



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

# **ESTABLISHING LANGUAGE REQUIREMENTS FOR GOVERNOR IN COUNCIL APPOINTMENTS**

**Report of the Standing Committee on Official Languages**

**René Arseneault, Chair**

**DECEMBER 2024  
44th PARLIAMENT, 1st SESSION**

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**René Arseneault  
Chair**

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## **NOTICE TO READER**

### **Reports from committees presented to the House of Commons**

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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# **THE STANDING COMMITTEE ON OFFICIAL LANGUAGES**

has the honour to present its

## **SEVENTH REPORT**

Pursuant to its mandate under Standing Order 108(3)(f), the committee has studied Language Obligations Related to the Process of Staffing or Making Appointments to Key Positions and has agreed to report the following:





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# LIST OF RECOMMENDATIONS

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*As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.*

## Recommendation 1

**That the Governor in Council make an order to set language requirements for Governor in Council appointments to ensure that the language profile corresponds to the three categories of language proficiency used at the Parliament of Canada and within the federal public service –reading comprehension, written expression and oral competency (comprehension and expression) – and to the three levels of language proficiency that are applicable – basic (A), intermediate (B) and advanced (C). That the order provide clarifications on assessing the language proficiency of candidates and incumbents. .... 30**

## Recommendation 2

**That the Governor in Council make an order requiring that all future Governor in Council appointments have a language profile and that the language proficiency to be achieved be designated as advanced (“Level C”) for reading comprehension, intermediate (“Level B”) for written expression and advanced (“Level C”) for oral competency (comprehension and expression). In order to ensure consistency with the *Public Service Official Languages Exclusion Approval Order*, that incumbents be given two years to attain the level of language proficiency required, at public expense. The Committee also recommends that the order provide clarifications on assessing the language proficiency of candidates and incumbents. .... 30**

## Recommendation 3

**That, to harmonize section 34(2) of the *Official Languages Act* with the order to establish a language profile for Governor in Council appointments as described in Recommendation 2, the President of the Treasury Board table a bill to amend Part V of the *Official Languages Act* (the Act) as follows:**

- a) Clarify section 34(2) by defining the expression “be able to speak and understand clearly both official languages”; and

- b) Strike out the words “a department named in Schedule I to the Financial Administration Act” and replace them with “institutions subject to the Official Languages Act.” ..... 30

**Recommendation 4**

That, to harmonize the *Language Skills Act* with the order to establish a language profile for Governor in Council appointments as described in Recommendation 2, the Government of Canada table a bill to amend the *Language Skills Act* to define the expression “be able to speak and understand clearly both official languages.” ..... 31

**Recommendation 5**

To attract more bilingual employees within the public service that could move into management positions, the Treasury Board of Canada Secretariat should seriously consider calls from public service unions to increase the bilingualism bonus, which has not been adjusted since 1977. .... 31

**Recommendation 6**

That the Treasury Board increase internal capacity within the federal public service to offer language training to federal public servants and that it improve the quality of training in order to promote language learning. .... 32

**Recommendation 7**

That the President of the Treasury Board and the Minister of Official Languages develop measures to promote partnerships with French or bilingual post-secondary institutions and institutions that offer French as a second language programs in order to support the next generation and expand the bilingual capacity of the federal public service. .... 32



# ESTABLISHING LANGUAGE REQUIREMENTS FOR GOVERNOR IN COUNCIL APPOINTMENTS

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## INTRODUCTION

In his *Annual Report 2021–2022*, the Commissioner of Official Languages, Mr. Raymond Th  berge, recommended that “one of the parliamentary committees on official languages study the language obligations related to the staffing of senior management positions in the federal public service and to Governor in Council appointments in order to determine whether knowledge of both official languages should be a requirement when hiring for these types of positions.”<sup>1</sup>

In spring 2024, the House of Commons Standing Committee on Official Languages (the Committee) implemented the Commissioner’s recommendation by hearing 10 witnesses on the question he raised.

The present report summarizes the main ideas emerging from the testimony the Committee heard over the course of its study. The recommendations draw from the evidence to guide the Government of Canada in achieving its bilingualism objectives for senior management positions within the federal public service.

## PARAMETERS OF THE STUDY

At the outset, it is important to clarify the parameters of the study. As the Commissioner recommended, the Committee focused on the language obligations for Governor in Council appointments. This matter involves several technical aspects. To simplify our analysis, we grouped Governor in Council appointments into two categories: (1) those that have language requirements; and (2) those that do not. As Table 1 shows below, the first category encompasses officers of Parliament, deputy ministers and associate deputy ministers. The second category encompasses all other Governor in Council appointments. The report examines these categories in detail.

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1 Office of the Commissioner of Official Languages, *Annual Report 2021-2022*, p. 32.



**Table 1—Overview of Language Requirements Associated with Governor in Council Appointments**

Category	Applicable Legislation	Requirements	Required Proficiency Level	Scope
Officers of Parliament	<i>Language Skills Act (LSA)</i>	Must “be able to speak and understand clearly both official languages” at the time of their appointment.	Not defined in the legislation.	The language requirement applies to 11 officers of Parliament listed in the LSA.
Deputy ministers and associate deputy ministers (or positions of equivalent rank)	Section 34(2) of the <i>Official Languages Act (OLA)</i>	“A person appointed by the Governor in Council to the position of deputy minister or associate deputy minister or a position of an equivalent rank in a department named in Schedule I to the <i>Financial Administration Act</i> shall, on their appointment, take the language training that is necessary to be able to speak and understand clearly both official languages.”	Not defined in legislation.	The language requirement applies to persons appointed to a position of deputy minister or associate deputy minister (or a position of an equivalent rank) in a department named in Schedule I to the <i>Financial Administration Act (FAA)</i> . According to the Privy Council Office, the Clerk of the Privy Council expects that all deputy ministers meet this requirement, not just those who are in positions named in Schedule I of the FAA. The requirement is not retroactive: According to section 107 of the <i>Official Languages Act</i> , “[t]he persons holding the positions referred to in subsection 34(2) immediately before the coming into force of that provision shall continue in office.”

Category	Applicable Legislation	Requirements	Required Proficiency Level	Scope
Other Governor in Council appointments (e.g., heads and members of commissions, boards, agencies, administrative tribunals and Crown corporations)	Not applicable (n/a)	n/a	n/a	n/a

Source: Table prepared by the Committee Analyst from the following sources: the *Language Skills Act*, the *Official Languages Act*, the *Financial Administration Act* and the House of Commons Standing Committee on Official Languages *Evidence* of 29 February 2024, 18 March 2024, 21 March 2024 and 8 April 2024.

## GOVERNOR IN COUNCIL APPOINTMENTS

Generally speaking, making a Governor in Council appointment is the responsibility of the Governor General acting on the advice of Cabinet and on the recommendation of the minister responsible.

In general, it is senior management positions that are filled by Governor in Council appointments. As explained by Ms. Hamoui, Assistant Secretary to the Cabinet for Senior Personnel at the Privy Council Office, “Governor in Council appointees include heads and members of commissions, boards, agencies, administrative tribunals and Crown corporations, as well as deputy ministers and associate deputy ministers leading federal public service departments.”<sup>2</sup> A significant number of positions are staffed by appointment. According to Ms. Hamoui, “the Governor in Council is responsible for filling some 2,200 positions,” and it makes “about 500 to 800 appointments a year.”<sup>3</sup> Agents and officers of Parliament and ombudspersons can be added to this list. The aforementioned positions are staffed through open selection processes, with a notice of

2 House of Commons Standing Committee on Official Languages (LANG), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0920 (Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel, Privy Council Office).

3 *Ibid.*, 0950 (Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel, Privy Council Office).



appointment opportunity posted on the Privy Council Office website so that members of the public can apply.

The appointment process varies depending on the nature of position. This is the case for the selection process for the appointment of ministers and deputy ministers, heads of mission/consuls (managed by the Minister of Foreign Affairs), judicial appointments, territorial commissioners, ministerial advisors, provincial administrators, deputy judges in the territories, Royal Canadian Mounted Police deputy commissioners and commanding officers, commissioners of oaths and official receivers.

## Positions Subject to Language Requirements

Some Governor in Council appointments are subject to language requirements: officers of Parliament, deputy ministers and associate deputy ministers.

### Officers of Parliament

Since the *Language Skills Act* was passed in 2013, officers of Parliament must “be able to speak and understand clearly both official languages” at the time of their appointment.<sup>4</sup>

The term “clearly” has not been defined in legislation, nor has it been defined by regulation, policy or directive. As a result, the phrase “be able to speak and understand clearly both official languages” may be interpreted in various ways.

With regard to assessing the language proficiency of candidates, Ms. Hamoui said that it is assessed “during the interview stage of a selection process and, if necessary, can also be assessed through language testing provided by the House of Commons.”<sup>5</sup>

### Deputy Ministers and Associate Deputy Ministers

Since June 2023, section 34(2) of the *Official Languages Act* (Part V – Language of Work) has stipulated that persons appointed to the position of deputy minister, associate deputy minister or a position of an equivalent rank must take language training once

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4 The Language Skills Act applies to the Auditor General of Canada, the Chief Electoral Officer, the Commissioner of Official Languages, the Privacy Commissioner, the Information Commissioner, the Senate Ethics Officer, the Conflict of Interest and Ethics Commissioner, the Commissioner of Lobbying, the Public Sector Integrity Commissioner, the President of the Public Service Commission and the Parliamentary Budget Officer.

5 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0920 (Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel, Privy Council Office).



they are appointed in order to “be able to speak and understand clearly both official languages.” This is the same phrase that appears in the *Language Skills Act*.

The scope of section 34(2) of the *Official Languages Act* is limited to the 22 institutions listed in Schedule I of the *Financial Administration Act* (FAA).<sup>6</sup> Therefore, it does not apply to all 230<sup>7</sup> federal institutions subject to the *Official Languages Act*. However, the Clerk of the Privy Council “has communicated his expectations that all deputy ministers – not only those occupying positions under Schedule I of the FAA – adhere to this requirement.”<sup>8</sup>

The implementation of section 34(2) falls to the Privy Council Office (PCO).<sup>9</sup> PCO provides the necessary support in the Governor in Council appointment process, including for deputy ministers and associate deputy ministers.<sup>10</sup> As explained by Mr. Carsten Quell, the Executive Director of the Official Languages Centre of Excellence under the Office of the Chief Human Resources Officer at the Treasury Board Secretariat, “[t]he Treasury Board Secretariat’s responsibility extends up to the assistant deputy minister level, meaning the level below deputy ministers.”<sup>11</sup>

### **Language Proficiency Previously Acquired by Deputy Ministers and Associate Deputy Ministers in the Federal Public Service**

Deputy ministers and associate deputy ministers recruited from the pool of assistant deputy ministers are already bilingual when they are appointed. As Mr. Quell explained,

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6 Treasury Board; Department of Citizenship and Immigration; Department of National Defence; Department of Western Economic Diversification; Department of Agriculture and Agri-Food; Department of Justice; Department of Health; Department of Public Safety and Emergency Preparedness; Department of Employment and Social Development; Department of the Environment; Department of Industry; Department of Foreign Affairs, Trade and Development; Department of Veterans Affairs; Department for Women and Gender Equality; Department of Finance; Department of Fisheries and Oceans; Department of Crown-Indigenous Relations and Northern Affairs; Department of Natural Resources; Department of Indigenous Services; Department of Transport; Department of Public Works and Government Services; and Department of Canadian Heritage.

7 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 16 June 2023, 1010 (Raymond Th  berge, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

8 Privy Council Office, Supplemental information, April 2024, p. 2.

9 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0935 (Carsten Quell, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources Officer, Treasury Board Secretariat).

10 Ibid., 0920 (Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel, Privy Council Office).

11 Ibid., 0925 (Carsten Quell, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources Officer, Treasury Board Secretariat).



“[t]he *Directive on Official Languages for People Management* requires that the assistant deputy minister positions be designated with a language profile of superior proficiency and that the incumbents of these positions be bilingual at the time of their appointment.”<sup>12</sup> He clarified that, “[o]f the approximately 6,000 public service executives, including assistant deputy ministers, 95% met the language requirements of their position as of March 31, 2023.”<sup>13</sup> The expression “public service executives” corresponds to “incumbents in the EX occupational group within the Core Public Administration, i.e. position levels EX-01 to EX-05.”<sup>14</sup>

### **Imprecise Statutory Provisions in the *Official Languages Act***

The Commissioner of Official Languages is satisfied with the new requirements in the *Official Languages Act* that apply to deputy ministers and associate deputy ministers (and positions of equivalent rank). However, he believes that “the job is only half done.”<sup>15</sup>

In the absence of clear policies and guidelines, how can we ensure that this change will be implemented, measured and adjusted as necessary? What measures will be put in place to support incumbents when they return from language training to enable them to carry out their responsibilities effectively in both official languages? What will happen in cases where senior civil servants are still unable to master their second official language?<sup>16</sup>

The Commissioner said that “a much more prescriptive instrument”<sup>17</sup> than a directive should be used to incorporate these points.

He also informed the Committee that section 34(2) is not applied retroactively. In fact, section 107 of the *Official Languages Act* indicates that “the persons holding the positions referred to in subsection 34(2) immediately before the coming into force of that provision shall continue in office.”<sup>18</sup> The Commissioner believes that it is therefore important to ensure that senior management is bilingual, because “senior leaders play a

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12 Ibid.

13 Ibid.

14 Treasury Board Secretariat, *Follow-Up Responses to the Standing Committee on Official Languages (LANG) Language Obligations Related to the Process of Staffing or Making Appointments to Key Positions from the appearance on March 21, 2024*.

15 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0920 (Raymond Th  berge, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

16 Ibid.

17 Ibid, 0945.

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

significant role.”<sup>19</sup> He said that, “[i]f they don’t speak both official languages, I guarantee that their employees will work in only one of the two official languages, not both.”<sup>20</sup>

## No Language Requirement for Many Governor in Council Appointments

Many Governor in Council-appointed positions do not require the incumbent to know both official languages.

In fact, notices of appointment state that “[p]roiciency in both official languages would be preferred,” and, as the Privy Council Office mentioned, “Notices of Appointment Opportunity indicate that bilingual proficiency will be considered when assessing applicants and may be operationally required, depending on the position.”<sup>21</sup>

When they apply for a position, candidates must indicate their first official language spoken and self-assess their language proficiency. They are asked to rate their “bilingual proficiency level, categorized as: fluently bilingual; functional; limited; or unilingual.”<sup>22</sup> The Privy Council Office confirmed that “there are no legislative definitions for these categories.”<sup>23</sup>

The Commissioner of Official Languages said that he “question[s] the absence of bilingualism in the list of essential criteria for Governor-in-Council appointments.”<sup>24</sup> In his view, “proficiency in both official languages must become a hiring criterion for senior management positions<sup>25</sup> in the public service and for Governor in Council

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19 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 1005 (Raymond Th  berge, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

20 Ibid.

21 Privy Council Office, Supplementary information, April 2024.

22 Ibid.

23 Ibid.

24 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0920 (Raymond Th  berge, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

25 The expression “senior management positions” corresponds to positions at the EX-01 to EX-05 levels. They are part of the executive occupational group. EX-05 and EX-04 are the assistant deputy minister levels, EX-03 is the director general or executive director level, EX-02 is the senior director level and EX-01 is the director level. These positions are not Governor in Council appointments. They are overseen by the Treasury Board.



appointments.”<sup>26</sup> In other words, the Commissioner believes that being able to speak both official languages is “an essential skill for any leader, especially those in federal institutions subject to the *Official Languages Act*.”<sup>27</sup>

The Commissioner’s argument is based on the fact that bilingualism within federal institutions relies largely on the engagement of senior officials in terms of official languages:

They need to lead by example and must be able to represent all their employees and Canadians in both official languages.<sup>28</sup>

In regions designated bilingual for language-of-work purposes, public servants have the right to work in the official language of their choice and to receive services from their employer in that language. Therefore, the full implementation of Part V of the *Official Languages Act* depends on the ability of senior leadership as well as managers and supervisors to work with their employees in both official languages (spoken and written).<sup>29</sup> The Commissioner explained the situation as follows:

In my opinion, any leader in the federal public service must be able to express himself or herself in both official languages and understand anyone who speaks English or French, in order to promote the use of both official languages and encourage linguistic security in the workplace in the federal public service. This also gives a voice to the issues on the table.

Senior management must lead by example and send a clear signal that both English and French have a prominent and equal place in the federal public service, so that public servants can flourish in both official languages. It is high time that we acted.<sup>30</sup>

The Commissioner confirmed that it is difficult for his office to assess how satisfied public servants are with the degree to which their language rights being respected at work. This is due, in part, to a decision to remove questions from the Public Service

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26 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0920 (Raymond Th  berge, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

27 Ibid.

28 Ibid.

29 Section 36(1)(c) of the *Official Languages Act* states that federal institutions in the National Capital Region and in designated parts or regions of Canada or in any place outside of Canada, must “ensure that ... managers and supervisors are able to communicate in both official languages with employees of the institution in carrying out their managerial or supervisory responsibilities.” This section is not yet in force. According to the Commissioner of Official Languages, it will come into force in June 2025.

30 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0925 (Raymond Th  berge, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

Employee Survey (PSES), particularly one about writing in the official language of their choice. Therefore, he gave the following explanation:

[I]t's difficult for us to obtain data on the extent to which bilingualism is alive and well in the federal government, the extent to which English-speaking or French-speaking public servants can use the language of their choice, or the extent to which they are supervised in French. We don't have data on this, and unfortunately, without it, it's hard to take a position one way or the other.<sup>31</sup>

According to the Commissioner, “the public service, through the Treasury Board or some other agency,” must give itself “tools to measure the use of both official languages in the workplace.”<sup>32</sup> He made a recommendation to that effect in his *Annual Report 2022–2023*.<sup>33</sup> Ms. Geneviève Tellier, Professor at the University of Ottawa, made a similar recommendation: “is there any progress in the federal government? I don't think so. That said, one of the main problems is the lack of data. If I could make a recommendation to the committee, it would be to insist on obtaining the data. Sound data is essential.”<sup>34</sup>

The Commissioner recommended that “all senior management positions and institutions subject to the *Official Languages Act*” be examined “to ensure that a command of both official languages is part of the requirements of these positions.”<sup>35</sup> As he explained, this examination process could answer a number of questions:

To what extent was bilingualism a definite or important asset? What is the rate of those appointments?

It would also be helpful to identify the trends in those appointments over a certain period. Radio-Canada reported recently that the number of francophones appointed dropped last year. Was that an anomaly? ...

If there is a declining trend, it needs to be corrected. First you will need the numbers, the data and the statistics. You will also have to consider who is responsible for

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31 Ibid., 0945.

32 Ibid.

33 “I recommend that, by the end of June 2025, the President of the Treasury Board, the Minister of Official Languages and the Clerk of the Privy Council work together to: draft an action plan in which they define concrete ways to highlight the role of official languages in the federal public service; [and] measure the actual capacity of federal public servants to work in the official language of their choice in regions designated bilingual for language-of-work purposes.” Office of the Commissioner of Official Languages, *Annual Report 2022–2023*, 2023, p. 8.

34 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0840 (Geneviève Tellier, Professor, As an individual).

35 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0925 (Raymond Thériault, Commissioner of Official Languages, Office of the Commissioner of Official Languages).



managing those appointments, specifically the secretariat responsible for senior officials.<sup>36</sup>

## Language Skills Are Essential Skills

Like the Commissioner of Official Languages, Ms. Tellier said that senior positions should be designated bilingual and that incumbents should have advanced language skills when they are appointed. She argued that language skills are essential skills for those aspiring to more senior positions.

Ms. Tellier does not believe that the best candidate can be someone who has all the skills required (education, experience, etc.) except language skills.

Does that person really have the necessary skills if they are not bilingual? That's the problem. We always say that bilingualism is essential, but then it goes to the bottom of the list. It should be at the top of the list.

We have to stop saying that someone who doesn't speak French or English still has the necessary skills. No, that person does not have the necessary skills. We have to change the way we look at and analyze the situation. We have to clearly indicate what the essential skills are and, as the case may be, determine that a given person does not have the necessary skills.<sup>37</sup>

In her opinion, “[a]cquiring an essential skill after the person is appointed should be an exception.”<sup>38</sup>

Farm Credit Canada (FCC), a federal Crown corporation, said it has made progress on increasing bilingualism, particularly in staffing positions designated as bilingual. Overall, FCC's process for staffing all such positions is in line with Ms. Tellier's recommendation:

Accepting a non-bilingual candidate to fill a designated bilingual position would be an exception. At the time of the job offer, we would require or ask the candidate to take French courses. Before granting this exception, however, we would need to have tried to fill the position on at least two occasions.<sup>39</sup>

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36 Ibid., 0935.

37 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0835 (Geneviève Tellier, Professor, As an individual).

38 Ibid.

39 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 8 April 2024, 1555 (Justine Hendricks, President and Chief Executive Officer, Farm Credit Canada).

## Effect of Language Profile of Governor in Council Positions and Appointments on Francophone Minority Communities

According to Ms. Angela Cassie, President of the Société de la francophonie manitobaine, the bilingualism of senior public servants has an effect not only on the francophone minority community in Manitoba, but also on the entire Canadian francophone population:

The bilingual capacity of senior public servants is not just a matter of spoken language, but also of understanding the unique challenges our communities face on a daily basis. This has a real impact on decision-making, including the funding of organizations that support our OLMCs [official language minority communities], as well as the provision of vital public services, among others.<sup>40</sup>

Therefore, failing to establish language requirements for Governor in Council appointments and appointing unilingual persons would have an effect on the implementation of Part VII of the *Official Languages Act*, regarding promoting bilingualism in Canadian society and enhancing the vitality of official language minority communities.

## First Official Language Spoken by Governor in Council Appointees

The Committee also heard about the first official language spoken by Governor in Council appointees.

It appears that “[c]urrently, 23% of GIC [Governor in Council] appointees report French as their first official language [spoken], and it’s 31% for public service executives.”<sup>41</sup>

As Ms. Hamoui explained, the Privy Council Office collects data on the language preference of appointees to ensure that there are “no downward trends.”<sup>42</sup> However, she said it was impossible to say why the number of people appointed by the Government of Canada whose first official language spoken was at that percentage.<sup>43</sup>

Part VI of the *Official Languages Act* states that the Government of Canada is committed to ensuring that “English-speaking Canadians and French-speaking Canadians ... have

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40 Ibid., 1540 (Angela Cassie, President, Société de la francophonie manitobaine).

41 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0940 (Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel, Privy Council Office).

42 Ibid., 0950.

43 Ibid.



equal opportunities to obtain employment and advancement in federal institutions”<sup>44</sup> and that “the composition of the work-force of federal institutions tends to reflect the presence of both the official language communities of Canada.”<sup>45</sup> It is worth considering whether Part VI applies to Governor in Council appointments.

## **CREATING CONDITIONS TO SUPPORT BILINGUALISM AMONG GOVERNOR IN COUNCIL APPOINTEES**

During the Committee’s meetings, some witnesses discussed three points that, in their opinion, would help create conditions to support bilingualism within the federal public service.

### **Language Training in the Federal Public Service**

#### **Current Situation**

Witnesses talked at length about language training within the federal public service. For public servants who do not already have advanced language skills at the beginning of their career, the language training provided by the employer, at public expense, affects whether they will be able to attain senior positions.

Between 1964 and 2004, Language Training Canada was responsible for providing language training to federal public servants. In 2004, the Government of Canada merged Language Training Canada with two other institutions – the Canadian Centre for Management Development, along with Training and Development Canada – to create the Canada School of Public Service (CSPS). Language Training Canada’s mandate was passed down to CSPS.

In 2006, the management of language courses was decentralized. CSPS stopped offering courses to help participants learn a second language. According to Ms. Wendy Bullion-Winters, Vice-President of the Business Enablement Branch and Chief Financial Officer at the Canada School of Public Service, “it now offers learning products to help maintain the language skills already possessed.”<sup>46</sup> Since then, each federal institution has been responsible for the language training it provides to its employees. It has led to the

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

45 *Ibid.*

46 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 18 March 2024, 1630 (Wendy Bullion-Winters, Vice-President, Business Enablement Branch and Chief Financial Officer, Canada School of Public Service).



widespread use of contractors or, depending on the capacity of the federal institution, to the creation of custom programs internally.

### **Current Problems Associated with Centralization**

According to the Professional Institute of the Public Service of Canada and the Public Service Alliance of Canada, two unions that represent federal public servants, the way training is currently offered is problematic for a number of reasons. To summarize, training is limited, lacking investment from federal institutions, unequal and poorly adapted to the needs of individuals.

Ms. Jennifer Carr, the President of the Professional Institute of the Public Service of Canada, said that many problems stem from decentralizing management for language training and using contractors:

We're also concerned about how the use of private contractors is making things even worse. Contracting out is being done outside of the normal rules the government has set for itself, ignoring the language and diversity requirements that our government says are its priorities. This means that on top of runaway costs and the damaging loss of institutional knowledge, contracting out is hurting the government's ability to offer quality services in both official languages.<sup>47</sup>

Therefore, Ms. Carr believes that a centralized approach is needed:

It's very clear that we have to go back to a centralized system to ensure the policy on language, as well as training, comes to fruition. We cannot have silos. We cannot have inequity happening among the departments—whether or not they have money to spend on training for certain employees versus others.<sup>48</sup>

According to Mr. Alexandre Silas, the Regional Executive Vice-President for the National Capital Region at the Public Service Alliance of Canada, jurisdiction over language training should be given back to CSPA:

I think that the language training services that the school used to provide to federal public service employees should be reinstated. This training must also apply specifically to the federal public service.<sup>49</sup>

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47 Ibid., 1635 (Jennifer Carr, President, The Professional Institute of the Public Service of Canada).

48 Ibid., 1700.

49 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0845 (Alexandre Silas, Regional Executive Vice-President, National Capital Region, Public Service Alliance of Canada).



## Varying Approaches

As Mr. Quell said, “departments approach language training differently.”<sup>50</sup> Some departments use contractors. Public Services and Procurement Canada has therefore “established standing offers so departments can choose pre-qualified language schools.”<sup>51</sup> These standing offers “include criteria governing not only the cost, but also the quality of the training provided. Suppliers are evaluated to ensure that the training is of good quality.”<sup>52</sup>

Although they have access to contracting services, some federal institutions have their own internal service. That is the case for the Canada Border Services Agency, which has its own language school. According to Ms. Holly Flowers Code, Vice President of Human Resources at Canada Border Services Agency, the CBSA’s dedicated language school and program trains 500 to 800 employees each year.<sup>53</sup> Mr. Quell said that Employment and Social Development Canada and Natural Resources Canada have also established internal language services.<sup>54</sup> For language schools within a department, “it’s the department’s responsibility to ensure its employees provide quality training.”<sup>55</sup>

Farm Credit Canada (FCC) uses a number of methods. The teaching method depends on the learner’s needs:

We have a combination of resources. We have some in-house teachers. If we do an immersion program, for example, we have a partnership with external resources. Because FCC is a Crown corporation, we don’t use the services of the public service of Canada. We’re independent in that respect. We have online resources, in-house teachers, as well as external partnerships, depending on candidates’ needs.<sup>56</sup>

Regarding the individual needs of public servants, Ms. Hendricks, the President and Chief Executive Officer of FCC, made the following statement:

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50 Ibid., 0955 (Carsten Quell, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources Officer, Treasury Board Secretariat).

51 Ibid.

52 Ibid., 1000.

53 Ibid., 0930 (Holly Flowers Code, Vice President, Human Resources, Canada Border Services Agency).

54 Ibid., 0955 (Carsten Quell, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources Officer, Treasury Board Secretariat).

55 Ibid., 1000.

56 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 8 April 2024, 1545 (Justine Hendricks, President and Chief Executive Officer, Farm Credit Canada).

We also mentioned our participation in the Best Practices Forum on Official Languages. For example, for an employee who suffers from dyslexia, we will instead retain private sector services to support and help them learn the language.<sup>57</sup>

In terms of financial resources, FCC has an annual budget for language training. As Ms. Hendricks explained, “when there’s a choice to be made, depending on our organization’s capacity,”<sup>58</sup> priority is given to providing language training “to incumbents in designated bilingual positions.”<sup>59</sup>

## Toward a New Language Training Framework

When he appeared before the Committee, Mr. Quell explained that the Treasury Board Secretariat was developing a new language training framework. He said it was “a commitment made by the government in 2019, which sought such a framework to improve the language training offering for staff.”<sup>60</sup>

Treasury Board Secretariat confirmed that the framework will be “inclusive,” as well as “effective, flexible, accessible [and] learner-driven,” and it will consider “the needs of equity-seeking groups, to support a culture that promotes bilingualism in the workplace as well as ongoing learning and the regular use of second official language skills.”<sup>61</sup>

In addition, Treasury Board Secretariat will ensure that distance learning is supported, so that “[a]ll public servants, including those in regions [designated bilingual for language-of-work purposes], will therefore benefit from improved access to language training and greater opportunities to become bilingual.” This will give employees “improved prospects for career advancement.”<sup>62</sup>

Treasury Board Secretariat has committed to developing several components of the new framework by the spring of 2024. It will begin by providing federal institutions with guidelines and an implementation guide. These tools will support federal institutions “in

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57 Ibid.

58 Ibid., 1550.

59 Ibid.

60 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0930 (Carsten Quell, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources Officer, Treasury Board Secretariat).

61 Treasury Board Secretariat of Canada, *Follow-Up Responses to the Standing Committee on Official Languages (LANG) Language Obligations Related to the Process of Staffing or Making Appointments to Key Positions – March 21, 2024*.

62 Ibid.



providing equitable access to inclusive and standardized language training approaches and across the public service.”<sup>63</sup> It will also develop a playbook for language training that outlines “different learning paths with various tools and resources to support institutions as well as learners (including from equity-seeking groups) in selecting options that will best meet their needs.”<sup>64</sup>

Linguistic security for federal public servants is a key part of the new framework. Treasury Board Secretariat has established an “interdepartmental working group whose mandate is to analyze, understand and raise awareness among federal public servants of linguistic insecurity.”<sup>65</sup> It has also created a “job aid which proposes various tools and strategies to overcome certain aspects of linguistic insecurity”<sup>66</sup> and a “workshop for employees on managing emotions to promote linguistic security.”<sup>67</sup>

## Learning French as a Second Language in a Formal Learning Context

In the view of the Commissioner of Official Languages, opportunities to learn French as a second language, particularly in school, should be taken into account when developing measures that seek to increase bilingualism in the federal public service:

There is a short-term approach and a long-term approach. The long-term approach is to have programs that give students access to second-language training. In the short term, we can offer training to candidates.<sup>68</sup>

Ms. Tellier’s views align with the Commissioner’s. She believes that the public service should “reach out to universities to tell them that it needs bilingual candidates, especially in public administration programs.”<sup>69</sup> For example, Ms. Tellier suggested an equivalency or accreditation system to validate language skills acquired at post-secondary institutions:

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63 Ibid.

64 Ibid.

65 Ibid.

66 Ibid.

67 Ibid.

68 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0935 (Raymond Th  berge, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

69 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0850 (Genevi  ve Tellier, Professor, As an individual).

If a person comes from a bilingual university and proves that they have taken courses in English and French, this should equate to public service language tests. It isn't complicated to implement. We just need people to think about these aspects and provide guidance on how to cut costs, make the system more effective and send a message too.<sup>70</sup>

According to Ms. Cassie, developing the language skills of future public servants is closely related to developing a French minority language education continuum and to ensuring access to opportunities to learn French as a second language at every stage in the education system. In other words, minority francophone educational institutions and French as a second language programs must be supported so that they can continue training the next generation of bilingual federal public servants.<sup>71</sup> This was one of the findings of the Committee's report in 2009 on the role of post-secondary institutions in promoting Canadian linguistic duality.<sup>72</sup>

### Implementing Section 91 of the *Official Languages Act*

In recent years, the Commissioner of Official Languages of Canada has focused significant attention on section 91 of the *Official Languages Act*. This section addresses the linguistic designation of federal public service positions. It reads as follows:

Nothing in this Act authorizes the application of official language requirements to a particular staffing action unless those requirements are objectively required to perform the functions for which the staffing action is undertaken.<sup>73</sup>

Section 91 does not apply to Governor in Council appointments, as they do not have a language profile. However, in the broader context of bilingualism in the federal public service, the process for designating the language profile of a position is key to complying with parts IV and V of the *Official Languages Act*. The Committee has therefore chosen to summarize the testimony it received on this topic.

In a November 2000 study, the Commissioner of Official Languages explained the meaning and scope of section 91 as follows:

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70 Ibid.

71 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 8 April 2024, 1540 (Angela Cassie, President, Société de la francophonie manitobaine).

72 LANG, 40<sup>th</sup> Parliament, 1<sup>st</sup> Session, *5,000 Positions to be Filled Every Year: The Role of Postsecondary Institutions in Promoting Canada's Linguistic Duality*, June 2009.

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



It [section 91] sets out the framework for the review of a position’s language requirements. These language requirements must be objectively necessary to perform the duties of the position, primarily with respect to service to the public in both official languages and compliance with language-of-work requirements.<sup>74</sup>

When he appeared before the Committee, the Commissioner explained that the implementation of section 91 is a systemic problem:

This section has always been poorly understood by managers, which has led to a systemic problem. Whether we receive 300, 600 or 1,000 complaints about this section, it’s a systemic problem throughout the federal government. Every time we have a position to fill, it’s extremely important to analyze its language requirements.<sup>75</sup>

The Commissioner made recommendations on how to implement section 91 of the *Official Languages Act* more effectively, and the Treasury Board Secretariat followed through. In his 2022–2023 annual report, the Commissioner stated that Treasury Board Secretariat had established “a working group to examine the issues raised..., identify best practices and develop a three-year action plan to increase compliance with the objective establishment of language designations of positions.”<sup>76</sup> Treasury Board Secretariat “presented its strategy to [the Commissioner’s] team in December 2022,”<sup>77</sup> but he would have “much preferred for this date to have marked the end of the implementation of this central agency’s ‘section 91’ plan rather than the beginning.”<sup>78</sup> The Commissioner therefore called on the Treasury Board President to “implement her three-year action plan by June 2025 to ensure that federal institutions comply with section 91 of the *Official Languages Act*.”<sup>79</sup> When he appeared before the Committee, the Commissioner could not say whether Treasury Board Secretariat would be able to meet the deadline.<sup>80</sup>

Ms. Cassie supported the Commissioner’s efforts regarding section 91. She said that “[o]ur community and our francophone communities deserve robust processes to

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74 Office of the Commissioner of Official Languages, *Implementing Section 91 of the Official Languages Act: A Systemic Problem*, November 2020, p. 3.

75 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0945 (Raymond Thériège, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

76 Office of the Commissioner of Official Languages, *Annual Report 2022–2023*, 2023, p. 11.

77 Ibid.

78 Ibid.

79 Ibid.

80 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0950 (Raymond Thériège, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

ensure representativeness of the Canadian population, as well as fair and equitable treatment.”<sup>81</sup>

## The Bilingualism Bonus

The bilingualism bonus is an annual payment of \$800 paid to eligible employees. An eligible employee is one who occupies a bilingual position and has second language evaluation results confirming that they meet the language requirements of their position. Executive group (EX) positions and Governor in Council appointments are not eligible for the bonus. However, the Committee has chosen to summarize what witnesses said about it, as it speaks to the broader perspective of bilingualism in the federal public service.

Both the Professional Institute of the Public Service of Canada and the Public Service Alliance of Canada view the bilingualism bonus as a tool that can improve bilingualism in the federal public service.

Mr. Silas said that his union is calling for an increase to the bilingualism bonus. He explained his position as follows:

Enhancing the bilingualism bonus is one example of what we are asking for. It has never been raised; the amount has remained unchanged since the bonus was created in 1977. That’s nearly half a century.

We have repeatedly urged the government to reconsider this policy, but it is refusing to raise the bonus. ...

PSAC [Public Service Alliance of Canada] believes that, if the government truly wants to support official languages, it must raise the bilingualism bonus to recognize the value of work in both official languages. It must also provide more quality language training to encourage anglophone and francophone workers to improve their second language.<sup>82</sup>

Mr. Silas stated that, “in a 2019 report, the government even suggested eliminating [the bilingualism bonus].”<sup>83</sup> From the union’s perspective, that “would be completely unacceptable.”<sup>84</sup> The report is entitled *The Next Level: Normalizing a Culture of Inclusive*

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81 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 8 April 2024, 1540 (Angela Cassie, President, Société de la francophonie manitobaine).

82 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0820 (Alexandre Silas, Regional Executive Vice-President, National Capital Region, Public Service Alliance of Canada).

83 Ibid.

84 Ibid.



*Linguistic Duality in the Federal Public Service Workplace*. It contains recommendations stemming from a review of the state of bilingualism in the federal public service, an initiative of Mr. Michael Wernick, then Clerk of the Privy Council and Secretary to the Cabinet. The recommendation about the bilingualism bonus reads as follows:

That the Treasury Board Secretariat initiate discussions with the National Joint Council to repurpose the bilingualism bonus to establish a new fund to be used exclusively for the development of non-executive employees' language skills, and co-managed with the bargaining agents.<sup>85</sup>

Ms. Carr's observations were in line with those of her colleague, Mr. Silas:

Every time we ask that the policy be revised, Treasury Board tells us they want to abolish the bonus instead. So they don't want to talk about increasing the bonus; they want to take it away and reinvest the money elsewhere. In our opinion, we need both: an increase in the bonus and more investment.<sup>86</sup>

According to the information available online through the *Dashboard on the status of the language of work recommendations*, the implementation of this recommendation is "in progress." To date, Treasury Board Secretariat "has initiated discussions with bargaining agents, given the need to achieve consensus when considering modifying benefits."<sup>87</sup>

Ms. Tellier does not share the same view as Mr. Silas and Ms. Carr. Rather, she suggests that salaries should be adjusted based on the language requirements of the position.

Bilingualism bonuses seem to pose an issue. Again, you're saying that bilingualism is an asset, not an essential skill. If the position requires bilingualism, it must be better paid. In other words, the overall salary must be improved. The federal public service needs to attract the best people, the people with the best skills.<sup>88</sup>

Ms. Tellier's opinion is based on the findings of a study she conducted for the Conseil du Trésor du Québec:

People are in the public service for the common good, and bilingualism—meaning serving the public in both languages and promoting the use of both languages—is part

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85 Privy Council Office, *The Next Level: Normalizing a Culture of Inclusive Linguistic Duality in the Federal Public Service Workplace*, 2017, p. 21.

86 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 18 March 2024, 1715 (Jennifer Carr, President, The Professional Institute of the Public Service of Canada).

87 Government of Canada, *Dashboard on the status of the language of work recommendations*.

88 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0855 (Geneviève Tellier, Professor, As an individual).



of the common good. It's wrong to think that salaries or bonuses will solve everything. Bonuses were a thing of the past.<sup>89</sup>

Instead of the bilingualism bonus, she suggested that the base salary be adjusted to reflect the language profile of the position:

If bilingualism is required to obtain these positions, yes, it costs money. If the people who want to enter the public service—and young people do—know that a good job requires bilingualism, they'll learn the other language.<sup>90</sup>

Mr. Quell reminded the Committee that, in 2002, Ms. Dyane Adam, who was the Commissioner of Official Languages at the time, “indicated that the government should ‘[c]onsider knowledge of English and French a basic skill, like other required skills for positions.’ She actually recommended eliminating the bilingualism bonus.”<sup>91</sup> He pointed out that the Committee had recommended in May 2005 that Treasury Board “eliminate the bilingualism bonus and that the knowledge of the two official languages be considered a professional skill that is reflected in the salaries of federal employees.”<sup>92</sup> Mr. Quell wrapped up his comments by saying that Treasury Board Secretariat would be “discussing the future of the bonus with the bargaining agents in April.”<sup>93</sup> It marks the first time the *Bilingualism Bonus Directive* will be reviewed since 1990.<sup>94</sup>

## **LACK OF LANGUAGE REQUIREMENTS IN THE APPOINTMENT PROCESS FOR THE GOVERNOR GENERAL AND PROVINCIAL LIEUTENANT GOVERNORS**

The matter of language proficiency of candidates for the positions of Governor General of Canada and Lieutenant Governors of the provinces was raised at the Committee's meetings. The Commissioner of Official Languages had addressed this topic in his *Annual Report 2021–2022*.

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89 Ibid.

90 Ibid.

91 Ibid., 0955 (Carsten Quell, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources Officer, Treasury Board Secretariat).

92 Ibid.

93 Ibid.

94 Public Service Alliance of Canada, *PSAC Presentation to the Committee of Official Languages, March 21, 2024, Additional Comments*, p. 2.



It is the prerogative of the Prime Minister of Canada – subject to the approval of the Monarch – to name a person of their choosing to the position of Governor General. Lieutenant Governors of the provinces are appointed by the Governor General on advice of the Prime Minister of Canada.<sup>95</sup>

The Prime Minister of Canada is not a federal institution. As a result, the *Official Languages Act* “does not apply to the appointment of the Governor General of Canada or the Lieutenant Governor of New Brunswick.”<sup>96</sup> Therefore, the Commissioner of Official Languages cannot intervene. With regard to these positions, he did say that “it is important for all senior federal leaders to be able to communicate in Canada’s two official languages and for Canadians to be heard in both official languages.”<sup>97</sup>

According to Ms. Tellier, selecting a Governor General who did not speak French at the time of her appointment in 2021 sent a chilling message about the place of French in the public sphere:

[T]he Governor General’s ignorance of French was extremely detrimental, not to Canada’s francophonie in general, but to the francophonie outside Quebec specifically.

Francophone populations outside Quebec have been fighting for years to show that knowledge of French in bilingual organizations is not just an asset, but an essential skill. This appointment sabotaged years of effort and struggle. I see it in my own organization, where bilingualism is no longer considered an essential skill for senior management positions, and where some new university programs are being offered in English only.<sup>98</sup>

She added that “[t]his appointment also implied that the francophonie and diversity are two separate things.”<sup>99</sup>

Similar concerns were included in the *Annual Report 2021–2022* of the Commissioner of Official Languages:

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95 Witnesses did not mention Territorial Commissioners, which are positions filled by the Governor in Council. Territorial Commissioners fulfill many of the same duties as Lieutenant Governors of the provinces, but they are not considered to be representatives of His Majesty. It is important to note that the territories were created by federal statute, not in the Constitution, which is the case for the provinces.

96 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 29 February 2024, 0930 (Raymond Thériège, Commissioner of Official Languages, Office of the Commissioner of Official Languages).

97 Ibid.

98 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0815 (Geneviève Tellier, Professor, As an individual).

99 Ibid.

These kinds of appointments generate a strong sense of injustice for many Francophones because they reinforce the impression that one of Canada’s official languages is more important than the other. They can also suggest, as the appointment of the new Governor General illustrates, that French-language requirements are an impediment to embracing diversity and advancing true reconciliation with Indigenous peoples.<sup>100</sup>

According to Ms. Tellier, it is in fact possible to reconcile French as an official language, as well as linguistic and cultural diversity, with Indigenous identity and the revitalization of Indigenous languages. She said, “recent appointments to senior public offices prove otherwise,”<sup>101</sup> and gave the examples of “Justice Michelle O’Bonsawin or the Lieutenant-Governor of Quebec, Manon Jeannotte.”<sup>102</sup> Justice O’Bonsawin is an Abenaki member of the Odanak First Nation, and Ms. Jeannotte is from the Nation Micmac de Gespeg. Each of them speaks both English and French fluently.

The appointments of the Governor General of Canada and the Lieutenant Governor of New Brunswick are being challenged in court. The groups Justice pour le Québec and the Association pour la défense des droits collectifs et individuels du Québec filed a lawsuit with the Superior Court of Quebec to revoke the appointment of Ms. Mary Simon pursuant to sections 16(1)<sup>103</sup> and 20(1)<sup>104</sup> of the *Canadian Charter of Rights and Freedoms*. The Attorney General of Canada argued that only the Federal Court had the jurisdiction to hear this case, but on 13 July 2023 the Superior Court of Quebec ruled that it would hear the case regarding Ms. Simon’s appointment as Governor General.<sup>105</sup>

In December 2019, the Acadian Society of New Brunswick (SANB) filed a motion before the New Brunswick Court of Queen’s Bench challenging the appointment of Ms. Brenda Murphy to the position of Lieutenant Governor of New Brunswick. The SANB

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100 Office of the Commissioner of Official Languages, *Annual Report 2021–2022*, p. 2.

101 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0815 (Geneviève Tellier, Professor, As an individual).

102 Ibid.

103 Section 16(1) reads: “English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.”

104 Section 20(1) reads: “Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where there is a significant demand for communications with and services from that office in such language; or due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.”

105 Superior Court of Quebec, District of Montréal, 2023 QCCS 2787, *Justice pour le Québec c. Procureur général du Canada*, 13 June 2023 [IN FRENCH ONLY].



argued that the Prime Minister had violated sections 16(2),<sup>106</sup> 18(2),<sup>107</sup> 20(2)<sup>108</sup> and 16.1(1)<sup>109</sup> of the *Canadian Charter of Rights and Freedoms*, the values enshrined therein, and the constitutional principle of the protection of minority rights.<sup>110</sup>

In April 2022, the Court of Queen’s Bench of New Brunswick<sup>111</sup> ruled in favour of the SANB:

In her decision, Chief Justice of the Court of Queen’s Bench, Tracey K. DeWare, criticized the appointment process for the Lieutenant Governor, not the appointment of the person currently in that role. Concretely, she determined that the federal government has an obligation to take into account the unique language status of New Brunswick when making appointments [translation].<sup>112</sup>

The Government of Canada appealed this decision. The New Brunswick Court of Appeal began considering this case in June 2023 and rendered its decision on 23 May 2024. It overturned the lower court judgment<sup>113</sup>.

At the time of writing, two legislative proposals are before the Senate. In 2021, Senator Claude Carignan introduced two bills seeking to address the matter of the

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106 Section 16(2) reads: “English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.”

107 Section 18(2) reads: “The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.”

108 Section 20(2) reads: “Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French.”

109 Section 16.1(1) reads: “The English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges, including the right to distinct educational institutions and such distinct cultural institutions as are necessary for the preservation and promotion of those communities.”

110 Acadian Society of New Brunswick (SANB), *Nomination d’une lieutenant-gouverneure unilingue: La SANB dépose une requête à la Cour du Banc de la Reine*, News release, 23 December 2019 [IN FRENCH ONLY].

111 Court of Queen’s Bench of New Brunswick, 2022 NBQB 85 (CanLII) | The Acadian Society of New Brunswick v. The Right Honourable Prime Minister of Canada et al. | CanLII.

112 Catherine Allard, “Lieutenant-gouverneure unilingue: une décision importante pour les Acadiens,” *Radio-Canada*, 14 April 2022 [IN FRENCH ONLY].

113 New Brunswick Court of Appeal, *The Right Honourable Prime Minister of Canada et al. v. La Société de l’Acadie du Nouveau-Brunswick and The Attorney General for New Brunswick*, 2024 NBQA 70 - 48-22-CA - Judgment.

language skills of the Governor General of Canada and the Lieutenant Governor of New Brunswick:

- Bill S-220, An Act to amend the Languages Skills Act (Governor General); and
- Bill S-229, An Act to amend the Language Skills Act (Lieutenant Governor of New Brunswick).

These two bills would add the positions of Governor General of Canada and Lieutenant Governor of New Brunswick to the list of positions in the *Language Skills Act*. Both bills are at second reading stage in the Senate.

Ms. Geneviève Tellier believes that using a statutory approach should be considered. She refers to it as “the hard way”:

There are probably two ways to do it: the easy way and the hard way.

The easy way would be to take note of what happened and say that it won’t happen again. ... We can therefore assume it won’t happen again, given the uproar it caused. We have to keep hammering away at this issue.

The hard way would be to change the legislation and make things clearer. ... It would be a matter of stating explicitly that, as is the case for Supreme Court judges, governors general and lieutenant-governors will have to speak both French and English. We don’t want to get to that point, but sometimes, when the government isn’t doing anything, that may be the only way to spur it to take action.<sup>114</sup>

Given that legal proceedings are underway, the Committee will not make any recommendations regarding the appointments of the Governor General and Lieutenant Governors at this time.

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114 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0825 (Geneviève Tellier, Professor, As an individual).



## RECOMMENDATIONS AND CONCLUSION

### Establishing Language Requirements for Governor in Council Appointments

As shown in Table 1, found in the “Parameters of the Study” section of this report, members of the Governor in Council community are not all subject to the same language obligations.

While officers of Parliament must be able to speak and understand clearly both official languages at the time of their appointment, pursuant to the *Language Skills Act*, deputy ministers and associate deputy ministers (and positions of equivalent rank), must upon their appointment take the language training that is necessary to be able to speak and understand clearly both official languages, pursuant to the *Official Languages Act*. Lastly, a significant number of high-level Governor in Council appointments do not have any language requirements (e.g., heads and members of commissions, boards, agencies, administrative tribunals and Crown corporations).

In the case of officers of Parliament and deputy ministers and associate deputy ministers, the level of proficiency required is not defined. The *Language Skills Act* and section 34(2) of the *Official Languages Act* both use the expression “be able to speak and understand clearly both official languages.” However, there is no definition of what the word “clearly” means.

For Governor in Council appointments with no language requirements, candidates are asked to “provide a self-assessed bilingual proficiency level, categorized as: fluently bilingual; functional; limited; or unilingual.”<sup>115</sup> If they are selected, “[a]pplicants are interviewed in the official language of their choice and may be asked to answer one or more questions in their second official language to assess their bilingual proficiency.”<sup>116</sup>

The Privy Council Office confirmed that there are no legislative definitions for the categories of bilingual, functional, limited or unilingual.<sup>117</sup> It follows the terms of reference used by the Public Service Commission and the House of Commons.<sup>118</sup> For positions within Parliament or the federal public service, the language profile covers

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115 Privy Council Office, Supplementary information, April 2024.

116 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0920 (Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel, Privy Council Office).

117 Privy Council Office, Supplementary information, April 2024.

118 *Ibid.*

three skills: reading comprehension, written expression and oral language (comprehension and expression), and it includes three levels that apply to each of these skills: A (basic), B (intermediate) and C (advanced). Therefore:

[F]unctional bilingualism in the GIC [Governor in Council] context is understood as an intermediate level of proficiency (analogous to a level B), while fluently bilingual can be understood as a superior level of proficiency (analogous to a level C).<sup>119</sup>

It appears as though the Privy Council Office also follows the practices of the Office of the Commissioner for Federal Judicial Affairs:

[S]ince 2016, appointments to the Supreme Court of Canada (SCC) require candidates to be “functionally bilingual”. The Office of the Commissioner for Federal Judicial Affairs (OCFJA), which supports the SCC appointment process, has indicated that to be considered functionally bilingual, an SCC judge should be able to read materials and understand oral argument without the need for translation or interpretation in French and English. This is in-line with the parameters set out by the Public Service Commission and the House of Commons for determining functional bilingualism, which PCO [Privy Council Office] follows in the GIC [Governor in Council] context.<sup>120</sup>

According to Ms. Hamoui, “[t]he Privy Council Office tracks bilingual proficiency in the Governor in Council community and monitors trends to help support decision-makers.”<sup>121</sup>

As many witnesses said, including the Commissioner of Official Languages of Canada, implementing Part IV of the *Official Languages Act* (communications with and services to the public) depends in part on how well senior officials of federal institutions can address Canadians in both official languages. Furthermore, ensuring the full implementation of Part V of the *Official Languages Act* (language of work) in regions designated bilingual for language of work purposes requires that people in leadership positions in federal institutions be capable of communicating orally and in writing in their employees’ official language of choice. The implementation of Part VII (enhancing vitality of official language minority communities and fostering bilingualism) is also affected by the language proficiency of senior officials. Lastly, in his report entitled *The Next Level: Normalizing a Culture of Inclusive Linguistic Duality in the Federal Public Service Workplace* (2017), the Clerk of the Privy Council said that “[t]he profile for positions providing service to the

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119 Ibid.

120 Ibid.

121 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0920 (Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel, Privy Council Office).



public or to employees is BBB or higher. The profile for positions that require a superior level of proficiency is typically CBC.”<sup>122</sup>

Based on the evidence heard, the Committee recommends as follows:

### **Recommendation 1**

**That the Governor in Council make an order to set language requirements for Governor in Council appointments to ensure that the language profile corresponds to the three categories of language proficiency used at the Parliament of Canada and within the federal public service –reading comprehension, written expression and oral competency (comprehension and expression) – and to the three levels of language proficiency that are applicable – basic (A), intermediate (B) and advanced (C). That the order provide clarifications on assessing the language proficiency of candidates and incumbents.**

### **Recommendation 2**

**That the Governor in Council make an order requiring that all future Governor in Council appointments have a language profile and that the language proficiency to be achieved be designated as advanced (“Level C”) for reading comprehension, intermediate (“Level B”) for written expression and advanced (“Level C”) for oral competency (comprehension and expression). In order to ensure consistency with the *Public Service Official Languages Exclusion Approval Order*, that incumbents be given two years to attain the level of language proficiency required, at public expense. The Committee also recommends that the order provide clarifications on assessing the language proficiency of candidates and incumbents.**

### **Recommendation 3**

**That, to harmonize section 34(2) of the *Official Languages Act* with the order to establish a language profile for Governor in Council appointments as described in Recommendation 2, the President of the Treasury Board table a bill to amend Part V of the *Official Languages Act* (the Act) as follows:**

- a) Clarify section 34(2) by defining the expression “be able to speak and understand clearly both official languages”; and**

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122 Privy Council Office, *The Next Level: Normalizing a Culture of Inclusive Linguistic Duality in the Federal Public Service Workplace*, 2017, p. 7.



- b) **Strike out the words “a department named in Schedule I to the Financial Administration Act” and replace them with “institutions subject to the Official Languages Act.”**

#### **Recommendation 4**

**That, to harmonize the *Language Skills Act* with the order to establish a language profile for Governor in Council appointments as described in Recommendation 2, the Government of Canada table a bill to amend the *Language Skills Act* to define the expression “be able to speak and understand clearly both official languages.”**

### **Language Training**

Witnesses emphasized that access to language training in the federal public service is key to ensuring that senior officials are bilingual and have the language skills needed to ensure the implementation of Part IV, Part V and, to some extent, Part VII of the *Official Languages Act*.

Some witnesses said that currently the provision of language training is not equal and that it is difficult to assess whether it helps achieve public servants’ objectives and, to a broader degree, those of the Government of Canada as regards the bilingual capacity of the federal public service.

In June 2024, the Treasury Board of Canada Secretariat revealed a new language training framework within the federal government. For that reason, the Committee prefers not to make any recommendations about the provision of language training at this time. However, the Committee calls on the Treasury Board of Canada Secretariat to ensure that training is standardized and that regular assessments are carried out to measure the effectiveness of the new framework.

With regard to the bilingualism bonus, the Committee recommends as follows:

#### **Recommendation 5**

**To attract more bilingual employees within the public service that could move into management positions, the Treasury Board of Canada Secretariat should seriously consider calls from public service unions to increase the bilingualism bonus, which has not been adjusted since 1977.**



On the topic of language training, some witnesses called for language training to be given to federal public servants internally. The Public Service Alliance of Canada made the following statement:

We also want Treasury Board [to] stop outsourcing language training to subcontractors and focus on creating its own training program. This would involve public service workers, who can adapt to the specific demands of the federal public service. The same goes for translation services, which should never be contracted out.<sup>123</sup>

In light of all the testimony heard on language training, the Committee recommends as follows:

#### **Recommendation 6**

**That the Treasury Board increase internal capacity within the federal public service to offer language training to federal public servants and that it improve the quality of training in order to promote language learning.**

As mentioned above, candidates who previously worked within the federal public service are more likely to have advanced language proficiency when they are appointed to a position staffed by Governor in Council appointment. The same cannot be said of candidates from outside the federal public service.

For many years, the Government of Canada has provided financial support for French as a second language programs across the country. The Committee was receptive to the idea that this support would help expand the bilingual capacity of the federal public service. Pursuant to the *Official Languages (Communications with and Services to the Public) Regulations*, the offer of federal services in French will have to increase in the years ahead. With a view to maintaining the consistency and continuity of government efforts to promote the standing and use of both official languages, it would be advisable to begin preparing now for the next generation and to contribute to expanding the bilingual capacity of the federal public service.

In light of the foregoing, the Committee recommends as follows:

#### **Recommendation 7**

**That the President of the Treasury Board and the Minister of Official Languages develop measures to promote partnerships with French or bilingual post-secondary institutions**

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123 LANG, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, *Evidence*, 21 March 2024, 0820 (Alexandre Silas, Regional Executive Vice-President, National Capital Region, Public Service Alliance of Canada).

**and institutions that offer French as a second language programs in order to support the next generation and expand the bilingual capacity of the federal public service.**

The Committee recognizes that such partnerships depend in part on the human and financial resources made available to post-secondary institutions in minority francophone communities. At the time of writing, the Committee is hearing evidence on federal funding of post-secondary institutions in official language minority communities, which will be the subject of a separate report.

In conclusion, the Committee would like to thank all witnesses who participated in its study.



## APPENDIX A: LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee’s [webpage for this study](#).

Organizations and Individuals	Date	Meeting
<p><b>Office of the Commissioner of Official Languages</b></p> <p>Pierre Leduc, Assistant Commissioner, Strategic Orientation and External Relations Branch</p> <p>Raymond Théberge, Commissioner of Official Languages</p> <p>Patrick Wolfe, Assistant Commissioner, Compliance and Enforcement Branch</p>	2024/02/29	89
<p><b>Canada School of Public Service</b></p> <p>Wendy Bullion-Winters, Vice-President, Business Enablement Branch and Chief Financial Officer</p>	2024/03/18	90
<p><b>The Professional Institute of the Public Service of Canada</b></p> <p>Jennifer Carr, President</p>	2024/03/18	90
<p><b>As an individual</b></p> <p>Geneviève Tellier, Professor</p>	2024/03/21	91
<p><b>Canada Border Services Agency</b></p> <p>Holly Flowers Code, Vice President, Human Resources</p>	2024/03/21	91
<p><b>Privy Council Office</b></p> <p>Rima Hamoui, Assistant Secretary to the Cabinet, Senior Personnel</p> <p>Marcia Jones, Director General, Strategies and Planning</p>	2024/03/21	91
<p><b>Public Service Alliance of Canada</b></p> <p>Pierre-Samuel Proulx, Senior Research Officer</p> <p>Alexandre Silas, Regional Executive Vice-President, National Capital Region</p>	2024/03/21	91

<b>Organizations and Individuals</b>	<b>Date</b>	<b>Meeting</b>
<b>Treasury Board Secretariat</b> Karim Adam, Director, Oversight and Compliance, Official Languages Centre of Excellence  Carsten Quell, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources Officer	2024/03/21	91
<b>Farm Credit Canada</b> Justine Hendricks, President and Chief Executive Officer	2024/04/08	92
<b>Société de la francophonie manitobaine</b> Angela Cassie, President	2024/04/08	92

## APPENDIX B: LIST OF BRIEFS

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The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [webpage for this study](#).

**Public Service Alliance of Canada**





## REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this report.

A copy of the relevant *Minutes of Proceedings* (Meetings Nos. [89](#), [90](#), [91](#), [92](#), [111](#), [112](#), [116](#) and [120](#)) is tabled.

Respectfully submitted,

René Arseneault  
Chair



## **Dissenting Opinion of the New Democratic Party:**

New Democrats believe that a comprehensive effort is needed to reinforce bilingualism and the use of the French language in the public service, both for Governor at Council positions and the wider public service. The government, by adopting Modernization of the Official Languages Act, has acknowledged the decline of French, and now the Treasury Board has to act accordingly.

Workers and Unions such as the PSAC and PIPSC have been clear about the challenges in the public service when it comes to bilingualism. The bilingualism bonus has not meaningfully increased since 1977, reflecting that successive Liberal and Conservative governments undervalued second language skills and particularly have discounted the value of the French language leading to its decline in Canada. Increasing the bonus will lead to more public servants pursuing bilingualism. This will then in turn increase the potential pool of bilingual candidates for senior management positions in the federal public service and to Governor in Council appointments. To recruit senior public servants that speak both languages, both languages should be fostered and rewarded.

Both PIPSC and PSAC support a substantive increase to the bilingualism bonus.

As stated by Alexandre Silas Regional Executive Vice-President, National Capital Region, Public Service Alliance of Canada): “If the government really wants to support official languages, PSAC believes it must raise the bilingualism bonus to acknowledge the value of work done in both official languages.”<sup>1</sup> We in the NDP believe this will have a trickle-down effect of also making sure the private sector values bilingual employees, revitalizing the French language in Canadian workplaces.

In their written statement PSAC stated that “Over the past 50 years, the bilingual bonus has been deemed the most appropriate way to recognise the additional value of speaking both official languages. However, the bilingual bonus has become nothing more than a symbolic payment. It should genuinely reflect the value of the additional skill and the actual service rendered. If this initial amount had been indexed to inflation, the bilingualism bonus would now be worth approximately \$4,000.”<sup>2</sup> The NDP agrees.

While some witnesses questioned the need for a bilingual bonus, the NDP wants to echo the view of PSAC that “ Past committees and witnesses have expressed that the knowledge of the two official languages should be considered a professional skill that is reflected in the salaries of federal employees. However, this view does not consider the complexity of the classification system in the federal public service. Under the current classification system, multiple positions are lumped together under single groups and levels which makes it simply impossible to

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<sup>1</sup> 0820 LANG-91 (March 21, 2024)

<sup>2</sup> PSAC PRESENTATION TO THE COMMITTEE OF OFFICIAL LANGUAGES MARCH 21, 2024  
ADDITIONAL COMMENTS

differentiate between unilingual and bilingual employees.”<sup>3</sup> The NDP feels that the Treasury board, in light of this evidence, must increase the bilingualism bonus up to 1977 levels that match inflation.

Jennifer Carr, President of the PIPSC echoed this view and talked about how employees currently not eligible for the bilingualism bonus should be considered “ We need to revise the bilingual bonus. In this assessment, we also need to ask whether the public servants in question are providing a service to the public. There are many public servants who are bilingual, but who occupy a unilingual position, not a bilingual one, and who therefore do not receive the bilingual bonus.”<sup>4</sup>

A problem identified by unions is the use of outsourcing of language training. It is the view of the NDP that any outsourcing of language services that can be done by good public union-paying jobs is unacceptable. We agree with Jennifer Carr that “We’re also concerned about how the use of private contractors is making things even worse. Contracting out is being done outside of the normal rules the government has set for itself, ignoring the language and diversity requirements that our government says are its priorities. This means that on top of runaway costs and the damaging loss of institutional knowledge, contracting out is hurting the government’s ability to offer quality services in both official languages.”<sup>5</sup> Outsourcing language training is just another example of the devaluation of the French language.

This view is echoed by PSAC “ We also want the Treasury Board to stop outsourcing language training to subcontractors and focus on creating its own training program. This would involve public service workers, who can adapt to the specific demands of the federal public service.”<sup>6</sup>

Another issue that was raised in testimony was consideration of making Indigenous languages eligible for the bilingualism bonus, which is supported by the PSAC and PIPSC. “We’re also proposing an indigenous language allowance for federal workers who speak an indigenous language. That would be an important step towards reconciliation.

Data collected from departments by the Joint Committee on the Use of Indigenous Languages in the Public Service, which included Treasury Board and PSAC representatives, established that several hundred federal workers use indigenous languages in the course of their work. These workers deserve to be recognized for the value they bring to the federal public service.”<sup>7</sup>

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<sup>3</sup> PSAC PRESENTATION TO THE COMMITTEE OF OFFICIAL LANGUAGES  
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<sup>4</sup> **1700 LANG-90 (March 18, 2024)**

<sup>5</sup> **(1635)LANG-90 (March 18, 2024)**

<sup>6</sup> **0820 LANG-91 (March 21, 2024)**

<sup>7</sup> **0820 LANG-91 (March 21, 2024)**

Many public servants find it necessary to communicate in an Indigenous language to do their job properly, which should be valued both in senior positions and in the wider public service.

Therefore New Democrats recommends:

1. That recommendation 5 be changed to: To attract more bilingual employees to the public service and encourage their progression into management positions, the Treasury Board of Canada Secretariat must heed the calls of public service unions to significantly increase the bilingualism bonus from \$800 to \$4,000 which would better reflect the value of bilingual employees' additional skills and the services they provide, aligning the bonus with its 1977 salary level when adjusted for inflation.
2. That the Treasury Board expand the eligibility of the bilingualism bonus, at large within the public service, including unilingual positions, in order to strengthen the French language at all levels of government.
3. That the Treasury Board implement a language allowance that would recognize the role that federal government workers play in supporting the delivery services and programs in Indigenous languages.
4. That the government must provide comprehensive, accessible and flexible language training opportunities for all employees.
5. That Treasury Board stop outsourcing language training to subcontractors and focused on creating its own training programs.

