



SENATE | SÉNAT
CANADA

Interim Report of the Standing Senate Committee on Official Languages

The Honourable René Cormier, Chair
The Honourable Rose-May Poirier, Deputy Chair



MODERNIZING THE OFFICIAL LANGUAGES ACT



*The Views of Official Language
Minority Communities*



OCTOBER 2018



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MEMBERS OF THE COMMITTEE



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Chair**



*The Honourable Rose-May Poirier,
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*The Honourable Mobina S.B. Jaffer**

THE HONOURABLE SENATORS:



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**Members of the Subcommittee on Agenda and Procedure*

EX-OFFICIO MEMBERS OF THE COMMITTEE:

The Honourable Senators Peter Harder, P.C. (or Diane Bellemare or Grant Mitchell), Larry W. Smith (or Yonah Martin), Yen Pau Woo (or Raymonde Saint-Germain), Joseph A. Day (or Terry M. Mercer)

OTHER SENATORS WHO HAVE PARTICIPATED IN THE STUDY:

The Honourable Senators Percy Mockler, Victor Oh and Claudette Tardif (retired)

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ORDER OF REFERENCE

Excerpt from the *Journals of the Senate*, Thursday, 6 April 2017:

The Honourable Senator Tardif moved, seconded by the Honourable Senator Jaffer:

That the Standing Senate Committee on Official Languages be authorized to examine and report on Canadians' views about modernizing the *Official Languages Act*. Considering that the Act will be turning 50 in 2019 and that it affects various segments of the Canadian population, that the committee be authorized to:

- a) Examine and report on young Canadians' views about the advancement of both official languages, how they identify with the languages and related cultures, the motivations for learning the other official language, the employment opportunities and future of bilingual youth, and what can be done to enhance federal support for linguistic duality;
- b) Identify the concerns of official language minority communities – and their sector-based organizations (e.g., health, education, culture, immigration) – regarding the implementation of the *Official Languages Act*, and what can be done to enhance their vitality and to support and assist their development;
- c) Examine and report on the views of stakeholders who have witnessed the evolution of the *Official Languages Act* since it was enacted 50 years ago, with a focus on success stories, its weaknesses, and what can be done to improve it;
- d) Identify issues specific to the administration of justice in both official languages, potential shortcomings of the *Official Languages Act* in this regard, and what can be done to ensure respect for English and French as the official languages of Canada;
- e) Identify issues specific to the powers, duties and functions of federal institutions with respect to the implementation of the *Official Languages Act* – particularly the roles of the departments responsible (e.g., Canadian Heritage, Treasury Board Secretariat, Department of Justice, Public Service Commission of Canada) and the Office of the Commissioner of Official Languages – and what can be done to ensure the equality of both official languages in the institutions subject to the Act; and

That the committee submit interim reports on the aforementioned themes, that it submit its final report to the Senate no later than June 30, 2019, and that it retain all powers necessary to publicize its findings until 180 days after the tabling of the final report.

The question being put on the motion, it was adopted.

Charles Robert
Clerk of the Senate

ACRONYMS

ACFA	<i>Association canadienne-française de l'Alberta</i>
ACUFC	<i>Association des collèges et universités de la francophonie canadienne</i>
AFFC	<i>Alliance des femmes de la francophonie canadienne</i>
AFO	<i>Assemblée de la francophonie de l'Ontario</i>
AMBM	<i>Association of Manitoba bilingual municipalities</i>
AFMNB	<i>Association francophone des municipalités du Nouveau-Brunswick</i>
ANIM	<i>Alliance nationale de l'industrie musicale</i>
APF	<i>Association de la presse francophone</i>
APFC	<i>Alliance des producteurs francophones du Canada</i>
CCFM	<i>Centre culturel franco-manitobain</i>
CÉF	<i>Conseil des écoles fransaskoises</i>
CHSSN	<i>Community Health and Social Services Network</i>
CIRLM	<i>Canadian Institute for Research on Linguistic Minorities</i>
CNFS	<i>Consortium national de formation en santé</i>
CNPF	<i>Commission nationale des parents francophones</i>
COLMCM	<i>Consortium of Official Language Minority Community Media</i>
CPF	<i>Canadian Parents for French</i>
CSFCB	<i>Conseil scolaire francophone de la Colombie-Britannique</i>
DSFM	<i>Division scolaire franco-manitobaine</i>
EDCMBM	<i>Economic Development Council for Manitoba Bilingual Municipalities</i>
FAAFC	<i>Fédération des aînées et aînés francophones du Canada</i>
FANE	<i>Fédération acadienne de la Nouvelle-Écosse</i>
FASM	<i>Francophone Affairs Secretariat of Manitoba</i>
FCCF	<i>Fédération culturelle canadienne-française</i>
FCFA	<i>Fédération des communautés francophones et acadienne du Canada</i>
FNCSF	<i>Fédération nationale des conseils scolaires francophones</i>
PPFM	<i>Fédération des parents francophones du Manitoba</i>
LANG	<i>House of Commons Standing Committee on Official Languages</i>
OCOL	<i>Office of the Commissioner of Official Languages</i>
OLLO	<i>Standing Senate Committee on Official Languages</i>

QCGN	Quebec Community Groups Network
QESBA	Quebec English School Boards Association
RAWQ	Regional Association of West Quebecers
RDÉE	<i>Réseau de développement économique et d'employabilité</i>
RÉFC	<i>Regroupement des éditeurs franco-canadiens</i>
RESDAC	<i>Réseau pour le développement de l'alphabétisme et des compétences</i>
SANB	<i>Société de l'Acadie du Nouveau-Brunswick</i>
SFM	<i>Société de la francophonie manitobaine</i>
SSF	<i>Société Santé en français</i>
TA	Townshippers' Association
UNMSJM	<i>Union nationale métisse St-Joseph du Manitoba</i>
USB	<i>Université de Saint-Boniface</i>
WTCW	World Trade Centre Winnipeg

GLOSSARY

ACTIVE OFFER

Requirement provided for in section 28 of the *Official Languages Act* (the Act) to inform members of the public that they can communicate with the federal government and receive services in either official language. This communication can be oral or written, in the form of signs, notices or other information on services that must be immediately available in English and French.

BILINGUALISM

In Canada, there are two facets to bilingualism: **individual bilingualism**, which refers to the ability to express oneself and be proficient in English and French; and **institutional bilingualism**, which refers to the capacity of the Government of Canada and its institutions to communicate with the public in both official languages.

BY AND FOR

Refers to a community's ability to take control of its own development by participating actively in and making an ongoing commitment to a project, activity or program from the design stage to completion, within an overall vision for development.

CONTINUUM

In the context of official language minority communities, the continuum consists of a set of circumstances in which a community can develop and thrive in its language on an ongoing basis. The **education continuum** consists of providing English-language (or French-language) education from early childhood to the post-secondary level. The **service continuum** consists of providing a range of services in English (or in French) in various development sectors and by various levels of government to ensure that a community can take charge of itself.

EXOGAMY

Refers to couples in which the spouses are not members of the same linguistic group and in which only one of the two spouses is francophone or anglophone.

INSTITUTIONAL VITALITY

Refers to the presence of institutional and related elements that foster the vitality of an official language minority community, such as a school, community centre or community media. In other words, a community's vitality depends on its ability to create and sustain the formal and informal organizations or institutions it needs to survive.

LINGUISTIC DUALITY

Linguistic duality is the presence of two linguistic majorities, English-speaking Canadians and French-speaking Canadians, coexisting in a country with anglophone and francophone minority communities spread across the country. This principle is at the heart of Canadian identity and recognizes that official language minority communities are an integral part of Canada's social contract. Linguistic duality is a core value that has social, cultural and economic dimensions for all Canadians.

OFFICIAL LANGUAGES

The *Canadian Charter of Rights and Freedoms* (the Charter) and the *Official Languages Act* (the Act) stipulate that English and French are the official languages of Canada.

PART I

Part I of the Act concerns the official languages used in Parliament during debates and other proceedings. It is an extension of the rights set out in section 17 of the Charter, which also apply to the legislature of New Brunswick.

PART II

Part II of the Act concerns the use of the official languages in Acts of Parliament; legislative instruments; rules, orders and regulations governing practices and procedures; treaties; federal-provincial agreements; and notices, advertisements and other materials that federal institutions make available to the public. Part II is an extension of the rights set out in section 18 of the Charter, which also apply to statutes and records of the legislature of New Brunswick.

PART III

Part III of the Act concerns the use of the official languages in any pleading in or process issuing from any federal court. It provides for such matters as the requirement to ensure that federal court judges, other than Supreme Court judges, can understand the official languages. Part III also concerns the pre-printed portion of forms used in federal court proceedings and in the publication of decisions. Part III is an extension of the rights set out in section 19 of the Charter, which also apply to New Brunswick courts.

PART IV

Part IV of the Act concerns communications with and services to the public. It states that the public has the right to communicate with and receive available services from federal institutions (and their offices) in either official language under certain circumstances. Part IV also sets out conditions for the travelling public. The *Official Languages (Communications with and Services to the Public) Regulations*, which were adopted in 1991, provide direction for enforcing Part IV and stipulate the conditions under which the public and the travelling public can receive services from or communicate with federal institutions in their language of choice. Part IV is an extension of the rights set out in section 20 of the Charter. While the provision of services by the federal government is determined by significant demand and the nature of the office, in the case of New Brunswick, services are provided by any office of an institution of the legislature or government.

PART V

Part V of the Act concerns the language of work in federal institutions. It provides for the requirement to ensure a work environment that is conducive to the effective use of both official languages in certain regions designated as bilingual. These regions include: the National Capital Region; some areas of northern and eastern Ontario; the Montreal region; some parts of the Eastern Townships, the Gaspé area and western Quebec; and New Brunswick. This list has not been reviewed since 1977. As of 1988, Part V includes a provision for implementing regulations, but the federal government has never acted on it.

PART VI

Part VI of the Act concerns the participation of English-speaking and French-speaking Canadians, and their equal opportunities for employment and advancement in federal institutions. As of 1988, Part VI includes a provision for implementing regulations, but the federal government has never acted on it.

PART VII

Part VII of the Act concerns the advancement of English and French in Canadian society. It provides for two commitments: the first concerns the vitality and development of official language minority communities; and the second concerns the full recognition and use of English and French. The Minister of Canadian Heritage is responsible for the horizontal coordination of Part VII. As of 2005, Part VII includes a provision for implementing regulations, but the federal government has never acted on it. It is an extension of the rights set out in section 16 of the Charter, aimed at advancing the equality of status and use of English and French in Canadian society. In New Brunswick, these provisions extend specifically to the province's anglophone and francophone communities. Under subsection 16.1(1) of the Charter, these two communities have the right to distinct educational institutions and distinct cultural institutions as are necessary for their preservation and promotion.

PART VIII

Part VIII of the Act sets out the Treasury Board's role in directing and coordinating the federal policies and programs related to parts IV, V and VI of the Act. It also stipulates the measures that the Treasury Board can take to ensure federal institutions implement the policies, directives and regulations to give effect to the Act.

PART IX

Part IX of the Act sets out the duties and powers of the Commissioner of Official Languages, including those related to complaints and investigations. It also provides for the process to appoint the Commissioner.

PART X

Part X of the Act sets out the rights of complainants who wish to apply to the Federal Court for a legal remedy. The right to a legal remedy is provided for in:

- sections 4 to 7 and 10 to 13;
- parts IV, V and VII; and
- section 91.

The Commissioner of Official Languages may:

- apply for a remedy with the consent of the complainant;
- appear on behalf of a person who has applied for a remedy; and
- appear as a party to any proceedings.

POSITIVE MEASURES

Requirement stipulated in section 41(2) of the Act to ensure that positive measures are taken to support official language minority communities and foster the full recognition and use of English and French. In *Canada (Commissioner of Official Languages) v. CBC*, the Federal Court recognized the obligation to act in a way that does not hinder the development and vitality of Canada's anglophone and francophone minorities. According to the ruling in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)*, in the absence of a specific regulatory framework, the current wording of the Act gives federal institutions some leeway in choosing which measures to take. The more detailed *Guide for Federal Institutions on Part VII (Promotion of French and English) of the Official Languages Act* provides institutions with some direction in carrying out this requirement.

QUASI-CONSTITUTIONAL STATUS

Principle recognized by the Supreme Court of Canada in *Lavigne v. Canada (Office of the Commissioner of Official Languages)* and in *Thibodeau v. Air Canada*, according to which the Act embodies basic goals that are closely linked to the values and rights set out in the Constitution. In general, quasi-constitutional legislation takes precedence over other Canadian legislation.

REMEDIAL PURPOSE

Principle that underlies the interpretation of section 23 of the Charter and was recognized by the Supreme Court of Canada in such decisions as *Mahe v. Alberta*, *Arsenault-Cameron v. Prince Edward Island*, and *Association des parents de l'école Rose-des-vents v. British Columbia (Education)*. According to this principle, section 23 is intended to remedy past injustices and ensure they are not repeated in the future.

RIGHTS-HOLDERS

Persons who hold recognized rights. With regard to education, provinces and territories are constitutionally required under section 23 of the Charter to provide the children of guaranteed rights-holders with an education in the minority official language, where numbers warrant. Application of these provisions is based on three criteria: the parents' mother tongue, the language in which they were educated, and the language in which siblings are educated.

SUBSTANTIVE EQUALITY

Principle recognized by the Supreme Court of Canada in *R. v. Beaulac*, *Arsenault-Cameron v. Prince Edward Island* and in *DesRochers v. Canada (Industry)*, which is the norm in Canadian law. Substantive equality assumes that official language minorities must be treated differently, if necessary, according to their particular circumstances and needs, to provide a standard of education equivalent to that of the linguistic majority or to receive services of equal quality to those of the linguistic majority.

PREFACE

We are pleased to present the second interim report in our study on modernizing the *Official Languages Act*. Based on the extensive testimony received, the members of the Standing Senate Committee on Official Languages are more convinced than ever that the Act needs to be modernized, and urgently so, to meet the requirements of the 21st century.

Official language minority communities (the communities) constitute the second segment of the population that our committee chose to consult after young Canadians. Not only committee members, but also the media, community groups and individuals across the country were keenly interested in the testimony received from all the community sectors consulted.

Our committee completed its public hearings for this second stage of the study at the same time as the Commissioner of Official Languages was holding his own consultations with communities and the Canadian public. It is clear that more and more stakeholders are calling on the federal government to rethink the content and implementation of the Act.

This tabling of this second interim report is timely. In September 2018, we celebrated the 30th anniversary of the coming into force of Part VII of the Act, which sets out obligations regarding the vitality and development of communities as well as the full recognition and use of English and French in Canadian society. In November, we will mark the 13th anniversary of amendments to Part VII, which, it is worth noting, were a Senate initiative.

Have the objectives behind these provisions been achieved on the ground? That is one of the questions our committee has sought to answer in recent months. In our view, the Federal Court's decision in May 2018 in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)* shows there is an obvious need to strengthen the mechanisms for implementing Part VII.

The testimony received over the past few months has far exceeded our expectations. Rather than limiting themselves to the single issue of implementing Part VII, representatives from both anglophone and francophone communities presented proposals that were detailed, well thought-out and generally reflected a consensus. Official language minority communities are more committed than ever to demanding that our federal linguistic framework support their aspirations, circumstances and needs.

Our study will be completed in 2019 with a final report that will offer a series of recommendations for the federal government, including those made by the communities. We would like to thank these communities sincerely for their contribution to this important initiative. Our committee will pay close attention to the work of the Minister of Tourism, Official Languages and La Francophonie, who was given a mandate in August 2018 to begin an examination towards modernizing the Act, which is crucial to our country's future.



The Honourable René Cormier
Chair



The Honourable Rose-May Poirier
Deputy Chair

REPORT HIGHLIGHTS

The *Official Languages Act* has been reviewed twice since it was passed 50 years ago. Two commitments were added during the first review in 1988: one concerns the vitality and development of official language minority communities, and the second concerns the advancement of English and French. Part VII of the Act was created to meet the constitutional objective of advancing the equality of status and use of English and French provided for in the *Canadian Charter of Rights and Freedoms*.

The Senate initiated a second review in 2005 to strengthen Part VII by requiring federal institutions to take “positive measures” to implement these two commitments. Based on the testimony heard in recent months – and a Federal Court decision in the spring of 2018 – the federal government must do more to achieve the objectives it has set for itself. The results on the ground occasionally leave something to be desired.

The perspectives of francophone minority communities outside Quebec and English-speaking communities in Quebec are an important aspect of the Senate Committee’s study on modernizing the *Official Languages Act*. These communities had a great deal to say about the measures needed to support their vitality and development. Rather than focusing solely on implementing Part VII of the Act, this second interim report presents insightful proposals on its full implementation.

Many of the comments made by the communities echo those of young Canadians in the Senate Committee’s first interim report. One such comment is the need to review the Act regularly.

The communities provided valuable input into rethinking the Act and they believe it needs a major overhaul to keep pace with changes to society, technology and case law. Linguistic duality, an integral part of Canada’s social contract, is a core value underlying the linguistic framework, and this framework must reflect the communities’ aspirations, circumstances and needs.

This implies providing stronger supports in the sectors that affect the communities’ development – education, immigration, arts and culture or health being only a few examples – and stipulating them clearly in the Act. The communities called for mechanisms to regulate transfer payments and ensure greater accountability.

A modernized Act must accommodate the principles of interpretation found in case law and facilitate remedies by creating an administrative tribunal and recognizing the Court Challenges Program. The powers of the Official Languages Commissioner should also be strengthened.

The Act must finally enshrine the requirement for community consultation in Part VII by establishing an advisory board and clearly defining the criteria for vitality in regulations.

The federal government would be well advised to seize this opportunity and clarify the obligations regarding services delivery to the public, language of work requirements and the equitable representation of francophones and anglophones in the federal public service. Introducing new technology and respecting substantive equality are two of the principles that should guide the federal government in this process.

One message stands out clearly in both the first and second interim reports: the federal government has a significant leadership role to play in advancing the two official languages. The communities expect the federal government to apply the objectives in the Act horizontally.

Modernizing the Act offers the federal government the opportunity to recognize New Brunswick's unique constitutional status and to serve as a model for the provinces and territories. The communities advocate taking a contextual approach tailored to the unique circumstances of each community and region.

The federal government can go a step further by amending the Act to require community consultation when real property assets are being disposed of or to require Statistics Canada to enumerate rights-holders. The Senate Committee raised both these issues in its report *Horizon 2018*.

Clearly, an example must be set at the highest levels of government. This means taking such measures as establishing clear-cut departmental responsibilities, providing increased political leadership and identifying a single entity with overall responsibility for implementing the Act. Another step would be to include new language requirements for Supreme Court of Canada justices and deputy ministers.

In summary, the federal government can rest assured that the findings of this report are the result of a thoughtful, coordinated process. In their testimony to the Senate Committee, the communities spoke with one voice and showed a great sense of solidarity.

The Senate Committee urges the federal government to take the communities' views into account when examining the Act. It will also pay close attention to the work of the Minister of Tourism, Official Languages and La Francophonie, who was given a mandate in August 2018 to modernize the Act – a piece of legislation that is crucial to our country's future.

NEXT STEPS

The Senate Committee will consult three other segments of the Canadian population in the next year and report on their views. It will conclude its study in 2019 by tabling a final report with specific recommendations for the federal government. That year also marks the 50th anniversary of the *Official Languages Act*.

MODERNIZING THE **OFFICIAL LANGUAGES ACT**

*The Views of Official Language
Minority Communities*

INTRODUCTION

On 6 April 2017, the Standing Senate Committee on Official Languages (the Senate Committee) received Senate approval to study Canadians' views on modernizing the *Official Languages Act* (the Act). The study consists of five components, which correspond to the five segments of the population that the Senate Committee plans to consult:

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

The Senate Committee's objective is to table a final report with specific recommendations for the federal government by 2019, when Canada will mark the 50th anniversary of the adoption of the

first Act. This second interim report provides an overview of the testimony heard during the second phase of the study.

From October 2017 to June 2018, the Senate Committee studied **the views of official language minority communities** to identify their concerns – and those of their organizations in various sectors (e.g., health, education, culture, immigration) – regarding the implementation of the Act, and what can be done to enhance their vitality and support and assist their development.

The Senate Committee held public hearings with representatives from the two official language minority communities (the communities) covered by the Act.



Senate Committee members leave the public hearings held on February 15, 2018 in Winnipeg, pictured with the Honourable Rochelle Squires, Minister responsible for Francophone Affairs, and Government of Manitoba representatives.

The Senate Committee met with:

- representatives from **francophone minority communities** outside Quebec; and
- representatives from **English-speaking communities in Quebec**.

A total of 76 witnesses appeared at the public hearings held in Ottawa and Manitoba. During their visit to Manitoba, Senate Committee members took the opportunity to meet informally with 26 other individuals.

Numerous sectors of the community were consulted, including the following:

- education, from early childhood to the post-secondary level;
- literacy and adult skills development;
- arts and culture;
- health;
- economic development;
- women;
- seniors;
- parents;
- community media; and
- francophone or bilingual municipalities.

The Senate Committee also met with:

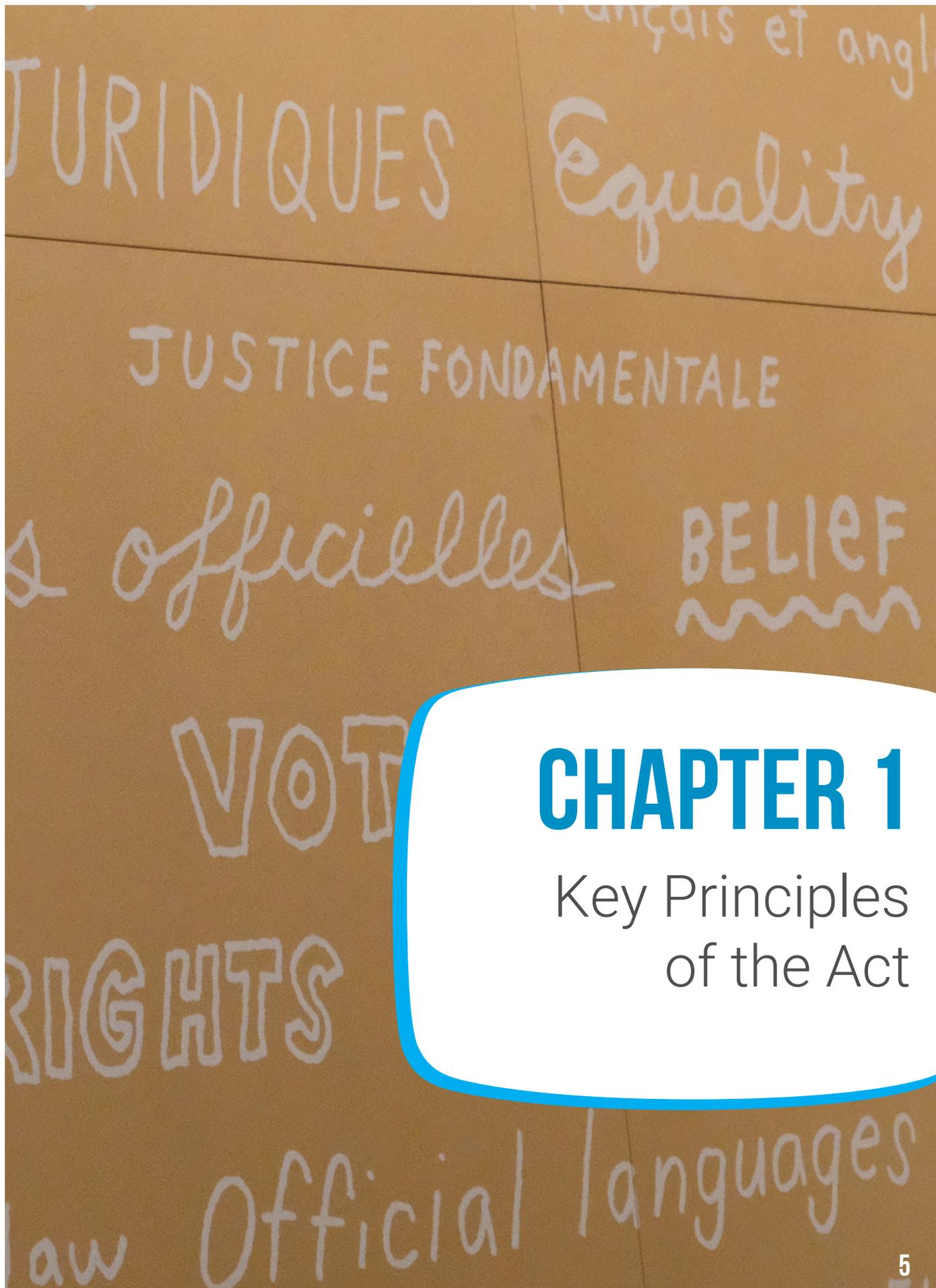
- a law professor who gave a technical presentation on the Act;
- the two major community umbrella organizations – the *Fédération des communautés francophones et acadienne du Canada* (FCFA) and the Quebec Community Groups Network (QCGN);
- five provincial organizations representing francophone minority communities and two regional organizations representing English-speaking communities in Quebec; and
- francophone Metis from Manitoba.

In addition to the testimony it heard, the Senate Committee received a number of briefs on modernizing the Act. Of note, the briefs from the FCFA and QCGN contained proposals that are detailed, complementary and supported by their members.¹

The Senate Committee wanted to hear as many of the communities' concerns as possible. It focused on measures to enhance the communities' vitality and support their development. That being said, witnesses presented well-considered proposals on the full implementation of the Act rather than restricting themselves simply to Part VII. The Senate Committee completed the second phase of its study with a sense of having achieved its goal.

Part VII of the *Official Languages Act* concerns the advancement of English and French in Canadian society. It provides for two commitments: the first concerns the vitality and development of official language minority communities; and the second concerns the full recognition and use of English and French.

This interim report is divided into three parts. The **first chapter** sets out the key principles of the Act that should form the basis for its modernization. The **second chapter** features the ideas that communities shared with the Senate Committee. The **third chapter** offers an overview of proposals for modernizing the Act. This report offers the federal government new avenues for rethinking the Act, taking into account communities' needs and perspectives.



CHAPTER 1

Key Principles
of the Act

According to representatives from official language minority communities, modernizing the federal language regime must be done in compliance with certain principles that have been upheld repeatedly in the public arena and by the courts. Chapter 1 sets out several key principles that these communities believe must guide any future modernization of the Act.

Status of the Act: A quasi-constitutional statute

When it was updated in 1988, the Act reflected the language rights enshrined in the *Canadian Charter of Rights and Freedoms* (the Charter). However, the Act now overlooks new jurisprudence on language rights and ignores additions to the constitutional order, as in the case of New Brunswick. Furthermore, its connection with other Canadian legislation is only partially addressed. Witnesses are seeking ways to ensure the Act is recognized as being quasi-constitutional.

Extension of constitutional rights

At least five of the ten parts that make up the body of the current Act are an extension of Charter language rights.

Provisions in the Act and the Charter

Part I of the Act, concerning the official languages used in Parliament, is an extension of the rights set out in **section 17*** of the Charter.

Part II of the Act, concerning the use of the official languages in legislative and other instruments, is an extension of the rights set out in **section 18*** of the Charter.

Part III of the Act, concerning the use of the official languages in any pleading in or process issuing from any federal court, is an extension of the rights set out in **section 19*** of the Charter.

** These rights extend to New Brunswick's courts and legislature.*

Part IV of the Act, concerning communications with and services to the public, is an extension of the rights set out in **section 20**** of the Charter.

*** Federally, the provision of services is based on significant demand and the nature of the office. In New Brunswick, services in English or French are provided at **any office** of an institution of the legislature or government of New Brunswick.*

Part VII of the Act, concerning the advancement of English and French, is an extension of the rights set out in **section 16***** of the Charter.

**** Under subsection 16.1(1) of the Charter, English and French linguistic communities are entitled to distinct educational institutions and such distinct cultural institutions as are necessary to preserve and promote those communities.*

The Act has quasi-constitutional status. The Supreme Court of Canada (Supreme Court) has clearly stated that it contains fundamental objectives that are closely linked to the values and rights set out in the Constitution.² In its brief, the FCFA recommended that this status be stated explicitly in the Act, which is not currently the case.³ The FCFA also called for the Act to include other principles of interpretation that exist in case law. For example, the Supreme Court has recognized that:

- parents in official language minority communities have the right to manage and control their own school boards;
- equal access to quality education in their own language is an indispensable factor in the development of the communities;
- the courts must interpret the Act broadly and purposively, in a manner consistent with the preservation and development of communities;
- the protection of minority rights is a constitutional value that must be reflected in the approach to governing, and presumes the protection of the community institutions that help to preserve and develop these communities; and
- the government must take the necessary steps so that anglophones and francophones contribute equally to the definition and provision of services, as implementing identical services for each community may not result in substantive equality.⁴

The FCFA believes that the Act should codify these principles of interpretation and those applicable to bilingual legislation.⁵ This would ensure the full application of section 13 of the Act, which states that the English and French versions of federal statutes “are equally authoritative.” During public hearings, the QCGN stated that it fully supports all the recommendations in the FCFA’s brief.⁶



The unique case of New Brunswick

New Brunswick is Canada’s only officially bilingual province. Sections 16 to 20 of the Charter all apply to that province’s government and legislature, without exception. However, this unique constitutional status is not clearly stated in the federal *Official Languages Act*. A number of francophone organizations criticized the federal government for not addressing this issue. The *Société de l’Acadie du Nouveau-Brunswick* (SANB) called the situation a “flagrant oversight,” and its brief contains a **draft amendment to the Act** that would apply to the preamble and purpose clause.⁷

The federal Act also does not reference the rights contained in section 16.1 of the Charter. New Brunswick specifically asked for this provision to be added in 1993 to enshrine the principles of a provincial statute passed more than 10 years earlier.⁸ Parliament did not take advantage of the amendments to Part VII of the Act in 2005 to address this shortcoming. Some witnesses stated that the Act should once and for all recognize the special status given to New Brunswick’s anglophone and francophone communities, thereby recognizing the asymmetry and disparity between these two communities.⁹ The SANB has proposed that Part VII of the Act be amended to require the federal government to consider the distinct institutions guaranteed in subsection 16.1(1) of the Charter. A **draft amendment** to this effect is contained in its brief.¹⁰

Other federal legislation

Senate Committee members were told that the obligations in the Act must be better aligned with those implied in other federal statutes. Section 82 of the Act states that parts I to V prevail over other federal laws and regulations, except for the *Canadian Human Rights Act*. Some witnesses believe that the *Canada Health Act*, the *Broadcasting Act*, and the *Telecommunications Act* should stipulate official language obligations as well.¹¹ The government has just launched a review of the latter two statutes. Other witnesses recommended codifying the language obligations arising from the *Divorce Act* and the *Bankruptcy and Insolvency Act* to specify the public's rights in this area and

consolidate a practice that is established but not always followed.¹²

The *Carriage by Air Act* could also be amended to stipulate that the *Montreal Convention* does not restrict the rights conferred by the Act.¹³ Graham Fraser, the former commissioner of official languages, made this proposal in his 2016 special report on Air Canada to ensure the primacy of fundamental rights in international carriage.¹⁴ The House of Commons Standing Committee on Official Languages made the same recommendation in November 2017.¹⁵ In its response to the committee, the government did not make a firm commitment on this issue, but it did not close the door on the possibility.¹⁶

Vitality: A critical concept for the Act

The purpose of the *Official Languages Act* is to “support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society.”

Three purposes are set out in the Act, and the intent of the second is stated clearly: support the development of communities and advance the equality of status and use of the official languages. The principle of vitality is at the very heart of the Act. Not only is it stipulated in Part VII, but it is also a key part of the Act's purpose clause. Although this purpose is set out in black and white, there are issues surrounding its application. That is why communities are calling for certain key concepts in the Act to be clearly defined.

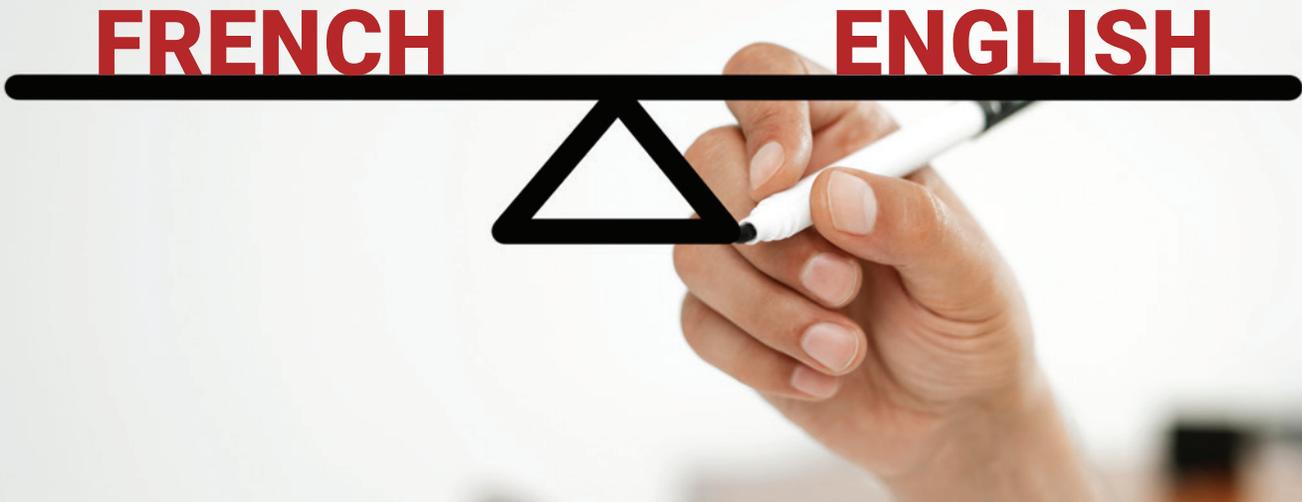
Key concepts to be defined

A common theme emerged from witness testimony: federal institutions do not seem to understand certain concepts in the Act, whether regarding specific details or more generally. These concepts include the difference between



Senator René Cormier, Senator Lucie Moncion and Senator Marie-Françoise Mégie visit the Canadian Museum for Human Rights in Winnipeg, which chronicles the history and evolution of language rights in Canada.

equality of status and use of both official languages, and substantive equality; the vitality and development of communities; positive measures; and remedial nature.



FRENCH

ENGLISH

Equality of status and use of both official languages and substantive equality

The first purpose stipulated in the Act is to ensure federal institutions respect the equal status and equal rights and privileges of English and French. This obligation arises directly from subsection 16(1) of the Charter. As Canada's official languages, English and French have the same status, rights and privileges.

This does not mean that the two languages must be treated equally in all instances. Based on the principle of substantive equality, official language minorities can be treated differently, according to their specific circumstances and needs, to ensure they receive an education and services of equal quality to those offered to the linguistic majority.¹⁷ This principle is the norm in Canadian law and creates obligations for the State.¹⁸ The federal government has developed tools to help federal institutions apply these principles¹⁹ but these tools

The purpose of the *Official Languages Act* is to “ensure respect for English and French as the official languages of Canada and ensure equality of status and equal rights and privileges as to their use in all federal institutions.”

are inadequate, if complaints to the Commissioner of Official Languages are any indication. As a result, stakeholders believe this principle needs to be enshrined in the Act.

“A modernized Act must embody, as its central guiding principle, the equality of status of English and French as official languages of Canada [and include] the principle of substantive equality [...]”

Quebec Community Groups Network, *Brief*, 28 May 2018, para. 45.

Vitality and development

One of the two commitments in Part VII of the Act is to “[enhance] the vitality of the English and French linguistic minority communities in Canada and [support] and assist their development.” What do the words “vitality” and “development” mean in this context? Possible interpretations include achieving full and harmonious development or seeing an improvement in conditions. However, these objectives are not clearly defined in the Act and do not always translate into real life, as the following excerpt shows.

“[U]nder the current [A]ct, communities manage to get by, not thrive.”

Sébastien Benedict, Réseau de développement économique et d’employabilité, Evidence,
4 December 2017.

Positive measures

The obligation for federal institutions to take “positive measures” to implement the commitment to vitality and development in Part VII was added to the Act in 2005. What does this obligation mean? The courts have ruled that it means the obligation to take concrete measures that benefit communities and do not adversely affect their development or vitality, but these measures are left to the discretion of the federal institutions.²⁰ This obligation is still not fully understood, even though we are marking the 13th anniversary of this amendment to the Act. The federal government has developed tools to help institutions implement the obligation,²¹ but they are not required to use them.

Witnesses strongly and unanimously supported the need to define “positive measures” in the Act and made a number of suggestions concerning the definition:

- the concrete measures taken by federal institutions should have a real impact on the ground;
- mandatory consultation with communities is at the heart of the principle of “by and for”; and
- the results of these consultations should be taken into account and should inform the final decision.²²

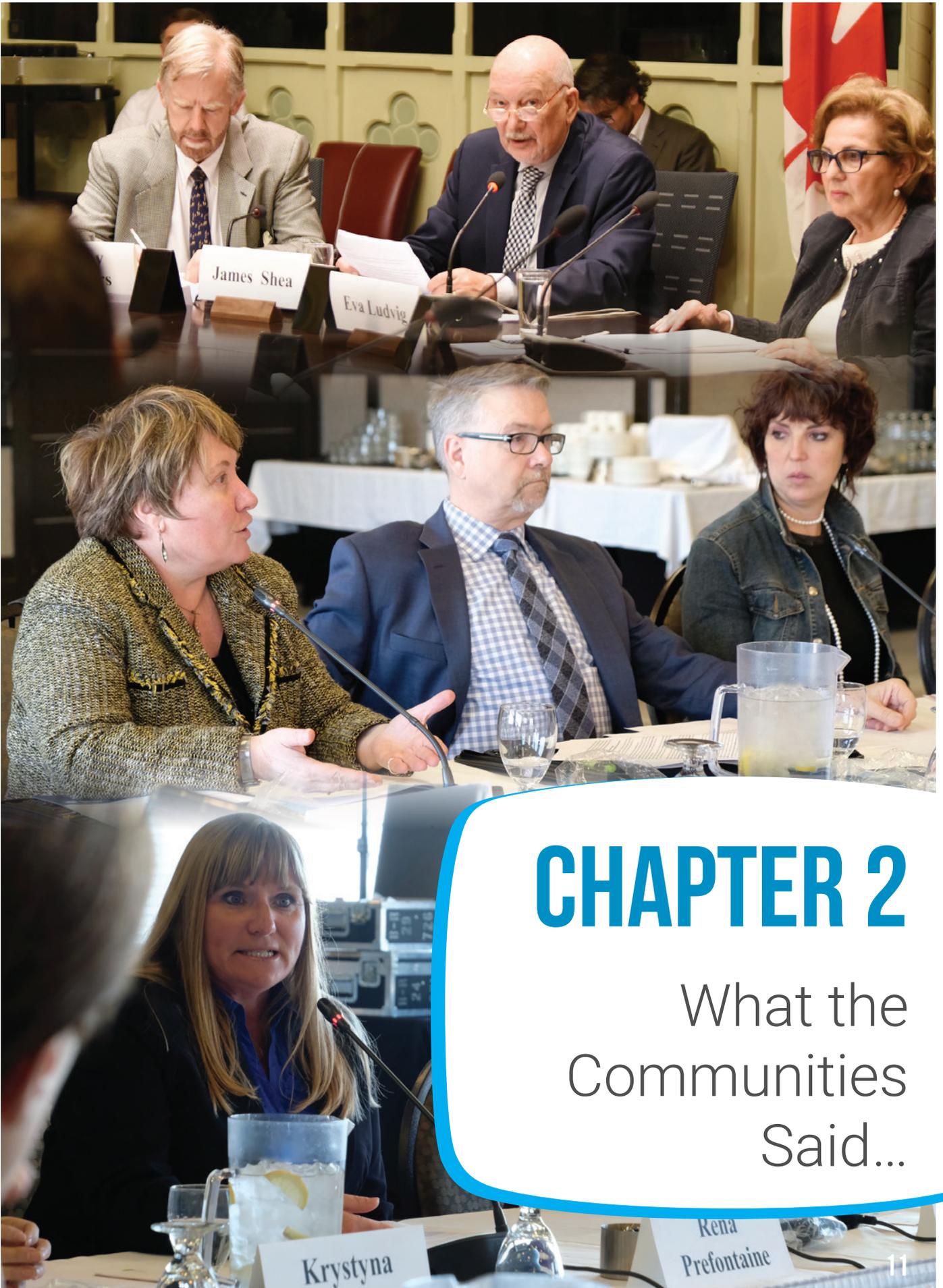
A “positive measure” goes beyond the restrictive approach of some federal institutions, as indicated in the brief submitted by one cultural organization.

“Participating in a community event or making documents available in both languages is not enough in terms of our responsibility under the Official Languages Act.”

Fédération culturelle canadienne-française, Brief,
5 February 2018, p. 6.

Remedial nature

The Supreme Court has ruled that section 23 of the Charter has a remedial nature in that it seeks to remedy past injustices and ensure they are not repeated in the future.²³ While the courts have interpreted this concept mainly in the context of minority language education rights, it has also been found to be applicable to Part VII of the Act. In other words, the federal government must take into account communities’ interests and support their development in order to achieve substantive equality and advance the equal status and use of English and French. For this to happen, the Act must include measures to address the loss of communities’ demographic weight and their assimilation, as discussed in Chapter 2 of this report.



CHAPTER 2

What the
Communities
Said...

Krystyna

Rena
Prefontaine

The testimony from official language minority communities far exceeded the Senate Committee's expectations. Rather than limiting themselves to measures to enhance their vitality and assist their development, community representatives addressed the challenges of implementing many other aspects of the Act and consistently enforcing its various parts. Chapter 2 presents their main concerns. Excerpts are taken from the public hearings in Ottawa, the fact-finding mission to Manitoba and briefs submitted to the Senate Committee.

Communities as partners in implementing the Act

Not surprisingly, the public hearings were dominated by discussions of the communities' role in interpreting and implementing the Act. Communities want to participate as true partners. They discussed many of the current problems that a modernized Act could resolve. To begin with, federal institutions do not understand their obligation to consult. For example, the communities' needs with regard to school facilities are also not considered during the disposal of federal real property. Language clauses are not used consistently or properly in agreements with other partners. The communities also stressed that the Act must reflect the needs of communities' various sectors of development. Lastly, they reiterated how important immigration is to their long-term vitality, yet the issue is not addressed in the current Act.

Consultation

The communities were unanimous in stating that consultation is important and must be provided for in the Act.²⁴ Consultations must be mandatory, effective and designed to bring about true participation.

"The consultations should have for a goal an open dialogue and the quest for solutions."

Martin Théberge, Fédération culturelle canadienne-française, *Evidence*, 5 February 2018.

"Consultation is the vital dimension of dialogue between government and the official language minorities. Without that exchange of views, we won't get good policy. Without good policy, you will not be, as a government, in a position to legislate clearly and establish rights that can be enforced."

Geoffrey Chambers, Quebec Community Groups Network, *Evidence*, 28 May 2018.

To ensure that consultations meet community needs, francophone organizations outside Quebec suggest the following:

- establishing a community advisory board;
- including an obligation to consider the results of consultations and to provide reasons for decisions in certain cases; and
- drawing from models in other provinces and territories such as Ontario, Manitoba, Yukon and Nunavut.²⁵

English-speaking organizations from Quebec also support the creation of a community advisory board.²⁶

Disposal of federal real property

The Senate Committee's report *Horizon 2018* detailed the difficulties in obtaining land for new schools in British Columbia, a situation illustrated by the case of Vancouver's *École Rose-des-vents*.²⁷ In its response, the federal government simply reminded federal institutions of the provisions of the *Directive on the Sale or Transfer of Surplus Real Property*.²⁸ It did not follow the Senate Committee's recommendation to pass regulations requiring federal institutions to take into account the needs and interests of French-language schools in the sale or transfer of real and personal property.

Modernizing the Act offers an opportunity to consider tangible solutions to help French-language schools across Canada. The *Conseil scolaire francophone de la Colombie-Britannique* submitted a **draft amendment to the Act** in its brief.²⁹ This proposal is supported by other organizations in the education sector, including those in Manitoba.³⁰

Language clauses

All federal funding should include official languages criteria. This applies to federal programs, third-party contracts and transfer payments to other levels of government. These criteria are known as language clauses, and communities have been calling for them for some time. In practice, the results continue to be very inconsistent.

The Act could stipulate that Part IV continues to apply even where powers are devolved to other levels of government, as suggested by University of Ottawa law professor Pierre Foucher.³¹ The Federal Court's decision in *Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development)* is a perfect illustration of the need to clarify the Act in this area.³² The Commissioner of Official Languages has stated that he would appeal this ruling.³³

Professor Foucher provided additional details to explain such a change during his appearance before the Senate Committee.

"The issue is that third parties who are not parties to the agreement have no recourse. It is very difficult to enforce the [language] clauses in the agreements. You should look at the possibility of allowing the members of minority language communities who would like to see linguistic agreements respected to turn to the [C]ommissioner or the court."

Pierre Foucher, University of Ottawa, *Evidence*, 16 October 2017.

An acquired rights clause could also be added to prevent the loss of rights when responsibilities are devolved to the provinces or private sector.³⁴ The FCFA supported the idea of entrenching language clauses in the Act, but did not suggest how to proceed.³⁵

Needs of the various development sectors

The Senate Committee met with a wide range of community organizations representing various development sectors. The following section highlights the detailed comments made by witnesses representing the education, arts and culture, health, economic development, women's, seniors and community media sectors. All these sectors are central to community vitality, and the Act should reflect this fact.

Education continuum

Education organizations all believe that a modernized Act should provide the tools to ensure a true education continuum in the minority language. This is not a new concept. During the first phase of the Senate Committee's study, young people suggested that the Act clearly reference early childhood services and post-secondary education.³⁶ Community representatives reiterated the need to support the entire education continuum in the Act.³⁷

One organization called for the definition of “continuum” to be broadened to encompass literacy and essential skills development needs.³⁸ Literate and educated official language minority communities contribute to the development of their communities. The levels of adult literacy and essential skills are often too low for these communities to participate fully in civic, economic, social and cultural life.³⁹

In Part VII, subsection 43(1), the Act describes the measures available to the Minister of Canadian Heritage to support the learning of English and French as Canada’s official languages. However, it remains silent on early childhood services and post-secondary education, and literacy and skills development. Several witnesses suggested strengthening the language in Part VII, while others suggested a new part be added to the Act dealing specifically with education.

Last year, three francophone organizations announced that they had signed a strategic education agreement with the federal government (strategic agreement).⁴⁰ The agreement contains provisions on consultations with minority-language school boards, accountability, additional costs related to French first-language education, and the creation of a specific protocol covering minority-language education.

The current protocol, the *Protocol for Agreements for Minority-Language Education and Second-Language Instruction* (the protocol), poses its share of challenges. Education in French as a first language is underfunded in Saskatchewan, which compromises the quality of French-language education in that province.⁴¹ The *Conseil des écoles fransaskoises* (CÉF) noted the following shortcomings in the current protocol:

- ▶ it allows communities’ needs to be determined unilaterally by the provinces and territories without taking into account a school board’s Charter right to manage its own schools;

- ▶ it does not require governments to consult school boards – a provision that should be stipulated in the Act;
- ▶ it does not contain any real accountability mechanisms, allowing provinces to decide whether or not to prepare financial reports or to share them with school boards; and
- ▶ it allows the funds allocated to minority primary and secondary education to be used to cover essential costs but not supplementary costs.⁴²

The CÉF’s brief contains a **draft amendment to the Act** on managing federal funding for minority language education, but does not specify which department would have this responsibility.⁴³ The FCFA supports this proposal and recommends that it apply to the full education continuum.⁴⁴ The *Fédération nationale des conseils scolaires francophones* (FNCSF) believes that the right to school management must be spelled out in the Act.⁴⁵ The Quebec English School Boards Association (QESBA) supported all of these suggestions.⁴⁶

The Senate Committee raised a number of these issues in a previous report.⁴⁷ The *Conseil scolaire francophone de la Colombie-Britannique* (CSFCB) believes these are structural problems that must be resolved permanently within the Act itself, and it fully supports the CÉF’s draft amendment.⁴⁸ This should be based on the provisions of the strategic agreement with the Government of Canada. In addition, federal funding of capital assets requires a better framework, and the use of special agreements must become a standard practice.⁴⁹

As francophone school board officials pointed out, there is a significant need in this regard.

“When parents are deterred from enrolling their children in a French-language school because of failing infrastructure — such as a lack of space, kindergartens, gyms or auditorium, poor physical condition of school buildings, or the fact that the school building is not well adapted to provide a quality school program by focussing on language and culture — the objective of section 23 of the Canadian Charter of Rights and Freedoms is jeopardized, as is the fundamental principle of the Official Languages Act to encourage the development of both official languages. So there is a lot of ground to be made up in a number of regions of the country when it comes to community school centres.”

Jean Lemay, Fédération nationale des conseils scolaires francophones, *Evidence*, 12 February 2018.

The CÉF and FCFA suggest the same approach for structuring federal funding for second-language education.⁵⁰ Furthermore, the *Association canadienne-française de l’Alberta* (ACFA) prepared a **draft amendment to the Act** to enshrine this responsibility.⁵¹

Arts and culture

Communities echoed the views that young Canadians brought up during the first phase of the study by emphasizing the close connection between language and culture, and the need to recognize this relationship in the Act.⁵² Francophone cultural organizations feel that arts and culture are one of the pillars of community development, along with education, health care and the economy.⁵³ They want a modernized Act to contain more specific objectives for supporting arts and culture, and they want to be recognized as key partners in ensuring the Act is implemented effectively.⁵⁴ The organizations called for



Supporting community vitality through arts and culture

During the Senate Committee’s trip to Manitoba, members visited the *Centre culturel franco-manitobain*, *Théâtre Cercle Molière* and *Centre du Patrimoine*, and attended the *Festival du Voyageur*. These cultural institutions and events embody the vitality of the French language in Winnipeg. Their clientele is highly diversified and has a special affinity for French or uses it day to day, even though it is not a first language. They foster a sense of belonging to the francophone community and support social cohesion. Many of the young francophones and francophiles that the Senate Committee has met in recent years described how much they enjoyed the *Festival du Voyageur* and its role in helping them develop a sense of belonging to the francophone community. One of the suggestions from Manitoba’s cultural and artistic stakeholders is to adapt government and institutional practices to reflect the diverse and evolving francophonie.

community and cultural spaces to be created to promote a sense of identity.⁵⁵ This is an underlying objective of Part VII, but its legislative basis is unclear. The cultural organizations highlighted the need to clarify the official languages mandate of federal cultural institutions such as CBC/Radio-Canada.⁵⁶

English-language cultural organizations in Quebec have asked to be treated in the same way as French-language organizations.⁵⁷ They were critical of federal program criteria, saying that they did not always take into account conditions in their communities.⁵⁸ They hope that the new Secretariat for relations with English-Speaking Quebecers, established by the provincial government in late 2017, will help build more effective relationships with federal institutions.⁵⁹

Health care

Health care initiatives are often cited as one of the greatest successes among federal official language programs. This is due to the close collaboration between the federal government, provinces and territories, and community organizations. Health Canada has developed a strong relationship with organizations such as the *Société Santé en français*, *Consortium national de formation en santé* and the Community Health and Social Services Network, with whom the Senate Committee has met. Health organizations suggested that Health Canada's model of direct support of organizations should guide the modernization of the Act.⁶⁰

Although comments were positive, there were hints that future setbacks could occur if the federal government did not show greater leadership in the community health sector.⁶¹ The FCFA suggested adding a new part to the Act specifically to address health.⁶² The purpose of this new part would be to structure health transfer payments to the provinces and territories and ensure investments are put to good use.



French-language health care training at the *Université de Saint-Boniface*

During their trip to Manitoba, Senate Committee members toured the new facilities at the School of Nursing and Health Studies, funded by Health Canada. The partnership model in the health care sector between the federal government and official language minority communities is often cited as a success story. The *Université de Saint-Boniface* is able to recruit francophone and francophile students, train them and retain them in their community once they enter the job market.

Economic development

The young Canadians who participated in the first phase of the study suggested that the Act support economic development, employability and entrepreneurship.⁶³ These ideas were echoed by a representative from an English-language organization in Quebec.⁶⁴ A francophone witness from this sector criticized the piecemeal approach of government programs for francophone minority communities.

“We find ourselves working on a case-by-case basis with a number of departments. It is extremely challenging to adopt a horizontal view in order to coordinate all departmental efforts and produce a more meaningful outcome.”

Sébastien Benedict, Réseau de développement économique et d’employabilité, Evidence, 4 December 2017.

Federal priorities frequently do not correspond to community needs. This situation hinders community development, in direct contrast to the objectives of the Act.⁶⁵ Some witnesses criticized the end of the coordination mechanisms that once existed in the economic development sector. They suggested considering those mechanisms when reviewing the partnership between the federal government and communities implied in Part VII.⁶⁶

Stakeholders in Quebec hope that a modernized Act will encourage employers to recognize the merits of bilingualism and lead to more anglophones being integrated into federal offices and other workplaces.⁶⁷ This would reduce the unemployment rate and the exodus of young people, who are significantly under-employed.⁶⁸



Women and seniors

The most notable statistical trend among official language minority communities from one census to the next is the aging of the population, which is compounded by a declining birth rate. Francophone seniors stated that they fully support the recommendations in the FCFA’s brief.⁶⁹

In addition, francophone women care for young children and play a key role in passing along their mother tongue to them. These roles can have a ripple effect on women’s choices as to post-secondary education and career path, and delay their retirement. Many of these women are caregivers for their sick or elderly relatives. All these factors reinforce the need to support community-based initiatives targeting early childhood services, post-secondary education, health care and employment. The organization representing francophone women in minority communities called for the Act to:

- integrate Gender-Based Analysis plus (GBA+);
- take gender roles into account and meet the needs of key populations; and
- introduce measures to monitor the effects of the Act on women.⁷⁰



Community media

Community media play a key role in community development and vitality. They are essential to reflecting the language of minority communities, and to promoting and developing it. In recent years, however, community media have experienced several challenges, including a significant decrease in federal advertising revenues, and the shift towards digital platforms.⁷¹ The Consortium of Official Language Minority Community Media (the Consortium) has requested federal support to address these problems. The Senate Committee acted on its behalf and asked the responsible ministers to identify short-, medium- and long-term solutions.⁷² Although the *Action Plan for Official Languages – 2018–2023* (the 2018–2023 Action Plan) allocates funding for community media, it seems insufficient to meet their immediate needs.⁷³

Sections 11 and 30 of the Act describe the obligations of federal institutions regarding notices and advertisements for the public, and the use of media when communicating with the public. These provisions ensure that members of minority communities receive information on federal activities and services that is timely, in their language and of equal quality to that received by majority language communities. However, there are ongoing problems regarding their implementation, and not all federal institutions apply these provisions systematically.⁷⁴

That is why Professor Foucher suggested amending the Act to:

- require the government to publish in community media;
- delete the words “wherever possible” from section 11; and
- include provisions concerning electronic publications.⁷⁵

Stakeholders support these proposals.⁷⁶ In its brief, the Consortium presented two **draft amendments to these sections of the Act**.⁷⁷ University of Ottawa doctoral student Marie-Hélène Eddie believes that the Act should affirm the community media’s role in enhancing vitality through a new provision or by regulation, modeled on other international practices.⁷⁸ The FCFA also suggested requiring notices and announcements to be published in both official languages, simultaneously and side-by-side, to increase the visibility of French across Canada.⁷⁹

Immigration as a key contributor to community vitality

The current Act does not address immigration, but many think it should. Immigration is a key factor in enhancing the vitality of communities, especially considering the rapidly aging population and declining birth rate that characterize them. Federal–provincial/territorial cooperation in this area is critical. In March 2018, for example, the federal–provincial/territorial ministers responsible for immigration adopted an action

plan to increase the number of French-speaking immigrants outside Quebec.⁸⁰

Francophone minority communities believe that the federal government should take a leadership role in a number of areas:

- **Welcoming newcomers at the airport:** the government must help francophone community organizations that want to assist newcomers and steer them toward services in French;
- **Employability:** the government must support communities in their efforts to convince employers to hire francophone immigrants, and facilitate the recognition of foreign credentials;
- **Education:** the government must help young francophone immigrants make the transition to French-language schools, in cases where the province or territory, along with francophone school boards, authorizes it;
- **Distribution of newcomers:** the government must ensure that francophone immigration is better distributed across Canada and in the regions, and facilitate the reception of refugees in francophone communities; and
- **Integration:** the government can help communities in their efforts to integrate immigrants economically, culturally and socially.⁸¹

A modernized Act should take into account the growing diversity of the population – socially, culturally, politically and economically – and the importance of the official languages as a way to integrate into Canadian society. The Act must promote cooperation among the various partners, particularly municipalities.⁸²

People who immigrate here must ... be served in the [official] language of their choice ... without being forced to seek services in English.

Bintou Sacko, *Accueil francophone, Evidence*, 15 February 2018.

The Act could be designed to become a driving force for francophone immigration across Canada.⁸³ In its brief, ACFA included a **draft amendment to the Act** concerning federal responsibilities in this area.⁸⁴

The unique case of New Brunswick

New Brunswick has developed a francophone immigration strategy and set a target of 33% by 2020. This goal is critical to maintaining the demographic weight of its two linguistic communities.⁸⁵ Moreover, the federal and provincial governments signed an immigration agreement in 2017 that includes an annex regarding French-speaking immigrants.⁸⁶ In its brief, the SANB included a **draft amendment to the Act** requiring the federal government to consider New Brunswick's linguistic balance when developing immigration policies.⁸⁷ This support must be ongoing, as stated in the following excerpt.

“New Brunswick, with a francophone population of more than 32%, needs permanent federal support in immigration, tailored to ensure the preservation and development of that population.”

Société de l'Acadie du Nouveau-Brunswick, *Brief*, 16 April 2018, para. 58.

Provision of services to the public: A key to vitality

The communities highlighted the need to make the objectives of Part IV and Part VII of the Act more coherent. They view the provision of services in both official languages as clearly being a key to their vitality. The communities believe that some of the mechanisms in the Act fail to meet their needs. This is true of the federal government's definition of "significant demand." The way the government regulates the active offer of services is also problematic. The communities called for changes in these two areas.

Significant demand

The communities recognized that significant demand is defined too narrowly in the Act and the *Official Languages (Communications with and Services to the Public) Regulations* (the Regulations). The current scope of the term makes it difficult to tailor federal services to their needs to achieve substantive equality. For years now, the communities have requested changes to the criteria used to determine the levels of service offered to the public. They would like the federal government to amend its definition of who is a francophone and take into account institutional vitality when setting service levels. They also want the federal language framework to conform to the constitutional reality in New Brunswick, which is covered by more generous provisions.

Definition of "francophone"

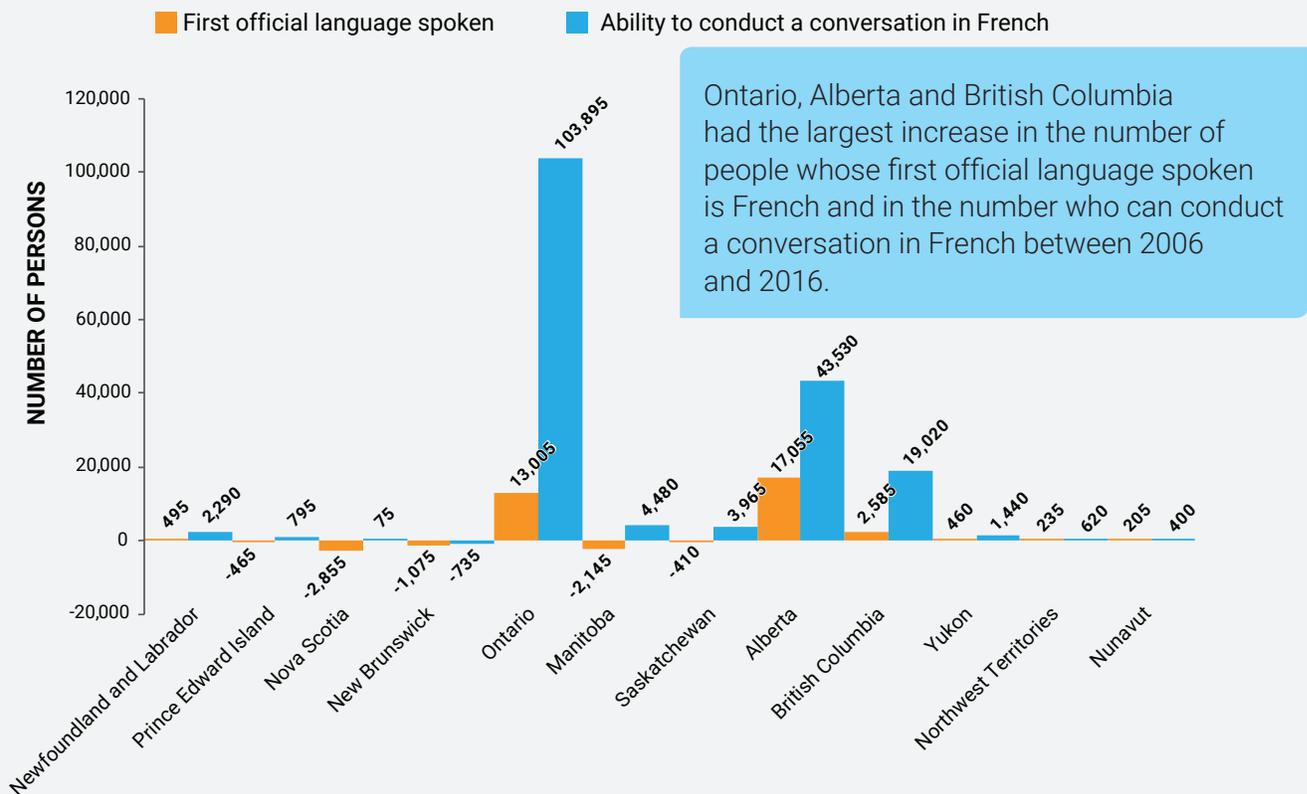
The determination of what constitutes significant demand does not account for the demographic changes that have occurred in Canadian society. It excludes potential users of services, such as francophone immigrants, couples where one spouse is francophone and the other is anglophone and French immersion graduates. Francophone minority communities believe this narrow definition hinders the fulfilment of the objectives of

Part IV of the Act. The overall population of these communities has shrunk over the past 10 years. Francophone immigration is increasingly vital to offsetting these population declines.⁸⁸ In its 2018–2023 Action Plan, the federal government noted the decrease in the percentage of francophones outside Quebec and committed to taking measures to curb this downward trend.⁸⁹

In addition, some francophone communities have seen a decline in the number of residents reporting French as their first official language spoken, a variable derived from the statistics on knowledge of official languages, mother tongue and language spoken most often at home. This decline is evident in the Atlantic provinces, minus Newfoundland and Labrador, Manitoba and Saskatchewan. As a result, fewer public services are being provided in both official languages.⁹⁰ In the remaining provinces and territories, there was a relatively modest increase, except for Ontario and Alberta, which recorded somewhat stronger increases (see Figure 1).

Comparing these statistics to those on the ability to conduct a conversation in French, we see larger increases across all provinces and territories outside Quebec. In Ontario, Alberta and British Columbia, the increases from 2006 to 2016 were particularly significant. In other words, more and more people know French in the country as a whole, but fewer and fewer people are counted by the federal government as needing French-language services (see Figure 1).

FIGURE 1 – Change in Number of Persons Who Reported Speaking French, By Linguistic Characteristic, Canada, All Provinces and Territories (except Quebec), 2006–2016



Source: Statistics Canada, 2006 and 2016 Censuses.

The francophone organizations are unanimously calling for changes in the way the federal government defines who is a francophone for the purposes of Part IV of the Act. This recommendation is similar to the one put forward by young Canadians in the first phase of this study.⁹¹ As the Senate Committee stated in its first interim report, more inclusive definitions have already been adopted elsewhere in Canada – in Ontario, Manitoba and Prince Edward Island. These definitions take into account factors such as francophone immigration, exogamy and the degree of affinity with the French language when determining who is a francophone. The FCFA defines a “francophone” as anyone who chooses to live part of their life in French.⁹² The stakeholders from Manitoba suggested drawing on the definition used in that province’s legislation.⁹³

“Manitoba recognizes that the vitality of a community cannot be measured solely by the size of its population. A community may consist of only a few hundred people yet be very strong and have a stable foundation. That is why we will support the modernization of Part IV of the Official Languages Act so that federal institutions take qualitative criteria into account in determining whether there is significant demand.”

Teresa Collins, Francophone Affairs Secretariat of Manitoba, *Evidence*, 15 February 2018.

The following excerpt illustrates the perverse effect of the current statistical calculation.

“When I completed the 1996 census questionnaire, French was the first language for my wife, myself and our entire family, that is, the first language learned and language spoken most often at home – 100 per cent of our household. In 1981, when I completed the questionnaire, I had three sons. French was the first language of all five members of the family, that is, the language learned and language spoken at home. By 2001, my three sons were married to anglophones, all of whom understand French. When we completed the questionnaire, French was the first language of 63 per cent of us, and 25 per cent spoke French at home. In 2016, when our family completed the census again, I had nine grandchildren, for a total of 17 people. French is the mother tongue and first language learned of 29 per cent of us, and the language spoken most often at home of only 12 per cent of us, even though 100 per cent of our family can communicate in both languages.”

Louis Tétrault, Association des municipalités bilingues du Manitoba, *Evidence*, 15 February 2018.

The profile of francophone communities will continue to change. Francophiles want to have the option of requesting service in French.⁹⁴ Manitoba’s francophone Metis want the Act to recognize their contribution to Canada’s social fabric and to ensure they have access to French-language services.⁹⁵ The federal government’s current practices serve to marginalize them in two ways. That is why they are also requesting a more inclusive definition of “francophone.”

“Why is the Government of Canada ignoring us when the modernization of the Official Languages Act is based on the following principle: acknowledging the citizenship of all francophones in Canada?”

Pauline Hince, Union nationale métisse Saint-Joseph du Manitoba, *Evidence*, 15 February 2018.

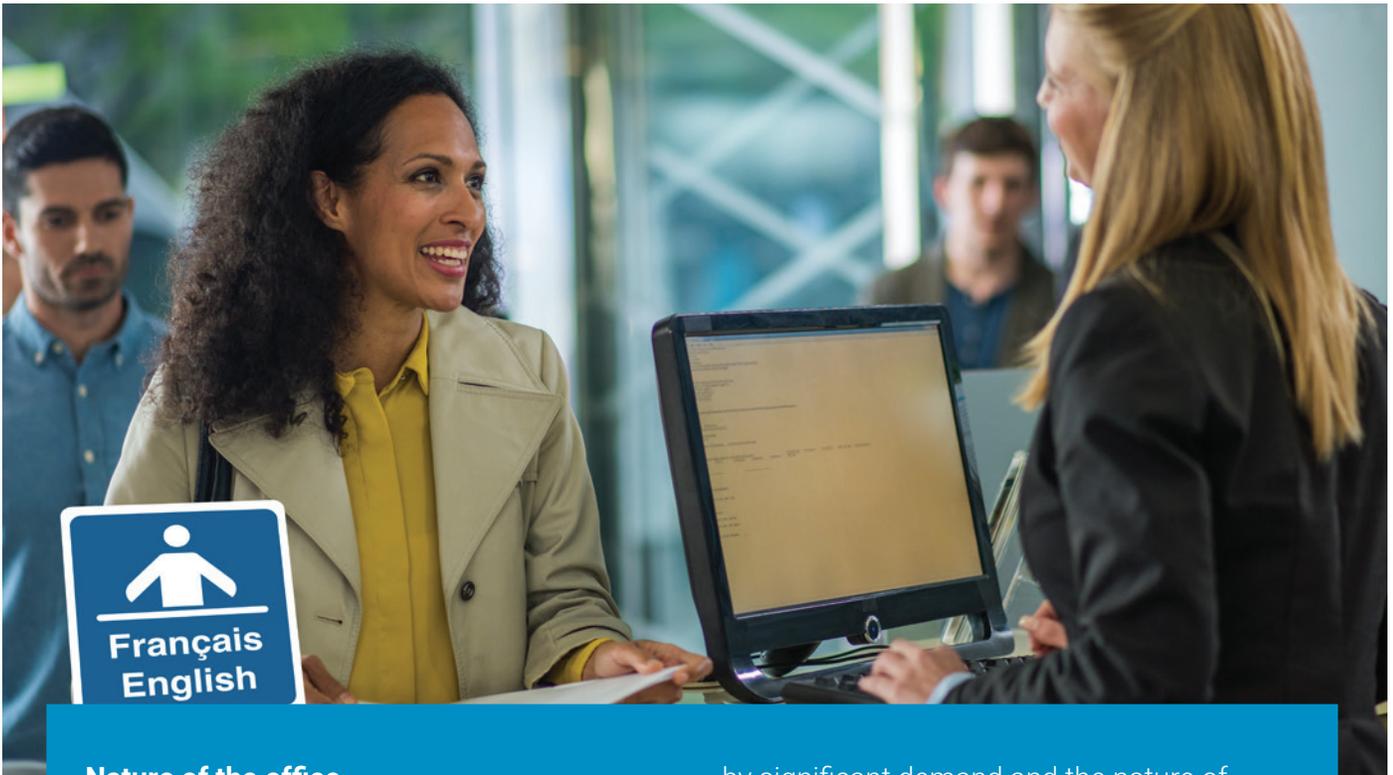
“For me, being a francophone Metis is being part of a group. Francophones often have to demand their rightful place at the Canadian table. For us, the French-speaking Metis in Manitoba, it would appear that we have to ask the [Manitoba Metis Federation], an anglophone organization, for our rightful place at the francophone Canadian table.”

Nancy Gouliquer, Union nationale métisse Saint-Joseph du Manitoba, *Evidence*, 15 February 2018.

In sum, the new definition should account for past and future changes while embracing Canada’s francophone communities in all their diversity.

Institutional vitality

Currently, subsection 32(2) of the Act includes a criterion respecting “the particular characteristics” of the minority population used to identify the circumstances in which there is significant demand for services. However, the Governor in Council did not employ that criterion in making the Regulations implementing Part IV of the Act. Some witnesses asked the government to base its decision on whether to provide services on the presence of minority-language institutions – in other words, to consider institutional vitality.⁹⁶ A community’s vitality depends on its ability to create and sustain the formal and informal organizations or institutions it needs to survive. The Act must take that into account. A framework that defines this criterion, developed with the communities, could serve as a reference for all federal institutions and be combined with an acquired rights clause to prevent the loss of rights in future administrative reorganizations.⁹⁷



Nature of the office

In addition to significant demand, the Regulations also take into account the nature of the office – particularly services that relate to the health, safety and security of the public. However, some witnesses believe that the core services to be offered at all times in both official languages should be expanded. A modernized Act could therefore include services deemed important for communities or likely to lead to their revitalization. This is the aim of Bill S-209, which was tabled in the Senate in fall 2015.⁹⁸ Witnesses believe that elements of the bill, including designating transportation hubs as bilingual, should be incorporated into a modernized Act.⁹⁹

The unique case of New Brunswick

As regards services to the public, New Brunswick has rights set out in subsection 20(2) of the Charter that do not apply in the rest of Canada. While at the federal level this obligation is determined

by significant demand and the nature of the office, it applies to any office of an institution of the legislature or government of New Brunswick.

Clearly, then, there is a gap between the services residents of New Brunswick can receive from their province – guaranteed in all cases – and the more limited ones provided by the federal government. Some witnesses said the Act should address this specific issue. The FCFA has proposed making the Act consistent with the current laws and policies of New Brunswick and extending the provision of federal services in both official languages to the entire province, not just where there is “significant demand.”¹⁰⁰ The SANB recommended that Part IV of the Act and its implementing regulations refer to the particular characteristics of New Brunswick and presented a **draft amendment to the Act** in its brief.¹⁰¹

Active offer

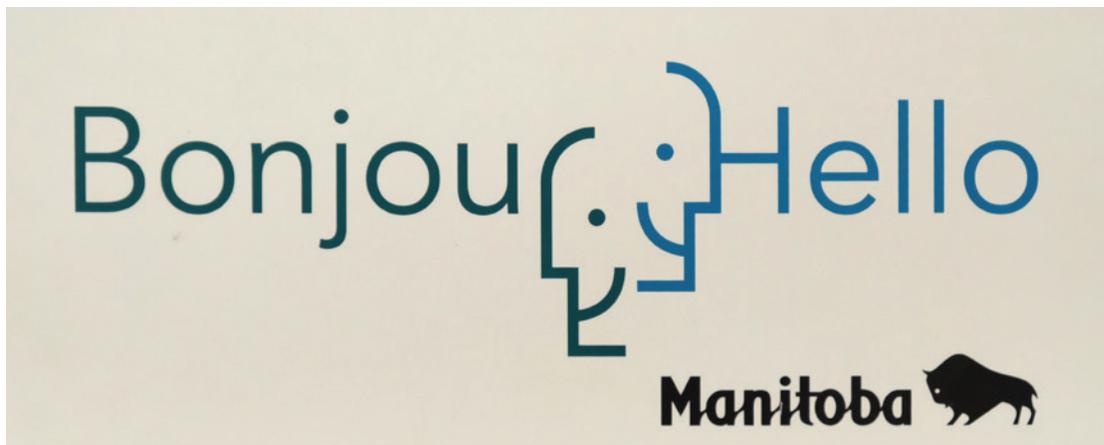
Active offer, be it a visual reminder or a personal greeting, continues to be the subject of many of the complaints filed each year with the Commissioner of Official Languages. Despite being part of the Act, this requirement is implemented very unevenly. Citizens who are not clearly offered the option of communicating with the federal government or receiving services in the language of their choice, or who are unaware of their rights in this regard, are unlikely to demand that this requirement be fulfilled.

Several witnesses reported a significant drop in the active offer of services by federal institutions in recent years.¹⁰² To address this problem, they advised strengthening the obligations in the Act. Witnesses suggested that adequate signage in federal offices be used to promote French in certain regions, as explained in the following quotation.

“We know that the government practice is to put French first in Quebec and English second, while outside of Quebec it is the opposite. This offends people in the Acadian [P]eninsula, those who live in a majority francophone area in particular. How is it that French is not first as it is in Quebec? The same goes for eastern Ontario. Perhaps the precedence requirement could be broadened to areas where francophones are in the majority.”

Pierre Foucher, University of Ottawa, *Evidence*, 16 October 2017.

Manitoba recognizes active offer as one of the principles of *The Francophone Community Enhancement and Support Act*: it is the cornerstone for the provision of high-quality French-language services. The province’s legislation also recognizes the need to gradually increase the range of services provided. Witnesses from Manitoba suggested that it be used as a model.¹⁰³



Active offer is the requirement provided for in section 28 of the *Official Languages Act* to inform members of the public, visually or verbally, that they can communicate with the federal government and receive services in either official language. This communication can be oral or written, in the form of signs, notices or other information on services that must be immediately available in English and French.

Others argued that all public officials who deliver services to the public should be able to actively offer service in either English or French.¹⁰⁴ Some referred to the concept of “culturally appropriate services,” which is already used in the health care sector.¹⁰⁵ In other words, the services the government provides should be tailored to the communities’ needs and satisfy the principle of substantive equality. This would require the development of a contextual approach to service delivery. Moreover, the Act should specifically set out the active offer requirement.¹⁰⁶

The Act: A unifying project

Bilingualism and linguistic duality are core values for the Canadian identity, and many are advocating that the Act mobilize all Canadians to promote these values. Witnesses emphasized that the Act should focus more on measures that advance both official languages, encourage people to learn them and foster cooperation.

Advancement of both official languages

One of the two commitments required by Part VII of the Act is “fostering the full recognition and use of both English and French in Canadian society.” The federal government already intervenes in various ways, including by supporting the provision of services in the minority language by other levels of government. For example, in Manitoba the most recent agreement on this issue supported the operations of bilingual service centres. These centres are increasingly using new technologies to improve the provision of bilingual services; some witnesses hope the federal government will learn from this experience.¹⁰⁷



Manitoba’s bilingual service centres

During its trip to Manitoba, the Senate Committee toured the bilingual service centre in Saint-Boniface, located in the heart of Winnipeg’s francophone neighbourhood. It is one of six such centres established across the province that provide a range of programs and services in both official languages. The centres reflect a single-window approach in which federal, provincial and municipal services are brought together under the same roof. This model is unique to Manitoba and is the envy of francophone communities elsewhere in Canada. The centres make it easier for citizens to receive the services they need in the language of their choice. The centres are integrated into communities and closely involved in their development, especially in rural areas. The stakeholders the Senate Committee heard from made two suggestions. The first was to improve access to the services provided by Service Canada at these centres. The second was to better publicize the bilingual services available at the centres.



Subsection 43(1) of the Act lists other measures the Minister of Canadian Heritage may take to advance English and French. However, these measures are not mandatory, and the testimony heard reveals that they are not well coordinated across the federal government. The Act needs to include mechanisms to correct these problems.

“A piece of legislation ... can also be seen as a force that directs people and inspires the public to want to act in harmony with the spirit of the law.”

Gabor Csepregi, Université de Saint-Boniface, Evidence, 15 February 2018.

In summary, the Act must normalize the presence of both official languages throughout the country.¹⁰⁸ It must also promote Canada’s bilingual character internationally. The ACFA offered a **draft amendment to the Act** in this regard.¹⁰⁹

Learning both official languages

Subsection 43(1) of the Act states that the federal government may “encourage and support the learning of English and French,” but does not require it to do so. The young Canadians who contributed to the first phase of this study called for the Act to require the creation of English and French language learning programs at the primary and secondary school levels in every province and territory.¹¹⁰ A francophone school board and a francophile parents group likewise proposed a requirement that all Canadian children be taught French from kindergarten to Grade 12.¹¹¹

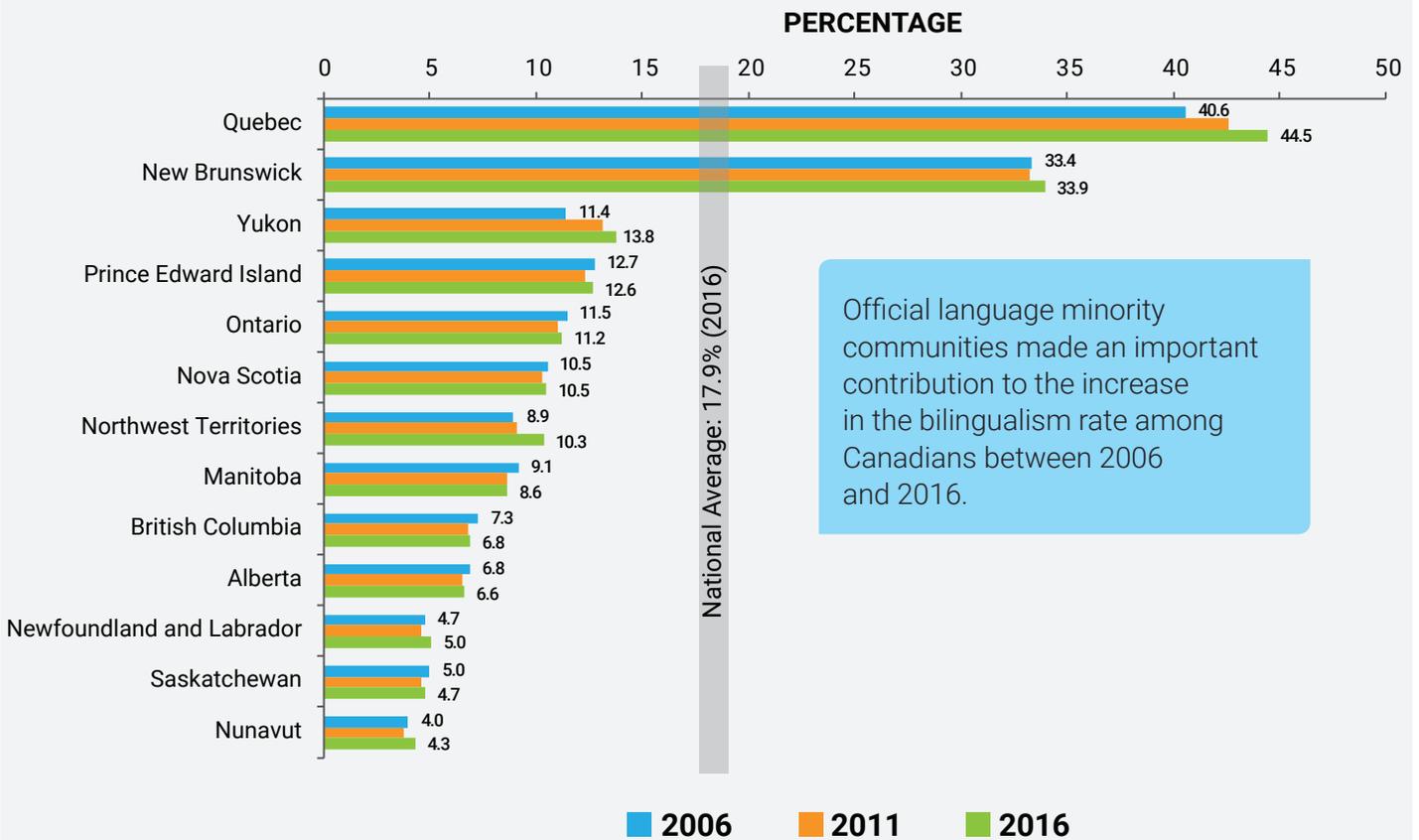
Education falls within provincial jurisdiction, but the federal government has provided significant funding for it under its spending power for nearly five decades. Given the amounts involved, the low rate of growth of bilingualism in Canada is worrisome. Compared with previous censuses, the rate of bilingualism among Canadians increased slightly to 17.9% in 2016 (see Figure 2).

As noted in the Senate Committee’s first interim report, young francophones outside Quebec and young anglophones in Quebec account for most of this increase in bilingualism among the overall population.¹¹²

The results are less stellar for young people outside Quebec whose first official language spoken is English.¹¹³ The 2018–2023 Action

Plan acknowledged this slower increase in bilingualism among Canada’s anglophones, and the federal government set a goal of reaching a national bilingualism rate of 20% by 2036, with a focus on increasing bilingualism among anglophones outside Quebec.¹¹⁴ Currently, only Quebec and New Brunswick have rates above the national average (see Figure 2).

FIGURE 2 – English-French Bilingualism Rate, Canada, All Provinces and Territories, 2006–2016



Source: Statistics Canada, 2006, 2011 and 2016 Censuses.

The existence of a French-language education continuum and a French-language services continuum helps to boost bilingualism.¹¹⁵ The public needs to be proactively educated about the benefits of bilingualism; information about this issue needs to be communicated to all Canadians in a clear, concise and understandable way.¹¹⁶

Cooperation

The Act currently applies to federal institutions only; it is not binding on the provinces and territories, municipalities or the private sector. Using its spending power, the federal government has nonetheless established a number of mechanisms for cooperation with these partners to advance the equality of status of English and French in Canadian

society. Subsection 43(1) sets out the Minister of Canadian Heritage's obligations in this regard.

During the public hearings, many called for improvements to the cooperation mechanisms within the Act itself. Indeed, some of the issues the witnesses raised fall under the jurisdiction of the various partners. This is true of matters relating to education, health care, immigration and early childhood education, for example.

With the provinces and territories

The evidence heard shows how important strong cooperation between the federal government and the provincial and territorial governments is to achieving the objectives of the Act. For years now, the communities have been making the same demands for reform regarding cooperation with the provinces and territories. They want the Act to give the federal government a stronger leadership role in cooperating with the provinces and territories on official languages issues.¹¹⁷ The young Canadians heard in the first portion of this study made similar arguments.¹¹⁸

A number of provinces and territories have their own policies or legislation to protect Canada's official languages. In fact, the federal government could draw lessons from some of the legislative measures in place in these provinces and territories. The Minister responsible for Francophone Affairs of Manitoba called for better opportunities to partner with the federal government to achieve the objectives of her province's legislation.¹¹⁹ Furthermore, federal government support for French-language services throughout the country should be increased.¹²⁰ Although the 2018–2023 Action Plan made commitments to expand the provision of French-language services in the territories, it provided no additional funding to the provinces.¹²¹

In addition, francophone communities expect the federal government to take the lead in the Canadian federation. They are calling for the Act to ensure – at a minimum – the provision of services comparable to those already delivered by a province or territory, as outlined in this excerpt from the FCFA's brief.



Representatives from Canadian Parents for French – Manitoba speak at the public hearings held in Manitoba on February 15, 2018 about the importance of improving federal-provincial collaboration to increase French learning opportunities across Canada.

“The [Act] must be consistent with the laws and policies of the provinces and territories when they are more expansive.”

Fédération des communautés francophones et acadienne du Canada, *Brief*, 26 March 2018, para. 130.

With municipalities

Municipalities play a role in several sectors, such as economic development and immigration.¹²² They also have a say in the establishment of school and community infrastructure that is crucial to enhancing the vitality of these communities, as evidenced by the case of *École Rose-des-vents* in Vancouver, which the Senate Committee discussed in its *Horizon 2018* report.¹²³

The federal government already provides support to deliver municipal services in French in majority-English provinces and municipal services in English in Quebec. Some witnesses expressed the hope that the Act will take into account the role municipalities play in enhancing the vitality of francophone communities.¹²⁴ A Manitoba organization called for the creation of a joint government–community committee to help implement Part VII and ensure bilingual municipalities take part in the process.¹²⁵ A New Brunswick organization proposed creating a dual-track arrangement at Immigration, Refugees and Citizenship Canada so that it can help bilingual municipalities implement francophone immigration measures.¹²⁶ The FCFA proposed amending the Act to include requirements regarding the adoption of five-year agreements and the resulting financial support.¹²⁷ Finally, more French signage in some municipalities outside Quebec should be encouraged.¹²⁸

With the private sector

Some witnesses called for the modernized Act to increase private sector participation by promoting partnerships with community groups. This would certainly benefit economic development, early childhood education and the arts and culture sectors.¹²⁹ The federal government could help normalize the presence of both official languages in the labour market.¹³⁰ Good examples of cooperation, such as the one described below, could be replicated elsewhere.

“Just take Air Canada, for example, which has official languages obligations. About a year ago, the company informed us that it was looking to increase its bilingual workforce all over the country, which is no small feat, especially in the Atlantic region. What can we do? We suggested that we work in partnership with the company. Thanks to our 30 service points across the country, we have access to skilled bilingual workers. Building partnerships is key. Through that partnership, we realized how prevalent the situation was in the private sector. Oftentimes, companies fail to provide French-language service not because they have no desire to do so, but because they have trouble finding bilingual staff. ... Our preference would be to build partnerships with the private sector and community sector to close that gap.”

Sébastien Benedict, Réseau de développement économique et d'employabilité, *Evidence*, 4 December 2017.

Statistics: An accurate portrait of Canada's linguistic landscape

An issue that often arises in Parliament is that of language statistics. The provision of education services and federal services depends on the statistics collected in the census of population. An inaccurate portrait of Canada's linguistic landscape will result in inadequate provision of these services to official language minority communities. That is why the communities continue to call for reforms to the process of enumerating education rights-holders and insist on including these changes in the Act.

Enumeration of education rights-holders

The evidence demonstrates that compiling the right linguistic data through the census is vital. This is the case for data on school attendance. Today, it is estimated that over half of rights-holders outside Quebec enroll their children in English early childhood centres, which limits their ability to go to school in French.¹³¹ The lack of spaces in French early childhood centres combined with the lack of data to properly estimate the demand are problems for French schools, which are unable to accurately assess their potential clientele. In September 2017, three francophone organizations that are very familiar with these challenges decided to join forces to deliver more French-language early childhood services across Canada.¹³²

To ensure the objectives of section 23 of the Charter are fully achieved, it is critical to add questions to the next census of population.¹³³ In response to a recommendation in the *Horizon 2018* report, the government announced a targeted investment of \$3 million over five years as part of the 2018–2023 Action Plan to “allow Statistics Canada to address the needs related to official languages of its numerous federal and community partners.”¹³⁴

However, the communities are hoping for more. The failure to ask the right questions increases the risk of assimilation.¹³⁵ In Manitoba, it is estimated that the current number of rights-holders – only half of whose children attend French schools – would double if they were properly counted.¹³⁶ But there are solutions to this problem.

“The consequence of the systematic and intentional undercounting of children who have a parent with rights under section 23 of the Charter threatens the survival of Francophone communities outside Québec. ... The only way to enumerate all the children who have at least one parent with rights ... is to ask the required questions of 100% of the population. ... Francophone school boards and provincial governments need to know the number of rights-holders ... for every catchment area, because that is how they and, if necessary, the courts, determine the numbers that warrants [sic] rights.”

Conseil scolaire francophone de la Colombie-Britannique, Brief, 12 February 2018, paras. 36, 43 and 46.

Francophone organizations are requesting that the Act expressly require Statistics Canada to enumerate education rights-holders.¹³⁷ In its brief, the CSFCB offered a **draft amendment to the Act** to that effect.¹³⁸ The ACFA did the same.¹³⁹ While it did not take a position on the wording of these amendments, the QESBA reiterated that the Act should address this issue.¹⁴⁰

Extending the concept of rights-holders to other areas

The Act could extend the concept of rights-holders to the health care field by identifying those who have the right to receive health services in the official language of their choice.¹⁴¹

It could do the same thing in the culture sector, except that it would recognize the right to culture *by, for and with* official language minority communities.¹⁴² The goal would be to establish benchmarks for provision of services and accountability.



Representatives from World Trade Centre Winnipeg, the Economic Development Council for Manitoba Bilingual Municipalities and the Association of Manitoba's Bilingual Communities talk about the social, cultural and economic benefits of bilingualism at the public hearings held in Manitoba on February 15, 2018.

Mechanisms necessary to ensure full implementation of the Act

One of the key findings from the public hearings was the need to ensure the full implementation of the Act. The communities stated that this goal will not be achieved unless the necessary mechanisms are put in place. They argued that the Commissioner of Official Languages is a large part of the solution. The communities proposed a number of options for strengthening the Commissioner's role in their affairs. Court remedies also have a role to play, as the courts can order remedies for violations of communities' rights. Another key proposal is to review the Act's coordination mechanisms. The communities again brought up the issue of the lack of accountability, this time asking that it be a

requirement in the Act. Finally, the witnesses said that inconsistencies across the various parts of the Act must be fixed.

Powers of the Commissioner of Official Languages

The powers of the Commissioner of Official Languages are set out in parts IX and X of the Act. The communities believe this office is vital. Above all, they would like to see concrete solutions to the systemic problems the Commissioner raises year after year. However, they do not all agree on the type of measures needed to improve the situation.

Advancement role

Under subsection 56(1) of the Act, the Commissioner has a duty to “take all actions and measures within the authority of the Commissioner with a view to ensuring recognition of the status of each of the official languages ..., including ... the advancement of English and French in Canadian society.” Some witnesses emphasized the need to strengthen this advancement role.¹⁴³ The goal is to foster a culture of implementing the Act, which could lead to changes in behaviour within the federal government and elsewhere.¹⁴⁴ An English organization from Quebec proposed including an arbitration process in the Act to avoid lengthy legal proceedings arising from the Commissioner’s handling of complaints.¹⁴⁵ A representative of community media made a similar suggestion to make it easier to find solutions and to give the Commissioner a more strategic role.¹⁴⁶

“We believe that by furthering dialogue among community stakeholders and the key departments, this type of more strategic role would allow us to have a much more harmonized and productive approach. So that is an idea we had, and we still believe in it.”

Linda Lauzon, Association de la presse francophone, Evidence, 19 March 2018.

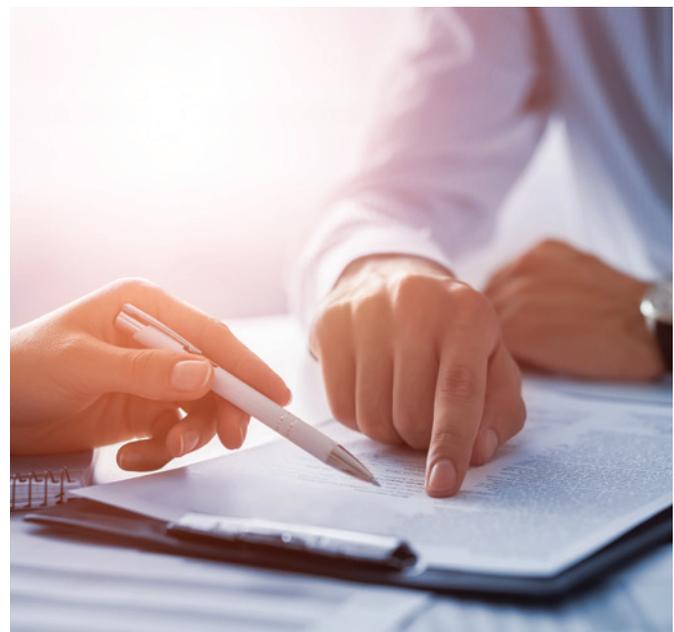
Oversight role

To perform the duties of the office, the Commissioner has an investigative power and a recommendation power. Some believe that the Commissioner should be given the power to impose sanctions on federal institutions that fail to comply with the Act. These sanctions could consist of orders, operational penalties, fines, administrative monetary penalties and enforceable agreements.¹⁴⁷ These proposals are consistent with those advanced by young Canadians.¹⁴⁸ Others favoured a more moderate approach that strikes a balance between offering incentives and the Commissioner taking disciplinary actions.¹⁴⁹

The FCFA has a very clear position on ways to strengthen the Commissioner’s oversight role. The organization called the current oversight framework archaic.¹⁵⁰ According to the FCFA, an amended Act must:

- extend the Commissioner’s jurisdiction to all federal legislation that affects official languages;
- set a clear deadline, once a complaint is filed, for submitting the investigation report, and make these reports public once the investigation is closed;
- protect complainants from reprisals; and
- better coordinate the Commissioner’s investigative work and the Treasury Board’s oversight role to ensure the compliance of federal institutions and to intervene when necessary, before matters go to court.¹⁵¹

In addition, the ACFA said that the Act must confirm the Commissioner’s broad authority over all matters relating to the rights, status and privileges of official languages, regardless of the source.¹⁵² The organization further proposed that the Act prohibit the obstruction of the Commissioner in the exercise of his powers.¹⁵³ The ACFA’s brief contains two **draft amendments to the Act** that deal with these issues.¹⁵⁴



Reports that are more binding

The Commissioner reports the office's findings to Parliament regularly. Several witnesses called for more follow-up on the recommendations the Commissioner makes in these reports. The communities would like to see concrete solutions that address the systemic problems with the implementation of the Act. The FCFA believes the Act should do the following:

- specify how much weight federal courts should give to the Commissioner's reports; and
- require the government to respond publicly to the Commissioner's reports.¹⁵⁵

A community representative from Quebec underscored the importance of strengthening the Office of the Commissioner's role to protect the rights of the anglophone minority.

"It's not a piece of legislation understood as actively safeguarding language rights for English speakers in Quebec. Often the results of investigations or complaints that have been lodged, there are a number of recommendations but there is very little follow-up and real-time impact for the community members affected by those particular incidents. In that regard, for the [A]ct to have a bit more teeth behind it in terms of being able to act on some of those recommendations with a little bit more force would be helpful."

Rachel Hunting, Townshippers' Association, *Evidence*, 4 June 2018.

Appointment process

The most recent Commissioner of Official Languages appointment process elicited a great deal of commentary, and many are calling for a review of the relevant provisions of the Act. New Brunswick's *Official Languages Act* stipulates that a selection committee prepare a list of candidates for the position, a provision that is

not in the federal Act. The FCFA proposed adding wording to that effect in the Act, as well as a provision that involves the communities in the process.¹⁵⁶ Professor Foucher suggested specifying a maximum term to fill the position.¹⁵⁷ The *Société de la francophonie manitobaine* favoured putting responsibility for coordinating appointments in the hands of the Privy Council Office, which would work with a group of parliamentarians to ensure the independence of the process.¹⁵⁸

Court remedies

Court remedies are the ultimate tool for ensuring the implementation of the Act. Although the Act already regulates the process for proceedings before the Federal Court, multiple witnesses called for stronger measures. Some proposed that the Commissioner take the initiative of bringing legal proceedings more often, both as an intervenor and as an applicant.¹⁵⁹ The ACFA included in its brief **a draft amendment to the Act** that would encourage the Commissioner to bring matters before the courts.¹⁶⁰ Others believe the solution is to create an administrative tribunal that could take the following form:

- a division within the Human Rights Tribunal;
- a new Official Languages Tribunal; or
- a new administrative division within the Office of the Commissioner of Official Languages responsible for remedies and penalties.¹⁶¹

The jurisdiction of this administrative tribunal should extend to all federal legislation that affects official languages.¹⁶² The Federal Court would be empowered to review its decisions.¹⁶³ In addition to these suggestions, the FCFA would like the Act to include a non-exhaustive list of recognized court remedies, such as declaratory relief and orders for damages.¹⁶⁴ Anglophones in Quebec also support the creation of this type of tribunal.¹⁶⁵

“Clearly, the goal is to avoid going to court as much as possible, hence the importance of creating a tribunal, and making the work of the [C]ommissioner’s office more effective.”

Mark Power, Power Law, *Evidence*, 26 March 2018.

Horizontal coordination of the Act

The current lack of coordination under the Act is one of the key criticisms levelled by the communities. They believe that changes are needed in two respects. First, the Act must designate a central agency responsible for its horizontal coordination across the federal government. Second, the Act must set out the responsibilities of ministers and deputy ministers. The purpose of these measures is to ensure federal institutions implement the Act much more consistently.

A central agency

The witnesses asked that a central agency be tasked with implementing the Act. In its brief, the FCFA provided detailed proposals for revamping the roles of the Privy Council Office and the Treasury Board in a modernized Act.¹⁶⁶ The witnesses argued that the coordination of the implementation of Part VII – currently carried out by the Minister of Canadian Heritage – should be strengthened. With the support of other francophone organizations, the FCFA took a very clear position by calling for this responsibility to be transferred to the Treasury Board, which would be supported by a minister of state.¹⁶⁷ Several provincial organizations, including the *Assemblée de la francophonie de l’Ontario*, agreed.

“Modernizing the Official Languages Act is the perfect opportunity to make Treasury Board responsible for the implementation of the [A]ct. This federal institution has the tools to play that role. It is a central agency established under the Financial Administration Act that is responsible for managing government affairs by applying policies and programs and managing budgets. It has a more transparent framework than that of the Privy Council Office since it is established in a statute. It already has expertise in the official languages.”

Carol Jolin, *Assemblée de la francophonie de l’Ontario*, *Evidence*, 16 April 2018.

However, an organization from New Brunswick differed somewhat.

“Treasury Board is already responsible for parts IV, V and VI, and it would be possible to do so through a regulatory approach with respect to Part VII. Perhaps the current problems stem more from a lack of political commitment by successive governments The Act’s provisions, as forward-looking and detailed as they may be, will never be able to replace the strong leadership needed from the Privy Council Office, Treasury Board and all government departments in achieving the Act’s objectives.”

Association francophone des municipalités du Nouveau-Brunswick, *Brief*, April 2018, p. 3.

The QCGN is not firmly behind its francophone counterpart’s position, but the group nonetheless supports the idea of a clearer hierarchy of responsibilities.¹⁶⁸ Other organizations proposed strengthening the existing powers of the Minister of Canadian Heritage or transferring this responsibility to the Privy Council Office.¹⁶⁹

“[W]e would like to be able to go to a body that is charged with making sure that the law is effectively enforced.”

Alpha Barry, Conseil des écoles fransaskoises, *Evidence*, 12 February 2018.

The former Interdepartmental Partnership with Official Language Communities, in effect from 2000 to 2008, provided concrete benefits for the communities’ vitality by encouraging partnerships between federal institutions, and some witnesses said it offers a model for the future.¹⁷⁰ The evidence shows the need to invest a central agency with horizontal coordination powers across all federal institutions, as well as oversight powers.¹⁷¹ The central agency would be responsible for managing the 2018–2023 Action Plan; this would not be left to the Minister of Canadian Heritage, as is the case now.¹⁷² An oft-cited example was New Brunswick’s *Official Languages Act*, which makes the premier responsible for implementing it.¹⁷³

Responsibilities of ministers and deputy ministers

Ministers and deputy ministers play an essential role in achieving the objectives of the Act. Without their leadership, efforts on the ground are often useless. Yet the Act assigns no specific responsibilities to them, aside from the Minister of Canadian Heritage and the President of the Treasury Board, who are tasked with implementing certain aspects of the Act.¹⁷⁴ In August 2018, the federal government had issued an order to transfer from the Minister of Canadian Heritage to the Minister of Tourism, Official Languages and La Francophonie the powers, duties and functions under the Act. This change has not been enshrined in the Act.¹⁷⁵

A Network of Official Languages Champions exists, but those who serve as champions are rarely members of senior management. Hence, the associated responsibilities are seen as incentive-oriented rather than compliance-oriented.

Experience has shown that leadership in official languages cannot be limited to a few individuals. That is why the communities are constantly calling for a more specific framework to govern the responsibilities of those who hold the most senior positions. For deputy ministers, this could take the form of performance contracts whose terms would be set out in the Act.¹⁷⁶

Ontario’s *French Language Services Act* includes such a provision in subsection 13(4).

In recent years, a number of powers have been delegated to the deputy heads of federal institutions. Some witnesses said the official languages obligations of senior officials need to be prescribed.¹⁷⁷ Clear objectives could be included in ministers’ mandate letters to measure results and ensure accountability.¹⁷⁸ The incumbents of these positions set the example for their employees. They should be required to foster a work environment in which all staff can use the official language of their choice. The Act is silent on this issue. Year after year, the reports of the Commissioner of Official Languages show that employees are not sufficiently informed about their rights and obligations. The FCFA went so far as to say that upholding language rights is an obligation that should extend to public service unions so that they can protect the language-of-work rights of their members.¹⁷⁹ Professor Foucher believes the Act should clearly take precedence over collective agreements.¹⁸⁰

Accountability

It is generally recognized that the creation of an accountability framework would help better implement the Act. This framework would entail the development of appropriate accountability instruments: clear governance measures, performance targets and oversight mechanisms. Accountability problems have been a recurring theme at the Senate Committee’s hearings for years. In this study, the communities called for including these obligations in the Act itself so that the desired outcomes are measurable and seen in tangible ways on the ground.¹⁸¹

Transfer payments

Some witnesses suggested attaching official languages–related conditions to federal transfers to the provinces and entrenching these obligations in the Act and other relevant federal legislation.¹⁸² The recommendations made include the following:

- **regarding education:** adding a part to the Act on federal–provincial/territorial education agreements to regulate and clarify the accountability obligations and the language obligations to be included in these agreements;
- **regarding literacy:** more systematically taking into account francophone communities’ needs in transfer payments to avoid situations such as the elimination of literacy organizations’ core funding or persistent inequalities in the services provided across the country; and
- **regarding early childhood education:** strengthening the language provisions in agreements under the *Multilateral Early Learning and Child Care Framework*, which specifies that agreements with the provinces and territories must take into account “the unique needs of French and English linguistic minority communities.”¹⁸³

Witnesses discussed applying a community development lens to all transfer payments from the federal government to the provinces and territories.¹⁸⁴ Francophone parents want the federal government to dedicate some of its program funding to the communities.¹⁸⁵ This already happens in the field of French-language television production, and it has had a dramatic effect on the communities that the government could replicate in other areas.¹⁸⁶

Performance indicators and targets

To determine whether a particular program affects the communities’ development, clear targets and performance indicators need to be established at the outset. Not all federal institutions do so when developing their programs or policies. The communities are therefore calling for improvements in this area. Arts and culture organizations spoke about the need to improve the accountability of federal institutions, as they reported noticing a lapse in recent years, particularly on the part of the Canada Council for the Arts, CBC/Radio-Canada and Canadian Heritage’s Canada Book Fund.¹⁸⁷ An economic development organization asserted that the Act could support the creation of performance indicators to ensure that programs are effective.¹⁸⁸

Disclosure and tracking of spending

The communities often have trouble tracking the spending that is intended for them, frequently because the amounts are not disclosed. This problem has been apparent in the education sector for decades. The communities want the federal government to do more when it works with the provinces and territories.

“The federal government should require a report at the end of the year to find out where the money for official languages went, how much money was allocated, and for how many children. Some provinces are doing a good job. ... It is not the case across the country”

Jean Lemay, Fédération nationale des conseils scolaires francophones, *Evidence*, 12 February 2018.

Manitoba’s Minister responsible for Francophone Affairs recognized this challenge and expressed a willingness to discuss potential solutions.¹⁸⁹

In addition, federal institutions that do report on their official languages performance submit vague reports based on self-evaluations. There is an urgent need for corrective and follow-up measures.¹⁹⁰ The changes made to the reporting process – which has run on a three-year cycle since 2011–2012 – have raised concerns.¹⁹¹ In June 2018, the Commissioner of Official Languages recommended that Canadian Heritage and the Treasury Board review these assessment tools and make the changes necessary to provide a more accurate overview of the situation in the federal government.¹⁹²

Consistency across the various parts of the Act

The parts of the Act each have their own objectives. Yet the evidence reveals that they cannot be interpreted in isolation. The current Act does not include an interpretation mechanism that recognizes the links that strengthen each of the parts, but such a provision could be added.¹⁹³ The organizations from Quebec called for improvements in this regard for the purpose of implementing parts IV, V and VI.¹⁹⁴



Senate Committee members during a tour of the Centre culturel franco-manitobain, the Théâtre Cercle Molière and the Centre du Patrimoine in Winnipeg on February 14, 2018.

Other issues

The communities identified other issues that could be addressed in the modernization of the Act. While some of them are, strictly speaking, beyond the scope of the Act, they deserve due consideration.

Public policy implementation

A modernized Act could be accompanied by a series of public policies designed to build the capacity of organizations and align their efforts

with those of the federal government to better meet the Act's objectives. These additional tools would support Canada's francophone communities and linguistic duality, and help develop measures to combat assimilation.¹⁹⁵ Canada's francophone post-secondary institutions could benefit from these policies, as explained by a stakeholder from the education sector.

“[T]he most important change that we recommend is that a new public policy on French-language post-secondary education be adopted because French-language education is the key to respect for and the permanence of the official languages across the country. That public policy would be designed to increase the capacity of ... colleges and universities ... in carrying out their twofold mandate and to expand their ability to train more professionals capable of providing services in both official languages in health, justice, business, early childhood and other fields.”

Raymond Th  berge, Consortium national de formation en sant  , *Evidence*, 6 November 2017.

Official languages as a 21st-century skill

As the young Canadians did during the first phase of this study, the communities called for the official languages to be recognized as an essential 21st-century skill. Some organizations are already leading the way in this area.

“First, we wanted the World Trade Centre Winnipeg to be fully bilingual and all documents to be published in both languages on our website or elsewhere. Second, we wanted the working language here in Winnipeg, Manitoba, to be French. Third, we wanted half of the board of directors to be appointed by the [Agence nationale et internationale du Manitoba], so half of the board would be francophones and the other half anglophones. This helped standardize bilingualism and the Francophonie in Manitoba. ... [I]f it matters to us and we prove that it is truly an essential skill, people start to understand. And that is why our immersion schools are overflowing.”

Mariette Mulaire, World Trade Centre Winnipeg, *Evidence*, 15 February 2018.

Section 55 of the Charter

The *Constitution Act, 1867*, was enacted by the United Kingdom in English only. The federal and provincial governments recognized this problem and adopted a specific provision – section 55 of the Charter – to require the preparation of a French version of the 1867 Constitution and other related constitutional texts. Once section 55 is implemented, and the English and French versions of the constitutional texts are enacted, they will have equal force of law. Yet this official French version still does not exist. In recent years, many have asked the federal government to take the necessary corrective measures. The FCFA reiterated that request in its brief to the Senate Committee and proposed that this requirement be included in the Act.¹⁹⁶

Boundaries of electoral districts

Since 2012, the *F  d  ration acadienne de la Nouvelle-  cosse* has been waging a battle to protect certain Acadian electoral districts at the provincial level. This issue was making headlines throughout the Senate Committee’s public hearings. And this is not the first time that the representation of the interests of francophone minority communities has been raised during the drawing of electoral districts’ boundaries.

At the federal level, the Federal Court recognized in 2004 that the needs of these communities had not been taken into account during a redistricting in New Brunswick. The court ordered the re-establishment of two Acadian federal ridings.¹⁹⁷ The FCFA suggested in its brief that the Act take the needs of the communities into account during the drawing of boundaries of federal electoral districts.¹⁹⁸



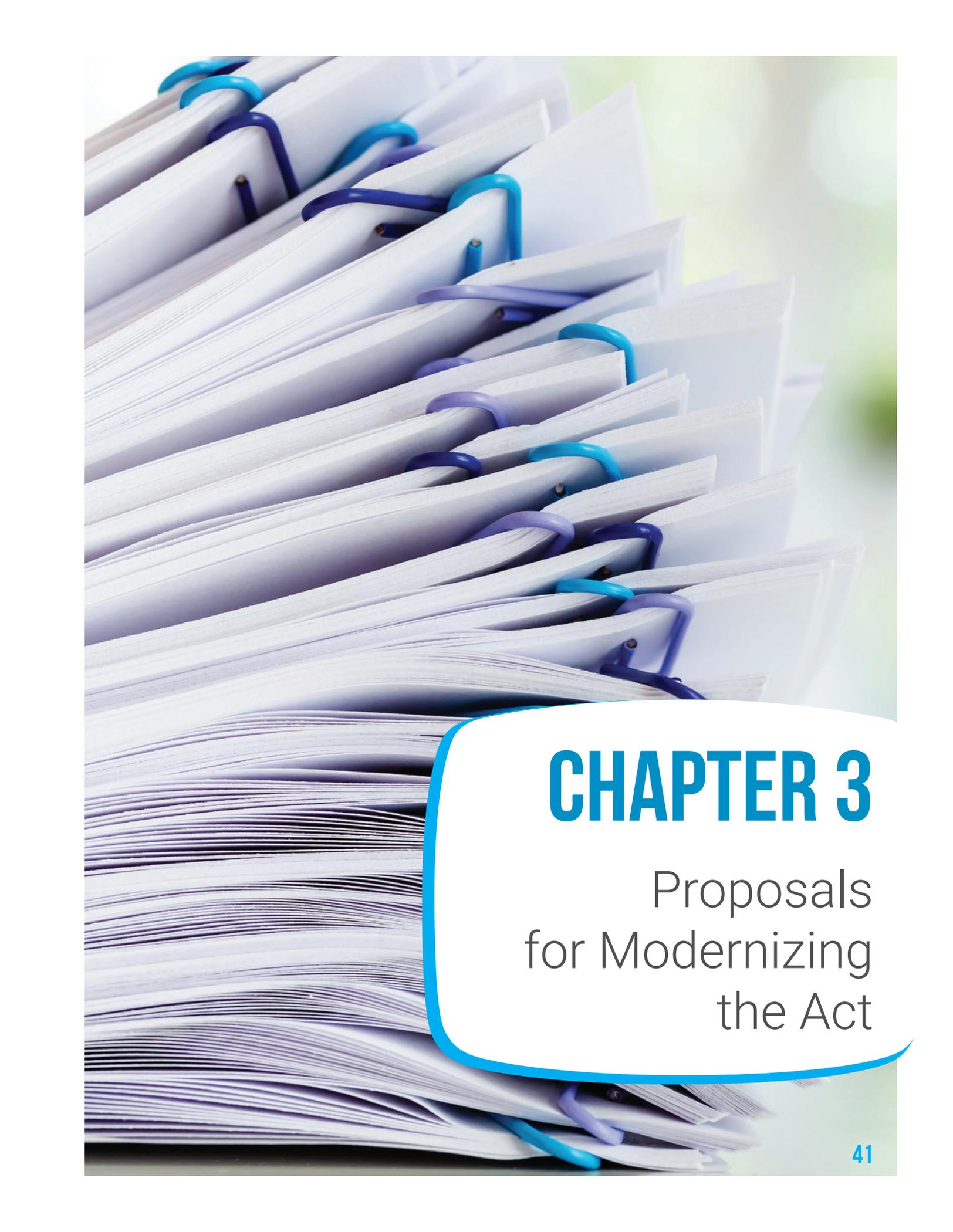
Obligations of federally regulated private-sector businesses

Witnesses proposed that the Act be amended to apply to federally regulated private-sector businesses in Quebec. The federal government has already released a study on this issue.¹⁹⁹ The QCGN and its members argued that the provisions of Part IV of the Act should apply to banks, airlines, telecommunications firms and interprovincial transportation companies, which are already subject to federal Regulations.²⁰⁰

“In addition to filling the legislative void in Quebec, this approach would have much farther-reaching consequences for official language minorities across Canada. It would extend the language rights under the Official Languages Act to thousands of workers within federally-regulated businesses across the country. ... Further, it would also create a right to services in the minority language for the services provided by federally-regulated businesses in every province. As such, it is a “win” for both French and English in Quebec, and a win for French-speaking minority language communities across the country.”

Quebec Community Groups Network, *Brief*, 28 May 2018, para. 87.

Professor Foucher made a similar suggestion, explaining that regions outside Quebec where there are concentrations of francophones could be targeted to strengthen the presence of French in those areas.²⁰¹ In addition, he proposed extending the obligations in Part IV to all airlines, not just Air Canada, as is currently the case.²⁰²



CHAPTER 3

Proposals
for Modernizing
the Act



Members of the Senate Committee visit the Canadian Museum for Human Rights on February 14, 2018.

Once again, the Senate Committee heard a number of proposals to bring the Act into the 21st century, which are outlined in this third chapter. Official language minority communities want the federal government to reconsider the Act on various fronts by:

- reviewing the preamble and purpose of the Act;
- demonstrating leadership at the highest levels;
- better regulating the provision of services to the public;
- rethinking the language of work requirements;
- ensuring equitable representation of anglophones and francophones in the federal public service;
- giving priority to measures that strengthen the vitality of the communities;
- reviewing the Act's horizontal coordination and implementation mechanisms;
- strengthening the powers of the Commissioner of Official Languages;
- facilitating legal remedies and the advancement of language rights; and
- amending the Act periodically.

Chapter 3 identifies points that will help shape the Senate Committee's final report.

Review the preamble and purpose of the Act

Currently, the preamble to the Act gives 10 statements that provide context for the implementation of the Act, but they have not been reviewed since 1988. Since then, the socio-demographic situation has changed. Various decisions handed down by the courts have helped advance language rights, but the current Act does not reflect these advancements. Proposed changes to the preamble included adding the following new commitments:

- to mobilize all Canadians, especially the linguistic majorities in Canada and newcomers, to promote the values of bilingualism and linguistic duality, of which the communities are a cornerstone;
- to apply the Act and its objectives horizontally, while ensuring that other federal legislation respects its principles;
- to focus more on the enhancement of the vitality of the communities and the results to be achieved in that regard;
- to enshrine the obligation to consult the communities;
- to codify the principles recognized in case law, such as the right to school management, a broader and purposive interpretation of language rights, services of equal quality, substantive equality and the protection of minority rights;
- to reflect on the major historical events that led to English and French becoming Canada's official languages;
- to affirm the importance of arts and culture and community media as elements of communities' vitality;
- to recognize French as a minority language in Canada and North America; and
- to recognize the unique constitutional status of New Brunswick.²⁰³



Senator René Cormier chairs the public hearings on February 15, 2018 in Winnipeg.

The communities want the purpose section of the Act, which currently contains three statements, to be reinforced. In their opinion, there is a clear gap between its objectives – which are ambitious and well-intentioned – and how they are enforced on the ground. They want the federal government to:

- reaffirm the place of both official languages in an increasingly diverse Canada;
- enshrine its commitment to upholding the values of bilingualism and linguistic duality; and
- codify a principle of interpretation of the Act that is compatible with existing case law.²⁰⁴

Demonstrate leadership at the highest levels

Communities believe that the Act cannot be fully implemented unless an example is set at the highest levels. Official languages must be part of the decision-making process and must be one of the conditions to be respected from the top down. The communities have suggested three ways to accomplish this.

Make bilingualism a condition of appointment for Supreme Court judges

Official language minority communities requested amendments to Part III of the Act to include bilingualism in the mandatory criteria for selecting Supreme Court judges.²⁰⁵ This is not a new request. Since 2008, no fewer than seven bills have been tabled in Parliament to require that Supreme Court judges must understand both official languages – Bill C-411 is the most recent iteration.²⁰⁶ It is similar to a proposal made by young Canadians.²⁰⁷ The House of Commons Standing Committee on Official Languages recommended amending subsection 16(1) of the Act in its December 2017 report.²⁰⁸ Despite the current government's commitment to only appoint judges to the Supreme Court who are functionally bilingual – a promise that has been kept so far – the communities want this practice stipulated in the Act. This would ensure that this practice would not end with a new government. The Senate Committee will examine this issue in more depth during the fourth phase of its study.

Engage the Privy Council Office in implementing the Act

The communities want the Privy Council Office to take on a stronger policy leadership role in the implementation of the Act.²⁰⁹ Some witnesses said that, in 2003, the government had delegated responsibility for the accountability and coordination framework to the Intergovernmental Affairs Secretariat within the Privy Council Office.²¹⁰ Horizontal coordination mechanisms were put in place at the highest levels. That is how the Committee of Deputy Ministers Responsible for Official Languages came to oversee the management of the Official Languages Program across the entire federal government for a time. The federal government could look to New Brunswick's legislation for inspiration. A modernized federal statute under the direct responsibility of the Prime Minister would provide the desired leadership, according to two francophone representatives.

"The Prime Minister should be responsible for embodying the spirit of the [A]ct, promoting it and ensuring its full implementation."

Jean-Luc Racine, Commission nationale des parents francophones, *Evidence*, 23 October 2017.

"[A] commitment from the people in power is needed to make it clear that it is a commitment that everyone has to observe."

Francis LaBossière, Santé en français, *Evidence*, 15 February 2018.

Modernize parliamentary and legislative mechanisms

Official language minority communities want the federal government to take on a leadership role within the Canadian federation, and it must be reflected in its own parliamentary and legislative mechanisms. In their opinion, the Act should:

- codify the requirement to provide document translation services to witnesses appearing before a parliamentary committee;
- provide that English and French versions of parliamentary debates and business be published side by side;
- extend the requirement to publish

texts in both official languages to regulations incorporated by reference in some circumstances;

- ensure that patents are published in both official languages;
- require community media to publish notices, announcements and other communications with the public in both official languages, ensuring that they are of equal quality and are published simultaneously and side by side;
- introduce provisions on electronic publications; and
- codify the principles applicable to bilingual legislation.²¹¹

Better regulate the provision of services to the public

The communities demand that the federal government review how it provides services to the public in English and French. The Senate Committee's study coincides with the federal government's promised review of the Regulations that address Part IV of the Act. The communities want the objectives in Part IV to be more consistent with the objectives in Part VII. They have identified two criteria that must govern services to the public: equal quality of service and active offer of service. They believe the changes resulting from a new regulatory framework must also be reflected in the Act.

Ensure the provision of services reflects community vitality

Francophone minority communities are in agreement that the offer of services to the public:

- be based on a more inclusive definition of "francophone";
- go beyond numbers and statistics; and
- be based on qualitative criteria and take into account a community's institutional vitality.²¹²

These recommendations align with the proposals heard from young people during the first phase of the Senate Committee's study.²¹³ The federal government could look to Ontario, Manitoba and Prince Edward Island for inspiration, as these provinces have already reviewed the definitions they use for offering services in French to the public.

Moreover, the Act must ensure that federal services are offered in both official languages across New Brunswick, in keeping with the provisions of the Charter regarding provincial services. Currently, the Regulations for Part IV – which are narrowly drawn and do not take into account the constitutional requirements of that province – encourage federal institutions in that province to do the bare minimum. Therefore, the Act must:

- recognize the unique constitutional status of New Brunswick with regard to services to the public.²¹⁴



Provide services of equal quality and regulate the active offer of service

Case law is clear in regard to respecting substantive equality and the need to offer services of equal quality in both official languages.²¹⁵ The communities want the Act to codify this principle.²¹⁶ The number of complaints filed with the Commissioner of Official Languages about services to the public – the highest number across all categories – shows that federal institutions have a poor track record in this area.

The Act already mentions the requirement for an active offer of service, but it has proven difficult to implement. Only policy instruments – which are not enforceable – make the underlying principles clear.²¹⁷ The communities want the Act to spell out the obligations under Part IV. They also want the impact of new technologies on the offer of service to the public to be taken into account, and in fact the federal government has committed to including this aspect in the new version of the Regulations.

“We could easily envision a Government of Canada whose offices were all designated as bilingual, where all Canadians had access to technology-enabled in-person service no matter where they lived.”

Christian Monnin, Société de la francophonie manitobaine, Evidence, 15 February 2018.

This is a suggestion made by the FCFA in its brief, in which it asked that:

- the Act take into account technological advances that would allow all services to be offered to the public in both official languages, except in exceptional circumstances.²¹⁸

Review the regulatory framework and amend the Act accordingly

At various times, bills that would strengthen Part IV of the Act have been referred to the Senate Committee, the most recent iteration being Bill S-209.²¹⁹ The communities want the modernized Act to incorporate these proposed changes.²²⁰ In practical terms, it will be necessary to ensure, once the government’s regulatory review process is complete, that the Act fully reflects those principles. An incomplete modernization process would only add to the risk of assimilation that already hangs over the communities. Some stakeholders believe that a review of the Regulations provides an opportunity to expand the scope to address other parts of the Act, such as Part VII.²²¹ At the time of writing, Parliament had not yet examined the proposed draft Regulations that had been promised for the fall of 2018. The Senate Committee will follow developments in this area closely. In its final report, it will note the consequential amendments to be made to the Act.

Rethink the language-of-work requirements

While the issue did not come up frequently during testimony, it seems clear that language-of-work requirements in a modernized Act must be rethought. The communities want Part V of the Act to reflect today's realities and the needs of public servants on the ground. To that end, the communities have proposed modernizing the list of designated bilingual regions and more clearly defining the resulting requirements through regulations.

Modernize the list of designated bilingual regions

The list of designated bilingual regions for language of work has not been reviewed since 1977. Only public servants in designated bilingual regions can work in the official language of their choice. In addition, bilingual public servants who work outside of designated bilingual regions have difficulty maintaining their language skills because they do not have access to adequate language training. The communities are in favour of:

- broadening the definition of “bilingual regions,” including the possibility of extending it to the entire country; and
- having public servants in all regions of Canada use both official languages more actively.²²²

Furthermore, the obligations in Part V “need to be able to account for digital technology and modern work practices such as virtual work teams.”²²³ Virtual collaboration between public servants in various regions is increasing, and therefore the concept of designated bilingual regions is becoming increasingly obsolete.²²⁴

Consider making regulations

While francophone minority communities did not specifically say that the federal government should make regulations to govern the obligations under Part V – even though section 38 provides for this possibility – it became clear from their testimony that there needs to be better oversight of the Act's implementation through clear, well-defined regulations. English-speaking communities in Quebec, on the other hand, said they want a modernized Act to make such regulations mandatory.²²⁵ Professor Pierre Foucher supported this suggestion, proposing that federal public servants' acquired rights for language of work be protected by legislation when offices are moved to regions that are not designated bilingual.²²⁶ The Senate Committee studied this matter in 2007 and recommended that language-of-work regulations be drafted.²²⁷

Ensure equitable representation of anglophones and francophones in the federal public service

A modernized Act must honour the commitment outlined in Part VI of the Act, ensuring an equitable representation of anglophones and francophones across the entire federal public service. These obligations are sometimes misunderstood. Francophone communities have requested that a clarification be added to the Act stating that language skills are an integral part of a merit-based

selection process.²²⁸ English-speaking communities in Quebec would like to see the Act redrafted to ensure that anglophones are fairly represented in federal institutions in Quebec's regions; they want regulations made to ensure the Act is respected in every province.²²⁹ Section 40 of the current Act provides that such regulations may be made, but the federal government has never done so.

Give priority to measures that strengthen the vitality of official language minority communities

The number one issue discussed with organizations representing the communities was how it is essential for the federal government to take on a true leadership role in the communities' development. Year after year, federal institutions have trouble meeting the objectives of Part VII of the Act. This leads to a poor understanding and piecemeal application of their obligations. The communities insist that the government prioritize measures that strengthen their vitality. They have proposed five ways to do so.

Define vitality criteria clearly

Without well-defined vitality criteria, the current objectives of the Act are difficult to achieve on the ground. Official language minority communities want the federal government to clearly define the key concepts of the Act and determine the factors that contribute to their vitality. This includes:

- defining the terms “vitality,” “development,” “positive measures,” “substantive equality,” “consultation,” “active offer,” “institutional vitality” and also the concept of “by and for,” while ensuring that the definitions incorporate input from the communities;
- establishing performance indicators so that the achievements of federal institutions can be measured; and
- providing for specific measures to counteract assimilation, particularly by outlining the federal government’s obligations to support immigration in the communities, and by including measures that consider New Brunswick’s demographic balance.²³⁰

Provide the tools communities need to develop and enhance their own vitality

The current legislative framework appears to be unable to meet the needs and expectations of the communities, as demonstrated by the results of a recent case the francophone community in British Columbia brought before the Federal Court.²³¹ The communities were hopeful that the amendments made in 2005 to Part VII of the Act would make a difference, but, as the FCFA mentioned in its brief, their optimism was short-lived.

“Unfortunately, the legislature had underestimated the inertia of federal institutions. To date, this legislative amendment has still not been implemented, having neither given the Department of Canadian Heritage the necessary tools to ensure that it was, nor centralized responsibility for its implementation with the Treasury Board, the only federal institution capable (if it wants to) of exercising enforcement powers under the [Act].”

Fédération des communautés francophones et acadienne du Canada, Brief, 26 March 2018, para. 18.

The communities want to be provided with the tools they need to develop and enhance their own vitality, which includes:

- reinforcing the requirement to coordinate horizontally to implement Part VII of the Act and transferring this responsibility to the Treasury Board;
- ensuring the Act contributes to better supporting the entire education continuum;
- considering adding new parts to the Act on education, health and other sectors that are key to the communities’ development;

- ensuring federal programs that support the implementation of the Act are aligned with communities' needs;
- making it mandatory to consult with the communities, represented by their school boards, before a federal institution can dispose of any real property assets; and
- including in the Act a requirement that Statistics Canada enumerate rights-holders under section 23 of the Charter.²³²

Create an advisory board and make consultation mandatory

The communities are unwavering: the Act must provide for effective, proactive and ongoing consultation mechanisms, as its objective is to ensure their vitality. In other words, their partnership with the federal government needs to be redefined. The communities therefore made the following recommendation:

- to create a communities' advisory board that would ensure the communities are consulted.²³³

The federal government can look to Manitoba's legislation as an example: it provides for an advisory council and recognizes in its principles the contribution the francophone community has made to the province.

Adapt to the circumstances of each community

The Act must allow for flexibility in its implementation. A winning solution for an urban community may not work in a rural or isolated community. Given that each province has its own legislative context, a measure that works for a francophone community outside Quebec might not work for an English-speaking community in Quebec. In short, witness testimony showed that the Act must take a contextual approach that is tailored to the unique circumstances of each community and region. Francophone minority communities requested that:

- federal initiatives take their needs into account, keeping in mind that these needs may vary from one community to the next, and that New Brunswick's unique constitutional status be recognized in the Act.²³⁴



English-speaking Quebeckers qualified this request by saying that the Act must seek the equality of both English and French; some said there should be no distinction in how the two official language minority community groups are treated.²³⁵

Ensure regulations are made

In 2010, the Senate Committee published a report on the implementation of Part VII subtitled "We Can Still Do Better." At the time, members of the Senate Committee did not recommend that the federal government make regulations, as some witnesses feared that overly restrictive regulations would limit the scope of Part VII. Justice Canada added that there was no need to take that route until the courts had addressed the interpretation of that part of the Act. But that time has now come. In the decision it handed down in May 2018, the Federal Court confirmed that the lack of regulations was seriously hampering the implementation of Part VII of the Act.²³⁶

Even before this decision was handed down, the communities had been strongly insisting that regulations be made, in consultation with the communities, so that Parliament's intent would be fully respected. The late Senator Jean-Robert Gauthier – who was an active member of the Senate Committee and who worked tirelessly to make Part VII of the Act enforceable – would have said not that the government “**can** do better”, but rather that it “**must** do more.” The communities believe that it is essential to make regulations. The regulations must:

- › define the key principles of Part VII to help communities take ownership of their development;

- › include new development sectors, as long as they are associated with clear, specific performance indicators with a defined timeline;
- › outline formal consultation mechanisms based on a true partnership between the communities and the federal government to draft a social project that addresses the remedial nature of language rights; and
- › be subject to periodic review.²³⁷

Review the Act's horizontal coordination and implementation mechanisms

Ensuring that the objectives of the Act are met and regulating its implementation require an overall vision and new horizontal coordination mechanisms. The communities have proposed four solutions to address these issues.

Increase departmental responsibilities

The communities want to bolster the responsibilities outlined in the Act and add new ones. They want the language used in the Act to be changed in several respects:

- › rather than stating the measures the President of the Treasury Board “may” take, the Act should be written to define the measures it “must” take;
- › the Act should recognize that the Treasury Board could have other responsibilities;
- › the Act should limit the delegation of responsibility to deputy heads;
- › the Act should reinforce the terminology used in Part VII to make it more restrictive;
- › the Act should define the obligations for ministers and deputy ministers with regard to its implementation; and
- › the Act should regulate the powers of other federal institutions, such as those that fall to the Department of Justice, Health Canada, the Department of Immigration and the Translation Bureau.²³⁸

In the meantime, the federal government conducted a Cabinet shuffle that has had an impact on current official languages responsibilities. It is too early to assess the relevance or effectiveness of this change, but witness testimony suggests that better defined ministerial oversight is needed to meet community expectations. The Senate Committee, in its final report, will make recommendations on how to address this issue in the Act.

Identify a single entity with overall responsibility for implementing the Act

The communities are critical of the federal government's leadership on official languages. They are calling for a single entity to be granted the power to ensure all the Act's provisions are implemented in all federal institutions. Currently, the responsibilities for implementing the Act are divided between Canadian Heritage and the Treasury Board, and they are not binding. In August 2018, the position of Minister of Tourism, Official Languages and La Francophonie was created, but the Act has not been changed to reflect this. Identifying a single entity with overall responsibility for implementing the Act seems even more difficult in the current context. In other words, there needs to be an institution that can take a critical look at the implementation of the Act and ensure that the other federal institutions respect the various parts of the Act.

However, there is no consensus as to which entity should be given that responsibility: the Treasury Board, the Privy Council Office or Canadian Heritage. Some witnesses even proposed creating a new entity directly responsible for official languages.²³⁹ The FCFA is against this idea to avoid an in-depth structural reform of the federal administration.²⁴⁰ Others are concerned that the responsibility for the Act would be diluted, especially if it was given to a rookie minister or if the department was granted inadequate resources.²⁴¹ The Senate Committee will examine the various options as part of the fifth phase of its study, which will address the issues specific to the powers and obligations of federal institutions with regard to the application of the Act.

Regulate transfer payments

Many witnesses called for regulating transfer payments. A large part of the federal government's commitment to official languages takes this form. The communities requested that:

- the support, intergovernmental collaboration and accountability mechanisms that are associated with the implementation of this part of the Act be strengthened;
- all federal–provincial/territorial agreements be required to be in both official languages;
- transfer payment mechanisms be codified in the Act, whether for education, health, childhood education or other;
- the communities be consulted and enforceable language clauses be included in these agreements; and
- it be mandatory to publish the contents of these agreements.²⁴²

Support the adoption of a government plan

Since 2003, the federal government has undertaken a number of initiatives to guide its efforts with respect to official languages. The first initiative was an action plan (2003–2008), followed by two roadmaps (2008–2013 and 2013–2018). It published its most recent set of five-year commitments – the 2018–2023 Action Plan – just as the Senate Committee was finishing its hearings. The federal government seems to have adopted a new approach that emphasizes more direct support for communities. This move was widely welcomed.

This type of government initiative does not have any kind of political or legislative authority. The communities want to have a reference to such a plan incorporated in a modernized Act to ensure it remains in place for years to come.

The FCFA proposed having the Privy Council Office develop this plan, to ensure that ministers and senior officials of federal institutions are accountable for its implementation and are required to consult with the communities.²⁴³ The plan should identify priority areas, such as the provision of services, immigration, education, health care, justice, culture, community media and the language of work.²⁴⁴

The federal government could learn from the example set by New Brunswick, which outlined the process for developing and managing a government plan in its revised provincial legislation in 2013. That said, the results published this year by the New Brunswick Commissioner of Official Languages show a simple section of legislation is not enough to ensure that its principles are respected; its implementation must be accompanied by leadership.²⁴⁵



Strengthen the powers of the Commissioner of Official Languages

Reviewing the powers of the Commissioner of Official Languages was a common refrain. Since former commissioner Graham Fraser's special report on Air Canada was published,²⁴⁶ people have been clamouring for the Commissioner's powers to be better defined. The communities are very hopeful that the Commissioner will be able to ensure their rights are fully respected. They want to broaden the circumstances in which the Commissioner can address the courts. The idea behind their various suggestions is the same: to strengthen the Commissioner's powers when federal institutions do not respect the Act and to put a stop to repeated violations of the Act. Therefore, the Act must:

- strengthen the Commissioner's role to promote, monitor and recommend, and

consider giving the Commissioner a new role as an arbiter or strategic facilitator with federal institutions that have many complaints filed against them;

- extend the Commissioner's jurisdiction to all federal statutes that have official languages ramifications and prohibit the obstruction of the Commissioner in the exercise of his powers;
- review the conditions associated with publishing and following up on the Commissioner's investigation reports and specify the weight they should be given in a court case;
- protect complainants from reprisals; and
- better manage the appointment process for this position.²⁴⁷



Facilitate legal remedies and the advancement of language rights

In addition to calling for increased powers for the Commissioner of Official Languages, the communities want the Act to include mechanisms to facilitate legal remedies and ensure the advancement of language rights. Four solutions were put forward.

Make the Act fully justiciable

Currently, Part X of the Act provides that a complainant may apply to the Federal Court if their language rights have not been respected. However, this right to recourse is limited to specific sections or parts of the Act. The communities have high hopes for the future. They want the Act to be fully justiciable (i.e., fully subject to legal remedy), so that all parts of the Act will be respected.²⁴⁸ They also want the Act's quasi-constitutional nature to be recognized: in other words, its primacy over all other federal legislation should extend to all parts of the Act.²⁴⁹

Create an administrative tribunal

The FCFA and the QCGN both want to see an administrative tribunal established that would be responsible for the application of the Act and all other federal legislation with significant impacts on official languages.²⁵⁰ The objective is to free the Commissioner from his double mandate of promoting and policing language rights.²⁵¹ This idea was brought forward when the Act was reviewed in 1988, but it was not implemented.

Codify the Court Challenges Program

Official language minority communities believe the Act should recognize the existence of the Court Challenges Program.²⁵² This program was first established in 1978, but as political winds changed, it was abolished and reinstated several times. The current government has committed to reinstating the Court Challenges Program and expanding its mandate to the justiciable parts of the Act. It is a victory for the communities, but they want to take it a step further and guarantee the long-term sustainability of this program. In their opinion, only statutory codification can achieve that step.

Adapt the justice system to meet communities' needs

Francophone minority communities want improvements to the administration of justice in both official languages. A modernized Act must:

- › clarify the federal government's responsibilities when it comes to matters relating to bankruptcy and family law – in this case, more specifically regarding divorces –, ensuring that every Canadian can use either English or French for these legal proceedings;
- › require third parties who provide services on behalf of the federal judiciary to offer litigants services in both English and French;
- › provide for regulations to outline the process to assess the language proficiency of judicial candidates;
- › require federal institutions to complete forms for federal court proceedings in the language of the litigant or in both official languages;
- › require federal court decisions to be published simultaneously online in both official languages;

- › outline a maximum time limit for decisions to be published in both languages; and
- › establish that the English and French versions of federal court judgments are equally authoritative, as is the case for legislative instruments.²⁵³

English-speaking communities in Quebec want the Act to:

- › improve access to services in English at every level of the justice system;
- › create an obligation to support bilingualism in courts and tribunals administered by the provinces; and
- › include a provision in Part VII that spells out the obligation to help the provinces and territories ensure access to the entire justice system in both official languages.²⁵⁴

The Senate Committee will examine the various possible solutions in greater detail when it looks at the perspective of the justice sector on the modernization of the Act.

Adapting the Act, now and in the future

One of the points raised frequently during the hearings was the importance of reviewing the Act on a regular basis.²⁵⁵ This echoes a proposal made by young Canadians during the first phase of the study.²⁵⁶ Some communities thought it should take place every five years, while others were in favour of reviews every 10 years. The FCFA and the QCGN were both in favour of a 10-year review.²⁵⁷ Despite differences in their views, witnesses agreed on the importance of putting mechanisms in place to ensure the Act can evolve, now and in the future. In addition to adding a provision to that end in the Act, the FCFA wants the communities to be consulted as part of the review process.²⁵⁸ The federal government has examples it can follow, as legislation in New Brunswick, the Northwest Territories and Nunavut already contain such requirements.

CONCLUSION

Members of the Senate Committee would like to thank the official language minority communities for their generous participation in the second phase of its study on modernizing the Act. Over the past several months, representatives from these communities have demonstrated their passion for and dedication to linguistic duality, a fundamental part of Canada's social contract. Modernizing the Act is crucial to the future of our country, and it must take into account the needs and expectations of the communities who benefit from the Act's strengths but suffer as a result of its weaknesses every day. The Act makes clear commitments regarding their vitality and development, yet the results on the ground can leave something to be desired.

The principle of **linguistic duality** is at the heart of Canadian identity and recognizes that official language minority communities are an integral part of Canada's social contract. Linguistic duality is a core value that has social, cultural and economic dimensions for all Canadians.

The communities agree that the Act needs a major overhaul to reflect changes to society, technology and the legal system. They believe it is a top priority. By 2019, they plan to increase their representations to the federal government and the public to emphasize the importance of rethinking the Act. The sticking point for them is the lack of an overall vision to ensure the Act's objectives can be achieved and to govern its implementation. The FCFA is committed to drafting its own bill to fuel discussion in the public realm and help guide the work of legislators.

The Senate Committee was pleasantly surprised by the strong consensus among witnesses who appeared. The communities spoke with one voice, while also promoting the specific needs of their individual sectors of development. They showed a strong sense of solidarity.

The federal government can rest assured that the findings of this report are the result of a thoughtful, coordinated process. Many of the themes discussed by the communities overlap with what young people had to say when they appeared before the Senate Committee.

The solutions suggested by witnesses are becoming more focused from one report to the next. They are supported by briefs that are already suggesting draft sections to include in a future bill. The debate on modernizing the Act has led to unprecedented mobilization by stakeholders on the ground. People are passionate about this topic.

The communities have high expectations for a modernized Act. They are dreaming big, as their statements show, because it will affect their future and the future of their country.

"I would like my grandchildren not to have to fight all the time."

Marc-André Ouellette, Conseil scolaire francophone de la Colombie-Britannique, *Evidence*, 12 February 2018.

The federal government must take their input into account as it begins its review of the Act. The Senate Committee would like to congratulate the Prime Minister for making this commitment in June 2018. It hopes that the review of the Act will be a priority for the Minister of Tourism, Official Languages and La Francophonie, as suggested by her new mandate letter released in August 2018.

In the meantime, the Senate Committee will continue its work. It will table a final report in 2019 that incorporates the views expressed to date and includes specific recommendations for the federal government. The Senate Committee's recommendations will feature the proposals from the communities to modernize the Act, while also keeping in mind that the Act belongs to all Canadians.

APPENDIX A – WITNESSES

Name of Organization	Spokesperson(s)
Public Hearings in Ottawa - 16.10.2017	
As an individual	Pierre Foucher, Professor, Faculty of Law, University of Ottawa
Public Hearings in Ottawa - 23.10.2017	
Commission nationale des parents francophones	Véronique Legault, President Jean-Luc Racine, Executive Director
Association des collèges et universités de la francophonie canadienne (ACUFC)	Lise Bourgeois, Co-Chair of the ACUFC and President of <i>Collège La Cité</i> Lynn Brouillette, Acting General Director
Public Hearings in Ottawa - 06.11.2017	
Société Santé en français	Alain-Michel Sékula, Director Michel Tremblay, Executive Director
Consortium national de formation en santé (CNFS)	Raymond Théberge, Co-Chair of CNFS, Rector and Vice-Chancellor of the Université de Moncton Lynn Brouillette, General Director
Public Hearings in Ottawa - 04.12.2017	
Réseau de développement économique et d'employabilité	Sébastien Benedict, Manager, Government and Community Relations Roukya Abdi Aden, Manager, National Consultations
Public Hearings in Ottawa - 05.02.2018	
Alliance des producteurs francophones du Canada	Carol Ann Pilon, Executive Director
Regroupement des éditeurs franco-canadiens	Frédéric Brisson, Executive Director
Alliance nationale de l'industrie musicale	Benoit Henry, Executive Director

Name of Organization	Spokesperson(s)
<i>Fédération culturelle canadienne-française</i>	Martin Théberge, President Maggy Razafimbahiny, General Director Marie-Christine Morin, Assistant Director
Public Hearings in Ottawa - 12.02.2018	
<i>Fédération nationale des conseils scolaires francophones</i>	Roger Paul, Executive Director Jean Lemay, Member of the Executive Committee
<i>Conseil scolaire francophone de la Colombie-Britannique</i>	Marie-France Lapierre, Chair and Trustee, Fraser Valley Region Marc-André Ouelette, Vice-President and Trustee, Southern Vancouver Island Region
<i>Conseil des écoles fransaskoises</i>	Alpha Barry, Chair Hélène Grimard, Vice-Chair
Public Hearings in Ottawa - 26.02.2018	
<i>Réseau pour le développement de l'alphabétisme et des compétences</i>	Michel Robillard, Board member Gabrielle Lopez, Representative
Public Hearings in Ottawa - 19.03.2018	
<i>Association de la presse francophone</i>	Francis Sonier, President Linda Lauzon, Executive Director
As an individual	Marie Hélène Eddie, Doctoral student in sociology, University of Ottawa
Public Hearings in Ottawa - 26.03.2018	
<i>Fédération des communautés francophones et acadienne du Canada</i>	Jean Johnson, Chair Alain Dupuis, Executive Director Mark Power, Lawyer (Power Law) Beth James, Strategic Counsel (Power Law)
<i>Alliance des femmes de la francophonie canadienne</i>	Soukaina Boutiyeb, Executive Director
<i>Fédération des aînées et des aînés francophones du Canada</i>	Élizabeth Allard, Chair Jean-Luc Racine, Director General
Public Hearings in Ottawa - 16.04.2018	
<i>Assemblée de la francophonie de l'Ontario</i>	Carol Jolin, President Peter Hominuk, Executive Director
<i>Société de l'Acadie du Nouveau-Brunswick</i>	Joey Couturier, President Simon Ouellette, Board Member Ali Chaisson, Executive Director

Name of Organization	Spokesperson(s)
<i>Fédération acadienne de la Nouvelle-Écosse</i>	Marie-Claude Rioux, Executive Director
<i>Association canadienne-française de l'Alberta</i>	Albert Nolette, Vice-President Isabelle Laurin, Executive Director
Public Hearings in Ottawa - 23.04.2018	
<i>Association francophone des municipalités du Nouveau-Brunswick</i>	Luc Desjardins, President Frédéric Dion, Executive Director
Public Hearings in Ottawa - 07.05.2018	
Quebec English-Language Production Council	Kirwan Cox, Executive Director
English Language Arts Network	Guy Rodgers, Executive Director
Public Hearings in Ottawa - 28.05.2018	
Quebec Community Groups Network	James Shae, President Geoffrey Chambers, Vice-President Eva Ludvig, Director Sylvia Martin-Laforge, Director General
Quebec English School Boards Association	Jennifer Maccarone, President Marion Sandilands, Lawyer (Power Law)
Community Health and Social Services Network	Jennifer Johnson, Executive Director Russel Kueber, Manager of Programs
Public Hearings in Ottawa - 04.06.2018	
Regional Association of West Quebecers	Linton Garner, Executive Director
Townshippers' Association	Rachel Hunting, Executive Director
Public Hearings in Manitoba - 15.02.2018	
<i>Société de la francophonie manitobaine</i>	Christian Monnin, President Bintou Sacko, Director, <i>Accueil francophone</i>
<i>Centre culturel franco-manitobain</i>	Ginette Lavack, Director General
<i>Santé en français (Manitoba)</i>	Francis LaBossière, Chair Annie Bédard, Executive Director
<i>Fédération des parents francophones du Manitoba</i>	Brigitte L'Heureux, Executive Director
<i>Division scolaire franco-manitobaine</i>	Alain Laberge, Director General
As an individual	Gabor Csepregi, President, <i>Université de Saint-Boniface</i>

Name of Organization	Spokesperson(s)
Canadian Parents for French – Manitoba	Rena Prefontaine, President Krystyn Baranowski, Vice President Catherine Davies, Executive Director
<i>Union nationale métisse Saint-Joseph du Manitoba</i>	Pauline Hince, Metis Nation and Red River Metis grandmother Nancy Gouliquer, Elder
World Trade Centre Winnipeg	Mariette Mulaire, President and CEO
Association of Manitoba Bilingual Municipalities	Louis Tétrault, Executive Director
Economic Development Council for Manitoba Bilingual Municipalities	Louis Allain, Executive Director
Government of Manitoba	The Honourable Rochelle Squires, Minister responsible for Francophone Affairs Teresa Collins, Executive Director, Francophone Affairs Secretariat of Manitoba Fred Meier, Clerk of the Executive Council, Cabinet Secretary and Co-Chair of the Francophone Affairs Advisory Council

APPENDIX B – VISITS AND INFORMAL MEETINGS

Name of Organization	Spokesperson(s)
Visits and Informal Meetings in Manitoba - 14.02.2018	
Centre culturel franco-manitobain	<p>Ginette Lavack, Director General, <i>Centre culturel franco-manitobain</i></p> <p>Gilles Lesage, Director, <i>Centre du Patrimoine</i></p> <p>Jean-Marc Dalpé, Author</p> <p>Geneviève Pelletier, Director, <i>Théâtre Cercle Molière</i></p> <p>Ricardo Lopez Muñoz, Stage Director</p>
Bilingual Service Centre – St. Boniface	<p>Teresa Collins, Executive Director, Francophone Affairs Secretariat, Government of Manitoba</p> <p>Renelle Boissonneault, Manager, Bilingual Service Centres, Francophone Affairs Secretariat, Government of Manitoba</p> <p>Martin Bisson, Information Specialist, Bilingual Service Centre – St. Boniface</p>
Canadian Museum for Human Rights	<p>Angela Cassie, Vice-President, Public Affairs and Programs</p>
Visits and Informal Meetings in Manitoba - 16.02.2018	
Université de Saint-Boniface	<p>Gabor Csepregi, President</p> <p>Peter Dorrington, Vice-President (Academic and Research)</p> <p>Stéphan Dorge, University Secretary</p> <p>Stéfan Delaquis, Dean, Faculty of Education and Professional Studies</p> <p>Mélanie Cwikla, Director of Technical and Professional Programs</p> <p>Athalie Arnal, Director of Human Resources</p> <p>Christine Mahé-Napastiuk, Registrar</p> <p>Aileen Clark, Director of the Continuing Education Division</p> <p>Alexandre Brassard, Dean, Faculty of Arts and Faculty of Science</p> <p>Robert Simard, Director of Infrastructure and Security</p> <p>Louise Ayotte-Zarestski, Director, Alfred-Monnin Library</p> <p>Madeleine Baril, Acting Dean, School of Nursing and Health Studies</p> <p>René Bouchard, Vice-President (Administration and Finance)</p> <p>Denis Bernardin, Director, IT Services</p>
Festival du Voyageur	<p>Darrel Nadeau, Executive Director</p>

APPENDIX C – BRIEFS, PRESENTATIONS AND OTHER DOCUMENTS

Alliance des femmes de la francophonie canadienne, Francophone and Acadian Women: Central to the Official Languages Act, Brief submitted to the Standing Senate Committee on Official Languages, 9 April 2018.

Alliance des producteurs francophones du Canada, Consultations on the Action Plan for Official Languages: Brief, 8 January 2017.

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Alliance des producteurs francophones du Canada, Intervention dans le cadre de l'Appel aux observations sur la demande du gouverneur en conseil de faire rapport sur les modèles de distribution de programmation de l'avenir – Avis de consultation de radiodiffusion CRTC 2017-359, 13 February 2018. [AVAILABLE IN FRENCH ONLY]

Association canadienne-française de l'Alberta, A Modern Official Languages Act for a diverse Francophonie, Brief submitted to the Standing Senate Committee on Official Languages, 16 April 2018.

Association francophone des municipalités du Nouveau-Brunswick, Appearance before the Standing Senate Committee on Official Languages for Hearings on a Review of the Official Languages Act, April 2018.

Canadian Institute for Research on Linguistic Minorities, Official Languages (Communications with and Services to the Public) Regulations Review, Brief written by Éric Forgues, Josée Guignard Noël and Anne Robineau, December 2017.

Conseil des écoles fransaskoises, Concrete Proposals for Modifications of the Official Languages Act: Shielding the Role of the Federal Government in French-Language Education from Partisan Politics, Brief submitted to the Standing Senate Committee on Official Languages, 12 February 2018.

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APPENDIX D – NOTES

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- 2 *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773; *Thibodeau v. Air Canada*, [2014] 3 S.C.R. 340.
- 3 FCFA (26 March 2018), *Brief*, para. 154.
- 4 *Mahe v. Alberta*, [1990] 1 S.C.R. 342; *R. v. Beaulac*, [1999] 1 S.C.R. 768; *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3; *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217; cited in *Lalonde v. Ontario (Commission de restructuration des services de santé)*, [2001], 56 O.R. (3d) 577; *DesRochers v. Canada (Industry)*, [2009] 1 S.C.R. 194; *Association des parents de l'école Rose-des-vents v. British Columbia (Education)*, [2015] 2 S.C.R. 139.
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- 7 *Société de l'Acadie du Nouveau-Brunswick* [SANB], *Let's Finally Recognize the Specificity of New Brunswick in the Official Languages Act!*, Brief submitted to the Standing Senate Committee on Official Languages, 16 April 2018, paras. 6 and 38–42.
- 8 *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, S.N.B. 1981, c. O-1.1. This statute was repealed and replaced by *An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick*, S.N.B. 2011, c. 198.
- 9 SANB (16 April 2018), *Brief*, para. 27; OLLO, *Evidence*, 26 March 2018 (Mr. Alain Dupuis, Executive Director, FCFA; Mr. Mark Power, Lawyer, Power Law); OLLO, *Evidence*, 23 April 2018 (Mr. Luc Desjardins, President, *Association francophone des municipalités du Nouveau-Brunswick* [AFMNB]).
- 10 SANB (16 April 2018), *Brief*, paras. 60–70.
- 11 OLLO, *Evidence*, 6 November 2017 (Mr. Michel Tremblay, Director General, *Société Santé en français* [SSF]); OLLO, *Evidence*, 5 February 2018 (Ms. Carol Ann Pilon, Executive Director, *Alliance des producteurs francophones du Canada* [APFC]; Mr. Martin Théberge, President, *Fédération culturelle canadienne-française* [FCCF]); OLLO, *Evidence*, 15 February 2018 (Mr. Francis LaBossière, Chair, *Santé en français*).
- 12 FCFA (26 March 2018), *Brief*, para. 108; *Fédération acadienne de la Nouvelle-Écosse* [FANE], *Brief submitted to the Standing Senate Committee on Official Languages for the study of Canadians' Views about Modernizing the Official Languages Act*, 16 April 2018, paras. 14–15.
- 13 FCFA (26 March 2018), *Brief*, para. 152; Pierre Foucher, Professor, Faculty of Law, University of Ottawa, *Modernization of OLA*, Brief submitted to the Standing Senate Committee on Official Languages, 16 October 2017, p. 2.
- 14 Office of the Commissioner of Official Languages [OCOL], *Special Report to Parliament, Air Canada: On the road to increased compliance through an effective enforcement regime*, Ottawa, June 2016, p. 30.
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- 20 Canada (Commissioner of Official Languages) v. CBC, [2014] FC 849; Fédération des francophones de la Colombie-Britannique v. Canada (Employment and Social Development), [2018] FC 530.
- 21 Government of Canada, Guide for Federal Institutions on Part VII (Promotion of French and English) of the Official Languages Act.
- 22 OLLO Evidence, 4 December 2017 (Mr. Sébastien Benedict, Manager, Government and Community Relations, Réseau de développement économique et d'employabilité [RDÉE]); FCCF, Brief Outlining the Views of the Representative of Canadian Francophone Arts and Culture on Modernizing the Official Languages Act, Brief presented to the Standing Senate Committee on Official Languages, 5 February 2018, pp. 5–6; OLLO, Evidence, 26 March 2018 (Mr. Jean Johnson, Chair, FCFA; Mr. Alain Dupuis, Executive Director, FCFA); FCFA (26 March 2018), Brief, paras. 32–41, 65–76; Mark Power et al., Étude d'impact: De l'obligation des institutions fédérales de consulter les communautés linguistiques officielles en situation minoritaire, Impact study funded by the Language Rights Support Program, March 2015 [AVAILABLE IN FRENCH ONLY]; Conseil scolaire francophone de la Colombie-Britannique [CSFCB], For an Official Languages Act in Service of Minority French-Language Education, Brief submitted to the Standing Senate Committee on Official Languages, 12 February 2018, para. 16; Alliance des femmes de la francophonie canadienne [AFFC], Francophone and Acadian Women: Central to the Official Languages Act, Brief submitted to the Standing Senate Committee on Official Languages, 9 April 2018, pp. 5–6; OLLO, Evidence, 16 April 2018 (Mr. Carol Jolin, President, Assemblée de la francophonie de l'Ontario [AFO]).
- 23 Mahe v. Alberta, [1990] 1 S.C.R. 342; Arsenault-Cameron v. Prince Edward Island, [2000] 1 S.C.R. 3; Association des parents de l'école Rose-des-vents v. British Columbia (Education), [2015] 2 S.C.R. 139.
- 24 OLLO, Evidence, 6 November 2017 (Mr. Raymond Thériège, Co-Chair, Consortium national de formation en santé [CNFS]) and Vice-Chancellor, Université de Moncton); OLLO, Evidence, 4 December 2017 (Mr. Sébastien Benedict, Manager, Government and Community Relations, RDÉE); OLLO, Evidence, 5 February 2018 (Ms. Carol Ann Pilon, Executive Director, APFC; Mr. Frédéric Brisson, Executive Director, Regroupement des éditeurs franco-canadiens [RÉFC]; Mr. Benoit Henry, Executive Director, Alliance nationale de l'industrie musicale [ANIM]); OLLO, Evidence, 15 February 2018 (Mr. Christian Monnin, President, Société de la francophonie manitobaine [SFM]; Ms. Ginette Lavack, Director General, Centre culturel franco-manitobain [CCFM]).
- 25 OLLO, Evidence, 26 March 2018 (Mr. Jean Johnson, Chair, FCFA; Mr. Alain Dupuis, Executive Director, FCFA); FCFA (26 March 2018), Brief, paras. 65–79; OLLO, Evidence, 15 February 2018 (Mr. Christian Monnin, President, SFM); OLLO, Evidence, 16 April 2018 (Mr. Carol Jolin, President, AFO).
- 26 OLLO, Evidence, 7 May 2018 (Mr. Guy Rodgers, Executive Director, English-Language Arts Network [ELAN]); QCGN (28 May 2018), Brief, para. 54; OLLO, Evidence, 28 May 2018 (Ms. Eva Ludvig, Director, QCGN); Townshippers' Association (TA), Brief, Modernization of the Official Languages Act, Brief submitted to the Standing Senate Committee on Official Languages, 4 June 2018, p. 4; OLLO, Evidence, 4 June 2018 (Ms. Rachel Hunting, Executive Director, TA; Mr. Linton Garner, Executive Director, Regional Association of West Quebecers (RAWQ)).
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- 28 Government response to the report of the Senate Standing Committee on Official Languages, Horizon 2018: Toward Stronger Support of French-Language Learning in British Columbia, November 2017.
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- 31 OLLO, *Evidence*, 16 October 2017 (Mr. Pierre Foucher, Professor, Faculty of Law, University of Ottawa).
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- 172 OLLO, *Evidence*, 6 November 2017 (Mr. Raymond Théberge, Co-Chair, CNFS, and President and Vice-Chancellor of the *Université de Moncton*; Mr. Michel Tremblay, Director General, SSF). Please note that according to the Privy Council Order No. 2018-1017, the Minister of Tourism, Official Languages and La Francophonie has taken charge of this file.
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