



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 Federal
Institutions and
Recommendations*

JUNE 2019

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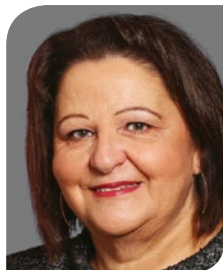
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MEMBERS OF THE COMMITTEE



The Honourable René Cormier
Chair*



The Honourable Rose-May Poirier,
Deputy Chair*



*The Honourable Dennis Dawson**

THE HONOURABLE SENATORS:



Raymonde
Gagné



Paul E.
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Marie-Françoise
Mégie



Lucie
Moncion



Larry W.
Smith



The Honourable
Mobina S.B. Jaffer

*Effective as of 13 May 2019,
the Honourable Mobina S.B.
Jaffer is no longer a member
of this committee.*

*We thank her for her
contribution to this study.*



The Honourable
Ghislain Maltais

retired on 21 April 2019.

*We thank him for his
contribution to this study.*

**Members of the Subcommittee on Agenda and Procedure*

EX-OFFICIO MEMBERS OF THE COMMITTEE:

The Honourable Senators 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 THIS PHASE OF THE STUDY:

The Honourable Senators Josée Forest-Niesing and Leo Housakos

STAFF MEMBERS:

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Annie Trudel, Administrative Assistant, Committees Directorate (April 2017 to September 2017; September 2018 to October 2018)
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Stéphanie Pépin, Administrative Assistant, Committees Directorate (March 2018 to September 2018)
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Marc-André Roy, Parliamentary Counsel, Office of the Law Clerk and Parliamentary Counsel
Marcy Galipeau, Head, Strategic Communications, Communications Directorate
Odette Labarge, Graphic Designer (Publications), Communications Directorate

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

ATSSC	Administrative Tribunals Support Service of Canada
CADMOL	Committee of Assistant Deputy Ministers on Official Languages
CHRC	Canadian Human Rights Commission
CHRT	Canadian Human Rights Tribunal
CIB	Canada Infrastructure Bank
CNFS	<i>Consortium national de formation en santé</i>
ÉSF	<i>Égalité Santé en français</i>
FCÉNB	<i>Fédération des conseils d'éducation du Nouveau-Brunswick</i>
FCFA	<i>Fédération des communautés francophones et acadienne du Canada</i>
IRCC	Immigration, Refugees and Citizenship Canada
ISED	Innovation, Science and Economic Development Canada
LANG	House of Commons Standing Committee on Official Languages
NCC	National Capital Commission
NCR	National Capital Region
OCOL	Office of the Commissioner of Official Languages
OLLO	Standing Senate Committee on Official Languages
OLSP	Official Languages Support Programs
OPC	Office of the Privacy Commissioner of Canada
PCO	Privy Council Office
PSC	Public Service Commission of Canada
PSPC	Public Services and Procurement Canada
QCGN	Quebec Community Groups Network
SSF	<i>Société Santé en français</i>
TBS	Treasury Board of Canada Secretariat

PREFACE

The Standing Senate Committee on Official Languages is pleased to present the final report of its study on Canadians' views about modernizing the *Official Languages Act* (the Act). This report contains the findings of the fifth phase of the study dealing with the views of federal institutions and sets out a list of recommendations proposed by the Committee members to modernize the Act.

Over the past two years, we have reported on the proposals of young Canadians, official language minority communities, people who have witnessed the evolution of the Act and justice sector experts. In the fifth and final phase of our study, we wanted to identify the specific issues facing the federal public service with respect to the Act's implementation.

We focused our attention on federal institutions affected by suggestions in the testimony heard and the briefs received to date. We devoted much of our energy to institutions that play a key role in the implementation of the current Act. We would like to extend our sincere thanks to the Office of the Commissioner of Official Languages; the Minister of Tourism, Official Languages and La Francophonie; and all the public servants who participated in this last phase of our study.

Unfortunately, we were unable to hear from the President of the Treasury Board. Major proposals for amendments to the Act directly affect his or her powers. While we are aware that this position has been shuffled repeatedly in recent months, we would have liked closer cooperation on such an important subject, especially since this role is at the heart of the regulatory changes to Part IV that will soon come into effect.

Over 100 proposals were presented to our committee, either in person or in writing. We are very grateful to those who shared their ideas, concerns and hopes with us to achieve a language regime that meets their needs and expectations. We took a pragmatic and realistic approach to the recommendations we chose to put forward. We would also like to thank the Senate staff assigned to our committee, particularly our analyst, Marie-Ève Hudon, for her excellent, meticulous work throughout this important study.

The issue of modernizing the Act has continued to evolve in recent months. In March 2019, the *Fédération des communautés francophones et acadienne du Canada* proposed a new wording of the Act, describing its proposed bill as "complete and thorough." Shortly afterwards, the Minister of Tourism, Official Languages and La Francophonie launched consultations, consisting of public forums, round tables and a symposium. The findings will be announced shortly. In May 2019, the Commissioner of Official Languages released his position to guide the federal government in its approach.

The federal government has everything it needs to update the Act, which is at the heart of Canada's social contract. Together, let's make equality between the two official languages a reality that every Canadian can experience every day, in a real, tangible way, right across the country.



The Honourable
René Cormier
Chair



The Honourable
Rose-May Poirier
Deputy Chair

REPORT HIGHLIGHTS

Official languages are at the heart of Canada's social contract, as are the principles of linguistic duality and bilingualism. But to give real meaning to the respect for English and French as official languages, the federal government must update and strengthen the *Official Languages Act*. This is in the interest of all Canadians.

After two years studying this topic, the Standing Senate Committee on Official Languages heard proposals addressing all parts of the Act, including to add new parts and to make consequential amendments to other federal statutes.

In recent months, the Senate Committee focused on the powers and duties of federal institutions in the implementation of the Act.

In the final phase of its study, the Senate Committee considered the views of federal institutions on the modernization of the Act, further to its earlier consideration of the views of young Canadians, official language minority communities, stakeholders who have witnessed the evolution of the Act and the justice sector.

This final report focuses on federal institutions that play a key role in implementing the current Act. It reviews the roles and responsibilities of Canadian Heritage, the Minister responsible for Official Languages, the Treasury Board, the Privy Council Office, the Public Service Commission, Justice Canada and the Office of the Commissioner of Official Languages. The Senate Committee identified gaps in the Act's implementation and ways to modernize these roles and responsibilities.

This final report examines in greater detail proposals made in the four interim reports tabled by the Senate Committee between February 2018 and April 2019. It examines the role played by certain federal institutions in implementing measures that address translation, the enumeration of rights-holders, the bilingual character of the national capital, immigration and the disposal of federal real property.

The key finding of this fifth and final phase of the study is that the Act must be strengthened and fully implemented. Its provisions are implemented inconsistently, and the responsibilities it outlines are neither sufficiently clear nor binding. Leadership and strengthening the horizontal coordination, oversight and compliance mechanisms are a common thread in proposals outlined in the evidence and briefs.

In total, between April 2017 and April 2019, more than 300 witnesses and 72 briefs and follow-ups informed the measures the Senate Committee recommends taking to modernize the Act.

The Standing Senate Committee on Official Languages has included in its final report **20 practical recommendations** for the federal government to modernize the Act. Its recommendations have been drafted to ensure that the Department of Justice Canada, which is responsible for drafting the bill to amend the Act, has the most useful information possible when the time comes to do so.

The Senate Committee's recommendations prioritize proposals that achieved consensus among witnesses and briefs. A number of considerations helped guide its choices. The Senate Committee recommends changes to the Act under the following four themes.

RECOMMENDATIONS

Leadership and cooperation (6 recommendations):

The Senate Committee calls for:

- the Treasury Board to be designated as the central agency responsible for the implementation and coordination of the Act;
- the Treasury Board to provide for the adoption, coordination and implementation of a government plan indicating the priority areas for official languages;
- cooperation mechanisms to be strengthened, by recognizing federal–provincial/territorial agreements in the Act and by applying an “official languages lens;” and
- an obligation to consult official language minority communities in certain circumstances and the creation of an advisory board.

Compliance (1 recommendation)

The Senate Committee proposes strengthening the ombudsman role of the Commissioner of Official Languages and creating a new Official Languages Tribunal.

Enforcement principles (11 recommendations)

The Senate Committee seeks to:

- clarify the principles and duties outlined in the Act in parts IV to VII and require that regulations be made;
- codify the Translation Bureau’s role in the Act;
- include in the Act certain constitutional rights addressing both the unique case of New Brunswick and education rights; and
- review the Act’s general provisions, particularly to ensure that the various parts of the Act are implemented consistently and that the content of the Act and its regulations are reviewed every 10 years.

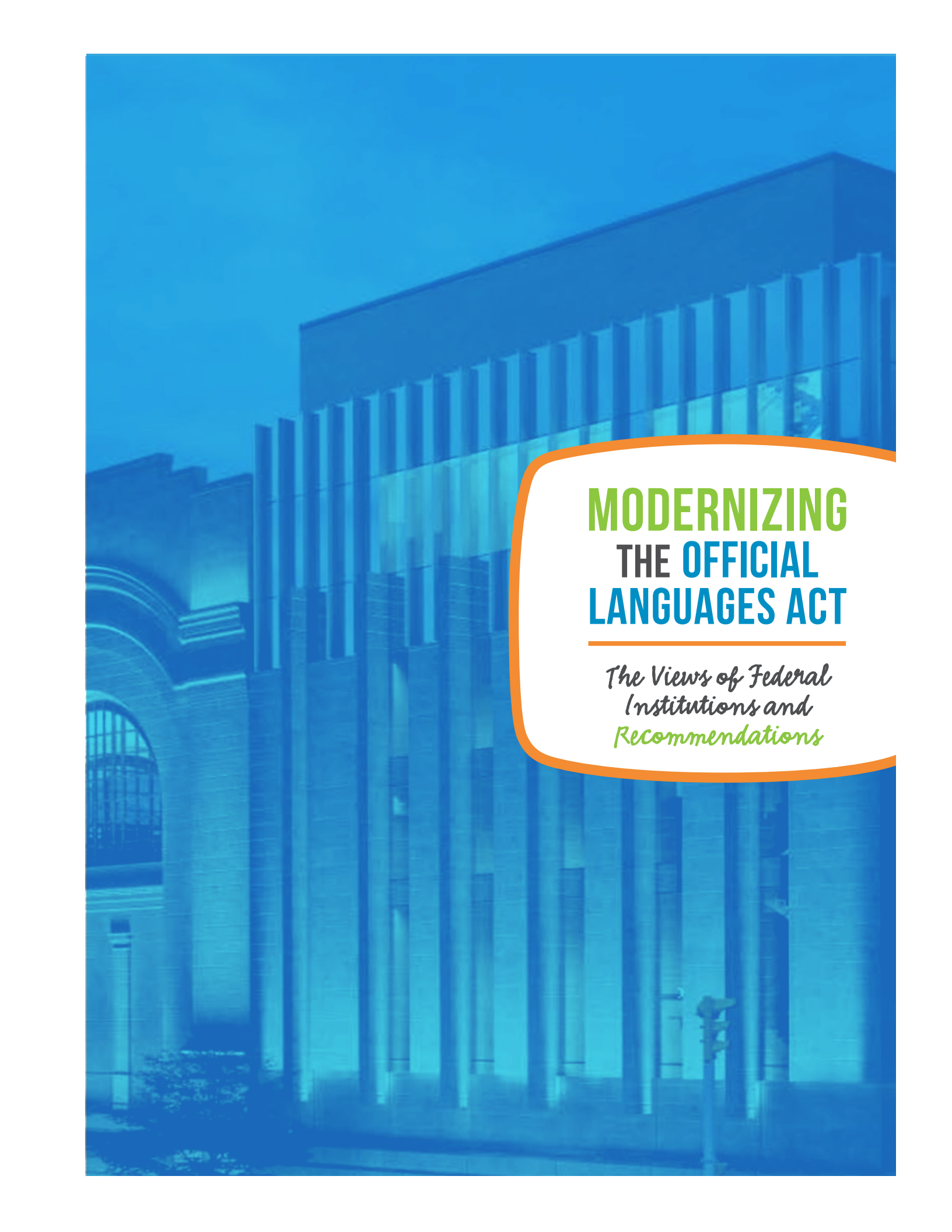
Judicial bilingualism (2 recommendations)

The Senate Committee calls for amendments to the Act to ensure equal access to justice in both official languages and to require that Supreme Court justices be bilingual when they are appointed.

The Senate Committee believes that a clearer, stronger Act will lead to effective and consistent implementation by all federal institutions. However, it notes that consistent leadership and strong political will are needed to ensure the proposed amendments to the Act have a positive impact on respect for English and French as Canada’s official languages.

NEXT STEPS

The Senate Committee will closely follow the federal government’s actions as it works to update the Act. With this final report in hand the Senate Committee is hopeful the recommendations will help guide the federal government in its approaches to modernizing the Act.



MODERNIZING THE OFFICIAL LANGUAGES ACT

*The Views of Federal
Institutions and
Recommendations*

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 consisted of five phases, which correspond to the five segments of the population that the Senate Committee consulted:

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

This year marks the 50th anniversary of the enactment of the very first Act, in 1969. It was overhauled in 1988 and amended again in 2005, raising many hopes, but it is clear that many aspects of its implementation now fall short.

Since the Senate Committee began its study two years ago, calls for the federal government to bring the Act into the 21st century have gained traction. The Senate Committee has carried out an in-depth review with a view to updating the Act.

Given the upcoming election, a government bill to amend the Act will have to wait until the next Parliament before it can be introduced. At that time, the federal government will have at its disposal the results of its own consultations, the official position of the Commissioner of Official Languages, the findings of the two standing committees on official languages, and a proposed new wording of the Act from the *Fédération des communautés francophones et acadienne du Canada* (FCFA).

The Senate Committee is very proud to table the fifth and final report of its series on modernizing the Act. In total, it has heard more than 100 proposals addressing all parts of the Act and suggesting the addition of new parts. These proposals come from more than 300 witnesses and 72 briefs and follow-ups from various individuals and organizations (Table 1). Between April 2017 and April 2019, the Senate Committee dedicated 44 meetings to this study and travelled to three provinces to meet with stakeholders.



From left to right: The Honourable Marie-Françoise Mègie, Lucie Moncion, Raymonde Gagné and René Cormier (Chair), accompanied by committee staff.

**Table 1 – Evidence and Briefs:
Study on the Modernization of the *Official Languages Act***

	Public Hearings	Informal Meetings	Round Tables	Briefs and Follow-ups
Young Canadians	41	65	19	12
Official language minority communities	76	24	-	24
Stakeholders who have witnessed the evolution of the Act	20	-	-	8
Justice sector	25	-	-	10
Federal institutions	33	-	-	18
TOTAL	195	89	19	72

In **Chapter 1** of this final report, the Senate Committee provides an overview of the evidence heard and briefs submitted as part of the final phase of its report, with respect to the views of federal institutions.

From December 2018 to April 2019, the Senate Committee focused on the issues specific to the **powers, duties and functions of federal institutions** with regard to the implementation of the Act – particularly the roles of the responsible departments and the Office of the Commissioner of Official Languages – and the measures to be taken to ensure the equality of both official languages in the institutions subject to the Act.

The Senate Committee held its final public hearings in Ottawa. In total, 33 witnesses, 15 briefs and three follow-ups helped guide the content of this report, which:

- focuses on federal institutions that play a key role in the implementation of the current Act;
- outlines the response of several federal institutions to proposals affecting them from the first four phases of the study; and
- includes a final series of suggestions from briefs submitted to the Senate Committee between December 2018 and April 2019.

In **Chapter 2** of this final report, the Senate Committee outlines its recommendations to the federal government for updating the Act.

In **Chapter 3** of this final report, the Senate Committee details its observations and provides comments on its recommendations. After considering all the proposals that were put forward, the Senate Committee made its selection. Its vision of a modern, updated Act is based on a number of considerations, which have in common the following elements:

- achievement of the constitutional objective of advancing the equality of status and use of English and French;
- federal government leadership to achieve the substantive equality of both official languages;
- the remedial nature of language rights;
- respect for provincial and territorial jurisdiction – as each level of government is responsible for legislating official language matters that fall under their authority;¹
- respect for the principle of judicial independence;
- a broad, liberal and purposive interpretation of the Act;

- consistent implementation of its parts; and
- strengthened duties and obligations.

The Senate Committee has 20 practical recommendations for the federal government. The priority has been given to proposals achieving consensus, while taking an overall view of the Act's implementation without getting lost in the details. They are divided into four main themes:

- **leadership and cooperation:** the Senate Committee's recommendations focus on designating a central agency, adopting a government plan, strengthening intergovernmental cooperation mechanisms and consulting official language minority communities;
- **compliance:** the Senate Committee's recommendations deal with strengthening the powers of the Commissioner of Official Languages and creating a new Official Languages Tribunal;

- **enforcement principles:** the Senate Committee's recommendations concern the clarification of the principles, duties and obligations imposed by parts IV to VII of the Act, the need to make regulations, the need to reaffirm certain constitutional rights in the Act, and the review of some of the Act's general provisions; and
- **judicial bilingualism:** the Senate Committee's recommendations support amendments to ensure equal access to justice in both official languages and to require that Supreme Court of Canada (Supreme Court) judges are bilingual at the time they are appointed.

Readers are invited to consult the four interim reports and their glossaries to better understand the context and scope of the recommendations presented in this final report.²



CHAPTER 1

*Implementation of the Act:
Issues Specific to the
Federal Public Service*



From left to right: The Honourable Marie-Françoise Mégie, Lucie Moncion and Raymonde Gagné.

Chapter 1 summarizes the views of federal institutions from two perspectives. First, it looks at institutions that play a key role in the administration of the current Act. Second, it looks at institutions

affected by the proposals made during the study of the first four phases. This chapter also summarizes ideas – some similar to previous ones, others new – that appeared in the last briefs that were received.

Role of Canadian Heritage and the minister responsible for official languages

When people think of the implementation of the Act, they often think of the Honourable Mélanie Joly, the current Minister of Tourism, Official Languages and La Francophonie. While she is often called upon to address various official languages matters, the legislation itself does not give her an official role to coordinate the Act as a whole within the federal government. As it stands, the Minister's responsibilities are restricted to implementing the following:

- Canadian Heritage's Official Languages Support Programs (OLSPs), which address Part VII of the Act, with a view to:

- enhancing the vitality and supporting the development of English and French linguistic minority communities; and
- fostering full recognition and use of English and French in Canadian society;

➤ the *Action Plan for Official Languages – 2018–2023* (the 2018–2023 Action Plan).

The public hearings and briefs on the fifth phase of the study help clarify some aspects of the Minister's role and responsibilities. This section examines these points in the context of the expectations already expressed about modernizing the Act.

Consultations on modernizing the Act

In March 2019, the Honourable Mélanie Joly launched consultations on modernizing the Act, further to the mandate letter she received from the Prime Minister on 28 August 2018.³ Between March 2019 and May 2019, the Minister committed to holding five forums, 11 round tables and a symposium on official languages that would wrap up her review. Her findings are expected in June 2019. The following considerations are guiding her review:

- the collective dimension of language rights;
- the declining number of francophones within the Canadian population;
- the stagnant rate of bilingualism among the English-speaking majority outside Quebec; and
- the role of new technologies affecting communication methods and the work environment.⁴

The Minister has said she will pay close attention to the work of the Senate Committee, in addition to the findings of her own review.⁵

In the spring and summer of 2018, the current Commissioner of Official Languages (the Commissioner), Raymond Thériault, carried out his own consultations on modernizing the Act with community organizations and the public. In December 2018, he published his vision, which is based on three pillars: an Act that is relevant, dynamic and strong.⁶ He shared his official position in May 2019.⁷

The House of Commons Standing Committee on Official Languages passed a motion in October 2018 to undertake its own study on modernizing the Act.⁸ At the time of writing this final report, the House of Commons Committee had finished hearing from witnesses but had not yet presented its study to Parliament.⁹

Lastly, in March 2019, the FCFA kept its promise and published a proposed new wording of the Act. After consulting its member organizations, the FCFA analyzed the administration and compliance issues involving the current Act and proposed solutions. A copy of its proposal was submitted to the Senate Committee as a follow-up to the brief it submitted

during the second phase of the Senate Committee's study.¹⁰ The Quebec Community Groups Network (QCGN), which also submitted a brief as part of the second phase of the study, said in a news release that it "fully supports the principles" outlined in the FCFA's proposed bill.¹¹

Governance mechanisms

The main message from the Senate Committee's hearings can be summarized as follows: the Act must be strengthened and fully implemented. To achieve this end, the institutions responsible for its administration must have the right governance mechanisms at their disposal.

The current Act identifies the Minister of Canadian Heritage as the person responsible for the administration of Part VII. The fact that the responsibility to coordinate this part was transferred to the Minister of Tourism, Official Languages and La Francophonie by order in council, rather than through an amendment to the Act, raised some concerns.¹² Separating the implementation of parts IV, V and VI from Part VII also leads to ambiguity, particularly in a context where the Act relies on horizontal administration to achieve its objectives. That is why the Commissioner is calling for more comprehensive, centralized and coordinated official languages governance.¹³

In response to the concerns expressed, the Minister of Tourism, Official Languages and La Francophonie provided assurance that mechanisms were in place to support her in her role.¹⁴ The Official Languages Branch, which oversees the OLSPs and the implementation of the 2018–2023 Action Plan, is still part of Canadian Heritage.¹⁵ She receives support from Guylaine F. Roy, the Deputy Minister of Tourism, Official Languages and La Francophonie at Innovation, Science and Economic Development Canada (ISED).¹⁶

The Committee of Assistant Deputy Ministers on Official Languages (CADMOL), created in 2007, also supports the Minister in carrying out her duties. Deputy Minister Guylaine F. Roy is the head of the CADMOL. It has 23 members, including the Council of the Network of Official Languages Champions and key players such as Canadian Heritage, the Treasury Board Secretariat, the Privy Council Office and Justice Canada.¹⁷

Commenting on the importance of ensuring effective governance of the Act, the Minister suggested enhancing the obligation federal institutions have to measure how their decisions will affect official language minority communities when tabling memoranda to Cabinet.¹⁸ The federal government could develop a tool similar to the gender-based analysis plus (GBA+) tool to ensure that an “official languages lens” could be applied to all policies and programs put forward by federal institutions.

Horizontal coordination: Part VII

The inconsistent performance of federal institutions in fulfilling their duties under Part VII is a source of concern. According to the current Act, the Minister shall “encourage,” “promote,” and “take such measures as that Minister considers appropriate” to fulfill their responsibilities.

The evidence heard and briefs received support the view that this vague language leads to issues with implementing and interpreting the Act. The Federal Court decision in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)* reinforces this idea that the implementation of Part VII is inadequate.

Part of the solution could be to clarify roles and strengthen coordination mechanisms. The FCFA has proposed transferring responsibility for Part VII to the Treasury Board, which would ensure the horizontal coordination of the entire Act.¹⁹ In addition, its proposed wording identifies a series of new duties under Part VII for:

- the Minister of Official Languages;
- the Minister of Employment and Social Development;
- the Minister of Immigration, Refugees and Citizenship;
- the Minister of Justice;
- the Minister of Canadian Heritage; and
- the Minister of Finance.²⁰

The Action Plan for Official Languages 2018–2023

The Minister of Tourism, Official Languages and La Francophonie coordinates the implementation of the 2018–2023 Action Plan. The current five-year plan has three pillars and requires 10 federal institutions to collaborate. While its existence depends on political will, its content changes based on the priorities of each government.

That is why two of the Senate Committee’s interim reports suggest including in the Act the obligation to adopt five-year development plans for official languages that address priority areas.²¹ The purpose is to ensure that this measure continues in the future and to outline clear and permanent objectives, while encouraging communities to take charge of their development. The Commissioner, the *Consortium national de formation en santé* (CNFS) and the *Société Santé en français* (SSF) are all proponents of this view.²²

The FCFA has included this measure in its proposed new wording of the Act. Its vision is that the development, review and evaluation of this action plan would fall to the Treasury Board instead of the Minister of Tourism, Official Languages and La Francophonie and would be done in consultation with official language minority communities.²³

Broad and liberal interpretation of “positive measures”

Each of the Senate Committee’s interim reports has emphasized the need to define “positive measures,” as their implementation varies significantly. The Minister of Tourism, Official Languages and La Francophonie spoke of the importance of encouraging a broad interpretation of “positive measures” for federal institutions, but did not provide any information on clarifying the scope of those measures.²⁴ The Federal Court of Appeal will be called on to interpret the scope of “positive measures” in the case on the rights of francophones in British Columbia regarding employment services.²⁵

Until the courts have ruled on the matter, the Commissioner continues to emphasize the importance of modernizing the Act.²⁶ However, in May 2018, his office changed how it addresses complaints relating to Part VII, leading

to growing concerns, as explained in the Senate Committee's two most recent interim reports.²⁷ This change is the reason that a number of complaints previously deemed founded no longer qualify: the Commissioner is applying the rule of interpretation stemming from the Federal Court decision in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*.²⁸ This decision creates a clear gap in the interpretation of obligations under Part VII, as described in the following excerpt.

The Federal Court's Decision

"[T]he modern approach to statutory interpretation, which requires us to read the words of an Act in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament, continues to apply even with respect to language rights. [...] The broad and liberal interpretation advocated in language matters must not disregard the accepted rules of interpretation. [...] It cannot transform a general duty to act into a series of targeted requirements when Parliament did not say so and did not intend to say so, and specifically gave the executive branch the right and the duty to do so. That would be to ignore the restraint that Parliament clearly exercised in Part VII, and to impose language obligations on federal institutions that the legislative and executive branches have so far refrained from imposing on them."

***Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, 2018 CF 530, paras. 52 and 257.**

The FCFA included in its proposal a duty to consult with official language minority communities, which was supported by the CNFS and the SSF.²⁹ A new part of the Act could:

- define the duty to consult;
- determine the criteria for "meaningful consultation"; and
- establish a Communities Advisory Council to provide advice and recommendations for federal institutions on how to implement the Act.³⁰

This proposal aligns with what the QCGN said in the second phase of the study.³¹ The duty to consult would go hand in hand with the implementation of the "positive measures" included in Part VII and would enshrine the principle of "by and for" that each of the interim reports mentioned. The FCFA and the QCGN chose not to define "positive measures," instead proposing that the commitment of federal institutions be turned into a duty.

The guide prepared for federal institutions by Canadian Heritage to help them implement "positive measures" addresses the responsibility to consult communities and to document measures taken.³² The Commissioner's memorandum of fact and law tabled with the Federal Court of Appeal maintains that "positive measures" must be interpreted through this guide, and in keeping with Parliament's intention.³³ Some federal institutions the Senate Committee met with supported the idea of clarifying the definition of "positive measures" in the Act, including representatives from Immigration, Refugees and Citizenship Canada (IRCC).³⁴



The Honourable René Cormier, Chair of the Senate Committee.

Federal–provincial/territorial agreements in education

The Honourable Mélanie Joly confirmed that negotiations for the *Protocol for Agreements for Minority-Language Education and Second-Language Instruction* are still ongoing, and she committed to making accountability and consultation issues a priority in the negotiations.³⁵ This promise was included in the federal budget tabled on 19 March 2019.³⁶

Three of the Senate Committee's four interim reports proposed incorporating these obligations into the Act.³⁷ Briefs from four francophone organizations submitted in the winter of 2019 also mentioned this matter.³⁸ The brief from the CNFS and the SSF added that all federal–provincial/territorial agreements must:

- contain an enforceable language clause that advances the equality of status and use of English and French in Canadian society and enhances the vitality of English and French minority communities and supports and assists their development; and
- allocate specific funds for official language minority communities.³⁹

In addition, these two organizations believe that the Act should support French-language post-secondary education, which would mean more health care professionals could be trained in French and serve the needs of francophone minority communities.⁴⁰

The *Fédération des conseils d'éducation du Nouveau-Brunswick* (FCÉNB) suggested that Part VII of the Act must ensure that the full potential of section 23 of the *Canadian Charter of Rights and Freedoms* (the Charter) is realized by supporting the principle of an education continuum.

"In such a context, the federal government's implementation of constitutional and quasi-constitutional (Official Languages Act) obligations seems essential to us to ensure compliance with section 23 of the Charter and ensure that its full potential is realized. We feel that failure to take action in that respect would have serious consequences on the development and enhancement of Canada's duality, and on the progression toward true equality for minority Acadian and francophone communities."

Fédération des conseils d'éducation du Nouveau-Brunswick, Brief, 31 January 2019, para. 43.



From left to right: The Honourable Larry W. Smith, Paul E. McIntyre and Ghislain Maltais.

Égalité Santé en français (ÉSF) recommended adding a criterion compelling the public disclosure of federal–provincial/territorial agreements.⁴¹

All these suggestions are also included in the FCFA's proposal, which outlines amendments to parts II and VII of the Act, covering both instruction in the language of the minority community and in the second official language.⁴²

Court Challenges Program

Part of the mandate given to the Minister of Tourism, Official Languages and La Francophonie is to fund the Court Challenges Program (CCP). It was first established in 1978 but has experienced a number of ups and downs over the years. It was re-established in the first mandate letter given to the Honourable Mélanie Joly, when she was the Minister of Canadian Heritage.⁴³

The CCP's activities were officially relaunched in early 2019. Requests to include this program in the Act were repeated in three of the Senate Committee's interim reports.⁴⁴ In its proposal, the FCFA entrenches the CCP in Part VII and makes the Minister of Official Languages responsible for funding it.⁴⁵

Making regulations

In its brief, ÉSF emphasized the urgent need to make regulations for Part VII of the Act.⁴⁶ The Commissioner's vision was along those same lines, requiring regulations that would clarify key concepts, outline "positive measures" and encourage proactive implementation of these obligations by federal institutions.⁴⁷ Three of the four Senate Committee's interim reports supported this proposal.⁴⁸ To date, the federal government has not made any commitments in this area.

Official languages in the federal public service

One of the three stated purposes of the current Act is to set out the powers, duties and functions of federal institutions with respect to official languages. This section identifies the challenges to be met in order to ensure that the federal government places a priority on official languages. It addresses the roles of three key players in more detail: the Treasury Board, the Privy Council Office (PCO) and the Public Service Commission (PSC). It supports the idea of designating a central agency responsible for applying and coordinating the Act.

Role of the Treasury Board

Part VIII of the Act identifies the President of the Treasury Board as being responsible for the implementation of parts IV, V and VI, which address the following areas, respectively:

- communications with and services to the public (Part IV);
- language of work (Part V); and
- equitable participation of English-speaking and French-speaking Canadians in the federal public service (Part VI).

As a committee of Cabinet, the Treasury Board plays a central role in the federal public administration in the following areas:

- financial administration and expenditure review;
- human resources management; and
- development and approval of programs, policies and regulations.

It has been repeatedly suggested since the Senate Committee first began its study that the role of the Treasury Board be strengthened and expanded. Unfortunately, the Senate Committee was unable to question the President of the Treasury Board during the fifth phase of its study since multiple people have held the position since January 2019. The following sections present the recommendations expressed to date and examine them in the context of the evidence and briefs from the fifth phase of the study.

Horizontal coordination: parts IV, V and VI

Currently, the Act grants discretionary powers and provides that the President of the Treasury Board “may” take measures to ensure the obligations outlined in parts IV, V and VI are met. Once again, the evidence and briefs show that this vague language leads to problems administering and interpreting the Act. In practice, federal institutions have very different understandings of their obligations.

The case of the Canada Infrastructure Bank (CIB), established in 2017, shows the challenges that arise when the time comes for an institution to implement the objectives of the Act. In 2018, a number of complaints were filed with the Commissioner about this newly established Crown corporation due to the lack of official language policies, the lack of employees able to speak French, the difficulty obtaining service in French, and the lack of bilingual requirements in the job postings for senior management positions. The CIB has since taken steps to address these issues.⁴⁹ That said, it is worth considering the type of guidance provided by the departments responsible for helping federal institutions understand their duties.

That is why key proposals for amendments to the Act seek to clarify and reinforce the responsibility for horizontal coordination that falls to the Treasury Board. For example, the FCFA would like to transform the Treasury Board’s discretionary powers into duties.⁵⁰ Its vision is that the Treasury Board would be responsible for administering the Act, developing federal policies and programs, and coordinating the implementation of the entire Act.⁵¹ The President of the Treasury Board would receive support in carrying out this role from an Official Languages Secretariat, which would be established within the Treasury Board.⁵²

The Commissioner called for the Act to clarify obligations as regards communications with and services to the public and language of work, while ensuring a greater consistency in the implementation of their respective objectives.⁵³

Regulations, policies and guidelines

On 25 October 2018, the federal government announced revisions to the *Regulations Amending the Official Languages (Communications with and Services to the Public) Regulations* (the Regulations) in order to provide more bilingual services across the country.⁵⁴ The Honourable Scott Brison, then President of the Treasury Board, and the Honourable Mélanie Joly were behind the review of the Regulations under Part IV, having received a mandate to do so in 2015.⁵⁵

The enactment of the new Regulations is coming soon. Most of their provisions will not come into force until after the data from the 2021 census are released. As described in each of the interim reports, as well as in a new brief submitted by health care organizations, the principles of these regulatory amendments must be reflected in the modernized Act, especially as regards the following:

- the criterion of “institutional vitality,” equal quality of service offered in English and French; and
- consultation with official language minority communities.⁵⁶

In addition, the FCFA incorporated most of the elements of *Bill S-209, An Act to amend the Official Languages Act (communications with and services to the public)*, into its proposed new wording of the Act.⁵⁷ The CNFS and the SSF echoed the desire to have the Act expressly provide that federal institutions must actively offer services in a linguistically and culturally appropriate way.⁵⁸ The FCFA included this matter in its proposal, outlining that regulations could be made to that effect and extending the obligation to actively offer services to another person or entity.⁵⁹ It also extends the application of parts IV and V to private sector companies subject to federal jurisdiction such as telecommunications companies, carriers and banks.⁶⁰ The QCGN made this same proposal in the brief it submitted during the second phase of the study.⁶¹

In the spring of 2018, the Commissioner published a special report to Parliament with a series of principles to guide the revision of the Regulations.⁶² In December 2018, he pointed out where the federal government's approach fell short. In his opinion:

- institutional vitality could be measured more broadly than by the mere presence of a minority-language primary or secondary school in a given region;
- access to services should not depend on the proportion of an official language minority compared with the majority; rather, it should be defined based on a set number; and
- the application of the Regulations remains complex and illogical in some cases, particularly as regards:
 - the rights of the travelling public; and
 - the lack of consistency in the obligations outlined in parts IV and V of the Act.⁶³

The Act also gives the Treasury Board the power to make other regulations, in parts V, VI and VII of the Act. The second interim report addressed the matter of making regulations for these three parts.⁶⁴

Oversight

Strengthening oversight, audit and evaluation mechanisms is at the heart of calls for the Act to be updated. Nancy Chahwan, Chief Human Resources Officer for the Treasury Board Secretariat (TBS), pointed out that the Act already delegates such powers to the Treasury Board.⁶⁵ The problem, according to the evidence and briefs, is that these are discretionary powers. The FCFA would like the wording in Part VIII of the Act to be more enforceable. The FCFA believes that, as the agency responsible for all budgets, the Treasury Board is well placed to promote the full implementation of the Act within the federal government.⁶⁶

There are mechanisms outside the Act, but some people believe they are ineffective, and they question whether the President of the Treasury Board is truly able to give official languages sufficient priority. For example, while the Treasury Board submissions process requires

official languages to be taken into account,⁶⁷ many complaints are still filed about institutions that have poorly analyzed the effect of their decisions pursuant to the Act.

Every three years, federal institutions submit an assessment of their performance in applying parts IV to VII of the Act to the Treasury Board and Canadian Heritage. Raymond Th  berge said these activity reports are uneven in quality and not up to the task.⁶⁸ In his 2018 annual report, he recommended that both departments examine these tools and make any necessary changes to ensure that a clearer picture of official languages in the federal government is presented.⁶⁹ In June 2019, the Commissioner will announce the Official Languages Maturity Model, a tool to help federal institutions better assess their performance in applying the principles of the Act.⁷⁰





From left to right: The Honourable Rose-May Poirier and Larry W. Smith.

Delegation of authority to deputy heads

Part VIII of the Act provides for the possibility of delegating the obligations outlined in parts IV, V and VI to the deputy heads of federal institutions. This trend has become more popular over the years. According to the evidence and briefs, it is one of the key reasons why the application of the Act is inconsistent. It is the reason the FCFA's proposal would prohibit the Treasury Board from delegating its responsibilities to deputy heads.⁷¹ It would go against the current system, according to Patrick Borbey, the President of the PSC, and Janine Sherman, the Deputy Secretary to the Cabinet at PCO.⁷² Guylaine F. Roy pointed out that, in the end, the Act makes each federal institution responsible for its implementation.

"Every minister, every institution is responsible for complying with the [Act] with respect to services to the public, language of work and the other components of the [Act]. The Treasury Board of Canada Secretariat and the [Minister of Tourism, Official Languages and La Francophonie] have specific responsibilities, but it's important to remember that every federal institution has obligations under the [Act]."

Guylaine F. Roy, Innovation, Science and Economic Development Canada, *Evidence*, 18 March 2019.

Managers' responsibilities

Managers have a key role to play in the administration of parts IV, V and VI, but the Act does not mention them directly. For a better understanding of managers' responsibilities, such as creating and maintaining a workplace that is conducive to the use of English and French, the Treasury Board's policies and directives must be consulted.⁷³ While some evidence and briefs highlighted the need to clarify managers' obligations, the FCFA's proposal did not include specific amendments to that effect.

A 2017 report published by a working group co-chaired by Patrick Borbey and Matthew Mendelsohn raised a significant issue: leaders of federal institutions do not always lead by example.⁷⁴ The report recognized that some managers do not demonstrate a good ability to work with their employees in the language of their choice.⁷⁵ It recommended increasing official languages accountability through performance and talent management frameworks.⁷⁶

Designated bilingual regions

The Senate Committee's second interim report proposed reviewing the list of designated bilingual regions for language-of-work purposes.⁷⁷ In its proposal, the FCFA:

- eliminates any mention of prescribed regions;
- prescribes the federal government's commitment to creating, across the country, conditions conducive to:
 - the use of both official languages at work; and
 - the option of learning the other official language;
- gives federal institutions the responsibility of informing their employees of these rights; and
- creates a link between the obligations outlined in parts IV and V.⁷⁸

These elements align with many of the concerns expressed by the QCGN during the second phase of the study.⁷⁹

The Senate Committee met with representatives of the CIB, whose headquarters is in Toronto. When asked about the relevance of expanding the list of prescribed regions for language-of-work purposes in the modernized Act – Toronto not being on that list – witnesses did not see it as a major inconvenience; they saw it as an opportunity to show leadership that will help shape the future of their young institution.⁸⁰

Role of the Privy Council Office

In the current Act, PCO is not given a specific role to play. New Brunswick's *Official Languages Act*, which makes the Premier responsible for its administration, is cited as an example in three of the Senate Committee's interim reports.⁸¹ Some people have called for a similar provision to be included in the federal Act, on the basis that PCO, closely aligned with Cabinet, is best placed to provide a clear, visible and ongoing commitment to official languages from a horizontal perspective.

The evidence and briefs draw from past experience when a minister responsible for official languages carried out their coordination duties with the support of PCO and a committee of deputy ministers on official languages. While the FCFA proposed returning to this framework in a position paper in 2009, its current proposal to modernize the Act is in favour of consolidating responsibilities under the Treasury Board instead of under PCO, because it believes that PCO does not have the appropriate powers and is not responsible for implementing any statutes.⁸² This section discusses the role that PCO could play in a modernized Act, based on three areas.

Political leadership

Official languages leadership is often the responsibility of several individuals. The Minister of Tourism, Official Languages and La Francophonie recognizes that it is a major issue for the federal public service.⁸³ According to Raymond Thériault, leadership must be ongoing and exercised at every level, with a view to creating a culture shift and changing organizational processes.⁸⁴

The Clerk of the Privy Council is the head of the federal public service. His most recent annual reports to the Prime Minister include commitments about the place of official languages in the public service.⁸⁵ While the FCFA does not wish to see PCO be given responsibility for coordinating the Act, its vision is for PCO to take on a political leadership role.⁸⁶ Janine Sherman of PCO mentioned that leadership is already part of the Clerk of the Privy Council's role.⁸⁷

Deputy ministers

Since 2007, the CADMOL has taken over the reins from the Committee of Deputy Ministers on Official Languages to ensure horizontal coordination within the federal government. While some concerns have been raised about the fact that the members of the current governance structure are less senior, Deputy Minister Guylaine F. Roy was reassuring: the CADMOL promotes coordinated government action and reports annually to the Public Service Management Advisory Committee, which is composed of deputy ministers.⁸⁸

The current Act does not define the language skills required to hold deputy minister positions, which are staffed through Governor-in-Council appointments. Two of the Senate Committee's interim reports addressed this issue and proposed giving deputy ministers clearer responsibilities in implementing the Act.⁸⁹ Janine Sherman pointed out they already have an obligation to support and promote the objectives of the Act through their terms and conditions of employment.⁹⁰ However, this practice is not formalized in the Act.

The FCFA is calling for specific indicators or objectives to be included in performance evaluations for ministers, parliamentary secretaries, deputy ministers and deputy heads.⁹¹ According to Janine Sherman, performance management frameworks for deputy ministers already do so.⁹² The FCFA also added provisions about their language proficiency in its proposal, as noted below.

Officers of Parliament

The FCFA proposes incorporating the *Language Skills Act* into Part V of the Act and expanding its application to:

- deputy ministers and deputy heads;
- ambassadors, high commissioners and consuls; and
- provincial lieutenant governors.⁹³

Its vision goes beyond the scope of the *Language Skills Act*, passed by Parliament in 2013, which limited the obligation to understand English and French to officers of Parliament. It is, however, in line with the concerns expressed by witnesses who appeared during the first three phases of the study.⁹⁴ Janine Sherman said that about half of those appointed by the Governor in Council are bilingual at this time, and that most deputy ministers are bilingual.⁹⁵

Role of the Public Service Commission

The PSC is another key player in the implementation of the current Act. It plays a major role in staffing bilingual positions and assessing the language skills of federal public servants. However, the Act makes no mention of it.

The PSC manages the *Public Service Official Languages Exclusion Approval Order*, which the Senate Committee's third interim report recommended repealing.⁹⁶ This order, in force since 1981, allows public servants who do not meet the language requirements to fill a bilingual position as long as they are taking training to acquire the necessary language skills. Many exempt employees work in the National Capital Region, which is a prescribed region under section 22 of the Act.⁹⁷

The federal institutions themselves set the language requirements for bilingual positions based on the needs associated with serving the public and the language of work. They must establish these requirements objectively, as provided for in section 91 of the Act. An increasing number of the complaints brought to the attention of the Commissioner are about this provision. In 2018–2019, they were more than eight times higher than in 2012–2013.⁹⁸ Of the institutions the Senate

Committee met with, some showed exemplary performance and exceeded standards, while others seemed to have difficulty implementing these obligations.⁹⁹ The CIB representatives mentioned that their difficulties were due to the challenges associated with recruiting bilingual public servants.¹⁰⁰

The 2017 report co-authored by Patrick Borbey and Matthew Mendelsohn showed that some public servants have trouble meeting the language requirements of their position or maintaining their levels, and may see official languages as an impediment to career advancement.¹⁰¹ That is why Patrick Borbey, current PSC President, and Nancy Chahwan, of the TBS, spoke of updating the language qualification standards for bilingual positions, which have not been revised for 35 years.¹⁰² Nancy Chahwan added that it is important to recognize the language skills of young Canadians across the country.¹⁰³

A vision of linguistic duality in the workplace

The report by Patrick Borbey and Matthew Mendelsohn contained a number of suggestions to improve the use of both official languages in the federal public service. It starts with making leaders and managers more accountable for promoting linguistic duality and ends with encouraging employees to maintain their own official languages skills and learning. This method would require better coordination between the institutions responsible – PCO, TBS, PSC and Canadian Heritage – and an emphasis on best practices.

Their report proposed raising the linguistic profile for senior positions and ensuring that language skills are assessed properly. It recommended expanding language training opportunities and putting an end to the bilingual bonus and redirecting those funds to provide language training for federal employees. It encouraged “receptive bilingualism” and emphasized strategies to increase the recruitment



of bilingual employees. It highlighted the importance of measures that would foster a culture of linguistic duality, both within institutions and across the federal government. Nancy Chahwan spoke of the need to adopt a more comprehensive approach to language acquisition, based on a continuum that starts at recruitment and continues with training, evaluation, practice and continual improvement.¹⁰⁴

In his annual report tabled in 2018, the Commissioner recommended that the Clerk of the Privy Council ensure federal employees receive annual updates on the status of the implementation of the Borbey and Mendelsohn report.¹⁰⁵ The CADMOL was given a mandate to examine their recommendations and follow up.¹⁰⁶ A dashboard on the status of the recommendations is available online.¹⁰⁷



The Honourable Rose-May Poirier, Deputy Chair of the Senate Committee.

Designating a central agency

Health organizations supported the proposals made in each of the Senate Committee's interim reports calling for the Act to be administered by a central agency.¹⁰⁸ They suggested making the Treasury Board that agency, which aligns with the FCFA's suggestion. They requested that the responsibility for implementing an action plan for official languages be given to the Treasury Board, which, as was explored earlier, involves making changes to current practice.

According to the vision of the Commissioner, Raymond Théberge, a modernized Act should clearly establish the responsibilities of the key stakeholders.¹⁰⁹ The following excerpt is taken from his appearance before the Senate Committee:

"It is important to establish governance that is much more horizontal and that has an entry point. Which point? ... I do not know, but it must be very clear who is responsible for official languages. It is also important to make sure that official languages are key priorities when departments plan their work. First and foremost, our challenge today is knowing who is responsible for official languages. Saying that everyone is responsible implies that no one is responsible."

Raymond Théberge, Office of the Commissioner of Official Languages (OCOL), Evidence, 10 December 2018.

Without identifying which institution should be responsible, the Commissioner provided the following five principles as a foundation to his vision:

- establish clear direction and leadership;
- establish a consistent accountability framework;
- make official languages a top priority and a key aspect of government planning and activities;
- ensure effective stewardship of official languages; and
- ensure ongoing progress toward the substantive equality of official languages.¹¹⁰

The Minister of Tourism, Official Languages and La Francophonie did not comment on the value of designating a central agency, but she recognized that it would be useful to include responsibility for horizontal coordination in the Act. She proposed doing so through the mandate letters for federal ministers.¹¹¹

One of the intended objectives of designating a central agency is to ensure consistency in the implementation of the various provisions of the Act, which are often interpreted in a vacuum. Rather than dividing the implementation of the Act into various parts, the evidence heard and briefs submitted identified the need to ensure a seamless implementation of all its obligations. Raymond Th  berge is a proponent of this approach.

“[W]ith our proposals, we are aiming for complete and consistent implementation of the [Act]. We cannot have inconsistencies between Part IV and Part V and expect to have communications and service delivery in both official languages. The same applies to [p]arts IV, VII and III. Over the years, amendments have been made and items have been added without taking into account other parts of the [Act].”

**Raymond Th  berge, OCOL, Evidence,
10 December 2018.**

The FCFA’s proposal takes into account the fact that the parts of the Act are interrelated and form a coherent whole, and it notes the consequential amendments that will have to be made to other federal statutes to ensure the federal linguistic regime is consistent.¹¹² In the brief it submitted during the second phase of the study, the QCGN also recognized the importance of considering the Act as a whole when it made its recommendations to modernize the Act.¹¹³

Role of Justice Canada

In the current Act, no department is identified as responsible for implementing Part III, which pertains to the administration of justice. Proposals to define Justice Canada’s role in the Act appear in two of the Senate Committee’s interim reports.¹¹⁴ This section considers those recommendations in light of the evidence heard and briefs received during the fifth phase of the study.

Horizontal coordination: Part III

The Minister of Justice and Attorney General of Canada has a number of roles to play as regards official languages:

- being responsible for drafting statutes;
- providing legal advice to the federal government on language rights issues;
- representing the interests of the federal government in legal disputes involving language;
- taking on various responsibilities associated with access to justice in both official languages; and
- collaborating with the Minister of Tourism, Official Languages and La Francophonie to implement the 2018–2023 Action Plan.

The Senate Committee was not able to hear from the current Minister, the Honourable David Lametti, but he submitted a brief.¹¹⁵

Access to justice in both official languages

The evidence and briefs indicated that there was a need to include in the Act equal access to justice, regardless of the official language chosen. The Commissioner believes an updated Act must ensure better access to the justice system.¹¹⁶ Similarly, the FCFA included in its proposal a duty in Part VII of the Act for the Minister of Justice to encourage and ensure access to justice in both official languages, which echoes a proposal made by the QCGN in the second phase of the study.¹¹⁷

As regards the appointment of bilingual judges, ÉSF echoed the views expressed in all the Senate Committee's interim reports, which called for bilingualism to be mandatory for all Supreme Court judges at the time of appointment.¹¹⁸ The FCFA offered two options: repeal the exemption provided for in section 16(1) of the Act and amend the *Supreme Court Act*.¹¹⁹ In addition, it added obligations to provide language training for federally appointed judges and evaluate their language abilities.¹²⁰

The Minister of Justice noted that an action plan to enhance the bilingual capacity of the superior court judiciary was launched in 2017.¹²¹ As regards Supreme Court judges, he committed to continue appointing judges who are “functionally bilingual,” without supporting an amendment to the Act.

“We are aware that some stakeholders are of the view that a legislative amendment is desirable to ensure that Supreme Court of Canada Justices are bilingual. We think that our selection process is a more efficient mechanism to achieve this outcome. In fact, such a legislative amendment would risk requiring a constitutional amendment, as it concerns the composition of the Supreme Court of Canada, which, according to that Court in the Reference Re Supreme Court Act, ss. 5 and 6, (2014) SCR 433, is protected from unilateral amendment by section 41 of the Constitution Act, 1982. Such an amendment would then require the authorization of the Senate, House of Commons and all ten provincial legislative assemblies.”

The Honourable David Lametti, Minister of Justice and Attorney General of Canada, *Brief*, 3 April 2019, p. 3.

As regards court decisions, ÉSF called for all federal court decisions – those of the Supreme Court, the Federal Court of Appeal, the Federal Court and the Tax Court of Canada, in particular – to be published simultaneously in both official languages, which supports proposals made in the fourth interim report.¹²²

In its proposal published in March 2019, the FCFA suggested repealing several criteria in section 20 of the Act, limiting the exceptions and establishing a maximum time limit for decisions to be published in both official languages.¹²³ Second, it endorsed providing in the Act that the English and French versions of federal court decisions, orders and judgments are equally authoritative.¹²⁴ Third, it would make the Minister of Justice responsible for having the decisions of provincial courts of appeal translated into the other official language.¹²⁵ Fourth, the FCFA's proposal would:

- extend the application of parts IV, V and VI to federal courts;
- put the rights of litigants at the forefront; and



From left to right: The Honourable Mobina S.B. Jaffer, Raymonde Gagné and Lucie Moncion.

- include in Part VII of the Act new sections seeking to give effect to section 55 of the *Constitution Act, 1982*, by requiring that the Minister of Justice oversee its implementation so that an official French version of constitutional texts is enacted once and for all.¹²⁶

The Minister of Justice addressed several of these concerns in his brief. First, he mentioned that the federal budget tabled in March 2019 included funding commitments to increase capacity to translate federal court decisions.¹²⁷ Second, he said that his department would explore ways to make the French version of the constitutional texts proposed by the French Language Drafting Committee in 1990 available to the public.¹²⁸

Oversight and compliance mechanisms

Strengthening oversight and compliance mechanisms is one of the key themes identified in each of the Senate Committee's interim reports. Two options were explored during the Senate Committee's public hearings: either reviewing the responsibilities of the Office of the Commissioner of Official Languages (OCOL) to give the Office more powers to impose penalties or creating an administrative tribunal. This section examines these two options in greater detail.

Powers of the Commissioner of Official Languages

The Commissioner opened the door to including new compliance mechanisms in the Act. He recognized that his current powers are not enough to ensure that federal institutions comply with his recommendations.¹²⁹ A number of scenarios were explored during the Senate Committee's public hearings, from strengthening the Commissioner's promotion role to a proactive intervention role before the courts, as well as adding various compliance mechanisms to the Act. The purpose of these various proposals was to ensure a more effective implementation of the Act. The FCFA made this one of the key parts of its proposed new wording of the Act, as did the QCGN in the second phase of the study.¹³⁰

Promotion

As regards official languages promotion, ÉSF called for the Act to give the Commissioner a proactive role by:

- requiring the Commissioner to consider all proposed legislation, both before and after it is enacted, to ensure it is consistent with the Act;
- including in the Commissioner's duties awareness campaigns about the importance of the Act and the usefulness of filing complaints with the Commissioner's office; and
- providing a mechanism so that the Commissioner gives a training session on the Act to all newly elected Members of Parliament.¹³¹

The Commissioner sees the Act as a tool to promote linguistic duality.¹³² In its proposal, the FCFA preserved the Commissioner's role in promoting language rights.

Complaints, investigations and audits

The Commissioner's powers as regards complaints, investigations and audits are clearly spelled out in the Act, but some believe that these powers are not strong enough. Raymond Thériault noted that, in some cases, behaviours are slow to change.¹³³ In fact, the mechanisms outlined in the Act limit the Commissioner's power to make recommendations and subsequently perform a follow-up or an audit.¹³⁴ The evidence and briefs showed that the Commissioner's recommendations are not a cure-all. Even when an institution puts them into practice, it does not mean that changes to its processes will be permanent.

The FCFA is a proponent of modernizing the Commissioner's role and powers so that the Act would:

- require the Commissioner to produce investigation files admissible in evidence;
- make investigation files available within a certain time frame;
- ensure complainants are protected from reprisals;

- give the Commissioner jurisdiction over other federal legislation that affects official languages;
- allow the Commissioner to conduct investigations into systemic issues on their own initiative;
- give the Commissioner the option of making reports and recommendations public or referring the file to the new Official Languages Tribunal;
- require the government to respond publicly to the Commissioner's reports and recommendations; and
- coordinate the Treasury Board's oversight role and the Commissioner's investigative work by requiring the Commissioner to send the Treasury Board a notice of intention to investigate.¹³⁵

As regards investigation reports, Raymond Thériault was not against the idea of releasing them to the public if it would be an incentive for federal institutions to change their behaviour.¹³⁶ This practice, which is in effect in New Brunswick, could serve as a model for making changes to the Act. In the meantime, the OCOL website provides summaries of investigations.¹³⁷

Administrative monetary penalties

As he considered the modernization of the Act, the current commissioner, Raymond Thériault, explored the possibility of adding a mechanism so the Commissioner could impose administrative monetary penalties (AMPs).¹³⁸ This mechanism, which would help ensure better compliance with the Act in a proportional way, could help encourage new behaviours and improve compliance with the Act.¹³⁹ This was one option considered by former commissioner Graham Fraser in a special report released in 2016 about Air Canada.¹⁴⁰

Based on the models in use within the federal government, a number of observations can be made about AMPs. They:

- are normally imposed by the agency tasked with enforcing the act in question;
- are often used in cases of minor violations and are in the realm of civil sanctions;

- set the maximum and minimum amounts based on the seriousness of the penalty, to address a range of behaviours;
- are subject to review or appeal mechanisms; and
- are often made public.¹⁴¹

Unlike the FCFA's proposal, which recommended giving a new Official Languages Tribunal the authority to order AMPs, as described below, the OCOL's general counsel called for this mechanism to be made available directly to the Commissioner, so that they can address a wide range of non-compliance issues in an incentivizing and non-punitive manner.¹⁴² If this solution were to be implemented, it would require:

- ensuring that a new administrative division is established within the OCOL to be responsible for AMPs, to protect the independence of the Commissioner;
- establishing a new part in the Act and providing for the making of regulations that would outline the details of violations, their level of seriousness and the penalties to be imposed; and
- including in the Act that AMPs would be posted on the OCOL website.¹⁴³

Enforceable agreements

The current commissioner, Raymond Th  berge, also explored the option of including enforceable agreements in the Act.¹⁴⁴ This was one of the solutions discussed by former commissioner Graham Fraser in his 2016 report.¹⁴⁵ This type of agreement has the advantage of being flexible, encouraging collaboration and emphasizing the Commissioner's role as a facilitator.¹⁴⁶

Rather than rely on investigation follow-up mechanisms, which are not always effective at ensuring compliance with the Act, the Commissioner could reach a voluntary agreement, negotiated with the non-compliant federal institution, with a variety of conditions to ensure compliance with the Act.⁵ The Commissioner would thus be able to impose a certain number of commitments to be honoured over a given period. If the Commissioner deemed that the agreement was not being complied with, he could apply to the Federal Court for an order or a hearing to compel compliance.

Once again, various compliance mechanisms in use within the federal government could serve as models for this change to the Act. For example, since 2015, the Privacy Commissioner may enter into compliance agreements.¹⁴⁸ A representative from the Office of the Privacy Commissioner (OPC) said that while his experience with compliance agreements to date has generally been positive, because they allow for flexibility and ensure that issues of concern can be addressed, he believes there is still room to increase their effectiveness.¹⁴⁹ The OCOL's legal counsel agreed, saying that compliance agreements are an arrow in the quiver to support the Commissioner's oversight role.

"For the system to be effective, we need several tools. If there is a binding agreement and it is not respected, it is advisable that there be administrative penalties to follow up if institutions do not comply with the commitments."

Pascale Gigu  re, OCOL, Evidence, 18 March 2019.

Fines

Three of the Senate Committee's interim reports called for including the authority to impose fines in the Act, following the model of, for example, the access to information regime.¹⁵⁰ The OPC representative shared that the ability to levy fines would be a useful tool to include in its enabling act.¹⁵¹ The special report on Air Canada identified fines as one option to consider.¹⁵² No evidence or brief from this fifth phase of the study proposed including this mechanism in the Act.

Obstruction of the Commissioner's work

The second interim report included a suggestion to prohibit the obstruction of the Commissioner in the exercise of their duties so that they could fully exercise their role promoting official languages.¹⁵³ This type of provision is included in other regimes, such as the access to information and the privacy regimes.¹⁵⁴ Evidence and briefs in the fifth phase made no mention of this.



From left to right: The Honourable Paul E. McIntyre and Ghislain Maltais.

Mediation and facilitated resolution process

Mediation is one of the processes promoted in other regimes, including those on human rights and privacy.¹⁵⁵ While there are advantages to accelerating the complaints process, some witnesses thought mediation would be risky when it comes to dealing with fundamental rights, such as the language rights protected by the Charter.¹⁵⁶ The OCOL has a facilitated complaint resolution process for certain types of complaints. It is a more informal, faster way to resolve less complex issues without following a formal hierarchy.¹⁵⁷

Role of intervenor before the courts

The Commissioner rarely initiates legal proceedings before the Federal Court. Echoing the proposals described in three of the Senate Committee's interim reports, ÉSF called for the Commissioner to be given the authority and funding required to take legal action as an applicant and to require that their recommendations be complied with.¹⁵⁸ The FCFA proposed that the Commissioner may:

- ▶ participate as a party in proceedings, if the Commissioner believes it is in the public interest to do so; and

- ▶ ask the new tribunal to begin an inquiry into a matter if the Commissioner is of the opinion that it is in the public interest to do so.¹⁵⁹

Administrative Tribunal

The FCÉNB is in favour of creating an administrative tribunal modelled after the Canadian Human Rights Tribunal.¹⁶⁰ The Commissioner is considering it; however, he does not make a formal recommendation about it.¹⁶¹ One of the advantages, according to Raymond Thériège, is that it would be much less costly for complainants.¹⁶² However, it is important to ensure that an administrative tribunal would be effective and resolve important points of contention.¹⁶³

For additional insight, the Senate Committee met with representatives of the Canadian Human Rights Commission (CHRC), the Canadian Human Rights Tribunal (CHRT) and the Administrative Tribunals Support Service of Canada (ATSSC).

Based on the public hearings, the regime in place for human rights seems to be the best option, as it separates the responsibilities of the CHRC and the CHRT.¹⁶⁴ It ensures each entity can carry out

complementary roles. The CHRC takes on the role of ombudsman, investigating complaints and promoting human rights. The CHRT, on the other hand, focuses on remedial measures to be taken and penalties to be imposed. This model would be a good fit for the federal language regime for two reasons. First, it involves quasi-constitutional rights. Second, it is called on to address complex complaints.

The CHRC's dispute resolution process follows three stages:

- first, it carries out an initial inquiry before a formal complaint is filed;
- second, it informs the non-compliant organization of the complaint, offers a confidential and voluntary mediation process, and then carries out an investigation; and
- third, it determines whether the complaint should go to conciliation, a mandatory mediation process that seeks to reach a settlement, or whether the case should be sent to the tribunal.

Not every complaint filed with the CHRC follows these three stages. It depends on the nature of the complaint. Of the 1,100 complaints the CHRC accepted in 2018, 65% went to mediation.¹⁶⁵ In any given year, 5% to 10% of complaints are referred to the tribunal.¹⁶⁶ Complaints referred to the tribunal are often complex and systemic in nature. In recent years, the CHRC has also introduced a proactive compliance approach, which shifts the burden away from individual complainants.¹⁶⁷

On the other side, the CHRT acts as a quasi-judicial tribunal independent of the CHRC. The tribunal investigates complaints referred to it by the CHRC. Because it receives a smaller number of complaints, the litigation costs are lower.¹⁶⁸ The CHRC may or may not be called to participate in the hearing before the tribunal. If the CHRT finds that the allegations of discrimination have been substantiated, it can issue a remedial order to the non-compliant organization.¹⁶⁹ Its decisions can be challenged by seeking judicial review before the Federal Court, but in practice, very few cases reach that point.¹⁷⁰

Similar to the proposal included in the Senate Committee's fourth interim report, the House of Commons Standing Committee on Official Languages recommended in a report tabled in November 2017 that a new administrative directorate within the OCOL be made responsible for handling penalties.¹⁷¹ The Chairperson of the CHRT advised against this approach, and spoke in favour of a new tribunal independent of the OCOL, as explained in the following excerpt.

"It is very important that if you have a tribunal, that tribunal must be at arm's length, and it must be an impartial body that weighs the evidence that it is going to hear from both parties who are affected by the preliminary decision of the commissioner. There are two ways you can do that. You can also have a tribunal, which is the primary determiner of facts, who finds the facts themselves and hears evidence from the parties. Or you could have a different model, which has been proposed now under Bill C-81, the "Accessible Canada Act", and Bill C-86, the "Pay Equity Act", where the commission will make decisions and the tribunal will be in an appellate role, where it will hear appeals of those decisions made at the commissioner level."

David L. Thomas, Canadian Human Rights Tribunal, Evidence, 25 February 2019.

He added that it was important, when considering the creation of this tribunal, to:

- include clear definitions in the Act about the respective mandates and roles of the OCOL and the tribunal;
- determine what types of decisions will be heard;
- identify what issues must be resolved; and
- provide for an appeals process.¹⁷²

OCOL's general counsel pointed out that section 80 of the Act provides for a summary hearing, which opens the door to a simplified and accelerated procedure that could facilitate the process for complainants who go before the Federal Court.¹⁷³ The FCFA's proposal eliminated this provision.¹⁷⁴ It opted instead to create a new Official Languages Tribunal, which would:

- have members with experience and expertise in official languages, with a term of office lasting between five and seven years;
- consider the Commissioner's investigation files as evidence;
- have the power to order remedial measures, further to the Commissioner's investigations, including declaratory relief, orders, damages and AMPs;
- have jurisdiction not only over the Act but also over other federal legislation that affects official languages;
- make its decisions and orders subject to judicial review by the Federal Court; and
- report to Parliament once a year.¹⁷⁵

While the QCGN did not go quite this far in its proposal, it did support creating a new Official Languages Tribunal.¹⁷⁶

Fund for the Promotion of Official Languages

The FCFA's proposal includes establishing a Fund for the Promotion of Official Languages under Part VII, which would receive the money paid through penalties imposed by the Official Languages Tribunal, donations, bequests and conditional donations.¹⁷⁷ According to the FCFA's vision, the amounts collected would be exclusively used by the federal government to fund initiatives promoting official languages and enhancing the vitality of official language minority communities. The Minister of Official Languages would be responsible for overseeing the fund. The Commissioner also suggested creating a fund, which he proposed calling a "linguistic duality fund," which would collect revenue from AMPs paid by federal institutions.¹⁷⁸ This mechanism could be modeled on the Environmental Damages Fund.¹⁷⁹

Role of key federal institutions

In the last phase of its study, the Senate Committee had the opportunity to consider the proposals submitted in its previous four interim reports in greater depth by examining the particular role played by federal institutions in the implementation of the Act. All the institutions the Senate Committee met with during the public hearings said they were committed to implementing the Act and achieving its objectives. Most of them were open to including new provisions to ensure the equality of both official languages and guarantee the effective implementation of the Act.¹⁸⁰

Raymond Th  berge believes an updated Act could identify institutions with a specific mandate in the implementation of Part VII.¹⁸¹ In 1994, the federal government recognized the key role played by some federal institutions in implementing Part VII of the Act and included them in a list of designated institutions that must report on progress made in this area. Statistics Canada, the National Capital Commission (NCC), Public Services and Procurement Canada (PSPC), and the IRCC – which the Senate Committee met with – are on this list.

However, the Senate Committee is aware that the perspective of the institutions it met with represents only one facet of reality. Due to time constraints, it was unable to study institutions with a poor track record in implementing the Act. Below are five issues that the Senate Committee focused on during the most recent public hearings.

Translation and interpretation

Three of the Senate Committee's interim reports included calls for the role of the Translation Bureau to be defined in the Act.¹⁸² In 2017–2018, the Translation Bureau translated 375 million words for federal institutions and Parliament and provided 6,700 days' worth of conference interpretation.¹⁸³ The current Act is silent regarding the important role this institution plays in achieving the objective of equality for both official languages. A representative from the Translation Bureau was very open to the idea of codifying this role, as long as the emphasis is on quality.

“The Translation Bureau already plays a very important role under the Official Languages Act and [p]arts IV, V and VII of the [Act]. ... If the government so wishes, by enshrining the Translation Bureau in the Official Languages Act, it can give the Bureau a clear mandate as a centre of expertise in language quality and as a translation tool. We would be prepared to provide all the translation tools to the entire government.”

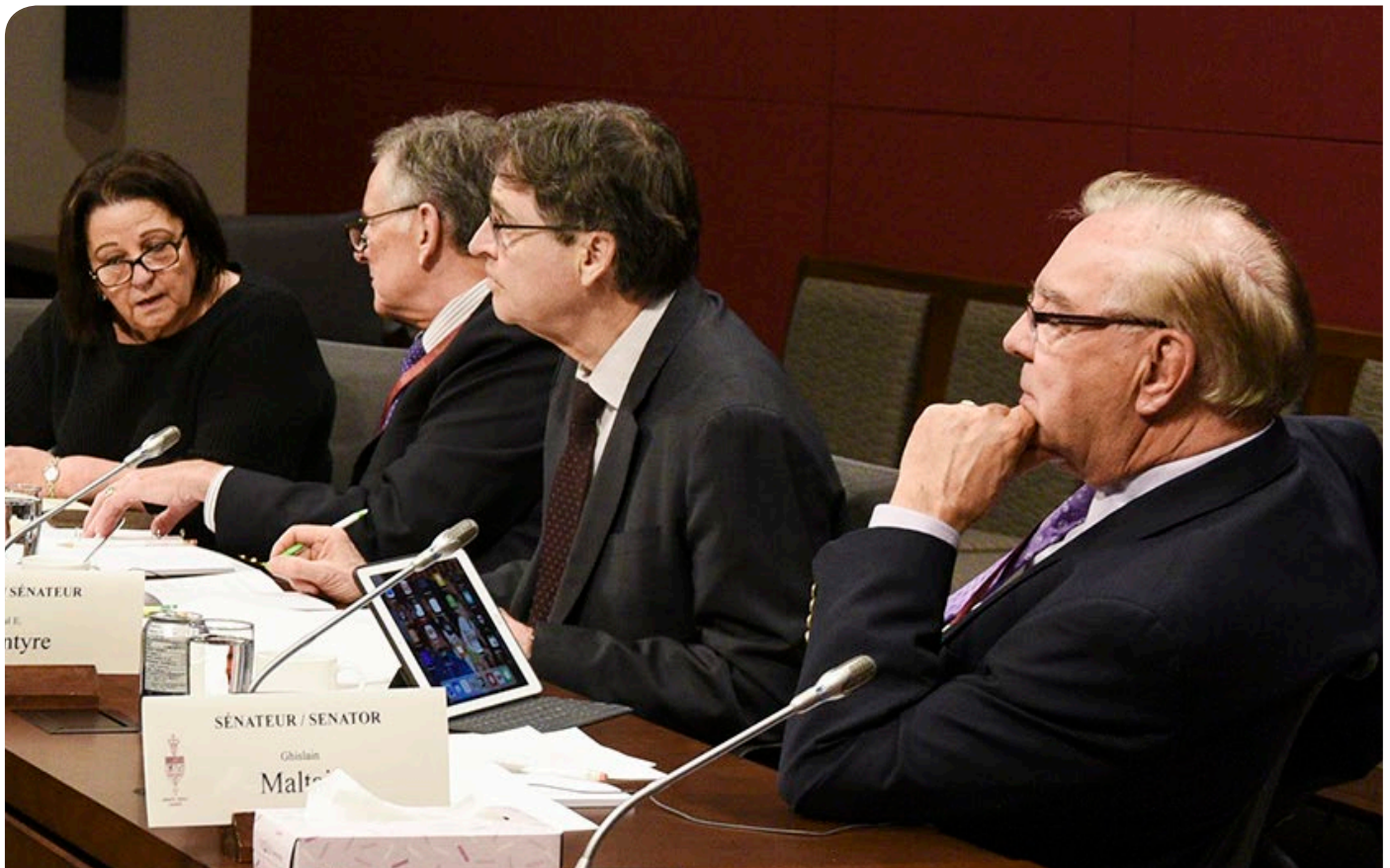
Stéphane Déry, Translation Bureau, *Evidence*, 18 February 2019.

Recently, the Translation Bureau added clauses on language quality to its translation contracts with third parties.¹⁸⁴ But, as its services are not mandatory for federal institutions, quality standards across the federal government cannot be guaranteed. A modernized Act could address this problem by:

- ensuring language clauses are included in all contracts;
- giving translation work to professional translators;
- following Canadian translation standards; and
- supporting official language minority communities that want access to Translation Bureau services.¹⁸⁵

The FCFA’s proposal would require federal institutions to use the Translation Bureau for their translation needs (in Part IV) and would make the Treasury Board responsible for overseeing it (in Part VIII).¹⁸⁶

The fourth interim report discussed a number of points specific to legal translation.¹⁸⁷ As we have seen, complying with section 20 of the Act often comes down to the financial considerations of translation, and that is why some people have



From left to right: The Honourable Rose-May Poirier, Larry W. Smith, Paul E. McIntyre and Ghislain Maltais.

proposed turning to the Translation Bureau for expertise to ensure that both versions of a court ruling are of equal quality. For example, the Supreme Court uses its services for the initial translation of its decisions. Retired lawyer David Joseph MacKinnon expressed his opposition to this idea in a letter in which he:

- defended the view that legal translation is different from ordinary translation;
- called for legal translation to be assigned only to lawyer-translators; and
- proposed entrusting the translation of all federal court decisions to the Courts Administration Service (CAS) and the ATSSC, rather than the Translation Bureau.¹⁸⁸

However, the Senate Committee did not have the opportunity to ask the ATSSC representative about this matter.



The Honourable Lucie Moncion.

Enumeration of rights-holders and data collection

The issue of enumerating rights-holders was addressed in two of the Senate Committee's interim reports.¹⁸⁹ When invited to comment on this matter, Statistics Canada representatives said that they are actively seeking a solution, and they recognized that more useful information in this area would help promote the vitality and development of official language minority communities.¹⁹⁰ They are not against including the enumeration of rights-holders in the Act, but they cautioned the Senate Committee not to restrict a future amendment to the Act to a census, as there may be better ways to collect the data.¹⁹¹ In its proposal, the FCFA was in favour of using the census.¹⁹²

In addition, health care organizations would like a general obligation to collect data included in the Act. According to the CNFS and the SSF, these data would be useful for the advancement of both official languages and the development of official language minority communities.¹⁹³ The FCFA's proposal is consistent with their vision: it outlined a duty to collect data in Part VII of the Act.¹⁹⁴ Without making a specific commitment in this area, the Minister of Tourism, Official Languages and La Francophonie said she was aware of Statistics Canada's important role in achieving the official languages targets the government has set.¹⁹⁵ The Commissioner suggested that an updated Act could take this into account.¹⁹⁶

Bilingual character of the national capital

The Senate Committee's third interim report noted concerns about strengthening the bilingual character of the National Capital Region (NCR).¹⁹⁷ While the Act recognizes specific obligations in this region as regards services to the public and language of work, there is no overarching vision among all stakeholders to promote both official languages. The evidence and briefs revealed a lack of active offer and inadequate bilingual signage. They called for stronger leadership from the federal government.

The Senate Committee invited the NCC to appear because it wanted to explore these ideas in more depth. NCC representatives were prepared to comply with tighter obligations in the Act and said that complying with the Act is in their DNA.¹⁹⁸

For example, all its leases with commercial tenants in the NCR have language provisions ensuring that service and signage is in both official languages.¹⁹⁹

The Minister of Tourism, Official Languages and La Francophonie recognized that improving the bilingual character of the national capital was in her sights and pointed out the funding allocated in the 2018–2023 Action Plan to support this initiative.²⁰⁰ She was open to discussing recognizing the bilingual character of the City of Ottawa in a modernized Act, but while being conscious of the need to respect the various jurisdictions involved. The FCFA proposed amending Part VII of the Act to make it mandatory to:

- include language clauses in:
 - agreements for transfers of funds for public works projects in the NCR;
 - contracts for the leasing of a federal building or federal real property in the NCR; and
- have the Minister of Canadian Heritage implement a language policy for the NCR in consultation with the provinces and municipalities in the NCR that extends to the contractual relationships of the federal government with other governments and with the private sector.²⁰¹

Immigration issues

Issues involving immigration were discussed in the Senate Committee's first three interim reports, which called for the following points to be recognized:

- the role of immigration in the vitality and development of official language minority communities and in maintaining their demographic weight;
- the role of official languages as a way to integrate into Canadian society;
- the importance of ensuring horizontal coordination in this area; and
- the bilingual character of Canada internationally.²⁰²

The FCFA addressed immigration in its proposal by:

- ordering the Minister of Immigration, Refugees and Citizenship to implement immigration policies and programs that meet the needs of official language minority communities;
- taking into account the special case of New Brunswick; and
- identifying other federal institutions with a responsibility to take "positive measures" in immigration and to promote the bilingual character of Canada abroad.²⁰³

The effects of immigration on maintaining the demographic weight of communities was clear in the debates surrounding the modernization of the Act. In recent years, the federal government has taken a number of steps, particularly as regards supporting francophone immigration. The current Act is silent on the effects that immigration can have on the vitality and development of communities. The Minister of Tourism, Official Languages and La Francophonie recognizes that immigration must be taken into account in a modernized Act.

"[W]e know that the impact is of such scope that we have to generally examine the systemic aspect of the weight of our communities, both inside and outside of Quebec. That is why we decided to study the possibility of modernizing the Official Languages Act... It's important to maintain the demographic weight of our linguistic communities, while being aware that the reality is that our francophonie has different faces and different accents, and we must adjust to that."

The Hon. Mélanie Joly, Minister of Tourism, Official Languages and La Francophonie, Evidence, 3 December 2018.

The IRCC representatives spoke about creating a policy hub for francophone immigration, a francophone immigration strategy, the *Federal/Provincial/Territorial Action Plan for Increasing Francophone Immigration Outside of Quebec*, efforts to promote francophone immigration abroad, and improvements to French-language testing in Canada.²⁰⁴ They recognized that implementing the Act requires a cooperative approach, and that the tools available to the federal government to handle immigration in English-speaking communities in Quebec are relatively limited.²⁰⁵ They were open to clarifying the roles and responsibilities of those involved.²⁰⁶

Consulting official language minority communities on the disposal of federal real property

The Senate Committee's second interim report addressed the need to consult official language minority communities when disposing of federal real property.²⁰⁷ The purpose is to make the process easier for francophone schools across Canada, such as the *École Rose-des-vents* in Vancouver, which is still in negotiations to purchase land. This file has been dragging on for more than a decade. Unfortunately, the Senate Committee was unable to obtain an update on this particular file during the public hearings.

All indications are that the *Directive on the Sale or Transfer of Surplus Real Property* is not stringent enough to ensure that the needs of francophone school boards are taken into account. Part of the problem is that there appears to be a lack of oversight and follow-up. Representatives from PSPC and TBS have committed to maintaining their efforts with partners to improve the situation and said that the directive is being reviewed, but they pointed out that it is the deputy heads of

federal institutions who are responsible for its implementation.²⁰⁸ The public hearings suggested that a proactive approach or the imposition of consequences could make it easier to solve problematic situations such as that of the *École Rose-des-vents*. A Senate Committee report tabled in 2017 proposed another solution: making regulations.²⁰⁹

Making it mandatory to consult school boards was one of the solutions put forward by the FCFA, which extended this requirement to include official language minority community organizations.²¹⁰ The Minister of Tourism, Official Languages and La Francophonie did not commit to addressing this matter in an updated Act but said that discussions were ongoing to address the case of the *École Rose-des-vents*.²¹¹

Other issues

Other issues that have arisen during the fifth phase of the study could be taken into account in a modernized Act. The evidence and briefs addressed some proposals that have already been studied in one of the previous four Senate Committee's interim reports.

New Brunswick's unique constitutional status

Two francophone organizations from New Brunswick highlighted the need to recognize New Brunswick's unique constitutional status in the Act, as mentioned in three of the Senate Committee's four interim reports.²¹² The FCÉNB and ÉSF called for the unique nature of this province to be recognized by requiring that federal services be offered in both official languages everywhere, rather than just limiting the criteria to "significant demand."²¹³ ÉSF went even further, calling for the Act to:



From left to right: The Honourable Marie-Françoise Mègie and Lucie Moncion.

- recognize New Brunswick's linguistic specificity in the preamble and purpose section of the Act, taking into account that the two linguistic communities in that province have equality of status and equal rights and privileges, pursuant to section 16.1 of the Charter;
 - refer to "official language minority communities" rather than "English and French linguistic minority communities," as neither linguistic community in New Brunswick is considered a "minority" according to the definition in the French version of section 2(b) of the Act;
 - require that all documents or agreements between the federal government and the Government of New Brunswick be published simultaneously in both official languages;
 - extend to third parties the duty to offer federal services across the province;
 - clarify rights regarding language of work to include responsibilities for managers in New Brunswick;
 - ensure equitable participation of public servants from both linguistic communities in federal offices located in New Brunswick;
 - amend Part VII of the Act to take into account the unique nature of New Brunswick, its bilingual character and the equality of its two linguistic communities; and
 - take into account the additional costs that respecting the substantive reality of both of New Brunswick's linguistic communities could involve.²¹⁴
- The FCFA included most of these ideas in the proposal it published in March 2019.²¹⁵

Community media

In the same vein as the proposals in two of the Senate Committee's interim reports, ÉSF calls for federal institutions to use community media for notices and announcements.²¹⁶ The FCFA mentioned it in its proposals for parts II, IV and VII.²¹⁷ The purpose is to address recurring complaints that community media is underused.

Health

Two health care organizations called for ensuring that health care of equal quality was available in both official languages.²¹⁸ While the federal government has supported initiatives for official language minority communities since 2003, the current Act does not address this issue directly. The *Canada Health Act* does not contain specific commitments with regard to official languages either. In the second phase of the study, witnesses asked for obligations in this area to be clarified.²¹⁹ The FCFA proposes a consequential amendment to the *Canada Health Act* to include a provision for linguistic duality.²²⁰

In addition, ÉSF's brief advocated recognizing the constitutional right of the francophone community in New Brunswick to distinct health care institutions of equal quality to those of the anglophone linguistic community, based on section 16.1 of the Charter.²²¹ It proposed amending section 43(1) of the Act to include the duty to "support the development of official language minority community institutions."²²²

Technologies

Three of the Senate Committee's interim reports spoke of the need to provide a framework for producing digital content in French and to take technology into account in the application of parts IV and V of the Act.²²³ The Commissioner believes that the Act must evolve at the same pace as technology, and that a technology-neutral Act should be drafted to ensure that this is the case.²²⁴ He did not provide greater detail about his proposal during the public hearings.

The FCFA did not address new technologies in its proposal, other than to say that the federal government has a duty to expand its offer of services to the public in both official languages.²²⁵ The Translation Bureau has included a technology component in its modernized vision to integrate artificial intelligence into its work, tools and processes, which could help it comply with the obligations of the Act.²²⁶ The Borbey and Mendelsohn report noted that the public service could take better advantage of new technologies to support the learning and use of official languages.²²⁷

Periodic review

In line with the proposals included in each of the Senate Committee's interim reports, the Commissioner believes that a periodic review of the Act is necessary to ensure that it evolves at the same rhythm as society, technology and case law.²²⁸ The FCFA proposed a review every 10 years, in consultation with official language minority communities.²²⁹ The QCGN echoed this proposal in its brief, which it submitted in the second phase of the study.²³⁰



CHAPTER 2

*List of
recommendations*

LEADERSHIP AND COOPERATION

The Senate Committee recommends that the federal government:

RECOMMENDATION 1

Treasury Board

1.1 Amend the *Official Languages Act* to assign responsibility for the implementation and coordination of the Act's provisions with respect to institutions within the executive branch to the Treasury Board. In those circumstances, provide that:

- an Official Languages Secretariat be created to support the Treasury Board in the performance of its duties;
- the Official Languages Secretariat be given the necessary tools and resources to work with all these institutions and review their performance; and
- it provide a clear picture of the Act's implementation by all these institutions on an annual basis.

1.2 Amend the *Official Languages Act* to state what the Treasury Board "must" do, rather than what it "may" do, in carrying out its responsibilities.

RECOMMENDATION 2

Government plan
for official languages

2.1 Amend the *Official Languages Act* to provide for the adoption, coordination and implementation of a government plan for official languages by the Treasury Board based on the model set out in New Brunswick's *Official Languages Act*. In those circumstances, provide that:

- the priority areas supported by the government plan include, but not be limited to, the offer of services in both official languages, the promotion of linguistic duality in the workplace and support for official language minority communities in the following strategic sectors: education, health, justice, immigration, economic development, community media, and arts and culture;
- the federal institutions covered by the government plan have clear responsibilities and report to the Treasury Board on its implementation; and
- the Treasury Board adopt an accountability framework to guide it and that it be made public.

<p>RECOMMENDATION 3 Federal–provincial/ territorial agreements</p>	<p>3.1 Amend the <i>Official Languages Act</i> to recognize federal–provincial/territorial agreements on services in the minority language, minority language education and second language instruction; to acknowledge their importance in enhancing the vitality and supporting the development of official language minority communities; and to strengthen their implementation. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the agreements and the accompanying action plans be made public; and • language clauses be included to define specific objectives for consulting official language minority communities and for communications with and services to the public in both official languages.
<p>RECOMMENDATION 4 Review of policies, programs, initiatives and services</p>	<p>4.1 Amend the <i>Official Languages Act</i> to provide for the adoption of a tool to apply an “official languages lens” to policies, programs, initiatives and services implemented by federal institutions that is based on the Gender-Based Analysis Plus (GBA+) model.</p>
<p>RECOMMENDATION 5 Consultation with official language minority communities</p>	<p>5.1 Amend the <i>Official Languages Act</i> to specify the obligation of federal institutions to assess the impact of their decisions on official language minority communities and to ensure that the policies and programs they implement are aligned with their needs. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the obligation to consult official language minority communities applies to decisions on general program and policy direction relating to the implementation of Part IV, the implementation of Part VII, the making of regulations under these two parts and their 10-year review, the government plan for official languages, federal–provincial/territorial agreements, the 10-year review of the Act and the disposal of federal real property; and • federal institutions take into account the results of those consultations and provide reasons for their decisions.

<p>RECOMMENDATION 6 Advisory board</p>	<p>6.1 Amend the <i>Official Languages Act</i> to create an advisory board to advise the federal government on measures to enhance the vitality of official language minority communities and to support their development, based on the model set out in Manitoba's <i>Francophone Community Enhancement and Support Act</i>. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • a majority of the board be made up of regional and sectoral representatives of official language minority communities, appointed by the federal government on the recommendation of their main representative organizations; • the other members of the board be appointed by the federal government; and • this amendment be made notwithstanding the requirement for public consultation under subsection 43(2) of the Act.
<p>COMPLIANCE</p>	
<p>RECOMMENDATION 7 Office of the Commissioner of Official Languages and the Official Languages Tribunal</p>	<p>7.1 Amend the <i>Official Languages Act</i> to create the Official Languages Tribunal, independent of the Office of the Commissioner of Official Languages and based on the model set out in the <i>Canadian Human Rights Act</i>:</p> <ul style="list-style-type: none"> • made up of members appointed by the Governor in Council who have expertise in, and sensitivity to, language rights, and who have a strong interest in the field; • whose mandate is to decide, in the first instance, proceedings brought under the <i>Official Languages Act</i>, including proceedings brought following a complaint filed with the Commissioner of Official Languages; • authorized to grant any remedy it considers just and appropriate in the circumstances, including declarations, orders, damages and administrative monetary penalties, the amounts of which will be allocated to a fund supporting projects that promote the development of official language minority communities and/or the promotion of both official languages; and • having a review mechanism before the Federal Court.

7.2 Amend the *Official Languages Act* to strengthen the ombudsman role of the Commissioner of Official Languages:

- by allowing the Commissioner to enter into compliance agreements with federal institutions, with such conditions as it considers necessary to ensure compliance and a recourse mechanism before the Official Languages Tribunal to review violations, based on the model set out in the *Personal Information Protection and Electronic Documents Act*;
- by providing for the public disclosure of its investigation reports, in the public interest, based on the model set out in New Brunswick's *Official Languages Act*;
- by making the current facilitated complaint resolution process permanent; and
- by authorizing the Commissioner to act before the Official Languages Tribunal on behalf of one or more complainants to obtain a just and appropriate remedy in the circumstances, and by providing for the circumstances in which the Commissioner would be required to do so.

7.3 Amend the *Official Languages Act* to provide a framework for the appointment process for the position of Commissioner of Official Languages by creating an independent committee to review the appointment, based on the model set out in New Brunswick's *Official Languages Act*.

ENFORCEMENT PRINCIPLES

RECOMMENDATION 8

Federal services
as drivers of vitality

8.1 Amend the *Official Languages Act* to explicitly recognize that the offer of communications with and services to the public in both official languages, including active offer, contributes to the vitality and development of official language minority communities. In those circumstances, provide that:

- institutional vitality be defined broadly, including all elements of the education continuum, from early childhood to post-secondary education, community centres, cultural centres and community media;

	<ul style="list-style-type: none"> • the determination of significant demand: <ul style="list-style-type: none"> > be based on institutional vitality and a broad definition of the population to be served, including all potential users of services, not just those who have English or French as their first language or who speak either language at home; > not give consideration to the proportion of the official language minority population with respect to the majority; and • the Governor in Council be required to take measures to enforce these requirements.
RECOMMENDATION 9 Federally regulated private companies	<p>9.1 Amend the <i>Official Languages Act</i> to extend the obligations regarding communications with and services to the public to federally regulated private carriers. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • air, marine, rail and road transport companies be required to provide communications and services in both official languages; and • the Governor in Council be required to take measures to enforce these requirements.
RECOMMENDATION 10 Linguistic duality, bilingualism and communities able to develop and flourish	<p>10.1 Amend the <i>Official Languages Act</i>, including its purpose, to clarify the federal government's commitment to linguistic duality and bilingualism, which requires that measures be taken to:</p> <ul style="list-style-type: none"> • recognize the remedial nature of language rights; • protect the survival of official language minority communities; • encourage interest in and support for bilingualism in Canadian society; and • promote the substantive equality of both official languages. <p>10.2 Amend the <i>Official Languages Act</i>, including its purpose, to replace references to "English and French linguistic minorities" with "official language minority communities."</p>

	<p>10.3 Amend the <i>Official Languages Act</i> to state what the Treasury Board “must” do to coordinate the implementation of Part VII, rather than “encourage” or “promote” such coordination.</p> <p>10.4 Amend the <i>Official Languages Act</i> to state what measures the Treasury Board “must” take to advance the equality of status and use of English and French in Canadian society, rather than “take such measures as [the Treasury Board] considers appropriate.” In those circumstances, provide that:</p> <ul style="list-style-type: none"> • these measures include the following strategic sectors: health, justice, immigration, economic development, community media, and arts and culture; and • the Governor in Council be required to take measures to enforce these requirements. <p>10.5 Amend the <i>Official Languages Act</i> to affirm that the provisions of Part VII are taken into consideration in the interpretation of the other parts of the Act.</p>
<p>RECOMMENDATION 11 The federal public service</p>	<p>11.1 Amend the <i>Official Languages Act</i> to require that, on appointment, deputy ministers have a sufficient understanding of English and French to be able to perform their duties in both official languages, orally and in writing. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the required level of proficiency in both official languages be C-B-C; • a deputy minister in office at the time of the coming into force of this amendment may remain in office even if the deputy minister does not meet this requirement; and • the Governor in Council be required to take measures to enforce these requirements. <p>11.2 Amend the <i>Official Languages Act</i> to clarify the obligations of deputy heads and managers to foster a culture of linguistic duality in the workplace. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • they ensure an active offer of services in English and French to their employees, pursuant to subsection 36(1);

	<ul style="list-style-type: none"> • the language requirements of their positions be increased, in all cases, to the C-B-C level, and that deputy heads and managers already in these positions at the time of the coming into force of this amendment be given two years to meet the requirements; • they adequately assess the language skills of their employees; and • they provide their employees with language training opportunities.
RECOMMENDATION 12 The Translation Bureau	<p>12.1 Amend the <i>Official Languages Act</i> to establish the role of the Translation Bureau in the Act's implementation. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the Translation Bureau be the exclusive provider of translation and interpretation services for federal institutions; and • it be equipped with the tools and resources necessary to serve as a centre of expertise in quality translation and interpretation.
RECOMMENDATION 13 Regulations to give effect to Part VII	<p>13.1 Amend the <i>Official Languages Act</i> to specify that the Governor in Council is required to make regulations setting out measures to give effect to Part VII. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the Governor in Council promote a broad and liberal interpretation of these requirements; • the Treasury Board consult with official language minority communities when developing the regulations; • these measures achieve the following objectives: <ul style="list-style-type: none"> > raising employees' awareness of the needs of official language minority communities and the government's commitments under Part VII; > determining whether policies and programs have impacts on the development of official language minority communities and the promotion of linguistic duality, from the initial development of policies through to their implementation;

	<ul style="list-style-type: none"> > consulting representatives of official language minority communities as required in connection with the development or implementation of policies and programs; > describing the federal institution's actions and demonstrating that it has considered the needs of these communities; and > if it has been determined that impacts exist, planning anticipated activities accordingly, presenting the expected outcomes and providing for results evaluation mechanisms. <p>13.2 Ensure, in conjunction with the modernization of the <i>Official Languages Act</i>, that regulations to give effect to Part VII are made by June 2021.</p>
<p>RECOMMENDATION 14 Regulations to give effect to parts IV to VI</p>	<p>14.1 Amend the <i>Official Languages Act</i> to specify that the Governor in Council is required, in regulations to give effect to Part IV, to recognize that the offer of communications with and services to the public in both official languages contributes to the vitality and development of official language minority communities.</p> <p>14.2 Ensure, in conjunction with the modernization of the <i>Official Languages Act</i>, that regulations to give effect to Part IV are amended by June 2023 and that the Treasury Board consults with official language minority communities when the regulations are amended.</p> <p>14.3 Amend the <i>Official Languages Act</i> to specify that the Governor in Council is required to make regulations setting out measures to give effect to Part V and Part VI. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the Governor in Council promote a broad and liberal interpretation of these requirements; • these measures achieve the following objectives: <ul style="list-style-type: none"> > creating workplaces conducive to the use of both official languages across the country; > clarifying the obligations of managers, chief executives and deputy ministers to encourage linguistic duality in the workplace;

	<ul style="list-style-type: none"> > clarifying the resources available to federal employees to ensure that their rights are respected; and > ensuring a more equitable representation of English-speaking and French-speaking Canadians in federal institutions located in the regions. <p>14.4 Ensure, in conjunction with the modernization of the <i>Official Languages Act</i>, that regulations to give effect to Part V and Part VI are made by June 2023.</p>
<p>RECOMMENDATION 15 Regulations on active offer</p>	<p>15.1 Amend the <i>Official Languages Act</i> to provide that the Governor in Council be required to make regulations setting out measures to give effect to the active offer. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the Governor in Council promote a broad and liberal interpretation of these requirements; • the Treasury Board consult with official language minority communities when developing the regulations; • these measures achieve the following objectives: <ul style="list-style-type: none"> > ensuring that the public is informed of the availability of services in both official languages; > offering services in both official languages on first contact; > providing services according to the principle of linguistically and culturally appropriate services; > providing services of equal quality in both official languages and ensuring respect for the principle of substantive equality; > allocating the human and financial resources necessary for the active offer of service in both official languages; and > extending the obligation to third parties providing services on behalf of federal institutions. <p>15.2 Ensure, in conjunction with the modernization of the <i>Official Languages Act</i>, that regulations on the active offer are made by June 2023.</p>

<p>RECOMMENDATION 16 Extension of New Brunswick's constitutional rights</p>	<p>16.1 Amend the <i>Official Languages Act</i> to recognize the equality of status of the English linguistic community and the French linguistic community of New Brunswick, as set out in section 16.1 of the <i>Canadian Charter of Rights and Freedoms</i>. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the preamble to the Act be amended to refer to this equality of status; • English-speaking and French-speaking employees in the federal public service in New Brunswick be represented in a manner that reflects this equality of status; • all initiatives affecting the vitality and development of these two communities take into account the equality of their status and recognize their right to distinct educational and cultural institutions; and • the Governor in Council be required to take measures to enforce these requirements. <p>16.2 Amend the <i>Official Languages Act</i> to recognize that the offer of communications with and services to the public in both official languages applies throughout New Brunswick. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the duties and obligations in Part IV apply to New Brunswick notwithstanding the criteria of significant demand and nature of the office; and • the Governor in Council be required to take measures to enforce these requirements.
<p>RECOMMENDATION 17 Extension of constitutional educational rights</p>	<p>17.1 Amend the <i>Official Languages Act</i> to recognize the right to school governance and the right to equal access to quality education in the minority language, as set out in section 23 of the <i>Canadian Charter of Rights and Freedoms</i>. In those circumstances:</p> <ul style="list-style-type: none"> • recognize that federal–provincial/territorial agreements on minority language education enhance the vitality and support the development of official language minority communities;

	<ul style="list-style-type: none"> • include all stages of the education continuum, from early childhood to post-secondary education, in the measures to enforce this requirement; and • provide for mandatory consultation with minority school boards, represented by their main representative organizations, in the measures to enforce this requirement. <p>17.2 Amend the <i>Official Languages Act</i> or other federal legislation to require the enumeration of education rights-holders under section 23 of the <i>Canadian Charter of Rights and Freedoms</i>.</p>
<p>RECOMMENDATION 18 General provisions</p>	<p>18.1 Amend the <i>Official Languages Act</i> to specify the obligation of federal institutions to implement the Act's various parts in a consistent manner.</p> <p>18.2 Amend the <i>Official Languages Act</i> to affirm the primacy of all parts of the Act over other federal laws. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the provisions of Part IV take precedence over those of Part V in the event of conflict; and • this principle does not apply to the <i>Canadian Human Rights Act</i> nor to its regulations. <p>18.3 Amend the <i>Official Languages Act</i> to extend the right to court remedy to all parts of the Act.</p> <p>18.4 Amend the <i>Official Languages Act</i> to require the Treasury Board to review the Act and its regulations every 10 years. In those circumstances, provide that:</p> <ul style="list-style-type: none"> • the review be carried out 10 years after the date of coming into force of the amended Act; and • the Treasury Board consult with official language minority communities during the 10-year review of the Act and its regulations.

RECOMMENDATION 19

Equal access to justice
in both official languages

- 19.1 Amend the *Official Languages Act* or other federal legislation to ensure that the importance of ensuring equal access to justice in both official languages is taken into account when appointing judges to provincial and territorial superior courts and courts of appeal. In those circumstances, mandate the Office of the Commissioner for Federal Judicial Affairs to ensure a systematic assessment of:**
- the need for bilingual judicial candidates in all regions of the country; and
 - the language skills of judicial candidates.
- 19.2 Amend the *Official Languages Act* to set a maximum period of six months to publish, in the other official language, the decisions of federal courts referred to in subsection 20(2).**
- 19.3 Amend the *Official Languages Act* to require the use of jurilinguists' expertise in translating federal court decisions and establish a system for revising decisions translated into the other official language.**
- 19.4 Amend the *Official Languages Act* to specify that the simultaneous publication of federal court decisions online is a communication with the public subject to the duties and obligations of Part IV.**
- 19.5 Amend the *Official Languages Act* to specify that the active offer of services in both official languages applies to federal courts.**
- 19.6 Amend the *Official Languages Act* to enshrine the existence of the "official language rights component" of the Court Challenges Program and its funding.**

RECOMMENDATION 20

Supreme Court judges

20.1 Amend the *Official Languages Act* and any necessary federal legislation to require that, on appointment, judges of the Supreme Court of Canada have a sufficient understanding of English and French to be able to read the written submissions of the parties and understand oral arguments without the assistance of translation or interpretation services. In those circumstances, provide that:

- a judge in office at the time of the coming into force of this amendment may remain in office even if the judge does not meet this requirement; and
- the Governor in Council may take measures to enforce this requirement, including compliance mechanisms.



CHAPTER 3

*Modernizing the Act:
Observations of the
Senate Committee*



The Honourable René Cormier, Chair of the Senate Committee.

Chapter 3 presents the Senate Committee's observations and provides additional insight regarding the recommendations to the federal government for updating the Act. The Senate Committee is making 20 recommendations, grouped under four main themes: **leadership and cooperation, compliance, enforcement principles** and **judicial bilingualism**.

Among the many proposals received throughout its study, the Senate Committee gave priority to those achieving consensus, while taking an overall view of the Act's implementation without getting lost in the details. Its vision of a modern, updated Act is based on a number of considerations, which have in common the following elements:

- achievement of the constitutional objective of advancing the equality of status and use of English and French;
- federal government leadership to achieve the substantive equality of both official languages;
- the remedial nature of language rights;
- respect for provincial and territorial jurisdiction;

- respect for the principle of judicial independence;
- a broad, liberal and purposive interpretation of the Act;
- consistent implementation of its parts; and
- strengthened duties and obligations.

Throughout its study, the Senate Committee heard proposals for consequential amendments to other federal acts. While it recognizes the importance of such changes, the Senate Committee wishes to reiterate that its original mandate was to modernize the Act itself. It has drafted its recommendations so that the Department of Justice Canada has the most useful information possible when drafting the government bill to amend the Act for which it is responsible. The 20 recommendations set out in this chapter are based on more than 100 proposals that emerged from the evidence heard and the briefs received between April 2017 and April 2019.

Leadership and cooperation

The core problem raised during the study was that the Act is implemented inconsistently by the federal government, which is why mechanisms are needed in the Act to ensure its full implementation. The Senate Committee believes it is important to assign responsibility for the Act's implementation and coordination to a central agency, specifically the Treasury Board, which will also be responsible for the adoption, coordination and implementation of a government plan. The Senate Committee also emphasizes the need to strengthen intergovernmental cooperation mechanisms and consultation obligations with official language minority communities. Consistent leadership and strong political will are needed to make sure that these amendments have a positive impact on respect for English and French as Canada's official languages.

Assign responsibility for the Act's implementation and coordination to a central agency

It would be a missed opportunity were an update of the Act not to review the responsibilities of key players. The purpose of the Act's modernization is to ensure it is fully implemented while strengthening its obligations. That is why the Senate Committee believes responsibility for its implementation and coordination must be assigned to a central agency. It believes this agency must be the Treasury Board, as do most of the proposals put forward.

The Treasury Board is already responsible for implementing parts IV to VI of the Act. Being at the very heart of government, the Treasury Board has significant powers and an overall vision of the challenges to be met. Its experience – in public financial management, human resources management and the development of programs, regulations and policies – is a valuable asset for promoting the values of bilingualism and linguistic duality at all stages of federal government initiatives or activities that have an impact on official languages.

The Act requires a horizontal application of its objectives, but the way it is currently designed divides responsibility among several players who do not have all the tools needed to ensure its full implementation. This creates confusion and frustration. More rigorous mechanisms are needed to ensure that all federal institutions covered by the Act implement it properly.

The Senate Committee does not wish to shift responsibility from federal institutions, which are ultimately responsible for implementing the Act. Rather, it proposes to ensure that, at the top, the Treasury Board is able to uphold the Act's enforcement principles, oversee their implementation and ensure that they are taken into account at all stages of public policy development.

This change could be as simple as specifying, in subsection 46(2) of the Act, what the Treasury Board "must" do in carrying out its responsibilities, which would then extend to the entire Act, save for some exceptions. Out of respect for the independence of Parliament, the courts and the Office of the Commissioner of Official Languages, parts I to III and Part X will be excluded. Assigning ultimate responsibility to a single agency provides a recognized focal point for coordinating the Act's implementation and addressing any compliance issues, thus ensuring a more consistent implementation of its various parts.

The creation of an Official Languages Secretariat, responsible for supporting the Treasury Board in the performance of its duties, will accompany these amendments. The secretariat will serve as a centre of excellence for official languages and have the necessary tools and resources to work with all institutions covered by the Act, other than the Senate, the House of Commons, the Library of Parliament, the Office of the Senate Ethics Officer, the Office of the Conflict of Interest and Ethics Commissioner, the Parliamentary Protective Service and the Office of the Parliamentary Budget Officer. The secretariat will review their performance and provide a clear picture of the official languages situation at the federal level on an annual basis.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 1

Treasury Board

1. Amend the *Official Languages Act* to assign responsibility for the implementation and coordination of the Act's provisions, with respect to institutions within the executive branch, to the Treasury Board. In those circumstances, provide that:

- an Official Languages Secretariat be created to support the Treasury Board in the performance of its duties;
- the Official Languages Secretariat be given the necessary tools and resources to work with all these institutions and review their performance; and
- it provide a clear picture of the Act's implementation by all these institutions on an annual basis.

2. Amend the *Official Languages Act* to state what the Treasury Board “must” do, rather than what it “may” do, in carrying out its responsibilities.

In keeping with this initiative and those before it, and in keeping with the provisions of section 5.1 of New Brunswick's *Official Languages Act*, the Senate Committee believes the Act should include an obligation for the federal government to adopt a government plan for official languages. This plan will set out a series of measures to ensure the equality of the status and use of English and French, particularly the substantive equality of both languages. It will not replace federal institutions' obligations or existing federal programs but will complement them so as to achieve the constitutional objective of advancing the equality of the status and use of English and French.

The Act must provide a non-exhaustive list of the various priority areas to be supported by the government plan. It will include, but not be limited to, providing services in both official languages, promoting linguistic duality in the workplace and supporting communities in key sectors such as education, health, justice, immigration, economic development, community media, and arts and culture. The government plan will clarify the responsibilities of the institutions involved in its implementation and require the federal government to adopt an accountability framework to guide it. With a view to transparency, the plan will be subject to mandatory public disclosure. Responsibility for its adoption and coordination will rest with the Treasury Board.

Adopt, coordinate and implement a government plan

Since 2003, the federal government has been adopting five-year initiatives that target key institutions and set out priority areas for action on official languages. The federal government's most recent commitments are presented in the *Action Plan for Official Languages – 2018-2023*, released in March 2018.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 2

Government plan for official languages

1. Amend the *Official Languages Act* to provide for the adoption, coordination and implementation by the Treasury Board based on the model set out in New Brunswick's *Official Languages Act*. In those circumstances, provide that:

- the priority areas supported by the government plan include, but not be limited to, the offer of services in both official languages, the promotion of linguistic duality in the workplace and support for official language minority communities in the following strategic sectors: education, health, justice, immigration, economic development, community media, and arts and culture;
- the federal institutions covered by the government plan have clear responsibilities and report to the Treasury Board on its implementation; and
- the Treasury Board adopt an accountability framework to guide it and that it be made public.

Rely on better defined and more rigorous intergovernmental cooperation mechanisms

Effective enforcement of the Act requires the cooperation of many partners. In its preamble, the Act recognizes the importance of cooperating with other levels of government to support the development of official language minority communities, provide services in both English and French, respect the constitutional guarantees of minority language educational rights and enhance opportunities for all to learn English and French.

Although mechanisms have been put in place to increase intergovernmental cooperation in these different areas, gaps remain. For a number of years, the Senate Committee has heard complaints and calls for more rigorous mechanisms. The federal government recognizes the problem but continues to address it on a case-by-case basis. Without clear direction to define the government's expectations for implementing the Act, progress from an official languages standpoint can be just as frequent as setbacks. The federal government must ensure that progress continues to be made toward substantive equality in both official languages.

Federal–provincial/territorial agreements play an essential role in the development and vitality of communities. This is the case, for example, in education and services to the public. Current management mechanisms for these agreements are clearly inadequate. In the past, education agreement recipients have changed the rules of the game, which has led to legal action. The federal government's lack of leadership in ensuring that the Act's objectives are met contributes significantly to these misunderstandings. Without a clear idea of the conditions to be met, it cannot be expected that the other signatories will make compliance with the Act a priority.

That is why the Senate Committee is calling for the accountability mechanisms associated with managing these agreements to be strengthened. This means the Act must include transparency obligations in the form of mandatory public disclosure. It must also define the parameters of the language clauses to be included in these agreements, particularly with respect to mandatory community consultation and compliance with the obligations relating to communications with and services to the public. First and foremost, the Act must provide a more formal framework for this practice.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 3

Federal–provincial/territorial agreements

1. Amend the *Official Languages Act* to recognize federal–provincial/territorial agreements on services in the minority language, minority language education and second language instruction; to acknowledge their importance in enhancing the vitality and supporting the development of official language minority communities; and to strengthen their implementation. In those circumstances, provide that:

- the agreements and the accompanying action plans be made public; and
- language clauses be included to define specific objectives for consulting official language minority communities and for communications with and services to the public in both official languages.

Many federal government transfer payments are also likely to have an impact on the future of communities, whether in health, immigration, literacy or early childhood. For national programs in areas of shared jurisdiction, federal institutions often act inconsistently when it comes to including language clauses to ensure compliance with the Act. A more systematic approach at the federal level seems necessary, for both the implementation of these national programs and all policies and programs put forward by federal institutions.

The Senate Committee strongly encourages the federal government to use Gender-Based Analysis Plus (GBA+) – which examines the impact of a policy, program, initiative or service on diversity groups – to develop a tool for applying an “official languages lens” in similar circumstances. This will ensure that the Act’s objectives are taken into account at all stages of public policy development.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 4

Review of policies, programs, initiatives and services

1. Amend the *Official Languages Act* to provide for the adoption of a tool to apply an “official languages lens” to policies, programs, initiatives and services implemented by federal institutions that is based on the Gender-Based Analysis Plus (GBA+) model.

The Senate Committee would also like to reiterate that, as part of the Act’s modernization, it is important for the federal government to undertake a comprehensive GBA+ to determine whether the proposed amendments have different impacts on members of Canadian society.

Require consultation with official language minority communities

In addition to including an “official languages lens,” it is important for the Act to include an obligation to consult communities in certain circumstances. To fully achieve the objective set out in section 2(b) of the Act, the Senate Committee believes it is vital that the Act include an obligation for the federal government to consult communities directly when implementing policies and/or programs that may impact their development. This is already implied by the concept of “positive measures” in Part VII. The idea is therefore to strengthen this obligation by specifying the circumstances in which it should apply.

First, the Act must specify that federal institutions are required to measure the impact of their decisions on communities. Institutions must take into account the results of these consultations, justify their decisions and ensure that the policies and programs they put in place are in line with the communities’ needs and provide for their effective representation. By ensuring their participation in the decision-making process, federal institutions will promote their managerial autonomy while respecting the famous principle of “*by and for*” heard throughout the study.

The Senate Committee does not want the obligation to consult to apply to too wide a range of government decisions, which could cause undue administrative burdens. It therefore targets seven decision-making areas on general program and policy direction that concern official language minority communities more directly. These include:

- the implementation of Part IV;
- the implementation of Part VII;
- the making of regulations under these two parts and their 10-year review;
- the government plan for official languages;
- federal–provincial/territorial agreements;
- the 10-year review of the Act; and
- disposal of federal real property.

On this last point, it seems obvious, especially in light of the public hearings in the fifth phase of the study, that the current efforts of federal institutions to take into account the needs of school boards and communities when disposing of their buildings are insufficient. A change to the *Directive on the Sale or Transfer of Surplus Real Property*, while commendable, will not force them to change their behaviour. The Senate Committee believes that specifying an obligation in the Act to this effect will encourage a more proactive approach and ensure that the interests of official language minority communities are taken into account.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 5 **Consultation with official language minority communities**

1. Amend the *Official Languages Act* to specify the obligation of federal institutions to assess the impact of their decisions on official language minority communities and to ensure that the policies and programs they implement are aligned with their needs. In those circumstances, provide that:

- the obligation to consult official language minority communities applies to decisions on general program and policy direction relating to the implementation of Part IV, the implementation of Part VII, the making of regulations under these two parts and their 10-year review, the government plan for official languages, federal–provincial/territorial agreements, the 10-year review of the Act and the disposal of federal real property; and
- federal institutions take into account the results of those consultations and provide reasons for their decisions.

The Act must also provide for the creation of an advisory board, made up of regional and sectoral representatives from official language minority communities. The advisory board will be responsible for advising the federal government on measures to enhance the vitality of official language minority communities and support their development. Based on section 8 of the *Francoophone Community Enhancement and Support Act*, this formal consultation framework will strengthen the principle of effective community representation in the Act.

The Senate Committee wishes to ensure that most of the seats on the advisory board are filled by community representatives appointed on the recommendation of their main representative organizations. The balance of seats will belong to the federal government. The creation of the advisory board will not replace the requirement for general public consultation stipulated in subsection 43(2) of the Act. The Senate Committee is adamant that this provision must stay. Rather, the advisory board will help communities participate in the Act's implementation through formal cooperation. The advisory board will guide the federal government in its decision making on general program and policy direction that may affect communities' development.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 6 **Advisory board**

1. Amend the *Official Languages Act* to create an advisory board to advise the federal government on measures to enhance the vitality of official language minority communities and to support their development, based on the model set out in Manitoba's *Francophone Community Enhancement and Support Act*. In those circumstances, provide that:

- a majority of the board be made up of regional and sectoral representatives of official language minority communities, appointed by the federal government on the recommendation of their main representative organizations;
- the other members of the board be appointed by the federal government; and
- this amendment be made notwithstanding the requirement for public consultation under subsection 43(2) of the Act.

Compliance

The federal government can only foster an exemplary implementation of the Act if it contains effective mechanisms to ensure compliance. The Senate Committee therefore believes it is important to both give new powers to the Commissioner of Official Languages (the Commissioner) and create an Official Languages Tribunal.

Strengthen the powers of the Commissioner of Official Languages and create a new Official Languages Tribunal

Recognizing that punitive powers are not a magic bullet in a language regime where promotion is just as important as intervention, the Senate Committee proposes that the ombudsman role be clearly separated from the policing role to avoid the Commissioner acting as both judge and jury. In other words, the Act must expand the Commissioner's toolbox so that they can intervene with federal institutions in a proactive and targeted manner, while providing for the creation of a tribunal to deal with the most serious or chronic cases.

The Senate Committee believes that using a variety of both administrative and judicial tools will promote greater compliance with the Act by federal institutions, while reducing the burden on complainants. It is therefore important to provide for various mechanisms, applicable in stages, depending on the seriousness of the offence or the nature of the problem.

In the Senate Committee's vision, the Commissioner retains and strengthens their current powers of investigation, audit, follow-up and recommendation. Thus, the Act will allow for the publication of the Commissioner's investigation reports if it is in the public interest, just like in subsection 43(17.2) of New Brunswick's *Official Languages Act*. In addition, the Act makes the current facilitated complaint resolution process permanent, ensuring that the simplest cases can be dealt with more quickly.

To encourage federal institutions to better implement the Act, the Commissioner will be given the authority to enter into compliance agreements with federal institutions, with a number of conditions to be met for a given period. This new power, based on section 17.1 of the Personal Information Protection and Electronic Documents Act, will be tied to a recourse mechanism, provided by the Official Languages Tribunal, that will review violations of the compliance agreement or force a hearing to compel the institution to comply with it.

To reduce the burden on complainants, the Commissioner will be given the ability to intervene on their own initiative before the Official Languages Tribunal, particularly to address systemic issues of importance to Canadians or simply to empower the Commissioner to act on their behalf. The Act will encourage the Commissioner to take a proactive approach to ensuring better compliance with the Act by authorizing the Commissioner to initiate proceedings before the Official Languages Tribunal on behalf of one or more complainants. The Commissioner will thus be able to act more strategically in seeking a remedy for these test cases by combining several complaints into a single proceeding.

The Official Languages Tribunal will be based largely on the model of the Canadian Human Rights Tribunal. It will act as a quasi-judicial tribunal, independent of the Office of the Commissioner of Official Languages but be governed by the same Act. Its members will have knowledge and experience in language rights, similar to the provisions in subsection 48.1(2) of the Canadian Human Rights Act.

The mandate and function of the Official Languages Tribunal will be set out in the Act. This new tribunal will focus on resolving key issues. It will deal with the most complex complaints from the Office of the Commissioner and be authorized to examine complaints brought by citizens themselves under the Act. It will be able to issue penalties and grant remedies to repeat offenders, including declarations, orders, statutory damages and administrative monetary penalties.

These penalties will be paid into a fund supporting projects that support the development of official language minority communities or promote both official languages. Decisions of the Official Languages Tribunal will be subject to judicial review before the Federal Court.

The Senate Committee also proposes reviewing the provisions of the Act relating to the appointment of a Commissioner, based on New Brunswick's model. As stipulated in subsection 43(2.1) of the province's Official Languages Act, an independent committee will be established to review the appointment. This will make the process more transparent while ensuring the incumbent's independence and legitimacy. The current practice of consulting the leader of every recognized party or group in the Senate and House of Commons and obtaining approval by resolution of the Senate and House of Commons will be maintained.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 7

Office of the Commissioner of Official Languages and the Official Languages Tribunal

1. Amend the *Official Languages Act* to create the Official Languages Tribunal, independent of the Office of the Commissioner of Official Languages and based on the model set out in the *Canadian Human Rights Act*:

- made up of members appointed by the Governor in Council who have expertise in, and sensitivity to, language rights, and who have a strong interest in the field;
- whose mandate is to decide, in the first instance, proceedings brought under the *Official Languages Act*, including proceedings brought following a complaint filed with the Commissioner of Official Languages;
- authorized to grant any remedy it considers just and appropriate in the circumstances, including declarations, orders, damages and administrative monetary penalties, the amounts of which will be allocated to a fund supporting projects that promote the development of official language minority communities and/or the promotion of both official languages; and
- having a review mechanism before the Federal Court.

2. Amend the *Official Languages Act* to strengthen the ombudsman role of the Commissioner of Official Languages:

- by allowing the Commissioner to enter into compliance agreements with federal institutions, with such conditions as it considers necessary to ensure compliance and a recourse mechanism before the Official Languages Tribunal to review violations, based on the model set out in the *Personal Information Protection and Electronic Documents Act*;
- by providing for the public disclosure of its investigation reports, in the public interest, based on the model set out in New Brunswick's *Official Languages Act*;
- by making the current facilitated complaint resolution process permanent; and
- by authorizing the Commissioner to act before the Official Languages Tribunal on behalf of one or more complainants to obtain a just and appropriate remedy in the circumstances, and by providing for the circumstances in which the Commissioner would be required to do so.

3. Amend the *Official Languages Act* to provide a framework for the appointment process for the position of Commissioner of Official Languages by creating an independent committee to review the appointment, based on the model set out in New Brunswick's *Official Languages Act*.

Enforcement principles

The Act supports the implementation of fundamental rights, most of which are protected by the Charter. The Act's quasi-constitutional nature is no longer in doubt. The Senate Committee believes that a clearer and stronger Act will lead to effective and consistent implementation by all federal institutions. Currently, the principles, duties and obligations in parts IV to VII give rise to issues with interpretation and enforcement. That is why the Senate Committee calls for them to be clarified. Moreover, the Senate Committee wishes to codify the important role of the Translation Bureau and encourage the making of regulations. Finally, it calls for a reaffirmation of constitutional rights relating to the specific case of New Brunswick and the rights to education, and for a review of some of the general provisions.

Clarify the principles, duties and obligations in Part IV of the Act

The *Official Languages (Communications with and Services to the Public) Regulations* will soon be updated. Nevertheless, the coming into force of these regulatory amendments without a review of the principles in Part IV of the Act would be another missed opportunity. Once again, the Act's modernization must ensure that the principles in the various parts of the Act are consistent and while strengthening them.

As official language minority communities – particularly francophone minority communities – face constant threat of assimilation and demographic pressure, it is important that the Act ensure the full implementation of “positive measures” by building on the principle of institutional vitality of communities, the principle of substantive equality and the remedial nature of language rights.

The Senate Committee hopes that the federal government will make sure that, in the Act, bilingual federal services are available to more Canadians and recognize the impact they can have on community vitality and development. Adding a provision in the Act stating that the offer of communications and services in both official languages contributes to the vitality of official language minority communities seems necessary.

The Senate Committee insists that the Act contain a clear and broad definition of institutional vitality that is not limited to minority schools. It must cover the entire education continuum from early childhood to post-secondary education. In addition, this definition must include other institutional and support elements that contribute to a community's vitality, such as community centres, cultural centres and community media.

The Senate Committee recognizes that the determination of significant demand excludes potential users of services. Although the Senate Committee recognizes the progress in the proposed regulations for implementing Part IV, which are expected to come into force soon, it believes that the Act must promote a broader vision based on institutional vitality and a definition of the population to be served covering all potential users of services, not only those who speak English or French as a first language, or who speak one of these languages at home. The federal government would then be better able to respond to the threats of assimilation and demographic pressure that francophone minority communities face every day.

In addition, the Senate Committee maintains that access to federal services should not depend on the proportion of an official language minority group with respect to the majority. This factor, which is used to determine significant demand, puts certain communities facing population decline more significantly than elsewhere, in both urban and remote areas, at a disadvantage. The Senate Committee believes that using these quantitative factors does not focus on real needs: ensuring that the federal government offers services where they are needed to contribute to official language minority community development.

The Senate Committee also recognizes that the active offer of communications and services in both official languages contributes to official language minority community vitality. Someone who is not clearly offered the opportunity to communicate with the federal government or receive services in the language of their choice, or who does not know their rights in this regard, is unlikely to demand that these rights be respected. That is why the Senate

Committee is calling for the obligations contained in the Act to be strengthened, recognizing that active offer contributes to institutional vitality.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 8

Federal services as drivers of vitality

1. Amend the *Official Languages Act* to explicitly recognize that the offer of communications with and services to the public in both official languages, including active offer, contributes to the vitality and development of official language minority communities. In those circumstances, provide that:

- institutional vitality be defined broadly, including all elements of the education continuum, from early childhood to post-secondary education, community centres, cultural centres and community media;
- the determination of significant demand:
 - > be based on institutional vitality and a broad definition of the population to be served, including all potential users of services, not just those who have English or French as their first language or who speak either language at home;
 - > not give consideration to the proportion of the official language minority population with respect to the majority; and
- the Governor in Council be required to take measures to enforce these requirements.

Moreover, despite the progress in the proposed regulations concerning the automatic bilingual designation of airports and train stations in provincial capitals, enforcing the Regulations under Part IV is complex and illogical with regard to the rights of the travelling public. There are still many language barriers, including those related to air travel, that will not be addressed when the proposed regulatory changes come into effect. The Senate Committee believes this is a missed opportunity.

Proposals were made to extend the application of certain parts of the Act to federally regulated private companies. In view of the importance of public safety, the Senate Committee proposes extending the application of Part IV to these companies with regard to services offered to the travelling public. In other words, carriers governed by federal laws and regulations will have to ensure that their communications with and services to the public are available in both official languages to ensure passenger safety. For example, this change will extend the application of Part IV to all airlines, not just Air Canada, as is currently the case. Besides air transport services, the changes will affect marine, rail and road transport companies.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 9

Federally regulated private companies

1. Amend the *Official Languages Act* to extend the obligations regarding communications with and services to the public to federally regulated private carriers. In those circumstances, provide that:

- air, marine, rail and road transport companies be required to provide communications and services in both official languages; and
- the Governor in Council be required to take measures to enforce these requirements.

Clarify the principles and duties in Part VII of the Act

Part VII of the Act, as written, does not ensure that the rights of members of official language minority communities are always respected, nor does it guarantee the substantive equality of the two official languages. Federal institutions have different understandings of their duties, resulting in many complaints and court remedies. Yet the intent of Parliament when it amended this part of the Act in 2005 was clear. It wanted to clarify the mandatory nature of the commitment set out in Part VII, impose duties on all federal institutions to implement this commitment and grant courts remedial powers to oversee its implementation.

Part VII is an extension of the rights provided for in subsection 16(3) of the Charter, which sets out the objective of advancing the equality of status or use of English and French in Canadian society. The purpose of the Act restates this objective, but its provisions are not sufficiently clear to fully realize this objective. By not emphasizing the underlying values of linguistic duality and bilingualism, the Act compromises the constitutional objective it is intended to promote.

The promotion of linguistic duality and bilingualism concerns all Canadians. To anchor these values in the federal government's approach, the Senate Committee proposes that a reference to the federal government's commitment in this regard be included in the Act. The Senate Committee proposes setting out this commitment in Part VII, with an additional reference in the purpose section of the Act. The modernized Act must act as a tool to recognize the remedial nature of language rights, protect the survival of official language minority communities, encourage interest in and support for bilingualism in Canadian society and promote the substantive equality of both official languages.

In addition, the Senate Committee stresses the need to update the Act's language to refer to "official language minority communities" rather than "English and French linguistic minority communities." Apart from the fact that this expression is now in common parlance, current language should reflect realities across the country and focus on the collective dimension of language rights. In New Brunswick, for example, neither of the two linguistic communities is considered a "minority" within the meaning of section 16.1 of the Charter. This reality must therefore be reflected in Part VII, as well as in the purpose of the Act.

The Senate Committee also insists that the federal government clarify the scope of the duties in Part VII by strengthening the corresponding wording. The modernized Act will therefore specify what the Treasury Board "must" do to coordinate its implementation by federal institutions. Similarly, it will set out a series of measures that the Treasury Board "must" take to advance the equality of status and use of English and French in Canadian society. The current list of measures in subsection 43(1) of the Act will be expanded to other strategic sectors, such as health, justice, immigration, economic development, community media, and arts and culture.

Finally, the Senate Committee believes the Act must clearly state that the provisions of Part VII must be taken into consideration in the interpretation of the other parts of the Act. Such an amendment would ensure the Act's consistent application and make Part VII a focal point.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 10

Linguistic duality, bilingualism and communities able to develop and flourish

1. Amend the *Official Languages Act*, including its purpose, to clarify the federal government's commitment to linguistic duality and bilingualism, which requires that measures be taken to:

- recognize the remedial nature of language rights;
- protect the survival of official language minority communities;
- encourage interest in and support for bilingualism in Canadian society; and
- promote the substantive equality of both official languages.

2. Amend the *Official Languages Act*, including its purpose, to replace references to "English and French linguistic minorities" with "official language minority communities."

3. Amend the *Official Languages Act* to state what the Treasury Board "must" do to coordinate the implementation of Part VII, rather than "encourage" or "promote" such coordination.

4. Amend the *Official Languages Act* to state what measures the Treasury Board "must" take to advance the equality of status and use of English and French in Canadian society, rather than "take such measures as [the Treasury Board] considers appropriate." In those circumstances, provide that:

- these measures include the following strategic sectors: health, justice, immigration, economic development, community media, and arts and culture; and
- the Governor in Council be required to take measures to enforce these requirements.

5. Amend the *Official Languages Act* to affirm that the provisions of Part VII are taken into consideration in the interpretation of the other parts of the Act.

Strengthen linguistic duality in the federal public service

The culture of linguistic duality is not yet fully rooted in the federal public service. Recent efforts by the Clerk of the Privy Council and the Committee of Assistant Deputy Ministers on Official Languages may not be sufficient to change all behaviours. The Senate Committee is proposing amendments in two areas: clarifying certain principles and duties in parts V and VI, on the one hand, and codifying the role of the Translation Bureau, on the other.

Clarify the principles and duties in parts V and VI of the Act

Experience shows that leadership in official languages is often in the hands of a few individuals and that responsibility for the implementation of language rights in the federal public service frequently lies with employees rather than managers. The Senate Committee wants to reverse this trend.

In the Senate Committee's vision, the Act must encourage federal institutions to take a proactive approach by enabling employees to work in the official language of their choice and ensuring equitable representation of anglophone and francophone employees. The Senate Committee firmly believes that the example must come from above. It therefore proposes that the Act set out the responsibilities of deputy ministers, chief executives and managers to foster a culture of linguistic duality in the workplace. Employees will then be better able to model their behaviour after those at the top.

In such circumstances, a modernized Act will require deputy ministers to be bilingual at the time of appointment. However, deputy ministers in office at the time this amendment comes into force may remain in office even if they do not meet the bilingualism requirements. The Act will state that proficiency in English and French is required at the C-B-C level, corresponding to an advanced level in written comprehension and oral proficiency and an intermediate level in written expression. This will be in line with existing practices for the designation of language profiles for supervisory positions.

The Act must also provide for the active offer of services provided under subsection 36(1) in both official languages to federal employees by managers and deputy heads. That provision must also explicitly state the mechanisms that must be made available to employees to enable them to work in the language of their choice. This includes measures to raise the language requirements of supervisory positions to the C-B-C level, ensure adequate assessment of employees' language skills and expand language training opportunities for employees. This will formalize the provisions of the *Directive on Official Languages for People Management* by enshrining them in the Act and therefore encourage best practices across the federal government. Deputy heads and managers already in these positions when this amendment comes into force will be given two years to meet the language requirements of their position.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 11 **The federal public service**

1. Amend the *Official Languages Act* to require that, on appointment, deputy ministers have a sufficient understanding of English and French to be able to perform their duties in both official languages, orally and in writing. In those circumstances, provide that:

- the required level of proficiency in both official languages be C-B-C;
- a deputy minister in office at the time of the coming into force of this amendment may remain in office even if the deputy minister does not meet this requirement; and
- the Governor in Council be required to take measures to enforce these requirements.

2. Amend the *Official Languages Act* to clarify the obligations of deputy heads and managers to foster a culture of linguistic duality in the workplace. In those circumstances, provide that:

- they ensure an active offer of services in English and French to their employees, pursuant to subsection 36(1);
- the language requirements of their positions be increased, in all cases, to the C-B-C level, and that deputy heads and managers already in these positions at the time of the coming into force of this amendment be given two years to meet the requirements;
- they adequately assess the language skills of their employees; and
- they provide their employees with language training opportunities.

Codify the role of the Translation Bureau in the Act

The Senate Committee fully believes in the essential role the Translation Bureau plays in implementing the Act and hopes this role will be recognized and strengthened. To this end, the modernized Act would require federal institutions to use its services, which would be provided by professional translators and interpreters. The Act would give it the tools and resources it needs to serve as a centre of expertise in high quality translation and interpretation. This would highlight the importance for federal institutions to follow Canadian language quality standards.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 12 **The Translation Bureau**

1. Amend the *Official Languages Act* to establish the role of the Translation Bureau in the Act's implementation. In those circumstances, provide that:

- the Translation Bureau be the exclusive provider of translation and interpretation services for federal institutions; and
- it be equipped with the tools and resources necessary to serve as a centre of expertise in quality translation and interpretation.

Add regulations to guarantee the full implementation of the Act

The Senate Committee maintains that regulations generally have more force than policies and directives, which are designed to persuade and are not as enforceable. In terms of enforcing the Act, it is clear that the *Policy on Official Languages* and its accompanying instruments alone cannot ensure compliance by federal institutions.

The Federal Court of Appeal will soon be called upon to interpret the enforceability of Part VII. It is likely that this issue will ultimately reach the Supreme Court. But rather than waiting for a ruling, the Senate Committee impresses on the federal government the urgency of taking action. By not taking a broad and liberal approach to the interpretation of the duties under Part VII, the intention of Parliament, which was made clear in 2005 when Parliament amended the Act to strengthen their implementation, is jeopardized. The Senate Committee therefore expects the federal government to demonstrate its leadership by clarifying the situation once and for all.

Time is running out. Too many Canadians are affected by the vagueness of Part VII, which is reflected in the setbacks suffered by official language minority communities and the unequal treatment of both official languages. In conjunction with the Act's modernization, the Senate Committee requests that, by June 2021, the Treasury Board make regulations to define the scope of the duties in Part VII and ensure the consistent taking of "positive measures" by all federal institutions.

To address the concerns expressed in 2010 in its study on the implementation of Part VII, the Senate Committee wishes to ensure that this new regulatory measure does not limit the scope of the Act.²³¹ This will allow the Governor in Council to take a broad and liberal interpretation of Part VII.

The new regulations will inevitably be developed in consultation with official language minority communities and based on the criteria established in the 2003 Accountability and Coordination Framework for Official Languages and the 2007 guide developed by Canadian Heritage to govern the performance of federal institutions in their implementation of Part VII. It can therefore be expected that each federal institution will:

- make its employees aware of the needs of official language minority communities and the government's commitments under Part VII;
- determine whether its policies and programs have an impact on the promotion of linguistic duality and community development, from the initial development of policies through to their implementation;
- consult the affected publics as required, in particular representatives of official language minority communities, in developing and implementing policies and programs;
- be able to describe its approach and show how it has considered the needs of official language minority communities; and
- where an impact has been identified, plan the activities accordingly in the coming year and in the longer term, present the deliverables (taking into account anticipated funding) and provide for results evaluation mechanisms.²³²

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 13 **Regulations to give effect to Part VII**

1. Amend the *Official Languages Act* to specify that the Governor in Council is required to make regulations setting out measures to give effect to Part VII. In those circumstances, provide that:

- the Governor in Council promote a broad and liberal interpretation of these requirements;
- the Treasury Board consult with official language minority communities when developing the regulations;
- these measures achieve the following objectives:
 - > raising employees' awareness of the needs of official language minority communities and the government's commitments under Part VII;
 - > determining whether policies and programs have impacts on the development of official language minority communities and the promotion of linguistic duality, from the initial development of policies through to their implementation;
 - > consulting representatives of official language minority communities as required in connection with the development or implementation of policies and programs;
 - > describing the federal institution's actions and demonstrating that it has considered the needs of these communities; and
 - > if it has been determined that impacts exist, planning anticipated activities accordingly, presenting the expected outcomes and providing for results evaluation mechanisms.

2. Ensure, in conjunction with the modernization of the *Official Languages Act*, that regulations to give effect to Part VII are made by June 2021.

In keeping with one of the previous recommendations, the Senate Committee proposes amending the Act to require the Governor in Council to take into account, in the Regulations in Part IV, the fact that the offer of communications with and services to the public in both official languages contributes to community vitality and development.

Within a realistic time frame, and given that enforcing these amended regulations depends on data from the next decennial census, Treasury Board must ensure that these regulatory amendments come into force by June 2023. The purpose is to promote a broad and liberal interpretation of the provisions of Part IV by establishing a more direct link with those of Part VII. This addition to the Act will inevitably have to be carried over to the accompanying regulatory framework, which must be developed in consultation with official language minority communities.

The Senate Committee also proposes requiring the making of two new regulations to help the federal government establish a culture of linguistic duality in the workplace throughout the public service. It is important, however, that these regulatory measures not limit the scope of the Act. That is why the Senate Committee calls on the Governor in Council to encourage a broad and liberal interpretation of these duties.

As part of the Act's modernization, the Treasury Board must therefore, by June 2023, make regulations to govern the application of parts V and VI of the Act, based on a number of criteria. The regulations will create work environments conducive to the use of both official languages across the country. They will take a two-pronged approach by specifying, on the one hand, the linguistic obligations of managers, chief executives and deputy ministers and, on the other hand, by clarifying the resources available to federal employees to ensure that their language of work rights are respected. Finally, the federal government must ensure a more equitable representation of French-speaking and English-speaking Canadians in federal institutions in the regions. English-speaking federal employees in Quebec will therefore see increased representation in the federal public service.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 14
Regulations to give effect to parts IV to VI

- 1. Amend the *Official Languages Act* to specify that the Governor in Council is required, in regulations to give effect to Part IV, to recognize that the offer of communications with and services to the public in both official languages contributes to the vitality and development of official language minority communities.**
- 2. Ensure, in conjunction with the modernization of the *Official Languages Act*, that regulations to give effect to Part IV are amended by June 2023 and that the Treasury Board consults with official language minority communities when the regulations are amended.**
- 3. Amend the *Official Languages Act* to specify that the Governor in Council is required to make regulations setting out measures to give effect to Part V and Part VI. In those circumstances, provide that:**
 - the Governor in Council promote a broad and liberal interpretation of these requirements;
 - these measures achieve the following objectives:
 - > creating workplaces conducive to the use of both official languages across the country;
 - > clarifying the obligations of managers, chief executives and deputy ministers to encourage linguistic duality in the workplace;
 - > clarifying the resources available to federal employees to ensure that their rights are respected; and
 - > ensuring a more equitable representation of English-speaking and French-speaking Canadians in federal institutions located in the regions.
- 4. Ensure, in conjunction with the modernization of the *Official Languages Act*, that regulations to give effect to Part V and Part VI are made by June 2023.**

Similar to section 3 of the *Francophone Community Enhancement and Support Act*, the Act must more clearly set out the duties of federal institutions with respect to active offer of communications with and services to the public. Active offer contributes to institutional vitality, but still too many federal institutions are not serious about performing this requirement.

The Senate Committee requests that the Act to include details of active offer to help federal institutions comply with the requirement. It believes that adding a provision requiring the making of regulations would help the federal government implement this requirement more effectively, provided that the scope of the Act is not limited. Therefore, the Senate Committee calls on the Governor in Council to encourage a broad and liberal interpretation of this duty by adding, to section 32 of the Act, the possibility for the Governor in Council to make regulations setting out the circumstances in which active offer must be implemented.

In conjunction with the Act's modernization, the Treasury Board must work to make regulations on active offer by June 2023, in consultation with official language minority communities, that will highlight a number of objectives. The Treasury Board must ensure that the public is informed of the availability of communications and services in both official languages and that the offer is made on first contact. Communications and services will be offered to the public, taking into account the specific linguistic and cultural context of each situation. Federal institutions will ensure, in all cases, that they provide services of equal quality in English and French and that they respect the principle of substantive equality. They will provide the human and financial resources needed to implement these duties. Finally, the federal government must ensure that these duties also apply to third parties providing services on behalf of federal institutions.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 15

Regulations on active offer

1. Amend the *Official Languages Act* to provide that the Governor in Council be required to make regulations setting out measures to give effect to the active offer. In those circumstances, provide that:

- the Governor in Council promote a broad and liberal interpretation of these requirements;
- the Treasury Board consult with official language minority communities when developing the regulations;
- these measures achieve the following objectives:
 - > ensuring that the public is informed of the availability of services in both official languages;
 - > offering services in both official languages on first contact;
 - > providing services according to the principle of linguistically and culturally appropriate services;
 - > providing services of equal quality in both official languages and ensuring respect for the principle of substantive equality;
 - > allocating the human and financial resources necessary for the active offer of service in both official languages; and
 - > extending the obligation to third parties providing services on behalf of federal institutions.

2. Ensure, in conjunction with the modernization of the *Official Languages Act*, that regulations on the active offer are made by June 2023.

Reaffirm certain constitutional rights in the Act

The Act ignores some recognized constitutional rights, which creates problems in their interpretation and implementation. The Senate Committee proposes amendments to the Act in two areas: recognizing New Brunswick's unique constitutional status and recognizing education rights in official language minority communities.

Recognize New Brunswick's unique constitutional status

New Brunswick is the only officially bilingual province in Canada. The Charter grants it separate constitutional status in sections 16 to 20, but the federal Act does not take this reality into account. Parliament's silence creates differences in the way the federal government and the Government of New Brunswick implement language rights. The Senate Committee believes that the Act's modernization is an opportunity to resolve this ambiguity.

In the Senate Committee's vision, the Act must take into account the equality of New Brunswick's two linguistic communities, as set out in section 16.1 of the Charter. It will do so first in its preamble. It will do so again in Part VI, by ensuring equitable representation of English-speaking and French-speaking employees working in the federal public service in New Brunswick, so as to respect their equality of status. Finally, it will apply equality of the two linguistic communities to all initiatives under Part VII aimed at their vitality and development by recognizing their right to distinct cultural and educational institutions.

As previously noted, in New Brunswick, neither of the two linguistic communities is considered a “minority” within the meaning of section 16.1 of the Charter. Consequently, the Senate Committee reiterates the need to refer to “official language minority communities” rather than to “English and French linguistic minority communities” in the Act.

In addition, the Act must take into account that communications with and services to the public in English and French are not circumscribed, in that province, by the criteria of significant demand and the nature of the office under subsection 20(2) of the Charter. Currently, there is a clear gap between the services that New Brunswickers can receive from their province – guaranteed in all cases – and those offered by the federal government – which are more restrictive. The Act must therefore provide that Part IV applies throughout New Brunswick, regardless of the criteria of significant demand and the nature of the office.

By making these changes, the federal government will ensure a more consistent implementation of the language rights set out in section 20 of the Charter, both on the federal and provincial fronts, respecting the offer of services to the public. In addition, it will give effect to the addition of section 16.1 to the Charter, made in 1993 at the province’s express request, concerning the equality of its two linguistic communities. The Act’s modernization provides an opportunity to address these inconsistencies, which were not addressed by the 1988 or 2005 revisions. This change may eventually lead other provinces to adopt a broad and liberal interpretation of language rights.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 16

Extension of New Brunswick’s constitutional rights

1. Amend the *Official Languages Act* to recognize the equality of status of the English linguistic community and the French linguistic community of New Brunswick, as set out in section 16.1 of the *Canadian Charter of Rights and Freedoms*. In those circumstances, provide that:

- the preamble to the Act be amended to refer to this equality of status;
- English-speaking and French-speaking employees in the federal public service in New Brunswick be represented in a manner that reflects this equality of status;
- all initiatives affecting the vitality and development of these two communities take into account the equality of their status and recognize their right to distinct educational and cultural institutions; and
- the Governor in Council be required to take measures to enforce these requirements.

2. Amend the *Official Languages Act* to recognize that the offer of communications with and services to the public in both official language applies throughout New Brunswick. In those circumstances, provide that:

- the duties and obligations in Part IV apply to New Brunswick notwithstanding the criteria of significant demand and nature of the office; and
- the Governor in Council be required to take measures to enforce these requirements.

Recognize education rights in official language minority communities

The Supreme Court has ruled, in the context of minority language education rights, that parents have the right to manage and control their own schools and that equal access to quality education is an essential factor for community development.²³³ Although subsection 43(1) sets out measures to support minority language education and learning of the other official language by the majority, the Act does not mention the right to school governance and the principle of substantive equality in education.

The Senate Committee believes it is important to affirm the crucial role that education plays as a factor in institutional vitality. As it did previously, the Senate Committee proposes including federal–provincial/territorial agreements on minority language education in the Act. These agreements play an important role in enhancing the vitality and supporting the development of communities and must apply to the entire education continuum, from early childhood to post-secondary education. The implementation of these agreements needs strengthening, a federal funding framework needs to be established, and minority school boards need to be included in the negotiations.

The Senate Committee further argues that, to ensure these rights are implemented, the federal government must be able to compile relevant language data on school attendance. The lack of hard data to estimate needs has a significant impact on community development and increases the risk of assimilation. The Act must therefore require the enumeration of education rights-holders so that the federal government can implement the rights set out in section 23 of the Charter. Under its constitutional obligations and the *Statistics Act*, the federal government has the authority to collect and publish data on education.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 17 Extension of constitutional educational rights

1. Amend the *Official Languages Act* to recognize the right to school governance and the right to equal access to quality education in the minority language, as set out in section 23 of the *Canadian Charter of Rights and Freedoms*. In those circumstances:

- recognize that federal–provincial/territorial agreements on minority language education enhance the vitality and support the development of official language minority communities;
- include all stages of the education continuum from early childhood to post-secondary education, in the measures to enforce this requirement; and
- provide for mandatory consultation with minority school boards, represented by their main representative organizations, in the measures to enforce this requirement.

2. Amend the *Official Languages Act* or other federal legislation to require the enumeration of education rights-holders under section 23 of the *Canadian Charter of Rights and Freedoms*.

Review general provisions of the Act

For the federal government to ensure a consistent, uniform reading of all the obligations set out in the Act, amendments to its general provisions are required. These changes will send a clear message to federal institutions about the need to interpret its various parts as a whole, rather than separately.

The Senate Committee requests that the general provisions of the Act affirm the primacy of all parts of the Act over other federal legislation. These changes will be in keeping with section 31, which recognizes that the provisions of Part IV prevail over those of Part V in the event of conflict, and subsection 82(2), which concerns the *Canadian Human Rights Act*. The Senate Committee believes that these changes will put an end to the current dispute over the interpretation of Part VII with respect to the Act's other provisions. The message will be clear: these provisions are just as important as the others. In the same vein, the Senate Committee proposes that the Act be fully justiciable, allowing court remedies for all its parts.

In addition, it is important that any future modernization of the Act not depend on political will. That is why the Senate Committee agrees with the almost unanimous testimony and briefs calling for a provision requiring its periodic review. The Senate Committee recommends a review every 10 years, similar to the provisions in section 42 of New Brunswick's *Official Languages Act*. This corresponds to the 10-year census cycle used to establish the duties of federal institutions with respect to communications with and services to the public, as well as the cycle chosen by the government to review the Regulations under Part IV. As mentioned above, it is important to provide for mandatory community consultation as part of this 10-year review.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 18 General provisions

- 1. Amend the *Official Languages Act* to specify the obligation of federal institutions to implement the Act's various parts in a consistent manner.**
- 2. Amend the *Official Languages Act* to affirm the primacy of all parts of the Act over other federal laws. In those circumstances, provide that:**
 - the provisions of Part IV take precedence over those of Part V in the event of conflict; and
 - this principle does not apply to the *Canadian Human Rights Act* nor to its regulations.
- 3. Amend the *Official Languages Act* to extend the right to court remedy to all parts of the Act.**
- 4. Amend the *Official Languages Act* to require the Treasury Board to review the Act and its regulations every 10 years. In those circumstances, provide that:**
 - the review be carried out 10 years after the date of coming into force of the amended Act; and
 - the Treasury Board consult with official language minority communities during the 10-year review of the Act and its regulations.

Judicial bilingualism

The administration of justice is one of the essential elements of the current Act, which, while providing for several important measures, does not always put litigants first and foremost. In keeping with the other recommendations put forward in this report, the Senate Committee proposes changes that reflect the evolution of the justice system and that take into account the needs of Canadians with respect to access to justice in the official language of their choice. To this end, the Senate Committee calls for measures to be included in the Act to ensure equal access to justice in English and French and to require that Supreme Court judges be bilingual at the time of their appointment.

Ensure equal access to justice in both official languages

The right to equal access to justice in the official language of one's choice has been repeatedly upheld by the Supreme Court.²³⁴ However, the current Act does not provide all the necessary mechanisms to make this objective a reality. The Senate Committee is therefore making a series of practical and realistic proposals to accomplish this.

First, measures are needed to better identify the need for bilingual judicial candidates across Canada. The Senate Committee believes the Act's modernization provides an opportunity to formalize and strengthen current practices. To increase the bilingual capacity of the federal judiciary, the Act must recognize the importance of ensuring equal access to justice in English and French when appointing judges to the provincial and territorial superior courts and courts of appeal.

This measure must go hand-in-hand with a more systematic assessment of the number of bilingual judges that are needed, particularly in the regions where the lack of judges able to hear cases in the language chosen by the parties increases delays in access to justice. The federal government must also make sure to properly and systematically assess language skills in a legal context. Such an obligation under the Act will encourage it to develop national standards and assessment tools.

The Senate Committee believes that the Office of the Commissioner for Federal Judicial Affairs is in the best position to ensure their implementation. If necessary, consequential amendments could be made to the *Judges Act*.

Second, the Senate Committee supports the evidence and briefs calling for clarification of the criteria in section 20 of the Act, which deals with the publication of decisions. Federal courts respond differently to these language requirements. The publication of decisions in both official languages is not always simultaneous, and translation is not always done by jurilinguists. It is difficult to ensure equal access to justice when the time frames for publishing decisions in one language and then in the other are too long, when the quality of both versions is not ensured, and when the court simply decides not to translate them.

Currently, judges make their decisions in only one language and there is no obligation to co-draft decisions. It might therefore be difficult at this stage to recognize both versions of federal court decisions as equally authoritative and of equal value in the Act. In the meantime, however, it is possible for the federal government to take steps to move the Act towards this ideal.

That is why the Senate Committee recommends limiting the exceptions provided for in section 20 of the Act to ensure that more decisions are published in a timely manner. Under subsection 20(2), there will be a maximum period of six months to publish decisions in the other language. In addition, the federal government must require the use of jurilinguists' expertise and establish a system for revising decisions translated into the other official language. This will promote a more consistent process to ensure the equal quality of both versions.

The Senate Committee also agrees with the Commissioner that Part IV of the Act, not Part III, must govern the simultaneous publication of federal court decisions on the web. To address confusion in interpreting these obligations, the

Act should specify that publishing these decisions online constitutes a communication with the public subject to the duties and obligations of Part IV. However, the Senate Committee does not question that the judicial aspects related to the drafting and translation of decisions, as well as their filing with the Registry, fall under Part III.

The Senate Committee is also calling for the Act to strengthen the obligation of federal courts to ensure active offer of services in English and French in the justice sector. Doing so would ensure that respect for the right of litigants to obtain service in the language of their choice lies at the core of the courts' practices.

Furthermore, ensuring equal access to justice in both official languages requires access to an effective, permanent right of remedy as regards the implementation of language rights. The Senate Committee firmly believes that the Court Challenges Program serves the interests of communities and Canadians in general in protecting language rights. Unfortunately, history has shown that the existence of the Court Challenges Program depends on political will. The only way to ensure its sustainability and guarantee its funding is to include it in the Act.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 19

Equal access to justice in both official languages

- 1. Amend the *Official Languages Act* or other federal legislation to ensure that the importance of ensuring equal access to justice in both official languages is taken into account when appointing judges to provincial and territorial superior courts and courts of appeal. In those circumstances, mandate the Office of the Commissioner for Federal Judicial Affairs to ensure a systematic assessment of:**
 - the need for bilingual judicial candidates in all regions of the country; and
 - the language skills of judicial candidates.
- 2. Amend the *Official Languages Act* to set a maximum period of six months to publish, in the other official language, the decisions of federal courts referred to in subsection 20(2).**
- 3. Amend the *Official Languages Act* to require the use of jurilinguists' expertise in translating federal court decisions and establish a system for revising decisions translated into the other official language.**
- 4. Amend the *Official Languages Act* to specify that the simultaneous publication of federal court decisions online is a communication with the public subject to the duties and obligations of Part IV.**
- 5. Amend the *Official Languages Act* to specify that the active offer of services in both official languages applies to federal courts.**
- 6. Amend the *Official Languages Act* to enshrine the existence of the "official language rights component" of the Court Challenges Program and its funding.**

We cannot talk about equal access to justice if Canadians do not have an official version, in both languages, of all constitutional texts. Section 55 of the *Constitution Act, 1982*, provides that a French version of certain portions of the Constitution, enacted in English only, must be prepared “as expeditiously as possible.” This promise has never been fulfilled and the English version of these texts is still the only one that has the force of law. This has an impact on the interpretation of language rights by the courts, since judges cannot apply the shared meaning rule to both versions. The Senate Committee therefore calls on the federal government, in the context of modernizing the Act, to take the lead and follow up on implementing this constitutional obligation.

Require Supreme Court judges to be bilingual at time of appointment

Considering that all its interim reports stressed the importance of requiring that Supreme Court judges be bilingual at the time of their appointment, the Senate Committee calls on the federal government to formalize in the Act its current practice of appointing judges who are “functionally bilingual.” This new obligation will capture the very essence, at the highest level, of equal access to justice for all Canadians in the official language of their choice.

The Senate Committee notes the current Minister of Justice’s commitment to continue appointing “functionally bilingual” judges to the Supreme Court but cautions that this practice is subject to political will. It seems vitally necessary, in the light of the testimony and briefs, to make this practice formal and enforceable.

The reasons for making this change are first and foremost symbolic, since Supreme Court judges are at the head of the highest court in the country. However, there are also practical reasons for making this change. The Act does not recognize the right of litigants and their lawyers to appear before the highest court in the country and be heard in the language of their choice, as is the case in lower courts. There is therefore a lack of consistency throughout the justice system. The Senate Committee believes that the pool of bilingual candidates is no longer a barrier to achieving this objective, as it was when the Act was revised in 1988. The message to the jurists

of the future seeking to become Supreme Court judges must be clear: proficiency in both official languages is required. Future candidates will have to demonstrate their ability to function in our bilingual and bilingual justice system.

The simplest way to resolve the situation is to remove the exception that applies to the Supreme Court under subsection 16(1) of the Act. However, the Senate Committee is aware that such an amendment only affects the institutional bilingualism of the Supreme Court. It could impose a language requirement on only five of the nine judges, which poses practical challenges in its implementation. Would it be acceptable, for cases involving language rights or cases argued in French, for the bench to be reduced? Another option, which has been attempted in several private members’ bills in recent years, is to amend the *Supreme Court Act* to require individual bilingualism for each of the nine judges.

All the witnesses who appeared before the Senate Committee considered the proposal as constitutional, as described in Chapter 1 of this final report, despite the Minister of Justice’s concerns about the 2014 reference to the Supreme Court regarding the appointment of Justice Nadon.²³⁵ In case of doubt, a reference to the Supreme Court will always be possible.

In its proposal, the Senate Committee does not question the fact that a judge in office at the time this amendment comes into force may remain in office even if the judge does not meet the requirements of bilingualism. It asks that the Act stipulate the circumstances in which proficiency in English and French is required. In the Senate Committee’s view, judges must be able to understand both official languages well enough to be able to read the written arguments of the parties and understand oral arguments without the assistance of translation or interpretation services. Of course, this will have to be accompanied by effective measures to assess candidates’ language skills. The federal government could easily continue to use the tests it has put in place, managed by the Office of the Commissioner for Federal Judicial Affairs, and improve them, if necessary. The Governor in Council could determine the details of implementing this requirement and any measures to enforce them.

Therefore, the Senate Committee recommends that the federal government:

RECOMMENDATION 20 **Supreme Court judges**

- 1. Amend the *Official Languages Act* and any necessary federal legislation to require that, on appointment, judges of the Supreme Court of Canada have a sufficient understanding of English and French to be able to read the written submissions of the parties and understand oral arguments without the assistance of translation or interpretation services. In those circumstances, provide that:**
 - a judge in office at the time of the coming into force of this amendment may remain in office even if the judge does not meet this requirement; and
 - the Governor in Council may take measures to enforce this requirement, including compliance mechanisms.

CONCLUSION

The *Official Languages Act* (the Act) is at the heart of Canada's social contract, as are the underlying principles of linguistic duality and support for bilingualism. For Canada to be a truly bilingual country, a modernized Act is needed to ensure that all Canadians fully embrace linguistic duality.

At the end of its two-year study, the Senate Committee concludes that the Act must be strengthened by adding provisions that ensure its full and consistent implementation by the entire federal administration. Some of its principles need to be better defined. Its various parts must be applied horizontally, its responsibilities must be strengthened from the top down, and monitoring, compliance and cooperation mechanisms must be made effective.

The Senate Committee's recommendations focus on four themes: **leadership and cooperation, compliance, enforcement principles** and **judicial bilingualism**. They are designed to give a more concrete scope to respect for English and French as Canada's official languages, in the interest of all Canadians.

Yet it takes more than a strengthened Act for the equality of the two official languages to become an everyday, tangible reality for all Canadians. Consistent leadership and strong political will must accompany its implementation. The federal government, when drafting its bill to amend the Act, must keep in mind that the Act is vital to our country's future.

The Senate Committee requests that the updated Act embody the constitutional principle of advancing the equality of status and use of Canada's two official languages and allow for the achievement of substantive equality, without which the protection of language rights and the survival of official language minority communities will be compromised. It is calling for a broad, liberal and purposive interpretation of the Act at all times.

The Senate Committee is extremely proud of the work it has accomplished over the past two years. In its opinion, its recommendations, based on the testimony of more than 300 witnesses and 72 briefs and follow-ups, will be essential in guiding the Act's modernization.

The Senate Committee would like to thank the Library of Parliament's Parliamentary Information and Research Service, as well as the Senate's Committees Directorate, Communications Directorate and the Office of the Law Clerk and Parliamentary Counsel for their support throughout this important study.

With this final report in hand – along with the work of the Commissioner of Official Languages, the House of Commons Standing Committee on Official Languages, the many civil society organizations that have submitted briefs and the results of its own consultations – the federal government now has everything it needs to update the Act. Together, let us come together to make this project a reality.

APPENDIX A – WITNESSES

Name of Organization	Spokesperson(s)
Public Hearings in Ottawa - 03.12.2018	
Innovation, Science and Economic Development Canada	The Honourable Mélanie Joly, P.C., M.P., Minister of Tourism, Official Languages and La Francophonie Guylaine F. Roy, Deputy Minister, Tourism, Official Languages and La Francophonie
Canadian Heritage	Denis Racine, Director General, Official Languages Branch Yvan Déry, Senior Director, Policy and Research, Official Languages Branch
Public Hearings in Ottawa - 10.12.2018	
Office of the Commissioner of Official Languages	Raymond Thériège, Commissioner of Official Languages Ghislaine Saikaley, Assistant Commissioner, Compliance Assurance Branch Pierre Leduc, Assistant Commissioner, Policy and Communications Branch Pascale Giguère, General Counsel, Legal Affairs Branch
Public Hearings in Ottawa - 18.02.2019	
Translation Bureau	Stéphan Déry, Chief Executive Officer
National Capital Commission	Céline Larabie, Executive Director, Human Resources Anne Ménard, Acting Executive Director, Capital Stewardship
Immigration, Refugees and Citizenship Canada	David Manicom, Assistant Deputy Minister, Settlement and Integration Policy Branch Corinne Prince, Director General, Settlement and Integration Policy Branch
Statistics Canada	Jane Badets, Assistant Chief Statistician, Social, Health and Labour Statistics Field Jean-Pierre Corbeil, Assistant Director and Chief Specialist of the Language Statistics Program, Social and Aboriginal Statistics Division
Canada Infrastructure Bank	Pierre Lavallée, President and CEO Frédéric Duguay, General Counsel and Corporate Secretary

Public Hearings in Ottawa - 25.02.2019

Public Services and Procurement Canada	Michael Mills, Associate Assistant Deputy Minister, Real Property Services Lucie Levesque, Director General, Real Property Services
Treasury Board of Canada Secretariat	Jessica Sultan, Senior Director, Real Property and Materiel Policy Division
Canadian Human Rights Commission	Keith Smith, Acting Director General, Policy and Communications Fiona Keith, Senior Counsel
Canadian Human Rights Tribunal	David L. Thomas, Chairperson
Administrative Tribunals Support Service of Canada	Marie-France Pelletier, Chief Administrator

Public Hearings in Ottawa - 18.03.2019

Office of the Commissioner of Official Languages	Ghislaine Saikaley, Assistant Commissioner, Compliance Assurance Branch Pierre Leduc, Assistant Commissioner, Policy and Communications Branch Pascale Giguère, General Counsel, Legal Affairs Branch
Office of the Privacy Commissioner of Canada	Brent Homan, Deputy Commissioner, Compliance Sector Regan Morris, Legal Counsel, Legal Services Directorate
Public Service Commission of Canada	Patrick Borbey, President
Treasury Board of Canada Secretariat	Nancy Chahwan, Chief Human Resources Officer
Innovation, Science and Economic Development Canada	Guylaine F. Roy, Deputy Minister, Tourism, Official Languages and La Francophonie
Privy Council Office	Janine Sherman, Deputy Secretary to the Cabinet, Senior Personnel and Public Service Renewal

APPENDIX B – BRIEFS, PRESENTATIONS AND OTHER DOCUMENTS

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David Joseph MacKinnon, Letter to the Chair of the House of Commons Standing Committee on Official Languages, the Hon. Denis Paradis, and to the Speaker of the Standing Senate Committee on Official Languages, the Hon. René Cormier – Illegality of the “Principles for the Establishment of a Quality Measurement Framework for Federal Government Translations” mechanism used by the Translation Bureau for legal translations, 7 February 2019.

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