Office of the Commissioner of Official Languages
Commissariat aux langues officielles

BRIEF TO THE STANDING COMMITTEE ON OFFICIAL LANGUAGES:

Bill C-13: *An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts*

SEIZING A HISTORIC OPPORTUNITY: FOR A COMPLETE MODERNIZATION OF THE *OLA*

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1. INTRODUCTION

This brief sets out the position of the Commissioner of Official Languages on Bill C-13, *An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts*.

Part 1 of the bill makes substantial changes to the *Official Languages Act* ("OLA"). These modifications will undoubtedly help to strengthen the OLA, modernize it, and ensure it is interpreted in accordance with the standard of substantive equality. The Commissioner supports this much-anticipated legislative measure, which reflects the government's commendable effort to be responsive to society's needs and advance linguistic duality as well as the vitality of official language minority communities.

In light of his analysis, the Commissioner feels that certain changes to Bill C-13 would further foster the achievement of the results desired from the modernization of the OLA. A fully modernized act is one whose parts come together to form a coherent and robust whole.

Part 2 of the bill enacts the *Use of French in Federally Regulated Businesses Act* ("UFA"). It meets a significant need by filling a legal void and creating language rights for consumers who do business with federally regulated private businesses ("FRPBs") and for the employees who work for them.

The Commissioner invites Parliament to take full advantage of this historic opportunity to make this bill a success for the future of official languages. To that end, he respectfully submits concrete recommendations, grouped into the following five themes:

- A robust and effective approach to the governance of official languages;
- Federal institutions that value official languages among their employees and the public;
- Support for official language minority communities and advancement of official languages to preserve gains and clarify institutions' obligations;
- Effective roles and powers for the Commissioner; and
- A coherent language regime for federally regulated private businesses.

2. OFFICIAL LANGUAGES GOVERNANCE: ENSURING A ROBUST AND EFFECTIVE APPROACH

Strict adherence to the OLA starts with effective governance. In this instance, governance refers to the way the federal government goes about implementing the OLA. It has a direct effect on the capacity of institutions and that of their employees to understand their obligations and the values that underpin them, to plan and carry out

their work accordingly, and to account for their results. To ensure full compliance with the OLA, it is therefore crucial that it contain appropriate governance-related provisions.

Bill C-13 makes some improvements in this regard by reinforcing Treasury Board's obligations and assigning concrete responsibilities to some key federal institutions. However, as they stand, these improvements, alone, cannot address the many governance issues that have long undermined the full implementation of the OLA.

The changes to the bill put forward in this chapter are aimed at ensuring that the administration of the OLA falls under the responsibility of Treasury Board, an institution that already has the mandate and means to set broad policies for the federal government as a whole and to monitor their application. The changes are also intended to ensure that federal institutions with a role in official languages governance are made more accountable through appropriate guidance and reporting.

A. A central agency must coordinate the implementation of the OLA and ensure its results

Given its government-wide nature and inherent challenges, the OLA's implementation must be well coordinated. The coordination function, which is critical, should be neither fragmented nor must it be denied appropriate means of action. For this reason, it is important that a central agency be placed in charge, given the authority conferred to such a body by that status. The current iteration of Bill C-13 takes a different approach entirely.

Fragmented governance is a longstanding issue. In his 1971 Annual Report, the first Commissioner, Keith Spicer, pointed out that the Department of the Secretary of State (the predecessor to Canadian Heritage) was poorly equipped to carry out the coordination task it had been given. Because it lacked the necessary means and shared coordination responsibilities with other agencies, the Department of the Secretary of State could not require departments to follow its direction. More than five decades later, the government has not altered its approach to coordinating the implementation of the OLA.

Although Bill C-13 contains a section promisingly entitled "Government-wide Coordination," responsibility for implementing the OLA as a whole is still not assigned to a central agency, since subsection 2.1(1) designates the Minister of Canadian Heritage as "responsible for exercising leadership within the Government of Canada in relation to the implementation of [the OLA]."

As a central agency, Treasury Board, rather than Canadian Heritage, would be best placed to play this role.

B. The agency in charge of implementation must have clearly defined obligations

Once more under subsection 2.1(1), the expression “exercising leadership” is vague and not conducive to requiring that the agency in charge of implementation meet clearly defined obligations. It is therefore important to clarify this role.

Similarly, subsection 2.1(2) states that in its coordination role, the Minister of Canadian Heritage, “shall, in consultation with the other ministers of the Crown, promote and encourage coordination in the implementation of [the OLA], including the implementation of the commitments set out in subsections 41(1) to (3),” relating to enhancing the vitality of communities and fostering official languages, protecting and promoting French, and advancing minority-language learning.

Not only should Treasury Board play this role, as suggested above, but the requirement set out in this provision, i.e., to “promote” and “encourage” the “coordination” of the implementation of the OLA, does not constitute an obligation likely to yield tangible results. The obligations of the coordinating agency must therefore be strengthened such that the agency in charge of the coordination is able to require federal institutions to implement the OLA.

Further, to make it clear that coordination must focus on all obligations and commitments of federal institutions, subsections 41(1) to (3) should not be referred to specifically in subsection 2.1(2) by use of the word “including.”

Moreover, in subsection 2.2(1), Bill C-13 creates an obligation for the Minister of Canadian Heritage, “in cooperation with the other ministers of the Crown,” to “develop and maintain a government-wide strategy that sets out the overall official languages priorities.” A government-wide strategy can contribute to the implementation of the OLA, particularly if it successfully manages to raise federal institutions’ awareness of the government’s key official languages priorities and spurs them to act; however, this new obligation, in its current form, contains a few shortcomings.

First, it is important to amend subsection 2.2(1) so that the government-wide strategy—which should be Treasury Board’s responsibility—is informed by consultations with official language minority communities to ensure it reflects their actual needs. In addition, interdepartmental cooperation, however necessary it may be to establishing a government-wide strategy, must not bog down the process. This risk could be mitigated by giving the agency in charge the discretion, rather than the obligation to consult other federal ministers. Lastly, it is not sufficient that the strategy be “developed” and “maintained”. Accountability measures must absolutely accompany it to ensure it is followed and results are achieved.

C. The governance structure must be effective and transparent

Bill C-13 assigns certain implementation and coordination responsibilities of the OLA to both Canadian Heritage and Treasury Board. This overlap risks perpetuating the fragmented implementation of the OLA.

On one hand, Treasury Board is responsible for the development and general coordination of the principles and programs for the application of parts IV, V and VI of the OLA. Under Bill C-13, it would also be responsible for subsection 41(5) in Part VII, which deals with the *obligation* of federal institutions to take positive measures.

The Minister of Canadian Heritage, on the other hand, is responsible for implementing the OLA, including the *commitments* pertaining to the enhancement of the vitality of minority communities, the protection of French, minority-language learning and, to a certain extent, the commitment relating to estimating the number of children entitled to minority-language education.

It is difficult to distinguish the respective roles Treasury Board and the Minister of Canadian Heritage will play in practice with regard to OLA implementation, particularly the implementation of Part VII, which focuses on the advancement of English and French and the enhancement of the vitality of official language minority communities. The overlap of institutions responsible for OLA implementation causes confusion and impedes effective and transparent governance. Treasury Board's obligation to consult Canadian Heritage also raises questions. Although these obligations would seem desirable at first blush, the question remains as to whether they risk encumbering and further complicating official languages governance.

It is therefore important to correct the relevant provisions of the bill. More specifically, provisions regarding Treasury Board's responsibilities and obligations should be amended such that Treasury Board becomes responsible for establishing policies for the application of Part VII in its entirety, recommending these to the Governor in Council, or even issuing directives to give effect to this part.

Again with a view of making federal institutions more accountable, the OLA should enhance the transparency of certain processes and results. To that end, it would be best for Bill C-13 to provide that the following key documents be made available to the public: the Minister of Citizenship and Immigration's immigration policy, the Minister of Canadian Heritage's process for estimating the number of children of rights holders and, as will be discussed below, federal-provincial-territorial agreements.

Lastly, to achieve a transparent governance structure, the OLA's ten-year reviews should be based on consultations with official language minority communities.

D. Treasury Board should be given enhanced powers

Bill C-13 strengthens Treasury Board's responsibilities, which are set out in Part VIII of the OLA. In effect, it turns the majority of Treasury Board's discretionary powers (what it *may* do) into duties (what it *must* do). This change is a significant step forward, as it provides a much better framework for its mandate. It is, however, necessary to go further.

Under Bill C-13, Treasury Board would retain two discretionary powers. The first is the power to recommend regulations for the application of parts IV, V and VI. On the one hand, part VII should be included, and on the other hand, this power should be made a mandatory duty so that it is not optional for Treasury Board to recommend regulations when they are needed. The second discretionary power is that of delegating any of its powers and duties to the deputy heads of other federal institutions. This power needs to be eliminated, as it would be odd for Treasury Board to be able to delegate powers that are to be made mandatory.

Furthermore, to ensure effective accountability, it is crucial that Treasury Board's auditing and monitoring role be expanded in Bill C-13. First, Part VIII should include a provision that Treasury Board monitors and audits federal institutions' compliance with the OLA, and not be limited to overseeing compliance with policies, directives and regulations. Then, to ensure that the government's identified priorities amount to more than good intentions, Treasury Board should be responsible for monitoring the implementation status of the government-wide strategy.

In short, Treasury Board must be the agency ensuring that the federal government prioritizes official languages not only to ensure compliance with the OLA, but also to advance linguistic duality.

RECOMMENDATIONS:

With regard to horizontal governance by a central agency:

1. Amend the OLA to place Treasury Board in charge of implementing the OLA and ensuring the horizontal coordination of this implementation.
2. Give Treasury Board the role of developing and maintaining the government-wide strategy.
3. Ensure that the government-wide strategy be informed by consultations with official language minority communities.
4. Incorporate monitoring and accountability measures, to be administered by Treasury Board, into the government-wide strategy.

With regard to effective and transparent governance:

5. Eliminate the overlap in responsibilities between Treasury Board and the Minister of Canadian Heritage. In so doing, place Treasury Board in charge of the overall development and of coordinating the principles and programs for the application for Part VII in its entirety, rather than solely subsection 41(5).
6. Make publicly available the immigration policy, the Minister of Canadian Heritage's process for estimating the number of children of rights holders and federal-provincial-territorial agreements.
7. Ensure that each ten-year review of the OLA be accompanied by consultations with official language minority communities.

With regard to the role of Treasury Board:

8. Turn all of Treasury Board's discretionary powers into binding obligations.
9. Eliminate Treasury Board's permission to delegate its powers and duties.
10. Expand Treasury Board's auditing and monitoring role by having it monitor and audit federal institutions' compliance with the OLA.

3. MODERNIZATION'S OVERLOOKED ELEMENTS: FEDERAL INSTITUTIONS THAT PROMOTE OFFICIAL LANGUAGES AMONG THEIR EMPLOYEES AND TOWARD THE PUBLIC

The OLA is more than the sum of its parts. It should be thought of as a whole whose parts reinforce each other. The lack of key provisions in Bill C-13 that would enhance the obligations of institutions when communicating with and providing services to the public, and that would strengthen institutions' obligations toward their employees, is a stumbling block to the success of the bill as a whole.

The amendments suggested in this chapter are intended to ensure that the OLA's core components, i.e., communications and services to the public, and language of work, are also modernized. They are also aimed at ensuring that Bill C-13 does not lose sight of other essential components of a modernized OLA, namely emergencies and federal-provincial-territorial agreements. Lastly, they are a reminder that the OLA must remain relevant in response to rapid changes in technology.

A. The right to communicate with federal institutions and receive services in one's language of choice must be respected

A modernized OLA must be unequivocal about the obligations of federal institutions that interact with the travelling public. It must also ensure that federal institutions fulfill their obligation to provide an active offer of bilingual communications and services. Lastly, the OLA should eliminate any existing ambiguity with regard to the obligations of federal courts when communicating their decisions to the public.

i. Rights of the travelling public

Since Transport Canada transferred its airports to airport authorities, successive commissioners of official languages were confronted with the authorities' restrictive interpretation of their obligations. Rather than recognizing that they are subject to the OLA's general communications and services framework, as all federal institutions are, several chose to interpret their obligations narrowly, limiting them to the provision concerning the travelling public, i.e., section 23 of the OLA.

The Federal Court recently handed down a decision in *Thibodeau v St. John's International Airport Authority*, 2022 FC 563, in which it clarified how to interpret airports' and airport authorities' obligations toward the general public and travelling public.

Any amendment to the relevant provisions of Part IV of the OLA must adhere to this decision. Federal institutions that interact with the travelling public must fully comply with their duties prescribed in section 22 of the OLA, which establishes the general framework governing obligations regarding communications and services, as well as those found in section 23 of the OLA. In addition, the travelling public should include those who use federal institutions' services and communications for the purpose or with the intention of travelling. This includes trip planning, travelling, and the period following the travels.

Therefore, in light of *Thibodeau v St. John's International Airport Authority*, the bill should clarify the duties imposed on federal institutions serving the travelling public by specifying that they apply to a broadly defined travelling public, and by specifying in section 23 that they also include the obligations under section 22 of the OLA.

These changes would contribute significantly to overcoming the impasse and ensuring that the general public and the travelling public have their rights respected.

ii. Active offer

Over the years, several commissioners have noted federal institutions' systematic breaches in their duty to provide an active offer of bilingual communications and services. Poorly understood and poorly implemented by many federal institutions, the duty to provide an active offer falls short of attaining its ultimate goal, which is to enable the public to exercise its right to receive communications and services in the official language of its choice. The absence of an adequate active offer particularly affects members of the linguistic minority who are at greater risk of not exercising their right to receive services and communications in the official language of their choice.

It is therefore crucial that the government clarify the obligation found in the OLA to provide an active offer. The amendments should stipulate specific rules, including the

substance of what constitutes an active offer and the manner in which it ought to be made.

iii. Federal Courts' decisions

Bill C-13 requires that a final decision, order or judgment of a federal court that has precedential value is to be made available simultaneously in both official languages. This addition is of great importance, since it will increase the number of decisions available in both official languages.

However, it would be essential to clarify that when federal court decisions are made available to the public, by being posted on the courts' websites for example, they should be made available simultaneously in both official languages so that both official language communities can benefit equally from these decisions. Too often, federal court decisions are posted on their websites in only one language, and several months—even years—may pass before the version in the other language follows on the website. This practice of electronically publishing decisions in only one language is a significant barrier to equal access to justice in both official languages and must be clarified once and for all.

B. The designated bilingual regions must be renewed and the rights of employees working in those regions must be strengthened

Consistency between regions designated bilingual for language of work purposes and regions where offices have an obligation to provide communications and services in both official languages is crucial. In addition, clarifications should be brought to the right of employees in designated bilingual regions to be supervised in the official language of their choice, as well as to the right of all employees, regardless of where they are, to receive services provided to them as individuals, services that are centrally provided, as well as training in the official language of their choice.

i. Designated bilingual regions

In the current OLA, regions designated as bilingual are not harmonized with regions where offices must provide communications and services to the public in both official languages.

This approach undermines the integral application of the OLA. First, a considerable number of federal public servants who work in regions designated as unilingual for language of work purposes must provide services to the public in both official languages without being entitled to work tools, supervision or training in the languages in which they must provide these services. It stands to reason that services offered to the public in the minority language in regions not designated as bilingual may be less accessible and of lower quality than those offered in designated bilingual regions.

Furthermore, the list of regions designated as bilingual for language of work purposes dates back to 1977. This list, which has been outdated for several years, has not been adjusted by the government to reflect the changes brought about by territorial realignments and reorganizations. It would be beneficial to update it to make it easier to understand.

One thing is certain, the OLA must be modernized to ensure consistency between regions designated as bilingual for language of work purposes and offices that must communicate and provide services in both official languages. It is important that any changes made in this regard ensure that language of work rights in regions currently designated as bilingual are maintained.

Also, federal institutions are now offering their employees a level of flexibility and mobility that was foreign to the workplace when Part V came into effect. The emergence of virtual teams and the proliferation of telework from a region other than the one in which an employee's position is located are new realities that the modernized OLA must take into account. Employees whose positions are located in a designated bilingual region should be able to maintain their Part V rights even when they telework from a region that is unilingual for language of work purposes.

ii. Supervision in one's official language of choice

The OLA provides that employees in regions designated as bilingual have the right to be supervised in the official language of their choice. However, Treasury Board indicates in its *Directive on Official Languages for People Management* that only employees who occupy designated bilingual positions are required to be supervised in the official language of their choice in designated bilingual regions.

Language rights apply to individuals, not to the positions they choose to hold. Every employee occupying a position in a designated bilingual region—modernized in the manner proposed above—should have the right to be supervised in the official language of their choice, *regardless of the language requirements of their position*. Bill C-13 must make this clarification to avoid a narrow interpretation of these rights.

iii. Rights involving training, services provided to individuals and services that are centrally provided

Employees receive a range of services in the performance of their duties, both individually and through centrally provided services, such as administrative services, compensation, training and development. These services are normally provided from the federal institution's head or central office. As such, they should be available in both official languages to employees across the country.

This is not currently the case. For example, a service from a head office offered in French to employees in a Montreal office might not be offered to employees in the

Winnipeg region because one is intended for a region designated as bilingual and the other is not. We must put an end to this narrow approach.

The OLA should therefore be amended to guarantee rights relating to training, services provided to employees as individuals, and services that are centrally provided, to all employees of the federal government. These services go beyond the territorial application of Part V in terms of their importance and availability.

Similarly, it would be useful to enact regulations establishing a list of examples of individual and centrally provided services. Such examples would facilitate the interpretation of Part V of the OLA.

C. Legal obligations in emergencies must be binding

Bill C-13 states in its preamble that "all legal obligations related to the official languages apply at all times, including during emergencies." This addition is welcome as federal institutions tend to neglect these obligations during emergency situations.

However, adding this obligation only in the preamble diminishes its force. It should therefore also be placed in the body of the OLA, thereby making it binding on federal institutions to comply with the OLA at all times, including in emergencies.

D. Language requirements for federal-provincial-territorial agreements must be enshrined in the OLA

It is important not to overlook the fact that federal-provincial-territorial agreements are of the utmost importance to official language minority communities. They can have either negative or positive repercussions for these communities, depending on their content.

Bill C-13 should therefore enshrine in the OLA the obligation for federal institutions to draft all federal-provincial-territorial agreements in both official languages and to include enforceable language clauses. In the interest of transparency, wherever possible, these agreements should be disclosed to the public.

E. The OLA must remain relevant in the context of changing technologies

The technologies that federal institutions use to communicate with the public and their employees have evolved since 1988, when the current OLA was adopted. In order to reflect new technologies and remain relevant, the OLA must be technologically neutral.

Bill C-13 partially adapts the OLA to this reality, by specifying, for example, for a single provision that a publication includes its electronic form. However, it should make the entire OLA technologically neutral so that terms such as "printed," "publication," "communication," and "service" encompass the use of electronic media, social media as well as any current and future means of communication and service delivery.

RECOMMENDATIONS:

With regard to Part IV of the OLA:

1. Taking into account the decision of the Federal Court in *Thibodeau v St. John's International Airport Authority*, clarify the obligations of federal institutions serving the travelling public by specifying that they apply to a broadly defined travelling public and by specifying in section 23 that they also include the duties arising from section 22.
2. Clarify the content and scope of the active offer duty.
3. Clarify that court decisions that are communicated to the public, including those which are posted on the Internet, must be communicated simultaneously in both official languages.

With regard to Part V of the OLA:

4. Modernize the OLA to ensure consistency between regions designated as bilingual for language of work purposes and offices required to communicate and provide services in both official languages, while maintaining the continuation of rights in existing bilingual regions.
5. Clarify in the OLA that employees whose positions are located in a designated bilingual region maintain their Part V rights when teleworking from a unilingual region for language of work purposes.
6. Clarify in paragraph 36(1)(c) of the OLA that the right of an employee to be supervised in the official language of their choice in designated bilingual regions applies regardless of the language requirements of their position.
7. Guarantee rights involving training, services provided to employees as individuals and services that are centrally provided across the country, not only in designated bilingual regions.

With regard to emergencies:

8. Include in the body of the OLA the duty for institutions to comply with the OLA at all times, including in emergencies.

With regard to federal-provincial-territorial agreements:

9. Enshrine in the OLA the duty of federal institutions to draft any federal-provincial-territorial agreements in both official languages, to incorporate enforceable language clauses in these agreements and to disclose them to the public.

With regard to technologically neutral legislation:

10. Make the entire OLA technologically neutral so that the language used includes the use of electronic media, social media and any other current and future means of communication and service delivery.

4. SUPPORT FOR COMMUNITIES AND ADVANCEMENT OF OFFICIAL LANGUAGES: PRESERVING GAINS AND PROVIDING A FRAMEWORK FOR OBLIGATIONS

Over the years, the provisions of the OLA regarding the advancement of English and French and support for the development and vitality of communities (the Part VII provisions) have led to a great deal of misunderstanding and inaction by federal institutions. It is true that the leadership of some federal institutions has made it possible to advance major community development initiatives and to promote the richness of the two official languages across the country. However, there have been too many missed opportunities for action, not to mention measures that have had detrimental effects. This is why a modernized OLA must firmly clarify and improve federal institutions' obligations.

Substantial amendments to Part VII of the OLA are proposed in Bill C-13, some of which are a step in the right direction. However, taken as a whole, the amendments risk undermining the Federal Court of Appeal's interpretation of the institutions' duties under Part VII as set out in *Canada (Commissioner of Official Languages*) *v Canada (Employment and Social Development*), 2022 FCA 14 (*FFCB*). This situation is deeply concerning.

This chapter proposes amendments to Bill C-13 that would enshrine in the OLA the principles set out in the Federal Court of Appeal's decision in order to preserve the gains that have been made. It also describes the elements of the bill that need to be further clarified in Part VII regulations. Finally, it proposes ways to strengthen the provisions concerning the immigration policy and the estimation of children of minority language education rights holders.

A. Federal institutions' discretion to take positive measures must be clarified

From the outset, Bill C-13 makes certain amendments to the OLA which undoubtedly improve Part VII.

In addition to maintaining the commitment to enhance the vitality of English and French linguistic minority communities and support their development, the bill imposes new commitments on the government with corresponding duties, such as advancing opportunities for English and French linguistic minorities to pursue quality learning in their own language.

Bill C-13 also provides guidance to federal institutions in fulfilling their obligation to take positive measures to implement the government's commitments. For example, subsection 41(6) of the modernized OLA specifies that these measures shall be "concrete and taken with the intention of having a beneficial effect on the implementation of the commitments."

The obligation to take positive measures as prescribed by the Federal Court of Appeal in *FFCB*, is, however, diluted in Bill C-13.

First, subsection 41(5)—the key provision of the bill regarding the duty to take positive measures—states that "[e]very federal institution has the duty to ensure that the positive measures that it considers appropriate are taken for the implementation of the commitments under subsections (1) to (3)." The institution is given too much latitude by the specification that the positive measures a federal institution shall take are those "that it considers appropriate." It might well find that it is appropriate not to take any positive measures. Yet, while the Federal Court of Appeal recognized that federal institutions have latitude in determining *which* positive measures are appropriate, it imposes a duty on them to act, to the extent possible, to enhance the vitality of minority communities.

Second, the new paragraph 41(7)(a) of the modernized OLA provides that in carrying out its mandate, every federal institution shall, on the basis of analyses that the federal institution considers appropriate, consider whether positive measures could potentially be taken under subsection 41(5). This provision is of no assistance to the duty in subsection 41(5) to take positive measures. The federal institution is again given too much latitude, contradicting the duty to act recognized by the Federal Court of Appeal, since the federal institution will be merely required to *consider* the potential of taking positive measures, on the basis of analyses *that it considers appropriate*.

Finally, the Federal Court of Appeal established that the obligation to take positive measures is ongoing. Bill C-13 does not clearly contain the same requirement. Part VII needs to be clarified in accordance with *FFCB* to require federal institutions to act so long as they can to implement the government's commitments, not just once or sporadically.

In order to preserve the gains made through the Federal Court of Appeal's decision, it is essential, first, to circumscribe the leeway given to federal institutions in the bill to take positive measures under subsection 41(5) of the modernized OLA. Second, the wording of subsection 41(7) should be revised to incorporate the two-step analysis set out in *FFCB*, adapting it to the commitments enumerated in subsections 41(1) to 41(3). According to this analysis, if one takes the example of the commitment to enhance the vitality of minority communities, federal institutions must first be sensitive to the particular circumstances of these communities and determine the impact of their decisions and initiatives on them. They must then act to enhance the vitality of these communities when implementing their decisions and initiatives; or where these decisions and initiatives could have a negative impact, they must act to mitigate these negative repercussions.

This means that federal institutions should have an obligation to take appropriate positive measures, based on impact analyses, to implement the commitments set out in the modernized OLA in an ongoing manner.

B. Federal institutions must mitigate the negative impacts of their decisions

The duty of federal institutions to identify any negative impacts their decisions may have on communities and to take steps to mitigate them is just as important as the duty to take positive measures.

In comparison to the current OLA, Bill C-13 partially recognizes the importance of this approach. In accordance with subsection 41(7), in carrying out its mandate, every federal institution shall, on the basis of analyses that the federal institution considers appropriate, take into account the direct negative impacts that its structuring decisions may have on the government's commitments in order to consider the possibilities for mitigating those negative impacts.

However, the wording of subsection 41(7) dilutes the duty established by the Federal Court of Appeal in *FFCB*, requiring federal institutions to act to mitigate the negative repercussions of their decisions.

First, under Bill C-13, federal institutions are required to carry out "analyses that the federal institution considers appropriate." This again leaves it up to them to determine not only at what stage an analysis should be carried out, but also *whether* it should even be carried out. A federal institution might therefore choose not to carry out an impact analysis.

Moreover, subsection 41(7) requires only that federal institutions "consider the possibilities" for mitigating the "direct" negative impacts that their "structuring" decisions may have on government commitments. Not only do federal institutions not have to consider the impacts of their "non-structuring" decisions—a term that is not defined in the bill—or any negative impacts that are not considered to be "direct," but they also do not have a duty to act.

To preserve the gains made through the Federal Court of Appeal's decision in *FFCB*, Bill C-13 should not give federal institutions such leeway. The bill should be amended to require them to mitigate any negative repercussions resulting from their decisions, based on impact analyses. In other words, their obligation to act should not be limited to "structuring" decisions or to decisions with "direct" negative impacts.

C. Regulations clarifying Part VII must not be delayed

It is important that the government fulfills its commitment to quickly enact regulations to clarify certain provisions of the new Part VII and provide a better framework for its implementation.

i. Application of paragraph 41(6)(b)

The new paragraph 41(6)(b) narrows the scope of positive measures that may be taken by federal institutions. Positive measures shall respect both the necessity of protecting and promoting the French language, taking into account that French is in a minority situation in North America, and the necessity of considering the specific needs of each of the two official language communities of Canada, taking into account the equal importance of the two communities.

Federal institutions may have difficulty understanding how to implement this provision. A regulation clarifying the implementation parameters would therefore be very useful.

ii. Dialogue and consultation activities, research and evidence-based findings

The decision-making process that federal institutions must follow to comply with the requirements of the other Part VII provisions, specifically with respect to dialogue and consultation activities, research and evidence-based findings, could also be prescribed by regulation.

iii. Evaluation and monitoring mechanisms

Subsection 41(10) of Bill C-13 requires federal institutions to establish evaluation and monitoring mechanisms in relation to the positive measures they take. In its current form, however, this provision does not specify whether those mechanisms must meet minimum requirements.

It would be helpful to make regulations to clarify the terms of these evaluation and monitoring mechanisms, such as what they must always include. This would ensure greater consistency in accountability across federal institutions.

iv. Obligations of the Minister of Foreign Affairs

Under Bill C-13, the federal government is now required to advance the use of English and French in the conduct of Canada's external affairs and to promote French as part of Canada's diplomatic relations. The Minister of Foreign Affairs "shall take such measures as that Minister considers appropriate for the implementation of the commitment."

However, the Minister of Foreign Affairs' obligation is not specific enough to properly implement this important new commitment to showcase our two official languages abroad. It would therefore be helpful to make regulations clarifying the obligation. For example, regulations could provide parameters for the Minister's discretion to take such measures that Minister considers appropriate for the implementation of the government's commitment. They could also include accountability measures that would be overseen by a central agency.

v. Obligations of the Minister of Canadian Heritage

Bill C-13 specifies the measures the Minister of Canadian Heritage *may* take to advance the equality of status and use of English and French in Canadian society.

This approach only partially recognizes the important role played by Canadian Heritage for official languages. The bill does not improve the governance of this key department's activities. Subsection 43(1) of the OLA remains non-binding in that it stipulates that the Minister of Canadian Heritage "shall take such measures as that *Minister considers appropriate* to advance the equality of status and use of English and French in Canadian society."

As is the case for the Minister of Foreign Affairs, the discretion that the Minister of Canadian Heritage may exercise—to "take such measures as that Minister considers appropriate"—should be clarified by regulations.

D. The Minister of Citizenship and Immigration needs more direction

Bill C-13 requires the Minister of Citizenship and Immigration to "adopt a policy on francophone immigration to enhance the vitality of French linguistic minority communities in Canada." It specifies that the policy must include objectives, targets and indicators, and a statement that the federal government recognizes that immigration is one of the factors that contributes to maintaining or increasing the demographic weight of French linguistic minority communities in Canada.

The inclusion of a francophone immigration policy is a significant step forward. However, amendments are needed to ensure that it is better able to achieve its ultimate goal of enhancing the vitality of francophone minorities.

First, although the bill indicates that the policy must contain objectives, targets and indicators, it does not require that they actually be linked to maintaining and increasing the demographic weight of francophone minorities. It is therefore important that the bill be amended to ensure that the objectives, targets and indicators are set with the purpose of maintaining and increasing the demographic weight of francophone minorities.

Second, the bill does not specify that the policy should address the entire immigration continuum, nor does it make mention of a strategy to encourage francophone immigrants to settle in francophone minority communities. The bill could be amended to broaden the scope of the policy to be adopted by the Minister so that it does not just apply to the selection and welcoming of francophone immigrants.

Third, the obligation created by the bill is to *adopt* a policy, not to achieve its objectives and meet its targets. The Minister of Citizenship and Immigration is not accountable if these are not met. It is important, therefore, that the Minister specify how they intend to achieve the objectives and targets and what indicators will be used to measure the results. Monitoring and reporting on the policy's performance will also be necessary. Furthermore, the bill does not require consultation with official language minority communities in developing the immigration policy, nor does it require public access to the policy. Amendments are therefore needed to create those requirements.

Finally, the provision regarding the immigration policy will come into force on a day to be set by order in council. It is important that the Minister of Citizenship and Immigration's obligation to adopt a policy on francophone immigration be fulfilled in a timely manner, and therefore that the order in council be issued promptly after Royal Assent.

E. Estimating the number of rights holder children must go beyond a process

Bill C-13 includes a new commitment by the government to contribute to an estimate of the number of children whose parents, under section 23 of the *Canadian Charter of Rights and Freedoms*, have the right to have their children receive instruction in the language of the English or French linguistic minority population of a province or territory, including the right to have them receive that instruction in minority language educational facilities. The bill requires that the Minister of Canadian Heritage shall establish a process to implement this commitment.

Given the importance of knowing the number of children whose parents are rights holders, this new commitment by the government is a significant step forward. However, the obligation to implement this commitment is lacking.

Unlike some of the government's commitments in the bill, this commitment does not impose a corresponding obligation on federal institutions to take positive measures to implement it. The Minister of Canadian Heritage is responsible for establishing a "process," for the federal government to *then* implement its commitment.

The obligation of the Minister of Canadian Heritage is not binding or specific enough to produce tangible results. Establishing a process is certainly necessary, but beyond that, there should be an obligation to directly implement the government's commitment to contribute to an estimate of the number of rights holder children. It would be advisable to include in the bill a clear obligation for Statistics Canada, among others, to implement the commitment regarding the estimate of rights holders.

Lastly, Canadian Heritage should have an obligation to consult official language minority communities when establishing the process for implementing the government's commitment.

RECOMMENDATIONS:

With regard to clarifying the discretion of federal institutions to take positive measures:

1. Create an obligation for federal institutions to take appropriate positive measures, based on impact analyses, to implement the commitments set out in the modernized OLA in an ongoing manner.
2. To preserve the gains made in the Federal Court of Appeal's decision in *FFCB* and enshrine the principles developed in this decision, circumscribe the latitude given to federal institutions in taking the positive measures prescribed in subsection 41(5) of the modernized OLA.
3. To preserve the gains made in the Federal Court of Appeal's decision in *FFCB* and enshrine the principles developed in this decision, amend the wording of subsection 41(7) of the modernized OLA to incorporate the two-step analysis established by the Federal Court of Appeal, adapting it to the commitments set out in subsections 41(1) to 41(3).

With regard to the obligation to mitigate the negative impacts of decisions:

4. Create an obligation for federal institutions to mitigate any negative impacts resulting from their decisions, based on impact analyses.

With regard to regulations for Part VII:

5. Enact regulations that include the following:
    a. Implementation parameters for new paragraph 41(6)(b);
    b. Implementation parameters for the decision-making process that federal institutions are required to adopt in relation to dialogue and consultation activities, research and evidence-based findings;
    c. Implementation parameters for the evaluation and monitoring mechanisms provided for in subsection 41(10);
    d. Parameters for the obligation of the Minister of Foreign Affairs and the Minister of Canadian Heritage to take such measures as they consider appropriate under subsections 42(2) and 43(1) of the OLA.

With regard to direction for the Minister of Citizenship and Immigration:

6. Link the objectives, targets and indicators of the immigration policy to the objective of maintaining and increasing the demographic weight of francophone minorities.
7. Ensure that the immigration policy apply to the entire immigration continuum.

8. Require the Minister of Citizenship and Immigration to specify how they intend to achieve the objectives and targets.
9. In the OLA require that the immigration policy include monitoring and accountability measures.
10. In the OLA require that the immigration policy be based on consultation with minority communities.
11. Make the immigration policy available to the public.
12. Promptly issue an order in council regarding the coming into force of the obligation to adopt an immigration policy.

With regard to the process of estimating the number of rights holder children:

13. Create a more binding obligation to implement the commitment to periodically contribute to an estimate of the number of rights holder children; include a clear obligation for Statistics Canada, among others, to implement this commitment.

5. THE COMMISSIONER'S NEW ROLES AND POWERS: PROVISIONS TO BE FINE-TUNED

Bill C-13 greatly improves the Commissioner of Official Languages' ability to bring federal institutions into compliance with the OLA. Compliance agreements, orders, and administrative monetary penalties ("monetary penalties"), in addition to increased flexibility in investigations as well as the ability to make certain parts of these public, are all useful and necessary powers given to the Commissioner for this purpose.

The amendments to Bill C-13 being proposed in this chapter are intended to make the Commissioner's power to make orders more flexible and to broaden the power to impose monetary penalties. They are also intended to ensure that the remedies provided in connection with the Commissioner's powers enable complainants to obtain prompt and fair redress for violations of their language rights.

A. The power to make orders must be more flexible

Bill C-13 empowers the Commissioner to make an order directing an institution to take any action that the Commissioner considers appropriate to rectify a contravention of the parts of the OLA dealing with communications with and services to the public and language of work. This is a substantial improvement to the OLA.

The new provision requires the Commissioner to complete a number of steps before making such an order. The Commissioner must have reasonable grounds to believe that a federal institution has contravened Part IV or V of the OLA, have made recommendations in respect of that contravention or an identical contravention by the

institution, and have previously invited the federal institution to enter into a compliance agreement.

Inasmuch as it may delay and complicate progress toward compliance, the prerequisite of having made recommendations to the federal institution in an investigation report should be removed from the bill. In other words, the Commissioner should have the discretion to make an order in the final investigation report, after notifying the institution.

B. The scope of the administrative monetary penalty regime must be reviewed and expanded

The new monetary penalty regime set out in Bill C-13 will give the Commissioner an important new tool in his efforts to ensure compliance with the OLA. However, it has a number of shortcomings that will undoubtedly undermine its usefulness.

i. Scope of monetary penalties

First and foremost, the scope of the monetary penalty regime is far too narrow. The bill states that monetary penalties may only be imposed on Crown corporations and corporations subject to the OLA that are designated by regulation, that have duties under Part IV, that operate in the transportation sector, and that engage in communications with and provide services to the travelling public.

All of these conditions greatly diminish the scope of application of monetary penalties. These could apply to all federal institutions with obligations under Part IV or V of the OLA, or both parts. At the very least, they should apply to federally regulated private businesses subject to the *Use of French in Federally Regulated Businesses Act* ("UFA"). By comparison, the monetary penalty regime in the *Accessible Canada Act*, SC 2019, c 10, is much broader in scope than the provisions in the current version of this bill. Therefore, a review of the application of the monetary penalty regime is required.

The monetary penalty regime in a modernized OLA should not be narrow in application; it should be designed to remain relevant as the compliance landscape evolves for all institutions.

ii. Monetary penalty regulations

Bill C-13 requires that the designation of organizations subject to the monetary penalty regime, which is necessary for the application of the regime, be made by regulation. This approach carries risks which require special attention. First, the need to designate organizations by regulation delays the application of this instrument, which is urgently needed to improve compliance. Second, it is important to set a high bar for successive governments should they seek to change the organizations designated by regulation.

Specifying in the OLA those organizations which are subject to the monetary penalty regime—using the inclusive definition proposed above—would limit this risk.

The bill also allows for the designation by regulation of contraventions that may be subject to a monetary penalty. This suggests the possibility that some violations under Part IV may be excluded. However, it is important to make all violations of Part IV—and Part V of the OLA, as proposed above—and any corresponding regulations, subject to monetary penalties. In addition, the regulatory approach creates avoidable uncertainty regarding which violations could result in a monetary penalty. Again for the sake of comparison, it is instructive to look at the *Accessible Canada Act*, which has a monetary penalty regime whose essential application measures are prescribed in the act itself rather than in regulations.

iii. Ultimate goal of monetary penalties

Amounts paid in respect of monetary penalties are appropriately remitted to the Receiver General. The purpose of monetary penalties, as Bill C-13 itself states, is not to punish but to promote compliance with the OLA. In the same vein, monies resulting from penalties should ultimately contribute to the advancement of linguistic duality. It would be advisable for the bill to require that amounts paid to the Receiver General be subsequently reallocated to a fund to support projects that benefit Canada's two official language communities.

iv. Coming into force

Bill C-13 provides that the monetary penalty regime will come into force on a day to be fixed by order of the Governor in Council. It is important to set a deadline for the coming into force of this long-awaited regime.

C. We must ensure better access to justice

The need for and importance of having judicial remedies in connection with the Commissioner's powers are clear. These remedies should ensure that complainants have access to justice and can obtain timely redress for violations of their language rights.

i. Right of review with respect to compliance agreements

Bill C-13 gives the Commissioner the power to enter into a compliance agreement with a federal institution. A compliance agreement will allow the Commissioner and the institution to agree on solutions that will enable the institution to comply with the OLA. The advantage of a compliance agreement is that it can be tailored to the specific situation raised by the complaint. At the Commissioner's invitation, the complainant may be made party to the agreement. It is therefore a flexible mechanism for ensuring that the problem that gave rise to the complaint is resolved.

On the other hand, the bill states that, if a complainant agrees to be a party to a compliance agreement, the complainant may not apply to the Federal Court for a remedy in the event that they disagree with the Commissioner's position on the institution's compliance with the agreement. In addition, the complainant must apply to the Federal Court for the suspension of any pending applications in respect of any matter covered under the agreement.

The modernized OLA should provide a legal recourse for complainants who are party to a compliance agreement and believe that the federal institution has failed to comply in whole, or in part, with the terms of the agreement, even if the Commissioner believes that the federal institution has complied. A complainant who feels that their rights have been violated should have access to justice.

ii. "De novo" review

Bill C-13 allows complainants and federal institutions to seek review of any matter that is the subject of an order of the Commissioner. It also allows federal institutions to apply for a review of the amount of a monetary penalty, of the facts of an alleged violation, or both.

It specifies that applications for review are *de novo* proceedings. Unlike a judicial review, a *de novo* remedy is heard and determined as a new proceeding, which means that the analysis is conducted again, in all cases, without deference to the Commissioner's analysis. If a federal institution challenges the Commissioner's decision, be it either an order or a monetary penalty, the Federal Court will have to redo the analysis that led to the Commissioner's decision to determine whether the order in question should have been made or the monetary penalty in question should be paid.

The *de novo* nature of the review is problematic for both the Commissioner's orders and monetary penalties. It could sow doubt among federal institutions as to how much attention they ought to pay to the Commissioner's recommendations, up until a decision is taken by the Commissioner to make an order or impose a monetary penalty, which could then be challenged in court. The *de novo* review could have the effect of encouraging federal institutions to challenge the Commissioner's decisions in court, given that it will require a new analysis which could revisit the merits of a complaint. The *de novo* review also significantly prolongs the process of providing fair and suitable redress to complainants for the violation of their language rights.

The type of remedy proposed in Bill C-13 should be revised to give deference to the Commissioner's analysis, based on five decades of accumulated expertise. It could, however, allow new evidence to be presented without the case having to be reviewed *de novo*.

RECOMMENDATIONS:

With regard to the Commissioner's power to make orders:

1. The Commissioner should have the power to make an order in the final investigation report. The prerequisite of having made recommendations should therefore be removed from the bill.

With regard to the Commissioner's power to impose administrative monetary penalties:

2. The organizations that are subject to the administrative monetary penalty regime should be designated in the OLA and not in future regulations.
3. The Commissioner's power to impose administrative monetary penalties should be expanded to apply to all federal institutions with obligations under Part IV or V, or both. At the very least, administrative monetary penalties should apply to businesses subject to the *Use of French in Federally Regulated Private Businesses Act*.
4. All violations of parts IV and V of the OLA and their regulations should be subject to the administrative monetary penalty regime. The possibility of exemption by regulation should be removed.
5. The monies generated by administrative penalties should be used to advance linguistic duality. Accordingly, they should be allocated to a Linguistic Duality Fund.
6. There should be a deadline for the coming into force of the administrative monetary penalty regime.

With regard to better access to justice:

7. The OLA should provide a right of judicial review for complainants who are party to a compliance agreement and believe, unlike the Commissioner, that the federal institution concerned has failed to comply with the compliance agreement.
8. The judicial review provisions applicable to orders and administrative monetary penalties should be revised, affording deference to the Commissioner's decisions, while allowing for the presentation of new evidence without the case being reviewed *de novo*.

6. FEDERALLY REGULATED PRIVATE BUSINESSES: ENSURING CONSISTENCY

Bill C-13 enacts the *Use of French in Federally Regulated Private Businesses Act* ("UFA"). Federally regulated private businesses ("FRPBs" or "businesses") include banks, air and marine transportation services, and telecommunications companies. The bill extends language rights to more Canadians by creating new obligations for such businesses toward consumers and employees.

Taking into account the minority status of French in North America, it is reasonable for Bill C-13 to focus on the need to protect and promote that language. Changes to the bill are however required to ensure greater harmonization with the OLA and clarify concepts that are central to the implementation of the UFA.

A. The UFA and OLA regimes must be consistent

The bill states that businesses subject to the UFA are not businesses that are already subject to the OLA, such as Air Canada or Canadian National. As a result, FRPBs will have obligations that may differ depending on which act they are subject to, including some companies in the same industry, such as Air Canada and WestJet. This means that the public they serve and the employees who work for them will have different rights, and different remedies, depending on which act applies. Ultimately, Canadians will find themselves in a fragmented and sometimes inconsistent language environment. Moreover, they will not have certain key language protections under the UFA that they have under the OLA.

Greater harmonization is therefore required.

i. Rights of Canada's two linguistic minorities

The stated purpose of the UFA is to "foster and protect the use of French in federally regulated private businesses in Quebec" and, at a later date, in "regions with a strong francophone presence." It creates obligations for FRPBs only with respect to French. It also states that language rights must be given a large, liberal and purposive interpretation and are to be interpreted in light of their remedial character. However, unlike the OLA as modernized by Bill C-13, it does not expressly state that substantive equality is the norm to be used for the interpretation of language rights.

There is no doubt that the protection and advancement of French are laudable goals. But there is also no doubt that enshrining the norm of substantive equality and recognizing legislative rights for both official language communities do not conflict with the protection and advancement of French.

The choice given to FRPBs in Quebec to be subject to the UFA or the *Charter of the French language* also raises a question that deserves particular attention. One of its consequences would be that rights, obligations and remedies would vary depending on the regime chosen by FRPBs located in Quebec. This could leave the public uncertain as to what rights they can exercise if they choose to do business with an FRPB or consider working for one.

ii. Differences between the two regimes

First, with respect to communications with and services to the public, the UFA does not address the rights of the travelling public, unlike the OLA. Section 7 of the UFA sets out,

in general terms, the right of consumers to communicate with FRPBs in French. Although this section could be interpreted as including the travelling public, it would certainly benefit from being made clear. Even if travelling from a UFA region to a non-UFA region, this public is undeniably part of the "consumer" group; and its language rights must be protected.

The UFA also does not address situations in which FRPBs would use third parties to provide certain services. It does not explicitly require FRPBs to ensure that third parties providing services to the public on their behalf, or third parties providing services to the travelling public, meet the same language requirements. It is therefore important that the UFA emulate the OLA in this respect and include a provision specifying FRPBs' obligations in instances where they employ third parties.

Finally, unlike the OLA, the UFA makes no mention of certain aspects of FRPBs' communications with the public, such as signage and active offer. The absence of active offer is a particularly significant shortcoming. The obligation regarding active offer of services and communications to consumers is paramount, given how crucial it is that consumers be informed of their language rights, especially in light of the fragmented application of FRPBs' language obligations, some being subjected to the UFA and others the OLA.

B. Key concepts remain to be clarified

Implementation of the UFA currently depends on the enactment of regulations defining concepts that are critical to its application. Some definitions ought to be incorporated directly into the UFA, while others should follow in regulations enacted as soon as possible.

i. Rights of "consumers"

The UFA creates a right for "consumers" to communicate in French with FRPBs. However, the term "consumer," which is an important category of rights holders in the UFA, is not defined. The UFA states that it may be defined by regulation. Yet, respect for consumer rights should not depend on, or await, regulations. The UFA should therefore contain a definition of the term so that consumer rights are explicit and definitively guaranteed from the moment the act comes into force.

Moreover, the definition of "consumer" should include all members of the public. Such a definition would ensure greater consistency between the rights of the public under the OLA and the rights of the *same* public with respect to FRPBs subject to the UFA. It would be unfortunate for a member of the public to be able to communicate in French with an FRPB governed by the OLA and not with an FRPB governed by the UFA simply because they are not considered a "consumer" for the purposes of their

communication. Restricting the definition of "consumer" would, therefore, be inappropriate.

ii. Rights of "employees"

The UFA states that the term "employee" may also be defined by regulation. However, like the term "consumer," it should be defined in the UFA to ensure that employees of FRPBs know their rights and employers know their obligations when the UFA comes into force.

Insofar as it is necessary to define "employees" for the purposes of the UFA, they should be the same category of persons as those who are considered to be "employees" for the purposes of Part V of the OLA, thereby ensuring consistency between the two statutes.

iii. "Regions with a strong francophone presence" and "number of employees"

Certain concepts will still need to be defined by regulation. That is the case for "regions with a strong francophone presence" and "number of employees."

The UFA provides that the government may take into account any factors it considers appropriate in defining, by regulation, a "region with a strong francophone presence", including the number of francophones in a region, the number of francophones in a region as a proportion of the region's total population, and the vitality and specificity of French linguistic minority communities.

The first two factors are quantitative, and the third is qualitative. It is important that the latter factor be central to the definition of "region with a strong francophone presence," since French-speaking communities in Canada are statistically in a minority situation. In addition, it is a good idea to have regular reviews of the designation of regions so that the UFA has the flexibility to adapt to changing demand in service across the country.

The definition of "number of employees" is particularly important because it will limit the number of FRPBs to which the UFA will apply.

The government should consider setting a low number of employees for the application of the UFA to FRPBs, so that the regime can effectively serve a greater number of Canadians.

All things considered, the government should commit to enacting regulations as soon as possible to define these key concepts, on which the application of the regime depends.

iv. Exemption of selected FRPBs by regulation

Under Bill C-13, the government may make regulations exempting FRPBs from the application of any provision of the UFA or its regulations "for any reason." Giving the government *carte blanche* makes the rights of the public and employees uncertain and

unpredictable. Any exemption of an FRPB, if necessary, should be included and justified in the UFA, not adopted by regulation.

v. Rights of travelling employees

The UFA does not address the case of employees of FRPBs who, in the course of their work, are required to travel between Quebec (or a region with a strong francophone presence) and a region not covered by the UFA. It would be appropriate to clarify what protection those employees have under the UFA.

RECOMMENDATIONS:

With regard to the consistency between the UFA and OLA regimes:

Specifically with regard to the FRPBs' right of option:

1. The choice given to federally regulated private businesses in Quebec to be subject to the *Charter of the French language* should be re-examined with the purpose of reducing public uncertainty.

Specifically with regard to the differences between the two regimes:

2. Section 7 of the UFA should include rights for the travelling public.
3. The UFA should include signage, active offer and third party obligations.

With regard to key concepts that remain to be clarified:

4. The term "consumer" should be defined in the UFA and should include all members of the public.
5. The term "employee" should cover the same class of persons as those who are considered employees under the OLA.
6. Regulations need to be enacted as soon as possible to define the key concepts of "region with a strong francophone presence" and "number of employees."
7. Qualitative factors should be central to the regulatory definition of "region with a strong francophone presence." Regular reviews of the designation of such regions are desirable.
8. The "number of employees" to be established by regulation should be low.
9. Any exemption of an FRPB, if necessary, should be included and justified in the UFA, not adopted by regulation.
10. Employees who must travel between UFA covered and non-UFA covered regions should be afforded protections under the UFA.

7. A COMPREHENSIVE MODERNIZATION IS WITHIN REACH

It bears reiterating that Bill C-13 is a real step forward. Nevertheless, following his analysis, the Commissioner finds it necessary to make recommendations concerning the governance of official languages, the obligations of federal institutions and federally regulated private businesses, and the powers of the Commissioner.

In light of the above, the Commissioner has found recurring issues throughout Bill C-13:

- Inconsistencies between various parts and provisions of the OLA, as well as between the OLA and the UFA;
- The latitude given to federal institutions in meeting their obligations;
- Inefficiencies in the exercise of powers by some key federal institutions;
- Lack of accountability measures;
- Insufficient dialogue with official language minority communities;
- Vagueness surrounding some key terms and concepts.

These issues suggest that Bill C-13 does not fully reflect the experience of the past 50 years; an experience which showcased not only the factors that have impeded the achievement of the OLA's goals but also the prerequisites for achieving significant, lasting progress.

In submitting his recommendations, the Commissioner sincerely hopes that they will help make Bill C-13 a historic milestone for official languages and the communities that speak them. It is thus essential that this language rights reform—which marks a major turning point in the history of official languages—be enacted without delay.

APPENDIX A

PROPOSED WORDING TO ACCOMPANY CERTAIN RECOMMENDATIONS IN THE BRIEF

APPENDIX A

A. Proposed wording to accompany certain recommendations in the brief

The purpose of this appendix is to propose wording to accompany some of the recommendations contained in the brief in order to give parliamentarians more information. The Commissioner wishes to make it clear that his recommendations in the brief are still the cornerstone of his position on Bill C-13.

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
MODERNIZATION'S OVERLOOKED ELEMENTS: FEDERAL INSTITUTIONS THAT PROMOTE OFFICIAL LANGUAGES AMONG THEIR EMPLOYEES AND TOWARD THE PUBLIC (pp. 6–11 of the Brief)		
With regard to technologically neutral legislation (p. 10)		
10. Make the entire OLA technologically neutral so that the language used includes the use of electronic media, social media and any other current and future means of communication and service delivery. *Explanatory notes: In drafting this proposal, we have been*	"**communication**" and "**communicate**" mean any form of communication, including spoken, written, virtual and electronic, as well as any other current and future forms of communication; *(communication)* et *(communiquer)* "**publication**" and "**publish**" mean any form of publication regardless of the medium used, including paper, electronic and virtual, as well as	**« communication »** et **« communiquer »** Toute forme de communication, notamment les communications orales, écrites, virtuelles, et par voie électronique, ainsi que toute autre forme de communication actuelle et à venir; *(communication)* and *(communicate)* « **publication** » et « **publier** » Toute forme de publication, quel que soit le support utilisé, notamment les publications sur support papier, électronique et

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
guided in particular by section 11(1.1) of Canada's Official Languages Act*, R.S.C. 1985, c. 31 (4th Supp.), as amended by Bill C-13; New Brunswick's* Official Languages Act*, S.N.B. 2002, c. O-0-5; and the* Library and Archives of Canada Act*, S.C. 2004, c. 11.*	any other current and future forms of publication; *(publication)* et *(publier)* "**service**" means any form of service offered or provided, including spoken, written, virtual and electronic, as well as any other current and future forms of service delivery; *(service)*	virtuel, ainsi que toute autre forme de publication actuelle et à venir; *(publication)* and *(published)* « **service** » Toute forme de service offert, notamment sous forme orale, écrite, virtuelle et électronique, ainsi que toute autre forme de service actuelle et à venir; *(service)*
With regard to Part IV of the OLA (p. 6 à 8)		
1. Taking into account the decision of the Federal Court in *Thibodeau v St. John's International Airport Authority*, clarify the obligations of federal institutions serving the travelling public by specifying that they apply to a broadly defined travelling public and by specifying in section 23 that they also include the duties arising from section 22.	**23 (1)** For greater certainty, in addition to the duty prescribed in section 22 of this Act, every federal institution that provides services or makes them available to the travelling public has the duty to ensure that any member of the travelling public can communicate with and obtain those services in either official language from any office or facility of the institution in Canada or elsewhere where there is significant demand for those services in that language. …	**23 (1)** Il est entendu qu'en plus de l'obligation prévue à l'article 22 de la présente loi, il incombe aux institutions fédérales offrant des services aux voyageurs de veiller à ce que ceux-ci puissent, dans l'une ou l'autre des langues officielles, communiquer avec leurs bureaux et en recevoir les services, là où, au Canada comme à l'étranger, l'emploi de cette langue fait l'objet d'une demande importante. …

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
Explanatory notes: This example shows the kind of amendments that could be made to section 23 of the OLA. As proposed in the Brief, this amendment should include the definition of "travelling public".		
With regard to Part V of the OLA (p. 8 à 10)		
6. Clarify in paragraph 36(1)(c) of the OLA that the right of an employee to be supervised in the official language of their choice in designated bilingual regions applies regardless of the language requirements of their position.	**36 (1)** Every federal institution has the duty, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), to **…** **(c)** ensure that~~,~~	**36 (1)** Il incombe aux institutions fédérales, dans la région de la capitale nationale et dans les régions, secteurs ou lieux désignés au titre de l'alinéa 35(1)a) : **…** **c)** de veiller : ~~à ce que, là où il est indiqué de le faire pour que le milieu de travail soit propice à l'usage effectif des deux langues officielles, les gestionnaires et les superviseurs soient aptes à communiquer avec les employés dans celles-ci lorsqu'ils exercent leurs attributions à titre de gestionnaires ou de superviseurs~~

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
	(i) each employee is supervised by their managers and supervisors in the official language of their choice, regardless of the linguistic identification of their position ~~if it is appropriate or necessary in order to create a work environment that is conducive to the effective use of both official languages, managers and supervisors are able to communicate in both official languages with employees of the institution in carrying out their managerial or supervisory responsibilities~~, and (ii) any management group that is responsible for the general direction of the institution as a whole has the capacity to function in both official languages.	(i) à ce que chaque employé soit supervisé par ses gestionnaires et ses superviseurs dans la langue officielle de son choix, et ce, sans égard à l'identification linguistique de son poste, (ii) à ce que la haute direction soit en mesure de fonctionner dans ces deux langues.
SUPPORT FOR COMMUNITIES AND ADVANCEMENT OF OFFICIAL LANGUAGES: PRESERVING GAINS AND PROVIDING A FRAMEWORK FOR OBLIGATIONS (pp. 12–19 of the Brief)		
With regard to clarifying the discretion of federal institutions to take positive measures and with regard to the obligation to mitigate the negative impacts of decisions (p. 12 à 14)		
1. Create an obligation for federal institutions to take appropriate positive measures,	**41 (5)** Every federal institution has the duty to:	**41 (5)** Il incombe aux institutions fédérales :

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
based on impact analyses, to implement the commitments set out in the modernized OLA in an ongoing manner. **2.** To preserve the gains made in the Federal Court of Appeal's decision in *Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)* 2022 FCA 14 and enshrine the principles developed in this decision, circumscribe the latitude given to federal institutions in taking the positive measures prescribed in subsection 41(5) of the modernized OLA. **3.** To preserve the gains made in the Federal Court of Appeal's decision in *Canada (Commissioner of Official Languages) v Canada (Employment and Social*	**(a)** ensure that ~~the~~ positive measures ~~that it considers appropriate~~ are taken, as appropriate based on analyses conducted under subsections (7) to (9), for the implementation of the commitments under subsections (1) to (3)~~.~~; and **(b)** take positive measures so long as it is able to act toward achieving the intended purpose of the commitments set out in subsections (1) to (3). … **(7)** In carrying out its mandate, every federal institution shall ~~on the basis of~~conduct analyses to determine the impact that its decisions and initiatives might have on the commitments set out in subsections (1) to (3) ~~that the federal institution considers appropriate~~ and, in that context, shall: **(a)** consider whether positive measures could ~~potentially~~ be taken under subsection (5); and **(b)** take into account the ~~direct~~ negative impacts that its ~~structuring~~ decisions and initiatives may have on the commitments under subsections (1) to (3) and take measures as prescribed under	**a)** de veiller à ce que soient prises les mesures positives ~~qu'elles estiment indiquées~~ qui sont indiquées, sur la base des analyses effectuées en vertu des paragraphes (7) à (9), pour mettre en œuvre les engagements énoncés aux paragraphes (1) à (3)~~.~~; **b)** de prendre des mesures positives tant et aussi longtemps qu'elles peuvent agir afin d'atteindre l'objectif envisagé par les engagements énoncés aux paragraphes (1) à (3). … **(7)** Dans la réalisation de leur mandat, les institutions fédérales effectuent~~, sur la base~~ des analyses pour déterminer les impacts que leurs décisions et initiatives pourraient avoir sur les engagements énoncés aux paragraphes (1) à (3) et, dans ce cadre, elles~~qu'elles estiment indiquées~~ : **a)** considèrent ~~le potentiel de~~ la prise de mesures positives au titre du paragraphe (5); **b)** prennent en compte les impacts négatifs ~~directs~~ que leurs décisions et initiatives ~~structurantes~~ pourraient avoir sur les engagements énoncés aux paragraphes (1) à (3), et ~~ce afin de considérer les possibilités~~ prennent

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
Development) 2022 FCA 14 and enshrine the principles developed in this decision, amend the wording of subsection 41(7) of the modernized OLA to incorporate the two-step analysis established by the Federal Court of Appeal, adapting it to the commitments set out in subsections 41(1) to 41(3). **4.** Create an obligation for federal institutions to mitigate any negative impacts resulting from their decisions, based on impact analyses. *Explanatory notes: The amendments to subsections 41(5) and 41(7) are based on the principles derived from* Canada (Commissioner of Official Languages) v Canada (Employment and Social	subsection (5) in order to ~~consider the possibilities for~~ mitigat~~ing~~ those negative impacts.	des mesures au titre du paragraphe (5) afin d'atténuer ces effets négatifs.

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
Development), *2022 FCA 14. See, for example, paragraphs 141 and 163 of that decision.*		
With regard to direction for the Minister of Citizenship and Immigration (p. 16 à 17)		
6. Link the objectives, targets and indicators of the immigration policy to the objective of maintaining and increasing the demographic weight of francophone minorities. **7.** Ensure that the immigration policy apply to the entire immigration continuum. *Explanatory notes: This example focuses on recommendations 6 and 7. However, the Commissioner's recommendations on Francophone immigration*	**44.1 (1)** The Minister of Citizenship and Immigration shall adopt a policy on the continuum of francophone immigration to enhance the vitality of French linguistic minority communities in Canada. **(2)** The policy shall include, among other things, **(a)** objectives, targets and indicators that aim to maintain or increase the demographic weight of French linguistic minority communities in Canada; and **(b)** a statement that the Government of Canada recognizes that immigration is one of the factors that contributes to maintaining or increasing the demographic weight of French linguistic minority communities in Canada.	**44.1 (1)** Le ministre de la Citoyenneté et de l'Immigration adopte une politique en matière du continuum de l'immigration francophone afin de favoriser l'épanouissement des minorités francophones du Canada. **(2)** La politique comprend notamment : **a)** des objectifs, des cibles et des indicateurs visant à maintenir ou à accroître le poids démographique des minorités francophones du Canada; **b)** un énoncé du fait que le gouvernement fédéral reconnaît que l'immigration est l'un des facteurs qui contribuent au maintien ou à l'accroissement du poids démographique des minorités francophones du Canada.

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
policy cannot be fully implemented without the additions proposed in recommendations 8 and 9.		
With regard to the process of estimating the number of rights holder children (p. 17 à 18)		
13. Create a more binding obligation to implement the commitment to periodically contribute to an estimate of the number of rights holder children; include a clear obligation for Statistics Canada, among others, to implement this commitment. *Explanatory notes: To ensure consistency, the commitment contained in subsection 41(4) is moved to the first paragraph of a new, separate section of section 41. The corollary obligation to this commitment contained in the new*	~~**41 (4)**~~ **41.1 (1)** The Government of Canada is committed to contributing periodically to an estimate of the number of children whose parents have, under section 23 of the *Canadian Charter of Rights and Freedoms*, the right to have their children receive their instruction in the language of the English or French linguistic minority population of a province or territory, including the right to have them receive that instruction in minority language educational facilities. ~~**2.3**~~ **41.1 (2)** The Minister of Canadian Heritage shall establish a process for Statistics Canada, and any other federal institution that may be included in that process, ~~the Government of Canada~~ to implement its commitment under subsection ~~41(4)~~41.1(1).	~~**41 (4)**~~ **41.1 (1)** Le gouvernement fédéral s'engage à contribuer périodiquement à l'estimation du nombre d'enfants dont les parents ont, en vertu de l'article 23 de la *Charte canadienne des droits et libertés*, le droit de les faire instruire dans la langue de la minorité francophone ou anglophone d'une province ou d'un territoire, y compris le droit de les faire instruire dans des établissements d'enseignement de la minorité linguistique. ~~**2.3**~~ **41.1 (2)** Le ministre du Patrimoine canadien établit un processus pour que ~~le gouvernement fédéral~~ Statistique Canada, et toute autre institution fédérale pouvant être inclue dans ce processus, mettent en œuvre l'engagement énoncé au paragraphe ~~41(4)~~41.1(1).

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
section 2.3 of the modernized OLA is then moved to the second paragraph of this new section.	**41.1 (3)** For greater certainty, federal institutions designated in the Minister of Canadian Heritage's process shall implement the commitment set out in subsection (1).	**41.1 (3)** Il est entendu que les institutions fédérales désignées par l'entremise du processus établi par le ministre du Patrimoine canadien mettent en œuvre l'engagement énoncé au paragraphe (1).
THE COMMISSIONER'S NEW ROLES AND POWERS: PROVISIONS TO BE FINETUNED (pp. 19–23 of the Brief)		
With regard to the Commissioner's power to make orders (p. 19 à 20)		
1. The Commissioner should have the power to make an order in the final investigation report. The prerequisite of having made recommendations should therefore be removed from the bill.	**64.5 (1)** If, after carrying out an investigation of a complaint in respect of a right or duty under Part IV or V, the Commissioner has reasonable grounds to believe that a federal institution has contravened that Part, ~~and has made recommendations under subsection 63(3) in respect of that contravention, or in respect of an identical contravention of that Part by the institution,~~ the Commissioner may make an order directing that institution to take any action that the Commissioner considers appropriate to rectify the contravention. **…**	**64.5 (1)** Au terme d'une enquête sur une plainte visant une obligation ou un droit prévus aux parties IV ou V, le commissaire peut, s'il a des motifs raisonnables de croire qu'une institution fédérale a contrevenu à l'une de ces parties, ~~et qu'il a fait des recommandations aux termes du paragraphe 63(3) à l'égard de la contravention ou d'une contravention identique commise par l'institution fédérale à l'une de ces parties,~~ lui enjoindre, par ordonnance, de prendre toute mesure qu'il juge indiquée pour remédier à la contravention. **…**

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
With regard to the Commissioner's power to impose administrative monetary penalties (p. 20 à 21)		
2. The organizations that are subject to the administrative monetary penalty regime should be designated in the OLA and not in future regulations. **3.** The Commissioner's power to impose administrative monetary penalties should be expanded to apply to all federal institutions with obligations under Part IV or V, or both. At the very least, administrative monetary penalties should apply to businesses subject to the *Use of French in Federally Regulated Private Businesses Act*. **4.** All violations of parts IV and V of the OLA and their	**65.1** The following definitions apply in sections 65.3 to 65.95 and subsection 66(3). ***designated body*** means federal institutions ~~a corporation~~ referred to in section 65.2. (*organisme désigné*) **65.2** Sections 65.3 to 65.95 apply to federal institutions ~~a Crown corporation — or corporation that is subject to this Act under another Act of Parliament —~~ that ~~**(a)** is designated by regulation;~~ ~~**(b)**~~ haves~~**)**~~ duties under Part IV or V; ~~**(c)** operates in the transportation sector; and~~ ~~**(d)** engages in communications with and provides or makes available services to the travelling public.~~	**65.1** Les définitions qui suivent s'appliquent aux articles 65.3 à 65.95 et au paragraphe 66(3). ***organisme désigné*** Toutes ~~société d'État ou personne morale~~ institutions fédérales visées à l'article 65.2. (*designated body*) **65.2** Les articles 65.3 à 65.95 s'appliquent aux institutions fédérales qui ~~sociétés d'État — ainsi qu'aux personnes morales assujetties à la présente loi en application d'une autre loi fédérale — qui remplissent les conditions suivantes :~~ ~~**a)** elles sont désignées par règlement;~~ ~~**b)**~~ ~~elles~~ ont des obligations au titre de la partie IV ou de la V.~~;~~ ~~**c)** elles exercent leurs activités dans le domaine des transports;~~ ~~**d)** elles offrent des services aux voyageurs et communiquent avec eux.~~

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
regulations should be subject to the administrative monetary penalty regime. The possibility of exemption by regulation should be removed. *Explanatory notes: In order to make federally regulated private businesses fully subject to administrative monetary penalties, amendments must also be made to the* Use of French in Federally Regulated Private Businesses Act*.* *In addition, this appendix does not include all of the legislative changes necessary to ensure consistency of the amended paragraphs.*	**65.3** The purpose of a penalty is to promote compliance with Part IV and Part V and not to punish. **65.4 (1)** The Governor in Council may, on the recommendation of the Minister of Canadian Heritage, make regulations ~~**(a)** designating any corporation for the purposes of section 65.2;~~ ~~**(b)** designating, as a violation that may be proceeded with in accordance with sections 65.3 to 65.95, the contravention of any specified provision of Part IV or the regulations made under that Part in respect of specified communications and services or specified categories of communications and services;~~ **(c)** fixing a penalty, or a range of penalties, in respect of each violation; **(d)** for the purposes of paragraph (3)(d), establishing other criteria to be considered in determining the amount of the penalty if a range of penalties is established;	**65.3** L'imposition d'une sanction vise non pas à punir, mais plutôt à favoriser le respect de la partie IV et de la partie V. **65.4 (1)** Sur la recommandation du ministre du Patrimoine canadien, le gouverneur en conseil peut prendre des règlements : ~~**a)** désignant des sociétés d'État ou des personnes morales pour l'application de l'article 65.2;~~ ~~**b)** désignant comme violation punissable au titre des articles 65.3 à 65.95 la contravention à toute disposition spécifiée de la partie IV et de ses règlements relativement aux services et communications spécifiés ou aux catégories de services et communications spécifiées;~~ **c)** déterminant le montant de la sanction — ou établissant un barème de sanctions — applicable à chaque violation; **d)** établissant, pour l'application de l'alinéa (3)d), d'autres critères applicables à la détermination du montant de la sanction, lorsqu'un barème de sanctions est établi;

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
	(e) increasing the amount of the maximum penalty set out in subsection (2); **(f)** respecting the service of documents required or authorized to be served under sections 65.3 to 65.95, including the manner and proof of service and the circumstances under which documents are to be considered to be served; **(g)** establishing the form and content of notices of violation; and **(h)** generally, for carrying out the purposes and provisions of sections 65.3 to 65.95. **…** **(3)** If a range of penalties is fixed by regulations made under paragraph (1)(c) in respect of a violation, then the Commissioner shall take into account the following criteria in determining the amount of the penalty: **…** **(b)** the history of compliance, by the designated body that is believed to have committed the violation, with the provisions of Part IV, Part V and the regulations made under ~~that~~ these parts ~~that~~	**e)** augmentant le montant maximal de la sanction prévu au paragraphe (2); **f)** concernant la signification des documents autorisés ou exigés par les articles 65.3 à 65.95, notamment par l'établissement de présomptions et de règles de preuve; **g)** établissant la forme et le contenu des procès-verbaux de violation; **h)** de façon générale, prévoyant toute autre mesure d'application des articles 65.3 à 65.95. **…** **(3)** Lorsqu'un barème de sanctions applicable à une violation est établi au titre des règlements pris en vertu de l'alinéa (1)c), le commissaire tient compte des critères ci-après pour la détermination du montant de la sanction : **…** **b)** les antécédents du prétendu auteur de la violation en ce qui a trait au respect des dispositions de la partie IV, de la partie V et de leurs ~~ses~~ règlements afférents ~~désignées par les règlements pris en vertu de~~

Number and text of recommendation	Proposed wording (EN)	Proposed wording (FR)
	~~are designated by regulations made under paragraph (1)(b)~~; … **65.5** Every designated body that contravenes a provision in Part IV, Part V or the regulations made under these parts ~~designated by regulations made under paragraph 65.4(1)(b)~~ commits a violation and is liable to a penalty of an amount to be determined in accordance with regulations made under paragraph 65.4(1)(c) and with subsection 65.4(3). … **65.6 (1)** If, after carrying out an investigation of a complaint in respect of a right or duty under a provision in Part IV, Part V or the regulations made under these parts ~~designated by regulations made under paragraph 65.4(1)(b)~~, the Commissioner has reasonable grounds to believe that a designated body has committed a violation and has made a report under subsection 63(1) in respect of that violation, the Commissioner may issue a notice of violation and shall cause it to be served — along with the report and any other relevant document — on the body.	~~l'alinéa (1)b)~~; … **65.5** La contravention à une disposition de la partie IV, de la partie V ou de leurs règlements afférents ~~— désignée par les règlements pris en vertu de l'alinéa 65.4(1)b) —~~ constitue une violation pour laquelle l'organisme désigné s'expose à une sanction dont le montant est déterminé conformément aux règlements pris en vertu de l'alinéa 65.4(1)c) et au paragraphe 65.4(3). … **65.6 (1)** Si, au terme d'une enquête sur une plainte visant une obligation ou un droit prévus à une disposition de la partie IV, de la partie V ou de leurs règlements afférents ~~désignée par les règlements pris en vertu de l'alinéa 65.4(1)b)~~, il a des motifs raisonnables de croire qu'une violation a été commise et il a établi un rapport au titre du paragraphe 63(1) à l'égard de la violation, le commissaire peut dresser un procès-verbal qu'il fait signifier avec le rapport et tout autre document pertinent prétendu auteur de la violation.

APPENDIX B

FURTHER RECOMMENDATIONS FOR AMENDMENTS TO BILL C-13

B. Further recommendations for amendments to Bill C-13

#	Section	Recommendation	Proposed wording (EN)	Proposed wording (FR)
			PART IV	
1	**Sec. 27**	To facilitate the interpretation of section 27, the English version should be amended to reflect the broader and more neutral language contained in the French version.	**27** Wherever in this Part there is a duty in respect of communications and services in both official languages, the duty applies in respect of oral and written communications and in respect of anything that relates ~~documents or activities that relate~~ to those communications or services.	**27** L'obligation que la présente partie impose en matière de communications et services dans les deux langues officielles à cet égard vaut également, tant sur le plan de l'écrit que de l'oral, pour tout ce qui s'y rattache.
2	**Sec. 28**	The two language versions of section 28 should be made equivalent, given that they currently do not have the same meaning. The French version of the provision uses the word "ou" ("or"), which allows a choice as to the form of the active offer, whereas the English version uses	**28** Every federal institution that is required under this Part to ensure that any member of the public can communicate with and obtain available services from an office or facility of that institution, or of another person or organization on behalf of that institution, in either official	**28** Lorsqu'elles sont tenues, sous le régime de la présente partie, de veiller à ce que le public puisse communiquer avec leurs bureaux ou recevoir les services de ceux-ci ou de tiers pour leur compte, dans l'une ou l'autre langue officielle, il incombe aux institutions fédérales de veiller également à ce que les

		the word “and”, which requires that all forms of the active offer be used. It should be noted that this proposal is in addition to the recommendations related to active offer contained in the Commissioner’s brief.	language shall ensure that appropriate measures are taken, including the provision of signs, notices and other information on services and the initiation of communication with the public, to make it known to members of the public that those services are available in either official language at the choice of any member of the public.	mesures voulues soient prises pour informer le public, notamment par entrée en communication avec lui ~~ou encore~~ et par signalisation, avis ~~ou~~ et documentation sur les services, que ceux-ci lui sont offerts dans l’une ou l’autre langue officielle, au choix.
PART V				
3	**Para. 35(1)(a), subsec. 36(2), sec. 37 and para. 38(1)(b)**	The English versions of certain sections of Part V uses the term “accommodate” to reflect the terms “permettre” and “respecte”, which are used in the French versions of these provisions. The notion of “accommodation” used in the English version, however, is not in keeping with the OLA and with language rights in general. Therefore, the verb “accommodate” should be replaced by a term equivalent to	**35 (1)** Every federal institution has the duty to ensure that **(a)** within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed, work environments of the institution are conducive to the effective use of both official languages and ~~accommodate~~ enable the use of either official language by its officers and employees; and	**35 (1)** Il incombe aux institutions fédérales de veiller à ce que : **a)** dans la région de la capitale nationale et dans les régions ou secteurs du Canada ou lieux à l’étranger désignés, leur milieu de travail soit propice à l’usage effectif des deux langues officielles tout en permettant à leurs employés d’utiliser l’une ou l’autre;

		the French versions so that the rights and obligations are the same in both language versions.	**…** **36 (2)** Every federal institution has the duty to ensure that, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), the measures that can reasonably be taken are taken in addition to those required under subsection (1) to establish and maintain work environments of the institution that are conducive to the effective use of both official languages and ~~accommodate~~ enable the use of either official language by its employees. **…** **37** Every federal institution that has authority to direct, or provides services to, other federal institutions has the duty to ensure that it exercises its powers and carries out its duties in relation to those other	**…** **36 (2)** Il leur incombe également de veiller à ce que soient prises, dans les régions, secteurs ou lieux visés au paragraphe (1), toutes autres mesures possibles permettant de créer et de maintenir en leur sein un milieu de travail propice à l'usage effectif des deux langues officielles et qui permette à leurs employés d'utiliser l'une ou l'autre. **…** **37** Il incombe aux institutions fédérales de veiller à ce que l'exercice de leurs attributions respecte, dans le cadre de leurs relations avec les autres institutions fédérales sur lesquelles elles ont autorité ou

			institutions in a manner that ~~accommodates~~ respects the use of either official language by employees of those institutions. **…** **38 (1)** The Governor in Council may make regulations in respect of federal institutions, other than the Senate, House of Commons, Library of Parliament, office of the Senate Ethics Officer, office of the Conflict of Interest and Ethics Commissioner, Parliamentary Protective Service or office of the Parliamentary Budget Officer, **…** **(b)** prescribing any other measures that are to be taken, within the National Capital Region and in any part or region of Canada, or in any place outside Canada, that is prescribed for the purpose of paragraph 35(1)(a), to establish and maintain work	qu'elles desservent, l'usage des deux langues officielles fait par les employés de celles-ci. **…** **38 (1)** Le gouverneur en conseil peut, par règlement visant les institutions fédérales autres que le Sénat, la Chambre des communes, la bibliothèque du Parlement, le bureau du conseiller sénatorial en éthique, le bureau du commissaire aux conflits d'intérêts et à l'éthique, le Service de protection parlementaire ou le bureau du directeur parlementaire du budget: **…** **b)** prendre toute autre mesure visant à créer et à maintenir, dans la région de la capitale nationale et dans les régions ou secteurs du Canada, ou lieux à l'étranger, désignés pour l'application de l'alinéa 35(1)a), un milieu de travail propice à l'usage effectif

			environments of those institutions that are conducive to the effective use of both official languages and ~~accommodate~~ enable the use of either official language by their employees;	des deux langues officielles et à permettre à leurs employés d'utiliser l'une ou l'autre;
PART IX				
4	**Sec. 52**	Section 52 requires the Commissioner to obtain the approval of the Treasury Board to fix and pay the remuneration and expenses of persons having technical or specialized knowledge relating to the work of the Commissioner. To maintain the independence of the Commissioner, it would be preferable to remove the requirement for Treasury Board approval. Moreover, it appears that section 52 of the OLA is difficult to reconcile with the Treasury Board's *Directive on the Management of Procurement*, which came into force on	**52** The Commissioner may engage, on a temporary basis, the services of persons having technical or specialized knowledge of any matter relating to the work of the Commissioner to advise and assist the Commissioner in the performance of the duties of his office and~~,~~ ~~with the approval of the Treasury Board,~~ may fix and pay the remuneration and expenses of those persons.	**52** Le commissaire peut engager temporairement des experts compétents dans les domaines relevant de son champ d'activité et~~, avec l'approbation du Conseil du Trésor,~~ fixer et payer leur rémunération et leurs frais.

		May 13, 2021 [“the *Directive*”]. According to the *Directive*, the Office of the Commissioner of Official Languages, as an agent of Parliament, is not subject to certain parts of the *Directive* (i.e., subsection 4.2.9, section 4.6 and Appendix A) that impose requirements for obtaining approval from a Minister, the Treasury Board or the Treasury Board of Canada Secretariat. However, section 52 of the OLA nonetheless requires Treasury Board approval to hire experts on a temporary basis.		
5	**Subsec. 64.6(1)**	In order to reflect the standard used in French and in other provisions of the OLA (including section 64.5), the “motifs raisonnables” standard in the French version of the provision should be “reasonable grounds” in the English version, rather than “opinion”.	**64.6 (1)** If the Commissioner ~~is of the opinion~~ has reasonable grounds to believe that a federal institution has not complied with the terms of an order made under subsection 64.5(1), the Commissioner may file in the Federal Court a copy of the order certified by the Commissioner to be a true copy.	**64.6 (1)** S’il a des motifs raisonnables de croire que l’institution fédérale n’a pas respecté l’ordonnance rendue en application du paragraphe 64.5(1), le commissaire peut déposer devant la Cour fédérale une copie certifiée conforme par lui de cette ordonnance.

PART X				
6	**Subsec. 77(2) and (3)**	Subsection 77(2) of the OLA allows a complainant to apply to the Federal Court for a remedy within sixty days after the latter has been informed of recommendations under subsection 64(2). It is not clear that subsection 77(2), as currently worded, allows a complainant to apply for a remedy after the Commissioner has conducted a follow-up that does not include recommendations or that concludes that an institution has acted on the Commissioner's original recommendations. Therefore, to facilitate complainants' access to justice, subsection 77(2) should specify that a complainant may apply for a remedy within sixty days after the latter has been informed of the conclusions of the report sent following the	**77 (2)** An application may be made under subsection (1) within 60 days — or within any further time that the Court may allow, on request made either before or after the expiry of those 60 days — after **(a)** the results of an investigation of the complaint by the Commissioner are reported to the complainant under subsection 64(1), **(b)** the complainant is informed of the recommendations of the Commissioner under subsection 64(2), **(b.1)** the complainant is informed of the conclusions of the report sent following the recommendations made under subsection 63(3), or **(c)** the complainant is informed of the Commissioner's decision to	**77 (2)** Sauf délai supérieur accordé par le tribunal sur demande présentée ou non avant l'expiration du délai normal, le recours est formé dans les soixante jours qui suivent la communication au plaignant des conclusions de l'enquête, des conclusions du rapport envoyé à la suite des recommandations faites en vertu du paragraphe 63(3), des recommandations visées au paragraphe 64(2) ou de l'avis de refus d'ouverture ou de poursuite d'une enquête donné au titre du paragraphe 58(5).

		recommendations made under subsection 63(3). To ensure consistency, these changes must also be made to subsection 77(3).	refuse or cease to investigate the complaint under subsection 58(5). **(3)** Where a complaint is made to the Commissioner under this Act but the complainant is not informed of the results of the investigation of the complaint under subsection 64(1), of the conclusions of the report sent following the recommendations made under subsection 63(3), of the recommendations of the Commissioner under subsection 64(2) or of a decision under subsection 58(5) within six months after the complaint is made, the complainant may make an application under subsection (1) at any time thereafter.	**(3)** Si, dans les six mois suivant le dépôt d'une plainte, il n'est pas avisé des conclusions de l'enquête, des conclusions du rapport envoyé à la suite des recommandations faites en vertu du paragraphe 63(3), des recommandations visées au paragraphe 64(2) ou du refus opposé au titre du paragraphe 58(5), le plaignant peut former le recours à l'expiration de ces six mois.
7	**N/A**	The consequences of certain actions and omissions by federal institutions may take several years to become apparent. Moreover, the decision in *Canada (Commissioner of Official*	**79.1** For greater certainty, evidence relating to facts that occurred after the complaint was made to the Commissioner is admissible in the course of proceedings under this Part, in	**79.1** Il est entendu que les éléments de preuve faisant état de faits survenus après le moment du dépôt de la plainte dont le commissaire était saisi sont admissibles dans les recours

		Languages) v Canada (Employment and Social Development), 2022 FCA 14, recognized that the obligation to take positive measures to implement the government's commitment in Part VII of the OLA is an ongoing one. It would be important to reflect this in the OLA by fully recognizing the right of the Court to consider evidence of events occurring after complaints were made to the Commissioner.	particular to assess the merits of the complaint as well as the appropriate and just remedy.	formés sous le régime de la présente partie, notamment pour évaluer le bien-fondé de la plainte ainsi que la réparation convenable et juste.
VARIOUS PARTS				
8	**Subsec. 3(1), 63.1(3), 64.5(6), 64.5(7), 65.6(4), 65.9(1), 78.1(1), 78.1(4) and 78.3(3)**	Some provisions in Bill C-13 use the term “business day”. However, the term “day” is still used in other provisions of the OLA not amended by Bill C-13. The use of two different methods of calculating time in different sections of the same legislation makes the application of the OLA more complicated than it needs	~~***Business day*** means a day other than~~ ~~**(a)** a Saturday;~~ ~~**(b)** a Sunday or other holiday; and~~ ~~**(c)** a day that falls during the seasonal recess, as defined in~~	~~***jour ouvrable*** Jour autre que :~~ ~~**a)** le samedi ;~~ ~~**b)** le dimanche ou un autre jour férié ;~~ ~~**c)** un jour compris dans les *vacances judiciaires saisonnières,* au sens de l’article 2 des *Règles*~~

		to be. All references to “business day” should be removed and replaced with “day”. *Explanatory note: If the change from “business day” to “day” unduly shortens certain timeframes, an amendment to the number of days in the wording could be considered.*	~~section 2 of the Federal Courts Rules; (***jour ouvrable***)~~ **…** **63.1 (3)** Before making the information public, the Commissioner shall give to the deputy head or other administrative head of any federal institution concerned at least 30 ~~business~~ days’ notice of the Commissioner’s intention to make it public. **…** **64.5 (6)** The order takes effect on the 31st ~~business~~ day after the day on which the deputy head or other administrative head of the federal institution receives the notice. **…** **64.5 (7)** For the purpose of this section, the deputy head or other administrative head of the federal institution is deemed to have received a notice on the fifth	~~*des Cours fédérales.* (***business day***)~~ **…** **63.1 (3)** Avant de rendre les renseignements publics, le commissaire donne à l’administrateur général ou à tout autre responsable administratif de l’institution fédérale concernée un avis d’au moins trente jours ~~ouvrables~~ de son intention de les rendre publics. **…** **64.5 (6)** L’ordonnance prend effet le trente et unième jour ~~ouvrable~~ suivant la date à laquelle l’administrateur général ou tout autre responsable administratif de l’institution fédérale reçoit l’avis. **…** **64.5 (7)** Pour l’application du présent article, l’administrateur général ou tout autre responsable administratif de l’institution fédérale est réputé avoir reçu

			~~business~~ day after the date of the notice. … **65.6 (4)** The notice of violation shall … **(f)** inform the designated body that the penalty is to be paid within 30 ~~business~~ days after the day on which the notice of violation is served and specify the manner in which to do so; … **65.9 (1)** Instead of paying the penalty set out in a notice of violation, the designated body named in the notice may, within 30 ~~business~~ days after the day on which the notice is served and in the manner specified in the notice, apply to the Federal Court for a review of the facts of the alleged violation or of the amount of the penalty, or both.	l'avis le cinquième jour ~~ouvrable~~ suivant la date que porte l'avis. … **65.6 (4)** Tout procès-verbal mentionne les éléments suivants : … **f)** le délai de trente jours ~~ouvrables~~ suivant la date de la signification du procès-verbal pour payer la sanction, ainsi que les autres modalités de paiement; … **65.9 (1)** Au lieu de payer la sanction, le prétendu auteur de la violation peut, dans les trente jours ~~ouvrables~~ suivant la date de la signification du procès-verbal et selon les modalités mentionnées dans celui-ci, exercer devant la Cour fédérale un recours en révision des faits reprochés ou du montant de la

				sanction, ou des deux.
			…	…
			78.1 (1) A person who makes a complaint described in subsection 64.5(1) and who receives a notice under subsection 64.5(5) in respect of the complaint may, within 30 ~~business~~ days after the day on which the deputy head or other administrative head of the federal institution receives the notice, apply to the Court for a review of any matter that is the subject of the order set out in the notice.	**78.1 (1)** Le plaignant dont la plainte est visée au paragraphe 64.5(1) et qui reçoit à cet égard l'avis prévu au paragraphe 64.5(5) peut, dans les trente jours ~~ouvrables~~ suivant la réception de l'avis par l'administrateur général ou tout autre responsable administratif de l'institution fédérale, exercer devant le tribunal un recours en révision de toute question dont traite l'ordonnance contenue dans l'avis.
			(2) A federal institution may, within 30 ~~business~~ days after the day on which its deputy head or other administrative head receives a notice under subsection 64.5(5), apply to the Court for a review of any matter that is the subject of the order set out in the notice.	**(2)** L'institution fédérale peut, dans les trente jours ~~ouvrables~~ suivant la réception de l'avis en application du paragraphe 64.5(5) par son administrateur général ou tout autre responsable administratif, exercer devant le tribunal un recours en révision de toute question dont traite l'ordonnance contenue dans l'avis.

			… **78.1 (4)** For the purposes of this section, the deputy head or other administrative head of the federal institution is deemed to have received the notice on the fifth ~~business~~ day after the date of the notice. **…** **78.3 (3)** If a complainant files notice of their intention to appear as a party to a review with the Court within 10 ~~business~~ days after the expiry of the period referred to in subsection 78.1(2), they may raise for determination by the Court any matter in respect of which they may make an application under subsection 78.1(1).	**…** **78.1 (4)** Pour l'application du présent article, l'administrateur général ou tout autre responsable administratif de l'institution fédérale est réputé avoir reçu l'avis le cinquième jour ~~ouvrable~~ suivant la date que porte l'avis. **…** **78.3 (3)** Le plaignant qui présente au tribunal un avis d'intention de comparaître comme partie à l'instance dans les dix jours ~~ouvrables~~ suivant l'expiration du délai prévu au paragraphe 78.1(2) peut soulever auprès du tribunal et faire trancher toute question à l'égard de laquelle il peut exercer le recours prévu au paragraphe 78.1(1).