



ARCHIVED - Government Transformations: The Impact on Canada's Official Languages Program - March 1998

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SUMMARY

Devolution, partnering, privatization, restructuring and cutbacks have been changing the face of Canada's federal government for several years. Federal institutions have been substantially altered, new ones have been created and, within the federal administration, there has been a significant shift in authority from central agencies to departments and Crown corporations. These changes are consistent with a rethinking of the role of government in society throughout the western world and at all levels of government.

The Commissioner has undertaken this assessment of the transformation of the federal public administration to determine the consequences for Canada's official language minority communities. The study was prompted by previous complaint investigations concerning some of the changes which have already taken place. An evaluation in early 1997 of federal provincial agreements in labour market development found that the negotiating process did not always ensure adequate protection of language rights. As we have examined, in general and in relation to specific complaints, the implementation of Part VII of the *Official Languages Act* ("the Act"), we have been obliged to conclude that in most instances the government's commitment to enhancing the vitality and supporting the development of language minority communities has not been given sufficient weight.

The study maps the evolution of institutional change in Canada's public sector from the early 1980s, beginning with the

Nielsen Task Force in 1984, through to Public Service 2000 in 1989, the 1994 and 1996 Program Review exercises and the federal government's ongoing renewal initiative. It then examines the transformation and creation of several federal institutions, including the Canadian Tourism Commission and the Canada Business Service Centres, as well as the government's plans for a new parks agency and a revenue and customs agency. It also reviews federal provincial negotiations in social housing, in immigrant settlement services and in regard to the federal *Contraventions Act*, as well as the transfer of health services to the Yukon government. To complete the picture, the study considers the evolving relationship between central agencies and other federal institutions in the management of the official languages program and the present state of institutional two-language capability in the federal Public Service.

The study confirms that the similarity of previous investigation results was not a coincidence. The transformation of the federal government has resulted in a subtle but cumulative erosion of language rights and, within the federal administration, has weakened the official languages program. The Commissioner concludes that the principal causes lie in the lack of clear accountability for management of the program and in the government's failure to consider fully, and give appropriate priority to, its responsibility for the interests of minority language communities, as federal institutions cope with changing circumstances and reduced resources. The Commissioner recommends the establishment of a task force on official languages with a mandate to develop the necessary strategies, policies and criteria to ensure full recognition and implementation of the Act in the evolving federal administration. To assist the task force, the Commissioner proposes a set of guiding principles for official languages in government transformations and calls on the federal government to adopt them as its policy.



I. INTRODUCTION

Rationale

Public administrations in Canada and around the world have undergone dramatic changes in recent years. There has been an explosion of devolution, partnering, privatization, delegation, decentralization, restructuring, downsizing and cutbacks¹ as traditional approaches to government are re-assessed and re-fashioned. Many of the concepts themselves are relatively new to the Canadian context. Who talked of devolution in Canada a decade ago? Who imagined the extent to which partnerships between the public and private sectors would take hold in Canadian political discourse and government operations?

Such questions are of more than passing interest to the Commissioner of Official Languages. With a mandate to ensure that federal institutions comply with the spirit and intent of the *Official Languages Act*, the Commissioner has a responsibility to monitor changes in the way this country is governed at the national level and the impacts of those changes on the language rights of English- and French-speaking Canadians. At issue is not government's right to manage the affairs of state, but its obligation to do so in a manner which is consistent with Canada's fundamental principles, including its linguistic duality.

In recent years the Commissioner, as Canada's official languages ombudsman, has received dozens of complaints related to changes in the federal administration.² In just one example, the 1996 budgetary reductions imposed on the Canadian Broadcasting Corporation, over 80 individuals and organizations brought to the Commissioner's attention their concerns about the effects of those cuts on official language minority communities. Investigations of complaints concerning various institutions revealed each time that official languages obligations had not been fully considered, had not been given priority, as the department, agency or Crown corporation sought to cope with changing circumstances and diminished resources. In addition, the Commissioner has noted with increasing concern the reduced role of central agencies in managing the official languages program and the loss of visibility of the program in day-to-day operations as well as in government-wide initiatives.

As the federal public administration continues to undergo significant change, the Commissioner has undertaken the present study in order to determine the extent of the problem and the nature of its origins. The study was conducted on the basis of Subsection 56(1) of the Act which prescribes that:

[I]t is the duty of the Commissioner to take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages and compliance with the spirit and intent of this Act in the administration of the affairs of federal institutions

including any of their activities relating to the advancement of English and French in Canadian society.

The Commissioner hopes that this analysis will provide guidance to the government in order to address existing weaknesses, and to prevent changes which are still in development, and those to come, from adversely affecting Canada's official language minority communities and the full implementation of the Act.

How the study was conducted

Our initial review of the subject matter revealed that virtually every federal institution in Canada has been substantially altered in the course of the past decade. Most of the changes are directly linked to the federal government's Program Review exercises I and II of 1994 and 1996 respectively, in which all government programs, services and activities were subjected to a thorough analysis as part of an aggressive strategy of fiscal restraint. A 1996 government document identifies more than 250 examples of changes under Program Review.³ In selecting transformations for purposes of our study we sought to ensure as wide a range of examples as possible, including large and small institutions as well as new and older transformations and ones which are still in the planning stages. Before finalizing the list we talked with representatives of official language minority communities. We also looked at the effects of changing approaches to public administration on the management of the federal government's official languages program.

The study team drew from several sources of information. In addition to previous studies, reports, and investigations of complaints by the Commissioner's Office, we reviewed the wide body of literature on public administration and government renewal initiatives dating back to the mid-1980s. We also met with officials in nine departments and agencies as well as the Privy Council Office, the Treasury Board Secretariat, the Department of Finance, the Public Service Commission, the Department of Justice and the Department of Canadian Heritage (for its responsibilities under Part VII of the Act). The interviews served two basic purposes. First, they provided us with insights into the consideration given to official languages issues in planning and implementing major institutional changes and, second, they helped us understand the roles and responsibilities of officials in the institutions undergoing change and in the central agencies.

Structure of the report

Given our objective to determine the effects of transformations on official languages within the federal government, we begin in the following section with an overview of the government's official languages program. We consider the roles and responsibilities of the principal players and describe their involvement in the transformation process. We then discuss some of the major international and domestic forces which have led to government renewal initiatives around the world. This is followed by a review of key reforms and transformations of Canada's federal public sector, beginning in the early 1980s, for their implications for language rights and obligations. In addition, we present important developments within central agencies and departments which have affected the federal administration's official languages program during this period, and the present state of institutional two-language capability within the Public Service. The concluding section presents our general assessment of the situation and proposes corrective action.



II. THE OFFICIAL LANGUAGES PROGRAM

The legal and constitutional obligations of the federal government in the domain of official languages find their source in the constitutional provisions adopted at the time of Confederation in 1867. In 1969 the *Official Languages Act* was enacted, followed by the constitutionalization of fundamental freedoms and language rights in the *Canadian Charter of Rights and Freedoms* in 1982 and the adoption of a new Act in 1988, accompanied in 1992 by regulations relating to language of service.⁴

The Act and regulations prescribe in considerable detail the language rights of English- and French-speaking Canadians. For the purposes of this study we focus on service to the public, language of work, equitable participation, promotion of English and French and, since 1988, the government's commitment to enhancing the vitality and development of the official language minority communities.⁵

The federal government's official languages program provides for the implementation of the government's linguistic obligations. It consists of various policies, programs and directives established by central agencies which govern the

recognition of language rights by federal institutions and the federal Public Service. Among other things, the program provides the necessary support for institutional two-language capability, including the language designation of positions, the staffing of bilingual positions, second-language training programs and translation services.

Roles and responsibilities of central agencies and key departments

The Act applies to all federal institutions as well as to certain privatized entities, Air Canada, for example. In addition to creating a linguistic ombudsman, the Commissioner of Official Languages, the Act assigns specific responsibilities to certain institutions. Part VIII of the Act confers a key role on the Treasury Board, a Cabinet committee, in the management of the government's official languages program:

46. (1) The Treasury Board has responsibility for the general direction and coordination of the policies and programs of the Government of Canada relating to the implementation of Parts IV, V and VI in all federal institutions other than the Senate, the House of Commons and the Library of Parliament.

Specifically, the Act gives the Treasury Board the authority to establish policies, recommend regulations and issue directives, monitor and audit federal institutions and ensure compliance with its policies, directives and regulations. The Act also gives the Board the authority to delegate powers to the deputy head or other administrative head of a federal institution. These responsibilities are carried out by the Treasury Board Secretariat (TBS) which is thus responsible, as a central agency, for developing, communicating and evaluating the government's official languages policies.

Part VII of the Act assigns a special responsibility to the Minister of Canadian Heritage. Referring to Section 41, which commits the government to enhancing the vitality and supporting the development of official language minority communities, Section 42 prescribes that:

[T]he Minister of Canadian Heritage, in consultation with other Ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41.⁶

In November 1996, in response to a recommendation by the parliamentary Standing Joint Committee on Official Languages and to interventions by the Commissioner, the government acknowledged that there was a greater need for accountability concerning the implementation of Part VII of the Act. This led to the signing in March 1997 of a Memorandum of Agreement between the President of the Treasury Board and the Minister of Canadian Heritage outlining TBS's role with regard to Part VII. The Secretariat was mandated to cause key institutions to incorporate their specific responsibility for the implementation of Section 41 into their annual action plans. It was also mandated to work with Canadian Heritage to develop and enhance mechanisms for evaluating federal activities related to Part VII. The President of the Treasury Board will report on the implementation of the Agreement in his Annual Report to Parliament on Official Languages.

Although the Act does not assign official languages responsibilities to the Privy Council Office (PCO) and the Public Service Commission (PSC), they are nonetheless important actors in the official languages program because of their respective mandates as central agencies and their policy responsibilities for the entire Public Service.

PCO describes its role as follows:

[T]o assist the government in the setting of priorities; to support the Prime Minister, Cabinet and Cabinet Committees in taking decisions on the implementation of government commitments and addressing the issues of the day; and to ensure the vitality and effectiveness of the institution of the Public Service in providing advice and support to the government and in providing services to Canadians.⁷

Given its responsibilities to the Prime Minister and Cabinet, PCO signals the direction of government policy in official languages, as in every domain throughout the federal administration, giving it immeasurable, if at times intangible, influence in decision-making within individual departments and agencies.

The mandate of the PSC, which is an independent agency reporting directly to Parliament, is to ensure that Canadians are served by a highly competent Public Service that is non-partisan and representative of Canadian society, including its linguistic duality. TBS delegates to the PSC authority in areas such as language training and testing. As a central agency the PSC works hand in hand with TBS and PCO.

In addition to drafting legislation and regulations the Department of Justice provides advice to and represents the government on legal matters, including those related to official languages. It exercises its advisory role largely through its network of legal service branches in federal government departments. In addition, the Deputy Minister of Justice chairs the Deputy Ministers' Committee on Official Languages.

Involvement in the transformation process

Throughout our study of the transformation of federal institutions, the involvement of central agencies and key departments was most often presented in reference to interdepartmental steering committees. The general idea is that representatives of PCO, TBS and PSC would meet with officials from a given agency to review a proposed change as it progressed from hypothesis to implementation. Canadian Heritage does not normally involve itself in these meetings, given its interpretation of its coordination responsibilities under the Act. (This interpretation is discussed later in this report.) Justice's involvement in the transformation process would come with a request for legal advice about the proposed change.⁸ We should also mention in this context the Department of Finance, which, given its fiscal and economic responsibilities, is also represented on steering committees examining major transformations.

It was frequently stressed in our interviews that the role of the central agencies in the transformation of federal institutions is not to veto or approve decisions but rather to raise questions. We were told that, in the end, the department or agency undergoing the change must be responsible for addressing, in an appropriate manner, the issues raised by the central agencies. PCO officials went further, making a distinction between some forms of transformation and others. While PCO's Machinery of Government and Intergovernmental Affairs branches review proposals for devolution, privatization and new agencies, and brief the Prime Minister and members of the Cabinet accordingly, officials suggested that PCO has no direct business in departmental reorganizations or decentralization even though, as we show in this report, many such decisions have important consequences for the official language minority communities.

The fact remains that central agencies have an important role in the transformation of the federal administration. They are uniquely placed in that they have an overview of the entire Public Service. Federal institutions look to the central agencies to demonstrate leadership and to provide support and guidance.⁹ The central agencies (and Canadian Heritage, with respect to Part VII) should logically help them meet the government's commitment to the official languages and the official language minority communities.



III. GOVERNMENT TRANSFORMATIONS: FORCES OF CHANGE

What Canada's federal government calls Program Review, Getting Government Right and Government Renewal are manifestations of global forces and changing public attitudes. The Canadian experience bears striking similarities to that of some other countries, but it has its own distinctive characteristics. We consider below the international context in which Canada has evolved in recent years and the domestic situation which continually shapes the nature and extent of institutional change in this country.

The international context

Through the 1980s and early 1990s increasingly globalized action and competition and rapidly evolving information technologies were affecting the traditional ability of governments around the world to manage social and economic issues. In the United States and in many industrialized Commonwealth countries such as Britain, Australia and New Zealand, as well as Canada, the result was a lessening of confidence in the efficiency and responsiveness of public institutions. In most cases the sense of dissatisfaction was fueled by an economic recession and a fiscal crisis. Governments decided they could no longer afford the costs of interventionist programs established in earlier times.

The pressures for change led to a rethinking of government's role in society. New principles and concepts of governance came to the fore. Leading analysts of the phenomenon refer to the principle of subsidiarity, according to which responsibility for addressing problems should lie with the lowest level of government possible, unless there is an important reason to do otherwise. They distinguish between bureaucratic government and "entrepreneurial" government, where private sector principles and practices are applied. In their influential book on the new style of government,¹⁰ David Osborne and Ted Gaebler use the analogy of steering and rowing to explain the direction in which

government is heading, or should be heading. Drawing on the principle of subsidiarity, they posit that government's role is to steer the ship of state, in terms of defining policy, and to leave the rowing, or program and service delivery, to others.

This new way of thinking is the basis of government transformations throughout the western world. Faced with declining resources and a demanding and critical public governments have overhauled public institutions in varying degrees. The most striking example of government reform during this period is generally considered to be New Zealand, which, prompted by an economic crisis in the early 1980s, undertook fundamental changes in the structure and management of its Public Service, including the privatization of key services. A similar, if less dramatic, public sector review occurred in Britain in the late 1980s under that country's Next Steps program. Among other things, Next Steps sought to piece out the Civil Service into smaller, more autonomous agencies delivering specific services.¹¹ In 1993 the United States federal administration launched what it called the National Performance Review, aimed at making government more responsive to public needs and empowering public servants so that they perform their jobs more efficiently. Phase II of this review called for a general downsizing of the federal administration, which led to departments and agencies generating a large variety of proposals for reducing government operations by way of alternative service delivery mechanisms.¹²

The Canadian context

Canada's experience with government renewal, beginning with smaller, localized reforms in the 1980s and culminating in the comprehensive Program Review exercises in the mid-1990s, was fueled by the same forces effecting change in other countries during the same period. The review exercises were aimed directly at reducing the cost of government. The goal was to be achieved in large part through the use of alternative, more efficient and less costly methods for the delivery of government services and programs. The end result would be an affordable and effective public sector, one in which Canadians would have confidence.

While deficit reduction and efficiency improvements have been dominant themes of Canadian government in the 1990s, they have shared the stage with national unity concerns. In a report prepared for the Deputy Ministers' Task Force on Service Delivery Models, David Wright and David Zussman suggest that the national unity issue "has given added impetus to the devolution of federal powers to the provinces and will consequently have a major long-term impact on the role of the federal government." To the extent that government renewal is being shaped by national unity concerns it is all the more important that the federal government fully respect and protect Canada's linguistic duality as it establishes a new role for itself in Canadian society *vis-à-vis* the provinces.

Meanwhile, the provinces have been undergoing their own versions of government rethinking. In 1993 Alberta introduced a three-year program to balance the provincial budget, describing it as "a new approach to government." In Ontario the government's "Common Sense Revolution" is driven by the goal of reducing costs and government intervention. Manitoba's reaction to the same forces of change has been to create numerous special operating agencies with a view to increasing efficiency and flexibility in government operations while reducing costs. Quebec has set a deadline for a balanced budget and is reviewing the costs of government services accordingly.

Some provincial ombudsmen, like the Commissioner, have expressed concerns about the possible adverse consequences of changes in government services and programs on the social well-being of the population. In her 1996-97 Annual Report¹³ Roberta Jamieson, the Ontario Ombudsman, stressed the need to maintain independent complaint resolution mechanisms in the context of privatization proposals and the trend to self-regulation. She called for a coordinated approach to protect the public's right to redress and proposed a set of guidelines to this end.¹⁴



IV. THE PLACE OF OFFICIAL LANGUAGES IN THE CHANGING FEDERAL ADMINISTRATION

The federal government's Program Review initiative announced in 1994 was an all-encompassing and strategic response to the forces of change being felt in public administrations around the world. It was not, however, the first or only reaction of the Canadian federal government to such pressures. We consider below some of the precedents undertaken in the 1980s and early 1990s for their own direct and indirect consequences for language rights and the official languages program. After a brief examination of Program Review itself we present our findings with regard to recent examples of institutional transformation, the changing roles of the central agencies in managing the official

languages program and the consequences for institutional two-language capability in the federal Public Service.

1. Public sector reforms prior to Program review

a) Government-wide initiatives

There have been many attempts in the past three or four decades to reform the federal administration, all devoting considerable attention to increasing the efficiency and effectiveness of the management of public affairs.¹⁵ The **Nielsen Task Force**, created in 1984 and headed by the Deputy Prime Minister, was distinguishable from previous reviews by its comprehensive assessment of individual government programs; it examined almost 1,000 government services and programs. It produced volumes of proposed changes. However, few were implemented, with the result that its direct impact on the official languages program was minimal. In hindsight, the Nielsen Task Force can nonetheless be seen as laying the groundwork for the Program Review initiative which followed a decade later. In a discussion paper on administrative reform in the federal government A.W. Johnson suggests that the Nielsen Task Force was a turning point in that it signalled the government's preparedness to consider dramatic changes to government programs and services in the future.¹⁶

In 1989 the government launched an all-embracing review of the federal Public Service. **Public Service 2000: The Renewal of the Public Service of Canada** (PS 2000) took the form of series of task forces, headed by deputy ministers and examining virtually every area of public administration and management. They produced over 300 recommendations aimed at achieving "a more outward looking Public Service, capable of adapting to change, committed to service to the public (and less obsessed with internal processes), accepting that staff, if given real challenges and treated with respect, will respond well."¹⁷ The Commissioner expected that official languages would figure prominently in discussions about more responsive approaches to Canadian taxpayers. However, he found that language issues received no more than a nod in passing in the PS 2000 reports and was obliged to point out that the initial Task Force Report on Service to the Public did not contain a single recommendation on two-language service. Following the Commissioner's interventions the matter was broached, albeit in a somewhat perfunctory manner, in the final text of the report, which contained the recommendation that "Treasury Board should ensure that public service managers fully understand the intent and application of the Official Languages Program".¹⁸

Although PS 2000 is generally perceived to have been overtaken by other developments, it did lead to an updating of the legislation governing the Public Service in the form of the 1992 *Public Service Reform Act*, which among other things assigned more personal management authority to deputy ministers. As stated in its White Paper on Public Service 2000, the government was convinced of the need for significant change in the relationship between central agencies and departments:

[T]he emphasis on system-wide conformity must be replaced with a combination of centrally-prescribed standards and much greater individual autonomy that can be applied flexibly across the range of administrative requirements.¹⁹

On this basis PS 2000 prepared the way for the fundamental transformation of central agencies in recent years as they moved from a compliance or control-based orientation towards a collaborative and supportive approach in their dealings with departments. (This change is examined in detail later in this report for its implications on the official languages program.)

Nineteen eighty-nine also saw the introduction of a new type of federal institution, the **Special Operating Agency (SOA)**, with five such organizations created that year. The government describes SOAs as giving "service delivery units increased management flexibility in return for agreed upon levels of performance and results."²⁰ The creation of SOAs had no immediate implications for the official languages program since they remain part of their departmental organization and therefore continue to be fully subject to the Act. With their emphasis on flexibility and results, however, SOAs represented the new wave of service delivery options, not all of which fall under the Act, in the wake of Program Review.

b) Institutional reforms

In 1981 the federal government transformed **Canada Post**, a major national institution touching the lives of most Canadians on a daily basis, from a government department to a Crown corporation. The change provided the

organization with greater flexibility in managing its affairs. The transformation itself did not alter Canada Post's language obligations since it remained a federal institution as defined by the Act. It did nonetheless change the relationship between Canada Post and central agencies. For example, as a Crown corporation Canada Post is governed by the Canada Labour Code rather than the *Public Service Staff Relations Act*.

Canada Post Corporation began its own transformation shortly thereafter as it pursued a program to privatize retail operations so that it could focus on the business of moving mail. Although the Act's provision for third party services, Section 25, means that Canada Post is obliged to ensure that designated postal franchises provide two-language services the Corporation has had difficulties in ensuring compliance with the language clauses of agreements with postal franchise owners. For several years complaints regarding services in person or by telephone at designated bilingual postal franchises have been proportionally almost double those concerning Corporation-owned outlets. The Commissioner notes that the Corporation has introduced measures to address the situation, including stronger requirements and reinforced monitoring mechanisms.

Another major national institution, **Air Canada**, underwent a radical transformation when it was privatized in 1988. During legislative debates on the privatization legislation the company's president suggested that two-language capability was not only commercially feasible but also vital in order for the company to maintain a competitive edge in the market. Company representatives nonetheless expressed concern about Air Canada being placed on an unequal footing with private airlines due to its obligations under the Act. In the end, the Air Canada *Public Participation Act* provided for the continuing application of all parts of the Act to the company following privatization. Unfortunately, as the Commissioner's Annual Reports of recent years show, the company does not always interpret its linguistic obligations as the Commissioner does.

The decision in 1991 to privatize **Petro-Canada** raised a different set of legal and linguistic issues. Noting that, unlike the case of Air Canada, Petro-Canada would fall into provincial jurisdiction once it ceased to be wholly owned by the Crown, the federal government did not provide for the continued application of the Act to the private company. Instead, the privatization legislation contained a provision requiring only that the company provide service in both languages from its head office and from any other office where there is significant demand. The Commissioner expressed concern at the time that the provision did not go far enough, pointing out that Petro-Canada itself would determine the level of significant demand. It was felt that the situation would create a precedent in the privatization process for other Crown corporations. In response, the government suggested that Petro-Canada's past performance and the provision for a basic level of two-language service would be sufficient to ensure the continued use of both official languages. However, since Petro-Canada is no longer subject to the Act, the Commissioner has no jurisdiction to investigate complaints concerning the company and Canadians have no recourse, other than Petro-Canada itself, in situations where linguistic problems are encountered.

During the early 1990s the government began to commercialize **airports** by transferring them to local airport authorities. The initial legislation adopted in 1992 provided that certain parts of the Act, particularly those relating to language of service, the duties of the Treasury Board, the Commissioner's role and court remedy, would continue to apply, depending on whether the airport was leased or sold.²¹ The question of applying some but not all parts of the Act to privatized airports was the subject of several interventions and statements by the Commissioner during this period.²² In the end the government adopted measures which ensured the continuation of certain language rights, including those related to language of work and participation, whether or not airports were transferred.²³ Complaint investigations since that time have revealed that at least one local airport authority has a restricted interpretation of its linguistic obligations.²⁴

One of the issues raised in commercializing a federal responsibility is the lack of a formal relationship between a privatized operation, such as a local airport authority, and the government's central agencies which house the policies, directives and, just as important, an expertise in official language matters. While it is one thing for a large institution such as Air Canada to manage its language obligations it is quite another matter for smaller operations such as some individual airport authorities to develop and administer official languages programs on their own and ensure consistency across the country.

During this period of change leading up to Program Review the government's record for preserving language rights and obligations was inconsistent. The Act was applied unevenly to transformed institutions, and task forces tended to ignore official languages issues. The official languages program was therefore less than secure as the government

began undertaking a more thorough examination of its operations under Program Review .

2. Program review

The reforms of the 1980s and early 1990s were hors d'œuvres to the main course of government renewal which was to follow . In its 1994 budget the federal government announced a new way of doing things:

The time has come to make choices as to what the necessary and appropriate role of the government really is, and then to allocate the resources needed to do a first-class job. The federal government should withdraw from those things that are no longer essential to the public interest, or that can be better accomplished by provincial or local governments, or by the private/voluntary sector.²⁵

It was Canada's turn to apply the principle of subsidiarity, reduce bureaucracy and rethink the role of government in society. Program Review had begun.

The government's fiscal restraint measures, devoted to eliminating the federal deficit, were to be achieved in large part through a thorough assessment of the need, affordability and efficiency of all federal government programs. Initially, Program Review's goals were to be met in three years. Program Review II, introduced in the 1996 federal budget in the form of additional cuts, extended the program to the end of 1998-99 with the result that government departments and agencies are still pursuing ways and means of reducing costs. In the meantime, programs have been eliminated or transferred to the private sector, not-for-profit organizations or other levels of government; new types of agencies and partnerships have been established or are being developed and departments have been restructured to reflect program changes.

Throughout this period budgetary measures will significantly reduce the operating costs of departments, in many cases by more than 20%, and, once fully implemented, will result in the elimination of some 55,000 positions in the federal administration.

Under Program Review each department submitted a strategic action plan for achieving assigned budgetary reductions to committees of Deputy Ministers and Ministers. Once the plan was approved the department was left with the task of implementing it. Officials who were involved in the process recalled that departments were not obliged to commit themselves to the details of achieving the cost-savings; the emphasis lay rather in doing whatever had to be done to meet the financial targets. Officials also stressed the urgency of the cuts, an urgency which challenged their ability to thoroughly consider all of the possible consequences of the changes being made.

The authorities responsible for managing Program Review developed guidelines to assist departments in the task of reassessing the pertinence of their programs. PCO drew up a series of "tests" which departments were asked to apply to each of their activities. The tests, however, omitted to remind departments of their constitutional and legal responsibilities towards the official language minority communities. The Program Review tests read:

- Public Interest Test Does the program area or activity continue to serve a public interest?
- Role of Government Test Is there a legitimate and necessary role for government in this program area or activity?
- Federalism Test Is the current role of the federal government appropriate, or is the program a candidate for realignment with the provinces?
- Partnership Test What activities or programs should or could be transferred in whole or in part to the private/voluntary sector?
- Efficiency Test If the program or activity continues, how could its efficiency be improved?
- Affordability Test Is the resultant package of programs and activities affordable within the fiscal constraint? If not, what programs or activities would be abandoned?²⁶

These tests, emanating as they did from PCO, set the tone for the numerous changes which have taken place throughout the federal administration since 1994. The lack of an explicit reference to language rights and obligations, however, represented a missed opportunity at a key stage in the transformation of the federal administration.

As departments and agencies found themselves exploring the relatively uncharted waters of alternative service delivery TBS developed guidelines and criteria to assist them in making appropriate choices. An important document for this purpose was the Board's Framework for Alternative Program Delivery issued in 1995. The framework presented the

range of possibilities and established principles and assessment criteria. One of the principles governed "public interest", which included "fulfilling federal obligations and interests." Among the questions and criteria to be applied in this regard was: "What official languages obligations should apply, and what mechanisms will ensure that they are met?" In addition, TBS reminded departments to take the requirements of the *Official Languages Act* into account in considering means of delivery, means of accountability and the human resource framework of alternative service mechanisms.

TBS deserves credit for including official languages criteria in its alternative service framework. However, the criteria do not appear to have been rigorously applied in the course of transformations.

Program Review and alternative service delivery focus on programs and services. The renewal of the Public Service itself is being pursued separately under the government's "La Relève" initiative.²⁷ Under the leadership of PCO, La Relève tends to be described in terms of what it is not: it is not a master plan and it is not a list. It is rather a call by PCO to departments and to the other central agencies to prepare for the human resource needs of the Public Service as it continues to transform itself.²⁸ A review of documentation issued by PCO on La Relève reveals that departmental actions under this initiative include measures relating to official languages, but there is no precise mention of the central agencies' role in ensuring that institutional two-language capability is protected as the Public Service undergoes its own renewal. A notable example of this is in la Relève's corporate development programs designed to ensure an adequate pool of senior managers. The programs seem to assume that the pool will have sufficient two-language capability to enable senior management in bilingual designated regions to respect the language of work rights of their staff, even though there presently exist significant shortcomings in this regard.²⁹

3. Selected transformations

a) Agencies, partnerships and privatizations

The 1996 federal budget was particularly noteworthy for announcing the government's intention to create a host of new agencies, including the **Parks Canada Agency**, the **Canada Revenue and Customs Agency** and the **Canada Food Inspection Agency**. At the time of our study only the Food agency was in place, having been established in April 1997, although planning had progressed to an advanced stage in the case of the Parks and Revenue agencies.

Our examination of these transformations confirmed that each is or will be a federal institution and that the Act will continue to apply in its entirety. Nonetheless, there have been questions about the direction in which they are heading and the implications for their language obligations. As recently as April 1997 official plans for the Revenue agency, which will in effect replace the existing department, called for it to operate at arm's length from the Minister, thereby raising concerns about the accountability of the agency head to Parliament for language and other matters. However, after consulting interested parties, the Department decided that the Minister will remain accountable to Parliament for the administration and enforcement of the programs for which he or she is presently accountable. Also, the agency will submit an annual report on official languages to TBS, for transmission to Parliament. As well, internal measures (a working group of managers and employees, and an official languages subcommittee in each province and territory) are being undertaken before the agency comes into being.

The government presents each of the three new agencies as facilitating the establishment of partnerships with the private sector, provinces and territories or other parties. Our understanding of plans for the Parks agency is the most reassuring with regard to partnering and language issues. Partnerships are already an integral part of Parks Canada operations at national parks and historic sites, with established provisions for two-language service. In addition, we found that senior Parks Canada officials involved in setting up the new agency were sensitive to the role of parks as instruments of economic development for the official language minority communities. While Revenue Canada and the new Food Inspection Agency already work closely with provincial counterparts in many areas, their partnership plans call for a more developed relationship than is presently the case, with unclear consequences for federal official language obligations.

The **Canadian Tourism Commission**, created in 1995 by Order in Council, is the very embodiment of partnering. The CTC is founded on the concept of the federal government working closely with the Canadian tourism industry, as well as with the provinces and territories, to promote Canada as a tourist destination. The closeness of the relationship is reflected in the Commission's Board of Directors. Of the 26 members the majority (17) are from the private sector, including the Chair. The remainder include seven representatives of provincial and territorial governments, one

representative of the federal government and the CTC President. Although the Deputy Minister of Industry Canada is the Board's sole federal representative he has no special authority over the Board's decisions. The CTC therefore is for all intents and purposes a federal institution which is a private-sector-led decision-making body. The partnership approach is carried over into the Commission's funding, with the federal government matching financing from its partners.

What has this enhanced partnering arrangement at the CTC particularly the dominant role of the private sector with its business orientation meant for the federal government's language obligations? Part of the answer lies in the Commission's Charter and Guiding Principles, which make no specific reference to the Act or to language rights. The answer is also found in the fact that while the Commission President is accountable for "adhering to legislative and government policy requirements", he or she reports not to a government Minister or Deputy Minister but to the private sector dominated Board of Directors.

As well, an important part of the answer to the question lies in the Commission's reliance on the private sector for taking care of language requirements. We found that the Commission is confident that the interests of official language minority communities are well served by the tourism industry's interests. Pointing out that the CTC does not directly fund tourism projects but assists them through the provision of information and marketing, officials stressed that Canada's two-language character is a major asset to tourism promotion, one that the industry is careful to nurture as a result. With regard to tourism projects as tools of community development, however, CTC representatives explained that the Commission does not have a regional development mandate nor does it examine tourism projects on the basis of whether they contribute to the vitality and development of the official language minority communities. Instead, a decision to encourage any project or proposal is purely a business one, based on its economic viability and its contribution to the marketing of Canada abroad. CTC representatives suggested that the Commission fulfils the Section 41 commitment as a by-product of its business decisions, since only proposals with the potential for success are encouraged. The officials also pointed out that minority language businesses are included in the Commission's efforts to encourage the small business sector to advance itself. They nonetheless insist that no special consideration is given to the official language minority communities in this regard as it would be contrary to the Commission's business orientation.

The Commissioner of Official Languages recognizes that the official language minority communities are well served when financially viable tourism projects are encouraged. He is nonetheless disturbed that a federal institution whose decisions impact on economic and regional development considers itself bound by the Act only to the extent that it does not conflict with business practices. In this way, the CTC illustrates the dangers of extending partnerships to the point where the federal government in effect abandons control and responsibility.

Another example of a highly developed partnership arrangement is found in the **Canada Business Service Centres**. Introduced as a pilot project in 1992, there are now 12 CBSCs, one in each province and territory. Each is established by a federal-provincial/territorial agreement. Although several pre-date Program Review they all are characterized by the emphasis on improved client services through a close working relationship among various parties. The most advanced Centres are federal, provincial, municipal and private sector partnerships in the delivery of information, counselling services and assistance.

The partnerships work in fact on two levels. On one level, the CBSCs provide the services of more than 20 federal departments and agencies with each Centre reporting to one of four federal "managing partners" (Western Economic Diversification, the Federal Office for Regional Development in Quebec, the Atlantic Canada Opportunities Agency and Industry Canada). The CBSC network is managed by a committee of Assistant Deputy Ministers of the responsible departments and agencies. On the other level, each Centre brings together the services of outside parties with business programs and information and is staffed by employees seconded from their parent organizations. A joint management committee comprised of a federal government representative and a representative of the respective provincial or territorial government is responsible for overseeing each Centre's operations. This multiplicity of relationships is assisted by a national secretariat with a mandate to provide co-ordinating support to the CBSC network.

As in the case of the Canadian Tourism Commission, CBSC officials expressed confidence that the Centres' client service focus ensures that official language minority clients receive service in their language. Backing up this confidence was the fact that all CBSCs are designated bilingual (there being only one Centre in each province/territory) and that the

agreement for the establishment of each Centre contains a language clause requiring that service be available in both official languages. Nonetheless, recent visits to one of the Centres in the context of the Commissioner's points of service follow-up revealed that the two-language designation was not being respected.

As noted above, the federal government makes up only half of the joint management committee for each Centre. In addition, the manager position alternates between federal and provincial/territorial employees and the staff are seconded from partner organizations the federal and provincial/territorial governments, municipal administrations and the private sector. While such sharing of authority may be commendable for various reasons, it leaves doubts as to the capacity of the federal government to ensure consistent respect for language rights.

In a situation involving partners at all levels the role of a co-ordinating secretariat takes on special significance. Our examination of the National CBSC Secretariat did provide reassurance that official languages considerations were being taken into account. We learned for example that the Secretariat had prepared information on the Centres' activities under Section 41 of the Act in collaboration with responsible officials in each of the managing partners' departments or agencies. It had also included a language of service provision in service standards developed for a new network of satellite business service centres, although we take this opportunity to suggest that the provision be reviewed in the light of this study. In addition, the Secretariat had worked in cooperation with TBS to develop a policy on the use of information produced by the partners when it is not immediately available in both languages. While these are positive and necessary activities, the Secretariat is a coordinating body with no line authority over the Centres, their managers or the managing partners. Its mandate makes no specific reference to the Act or language rights. On this basis, the Secretariat's ongoing contribution to official language matters and the effectiveness of that contribution are less than secure.

In the aftermath of a government review of its mandate in 1995 and major funding reductions, the **National Film Board** decided, among other things, to close down the rental service for its videos and films. The Board had in fact begun shutting its network of distribution centres in major cities in the mid-1980s; the latest round of budget cuts accelerated the process. As each distribution centre was closed the NFB transferred, by way of partnership agreements, its video and film collections to the local public library and/or community associations. This arrangement enables the Board to focus on its core activities while maintaining accessibility to its products.³⁰

According to the NFB the distribution of its videos and films under a partnership agreement is not done on behalf of the Board and there is no obligation on the partner to provide the rental service in both official languages. Nonetheless, each partnership agreement includes a clause requiring that partners refer clients to the NFB toll-free number for service in the minority language. We also note that the NFB has taken steps to ensure that its holdings in both languages continue to be available across Canada.

The **National Capital Commission** responded to the severe budget cuts resulting from Program Review by commercializing part of its realty and property management functions. Rather than contract out the work to any private company it chose to transfer the services to groups of former employees. In the end, the NCC created six employee takeover corporations (ETCs) for this purpose. Officials explained that one of the reasons ETCs were the preferred option was that they enabled the NCC to retain the expertise of former employees.

The creation of ETCs at the NCC has various implications for language rights and obligations. On the one hand, those NCC employees who left to form an ETC no longer have a legal right to work in their own official language since the ETCs do not constitute federal institutions. On the other hand, because the ETCs operate on behalf of the NCC the Commission is obliged by Section 25 of the Act to ensure that the transferred services continue to be provided in both languages. NCC officials provided us with information to indicate that it is acting in accordance with this obligation.

The Commission's 1995-96 Annual Report noted that the NCC, as the first public agency to attempt a large-scale commercialization, was "working without a map" and "working from scratch and without any standard government model for commercialization."³¹ These statements are particularly noteworthy given the existence of a Treasury Board policy on employee takeovers.

b) Transfers and withdrawals involving other levels of government

i. Labour market development

Prior to undertaking this study the Commissioner conducted an investigation of complaints concerning federal-provincial

Labour Market Development Agreements (LMDAs) and the Employment Insurance Act.

In December 1996 the federal government began signing agreements with provincial governments to fulfil its commitment to withdraw from labour market development. The agreements vary considerably, but essentially they allow a province to assume all or some of the responsibility offered by the federal government, including labour training, apprenticeship programs, cooperative education programs and workplace training.

For the purposes of the investigation the Commissioner developed a set of guiding principles for such agreements, based on his belief that fundamental language rights must be preserved by specific, reliable and transparent mechanisms. The guiding principles are:

1. to preserve existing rights by clearly guaranteeing the members of the public concerned the right to services as stipulated in the Act and the official languages regulations
2. to define a mechanism that gives the members of the public concerned the option of adequate and transparent remedy in case of dissatisfaction and, if appropriate, of redress of the situation
3. to make reference to a commitment by the provinces to support the development of the official language minority communities and provide for concrete measures to this end
4. to establish accountability and control mechanisms to ensure that language rights are respected
5. to take into account the language rights of federal employees when giving current employees the choice of transferring to the employ of a province or remaining in the employ of the federal government.

These guiding principles apply to the transfer of programs, services and activities for which the federal government retains final responsibility and/or continues to support through funding arrangements. The extent of language rights defined in the LMDA agreements was the result of federal-provincial negotiations and reflected the language context of each province.

The Commissioner found that the LMDA negotiation process did not uniformly ensure adequate protection of language rights, noting that the linguistic provisions in some cases fell short of the guiding principles. He recommended that TBS, in collaboration with PCO, develop an overall application policy in accordance with the Act, taking the above guiding principles into account for any situation in which federal responsibilities are withdrawn or transferred to the provinces, and that it monitor the policy's implementation. TBS should also ensure that the language of work rights of current federal employees are preserved. The Commissioner also recommended that Canadian Heritage define the role it intends to play with the provinces and territories to promote the implementation of programs and services in the area of labour training so as to meet the needs of the official language minority communities. In addition, the Commissioner made nine recommendations to Human Resources Development Canada. Essentially, these aimed at ensuring that any agreement contains at least a minimum guarantee that the public has access in the language of its choice to the same services and programs as those to which they were entitled prior to the agreement. These recommendations included the obligation to define in each agreement an effective redress mechanism for language-related issues, especially since devolution to the provinces and territories, and even more so to municipalities, essentially removes them from the Commissioner's jurisdiction.

ii. Social housing

The federal government's decision to transfer responsibility for the management of social housing to the provinces has led the Commissioner to express his concern to the government and to Canada Mortgage and Housing Corporation (CMHC) about the possible impact on official language minority communities. After examining agreements signed by CMHC and several provinces, we understand that the provision for language, which is virtually identical in the four agreements signed at the time of our study, was modelled on the language clause in the Canada-Alberta Labour Market Development Agreement. CMHC, despite the evident commitment of its President and its senior managers, could have chosen a more satisfactory model. Under the provision provincial housing authorities are directed to use "as a guideline" the criteria set out in the federal official languages regulations concerning language of service when determining areas of significant demand for the provision of service in both official languages. While the CMHC provision for language also prescribes that areas of significant demand "will be determined in consultation with representatives of the minority language community in each locality", it does not explain which takes precedence: the "guideline" in the form of the regulations or the needs of the official language minority communities.

The language clause in the CMHC social housing agreements falls short of the Commissioner's guiding principles established in reference to the LMDA agreements on other fronts as well. (In fairness, it should be noted that the first accords were already signed and in effect when CMHC became aware of these principles.) Whereas the province or territory must agree to provide information and assistance in both English and French, where required, the language clause does not make precise provision for the federal government's commitment under Part VII of the Act to promote the vitality and well-being of the official language minority communities. The agreement also lacks provisions for accountability and redress in situations where the provincial housing authority does not meet a client's language needs, whereas such provisions exist where funding is concerned. Finally, it is not explicitly stated that CMHC intends to monitor the implementation of the agreements' language clause.

CMHC feels, however, that the most recent agreements do take account of the objectives of Part VII of the Act and require more of the provinces and territories than did earlier ones. In particular, it considers that the provinces and territories are obligated to inform and serve the official language minority communities in the same way that CMHC has been doing.

We were given to understand that the federal-provincial agreements signed by CMHC are based on a framework agreement approved by Cabinet which would have been reviewed by PCO, TBS and other central agencies. It was suggested to us that shortcomings should have been dealt with at that level. There is some apparent uncertainty regarding responsibility in this area.

iii. Immigrant settlement services

At the time of our study Citizenship and Immigration Canada was negotiating agreements with provinces to reduce the federal role in settlement service programs for immigrants.³² The general thrust of such services is to provide assistance to recent immigrants in their own language while furnishing language training, in English or French, to foster their integration and employability. Most of these settlement services are in fact delivered by third parties with the financial participation of the federal and sometimes provincial governments. Not included in the present round of negotiations is Quebec, which had previously signed a more comprehensive immigration accord with the federal government.

The federal government's decision to reduce its role in immigrant settlement services flows directly from Program Review. Applying Program Review's six "tests", the federal delivery of immigrant settlement services failed on the basis that it did not constitute part of the Department's core activity and because other organisations were in the same business. It was up to the Department to determine how best to get out of the business, while ensuring effective service delivery at the local level. A lengthy consultation process with various stakeholders concluded that the provinces were the best vehicle for maintaining service delivery in the context of a federal withdrawal.

Without any signed agreements to examine we could not assess their impact on the official languages program. We do not know precisely if or how the federal government's language obligations will continue to apply. Noting that under the Constitution both levels of government have jurisdiction in immigration, the Commissioner's position is that the responsibilities for language which the federal government adopted in establishing programs in this area must be maintained in negotiating changes with the provinces.

Information obtained during the course of the study indicated that departmental officials were aware of the Commissioner's concerns with regard to the LMDAs and were examining ways to address them in this situation.

iv. Federal Contraventions Act

The Commissioner recently completed an investigation of a complaint concerning the impact of a devolution process relating to the *Federal Contraventions Act*. By virtue of this Act, the federal government is negotiating an agreement with Ontario which would effectively transfer responsibility to the province for prosecuting various relatively minor infractions to federal statutes and regulations as well as for the handling of the related administrative procedures. The provincial government proposes to delegate further the prosecution of federal infractions pursued under the Contraventions Act to municipalities.

The investigation led the Commissioner to conclude that the situation constitutes a diminution of language rights and obligations. Whereas the language rights provided by the Ontario legislation are largely the same as those guaranteed in the Criminal Code, the proposed delegation of responsibilities to municipalities inevitably makes it questionable

whether the language rights of those charged with infractions to federal statutes and regulations will be respected and effectively implemented. In his report the Commissioner made five recommendations to the Department of Justice aimed at ensuring that the language rights guaranteed by the Criminal Code and Part IV of the Act are preserved in the context of this agreement.

Since issuing the report the Commissioner has received a new complaint regarding the absence of a linguistic clause in an agreement between the federal government and the City of Mississauga, Ontario, in the context of the Contraventions Act.

v. Health services in Yukon

The federal government transferred the Whitehorse General Hospital to the Yukon government in 1993, and other health services, including a medical clinic, in 1997. We understand that neither transfer included provisions for the maintenance of federal official languages obligations. Instead, the transferred services now fall under the Yukon Languages Act which provides for the availability of service in French at head offices and where there is significant demand or where it is necessary due to the nature of the office. During recent visits to the hospital and the clinic in the context of another study our officials identified several problems at both locations and brought the problems to the attention of Health Canada. At the time of drafting this report the Department had responded that it was no longer responsible for the two locations. We are reviewing the situation.

vi. Database

In our examination of devolutions and withdrawals of federal programs, we learned that the Intergovernmental Affairs unit at PCO was creating a database of federal-provincial agreements, the information being gathered from each federal department and agency. The database will no doubt enhance PCO's ability to track developments in federal-provincial relations and in the agreements themselves. For this reason, and given the problems outlined above, it is important that the database include information on the provision for language rights in each agreement. The information will provide a necessary basis for ensuring adequate accountability for official languages responsibilities in the context of transfers and devolutions.

c) Program cuts and reorganizations

In addition to the Commissioner's evaluation of the LMDAs, other complaint investigations in recent years have concerned situations which resulted from decisions taken by government departments and agencies in the context of Program Review. The central issue in these cases was the impact of significant budgetary cutbacks and major reorganizations on the well-being and effective functioning of the official language minority communities.

i. The Canadian Broadcasting Corporation

Two of these investigations concerned budget reductions imposed on the CBC and the resultant programming changes announced by it in September 1996. The investigations revealed that the government's commitment under the Act to enhance the vitality and support the development of the official language minority communities was not given sufficient weight by the CBC in all sectors or at all stages of the development and implementation of its new programming strategy. In addition, the Commissioner concluded that Canadian Heritage did not adequately exercise its coordination responsibilities during the Program Review exercises which forced the CBC to make the cuts and changes in question.

The Commissioner made several recommendations to the CBC aimed at minimizing the potentially negative impact of the budget reductions and programming changes on the English-speaking population in Quebec and on the French-speaking communities in the other provinces and the territories. After receiving the draft investigation report the Corporation announced several changes in areas of particular concern to French-language communities outside Quebec.

With regard to the responsibilities of Canadian Heritage, the Commissioner noted that the Minister was about to sign a Memorandum of Agreement with the President of the Treasury Board aimed at providing more rigorous accountability for the implementation of Part VII of the Act.³³ In this regard, the Commissioner recommended that the agreement clearly define the role, responsibilities and accountability of each party for the application of Part VII. Both of these reports will be followed up in due course to assess the implementation of the Commissioner's recommendations.

ii. The Department of Fisheries and Oceans

Following complaints from organizations representing New Brunswick's Acadian community, the Commissioner investigated the implications in the Maritimes of a major restructuring at the Department of Fisheries and Oceans. The national reorganization was necessitated by sharp reductions in the Department's budget under Program Review and the government's decision to amalgamate DFO and the Canadian Coast Guard. The creation of a new Maritimes administrative region with headquarters in Halifax meant removing the regional headquarters status of the Department's Moncton operations, which served the Acadian region and fishery in northern New Brunswick. The investigation led the Commissioner to conclude that the Department had not fully respected the Act, noting that the requirements of Section 41 were not fully taken into account in deciding among the options for reorganization.

A particular element of concern resided in the fact that Moncton is in a designated bilingual region with respect to language of work and Halifax is not. The Department agreed to pay particular attention to the ability of its Halifax headquarters to respond to French-speaking clients. It also recognized that Halifax is much farther from the Acadian Peninsula of New Brunswick, with its major concentration of French-speaking fishermen, and offered assurances that certain resources would be maintained in Moncton.

iii. Human Resources Development Canada offices

Following the 1995 federal budget reductions and the amalgamation of various federal programs and services HRDC established a new Service Delivery Network, described as a combination of offices, kiosks, electronic on-line services and community partnerships for accessing departmental services. The Commissioner conducted an investigation after receiving a complaint that the new network did not reflect the needs of the Acadian population in southwestern Nova Scotia. The study showed that while there was no evidence that language considerations were taken into account in selecting offices for closure the changes in question would not have a substantive impact on the region's Acadian community. However, it also revealed a significant weakness in the process for establishing service delivery partnerships. We found that HRDC had undertaken negotiations with potential partners before it had established the necessary provisions for ensuring that HRDC services would continue to be provided in both official languages.

This survey of institutional transformations raises significant questions about the role of central agencies as departments adapt to reduced resources and new-found flexibility in managing their programs and services. These questions lead us to a closer examination of the role of the central agencies in managing the official languages program.

4. Key activities of the Official Languages Program

a) Monitoring implementation of the official languages program

Part VIII of the Act provides the Treasury Board with the authority to monitor and audit federal institutions for their compliance with the policies, directives and regulations established by the Treasury Board or the Governor in Council in the area of official languages. Prior to PS 2000 this authority was exercised through a compliance-based audit function within TBS. This changed in 1991 with the drive towards enhancing the autonomy, accountability and flexibility of departments. TBS abolished its official languages audit unit and turned to internal audit units within individual departments and to its own general audit group to provide monitoring and audit.

In a 1993 review of these changes the Commissioner noted that the internal audit system of each department was not always adequate and that the Treasury Board relied almost totally on departments' and agencies' self-appraisal for their implementation of the Act.³⁴ The Commissioner also expressed concern that primary responsibility for the official languages program had passed from the official languages directorates of departments and agencies to the managers of each organization.

TBS responded that, in its view, the official languages audit function was strengthened rather than weakened by this decentralization of responsibility. The Secretariat pointed out that official languages were now included in the government's internal audit plan. TBS added that it had redefined the responsibility framework for official languages in such a manner as to place emphasis on obtaining results and that it maintained a monitoring role through the Letters of Understanding (LOUs) on official languages it signed with individual departments.

When LOUs were introduced in 1991, the Treasury Board described them as "the key instrument for determining the accountability of each department and agency to the Treasury Board."³⁵ According to TBS, LOUs indicate the extent to which departments intend to fulfil their language obligations and provide mutually acceptable means for measuring

results in this regard.³⁶ We nonetheless find that the LOU system's effectiveness in ensuring accountability is diminished by the fact that it is based in large part on each department's self-evaluation and allows for exemptions should the department and TBS decide that a LOU is no longer necessary. In the case of an exemption deputy heads are expected to report official languages problems in their annual management report. It would appear difficult under these circumstances to ensure full objectivity in measuring official languages performance.

The LOU system was virtually abolished in February 1997, when the annual management reports by deputy heads began gradually to replace the LOUs. Thus, the exception has become the rule, although the Secretariat reserves the right to require an institution to sign an LOU "if warranted by the situation."³⁷ According to TBS this new simplified accountability system "promotes trust and limits TBS intervention to problem cases."³⁸ In our view, the change weakens TBS's ability to monitor the official languages situation in each department.

The Secretariat uses the data contained in annual management reports to prepare the President's Annual Report to Parliament on Official Languages. At the time of tabling of the President's report the Treasury Board Ministers receive a summary of the management reports without being asked to approve them. This constitutes a significant change from the previous system in which the Ministers would approve each LOU.

In 1996 official languages at TBS underwent further structural changes. The Official Languages and Employment Equity Branch became a division within the Secretariat's Human Resources Branch. The changes continued in 1997 when separate divisions were created for the official languages and employment equity programs. TBS explained the restructuring in terms of recognizing that official languages contain an important human resources component.³⁹ It should be noted that between 1990 and 1997, along with the change from branch to division, the number of staff responsible for official languages decreased by close to half and the budget shrank by more than 40%.

(At the time of this restructuring the Commissioner felt that it was not appropriate for him to take a position with regard to the internal functioning of the Treasury Board and that the results were what counted. This report is a consideration of the results observed.)

During the 1990s TBS's central agency role in official languages evolved from one based on auditing, evaluating and monitoring to one of support, consultation and co-operation. The evolution follows the general trend in government towards a relaxation of controls. In interviews conducted for purposes of this study TBS officials expressed the view that the Secretariat's horizontal approach to issue management, through enhanced working relationships with officials at all levels in departments and other central agencies, ensures that it is aware of official languages issues as they develop and that it remains effective in dealing with them. We note as well that in 1996 TBS issued an official languages audit guide to be used by internal auditors to help them better understand the official languages program they are expected to audit in their respective departments. In addition, TBS continues to undertake government-wide studies and audits on the performance of federal departments and agencies in such areas as language of service and language of work, although we note that the publication of the results of these studies has been delayed.

Without questioning the inherent value of cooperation and consultation or the usefulness of the studies and audits which TBS continues to conduct, the Commissioner feels obliged to wonder about their effectiveness in the light of the findings of this study. The degree to which official languages considerations have not been given their due regard in various institutional transformations in the federal administration requires a reconsideration of the manner in which TBS exercises its official languages responsibilities.

b) Coordination of activities under Part VII

Complaint investigations have brought considerable attention to the responsibilities of the Department of Canadian Heritage for the government's commitment to enhancing the vitality and supporting the development of the official language minority communities, as prescribed in Part VII of the Act. The Department defines its role for the implementation of Part VII in terms of consultation, coordination and facilitation. In their joint response to an investigation report Canadian Heritage and TBS took the position that

[T]he aim of sections 41 and 42 of the Act is to prompt greater involvement of all federal institutions in the development of official-language minority communities. The objective is to bring federal departments to take the initiative in the development of minority linguistic communities. Each minister must assume responsibility for his or her department's actions in responding to the requirements of section 41 of the

Act.

The Commissioner favours a broader interpretation of Canadian Heritage's coordinating role with regard to the government's Part VII commitment. He maintains that the Department's coordinating responsibility requires intervening actively with regard to other federal institutions in order to ensure that their actions give meaning to Part VII. While Canadian Heritage has resisted the Commissioner's interpretation, it indicated in a recent complaint investigation that its coordination role was evolving and that it was considering ways of developing more pro-active approaches.

The Commissioner was encouraged by the signing in 1997 of the Memorandum of Agreement between Canadian Heritage and the Treasury Board. As stated earlier, the Agreement formally involves TBS in giving effect to the Part VII commitment. As a result of this Agreement, when departments and agencies submit their business plans to TBS prior to receiving their annual budget allocation they are reminded to include the activities they plan to undertake in order to fulfil their obligations under Part VII. It is hoped that this change will produce meaningful results.

The Memorandum of Agreement has been cited by key federal institutions as evidence of the federal government's commitment to official languages over the years. Other evidence includes the development in 1994 of a framework for the implementation of Section 41 of the Act.

c) Official languages network

In 1996 TBS commissioned a study of the administration of official languages and of employment equity programs in 21 federal departments and agencies.⁴⁰ The survey examined the resources and the organizational structures in place to carry out departmental responsibilities under the Act. It confirmed that as a result of Program Review, restructuring and downsizing official languages activities were being increasingly delegated to managers and integrated with other managerial functions and that the official languages program had been integrated into the human resources structure of departments. In addition, the study revealed that these same factors resulted in a decline of over 25% in a single year (1995-96) in the numbers of employees allocated to the administration of official languages in the institutions in question, with a further decrease expected in 1996-97.⁴¹

Official languages program administrators in departments pointed out that the integration with human resources has created perception problems among employees and specifically among individuals with official languages responsibilities. These groups increasingly perceive official languages as "just another" human resource activity, "on a par" with staffing, classification and staff relations. They also see official languages as no longer a government priority.⁴² The report recognized the need to address these perceptions and recommended, among other things, that TBS "re-energize" itself by playing a more visible leadership role and reaffirming the fundamental status of the official languages program within departments.

The government's Departments and Agencies Advisory Committee on Official Languages, made up of official languages managers in departments and central agencies, recently included several of the report's suggested initiatives in its priorities for the coming year. The Commissioner hopes that the Committee and TBS are successful in addressing the perceptions of the diminished importance of the official languages program. They should begin immediately by raising the program's visibility and issuing a clear message of its place among the government's priorities and commitments.

d) Development of legal parameters

The Department of Justice announced in its 1997-98 Action Plan for the implementation of Section 41 of the Act that it would "establish the official languages legal parameters applicable in the case of a devolution, transfer, service contract, grant or commercialization involving federal services."⁴³ This step is in keeping with the Commissioner's recommendations contained in his 1996 report on the government's application of the Act's Part VII.⁴⁴

We understand that these parameters will draw from legal opinions prepared by the Department's network of legal services in government departments and agencies over the years on official languages issues, such as the scope of the applicability of Section 25 of the Act. The parameters, based on experience, will thus serve as guidelines for future legal opinions in this area and will no doubt assist in ensuring consistency in the interpretation of the government's language obligations as it continues to transform its institutions. The problems encountered with certain linguistic provisions in federal-provincial agreements underline the importance and the urgency of the Justice initiative.

This review of key activities in the official languages program indicates that the government may be learning from the

experience of recent years. The involvement, albeit limited, of TBS in the application of Part VII, and the development of legal parameters in particular, are evidence that central agencies recognize that problems exist and are prepared to play a larger role in protecting the official languages program in the context of the government's renewal initiative. These developments address specific weaknesses. A truer test of the government's seriousness in strengthening the official languages program lies in how it addresses the broad perception problems revealed in the report by the Sussex Circle.

5. The state of institutional two-language capability

Throughout this period of transformation in the federal administration the principle of institutional bilingualism, according to which government institutions must have sufficient two-language capability and all that this entails in order to respect the language rights of English- and French-speaking Canadians, has remained unchanged. The requirements inherent to the concepts of language of service and language of work are no different than they were when the Act was adopted. However, the various programs which enable government departments and agencies to implement the principle of institutional two-language capability have not been spared the pressures for change we have witnessed under PS 2000, Program Review and government renewal in general. We examine below how the key components of the government's official languages program have evolved during this period.

a) Second-language training and evaluation

As part of its mandate the PSC is responsible for meeting the second-language training needs of the federal Public Service. Presently the PSC meets this responsibility itself through Language Training Canada (LTC) and by means of contractual arrangements with private sector suppliers. Federal institutions are free to choose either LTC or the private sector for their language training needs.⁴⁵

As revealed by the Commissioner in recent annual reports, there has been a steady and significant decrease (30%) in demand for second-language training since 1993.⁴⁶ The PSC attributes this to the existence of a larger pool of available bilingual employees and a consequent decline in the numbers of persons who require language training, as well as to a trend towards the use of more imperative staffing of bilingual positions and, finally, to the overall decrease in staffing actions in the Public Service.⁴⁷ The drop in demand has been accompanied by a reduction in the number of second-language teachers. As the Commissioner noted in his 1996 Annual Report, the PSC issued assurances that the cutbacks at LTC would have no impact on its ability to respond effectively to the language training needs of departments. The Commissioner nonetheless cautioned the PSC on the need to monitor the situation closely.⁴⁸

Hand in hand with second-language training is the evaluation of second-language skills. In 1993 changes were made to the second-language testing schedule. The validity period for test results was extended from three years to five and the process for obtaining an exemption from future evaluation for writing was modified. In 1993 the duration of the validity of second-language evaluation results became indefinite as long as the employee remained in the same position, the language requirements of which had not changed, and he or she had valid second-language evaluation results at or above the level required at the time of appointment to the position. Replacing the previous system of central monitoring is an arrangement whereby deputy heads are expected to ensure that incumbents meet the language requirements of their positions. The Commissioner has previously cautioned against a lessening of controls in this area, especially for positions whose incumbents use their second language only to a moderate extent.⁴⁹ The relatively high failure rate among those evaluated for second-language proficiency in oral interaction (30% in 1996) reinforces the need to review the existing arrangement.⁵⁰

b) Bilingual positions and the participation of English- and French-speaking Canadians

Since 1992 there has been a dramatic reduction in the total number of positions in the Public Service (from 216,688 to 191,343). During this same period the proportion of positions designated bilingual has been relatively stable, increasing by 1.5% (from 29.5% to 31%). However, there does not appear to be any evidence as to whether the numbers and distribution of bilingual positions are sufficient to ensure adequate two-language capability in the reduced Public Service; no systemic evaluation has been conducted.

The Commissioner has previously noted a trend to an increased use of imperative staffing in federal departments and agencies, i.e. the staffing of bilingual designated positions by candidates who must meet the language requirements of the positions prior to appointment. We note for example that in 1982 imperative staffing actions accounted for 50.6%

of appointments to bilingual positions. By 1995-96 this had grown to 88.8%.⁵¹ Interestingly, the numbers of candidates who meet the language requirements of positions being staffed non-imperatively is also increasing.

According to the latest figures the overall proportions of English- and French-speaking employees have decreased slightly from the 1996 rates because the proportion of unknowns has increased. In 1997 the participation rate of French-speaking employees went from 27.2% to 26.6% while that of English-speaking employees went from 71.9% to 70.1%.⁵² In general, however, participation rates have remained relatively stable over the past ten years, with minor fluctuations, and this despite upheavals in organizational structures.

c) Designated bilingual offices

Between 1994 and 1997 government cutbacks resulted in a 9% decrease in the number of federal points of service, whether offices, wickets, service counters, etc., across the country. Of concern to the Commissioner, and to the official language minority communities, is the fact that a much greater proportion 27% of those points of service which were eliminated had been designated bilingual. The Commissioner has asked TBS to examine the situation carefully. (It is possible that the method of counting may have been changed. Also, in fairness, it must be stated that there has been no significant increase in complaints in this regard. The publication by TBS of lists identifying designated bilingual offices has certainly been helpful in this respect.)

d) Language requirements for senior management

In 1988 the TBS official languages policy for the Executive Group (EX) was modified. All members of the EX group occupying bilingual positions in regions designated bilingual for language of work purposes were to attain the levels "CBC" (level "C" for reading, level "B" for writing and level "C" for spoken interaction) by March 31, 1998. This objective was set in order to ensure that members of the EX group including the level of assistant deputy minister in bilingual regions meet their obligation to respect the language of work rights of their employees. A year before its deadline, however, the policy still had a long way to go, with only some 60% of EXs meeting the levels.⁵³

TBS must now prepare a new policy or amend the current one. As it explores the possibilities, the current policy's shortfall after ten years is further evidence that the decentralization of responsibility to departments has lessened the effectiveness of the official languages program and makes it imperative that any new measures include effective monitoring and accountability mechanisms.

e) Translation

In 1995 the Translation Bureau, while still part of Public Works and Government Services Canada, was made into a Special Operating Agency. This obliged the Bureau to compete with the private sector for translation and interpretation contracts of federal institutions.

Under its new organizational structure the Bureau maintains quality control of its in-house product and of the translations provided to it through contracting out. It does not, however, have the authority to evaluate the translations produced by the private sector on contract with individual institutions. The Commissioner has previously expressed concern about the resultant risk of variable quality in these translations. He has also asked TBS to evaluate the impact and the effectiveness of the Bureau as a SOA. However, the Bureau was granted a transition period which lasts until fiscal year 2000-2001. We understand that during this period no evaluation will be conducted. TBS has indicated that it is following the situation closely by means of regular meetings with the Translation Bureau and that feedback on the Bureau's operations has generally been positive. The Commissioner is nonetheless concerned by the lack of a formal evaluation mechanism for several years to come.

Overall, institutional two-language capability appears to be surviving government renewal, but it is on shaky ground in a number of areas. The reduction in the monitoring of the second-language skills of public servants represents a withdrawal of effort, despite the obvious risks for two-language capability in the federal Public Service. The government's failure to secure a fully bilingual EX category (where that capability is necessary) after ten years of trying means that problems will continue in securing the language of work rights of public servants. These situations combine with our other findings to demonstrate a tendency by the government to de-emphasize its official languages responsibilities.



V. CONCLUSION

This special study of transformations in the federal administration and their impact on official languages was undertaken after several complaint investigations revealed an inadequacy of attention to language rights and obligations as federal institutions underwent structural changes and devolutions and other transfers were carried out. The study has confirmed that the similarity of the investigation results was no coincidence. Devolution, partnering, commercialization and restructuring of federal services and programs, in addition to changes in the relationship between central agencies and departments, have resulted in a cumulative weakening of language rights and of the federal government's effectiveness with respect to official languages.

Review of evidence

The weakening of language rights is documented throughout the preceding text. Below, we review and regroup the evidence to see the various ways in which the changes in recent years have come together to decrease consideration for Canada's official languages. First, we see how the transformation of departments and agencies has occurred without full consideration of the Act. Second, we list the evidence indicating that central agencies have not given sufficient leadership in ensuring that federal institutions maintain their language obligations in the context of the Program Review exercises and subsequent changes. Third, we document the withdrawal of resources and commitment from the government's official languages program.

Inadequate consideration of language rights in institutional transformations

- In 1995 Human Resources Development Canada negotiated with potential partners for the creation of a new service delivery network before establishing provisions ensuring that services would continue to be provided in both official languages.
- More recently at Human Resources Development Canada, the federal provincial negotiation process for labour market development agreements did not, in most instances, fully ensure adequate protection of language rights.
- When Health Canada transferred medical services to the Yukon government in 1993 and 1997 it did not include provisions for the maintenance of federal official languages obligations.
- At Justice the proposed delegation of administrative responsibilities to Ontario (and subsequently to Ontario municipalities) under the *Federal Contraventions Act* has led to a situation which risks an erosion of language rights and obligations.
- Fisheries and Oceans did not take full account of the government's commitment under Part VII in its 1995 decision to remove the regional headquarters status of the Department's Moncton operations.
- Canada Mortgage and Housing Corporation, although thoroughly committed to official languages, especially at the management level, chose an unfortunate model (the Canada-Alberta Labour Market Development Agreement) for linguistic provisions in federal-provincial agreements in social housing.
- The Canadian Tourism Commission's Charter and Guiding Principles make no explicit reference to the Act or language rights.
- Since it was privatized in 1991 minority language clients of Petro Canada have no independent recourse if the company fails to meet the linguistic provision contained in the privatization legislation.
- In developing a new programming strategy the Canadian Broadcasting Corporation did not at first give sufficient weight to the government's commitment to enhance the vitality and support the development of linguistic minority communities.

Failure of central agencies to ensure maintenance of language obligations during Program Review and subsequent changes

- These situations occurred despite the involvement of the Privy Council Office and the Treasury Board Secretariat as central agencies in the Program Review decision-making process and despite the Secretariat's Framework document for alternative service delivery methods.
- Canadian Heritage did not adequately exercise its coordination responsibilities during the Program Review which resulted in the Canadian Broadcasting Corporation's new programming strategy.
- The Program Review tests established by the Privy Council Office made no reference to linguistic rights and obligations.
- Under *La Relève* there is no mention of the central agencies' role in ensuring that institutional two-language capability is preserved during the transformation of the Public Service.

- The National Capital Commission reported that it was "working without a map" and "working from scratch and without any standard government model for commercialization" in establishing employee takeover corporations.

Withdrawal of resources and commitment from the official languages program

a) Treasury Board Secretariat

- In 1991 the Secretariat abolished its official languages audit unit and turned to internal audit units within the departments and to its own general audit group to provide the necessary monitoring.
- The Secretariat relies heavily on departmental self-assessments to monitor official languages performance.
- Between 1990 and 1997 the number of staff responsible for official languages at the Treasury Board Secretariat has decreased by nearly half.
- Between 1994 and 1997 the number of federal offices designated to provide service in both official languages apparently decreased by 27% whereas the overall decrease in federal offices was 9%.
- A ten-year program to bilingualize the senior management category in the Public Service is about to expire while 40% of the targeted group still do not meet one of the three established requirements.
- Treasury Board Ministers now receive only summaries of official languages annual reports whereas previously they approved each department's Letter of Understanding on official languages.

b) Canadian Heritage

- The Department defines its coordinating role for the implementation of Part VII in terms of consultation, coordination and facilitation, whereas the Commissioner favours a broader interpretation which includes active intervention with regard to other federal institutions to ensure that their actions are in accordance with Part VII.

c) Public Service Commission

- The second-language skills of federal employees in bilingual positions are no longer re-tested after nomination unless circumstances change.

d) Departments and agencies

- During 1995-96 there was a 25% decline in the numbers of employees allocated to the administration of official languages in 21 departments and agencies examined in a study commissioned by TBS, with a further decrease expected in 1996-97.
- The integration of the official languages program into departmental human resources units has created a general perception that the program is "just another" human resource activity, "on a par" with staffing, classification, and staff relations.

The Commissioner fully recognizes that there are exceptions to this pattern. The National Secretariat of Canada Business Service Centres gives every indication of assuming and understanding this responsibility in its coordinating role. Among the central agencies, Justice will fill an important vacuum by establishing legal parameters for devolution. On paper TBS acted responsibly in including official languages in criteria for establishing alternative service delivery methods; in practice, however, the Secretariat has left itself with insufficient leverage to ensure that the criteria are appropriately applied.

The picture presented by this study leads the Commissioner to conclude that the problem lies principally with a lack of clear accountability for managing the official languages program and in the government's failure to take full and active account of the needs and interests of official language minority communities as departments and agencies struggle to cope with changing circumstances and reduced resources.

A question of accountability

Who is in charge of the official languages program? The answer is unclear. Central agencies and departments accept varying degrees of responsibility but there is no one definitive authority. No one steps forward like President Harry Truman and says, "The buck stops here." TBS has de-emphasized monitoring in favour of cooperation and consultation. Canadian Heritage has adopted a limited interpretation of its coordinating role for the implementation of Part VII and the PSC has reduced its monitoring function. Meanwhile, government departments and agencies focus on other priorities.

Public and private interest

In the view of some senior officials interviewed the theory is that as the federal administration transforms itself good business sense will protect the well-being of Canada's two official languages. This may apply to some locations where "critical mass" exists, but in others where the minority population is relatively small one cannot simply assume that organizations committed to making profits or focusing on administrative efficiency will match the significant demand criteria established under the Act's regulations for providing service in both languages where numbers warrant. We found little to suggest that a more entrepreneurial style of government will enhance the recognition of language rights in other areas, notably in regard to the government's Part VII commitment. These observations are not intended to denigrate the private sector (or the public one) but rather to remind ourselves of the particular role, rules and responsibilities of the public sector.

The public interest demands that public institutions be accountable for their actions. When those actions affect the interests of Canada's official language minority communities they affect one of this country's fundamental values, that of our linguistic duality, enshrined in our history, in the Constitution and in the Act. The primary responsibility for protecting national values rests with the federal government. The omission of any specific recognition of the official language minorities in the 1997 Calgary declaration on national unity signed by nine provincial premiers demonstrates the need to ensure that Canada's linguistic duality is duly considered in federal-provincial discussions.

As the federal government proceeds with its renewal process it has a responsibility to manage change in accordance with the fundamental values of Canadian society. The existing linguistic regime falls short of what is needed to protect the rights and needs of English- and French-speaking Canadians. Within the federal administration roles and responsibilities in official languages are less clear than they were in the past and the normal checks and balances of monitoring, audit and evaluation have been weakened. In the absence of effective evaluation mechanisms devolution of authority, responsibility and accountability in official languages has gone too far. The message being conveyed is that language rights are just another human resource issue instead of being a national value which transcends organizational changes and management trends.

As linguistic ombudsman the Commissioner is not a substitute for an inadequate linguistic regime; he can only sound the alarm. The government has a duty to take charge of the situation before irreparable damage is done to Canada's official language minority communities.

Respecting language rights has become an administrative task rather than a national value. As the government transforms itself, official language minority communities feel that they have not been listened to; they deserve to be, and the Commissioner urges that they be given a full and continuing opportunity to express themselves.

Recommendation

It is time to reverse the current.

The Commissioner believes that fundamental changes are urgently required in the management of official languages if the language rights of English- and French-speaking Canadians are to survive and flourish. It is incumbent on the federal government to conduct a thorough review of the ways and means by which it gives meaning to its legal and constitutional obligations in this area. Our special study of government transformations points to three areas requiring particular attention: (1) the roles and responsibilities of the central agencies *vis-à-vis* other federal institutions, (2) the mechanisms for planning and implementing structural changes in the federal administration and (3) the relationship between the federal government and other levels of government in the context of devolutions, withdrawals and transfers.

The Commissioner therefore recommends that the government, in consultation with the Privy Council Office as the communicator of the government's policy directions, the Treasury Board Secretariat as general manager of the official languages program; the Public Service Commission for its human resources responsibilities, and Canadian Heritage for its responsibilities under Part VII of the Act:

establish, within 90 days of receiving this report, an official languages task force with a mandate to develop the necessary strategies, policies and criteria to ensure full recognition and implementation by all departments, agencies and Crown corporations of the Official Languages Act in particular but not only Part VII and the official languages regulations in the new and evolving federal administration

ensure that the official language minority communities across the country are given ample opportunity to provide their input

require that the task force submit its action plan no later than eight months following its creation.

To assist the task force in its work the Commissioner has expanded his guiding principles for federal-provincial agreements, enunciated with regard to those on labour market development, to encompass all institutional transformations as well as the relationship between central agencies and other federal institutions.

Guiding principles for Official Languages in government transformations

As the federal administration evolves, the government has a duty to:

1. preserve existing rights by clearly guaranteeing the members of the public concerned the right to services as stipulated in the Act and official languages regulations
2. define a mechanism that gives the members of the public concerned the option of adequate and transparent remedy in case of dissatisfaction and, if appropriate, of redress of the situation
3. establish effective accountability and control mechanisms to ensure that language obligations are fulfilled
4. in the case of transfers and withdrawals involving other levels of government obtain a commitment by the other level of government to support the development of the official language minority communities, to consult those communities with regard to their needs and interests and to take concrete measures accordingly
5. take into account the language rights of federal employees when giving current employees the choice of transferring to the employ of another level of government or the private sector or remaining in the employ of the federal government.

The Commissioner urges the federal government to adopt these guiding principles as official policy for future transformations.

There is an urgent need to reverse the current.



APPENDICES

APPENDIX A GLOSSARY

For the purposes of this study, we have adopted the following terms and definitions.

GENERAL TERMS

Alternative service delivery (ASD):

selecting the best means of delivering programs and services to meet government objectives. This could include new organizational models, employee takeovers and contractual arrangements, partnerships, devolution and privatization. The objective is to create a more client-oriented, affordable and innovative program delivery environment. Examples of such mechanisms are Crown corporations, commercialized and privatized government services and other co-operative arrangements with the private sector. (President of the Treasury Board, *Annual Report to Parliament*, 1996, p. 93.)

Commercialization:

means adopting a businesslike approach to the delivery of certain services. The objective of commercialization is to improve services and reduce costs, while continuing to protect the public interest. Commercialization embraces a number of possibilities for owning and operating assets e.g. Crown corporations, 'mixed' public-private enterprise, transfer to other levels of government, or outright privatization. Commercialization can also involve greater cost-recovery from users. In return, service delivery can be expected to be more responsive to clients. In all cases, consultations will be a key element in determining the option to be chosen in any particular case. (Department of Finance, *A New Framework for Economic Policy*, October 1994, p. 58)

Partnering:

a collaborative arrangement between two or more parties based on mutual interest and a clear understanding, agreement or contract that sets out the objectives and terms of the arrangement to provide services or perform other activities. It is not necessarily a true legal partnership where the parties are liable for each other's actions,

however, partnering arrangements can be either formal or informal. (President of the Treasury Board, *Annual Report to Parliament*, 1996, p. 94.)

Partnership:

a true legal partnership refers to a relationship among legally distinct entities in which each partner's actions are fully binding on every other partner. As the federal government has been reluctant to enter into such true legal partnerships, it uses the term "collaborative arrangement". (Treasury Board Secretariat, *Stretching the Tax Dollar - The Federal Government as "Partner": Six Steps to Successful Collaboration*, October 1995, p. 3.)

Program Review:

a federal government-wide assessment of all programs, policies and activities introduced in 1994 in an attempt to improve the effectiveness and efficiency of services to Canadians while meeting important fiscal targets. (President of the Treasury Board, *Annual Report to Parliament*, 1996, p. 94.)

TRANSFORMATIONS

The transformations examined in the study fall into one of two categories.

a) Transformations Within the Government

Crown corporations:

operate "at arm's length" from ministerial direction; their accountability to government is based on a contradiction -- the need to balance commercial independence with the prerogatives of ownership and control.

The corporate form was adopted by the federal government to enable these entities to function effectively in a businesslike way, free of the bureaucratic restraints of a department (the employees are not public servants and the administrative rules and regulations of the public service do not apply). In this way, a specific task could be carried out on behalf of, but not directly by, the government. There are two broad categories of Crown corporations: non-commercial (ex. Canada Mortgage and Housing Corporation) and commercial (ex. Canada Post Corporation). (*Public Policy Delivery: Federal Government Organizational Models*, Background Paper BP-266E, Research Branch, Library of Parliament, p. 10-11.)

Decentralization:

a basic administrative concept and process of shifting and delegating (...) authority from a central point to subordinate levels within the administrative hierarchy, in order to promote independence, responsibility, and quicker decision-making in adapting policies and programs to the needs of those levels. (*Termium*)

Delegation:

action whereby an authority transfers part or all of its administrative powers to another party.

Reorganization/restructuring:

the action of changing organizational structures to adapt them to meet new needs.

Special Operating Agency (SOA):

SOAs give service delivery units increased management flexibility in return for agreed upon levels of performance and results. SOAs remain part of their departmental organization and remain accountable for results to their home department. However, they operate under a tailor-made, written understanding with the department. This understanding (consisting of a 'framework agreement' and a business plan) covers the results and service levels expected, the relief from administrative rules that will be granted and the resources available to do the job. (Treasury Board Secretariat, *Population Affiliation Report*, December 1997, p. 127.)

Other terms used in this category:

Cuts in positions

Program cuts

Staffing freezes

b) Transformations Involving Other Parties

Devolution:

government A transfers activities to government B. The latter carries out the program as it sees fit, all the while complying with the standards set by government A. (*Federal-Provincial Program Overlap*, Background Paper BP-321E, Research Branch, Library of Parliament, p. 5.)

Employee takeover:

a form of privatization of a service. A group of service provision employees leave the public service in return for a

directed multi-year contract to provide the same service to the government. (...) After the expiry of the initial contract, the government puts the service to tender. The former employees have full rights to bid. (*Public Policy Delivery: Federal Government Organizational Models*, Background Paper BP-266E, Research Branch, Library of Parliament, p. 9.)

Privatization:

transfer (public property, services, etc.) from public or government control or ownership to private control or ownership. (Gage Canadian Dictionary, 1997.)

APPENDIX B PERTINENT INVESTIGATION REPORTS

1. Report on complaints concerning the Labour Market Development Agreements (LMDAs) and the *Employment Insurance Act*. July 1997. 14 complaints.
2. Report on complaints concerning budgetary reductions and programming changes at the Canadian Broadcasting Corporation. June 1997. 83 complaints.
3. Report on complaints concerning the federal government's responsibility in regard to budgetary reductions and programming changes at the Canadian Broadcasting Corporation. June 1997. 9 complaints.
4. Report of a complaint concerning the reorganization of Human Resources Development Canada offices in South-West Nova Scotia. January 1997. One complaint.
5. Report on complaints concerning the reorganization of the Department of Fisheries and Oceans in the Maritimes. July 1996. 4 complaints.

N.B. Although these investigation reports are confidential. Subsection 63(1) of the Act requires that a copy be provided to the Treasury Board.

APPENDIX C OFFICIAL LANGUAGES OBLIGATIONS OF THE FEDERAL GOVERNMENT: A SUMMARY OF LEGAL AND CONSTITUTIONAL REQUIREMENTS

The Legislative Competence of Language

In Canada both federal and provincial levels of government can claim jurisdiction over language and neither can claim exclusive jurisdiction of it. Language is not a subject listed in the Constitution Act, 1867, under either Section 91 (federal powers) nor Section 92 (provincial powers). Neither is it an independent matter. Language is rather an ancillary matter, associated to whatever purpose for which it is used. For example, a provincial law establishing an official language is, for constitutional purposes, valid in relation to the institutions or activities to which the law applies. Hence, both federal and provincial levels of government can legislate on language.

Official Languages: An Historical Perspective

The *Constitution Act*, 1867, contained minimal provisions on language. They are mostly limited to Section 133, which provided for the enactment of federal statutes in both English and French and imposed a regime of legislative, parliamentary and judicial bilingualism. This section imposed a similar obligation for the institutions of Quebec. Section 93 of the *Constitution Act* also provided for the protection of confessional school rights, which did not protect language in schools.

The 1960 Canadian Bill of Rights was the first attempt by the Parliament of Canada to affirm that Canada was founded on certain fundamental principles. These principles included fundamental rights and freedoms. Even though language rights were not specified the Bill still stands as the parent to the *Canadian Charter of Rights and Freedoms* of 1982, which constitutionalized fundamental rights and freedoms and provided for the constitutional protection of language rights, per Sections 16 to 22. These provisions establish English and French as the official languages of Canada and protect their use in all institutions of the Parliament and the government of Canada (Section 16). They provide for constitutional language rights before Parliament and its Courts (Section 17 to 19). The Charter also guarantees the right of the public to services in either official language from the federal government's institutions (Section 20). Another provision (Section 23) gives constitutional protection to minority official language parents wishing to educate their children in publicly funded official language minority programs everywhere in Canada. Finally, it provides for a recourse before the Courts where a fundamental right or freedom, including a language right, has been violated (Section 24).

In 1969 Parliament enacted the first *Official Languages Act*. This Act provided for the implementation of Section 133 of the *Constitutional Act, 1867*, and added provisions for official languages services to the public from federal institutions. In 1988 a new *Official Languages Act* was adopted. It enhanced the language rights provisions contained in the 1969 Act and provided for new rights such as the right of federal employees to work in the official language of their choice in designated regions. Legal recourse provisions were added, worded similarly to Section 24 of the Charter.

It followed that the federal government took various measures, which together came to form the government's official languages program, to implement both its legal and constitutional obligations over official languages. Policies and directives were developed by central agencies to direct and guide the various federal institutions on how to meet their official languages obligations. Several institutions developed and implemented official languages programs and measures. In 1992 the official languages (communications with and services to the public) regulations were enacted under the *Official Languages Act, 1988*, to provide better guidance on requirements for official languages services to the public.

A final issue is worthy of mention. The considerable impact of the federal government's spending power in fields outside exclusive federal jurisdiction should not be forgotten. By means of its spending power, through its leadership and by means of intergovernmental agreements, the federal government can exercise a great deal of influence in this sector.

In conclusion, it is important to note that, although both levels of governments have a role to play in the area of official languages and languages rights, the jurisdiction of the Commissioner of Official Languages is limited to the activities of federal institutions and agencies in this field.

APPENDIX D FEDERAL INSTITUTIONS INTERVIEWED

PRIVY COUNCIL OFFICE

TREASURY BOARD SECRETARIAT

PUBLIC SERVICE COMMISSION

DEPARTMENT OF JUSTICE

DEPARTMENT OF FINANCE

CANADIAN HERITAGE

- Part VII responsibilities
- Parks Canada

REVENUE CANADA

CITIZENSHIP AND IMMIGRATION CANADA

AGRICULTURE AND AGRI-FOOD CANADA

CANADA MORTGAGE AND HOUSING CORPORATION

INDUSTRY CANADA

Canada Business Service Centres National Secretariat

Canadian Tourism Commission

NATIONAL FILM BOARD

NATIONAL CAPITAL COMMISSION



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Notes

1. A glossary of the terms used to describe the various types of transformations is found in [Appendix A](#).
2. See [Appendix B](#).
3. David Wright and David Zussman, Review and Analysis of Recent Changes in the Delivery of Government Services. A Report Prepared for the Deputy Ministers' Task Force on Service Delivery Models, Ottawa: Treasury Board Secretariat, May 21, 1996, Appendices G and H.
4. See [Appendix C](#) for a summary of legal and constitutional requirements in official languages.
5. The relevant sections of the Act are Parts IV, V, VI and VII as well as the official languages (communications with and services to the public) regulations.
6. Section 41 reads as follows:
[T]he Government of Canada is committed to
(a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and
(b) fostering the full recognition and use of both English and French in Canadian society.
7. Privy Council Office, 1997-98 Estimates Part III Expenditure Plan, p. 16.
8. The Department of Justice states that it is expected, in general...
to provide legal services in support of a full spectrum of governmental policy initiatives, and to be involved in various stages in the policy process (e.g., policy development, drafting of legislation and regulations, implementation, compliance measures, and litigation). To be most effective in preventing legal difficulties at later stages, Department of Justice counsel are involved at an early stage of the policy process, so that they are aware of the objectives and of options being considered and can provide an early indication of the legal implications of these options. (Department of Justice, Role of the Department of Justice in the Government of Canada, <http://canada.justice.gc.ca>. Accessed January 26, 1998.)
9. See: Sussex Circle, Situation Report on the Administration of Official Languages and Employment Equity Programs in Federal Government Departments, prepared for the Treasury Board Secretariat, Ottawa: March 1996.
10. David Osborne and Ted Gaebler, *Reinventing Government. How the Entrepreneurial Spirit is Transforming the Public Sector*, Don Mills, Ontario: Addison-Wesley Publishing Company, 1992.
11. Spencer Zifcak, Administrative Reform in Whitehall and Canberra, Canberra Bulletin of Public Administration, No 78, (August 1995): 13-16.
12. David L. Saedler, Privatization: Paradigm Lost. A Discussion of Competitive Government for the '90s. Paper presented to the Privatization Task Force of the District of Columbia, April 25, 1995.
13. David Wright and David Zussman, op. cit., p. 5.
14. In her report the Ontario ombudsman says:
(S)uch a policy would include a number of guidelines: governmental organizations should publicize their complaint mechanisms and appeal procedures; they should seek to identify all persons affected by maladministration, and offer appropriate redress; there should be systems in place to prevent the recurrence of maladministration; there should be consistent standards on the conditions for granting redress; financial compensation for worry, distress and other damage should be available in exceptional cases; and clients should be advised if they continue to be dissatisfied when all internal appeals have been exhausted, that they have access to an independent investigation through the Ombudsman. (Ontario Ombudsman, Annual Report 1996/97, p. 2.)
15. See in particular: A.W. Johnson, Reflections on Administrative Reform in the Government of Canada 1962-1991, Office of the Auditor General of Canada, Ottawa: 1992.
16. Ibid., p. 34.
17. Privy Council Office, Questions and Answers for the Releases of PS Task Force Reports, Public Service 2000,

- Ottawa: August 14, 1990. Quoted in: Commissioner of Official Languages, Annual Report 1990, p. 31.
18. Office of the Commissioner of Official Languages, Annual Report 1990, p. 31.
 19. Government of Canada, Public Service 2000 The Renewal of the Public Service of Canada, Ottawa: 1990, p. 26.
 20. Treasury Board Secretariat, Population Affiliation Report, Ottawa: March 1997, p. 107.
 21. Airport Transfer Act, Section 4.
 22. The Commissioner was instrumental in the legislation being changed to include the Act's language of work provisions for leased airports.
 23. An Act to amend the Airport Transfer Act, Section 2.
 24. The Commissioner's Office has approached the Treasury Board Secretariat regarding the need to clarify the scope of the linguistic obligations of local airport authorities.
 25. Department of Finance, A New Framework for Economic Policy, Ottawa: 1994, p. 56.
 26. Treasury Board Secretariat, Getting Government Right. A Progress Report, March 7, 1996, Appendix I.
 27. See: Privy Council Office, La Relève: A commitment to action, Ottawa: 1997.
 28. Notes for an address by Jocelyne Bourgon, Clerk of the Privy Council and Secretary to the Cabinet. HRCC Conference Human Resources Development Canada. Cornwall, Ontario, November 6, 1996.
 29. These shortcomings are examined in Chapter IV, Section 5(d) of this report, p. 22.
 30. The NFB notes that its videos can be purchased via a toll-free, 24-hour service and that it is exploring new avenues, such as Internet, to increase dissemination of its productions.
 31. National Capital Commission, Annual Report 1995-1996, Ottawa: p. 15.
 32. The Department describes the change as a "realignment" of settlement services. We understand that this includes a partial withdrawal of federal activity in this area and that negotiations with the provinces are aimed at ensuring that services are maintained.
 33. This initiative followed the government's response, announced in November 1996, to the Second Report of the Standing Joint Committee on Official Languages concerning the implementation of Part VII of the Act.
 34. Office of the Commissioner of Official Languages, Annual Report 1993, Ottawa: pp. 12-13. Among other things, the Commissioner found that previous problems in two-language capability in the internal audit community remained.
 35. Treasury Board, Official Languages in Federal Institutions, Annual Report 1990/91, Ottawa: p. 21.
 36. Letter of December 13, 1993, from the Secretary of the Treasury Board to the Commissioner of Official Languages.
 37. Treasury Board, Annual Report on Official Languages 1996/97, Ottawa: p. 6.
 38. Ibid.
 39. Ibid., p. 2.
 40. Sussex Circle, Situation Report on the Administration of Official Languages and Employment Equity Programs in Federal Government Departments prepared for the Treasury Board Secretariat, Ottawa: March 1996.
 41. Ibid., p. 9.
 42. Ibid., p. 8.
 43. Department of Justice, Status Report 1996-1997 and Action Plan 1997-1998 Action Plan, Implementation of section 41 of the *Official Languages Act*, Ottawa: June 30, 1997, p. 23.
 44. Office of the Commissioner of Official Languages, A Blueprint for Action. Implementing Part VII of the *Official Languages Act*, 1988. Report of the Commissioner of Official Languages on the Federal Government's Implementation of Part VII of the *Official Languages Act*, Ottawa: February 1996.
 45. We understand that LTC has an advantage over private suppliers in that it bears the costs of language training required for employees to reach established proficiency levels whereas departments must assume the costs if they use private suppliers for this purpose.
 46. Office of the Commissioner of Official Languages, Annual Report 1996, Ottawa: p. 62.
 47. Public Service Commission of Canada, Annual Report 1996-97, Ottawa: p. 17.
 48. Office of the Commissioner of Official Languages, Annual Report 1996, Ottawa: p. 63.
 49. Office of the Commissioner of Official Languages, Annual Report 1995, Ottawa: p. 60.
 50. Office of the Commissioner of Official Languages, Annual Report 1996, Ottawa: p. 63.
 51. Ibid., p. 62.
 52. Sources: Treasury Board Secretariat, Official Languages Information System (OLIS) II, 1995, December 1996; Position and Classification Information System (PCIS) 1996, September 1997.

53. TBS has reported that most of the problem lies with the level "C" required for spoken interaction. While 40% of the EX group does not meet the language requirements for all three categories, 94% possess the level "C" for comprehension, 98% meet the level "B" requirement for writing and 61% have level "C" for spoken interaction. (Treasury Board, Annual Report on Official Languages 1996/97, Ottawa: p. 27.)

Date modified: 2012-03-06


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