provided for in Bill S-209.<sup>97</sup> Once in force, the revised Regulations will:

- ensure a federal office remains bilingual when the minority population that it serves has remained the same or has increased, even if its proportion with regard to the general population has declined; and
- take into account the presence of a minority-language school in a federal office's service area when determining the office's language obligations.<sup>98</sup>

The term **institutional vitality** refers to the presence of institutional and related elements that foster the vitality of an official language minority community, such as a school, community centre or community media. In other words, a community's vitality depends on its ability to create and sustain the formal and informal organizations or institutions it needs to survive.

These changes could help communities become masters of their own vitality and thus foster their autonomy.<sup>99</sup> In the long term, the government would have to adapt to the priorities of the communities, rather than force communities to adapt to the priorities of the government.<sup>100</sup> For this to happen, the criteria for institutional vitality need to be stipulated in the Act, and the Governor-in-Council must consider them when making regulations.<sup>101</sup> The brief by François Boileau contained a **draft amendment to the Act** in this regard.<sup>102</sup>

Gino LeBlanc added that the Act needs to prescribe education objectives that will help provincial governments expand access to French schools where there is a pressing need to build new schools.<sup>103</sup>

That way, the new regulatory framework could account for institutional vitality in communities that are still negotiating with their provincial or territorial government to obtain these schools, not just those that already have them.

### Substantive equality and services of equal quality

The Act must be a force for implementing the principles of substantive equality and services of equal quality. The Hon. Michel Bastarache is an ardent defender of these principles. He has ruled on their interpretation in his role as a Supreme Court justice and participated in writing the very first draft of Bill S-209. He suggested clarifying the obligations on this subject in section 20 of the Act.<sup>104</sup>

### A minimum threshold for services

The Act must define a minimum threshold for services. It could consider designating all federal offices as bilingual by guaranteeing a minimum threshold for services to be provided in both languages on a mandatory basis. Marie-France Kenny, who put forward this idea, also suggested that obligations regarding services to the public be based on the threshold for francophone immigrants in each province and territory.<sup>105</sup>

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*"At this time, nothing indicates that the [A]ct and its regulations constitute the minimum imposed on the government. As a result, there's no incentive for the government to do more and to go above and beyond its duties. I think that the fact that there's a minimum threshold must be clearly stated in writing and that the government must be encouraged to do more."*

**Marie-France Kenny, *Evidence*, 1 October 2018.**

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The City of Moncton offers an interesting case study of the type of changes to be expected. While municipal and provincial services are offered in both official languages at all times, in accordance with political, legislative and constitutional guarantees, some federal offices are not required to provide bilingual services under the Regulations. Officials from New Brunswick maintained that these services should be offered at all times.<sup>106</sup> The brief from Michel Carrier, Acting Commissioner of Official Languages for New Brunswick, contained a **draft amendment to the Act** to this effect.<sup>107</sup>

For his part, François Boileau called on the federal government to promote the establishment of multi-service windows like the Bilingual Service Centres in Manitoba.<sup>108</sup> The revised Regulations do not go that far but rather identify key services that must be available in both official languages at all times.<sup>109</sup>



## Ensuring consistency between the Act's various parts

Some witnesses noted the need to ensure consistency in the implementation of various parts of the Act and emphasized the links between parts IV and VII.<sup>110</sup>

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*"If, by looking at the legislation, we could make [p]arts IV and VII more consistent, that would be good. I think it is now time to look at that and move forward to make the legislation a more effective tool."*

**Graham Fraser, *Evidence*, 24 September 2018.**

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## The primacy of certain parts of the Act

Marie-France Kenny argued the Act must stipulate that parts IV and VII take precedence over parts V and VI.<sup>111</sup> Hélène Asselin, on the other hand, countered that Part VII should not be included in the list of provisions that take precedence over other federal legislation, because that part currently "sets out obligations of means, rather than of results."<sup>112</sup>

## The regulatory framework

There is an obvious need to strengthen the Act's regulatory framework. Under the proposed amendments to the Regulations governing Part IV, the obligations regarding offer of services would be extended to carriers in provincial and territorial capitals and would take into account institutional vitality, in keeping with the recommendations by Hélène Asselin.<sup>113</sup>

The Hon. Michel Bastarache warned the Senate Committee against basing the provisions with respect to the travelling public solely on administrative or financial considerations.<sup>114</sup> In his testimony, he emphasized the need to address language barriers regarding travel by air or along the Trans-Canada Highway, which the proposed revisions to the Regulations do not do.<sup>115</sup> The Hon. Michel Bastarache also underlined the arbitrary nature of numerical criteria, which, incidentally, are still part of the government's proposal.

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*"Suppose then that there have to be 2,000 people. The federal government offers services, but a new census says there are 1,950 people, so the services are cut. That happened in Manitoba and that is why there are lawsuits. It makes no sense. What does this say about the purpose of the [A]ct? Does it mean providing services where they are needed or where there are enough people who will use them?"*

**The Hon. Michel Bastarache, *Evidence*,  
1 October 2018.**

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The witnesses stressed that the regulatory amendments must also be part of the modernized Act, in order to provide a clear framework for its interpretation.

In addition to Part IV, it is clear that regulations must be made under Part VII of the Act, in particular, to define "positive measures," consultation mechanisms, the principle of "by and for" and interdepartmental coordination measures.<sup>116</sup> The Federal Court has recognized that "regulatory silence and the resulting vagueness are probably detrimental" to communities.<sup>117</sup> However, the rules defined under Part VII should not increase the provincialization of the related language issues.<sup>118</sup>

Diane Desautniers proposed adding two new obligations:

- encourage federal institutions to use the Crown's purchasing power to promote the acquisition of goods and services from businesses in official language minority communities, similar to the approach taken in the Procurement Strategy for Aboriginal Business; and
- establish a reporting requirement for organizations in communities that have received federal grants and contributions.<sup>119</sup>



The Hon. Michel Bastarache was in favour of expanding the regulatory framework to other parts of the Act, provided that this does not limit their scope.<sup>120</sup>

### Reviewing the role and responsibilities of the Commissioner of Official Languages

The Senate Committee was able to reflect further on the powers to be granted to the Commissioner by hearing from four individuals who are, or have been, central to this role. Graham Fraser and François Boileau argued that the Commissioner should not be judge and jury, which means:

- avoid giving the Commissioner the power to impose sanctions;
- do not empower the Commissioner to impose fines;
- strengthen the promotional role of the position;
- give the Commissioner the appropriate tools to serve as a mediator; and
- consider establishing an official languages administrative tribunal where the Commissioner could be called on to act as an intervener.<sup>121</sup>



Senator Lucie Moncion and Senator Raymonde Gagné, members of the Senate Committee, listen to the testimony by Michel Carrier, Acting Commissioner of Official Languages for New Brunswick, at public hearings in Moncton, on October 26, 2018, as part of the study on modernizing the Official Languages Act.

Stéphanie Chouinard, who focused on this subject in her testimony, suggested reviewing the role of the Commissioner with a view to:

- encouraging the Commissioner to initiate legal proceedings to address recurring complaints or systemic problems;
- providing the funding required for this role;
- requiring the Commissioner to present the findings of an investigation as evidence;
- not granting the power to impose sanctions; and
- making the appointment process for the position transparent.<sup>122</sup>

The Hon. Serge Joyal supported the idea of empowering the Commissioner to initiate legal proceedings.<sup>123</sup> Gino LeBlanc stated that the Commissioner's reports must be made more binding.<sup>124</sup> Katherine d'Entremont and Michel Carrier suggested following the example of New Brunswick by:

- making investigation reports public;
- informing the public and legislators about the Commissioner's role;
- protecting complainants from reprisals; and
- establishing an independent committee to review appointments to the position of Commissioner.<sup>125</sup>

Michel Carrier's brief contained **draft amendments to the Act** based on provisions in the provincial legislation.<sup>126</sup> The Hon. Michel Bastarache supported the idea of strengthening the Commissioner's role.<sup>127</sup> Linda Cardinal called for more binding reports, and stated that the punitive aspect of the Act could take the form of better follow-ups or greater leadership.<sup>128</sup> Françoise Enguehard emphasized the promotional role of the Office of the Commissioner.<sup>129</sup>

## Creating an administrative tribunal

The idea of creating an official languages administrative tribunal is gaining new supporters.<sup>130</sup> Stéphanie Chouinard strongly supported this idea and proposed giving this new tribunal the power to impose sanctions following investigations by the Commissioner.

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*"A tribunal would be easier for Canadians to access than the Federal Court. There would be more sanctions for direct violations of the [A]ct, rather than decisions about major legal principles, which is what usually happens in the Federal Court. In my opinion, this sort of amendment would give renewed meaning to the Official Languages Act, both for Canadians and for the political institutions that must comply with it. Canadians could finally obtain court orders for violations of the [A]ct, and institutions would have a tangible incentive to comply with official language requirements. By all accounts, this incentive appears to be missing in the current system, which, if you will forgive the expression, favours the carrot-and-stick approach, according to the numerous investigation reports from the Office of the Commissioner."*

**Stéphanie Chouinard, Evidence, 30 April 2018.**

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In Ms. Chouinard's view, the Federal Court could serve as a court of appeal for decisions by the administrative tribunal.<sup>131</sup> The Hon. Michel Bastarache suggested modeling the tribunal on the Canadian Human Rights Tribunal, which hears cases referred by the Canadian Human Rights Commission and can order injunctions.<sup>132</sup>

However, witnesses raised a number of issues to consider before establishing such a mechanism. Michel Carrier argued that an administrative tribunal could slow down the judicial process rather than improve it.<sup>133</sup> Marie-France Kenny did not support this type of tribunal, preferring instead to strengthen the Commissioner's powers by allowing him or her to impose fines and penalties, and to make orders.<sup>134</sup> François Boileau, Michel Carrier and the Hon. Michel Bastarache opposed the power to impose penalties.<sup>135</sup> Martin Normand cautioned the Senate Committee against limiting the Commissioner's leeway by establishing an administrative tribunal.<sup>136</sup>



## Codifying existing practices in the Act

Some practices exist already, and the testimony heard supported the idea that enshrining them in the Act would ensure their continuation. However, the witnesses appearing at this third phase of the study did qualify this, as described in the following paragraphs.

### Providing for an implementation plan in the Act

Gino LeBlanc suggested that the Act include a five-year plan for its implementation that emphasizes the Act's remedial nature regarding community development and its importance in supporting bilingualism.<sup>137</sup> In other words, the Act could more formally provide for strategies such as the *Action Plan for Official Languages – 2018-2023*, and set out priorities and implementation mechanisms. The provincial language commissioners supported including this type of provision in the Act and suggested following the example set by New Brunswick.<sup>138</sup> However, adopting a plan like this does not guarantee that it will be acted on; the Act must contain mechanisms to govern its management.<sup>139</sup>

### Enshrining in the Act principles recognized in case law

The Hon. Serge Joyal defended the idea of incorporating recognized principles of case law in the preamble to the Act, such as the principle of remedial nature of language rights, the broad and liberal interpretation of language rights and equality of both official languages.<sup>140</sup> Other witnesses agreed that the principle of remedial nature should be included in the Act.<sup>141</sup>

### Recognizing New Brunswick's unique constitutional status

Once again, there were many requests to enshrine in the Act the constitutional uniqueness of New Brunswick. This applies to the provision of federal services to the public under Part IV, which should be offered throughout the province, as expressed in section 20(2) of the Charter, and to the recognition of the equality of the province's two linguistic

communities, whose right to separate educational and cultural institutions, as expressed in section 16.1 of the Charter, should be included in Part VII.<sup>142</sup>

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*"Right from the 1988 overhaul, the [Act] should have reflected this constitutional uniqueness. Our office therefore invites Parliament to recognize New Brunswick's uniqueness in the modernized federal legislation and, wherever possible, to harmonize the federal and New Brunswick linguistic structures."*

**Katherine d'Entremont, *Evidence*, 11 June 2018.**

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Although such a move would be mainly symbolic, Michel Carrier added that it would provide practical support for implementing constitutional provisions and guide public servants in delivering federal programs and services in New Brunswick.<sup>143</sup> This proposal did not meet with unanimous approval from the witnesses. The Hon. Michel Bastarache did not see the point of including such a provision.<sup>144</sup> That being said, it is clear once again from the evidence that the Act must allow for a contextual approach that reflects the particular circumstances of each community and region.<sup>145</sup>

### Taking immigration into account to promote the vitality of official language minority communities

The Hon. Serge Joyal emphasized that the Act must affirm the role of immigration in the development and vitality of official language minority communities.<sup>146</sup> Françoise Enguehard recognized that immigration is essential to the survival of these communities.<sup>147</sup> Diane Desaulniers asked that the criteria for federal programs for francophone immigration be adjusted to meet the needs of organizations working in remote regions.<sup>148</sup>



From left to right: Nicole O. Melanson, Manager, Communications and Bilingual Services for the City of Moncton, and Dawn Arnold, Mayor from the City of Moncton, testify before the Senate Committee at public hearings in Moncton, October 24, 2018.

The provincial language commissioners, well aware of the challenges related to francophone immigration, proposed the following:

- set out in the Act federal support for immigration based on provincial priorities;
- provide for mandatory community consultation; and
- maintain the demographic weight of francophone minority communities and recognize New Brunswick's specific linguistic balance.<sup>149</sup>

Officials from the City of Moncton requested that the federal government support the efforts of bilingual municipalities, particularly with regard to recruiting, receiving and integrating immigrants.<sup>150</sup> The city's current mayor, Dawn Arnold, would like to see the creation of a regional office of Immigration, Refugees and Citizenship Canada to support the city's efforts regarding francophone immigration, which is so vital to ensuring the francophone community's renewal.<sup>151</sup>

## Codify the Court Challenges Program

Having participated in the establishment of the first Court Challenges Program (CCP), the Hon. Serge Joyal made a strong plea for its inclusion in the Act. In his view, a program that funds court remedies is necessary to ensure the advancement of language rights.

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*"[W]e can't force a Canadian who feels that his or her language rights are not respected to be a hero. The country can't work that way. The fundamental principles on which Canada is built cannot rest on the shoulders of one individual who takes on the responsibility to defend everyone else.*

**The Hon. Serge Joyal, *Evidence*, 30 April 2018.**

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He added that the courts are the defenders of language rights, but in the end, without a clear and strong Act, it will be difficult to enforce them.<sup>152</sup> The Hon. Michel Bastarache fears that the new CCP will not receive adequate funding or that its criteria will be too restrictive to meet people's needs.<sup>153</sup>

### Requiring that Supreme Court judges be bilingual

From one report to the next, one message stands out: it is time for the Act to require Supreme Court judges to be bilingual at the time of their appointment. During public hearings, Graham Fraser reassured the Senate Committee that such a change to the way Supreme Court justices are nominated may not be unconstitutional, even given the decision on the former government's appointment of Justice Nadon to the Supreme Court.<sup>154</sup>

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*"Amending the [A]ct by taking out "autres que la Cour suprême"— in English, "other than the Supreme Court" — would not, in my view, change the nomination process in a way that is rejected by the Nadon decision. The current Prime Minister has made bilingualism a criterion for appointment to the Supreme Court. In my view, this decision should be enshrined in legislation. In the case of doubt of its constitutionality in light of the Nadon decision, a reference could be made to the Supreme Court to evaluate the constitutionality of such a proposal."*

**Graham Fraser, *Evidence*, 24 September 2018.**

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According to Stéphanie Chouinard, in addition to including this requirement to understand both official languages in the Act, candidates' language skills must be tested thoroughly.<sup>155</sup> The Hon. Michel Bastarache opined that, after 50 years, "people who aspire to that position have had time to prepare."<sup>156</sup>



## Dreaming big

The evidence heard provided new ideas for provisions to be incorporated into the Act. It also included proposals that have been heard before, concerning recurring problems that need to be addressed, and a broader vision of the future of bilingualism and linguistic duality in the Canadian context.

### Codifying language obligations in the National Capital Region

One brief proposed amendments to the Act to strengthen the federal government's role and authority over the National Capital Region (NCR). As stated in the previous chapter, some federal statutes already contain such provisions, but none of them propose a comprehensive vision for advancing both official languages in the NCR. For this reason, the brief, which was presented during public hearings by Linda Cardinal, proposed to create a new part in the Act that would:

- provide a framework for bilingual signage and the use of both official languages in the NCR, including the role and powers of the National Capital Commission and Canadian Heritage in this regard;
- recognize the existing legal frameworks of Ontario and the City of Ottawa concerning bilingualism;
- strengthen the requirement for cooperation between governments, the private sector and community organizations to achieve official languages objectives in a clear and consistent manner by mandating the introduction of a linguistic policy and affirming the federal government's leadership in this regard; and
- include a provision to address the active offer of services in both official languages by federal institutions in the NCR (for example, at the Ottawa airport), by the City of Ottawa and by businesses that lease space in federally owned buildings.<sup>157</sup>

Graham Fraser and the Hon. Michel Bastarache found this idea interesting and suggested that the federal government look into it.<sup>158</sup> Linda Cardinal, reacting to the new federal funding announced for the City of Ottawa, added that a study should be conducted to identify the funding necessary to permanently establish the official languages in the NCR.<sup>159</sup>

Dawn Arnold supported these proposals; according to her, it is a matter of will and leadership.<sup>160</sup> There is a strong desire in Moncton to communicate with both language communities, in English and in French. This value is rooted in the practices of community organizations, the municipality and often the private sector itself. Bilingualism is seen as an aspect of social cohesion.<sup>161</sup> The City of Moncton unanimously adopted its first official languages policy in 1991, has updated it three times and is preparing to introduce a new version.<sup>162</sup> This shows that, when you believe in bilingualism, you can adapt to keep pace with changes in society and its characteristics.

### Requiring that rights-holders be enumerated

One idea that was explored in the previous interim report – a provision in the Act to require Statistics Canada to enumerate rights-holders – emerged again.<sup>163</sup> Access to reliable census data is vital to ensuring the Act is implemented properly. It is necessary in order to be able to serve official language minority communities in accordance with section 23 of the Charter, to evaluate their needs and have the right tools to assess their vitality.<sup>164</sup>



## Reviewing the language rights of federal public servants

Witnesses described the measures needed to clarify the Act in the context of the federal public service. Too often, federal employees misunderstand their obligations under the Act because these obligations are poorly defined. Witnesses' proposals concerned the provisions of parts V and VI and section 91 of the Act, as well as managers' responsibilities and translation.

### Language of work

In their briefs, Hélène Asselin and Diane Desaulniers proposed that the Act:

- define the principles underlying the application of Part V, by reviewing the language requirements for positions in order to promote receptive bilingualism;

- take into account new technologies to increase opportunities to use both official languages in the workplace; and
- extend the active offer of service to federal employees who provide personal and central services and to supervisors, in order to foster the use of both official languages in the workplace.<sup>165</sup>

Some witnesses wanted to see more funding for language training for federal employees, which would allow for better implementation of the Act.<sup>166</sup>

Diane Desaulniers expressed her view that this training must be provided early in an employee's career and suggested that the *Public Service Official Languages Exclusion Approval Order* is outdated and should be repealed.<sup>167</sup> The Hon. Michel Bastarache supported this idea.<sup>168</sup>



## Equitable representation

Diane Desautniers argued that official language groups should be considered a designated group under the *Employment Equity Act* – meaning that the government would foster the hiring of more anglophones and francophones in the federal public service – on the same basis as women, persons with disabilities, Aboriginal peoples or members of visible minorities.<sup>169</sup> Graham Fraser suggested that Part VI of the Act be reviewed to consider the specific needs of some regions, particularly with regard to anglophone representation in the federal public service in Quebec, echoing a proposal heard during the second phase of the study.<sup>170</sup>

## Senior officials and managers

In her brief, H       Asselin suggested that managerial accountability be strengthened through performance reviews.<sup>171</sup> Graham Fraser and Michel Carrier also suggested that these responsibilities, particularly those of managers and deputy ministers, be formalized, which would encourage a more active use of both official languages in the workplace and a more effective implementation of the Act.<sup>172</sup> Gino LeBlanc called for the reinstatement of a deputy ministers committee on official languages.<sup>173</sup>

Diane Desautniers proposed that section 91 of the Act require managers to establish the linguistic requirements of positions objectively. She suggested that as many positions as possible be designated CCC, which corresponds to an advanced level of reading, writing and oral interaction.<sup>174</sup> Treasury Board must also be given oversight authority and the necessary resources to carry out its mandate with federal institutions, while offering them comprehensive and practical tools to implement the Act.<sup>175</sup>

## Translation

Michel Carrier called on the federal government to outdo New Brunswick by codifying translation obligations. He suggested that the Translation Bureau's responsibilities be enshrined in the Act in order to recognize officially and definitively the value of the work done by translators and interpreters.<sup>176</sup> Diane Desautniers recommended facilitating access to translation at all stages of a project, which would encourage federal employees to draft documents in their language of choice.<sup>177</sup> For example, the City of Moncton includes translation in project planning right from the beginning to avoid giving the impression that bilingualism requirements create needless delays.<sup>178</sup>

## Guaranteeing better access to justice in both official languages

The Hon. Michel Bastarache told the Senate Committee that there is a need to:

- assess the language abilities of judges who hear cases in both official languages;
- identify the requirements for bilingual candidates for the judiciary across Canada;
- require federal court decisions to be posted simultaneously on the Internet; and
- review language rights at trial to cover appeals, motions and other related procedures.<sup>179</sup>

Fran       Boileau added that the Act must provide for the active offer of service to be extended to the justice sector.<sup>180</sup> These issues will be addressed in greater detail in the Senate Committee's next report, which will focus on the justice sector.

## Expanding the right to court remedies

St         Chouinard held that all parts of the Act should allow for legal remedies.<sup>181</sup> Michel Carrier agreed and suggested that the Act include a provision clearly stating its quasi-constitutional status.<sup>182</sup> His brief provided a **draft amendment to the Act** modelled on legislation in place in New Brunswick.<sup>183</sup>

## Providing for an opt-in regime

François Boileau offered the Senate Committee a broader vision of the implementation of the Act.<sup>184</sup> The Act could provide for an opt-in regime of language rights and obligations for the provinces and territories including, for example, standard provisions.<sup>185</sup> Part VII of the Act would provide financial and logistical support for the provinces and territories that decided to opt in. This would be done in spirit of harmonizing the federal and provincial language regimes, affirming federal leadership in this area and promoting cooperative federalism.

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*“Even though language rights are not its private preserve, the federal government has a quasi-constitutional obligation to do more to encourage the provinces to take measures to advance the substantive equality of English and French in Canada. In addition, the federal government has the moral authority, know-how and means to launch a new era of cooperative federalism in the area of official languages with a view to realizing the aspirations of section 16 of the Charter.”*

**François Boileau, *Brief*, 11 June 2018, para. 104.**

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Senator René Cormier, Chair of the Senate Committee, in an interview with witnesses at public hearings in Moncton on October 24, 2018, as part of the study on the Official Languages Act.

François Boileau provided the Senate Committee with **draft amendments to the Act**.<sup>186</sup>

## Reviewing the Act periodically

As was the case for the first two interim reports, the witnesses who appeared during this phase of the study reiterated the need to legislate a periodic review of the Act.<sup>187</sup> The proposed revisions to the Regulations require them to be analyzed every 10 years to determine whether they still meet the needs and realities of the public.<sup>188</sup> In Michel Carrier's view, the Act could also be reviewed every 10 years and communities could be involved in the process.<sup>189</sup>

# An Act for all Canadians

While the first two phases of the study focused on specific groups – youth and communities – the comments heard during this third phase are broader in scope. The testimony and briefs agreed that the Act concerns all Canadians. As a societal initiative, it must protect both official languages while remaining balanced in its composition, language and scope.

## An Act that protects both official languages

Witnesses noted the importance of maintaining an open and respectful dialogue regarding the modernization of the Act. All Canadians have an interest in this Act, and it must be reviewed in a spirit of collaboration, openness, tolerance and promotion of the richness of both official languages.<sup>190</sup> It must not exclude newcomers or Aboriginal peoples – First Nations, Inuit and Métis – but rather encourage all Canadians to work together and listen to one another.<sup>191</sup> Arts and culture are one mechanism for bringing together the country's two main language communities, and more should be done to harness their potential.<sup>192</sup>

In its implementation, the Act must take into account that there are two groups to be served, one francophone and one anglophone; that they may be either in a minority situation or majority situation and that their needs may not be identical.<sup>193</sup> Michel Carrier suggested that the Act should require notices and announcements to be published simultaneously in both official languages.<sup>194</sup> His brief contained a **draft amendment to this Act** to that effect.<sup>195</sup>

Gino LeBlanc described French as a minority language in Canada and suggested possible levers to increase cooperation among the country's francophones.<sup>196</sup> Witnesses did not unanimously support this idea and some did not consider it relevant.<sup>197</sup> They felt that the Act must take a pan-Canadian perspective and focus on the country's two language communities, whether in a minority situation or not, and ensure that francophones in Quebec are included and that they are better informed about the Act's objectives.<sup>198</sup>

Hélène Asselin argued that the federal government's current approach excludes Quebec francophones from the debates on the place of French in Canada's language regime.<sup>199</sup> Graham Fraser called for greater recognition of the needs of Quebec's English-speaking communities in the context of protecting the French language in that province.<sup>200</sup>

## A balanced Act

Martin Normand and Linda Cardinal stated their belief that there is a need to agree on the objectives of the modernization of the Act to ensure that it does not become a sort of huge catch-all.<sup>201</sup>

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*"We already know that we are experiencing numerous difficulties with fully implementing the Official Languages Act. If we constantly add requirements, there is no guarantee that they would be met, given the current state of affairs."*

**Martin Normand, *Evidence*, 30 April 2018.**

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Diane Desautels argued that it is important to find the balance between flexibility and rigidity in the Act.

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*"It is a matter of finding the balance point: if the [A]ct is weakened, it will be easy to conclude that its implementation is optional. On the other hand, if the new version of the [A]ct [is] too rigid, as many of the organizations consulted are requesting, it then becomes a maximum which often results in an implementation based on the smallest common denominator, to the detriment of Canada's linguistic duality."*

**Diane Desautels, *Brief*, 9 October 2018, p. 1.**

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# CONCLUSION

Already halfway through their study on modernizing the Act, the members of the Senate Committee noted the deep and sincere commitment of the stakeholders who wish to improve its implementation. The main finding of this third phase of the study is clear: **the fundamental issue to address is to ensure that the Act is applied effectively and consistently.**

While there is a need to strengthen the Act's implementation and oversight mechanisms, there is no need for it to encompass too many subjects or address every tiny detail. It must deal with the essentials. To do this, the provisions that are not working must be identified, and certain existing practices must be codified to ensure their continuation. Finally, new provisions need to be introduced that reflect the evolution of Canada's linguistic landscape.

The witnesses who appeared in recent months have made a point of stating that the Act concerns all Canadians. As part of its modernization, it seems worthwhile confirming its importance in advancing equality between the two official languages, while ensuring the needs of the entire population are considered in a balanced way. Several concepts, such as collaboration, the promotion of both official languages and political will, were raised repeatedly.

The solutions presented by witnesses are becoming more numerous, specific and nuanced from one interim report to the next. The debate on modernizing the Act is not yet over. It is being rekindled by rulings that interpret it restrictively, as in the Federal Court's decision in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*.

It is being fuelled by changing practices, as shown by recent changes in the way that the Commissioner of Official Languages handles complaints under Part VII of the Act.

And it is being energized by the recent decisions of some provinces, which tend to limit the interpretation of well-established language rights and which reaffirm the need for sustained intergovernmental cooperation to ensure those rights are upheld.

The debate on modernizing the Act is now taking place against the backdrop of upcoming regulatory changes, which will certainly widen its scope but will not affect the implementation of the Act as a whole. The Senate Committee would like to congratulate the President of the Treasury Board and the Minister of Tourism, Official Languages and La Francophonie, who have taken the lead in advancing this issue and have been attentive to the needs of stakeholders. This does not mean that the new regulations are perfect or complete. The Senate Committee invites ministers to consider the next step, which is to enshrine in the Act the principles that will emerge from these new Regulations when they are made.

The federal government has before it a series of proposals to help it revise the Act, including those from people who have witnessed its evolution. The Senate Committee will continue its work with a view to tabling a final report in 2019 that will contain specific recommendations for the federal government. The proposals heard in recent months will be included, in recognition that the Act is of concern to all Canadians and must promote the advancement towards the equality of Canada's two official languages.

# APPENDIX A – WITNESSES

Name of Organization	Spokesperson(s)
<b>Public Hearings in Ottawa - 23.04.2018</b>	
<b>As an individual</b>	Gino LeBlanc, Director, Office of Francophone and Francophile Affairs, Simon Fraser University
<b>Public Hearings in Ottawa - 30.04.2018</b>	
<b>As individuals</b>	Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada
	Martin Normand, Postdoctoral Fellow, Research Chair in Canadian Francophonie and Public Policies, University of Ottawa
	The Honourable Serge Joyal, P.C., Senator
<b>Public Hearings in Ottawa - 11.06.2018</b>	
<b>Office of the Commissioner of Official Languages for New Brunswick</b>	Katherine d'Entremont, Commissioner of Official Languages for New Brunswick
<b>Office of the French Language Services Commissioner of Ontario</b>	François Boileau, French Language Services Commissioner
<b>Public Hearings in Ottawa - 24.09.2018</b>	
<b>As individuals</b>	Linda Cardinal, Professor and holder of the Research Chair in Canadian Francophonie and Public Policies, University of Ottawa
	Bernadette Sarazin, Co-Owner, Brio Strategies Inc.
	Graham Fraser, former commissioner of official languages and Visiting Professor, McGill Institute for the Study of Canada
<b>Public Hearings in Ottawa - 01.10.2018</b>	
<b>As individuals</b>	Françoise Enguehard, Author and Journalist
	Marie-France Kenny, Chief Executive Officer, Dualicom Inc.
	The Honourable Michel Bastarache, former justice of the Supreme Court of Canada



Name of Organization	Spokesperson(s)
<b>Public Hearings in New Brunswick - 24.10.2018</b>	
<b>Dialogue New Brunswick</b>	Nadine Duguay-Lemay, Chief Executive Officer
	Maxime Bourgeois, Board Director
<b>Frye Festival</b>	Suzanne Cyr, Chair
<b>City of Moncton</b>	Dawn Arnold, Mayor
	Nicole O. Melanson, Manager, Communications and Bilingual Services
<b>Public Hearings in New Brunswick - 26.10.2018</b>	
<b>Office of the Commissioner of Official Languages for New Brunswick</b>	Michel Carrier, Acting Commissioner of Official Languages for New Brunswick
	Hughes Beaulieu, Executive Director

# APPENDIX B – BRIEFS, PRESENTATIONS AND OTHER DOCUMENTS

*Association des communautés francophones d'Ottawa* and the University of Ottawa Canadian Francophonie Research Chair in Language Rights and Research Chair in Canadian Francophonie and Public Policies, Joint Submission, Brief submitted to the Standing Senate Committee on Official Languages, 31 July 2018.

Diane Desaulniers, Groupe Vision management consulting (GVMC), Modernisation [sic] of the Official Languages Act, Brief submitted to the Standing Senate Committee on Official Languages, 9 October 2018.

Hélène Asselin, Modernization of the Official Languages Act, Brief submitted to the Standing Senate Committee on Official Languages, 18 June 2018.

Martin Normand, Postdoctoral Fellow, Research Chair in Canadian Francophonie and Public Policies, University of Ottawa, Effective Representation, Active Offer and Positive Measures: Possible Approaches to Modernizing the Official Languages Act, Speech before the Standing Senate Committee on Official Languages, 30 April 2018.

Office of the Commissioner of Official Languages for New Brunswick, Brief Submitted to the Standing Senate Committee on Official Languages As Part of Its Study on Canadians' Views about Modernizing the Official Languages Act, 26 October 2018.

Office of the Commissioner of Official Languages for New Brunswick, Follow-up Letter, Sent to the Standing Senate Committee on Official Languages on 1 November 2018.

Office of the French Language Services Commissioner of Ontario, Modernizing the Official Languages Act: Seeking areas of interjurisdictional harmonization, Brief submitted to the Standing Senate Committee on Official Languages, 11 June 2018.

Office of the French Language Services Commissioner of Ontario, Follow-up Letter, Sent to the Standing Senate Committee on Official Languages on 14 August 2018.

# APPENDIX C – NOTES

1. Standing Senate Committee on Official Languages [OLLO], *Modernizing the Official Languages Act: The Views of Young Canadians*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, February 2018; OLLO, *Modernizing the Official Languages Act: The Views of Official Language Minority Communities*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, October 2018.
2. The Senate Committee will examine the rights under section 133 of the *Constitution Act, 1867* in its next report on justice.
3. Royal Commission on Bilingualism and Biculturalism [RCBB], *Preliminary Report*, Ottawa, 1965, p. xvii.
4. RCBB, *Book I: The Official Languages*, Ottawa, 1967, pp. 147 and 149.
5. *Official Languages Act*, S.C. 1969, c. 54.
6. The Hon. Serge Joyal tried three times, between 1977 and 1980, to amend the Act to make it enforceable, but without success. He co-founded the Special Joint Committee on Official Languages, established in 1980 to assess progress since the passage of the Act. OLLO, *Evidence*, 30 April 2018 (The Hon. Serge Joyal, P.C., Senator, As an individual).
7. RCBB, *Book II: Education*, Ottawa, 1968, p. 238.
8. OLLO (February 2018); OLLO (October 2018).
9. OLLO (February 2018); OLLO (October 2018).
10. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc, Director, Office of Francophone and Francophile Affairs, Simon Fraser University, As an individual).
11. Government of Canada, *Public Service Official Languages Exclusion Approval Order*.
12. Government of Canada, *List of Bilingual Regions of Canada for Language-of-Work Purposes*. The regions are the National Capital Region; parts of Eastern and Northern Ontario; the region of Montreal; parts of the Eastern Townships, the Gaspé and Western Quebec; and New Brunswick.
13. Ms. Hélène Asselin, *Modernization of the Official Languages Act*, Brief submitted to the Standing Senate Committee on Official Languages, 18 June 2018; Ms. Diane Desaulniers, Groupe Vision Management Consulting (GVMC), *Modernisation [sic] of the Official Languages Act*, Brief submitted to the Standing Senate Committee on Official Languages, 9 October 2018.
14. *Official Languages Act*, R.S.C. (1985), c. 31 (4<sup>th</sup> Supp.).
15. OLLO (October 2018).
16. *Bill 57, the Restoring Trust, Transparency and Accountability Act, 2018*, passed by the Legislative Assembly of Ontario on 6 December 2018, provides that the duties currently associated with the French Language Services Commissioner are transferred to the Ontario Ombudsman, to whom the new Deputy Ombudsman appointed as French Language Services Commissioner will report. These legislative provisions will come into force on 1 May 2019.
17. OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau, French Language Services Commissioner, Office of the French Language Services Commissioner of Ontario [OFLSC]; Ms. Katherine d'Entremont, Commissioner of Official Languages for New Brunswick, Office of the Commissioner of Official Languages for New Brunswick [OCOLNB]); OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser, former commissioner of official languages and Visiting Professor, McGill Institute for the Study of Canada, As an individual); OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier, Acting Commissioner of Official Languages for New Brunswick, OCOLNB).

18. Richard Goreham, *Language rights and the Court Challenges Program: A Review of its Accomplishments and Impact of its Abolition: Report to the Commissioner of Official Languages*, Ottawa, 1992, p. 6; Court Challenges Program, *Annual Report 2006-2007*, 2007, p. 56. Of this number, approximately 150 decisions were handed down by the courts during this period, according to the Hon. Serge Joyal. OLLO, *Evidence*, 30 April 2018 (The Hon. Serge Joyal).
19. Government of Canada, *Expert Panel Members Appointed to Advance Work of Court Challenges Program*, News release, Gatineau, 20 November 2018.
20. OLLO, *Evidence*, 30 April 2018 (The Hon. Serge Joyal).
21. OLLO, *Evidence*, 30 April 2018 (Ms. Stéphanie Chouinard, Assistant Professor, Department of Political Science, Royal Military College of Canada, As an individual).
22. OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard, Author and Journalist, As an individual).
23. Government of Canada, *Table showing current Regulations vs. proposed amendments, and the anticipated impact of the changes*.
24. OLLO (October 2018).
25. OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand, Postdoctoral Fellow, Research Chair in Canadian Francophonie and Public Policies, University of Ottawa, As an individual); Mr. Martin Normand, Postdoctoral Fellow, Research Chair in Canadian Francophonie and Public Policies, University of Ottawa, *Effective Representation, Active Offer and Positive Measures: Possible Approaches to Modernizing the Official Languages Act*, Speech before the Standing Senate Committee on Official Languages, 30 April 2018, pp. 4–5; Ms. Hélène Asselin (18 June 2018), *Brief*, p. 9; OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache, former justice of the Supreme Court of Canada, As an individual).
26. Government of Canada, *Action Plan for Official Languages – 2018-2023 : Investing in Our Future*, 2018.
27. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau; Ms. Katherine d'Entremont); OCOLNB, *Brief presented to the Standing Senate Committee on Official Languages As Part of Its Study on Canadians' View about Modernizing the Official Languages Act*, 26 October 2018, paras. 58 to 65.
28. Government of Canada, "Annex A: Official Languages Accountability and Coordination Framework," *The Next Act - New Momentum for Canada's Linguistic Duality: The Action Plan for Official Languages*, Ottawa, 2003, pp. 67–76.
29. OLLO (October 2018).
30. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 30 April 2018 (Ms. Stéphanie Chouinard; Mr. Martin Normand); Ms. Hélène Asselin (18 June 2018), *Brief*, pp. 9–10; OLLO, *Evidence*, 24 September 2018 (Ms. Linda Cardinal, Professor and holder of the Research Chair in Canadian Francophonie and Public Policies, University of Ottawa, As an individual; Mr. Graham Fraser); OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard; Ms. Marie-France Kenny, Chief Executive Officer, Dualicom Inc., As an individual; The Hon. Michel Bastarache); Ms. Diane Desaulniers (9 October 2018), *Brief*, pp. 5–6.
31. OLLO, *Implementation of Part VII of the Official Languages Act: We Can Still Do Better*, 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, June 2010.
32. Government Response to the Report of the Standing Senate Committee on Official Languages: *Implementation of Part VII of the Official Languages Act: We Can Still Do Better*, November 2010.
33. *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, [2018] FC 530; OLLO (February 2018); OLLO (October 2018).
34. OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand); Mr. Martin Normand (30 April 2018), *Brief*, pp. 4–5; Ms. Hélène Asselin (18 June 2018), *Brief*, p. 9; OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser); OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard; Ms. Marie-France Kenny; The Hon. Michel Bastarache); Ms. Diane Desaulniers (9 October 2018), *Brief*, pp. 5–6.
35. *Fédération des communautés francophones et acadienne du Canada, The Implementation of the Official Languages Act: A New Approach - A New Vision*, Ottawa, November 2019.
36. OLLO, *Evidence*, 1 October 2018 (Ms. Marie-France Kenny).
37. OLLO, *Evidence*, 1 October 2018 (Ms. Marie-France Kenny).



38. *Bill S-220, An Act to amend the Official Languages Act (communications with and services to the public)*, 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, first reading in the Senate on 9 June 2010; *Bill S-211, An Act to amend the Official Languages Act (communications with and services to the public)*, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, first reading in the Senate on 16 May 2012; *Bill S-205, An Act to amend the Official Languages Act (communications with and services to the public)*, 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, first reading in the Senate on 23 October 2013; *Bill S-209, An Act to amend the Official Languages Act (communications with and services to the public)*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, first reading in the Senate on 8 December 2015.
39. Government of Canada, *Regulations Amending the Official Languages (Communications with and Services to the Public) Regulations*, tabled in Parliament on 25 October 2018.
40. OLLO, *Evidence*, 30 April 2018 (The Hon. Serge Joyal); OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand); Ms. Hélène Asselin (18 June 2018), *Brief*, p. 8; OLLO, *Evidence*, 24 September 2018 (Ms. Linda Cardinal; Mr. Graham Fraser); OLLO, *Evidence*, 1 October 2018 (Ms. Marie-France Kenny; The Hon. Michel Bastarache).
41. *Bill C-559, An Act to amend the Supreme Court Act (understanding the official languages)*, 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, first reading in the House of Commons on 5 June 2008; *Bill C-232, An Act to amend the Supreme Court Act (understanding the official languages)*, 3<sup>rd</sup> Session, 40<sup>th</sup> Parliament, first reading in the House of Commons on 3 March 2010; *Bill C-208, An Act to amend the Supreme Court Act (understanding the official languages)*, 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, first reading in the House of Commons on 16 October 2013; *Bill C-203, An Act to amend the Supreme Court Act (understanding the official languages)*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, first reading in the House of Commons on 9 December 2015; *Bill C-382, An Act to amend the Official Languages Act (Supreme Court of Canada)*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, first reading in the House of Commons on 31 October 2017.
42. *Bill C-548, An Act to amend the Official Languages Act (understanding the official languages – judges of the Supreme Court of Canada)*, 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, first reading in the House of Commons on 15 May 2008; *Bill C-411, An Act to amend the Official Languages Act (understanding of official languages)*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, first reading in the House of Commons on 19 June 2018.
43. House of Commons Standing Committee on Official Languages [LANG], *Ensuring Justice is Done in Both Official Languages*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, December 2017.
44. OLLO (February 2018); OLLO (October 2018).
45. OLLO, *Evidence*, 30 April 2018 (Ms. Stéphanie Chouinard); OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser); OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
46. *Bill C-381, An Act to amend the Judged Act (bilingualism)*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, first reading in the House of Commons on 31 October 2017.
47. Office of the Commissioner of Official Languages [OCOL], *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*, Ottawa, 2013; Government of Canada, *Action Plan: Enhancing the Bilingual Capacity of the Superior Court Judiciary*.
48. *Bill C-47, An Act to amend the Air Canada Public Participation Act*, 1<sup>st</sup> Session, 38<sup>th</sup> Parliament, first reading in the House of Commons on 2 May 2005; *Bill C-29, An Act to amend the Air Canada Public Participation Act*, 1<sup>st</sup> Session, 39<sup>th</sup> Parliament, first reading in the House of Commons on 18 October 2006; *Bill C-36, An Act to amend the Air Canada Public Participation Act*, 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, first reading in the House of Commons on 10 December 2007; *Bill C-17, An Act to amend the Air Canada Public Participation Act*, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, first reading in the House of Commons on 17 October 2011.
49. OLLO, *Air Canada's Obligations under the Official Languages Act: Towards Substantive Equality*, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, March 2012.
50. OCOL, *Special Report to Parliament – Air Canada: On the Road to Increased Compliance through an Effective Enforcement Regime*, Ottawa, June 2016.
51. LANG, *Air Canada's Implementation of the Official Languages Act: Aiming for Excellence*, 1<sup>st</sup> Session, 42<sup>nd</sup> Parliament, November 2017.

52. *Thibodeau v. Air Canada*, [2011] FC 876, para. 70.
53. *Thibodeau v. Air Canada*, [2014] 3 SCR 340.
54. *Bill C-666, An Act to amend the Carriage by Air Act (fundamental rights)*, 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, first reading in the House of Commons on 23 April 2015.
55. LANG (November 2017).
56. Government Response to the House of Commons Standing Committee on Official Languages entitled *Air Canada's Implementation of the Official Languages Act: Aiming for Excellence*, March 2018.
57. *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, [2018] FC 530.
58. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau; Ms. Katherine d'Entremont); Ms. Hélène Asselin (18 June 2018), *Brief*, p. 10; OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard; Ms. Marie-France Kenny; The Hon. Michel Bastarache).
59. RCB (1967), pp. 99, 102, 108 and 119.
60. OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau; Ms. Katherine d'Entremont); OFLSC, *Modernizing the Official Languages Act: Seeking areas of interjurisdictional harmonization*, Brief presented to the Standing Senate Committee on Official Languages, 11 June 2018, para. 52; OLLO, *Evidence*, 1 October 2018 (Ms. Marie-France Kenny); OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier).
61. OFLSC (11 June 2018), *Brief*, para. 2; OLLO, *Evidence*, 26 October 2018 (Mr. Hughes Beaulieu, Executive Director, OCOLNB).
62. Ms. Hélène Asselin (18 June 2018), *Brief*, pp. 6–7.
63. RCB, *Book V: The Federal Capital*, Ottawa, 1970, pp. 40, 53, 58, 59 and 66.
64. Government of Canada (2018).
65. *Association des communautés francophones d'Ottawa* (ACFO), University of Ottawa Canadian Francophonie Research Chair in Language Rights (CFRCLR) and Research Chair in Canadian Francophonie and Public Policies (RCCFP), *Joint Brief*, Brief presented to the Standing Senate Committee on Official Languages, 31 July 2018, paras. 29–30.
66. OLLO, *Evidence*, 24 September 2018 (Ms. Linda Cardinal).
67. OLLO, *Evidence*, 24 October 2018 (Mr. Maxime Bourgeois, Board Director, Dialogue New Brunswick).
68. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
69. OLLO, *Evidence*, 11 June 2018 (Ms. Katherine d'Entremont); OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier); OCOLNB (26 October 2018), *Brief*, para. 58.
70. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser); OLLO, *Evidence*, 1 October 2018 (Ms. Marie-France Kenny).
71. OLLO, *Evidence*, 30 April 2018 (Ms. Stéphanie Chouinard); OFLSC, *Follow-up letter*, sent to the Standing Senate Committee on Official Languages 14 August 2018, pp. 6–7.
72. OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand).
73. OLLO, *Evidence*, 24 September 2018 (Ms. Linda Cardinal); OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard).
74. OLLO, *Evidence*, 30 April 2018 (The Hon. Serge Joyal).
75. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
76. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand); OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
77. OLLO (October 2018); Ms. Diane Desaulniers (9 October 2018), *Brief*, p. 5.
78. OLLO, *Evidence*, 24 September 2018 (Ms. Linda Cardinal).
79. Ms. Hélène Asselin (18 June 2018), *Brief*, p. 7.
80. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard; Ms. Marie-France Kenny; The Hon. Michel Bastarache).

81. OLLO, Evidence, 11 June 2018 (Mr. François Boileau); OFLSC (11 June 2018), Brief, paras. 80–93.
82. OLLO, Evidence, 23 April 2018 (Mr. Gino LeBlanc); OLLO, Evidence, 11 June 2018 (Ms. Katherine d’Entremont).
83. Ms. Hélène Asselin (18 June 2018), Brief, p. 9.
84. OLLO, Evidence, 24 October 2018 (Mr. Maxime Bourgeois).
85. OLLO, Evidence, 30 April 2018 (Mr. Martin Normand); Mr. Martin Normand (30 April 2018), Brief, pp. 3–5.
86. Mr. Martin Normand (30 April 2018), Brief, pp. 1–2.
87. OLLO, Evidence, 24 September 2018 (Ms. Linda Cardinal).
88. OLLO, Evidence, 23 April 2018 (Mr. Gino LeBlanc).
89. OLLO, Evidence, 1 October 2018 (Ms. Marie-France Kenny); OLLO (October 2018).
90. OLLO (October 2018); OLLO, Evidence, 30 April 2018 (Mr. Martin Normand); Mr. Martin Normand (30 April 2018), Brief, pp. 2–3.
91. OLLO, Evidence, 11 June 2018 (Mr. François Boileau); OFLSC (11 June 2018), Brief, paras. 53–79.
92. Ms. Diane Desaulniers (9 October 2018), Brief, pp. 2–3.
93. OLLO, Brief, 30 April 2018 (The Hon. Serge Joyal); OLLO, Evidence, 11 June 2018 (Mr. François Boileau); OFLSC (11 June 2018), Brief, paras. 4–52; OLLO, Evidence, 1 October 2018 (Ms. Françoise Enguehard; The Hon. Michel Bastarache).
94. OFLSC (11 June 2018), Brief, paras. 24–26; OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
95. Government of Canada, Table showing current Regulations vs. proposed amendments, and the anticipated impact of the changes.
96. OFLSC (11 June 2018), Brief, paras. 47 and 49.
97. OLLO, Evidence, 30 April 2018 (The Hon. Serge Joyal); Ms. Hélène Asselin (18 June 2018), Brief, pp. 7–8; OLLO, Evidence, 11 June 2018 (Mr. François Boileau); OFLSC (11 June 2018), Brief, paras. 29–34 and 43–45; OLLO, Evidence, 1 October 2018 (Ms. Marie-France Kenny; The Hon. Michel Bastarache).
98. Government of Canada, Table showing current Regulations vs. proposed amendments, and the anticipated impact of the changes.
99. Mr. Martin Normand (30 April 2018), Brief, p. 5.
100. OLLO, Evidence, 30 April 2018 (Mr. Martin Normand); Mr. Martin Normand (30 April 2018), Brief, p. 5.
101. OFLSC (11 June 2018), Brief, paras. 48–50; OLLO, Evidence, 30 April 2018 (Ms. Stéphanie Chouinard); OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
102. OFLSC (11 June 2018), Brief, para. 50.
103. OLLO, Evidence, 23 April 2018 (Mr. Gino LeBlanc).
104. OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
105. OLLO, Evidence, 1 October 2018 (Ms. Marie-France Kenny).
106. OLLO, Evidence, 11 June 2018 (Ms. Katherine d’Entremont); OLLO, Evidence, 24 October 2018 (Ms. Nicole O. Melanson, City of Moncton); OCOLNB (26 October 2018), Brief, paras. 40–41.
107. OCOLNB (26 October 2018), Brief, para. 46.
108. OLLO, Evidence, 11 June 2018 (Mr. François Boileau); OFLSC (11 June 2018), Brief, para. 67.
109. Government of Canada, Table showing current Regulations vs. proposed amendments, and the anticipated impact of the changes.

110. OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser); OLLO, *Evidence*, 1 October 2018 (Ms. MarieFrance Kenny).
111. OLLO, *Evidence*, 1 October 2018 (Ms. MarieFrance Kenny).
112. Ms. Hélène Asselin (18 June 2018), *Brief*, p. 8.
113. Government of Canada, *Table showing current Regulations vs. proposed amendments, and the anticipated impact of the changes*; Ms. Hélène Asselin (18 June 2018), *Brief*, p. 8.
114. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
115. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache); Government of Canada, *Table showing current Regulations vs. proposed amendments, and the anticipated impact of the changes*.
116. OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand); Mr. Martin Normand (30 April 2018), *Brief*, pp. 4–5; Ms. Hélène Asselin (18 June 2018), *Brief*, p. 9.
117. *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, [2018] FC 530.
118. Ms. Hélène Asselin (18 June 2018), *Brief*, pp.1–6.
119. Ms. Diane Desaulniers (9 October 2018), *Brief*, p. 5.
120. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
121. OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau); OFLSC (14 August 2018), *Follow-up letter*, pp. 11–12; OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser).
122. OLLO, *Evidence*, 30 April 2018 (Ms. Stéphanie Chouinard).
123. OLLO, *Evidence*, 30 April 2018 (The Hon. Serge Joyal).
124. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc).
125. OLLO, *Evidence*, 11 June 2018 (Ms. Katherine d’Entremont); OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier); OCOLNB (26 October 2018), *Brief*, paras. 74–82.
126. OCOLNB (26 October 2018), *Brief*, paras. 74, 77 and 81.
127. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
128. OLLO, *Evidence*, 24 September 2018 (Ms. Linda Cardinal).
129. OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard).
130. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau); OFLSC (14 August 2018), *Follow-up letter*, pp. 11–12; OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser); OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache)
131. OLLO, *Evidence*, 30 April 2018 (Ms. Stéphanie Chouinard).
132. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
133. OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier).
134. OLLO, *Evidence*, 1 October 2018 (Ms. Marie-France Kenny).
135. OFLSC (14 August 2018), *Follow-up letter*, p. 13; OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache); OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier).
136. OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand).
137. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc).
138. OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau; Ms. Katherine d’Entremont); OFLSC (11 June 2018), *Brief*, para. 93; OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier); OCOLNB (26 October 2018), *Brief*, paras. 58–65.
139. OLLO, *Evidence*, 26 October 2018 (Mr. Hughes Beaulieu); OCOLNB (26 October 2018), *Brief*, paras. 64–65.
140. OLLO, *Evidence*, 30 April 2018 (The Hon. Serge Joyal).
141. OLLO, *Evidence*, 30 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 24 October 2018 (Mr. Maxime Bourgeois); OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier).



142. OLLO, Evidence, 23 April 2018 (Mr. Gino LeBlanc); OLLO, Evidence, 30 April 2018 (The Hon. Serge Joyal); OLLO, Evidence, 24 September 2018 (Ms. Linda Cardinal); OFLSC (11 June 2018), Brief, para. 51; OFLSC (14 August 2018), Follow-up letter, pp. 2–3; OLLO, Evidence, 11 June 2018 (Ms. Katherine d’Entremont); OLLO, Evidence, 24 October 2018 (Ms. Nadine Duguay-Lemay, Chief Executive Officer, Dialogue NB; Mr. Maxime Bourgeois); OLLO, Evidence, 26 October 2018 (Mr. Michel Carrier); OCOLNB (26 October 2018), Brief, paras. 5–6 and 10–56.
143. OLLO, Evidence, 26 October 2018 (Mr. Michel Carrier); OCOLNB, Follow-up letter, sent to the Standing Senate Committee on Official Languages, 1 November 2018.
144. OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
145. OLLO, Evidence, 23 April 2018 (Mr. Gino LeBlanc); OLLO, Evidence, 30 April 2018 (The Hon. Serge Joyal); OLLO, Evidence, 26 October 2018 (Ms. Nadine Duguay-Lemay); OLLO, Evidence, 26 October 2018 (Mr. Michel Carrier).
146. OLLO, Evidence, 30 April 2018 (The Hon. Serge Joyal).
147. OLLO, Evidence, 1 October 2018 (Ms. Françoise Enguehard).
148. Ms. Diane Desaulniers (9 October 2018), Brief, pp. 5–6.
149. OLLO, Evidence, 11 June 2018 (Mr. François Boileau; Ms. Katherine d’Entremont); OFLSC (11 June 2018), Brief, para. 109; OFLSC (14 August 2018), Follow-up letter, pp. 8–9; OLLO, Evidence, 26 October 2018 (Mr. Michel Carrier; Mr. Hughes Beaulieu); OCOLNB (26 October 2018), Brief, para. 56.
150. OLLO, Evidence, 24 October 2018 (Ms. Nicole O. Melanson; Ms. Dawn Arnold, Mayor, City of Moncton).
151. OLLO, Evidence, 24 October 2018 (Ms. Dawn Arnold).
152. OLLO, Evidence, 30 April 2018 (The Hon. Serge Joyal).
153. OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
154. Reference re Supreme Court Act, ss. 5 and 6, [2014] 1 SCR 433.
155. OLLO, Evidence, 30 April 2018 (Ms. Stéphanie Chouinard).
156. OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
157. ACFO, CFRCLR and RCCFPP (31 July 2018), Brief, paras. 25–36; OLLO, Evidence, 24 September 2018 (Ms. Linda Cardinal).
158. OLLO, Evidence, 24 September 2018 (Mr. Graham Fraser); OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
159. OLLO, Evidence, 24 September 2018 (Ms. Linda Cardinal).
160. OLLO, Evidence, 24 October 2018 (Ms. Dawn Arnold).
161. OLLO, Evidence, 24 October 2018 (Ms. Nadine Duguay-Lemay).
162. OLLO, Evidence, 24 October 2018 (Ms. Dawn Arnold; Ms. Nicole O. Melanson).
163. OLLO (October 2018).
164. OLLO, Evidence, 23 April 2018 (Mr. Gino LeBlanc); OLLO, Evidence, 30 April 2018 (Ms. Stéphanie Chouinard).
165. Ms. Hélène Asselin (18 June 2018), Brief, pp. 8–9; Ms. Diane Desaulniers (9 October 2018), Brief, p. 4.
166. OLLO, Evidence, 24 September 2018 (Mr. Graham Fraser); OLLO, Evidence, 1 October 2018 (Ms. MarieFrance Kenny).
167. Ms. Diane Desaulniers (9 October 2018), Brief, pp. 8–9.
168. OLLO, Evidence, 1 October 2018 (The Hon. Michel Bastarache).
169. Ms. Diane Desaulniers (9 October 2018), Brief, pp. 4–5.
170. OLLO, Evidence, 24 September 2018 (Mr. Graham Fraser); OLLO (October 2018).
171. Ms. Hélène Asselin (18 June 2018), Brief, p. 9.
172. OLLO, Evidence, 24 September 2018 (Mr. Graham Fraser); OLLO, Evidence, 26 October 2018 (Mr. Michel Carrier).

173. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc).
174. Ms. Diane Desaulniers (9 October 2018), *Brief*, pp. 6–7.
175. Ms. Hélène Asselin (18 June 2018), *Brief*, pp. 3 and 8–9; Ms. Diane Desaulniers (9 October 2018), *Brief*, pp. 7–8.
176. OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier); OCOLNB (26 October 2018), *Brief*, paras. 88–89.
177. Ms. Diane Desaulniers (9 October 2018), *Brief*, pp. 9–10.
178. OLLO, *Evidence*, 24 October 2018 (Ms. Nicole O. Melanson).
179. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
180. OFLSC (11 June 2018), *Brief*, para. 74.
181. OLLO, *Evidence*, 30 April 2018 (Ms. Stéphanie Chouinard).
182. OLLO, *Evidence*, 26 October 2018 (Mr. Michel Carrier); OCOLNB (26 October 2018), *Brief*, paras. 83–87.
183. OCOLNB (26 October 2018), *Brief*, para. 87.
184. OLLO, *Evidence*, 11 June 2018 (Mr. François Boileau); OFLSC (11 June 2018), *Brief*, paras. 94–111; OFLSC (14 August 2018), *Follow-up letter*, pp. 3–6.
185. For example, these standard clauses could cover parliamentary and legislative language rights; language rights in respect of the administration of justice, services to the public, health care, immigration and language of work; and a commitment to advance Part VII. OFLSC (11 June 2018), *Brief*, para. 106.
186. OFLSC (14 August 2018), *Follow-up letter*, pp. 5–6.
187. OLLO (February 2018); OLLO (October 2018); OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc); OLLO, *Evidence*, 11 June 2018 (Ms. Katherine d'Entremont); OCOLNB (26 October 2018), *Brief*, paras. 66–71.
188. Government of Canada, *Table showing current Regulations vs. proposed amendments, and the anticipated impact of the changes*.
189. OCOLNB (26 October 2018), *Brief*, paras. 69–71.
190. OLLO, *Evidence*, 24 October 2018 (Ms. Nadine Duguay-Lemay; Ms. Suzanne Cyr, Chair, Frye Festival).
191. OLLO, *Evidence*, 24 October 2018 (Ms. Nadine Duguay-Lemay).
192. OLLO, *Evidence*, 24 October 2018 (Ms. Nadine Duguay-Lemay; Ms. Suzanne Cyr).
193. OLLO, *Evidence*, 1 October 2018 (The Hon. Michel Bastarache).
194. OCOLNB (26 October 2018), *Brief*, paras. 72–73.
195. OCOLNB (26 October 2018), *Brief*, para. 73.
196. OLLO, *Evidence*, 23 April 2018 (Mr. Gino LeBlanc).
197. OLLO, *Evidence*, 1 October 2018 (Ms. Françoise Enguehard; Ms. Marie-France Kenny; The Hon. Michel Bastarache).
198. Ms. Hélène Asselin (18 June 2018), *Brief*, pp. 1–2, 4–5 and 10; *Evidence*, 24 September 2018; Ms. Diane Desaulniers (9 October 2018), *Brief*, p. 2.
199. Ms. Hélène Asselin (18 June 2018), *Brief*, pp. 4–5.
200. OLLO, *Evidence*, 24 September 2018 (Mr. Graham Fraser).
201. OLLO, *Evidence*, 30 April 2018 (Mr. Martin Normand); OLLO, *Evidence*, 24 September 2018 (Ms. Linda Cardinal).

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