

## The Use of the Official Language Minority Press by Federal Institutions

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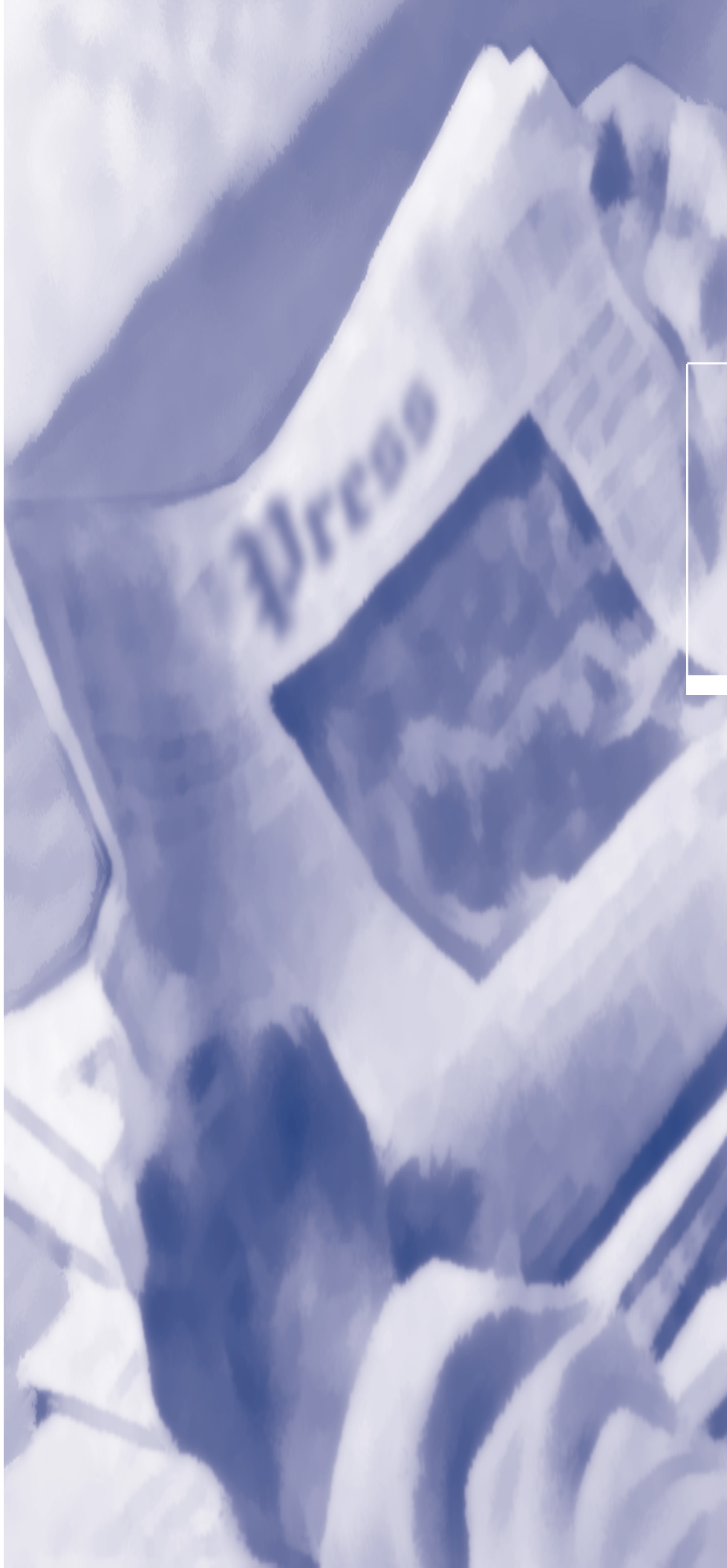
Cat. No.: SF31-65/2002

ISBN: 0-662-66948-7

Printed on recycled paper



Imprimé sur du papier recyclé



# The Use of the Official Language Minority Press by Federal Institutions

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November 2002





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## I. INTRODUCTION

For several years, the Office of the Commissioner of Official Languages has received many complaints about federal institutions' failure to use the official language minority press when placing advertisements in official language majority newspapers. In spite of various measures taken with the institutions by successive Commissioners of Official Languages over the years, primarily through investigations and complaints, and in spite of the commitments made by institutions following these investigations, the problem persists.

Since complaints are filed further to announcements being published in official language majority newspapers without equivalent announcements being placed in official language minority newspapers, the campaign that was the subject of the announcement is often finished, and it is too late to take the appropriate corrective measures.

To eliminate such cases where it is too late for corrective action, the Commissioner of Official Languages undertook a special study in the summer of 2001 in order to propose solutions to address these problems at their source and to prevent repeated complaints about the failure of institutions subject to the *Official Languages Act*<sup>1</sup> to use the official language minority press.

## II. LEGISLATIVE PROVISIONS

Section 56 of the *Official Languages Act* gives the Commissioner of Official Languages the mandate to take any measures within her authority to ensure recognition of the status of each of the official languages and compliance with the spirit and intent of the *Official Languages Act* as regards the administration of the affairs of federal institutions, including any

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

This special study was conducted pursuant to the various provisions of the *Official Languages Act*. We considered first of all the requirements relating to the media, that is, section 11, Part II (Legislative and Other Instruments), and section 30, Part IV (Communications with and Services to the Public).

Section 11 states that:

(1) A notice, advertisement or other matter that is required or authorized by or pursuant to an Act of Parliament to be published by or under the authority of a federal institution primarily for the information of members of the public shall, (a) wherever possible, be printed in one of the official languages in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that language and in the other official language in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that other language; and (b) where there is no publication in general circulation within a region where the matter applies that appears wholly or mainly in English or no such publication that appears wholly or mainly in French, be printed in both official languages in at least one publication in general circulation within that region.

(2) Where a notice, advertisement or other matter is printed in one or more publications pursuant to subsection (1), it shall be given equal prominence in each official language.

<sup>1</sup> *Official Languages Act*, R.S.C. 1985 (4th Supp.), c. 31.

Section 30 stipulates that:

Subject to Part II, where a federal institution is engaged in communications with members of the public in both official languages as required in this Part, it shall communicate by using such media of communication as will reach members of the public in the official language of their choice in an effective and efficient manner that is consistent with the purposes of this Act.

Part IV of the *Official Languages Act* stipulates that the public has the right to communicate with federal institutions and receive services from them in the official language of their choice, at their head or central office and at their offices in the National Capital Region, in Canada or elsewhere, where there is significant demand for services in that language. This obligation also applies to a number of federal institutions which, although privatized, are still subject to the *Official Languages Act*. It should be noted that in this report, privatised institutions will be treated in the same manner as other federal institutions.

The *Official Languages (Communications with and Services to the Public) Regulations* set forth the conditions establishing a significant demand for services in English and French. They also include a series of general rules and rules pertaining to specific services.

Throughout this study, we have also considered Part VII of the *Official Languages Act*, specifically section 41, which provides that:

The 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.

In Canadian society, the media, including newspapers, are important communication tools. Official language minority communities rely to a great extent on the media in their language, including their newspapers, to be informed of current events relating to their community. Official language minority newspapers foster the development and vitality of these communities.

In addition to communicating with the public in the official language of their choice, all federal institutions are required to implement Part VII of the *Official Languages Act*.

### III. METHODOLOGY

We began with an analysis of the complaints received over the last four years. Between January 1, 1998 and December 31, 2001, a total of 848 admissible advertising-related complaints were filed with the Office of the Commissioner of Official Languages (these account for 19% of all admissible complaints). Of this total, 810, or 95.5%, pertained to the failure to place advertising in French-language minority newspapers and 38, or 4.5%, pertained to the failure to place advertising in English-language minority newspapers (see Appendix A).

In order to identify the type of advertising that was most frequently the subject of complaints, we divided the complaints into the following categories.

The first category, “Notices,” includes advertising pertaining to promotions, calls for tender, notices, invitations, etc. According to our tabulations, this type of advertising accounts for 24.9% of advertising-related complaints filed since 1998.

The second category, “Recruitment,” pertains specifically to the hiring of staff. This category does not include general advertising by Human



Resources Development Canada, such as announcements regarding student employment programs. This second category of advertising accounts for 10.6% of advertising-related complaints received since 1998.

A third category, “Commercial,” includes advertising directly related to the institution’s mandate, announcements regarding federal programs, and information about routes and tariffs directed at the public. This category includes all commercial advertisements placed by third parties working under contract for an institution subject to the *Official Languages Act*. This category of advertising includes the greatest number, or 53.9%, of complaints.

A fourth category, “Partnership,” includes all types of advertising made under a partnership by one federal institution with another federal or provincial institution or a private firm. This category also includes advertising by firms or groups that receive federal grants and are required to publish their advertising in both official languages. According to our records, this type of advertising accounts for 7.5% of advertising-related complaints filed since 1998.

A final, “Miscellaneous,” category encompasses all advertising that does not fall under one of the other categories. This type of advertising accounts for 3.1% of advertising-related complaints filed since 1998.

Appendix B gives a more detailed breakdown of the categories of complaints, with the number of complaints filed each year since 1998. Appendix C provides detailed statistics about the number of complaints by linguistic group per province, the section of the *Official Languages Act* in question and the provinces most often involved. Overall, the majority of complaints pertain to section 30 of the *Official Languages Act*.

In reference to the table on complaints filed against institutions per year (see Appendix D), we note a reduction, from 284 to 121, in the number of complaints lodged between 1998 and 2001. This is an encouraging trend which no doubt indicates that institutions are increasingly aware of their obligations with respect to the use of the minority press. However, caution must be exercised in interpreting the data, since we are unable to ascertain whether the extent of the advertising carried out by the institutions was consistent from year to year. The most frequently cited institutions are Air Canada, Human Resources Development Canada, and the Halifax International Airport Authority.

Next, we examined the Communications Policy of the Government of Canada (CPGC) to gain a better understanding of the advertising process. This policy was issued under section 7 of the *Financial Administration Act*.<sup>2</sup> It is applicable to all departments and agencies listed in Schedules I, I.1 and II of the *Financial Administration Act*, for whom Treasury Board is the employer. As for Crown corporations, they fall under Schedule III of this Act.

Then we selected some twenty institutions of varying types to study the operation and management of the advertising process in various institutions subject to the *Official Languages Act*. To this end, we conducted a total of 24 interviews with communications officials at these institutions in order to discuss budget allocation for media use and, if applicable, their internal policies and procedures pertaining to advertising and the development and approval of advertising prepared by the institution at the national and regional levels.

Some institutions were selected for our study depending on their central agency role or common service orientation, the nature of their advertising and their involvement in

<sup>2</sup> *Financial Administration Act*, R.S.C. 1985, c. F-11.

partnership or third party agreements; others were randomly selected from among the institutions listed in Schedules I, II and III of the *Financial Administration Act*.

We also conducted interviews with five officials from the key communications agencies, namely, the Canada Information Office (which, on September 1, 2001, became the Communication Canada agency); the Treasury Board Secretariat (TBS); the Privy Council Office; and Public Works and Government Services Canada (PWGSC). We analyzed documents such as contracts with advertising agencies, general advertising and official languages policies and guidelines, as well as internal policies and guidelines of some federal institutions and the *Advertising Guide* produced by PWGSC's now defunct Communications Coordination Services Branch. We also reviewed, on the federal government's Publiservice Intranet site, all sites and links pertaining to advertising.

At the time we conducted our interviews and examined the documents, policies, and procedures relating to advertising, TBS was revising its government communications policy. The new CPGC was subsequently approved; it came into force on April 1, 2002. Although the interviews and analyses were completed before the new communications policy took effect, this report takes account of the changes subsequent to this policy coming into force.

We also had discussions during the study with representatives of the Association de la presse francophone (APF), which represents French-language newspapers outside Quebec, and of the Quebec Community Newspapers Association (QCNA), which represents English-language community newspapers in Quebec.

Finally, this report takes into account the comments received on our preliminary report

from organizations included in our study. Air Canada has indicated that it would like to meet with our Office concerning its obligations under the *Official Languages Act* and has reserved its comments until the meeting, which will take place later this fall.

## IV. FINDINGS

The CPGC establishes the roles and responsibilities of the central agencies (e.g., TBS and the Privy Council Office) and of the common services organizations (e.g., PWGSC and Communication Canada) as regards communications. Under paragraph 7(1)(a) of the *Financial Administration Act*, Treasury Board is responsible for approving and enacting, under the direction of Cabinet, the CPGC. TBS is responsible for developing the official languages policies, which also include guidelines on media use. Moreover, the Privy Council Office supports Cabinet communications strategies and monitors their implementation, informs institutions of government priorities, and provides them with advice and assistance in managing their communications program. Under the CPGC, the Minister of Public Works and Government Services (PWGSC) is mandated by Cabinet to ensure the integrity of the awarding of contracts for advertising and public-opinion research. PWGSC is responsible for the management of service contracts and the competitive process for the selection of advertising agencies by federal departments, as well as contracts with the government's accredited placement agency. Communication Canada was born out of the amalgamation, on September 1, 2001, of the now defunct Communications Coordination Services Branch of PWGSC and the Information Canada Office. Communication Canada ensures that communications concepts and strategies used by the institutions subject to the CPGC are

consistent with the government's communications objectives. Communication Canada also approves the general media plans of federal institutions listed in Schedules I and II of the *Financial Administration Act*, as well as their individual advertising.

Communications operations in the federal government are constantly evolving. Many changes have been made in recent years. For the past year, there has been a Cabinet committee on Government Communications, comprised of various ministers and chaired by the Minister of Public Works and Government Services. This committee adopts strategic directions to make communications more effective and consistent throughout the government and supervises the strategy or approach to government communications as a whole.

Until very recently, government advertising initiatives were not subject to supervision or centralized review of any kind. In view of the significant investment the government makes in advertising, a series of new management techniques has been adopted, including the creation of the Government Advertising Committee. This committee is made up of Communication Canada officials, the Assistant Secretary to the Cabinet, the Director of Operations and Strategic Planning at the Privy Council Office, as well as directors general of communications from various large departments. It was created to improve the planning and implementation of the government's major advertising campaigns and its mandate is to examine and provide advice on these campaigns. This committee can invite institutions to submit their media plans to it, although it does not have the authority to require this.

As stated above, we examined the CPGC, which "[...] applies to all institutions of the Government of Canada identified in Schedules I, I.1 and II of the [*Financial Administration*]

*Act*."<sup>3</sup> These departments and agencies, for whom Treasury Board is the employer, are governed by the *Public Service Employment Act*.<sup>4</sup> On the other hand, some thirty institutions listed in Schedule III of the *Financial Administration Act* for whom Treasury Board is not the employer (e.g. Crown corporations and the various museums), as well as privatized institutions that are still subject to the *Official Languages Act* (e.g. Air Canada and NAV CANADA) are not required to comply with the CPGC. However, Treasury Board encourages the institutions listed in Schedule III (Parts 1 and 2) to become familiar with the CPGC and to apply its principles to their own communications management.

#### *THE ADVERTISING PROCESS AT INSTITUTIONS SUBJECT TO THE CPGC*

As the employer, Treasury Board can issue policies to ensure that institutions comply with the provisions of various programs. One example is the CPGC.

Up until four years ago, federal institutions required to comply with the government communications policy had to submit their annual advertising plan once per year to the now defunct Communications Coordination Services Branch of PWGSC. On December 1, 1998, this Branch created an electronic reporting system, which is used to gather information on advertising plans and public-opinion research conducted for federal institutions. Since then, the planning process has been better controlled. Institutions must now submit to Communication Canada, three times per year, an advertising plan indicating overall objectives and planned budgets.

Communication Canada is also responsible for approving, in all but a few cases, all

<sup>3</sup> Treasury Board, Communications Policy of the Government of Canada [[http://www.tbs-sct.gc.ca/pubs\\_pol/sipubs/comm/comm1\\_e.html](http://www.tbs-sct.gc.ca/pubs_pol/sipubs/comm/comm1_e.html)], under Application and Authority.

<sup>4</sup> *Public Service Employment Act*, R.S.C. 1985, c. P-33.

advertising from institutions subject to the CPGC. Thus, in addition to the general advertising plan, the federal institutions in question must also submit for approval a detailed advertising plan for each project, regardless of the type of media to be used. These advertising plans must include, among other things, the target audience, a copy of the advertisement itself, in both English and French if the institution must publish it in both official languages, the media to be used (national or regional coverage), the campaign duration, and any partners.

Each institution works with the advertising agency assigned to it through the competitive process for advertising design and production. In most cases, these advertising agencies cannot place announcements in the media. Média I.D.A. Vision is the only accredited media placement agency that is authorized to purchase media space or air time on behalf of the government. It too was selected by means of a competitive process.

To meet the needs of some institutions or to facilitate the management of a specific program, PWGSC may negotiate special contracts providing for institutions to deal directly with the newspapers, without having to seek Communication Canada approval. This is the case of the Public Service Commission, which is responsible for external recruitment to organizations which are subject to the *Public Service Employment Act*. External recruitment advertising accounts for 10.6% of advertising-related complaints filed against federal institutions since 1998.

The advertising agency usually develops specific advertising campaigns. The media plan includes the visual concept, the regions to be included in the campaign, and the suggested media. The institution has the final say in approving the media plan. The institution then submits the media plan to Communication Canada for approval. If it is determined that an

advertisement must be placed in both official languages, Communication Canada checks to ensure that media from both official language groups have been selected. It does not, however, verify whether the suggested media effectively reach the two official language communities. At the time of our interviews, PWGSC's Communications Coordination Services Branch was of the opinion that each federal institution is responsible for the content and linguistic quality of messages prepared in either official language and that it is up to each institution to comply with the linguistic obligations set out in the *Official Languages Act* as regards communications with the public.

Communication Canada is responsible for issuing project registration numbers permitting institutions to contract advertising agencies through PWGSC. When approving a media plan, Communication Canada assigns a registration number and returns the material to the institution. This number is then used by Média I.D.A. Vision when placing advertisements. Média I.D.A. Vision does not accept any placement orders without a registration number.

#### *THE ADVERTISING PROCESS AT INSTITUTIONS NOT SUBJECT TO THE CPGC*

Since Treasury Board is not the employer for institutions listed in Schedule III of the *Financial Administration Act* or for privatized institutions, it cannot require that they comply with its communications policy and guidelines. Treasury Board does nevertheless encourage them to draw on its policies to ensure compliance with the various acts to which they are subject, such as the *Official Languages Act*.

With regard to communications, including advertising, these institutions and corporations operate independently. Some institutions sign one-year or multi-year contracts with advertising agencies, while others often develop

their own advertising and use the services of advertising agencies for specific projects only.

As they are not subject to the CPGC, these institutions are not required to submit their media plans for advertising campaigns or specific advertisements to Communication Canada for approval. They are nevertheless required to fulfil their official language obligations, and as already mentioned, they are encouraged to apply the CPGC principles to their own communications management.

Our study showed that institutions not subject to the CPGC do not violate the provisions of the *Official Languages Act* any more than other federal institutions. We did note, however, that among Crown Corporations and privatized corporations, Air Canada and its regional carriers and Halifax International Airport Authority were the object of the greatest number of advertising-related complaints. Air Canada and its regional carriers were the object of 32% of advertising-related complaints in 1998, 23.1% in 1999, 17.9% in 2000 and 6.6% in 2001. Halifax International Airport Authority was the object of 9.5% of these complaints in 2000 and 12.4% in 2001. The new *Air Canada Public Participation Act*,<sup>5</sup> which was enacted on July 5, 2000, now specifies the obligations of Air Canada's regional carriers regarding communication with the public, including advertising. Previously, Air Canada maintained that the *Official Languages Act* did not apply to its regional carriers. This new legislation rules on former areas of contention.

Officials at Halifax International Airport Authority, for their part, argue that they are subject to section 30 only for their communications with the travelling public (section 23 of the *Official Languages Act*) and not for communications involving general business and the general public (section 22 of

the *Official Languages Act*). The airport authority's position is based on the premise that the "general public" and the "travelling public" are separate entities under the *Official Languages Act*. According to the Commissioner of Official Languages, an attentive reading of section 23 of the *Official Languages Act* shows that this is not the case. The introductory clause "for greater certainty" in section 23 of the *Official Languages Act* makes section 23 a continuation and complement to section 22. That means that section 23 is inoperative without section 22. The Commissioner of Official Languages stressed this point in a preliminary report she submitted in October 2001 to TBS and to the airport authorities affected by complaints of this nature. TBS has since accepted our position and is currently working towards resolving the issue by outlining the institutions' obligations in this regard.

#### MANAGEMENT OF THE ADVERTISING PROCESS AND BUDGET IN INSTITUTIONS

During this study, we noted that the way the communications/advertising process and budgets are managed varies from one institution to another, whether the institutions are subject to the CPGC or not, or whether they are privatized institutions that are still subject to the *Official Languages Act*.

Some institutions have centralized the entire communications/advertising function and related budgets at their head office. Other institutions retain control over communications budgets at their head office, but provide some of that budget allocation to their regional offices. Some institutions share their initial budget allocation with each region according to its needs. Other highly decentralized institutions have one budget for head office and a separate communications/advertising budget for each region.

<sup>5</sup> *Air Canada Public Participation Act*, R.S.C. 1985 (4th Supp.), c. 35.

The CPGC states that “[t]he head of communications must ensure that the activities of an institution’s communications staff, at headquarters and in regional offices, conform to the requirements of this policy regardless of reporting relationships or placement within organizational structures.” (Accountability #6).

Our study revealed that employees other than communications staff also place ads in the media. We also noted that, the more decentralized the advertising process and budget, the more difficult it is for the institution to ensure that all its offices meet their linguistic obligations. Without an internal monitoring system, regional managers can place advertisements as they see fit, unbeknownst to the institution’s head office and approval process officials at Communication Canada. They simply develop the advertisement themselves or have it prepared locally either by the newspaper or by a small private firm. Then, the manager deals directly with the newspapers and absorbs the expenditure for the advertisement from his or her operating budget.

Although the managers in question at head office recognize that managers do not always follow the established approval process, few institutions have internal directives to guide their managers. Fisheries and Oceans adopted an internal directive in 2000, which it distributed to all its managers. At the time of our study, Parks Canada was preparing an internal directive. Furthermore, most federal institutions stressed that managers, both at head office and in the regions, can refer to the CPGC, to Treasury Board official languages policies, or to the *Advertising Guide* produced by the now defunct Communications Coordination Services Branch of PWGSC. This guide is now the responsibility of Communication Canada. All these documents are available on Publiservice, the federal government’s Intranet site, either under the

TBS directory or the Communication Canada directory. The weaknesses found in this approach are discussed below and recommendations are made in this regard.

However, institutions for whom the employer is not Treasury Board and which are therefore not subject to the CPGC, do not have access to Publiservice. They can consult federal policies on the Internet sites of central agencies, although the *Advertising Guide* is only available on Publiservice. During our interviews, we noted that the institutions listed in Schedule III of the *Financial Administration Act* were not aware of this document. We will address this matter below.

#### *WEAKNESSES IDENTIFIED*

##### *Government of Canada communications policy, procedures and guidelines*

The previous government communications policy dates back to 1988. The new CPGC took effect on April 1, 2002. At the time we conducted our interviews and examined the communications documents relating to the internal operations of the institutions taking part in this study, the 1988 policy was still in force. This report does, however, take into account the changes included in the new policy.

To begin, this policy stipulates that federal institutions are not required to submit for approval to Communication Canada their notices, calls to tender, announcements of public hearings and general information about institutions. Our data shows that notices account for about a quarter, or 24.9%, of advertising-related complaints (211 complaints) filed with our office between January 1, 1998, and December 31, 2001. This significant number of complaints indicates that better monitoring is necessary.

Although TBS added a few details, official languages still occupy only a relatively small place in the CPGC. Policy Requirement #4 states simply: “[...] institutions must respect the equality of status of the two official languages as established by the *Canadian Charter of Rights and Freedoms* and given effect through the *Official Languages Act* and the *Official Languages (Communications with and Services to the Public) Regulations*.”

The previous government communications policy of 1988 clearly reiterated institutions’ linguistic obligations as regards service to the public, namely, to respect “the constitutional right of the public to be served in English or French from their head or central office, or from any other of their offices where there is a significant demand for services in such language, or where the nature of the office makes it reasonable that services be provided in both official languages.”<sup>6</sup> The new policy does not include this reference. Rather, Policy Requirement #4 reads: “Institutions must identify and respect all official language requirements that apply when engaging in any of the communication activities stipulated in this policy.”

The section of the policy pertaining specifically to advertising (Policy Requirement #23) states that institutions must determine the linguistic obligations incumbent upon them pursuant to sections 11 and 30 of the *Official Languages Act*; however, it does not set out what these obligations are.

In light of the foregoing, we are of the opinion that, in the new CPGC, TBS should have retained the reference to the public’s constitutional right to be served in English or in French at the head or central office of federal institutions, as well as at any other office or facility where there is significant demand for communications with and services in either of those languages or where this is justified given

the mandate of the office. TBS should further strengthen the overall official languages provisions as well as provisions with regard to specific communication activities.

The Commissioner of Official Languages therefore recommends that the Treasury Board Secretariat:

1. **ensure that, by March 31, 2003, the government communications policy, procedures or guidelines place greater emphasis on official language obligations by referring to sections 11 and 30 of the *Official Languages Act*, that is, by stipulating linguistic obligations according to the mode of communication used and by citing the right of Canadians to receive communications from the federal government in the official language of their choice;**
2. **ensure that, by March 31, 2003, where linguistic obligations are cited, its government communications policy, procedures or guidelines refer the reader to the relevant sections/chapters/guidelines of Treasury Board policies, the *Official Languages Act*, or the *Official Languages Regulations*.**

Regarding Recommendation 1, TBS points out that Policy Requirement #23 of the CPGC refers to the obligations under sections 11 and 30 of the *Official Languages Act* and specifies the obligation to include the media serving the linguistic minority. Also, under Policy Statement #2 and under Policy Requirements #1a) and #4 of the CPGC, there are references to the language obligations under the *Canadian Charter of Rights and Freedoms*, including the right of the public to communicate with the government in either language, and references to the *Official Languages Act* and to the obligation to comply with Treasury Board official languages policies.

<sup>6</sup> Treasury Board, Government Communications Policy (1988).

We concur with TBS that the CPGC is not intended as a substitute to the *Official Languages Act*. However, we believe that TBS ought to take every opportunity, in its policies and guidelines, to reinforce relevant official language obligations by outlining their basic principles, in addition to referring the reader to related policies and guidelines.

TBS has informed us that it plans to take Recommendation 2 into account during the next policy review scheduled to occur within five years of the CPGC's effective date. The intent of the recommendation is that TBS take appropriate action within the specified time frame. Thus, in the shorter term, we consider that TBS ought to amend its communications guidelines in accordance with the recommendation.

#### *Advertisements published by members of Parliament*

The Office of the Commissioner of Official Languages also receives complaints to the effect that members of Parliament and federal ministers place advertisements in newspapers, on behalf of the Government of Canada, to announce government initiatives such as funding or job creation, or to invite the public to events. These ads often include the name of the member of Parliament or the name and title of the minister in question, along with the Government of Canada logo. When such complaints are brought to the attention of the office of the member of Parliament or Minister, officials answer that the ads in question were paid for by the member of Parliament's or Minister's constituency office. They point out that, pursuant to section 90 of the *Official Languages Act*, which states that "[n]othing in this Act abrogates or derogates from any powers, privileges or immunities of members of the Senate or the House of Commons in respect of their personal offices and staff or of judges of any Court," such ads are not covered by this

Act. The Office of the Commissioner of Official Languages is currently examining the application of this section. Any ensuing recommendations will be addressed to the proper authorities.

#### *Treasury Board official languages policies*

The Policy on Communications with the Public<sup>7</sup> stipulates when communications with the public must be in both official languages and also defines what constitutes a communication. This definition includes advertisements.

Moreover, the policy stipulates (Policy Requirement #3) that "[a]ny country-wide communication with the public, by a federal institution or on its behalf, must therefore normally be provided simultaneously in both official languages." [our underlining] In our opinion, this sentence is open to interpretation as regards advertising. For example, a manager may conclude that if he or she places an announcement in the official language majority newspaper in a specific region, he or she is not required to place the announcement in official language minority newspapers since the announcement is not disseminated country-wide. This is incorrect. The fact that an announcement is not published nationally does not preclude the institution being required to publish it in both official languages. Moreover, if an institution places an announcement in a majority-language daily on a Monday and the minority-language newspaper is a weekly and is only published on Thursday, the institution will clearly not be able to publish its announcement in both newspapers simultaneously. The reality is that a number of official language minority newspapers are only printed once a week, hence weeklies. Minority-language weeklies are an effective method of

<sup>7</sup> Treasury Board, official languages policies, chapter 1-1 - Communications with the Public [[http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/OffLang/CHAP1\\_1\\_e.html](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/OffLang/CHAP1_1_e.html)].



communication given the relatively permanent nature of the announcements featured in them, their long-term accessibility and the fact that they have good market penetration and stable readership.

TBS points out that the sentence in its Policy on Communications with the Public, to which we refer above as being open to interpretation, must be interpreted in relation to the sentence which precedes it. This sentence states that “[w]hen the communication is aimed at the general public [...], both official languages must be used.” In our view, to interpret the second sentence in relation to the first presupposes that the “general public” is synonymous with “country-wide.” We believe that targeting the “general public” can also mean the public within a specific region, in which case both official languages may have to be used, depending on whether the region is in an area of significant demand as determined by the *Official Languages Regulations*.

Since our example concerns placing an advertisement in the newspapers, TBS also underlines the fact that in this case reference must be made to the Policy on Use of Media,<sup>8</sup> which deals specifically with the matter. TBS further points out that advertising in official languages minority media is addressed in the CPGC, which includes the following statement under Policy Requirement #23: “[...] institutions must respect the Government of Canada’s commitment, stated in Part VII of the *[Official Languages] Act*, to enhance the vitality of official language minority communities. Advertising plans and campaigns must address the needs, concerns and language preferences of such communities. Media buys must include the purchase of advertising space and time in organs serving a community’s official language minority, be it English or French.”

<sup>8</sup> Treasury Board, official languages policies, chapter 1-5 - Use of Media [[http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/OffLang/CHAP1\\_5\\_e.html](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/OffLang/CHAP1_5_e.html)].

We recognize that TBS’s guidelines on media use clarify the obligations of federal institutions under sections 11 and 30 of the *Official Languages Act* and are intended to help institutions apply the policy efficiently and effectively. These guidelines do not, however, have the force of law. They are instead akin to good management practices.

It is our opinion that Treasury Board’s official languages policies should provide more details about the obligations arising from sections 11 and 30 of the *Official Languages Act* and suggest more ways of implementing them.

The Commissioner of Official Languages recommends that the Treasury Board Secretariat:

3. by March 31, 2003, revise the Policy on Communications with the Public to include more details about the obligations arising from sections 11 and 30 of the *Official Languages Act* and directly discuss media use.

TBS has pointed out that the Policy on Use of Media specifically deals with the obligations under sections 11 and 30 of the *Official Languages Act*. However, it agrees that the Policy on Communications with the Public could have better links to the Policy on Use of the Media. Its Official Languages Branch will therefore consider the above recommendation in the context of the official languages policy review which will take place in the coming year.

We expect the consideration given the above recommendation to translate into the action necessary to fully implement it.

During our interviews, some of the institutions listed in Schedule III of the *Financial Administration Act* expressed a need for better directives on the implementation of sections 11 and 30 of the *Official Languages Act*. We trust that implementation of the above recommendation and the establishment of

links between the two Treasury Board policies mentioned above will be helpful to these institutions, since Treasury Board encourages them to draw on its policies in order to comply with the *Official Languages Act*.

Moreover, with regard to monitoring, it was noted that TBS ensures that the official languages policies are applied through monitoring activities conducted either by the institution or by its Official Languages Branch.

We found that many institutions whose communications functions and especially advertising are decentralized have no system to ensure that managers are well acquainted and comply with their obligations relating to communications/advertising. We were also told that regional managers can easily publish newspaper announcements without the knowledge of officials at head office. Communications officials at the head offices of some institutions stated that regional managers have access to the various federal policies and to the *Advertising Guide*, all of which are posted on Publiservice, and they assume that all managers fully understand their contents.

Moreover, other institutions indicated that they had resolved several problems since they had developed an internal directive distributed to all managers in all their offices throughout the country. This is the case at Fisheries and Oceans. The internal directive prepared in 2000 led to a drop in the number of advertising-related complaints filed against the institution.

In view of the large number of complaints we continue to receive concerning the failure of federal institutions to use the minority-language press, and given that the head of communications in each institution clearly is responsible for ensuring compliance with the CPGC, all federal institutions must exert greater control over the management of their advertising process, and TBS must see to the application of Treasury Board official languages policies.

In light of the preceding, the Commissioner of Official Languages recommends that the Treasury Board Secretariat:

4. **by March 31, 2003, develop audit measures to see to the application of the advertising component of Treasury Board official languages policies and conduct periodic audits;**
5. **by March 31, 2003, encourage federal institutions to develop internal procedures to help their managers apply the Communications Policy of the Government of Canada to institutional operations.**

TBS accepts the principles in Recommendation 4 and has indicated that its Official Languages Branch will be able to follow up on it within a year. We take this to mean and expect that the Official Languages Branch will in fact do so within a year.

Regarding Recommendation 5, TBS underlines the fact that the CPGC contains procedures that institutions must follow. As for internal procedures within departments, TBS considers that this question is properly left to each institution concerned, provided the procedures they develop for their own operations meet the procedural requirements of the CPGC.

While we agree that the question of internal procedures is properly left to each institution concerned, we believe that TBS ought nonetheless to encourage institutions to develop procedures tailored to their particular situation. In this way, managers may be more likely to buy into the policies.

### *Advertising Guide*

This guide was published in January 2000 by the now defunct Communications Coordination Services Branch of PWGSC to help institutions subject to the government

communications policy to conduct their advertising effectively through the appropriate media.

The section entitled “Advertising Checklist” provides a list of steps in the advertising process. In bold type, it states that advertising should be planned in both official languages, adding later on that copy should be proof-read in both languages.

Under the “Applicable Policies” section, the guide notes initially that “[t]he *Official Languages Act* states that both official languages must be used and presented equally in all advertising.”<sup>9</sup> The guide cites for example that, “[...] when an ad is placed in a daily English-language paper serving a specific community, [...] the same ad must be placed in an equivalent French-language paper serving the same community. If there are no equivalent newspapers, the alternatives would be to use a different medium (for example, radio), or to publish a bilingual advertisement in the newspaper of your choice.”<sup>10</sup> [our underlining]

The guide is helpful in that it states federal institutions’ linguistic obligations and gives an example of their application. However, we do not agree with the interpretation of the *Official Languages Act* that is presented. The sample announcement included in the guide is in fact a misinterpretation of the *Official Languages Act*. This Act does not stipulate that announcements must be published in daily newspapers. The equality of both languages does not necessarily mean that they must be treated “identically.” As regards the print media, minority-language weeklies are an effective way of reaching official language communities since these papers have good market penetration and enjoy stable readership.

The Department of National Defence has underlined the fact that there are instances

<sup>9</sup> Public Works and Government Services Canada, *Advertising Guide*, p. 3. [Via Publiservice: [http://publiservice.gc.ca/services/adv-pub/protected/downloads/adguide\\_e.pdf](http://publiservice.gc.ca/services/adv-pub/protected/downloads/adguide_e.pdf)].

<sup>10</sup> *Supra*, note 9, pp. 3-4.

where minority-language publications do not reach a wide enough portion of the community. In this regard, we wish to point out that, whereas a national official language majority newspaper may be appropriate for reaching the target audience in cases of country-wide advertising in English, there is no equivalent newspaper for doing so in French. Thus, in such cases, in order to compensate and reach out at the national level, institutions are required to place advertisements in French-language newspapers in various localities. However, if in doing so, equivalence is still not achieved, other media will have to be used.

The *Advertising Guide*, now the responsibility of Communication Canada, should make the distinction between the obligations arising from section 11 and those arising from section 30 of the *Official Languages Act*. Section 30 stipulates that, where warranted by demand, the use of the media must provide for effective communication with members of the public in their preferred official language. The institution may choose to use newspapers. Section 11 does not allow institutions to use media other than the print media. Under this section, institutions are required to publish announcements in both official languages, the French version in at least one primarily French-language publication and the English version in at least one primarily English-language publication. This section pertains to publications “in general circulation within each region.”<sup>11</sup> This does not limit the choice to daily newspapers.

In light of the preceding, the Commissioner of Official Languages recommends that Communication Canada:

6. **by March 31, 2003, make the required corrections to the *Advertising Guide*, drawing on Treasury Board Secretariat guidelines on media use, to make the distinction between obligations**

<sup>11</sup> *Supra*, note 1, s. 11.

**pursuant to section 11 and those pursuant to section 30 of the *Official Languages Act*;**

Communication Canada has informed us that when it received our preliminary report, the guide was already being revised. Communication Canada will pursue its review, in cooperation with our Office and TBS, and take into account TBS's guidelines on advertising, which will be issued shortly within the framework of the CPGC.

**7. by March 31, 2003, define, in its *Advertising Guide*, the concept of equivalent publication;**

Communication Canada will define the concept of equivalence in co-operation with our Office and TBS.

**8. by March 31, 2003, change its interpretation of equivalent publication to include weeklies.**

Communication Canada will make the modifications in co-operation with our Office and TBS.

All supporting documents pertaining to communications and advertising are available on Publiservice, which is managed by Communication Canada. This Intranet site offers a whole range of services relating to the various media, including advertising samples and key links. This site is well designed and provides a wealth of information for communications managers. Communication Canada points out that almost 95% of all federal public servants have access to Publiservice and the percentage is increasing all the time.

Access to Publiservice by federal institutions listed in Schedule III of the *Financial Administration Act* and by privatized institutions subject to the *Official Languages Act* is optional and costs are associated with each subscription. Such access is assured through the Government

Enterprise Network (GENet), managed by PWGSC. At the time when Communication Canada was preparing its comments on our preliminary report, responsible officials at GENet informed them that, among the federal institutions listed in Schedule III mentioned above, new institutions were subscribing to the GENet at a rate such that 90% of them now have access to Publiservice and, therefore, to the whole range of information contained therein.

*Contracts with advertising and placement agencies*

For the institutions listed in Schedules I and II of the *Financial Administration Act*, PWGSC is the only body authorized to issue advertising-related contracts, either with advertising agencies or with the placement agency accredited by the government (Média I.D.A. Vision).

The institutions listed in Schedule III of the *Financial Administration Act* and the privatized institutions subject to the *Official Languages Act* negotiate their contracts directly with advertising agencies, without any involvement on the part of PWGSC.

The study showed that contracts signed between client federal institutions (institutions listed in Schedules I, II, and III as well as privatized institutions) and advertising agencies do not include any clause citing the requirements relating to communications with and services to the public in both official languages.

Officials of the now defunct Communications Coordination Services Branch at PWGSC maintained that it is not necessary to include such a clause in standard contracts since each federal institution is wholly responsible for ensuring compliance with the provisions of the *Official Languages Act*. Moreover, they added that advertising agencies that make it through the pre-selection process must submit an

advertising campaign illustrating, among other things, their use of media in both official languages. In their opinion, the agencies know that they must produce advertising in both official languages.

We do not share this point of view. Including a language-related clause in the contract with an advertising or placement agency would be a more effective way of ensuring that agencies are aware of and comply with federal institutions' linguistic obligations as regards communications with and services to the public.

The Commissioner of Official Languages therefore recommends that Public Works and Government Services Canada:

**9. by March 31, 2003, develop a language-related clause to be included in all future contracts signed with advertising or placement agencies.**

The Department has informed us that it will follow up on this recommendation, although we have not yet received written confirmation to this effect.

The Commissioner of Official Languages also recommends that the Treasury Board Secretariat:

**10. by March 31, 2003, encourage federal institutions for whom Treasury Board is not the employer and privatized institutions subject to the *Official Languages Act* to include a language-related clause in all future contracts signed with their advertising and/or placement agencies.**

According to TBS, the role of Treasury Board with respect to these institutions is to encourage them to apply the principles set out in its policies, and TBS is not authorized to specify the procedures to be followed. Thus TBS considers that it is not in a position to follow

up on the above recommendation as stated. However, TBS's Official Languages Branch is prepared to remind these institutions, and even to stress, at the next Crown Corporations Advisory Committee on Official Languages meeting in 2003, that they are responsible for taking the necessary measures to comply with the principles set out in Treasury Board policies.

Given that PWGSC is prepared to add a language-related clause to its contracts with advertising and the accredited placement agency, we consider that TBS could at least suggest to federal institutions for whom Treasury Board is not the employer that they follow PWGSC's lead. Including a language-related clause in their contracts with these agencies would serve to ensure that these institutions comply with the principles set out in Treasury Board policies when third parties act on their behalf.

We have been informed by the Clerk of the Privy Council that the President of the Treasury Board has requested that TBS examine mechanisms for monitoring the application of the CPGC by federal agencies and Crown corporations.

*English-language and French-language publications across the country*

Média I.D.A. Vision is the placement agency accredited for the government, that is, for the institutions listed in Schedules I and II of the *Financial Administration Act*. It is the only agency authorized to purchase media space or air time on behalf of the government.

All advertising subject to approval by Communication Canada must be submitted to Média I.D.A. Vision for placement. Federal institutions listed in Schedule III of this Act, for which approval from Communication Canada is not required, usually deal directly with the newspapers.

PWGSC officials stated that it is up to the accredited placement agency to keep a current list of English-language and French-language publications/newspapers across the country and that this responsibility is one of the conditions of its contract with the government. Nevertheless, we found no specific clause to this effect in the contract.

Moreover, the advertising agencies used by the institutions listed in Schedule III of the *Financial Administration Act* and by privatized institutions do not have access to the newspaper list held by Média I.D.A. Vision, since they are not its clients.

In spite of what PWGSC officials told us, we were surprised to hear, on more than one occasion, from advertising officials with Schedule I and II institutions, that advertising agencies they deal with do not have at their disposal the same list of nationally-recognized newspapers that Média I.D.A. Vision has.

As the body responsible for awarding government advertising contracts, PWGSC should perform its advertising-related responsibilities more effectively. Since the placement agency Média I.D.A. Vision acts on behalf of PWGSC, it is incumbent on PWGSC to ensure that the list of English-language and French-language newspapers across the country is updated and distributed to whoever should receive it. Moreover, PWGSC should establish selection criteria to guide the choice of English-language and French-language newspapers across the country and append them to the contract signed with the placement agency.

In light of the preceding, the Commissioner of Official Languages recommends that Public Works and Government Services Canada:

**11. by December 31, 2002, amend its contract with Média I.D.A. Vision, to include a clause stipulating that the agency must keep an updated list of English-language and French-language newspapers across the**

**country and of the regions served by these newspapers.**

The Department has informed us that it will follow up on this recommendation, although we have not yet received written confirmation to this effect.

In her preliminary report, the Commissioner recommended that Communication Canada take appropriate measures to make available to the institutions listed in Schedule III of the *Financial Administration Act* and to privatized institutions subject to the *Official Languages Act* the aforementioned list of newspapers.

According to Communication Canada, the list of newspapers is already offered to planning departments and organizations through its partner responsible for the management of this list, Média I.D.A. Vision. Moreover, as already mentioned, 90% of Schedule III institutions now have access to Publiservice.

In the course of our study, we learned of a case where a Schedule III institution was denied the list of newspapers by Média I.D.A. Vision since the institution in question was not one of its clients.

The Commissioner of Official Languages therefore recommends that Communication Canada:

**12. inform institutions listed in Schedule III of the *Financial Administration Act* that a list of newspapers is available to them and explain how they can obtain it.**

### *Partnership*

Whereas the previous government communications policy addressed the issues of partnership and sponsorship in only a superficial way, the new policy deals with these matters in greater detail. However, the only reference to official languages reads as follows: "Official languages [...] are among the communication requirements delineated in

partnering agreements.” (Policy Requirement #24). Managers who are not familiar with the policies and practices therefore have to do extensive research in order to understand these requirements.

The *Advertising Guide*, which is now the responsibility of Communication Canada, makes very little mention of advertising partnerships. The only reference is in Appendix A, a short definition of “partnership” and the following suggestion about its use: “If government funds are provided to an association or group for communication and marketing activities and there is resultant visibility for the department (such as the Canada wordmark use), departmental representatives should have the opportunity to approve the material before it is published to ensure that government policies, such as the Official Languages Policy, are respected.”<sup>12</sup>

Treasury Board’s official languages policies were developed to ensure compliance with the provisions of the *Official Languages Act*. Although there are guidelines pertaining to grants and contributions, TBS does not address the issue of partnership.

Federal advertising conducted through partnerships with other groups is the subject of 7.5% of advertising-related complaints filed since 1998. We noted that there are few directives to guide federal institutions in this regard.

We acknowledge that the level of federal participation in a partnership can vary greatly from one agreement to another and that it would be difficult to apply a general operating principle. This is all the more reason to ensure that institutions are given sufficient guidance.

The study also revealed that some representatives of federal institutions do not make a distinction between the obligations pursuant to federal funding and those pursuant

to a partnership. Some institutions, such as Canada Mortgage and Housing Corporation (CMHC), are more or less a conduit for federal funding to other levels, such as the provinces. This funding is in turn distributed by the provinces to other entities, such as municipalities. A province or municipality that decides to place an advertisement in a newspaper does so of its own free will, and not in partnership with a federal institution. CMHC’s participation is at the level of program funding. It is not a partner in conducting advertising campaigns.

In light of the foregoing, the Commissioner of Official Languages recommends that the Treasury Board Secretariat:

**13. by March 31, 2003, ensure that the policy, procedures or guidelines on government communications assign greater importance to the issue of advertising partnerships and to official language obligations by referring to sections 11 and 30 of the *Official Languages Act*, that is, by specifying linguistic requirements according to the medium of communication used;**

**14. by March 31, 2003, revise the Policy on Communications with the Public to specify the obligations of federal institutions participating in partnerships.**

Regarding Recommendation 13, TBS has informed us that communications guidelines for partnering, collaborative arrangements and sponsorships will be issued under the CPGC well in advance of March 31, 2003. Advertising guidelines will also be issued under the CPGC before this date, and they will address the official language obligations under sections 11 and 30 of the *Official Languages Act*. However, they will not replace the Policy on Use of Media.

<sup>12</sup> *Supra*, note 9, p. 15.

As to Recommendation 14, TBS agrees that it would be advisable to indicate the obligations of federal institutions in partnership situations more specifically. Accordingly, TBS proposes incorporating this measure into the official languages policy review process, for which the framework and timetable is currently being developed by its Official Languages Branch. TBS will also raise the matter with the official languages champions and directors. The issue will also be taken into account when developing the CPGC guidelines for partnering, collaborative arrangements and sponsorships.

We expect TBS to take appropriate action in line with the above recommendation and, in the meantime, to ensure that this issue is adequately addressed in the CPGC guidelines.

The Atlantic Canada Opportunities Agency (ACOA) points out that, in their experience, beneficiaries of grants and contributions in many cases overlook the language-related clause in their agreement and publish advertisements in one language only. Quite often in such cases it is too late to correct the situation, since advertisements have to be placed within a particular time frame. ACOA suggests that federal institutions responsible for advertisements published by third parties ask their front line employees to stress the importance of the beneficiary's responsibilities with respect to advertising in both official languages where the policy applies. We concur with ACOA that federal institutions ought to regularly remind third parties of their official language obligations with respect to advertising.

### *Impact of advertising deadlines at various newspapers*

During our study, we met with officials from the Association de la presse francophone (APF), which represents 24 French-language newspapers outside Quebec, and with one official from the Quebec Community Newspapers Association (QCNA), which

represents 32 English-language community newspapers in Quebec.

As stated in the section of this report entitled "Advertising Guide," many official language minority newspapers are weeklies, whether they are French-language newspapers outside Quebec or English-language newspapers in Quebec. A number of them have a policy of setting the Friday prior to newspaper delivery as the deadline for placing advertising orders. If the newspaper is delivered on Thursday or Friday, institutions must therefore submit their advertising orders nearly a week before the newspaper is delivered. Once an order is placed, some newspapers allow institutions a grace period of one or two working days to submit the layout for the advertisement.

The institutions interviewed stated that dailies, whether English-language or French-language, require barely 24 hours notice to place an ad.

The deadline for weeklies should not pose any problems for institutions in the case of advertising campaigns planned over a relatively long period of time, such as an annual advertising campaign or an advertising campaign relating to a specific program (e.g. Health Canada's anti-tobacco campaign). Good planning should allow institutions to meet the newspapers' deadlines.

The same is not true of institutions operating in a competitive or changing environment, such as transportation companies like Air Canada and Via Rail or Canada Investment and Savings, for its Canada Savings Bonds campaign.

In order to remain competitive in the transportation industry, a company such as Air Canada must often react quickly to a number of external factors. In this market, with the lead time to place an ad being so short, often just over 72 hours, these companies cannot always meet the newspapers' deadlines. For example, deadlines are essential to the success of a seat



sale campaign. For sales lasting more than seven days, an airline company can still meet the deadline and place an ad in an official language minority weekly. If the advertising campaign is shorter in duration, however, the institution cannot necessarily meet the weeklies' deadlines.

Canada Investment and Savings must also respond to unforeseen events, since interest rates fluctuate regularly. The institution may be required to cancel its advertising order at the last minute when interest rates change and the advertisement is no longer relevant.

Section 30 of the *Official Languages Act* provides that, where institutions are required to offer services to the public in both official languages, they must use media that allow them to communicate effectively with the public in the official language of their choice. If an institution decides that newspapers are the best medium to convey a specific message to the public, this media choice must generally be used for the English-speaking public and French-speaking public alike. However, as mentioned previously, equal treatment of both languages does not always mean that they must be treated identically.

We recognize that official language minority newspapers do not have the same resources as the large dailies and cannot accommodate institutions as easily as the dailies can. Although the Commissioner has no jurisdiction over privately-owned newspapers, she nevertheless considers that official language minority newspapers could examine various options to facilitate the placement of advertising orders.

We acknowledge that the short deadlines set by official language minority newspapers pose a challenge to federal institutions operating in a competitive sector. The fact remains, however, that they have linguistic obligations and must

consider all possibilities in order to fulfil them. We consider institutions to be contravening the *Official Languages Act* if they publish an ad in the newspaper of the official language majority without placing the same ad in the newspaper of the official language minority, when they state that they are unable to meet the latter's deadlines and do not take other steps to reach the official language minority community.

An institution that chooses, under section 30 of the *Official Languages Act*, to place an ad in an official language majority newspaper in a region with significant demand and then cannot meet the deadlines for the official language minority newspapers must find another way of conveying the information to the official language minority community. During its 2001 campaign, Canada Investment and Savings designed a generic, camera-ready ad that the weeklies published instead of cancelling the planned ad due to a change in interest rates. The ad copy gave readers the telephone number they could call to find out current interest rates. This practice allowed Investment and Savings Canada to reduce the number of complaints filed against it with respect to savings bond campaigns from a total of 24 complaints in 1999 to a single complaint in 2001. We believe that transportation companies such as Air Canada ought to explore various avenues when facing similar problems.

In light of the preceding, the Commissioner of Official Languages recommends that the federal institutions in question:

**15. by March 31, 2003, arrange exploratory meetings with representatives of the Association de la presse francophone and the Quebec Community Newspapers Association in order to find solutions that would allow them to meet, at all times, their**

### linguistic obligations under sections 11 and 30 of the *Official Languages Act*.

Communication Canada has informed us that such meetings have already taken place and continue to take place on a regular basis in order to share the information with the communications community as a whole.

Although the Association de la presse francophone has not yet been approached by Communication Canada in this respect, the Association has indicated that it is willing to take the necessary steps, in consultation with its member newspapers, towards examining the possibility of longer deadlines. Its role would be limited to proposing solutions since it could not oblige its members to revise their advertising deadlines.

The Department of National Defence points out that, although its advertising campaigns are for the most part proactive and therefore planned well in advance, there are situations where recruitment advertising must be reactive, such as when the Department is faced with a skill shortage and must tap into the market quickly at a particular point in time. This may mean offering potential recruits an incentive, such as a bonus or allowance, which requires Treasury Board approval. In these situations, media publication schedules are not always able to accommodate the life cycle of the target group. However, the Department routinely contacts the minority press to ensure that it meets its official language obligations.

While we appreciate that certain circumstances can pose special problems, we believe that institutions ought to make allowances for such eventualities as part of their planning.

## V. PART VII OF THE *OFFICIAL LANGUAGES ACT*

Part VII of the *Official Languages Act* sets forth the federal government's commitment to "enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and fostering the full recognition and use of both English and French in Canadian society."<sup>13</sup> All institutions subject to the *Official Languages Act* as a whole are required to comply with the provisions of Part VII of the Act.

The Speech from the Throne delivered on January 30, 2001, noted that: "Canada's linguistic duality is fundamental to our Canadian identity and is a key element of our vibrant society. The protection and promotion of our two official languages is a priority of the Government — from coast to coast. The Government reaffirms its commitment to support sustainable official language minority communities ...". This was reiterated in the Speech from the Throne delivered on September 30, 2002: "Linguistic duality is at the heart of our collective identity. [...] It [the government] will support the development of minority English- and French-speaking communities [...]. It [the government] will enhance the use of our two official languages [...] when communicating with Canadians."

The "government" is comprised of all federal institutions and privatized institutions designated by political authorities as being subject to the *Official Languages Act*. Our study showed a lack of awareness among communications managers of their responsibilities for implementing Part VII of the *Official Languages Act*. In our opinion, this lack of awareness may contribute to the misinterpretation by some managers of their linguistic obligations as regard

<sup>13</sup> *Supra*, note 1, s. 41.

communications. Furthermore, we believe that ensuring that everyone applies the provisions of sections 11 and 30 of the *Official Languages Act* would necessarily have a positive effect by inspiring greater compliance with Part VII of the *Official Languages Act* on the part of federal institutions.

In implementing Part VII of the *Official Languages Act*, few institutions consider the role the various media play in official language communities. However, newspapers are a reflection of the communities' identity, and members of these communities rely on them as sources of information. Newspapers are also a communication tool with a significant penetration rate, among official language majority and minority communities alike. For official language minority communities, newspapers are an important tool for the survival and growth of the community and of its culture.

Agencies that play a central role or provide common services maintain that each federal institution is responsible for ensuring compliance with the provisions of the *Official Languages Act*. The CPGC contains two references to Part VII of the *Official Languages Act*, one in Policy Statement #2 and the other in the second paragraph of Policy Requirement #23, which outlines the responsibilities of federal institutions in this regard. The Department of Canadian Heritage is responsible for coordinating the implementation of Part VII of the *Official Languages Act*. It is our opinion that institutions require further guidance and advice on how to fulfill their responsibilities with regard to communications pursuant to Part VII of the *Official Languages Act*. Moreover, a system for monitoring communication activities is required to ensure full implementation of Part VII.

In light of the preceding, the Commissioner of Official Languages recommends that the Department of Canadian Heritage:

16. by December 31, 2002, create a committee comprised of representatives from Communication Canada, the Treasury Board Secretariat, communications officials from a few key departments, and representatives of English-language and French-language minority newspapers in order to make managers more aware of the needs of official language minority communities;
17. by March 31, 2003, add a component on media use to its guide on the implementation of Part VII of the *Official Languages Act*;
18. by March 31, 2003, implement a monitoring system to ensure that federal institutions comply with the provisions of Part VII of the *Official Languages Act* in their communication activities.

The Department of Canadian Heritage intends to implement the above recommendations to the extent of its authority. Regarding Recommendation 16, the Department planned to set up by early fall a committee made up of representatives of Communication Canada, TBS, the Privy Council Office, Canadian Heritage and the official language minority media. The committee's mandate will be to examine the means of promoting the use of the media within the government framework. The Department will insist that control mechanisms are put in place by committee members who have the necessary authority. Regarding recommendation 17, the update of the Department's guide on the implementation of Part VII of the *Official Languages Act* currently under way will include a section on the official language minority media. In addition, the Deputy Minister recently requested in her call letter to her counterparts in 28 federal

departments and agencies concerning their action plan for implementation of section 41 of the *Official Languages Act*, that they take into account the official language minority press in their advertising activities.

The Department has informed us that it has taken part in meetings with representatives of PWGSC and TBS on the measures required to bring the official language minority press into general use within the federal administration.

We note that the Department's response does not address the substance of Recommendation 18 above. However, the Commissioner maintains her recommendation.

Finally, the Clerk of the Privy Council has informed us that the Council's Communications and Consultation Secretariat will work along with TBS, PWGSC and Communication Canada in order to improve advertising-related procedures. They will be supported in this task by the Communications Community Office, which was created in April 2002 and one of whose objectives is to contribute towards the professional development of communicators.

## VI. CONCLUSION

Our study has shown that the failure of federal institutions to ensure that advertisements placed in official language majority newspapers also appear in newspapers serving the official language minority can be attributed to inadequate policies or guidelines, the absence of effective monitoring and control mechanisms and the lack of adequate planning.

Central agencies, such as TBS and Canadian Heritage, and common service organizations, such as Communication Canada and PWGSC, have a pivotal role to play in providing institutions with adequate official languages policy directives and guidelines on advertising. The government communications policy and guidelines must not only contain references to related official languages policies, but should also reinforce their basic principles and thereby provide a first-hand overview of official language obligations in context.

Responsible managers must also have ready access to clear and cohesive guidelines on official language obligations which are relevant to their particular situation. Thus, it is incumbent on individual institutions to develop internal directives accordingly. Such directives must address requirements both in terms of Part IV (Communications with and services to the public) and Part VII (Advancement of English and French) of the *Official Languages Act*.

Effective monitoring and control mechanisms are required, not only on the part of TBS and, where Part VII is concerned, Canadian Heritage, but by all federal institutions in matters of advertising. Moreover, official language responsibilities must be clearly outlined in clauses in partnership and third party agreements.



Good planning is essential if institutions are to meet the newspapers' deadlines. This is especially important, since failure to meet these deadlines can often favour one linguistic group over the other. Discussions between federal institutions and newspaper associations should serve to help identify pitfalls and determine practical solutions.

In short, federal institutions need to equip responsible managers with the information and tools required for complying with their official language obligations in all aspects of their advertising. Having done so, they must then ensure that the policies and guidelines are respected.



## RECOMMENDATIONS

1. The Commissioner of Official Languages recommends that the Treasury Board Secretariat ensure that, by March 31, 2003, the government communications policy, procedures or guidelines place greater emphasis on official language obligations by referring to sections 11 and 30 of the *Official Languages Act*, that is, by stipulating linguistic obligations according to the mode of communication used and by citing the right of Canadians to receive communications from the federal government in the official language of their choice.
2. The Commissioner of Official Languages recommends that the Treasury Board Secretariat ensure that, by March 31, 2003, where linguistic obligations are cited, its government communications policy, procedures or guidelines refer the reader to the relevant sections/chapters/guidelines of Treasury Board policies, the *Official Languages Act*, or the *Official Languages Regulations*.
3. The Commissioner of Official Languages recommends that the Treasury Board Secretariat, by March 31, 2003, revise the Policy on Communications with the Public to include more details about the obligations arising from sections 11 and 30 of the *Official Languages Act* and directly discuss media use.
4. The Commissioner of Official Languages recommends that the Treasury Board Secretariat, by March 31, 2003, develop audit measures to see to the application of the advertising component of Treasury Board official languages policies and conduct periodic audits.
5. The Commissioner of Official Languages recommends that the Treasury Board Secretariat, by March 31, 2003, encourage federal institutions to develop internal procedures to help their managers apply the Communications Policy of the Government of Canada to institutional operations.
6. The Commissioner of Official Languages recommends that Communication Canada, by March 31, 2003, make the required corrections to the *Advertising Guide*, drawing on Treasury Board Secretariat guidelines on media use, to make the distinction between obligations pursuant to section 11 and those pursuant to section 30 of the *Official Languages Act*.
7. The Commissioner of Official Languages recommends that Communication Canada, by March 31, 2003, define, in its *Advertising Guide*, the concept of *equivalent publication*.
8. The Commissioner of Official Languages recommends that Communication Canada, by March 31, 2003, change its interpretation of *equivalent publication* to include weeklies.
9. The Commissioner of Official Languages recommends that Public Works and Government Services Canada, by March 31, 2003, develop a language-related clause to be included in all future contracts signed with advertising or placement agencies.

10. The Commissioner of Official Languages recommends that the Treasury Board Secretariat, by March 31, 2003, encourage federal institutions for whom Treasury Board is not the employer and privatized institutions subject to the *Official Languages Act* to include a language-related clause in all future contracts signed with their advertising and/or placement agencies.
11. The Commissioner of Official Languages recommends that Public Works and Government Services Canada, by December 31, 2002, amend its contract with Média I.D.A. Vision, to include a clause stipulating that the agency must keep an updated list of English-language and French-language newspapers across the country and of the regions served by these newspapers.
12. The Commissioner of Official Languages recommends that Communication Canada inform institutions listed in Schedule III of the *Financial Administration Act* that a list of newspapers is available to them and explain how they can obtain it.
13. The Commissioner of Official Languages recommends that the Treasury Board Secretariat, by March 31, 2003, ensure that the policy, procedures or guidelines on government communications assign greater importance to the issue of advertising partnerships and to official language obligations by referring to sections 11 and 30 of the *Official Languages Act*, that is, by specifying linguistic requirements according to the medium of communication used.
14. The Commissioner of Official Languages recommends that the Treasury Board Secretariat, by March 31, 2003, revise the Policy on Communications with the Public to specify the obligations of federal institutions participating in partnerships.
15. The Commissioner of Official Languages recommends that the federal institutions dealing with advertising deadlines at various minority newspapers, by March 31, 2003, arrange exploratory meetings with representatives of the Association de la presse francophone and the Quebec Community Newspapers Association in order to find solutions that would allow them to meet, at all times, their linguistic obligations under sections 11 and 30 of the *Official Languages Act*.
16. The Commissioner of Official Languages recommends that the Department of Canadian Heritage, by December 31, 2002, create a committee comprised of representatives from Communication Canada, the Treasury Board Secretariat, communications officials from a few key departments, and representatives of English-language and French-language minority newspapers in order to make managers more aware of the needs of official language minority communities.
17. The Commissioner of Official Languages recommends that the Department of Canadian Heritage, by March 31, 2003, add a component on media use to its guide on the implementation of Part VII of the *Official Languages Act*.



**18. The Commissioner of Official Languages recommends that the Department of Canadian Heritage, by March 31, 2003, implement a monitoring system to ensure that federal institutions comply with the provisions of Part VII of the *Official Languages Act* in their communication activities.**





## APPENDIX A

Complaints filed with the Office of the Commissioner of Official Languages regarding advertisements not placed in minority newspapers since 1998

### Advertisements not placed in French-language minority newspapers

1998	273
1999	256
2000	170
2001	111
<b>Total</b>	<b>810 (95.5%)</b>

### Advertisements not placed in English-language minority newspapers

1998	11
1999	8
2000	9
2001	10
<b>Total</b>	<b>38 (4.5%)</b>

**Grand Total: 848 (or 19% of all admissible complaints)**



## APPENDIX B

Number of complaints regarding the failure to publish in official language minority press, per category and per year since 1998

Note: The complaints shown below were deemed admissible under the *Official Languages Act*. Since some complaints were still under investigation at the time we compiled the data, we were unable to differentiate between founded and unfounded complaints.

### NOTICES

	French	English
1998	53	6
1999	48	8
2000	64	3
2001	26	3
<b>Total</b>	<b>191</b>	<b>20</b>

**Grand Total: 211 (24.9% of all complaints on official language minority press)**

### RECRUITMENT

	French	English
1998	39	1
1999	18	0
2000	17	4
2001	11	0
<b>Total</b>	<b>85</b>	<b>5</b>

**Grand Total: 90 (10.6% of all complaints on official language minority press)**



*Appendix B (continued)*

**COMMERCIAL**

	French	English
1998	170	2
1999	149	0
2000	66	0
2001	63	7
<b>Total</b>	<b>448</b>	<b>9</b>

**Grand Total: 457 (53.9% of all complaints on official language minority press)**

**PARTNERSHIP**

	French	English
1998	7	2
1999	36	0
2000	10	0
2001	9	0
<b>Total</b>	<b>62</b>	<b>2</b>

**Grand Total: 64 (7.5% of all complaints on official language minority press)**

**MISCELLANEOUS**

	French	English
1998	4	0
1999	5	0
2000	13	2
2001	2	0
<b>Total</b>	<b>24</b>	<b>2</b>

**Grand Total: 26 (3.1% of all complaints on official language minority press)**



## APPENDIX C

Overview of complaints regarding the failure to publish in official language minority press since 1998

### Number of complaints per year

<b>1998</b>	<b>Number</b>	<b>%</b>
Francophones	273	96.1
Anglophones	11	3.9
<b>Total</b>	<b>284</b>	
<b>1999</b>		
Francophones	256	97.0
Anglophones	8	3.0
<b>Total</b>	<b>264</b>	
<b>2000</b>		
Francophones	170	95.0
Anglophones	9	5.0
<b>Total</b>	<b>179</b>	
<b>2001</b>		
Francophones	111	91.7
Anglophones	10	8.3
<b>Total</b>	<b>121</b>	



Appendix C (continued)

**Number of complaints per section of the *Official Languages Act***

<b>1998</b>		
	French	English
Section 11	51	5
Section 30	220	6
Section 11 or 30	2	0
<b>Total</b>	<b>273</b>	<b>11</b>
<b>1999</b>		
	French	English
Section 11	18	2
Section 30	237	6
Section 11 or 30	1	0
<b>Total</b>	<b>256</b>	<b>8</b>
<b>2000</b>		
	French	English
Section 11	16	3
Section 30	152	6
Section 11 or 30	2	0
<b>Total</b>	<b>170</b>	<b>9</b>
<b>2001</b>		
	French	English
Section 11	19	1
Section 30	92	9
Section 11 or 30	0	0
<b>Total</b>	<b>111</b>	<b>10</b>

## Appendix C (continued)

## Provinces with the most complaints (French)

<b>1998</b>	Number	%
Ontario (excluding NCR*)	75	27.5
Nova Scotia	64	23.4
Saskatchewan	53	19.4
Prince Edward Island	41	15.0
Alberta	21	7.7
<b>1999</b>		
Nova Scotia	61	23.8
Ontario (excluding NCR)	52	20.3
Prince Edward Island	46	18.0
Alberta	39	15.2
Saskatchewan	29	11.3
<b>2000</b>		
Nova Scotia	60	35.3
Ontario (excluding NCR)	34	20.0
Prince Edward Island	21	12.4
Alberta	21	12.4
Saskatchewan	13	7.6
British Columbia	13	7.6
<b>2001</b>		
Nova Scotia	47	42.3
Ontario (excluding NCR)	43	38.7
Prince Edward Island	10	9.0
Alberta	8	7.2

\*NCR = National Capital Region



## APPENDIX D

Institutions with the most complaints filed against them regarding the failure to publish in official language minority press since 1998

<b>1998 (total of 284 complaints)</b>	Number	%
Air Canada (including regional carriers)	90	32.0
Human Resources Development Canada	24	8.4
Fisheries and Oceans Canada	15	5.3
Business Development Bank of Canada	14	4.9
National Defence	12	4.2
Public Works and Government Services Canada	11	3.9
Agriculture & Agri-Food Canada	9	3.2
Canadian National	7	2.5
<b>1999 (total of 264 complaints)</b>		
Air Canada (including regional carriers)	61	23.1
Human Resources Development Canada	44	16.7
Canada Investment and Savings	24	9.1
Atlantic Canada Opportunities Agency	11	4.2
Business Development Bank of Canada	7	2.7
Fisheries and Oceans Canada	7	2.7
<b>2000 (total of 179 complaints)</b>		
Air Canada (including regional carriers)	32	17.9
Halifax International Airport Authority	17	9.5
Human Resources Development Canada	13	7.3
Canada Post Corporation	11	6.1
Canada Mortgage and Housing Corporation	8	4.5
Canadian National	8	4.5
National Defence	8	4.5
Elections Canada	7	3.9
<b>2001 (total of 121 complaints)</b>		
Human Resources Development Canada	17	14.0
Halifax International Airport Authority	15	12.4
Industry Canada	9	7.4
Air Canada (including regional carriers)	8	6.6
Solicitor General of Canada	5	4.1



## APPENDIX E

### List of institutions consulted

Air Canada  
Atlantic Canada Opportunities Agency (APECA)  
Business Development Bank of Canada  
Canada Investment and Savings  
Canada Mortgage and Housing Corporation (CMHC)  
Canada Post Corporation  
Canadian Heritage  
Canadian Radio-Television and  
Telecommunications Commission (CRTC)  
Communication Canada  
Fisheries and Oceans Canada  
Halifax International Airport Authority  
Human Resources Development Canada (HRDC)  
Justice Canada  
National Defence  
Parks Canada  
Privy Council Office  
Public Service Commission of Canada  
Public Works and Government Services Canada (PWGSC)  
Statistics Canada  
Treasury Board Secretariat (TBS)





