

Brief to the

**Expert Panel on Language of Work and Service  
in Federally Regulated Private Businesses**

**The Honourable Marlene Jennings, P.C. President  
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*March 30, 2021*

## Summary

Canada has two official languages and two official language minorities.

In its recent paper on official languages, *English and French: Towards a Substantive Equality of Official Languages in Canada*, the Government of Canada makes a legislative proposal to increase the use of French in federally regulated private enterprises. The paper outlines specific proposals to provide rights to work and rights to services in French – but not in English – in federally regulated private businesses in Quebec and in regions with a strong Francophone presence.

The Government of Canada’s proposal to grant language rights to one language group and not the other runs counter to the purpose of the *Official Languages Act* and offends the government’s constitutional obligation to ensure respect for English and French as the official languages of Canada. It also poses significant challenges for the substantive equality of the English-speaking minority in Quebec.

The Quebec Community Groups Network makes the following two recommendations to this Panel:

Recommendation 1: Any language rights in federally regulated businesses must apply to both English-speakers and French-speakers.

Recommendation 2: Any creation of language rights in federally regulated businesses must be done in an instrument other than the *Official Languages Act*.

### 1. *How did we get here? From consensus to confusion*

#### *The 2018 Consensus*

Federally regulated private businesses are not presently subject to any rules concerning the language of work and service.<sup>1</sup> In Quebec, this means that there is a class of workers not subject to either the *Official Languages Act* or the *Charter of the French Language*. For these workers, there is no legal right to work in French; nor is there a right for consumers to receive services in French. To fill this legislative void, attempts have been made in Parliament to extend the application of the *Charter of the French Language* to these federally regulated businesses.<sup>2</sup> These Bills suffered from two major flaws. First, they would have created “territorialized” federal official language obligations, wherein certain federally mandated language requirements would apply only in Quebec. Second, they would have created language rights for one official language group and not the other.

In their proposals for the modernization of the *Official Languages Act*, both the Quebec Community Groups Network (QCGN) and the Fédération des communautés francophones et acadienne du Canada

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<sup>1</sup> The exception being former Crown corporations such as Air Canada, Canadian National Railway, and NAV Canada, which are all subject to the *Official Languages Act*.

<sup>2</sup> See e.g. Bill C-455, [An Act to Amend the Canada Labour Code](#), 40th Parl, 3rd Sess, 2009 (first reading 6 October 2009 and reinstated from previous sitting on 40th Parl, 2nd Sess). This Bill would have harmonized the language requirements for federally-regulated businesses to those under Quebec’s *Charter of the French Language*.

(FCFA) proposed another—more constitutionally coherent—way to fill this legislative void. The consensus was to extend language of work and service obligations provided in the *Official Languages Act* to federally regulated businesses Canada wide.<sup>3</sup> The Senate Standing Committee on Official Languages partially adopted this proposal in its recommendations for a modernized *Act*.<sup>4</sup> In addition to filling the legislative void in Quebec, this approach would have created language rights for thousands of minority francophone workers within federally regulated businesses across Canada. It would have been a win for French- and English-speakers in Quebec, and for French-speaking minority language communities across Canada.

### *The Political Imperative*

In 2019 and 2020, there have been renewed attempts to apply Quebec's *Charter of the French Language* to federally regulated businesses. This political pressure comes from two directions. At the federal level, there is political interest to be seen as working with a popular provincial government in Quebec. The traditional lifespan of a minority Parliament has been reached, there is likely to be a federal election this year, and Quebec's seats are key to electoral success. And provincially, the Coalition Avenir Québec is under pressure to fulfill campaign promises to take measures to protect and promote the French language.

Bill C-254 is a private member's bill introduced by Mme. Julie Vignola (Bloc Québécois) on November 24<sup>th</sup>, 2020. It is similar to bills proposed in previous Parliaments by the BQ and NDP, which sought to amend federal legislation to permit the application of the *Charter of the French Language* in Quebec to federally regulated businesses.<sup>5</sup> These bills were unsuccessful because they were opposed by the Conservative and Liberal caucuses. This situation has changed.

In September 2010, Conservative leader Erin O'Toole met with Premier Francois Legault. In a news conference following that meeting, M. O'Toole said, "I think large federal institutions should respect the French language provision in Quebec. I think it's a question of respect and I understand the priority of protecting language, culture, and identity."<sup>6</sup> In subsequent messaging, 'federal institutions' was changed to federally regulated enterprises. This was a sea change in the Conservative Party of Canada's approach to official languages and opened the door in a minority House to C-254.

Provincially, there is all-party support to extending the *Charter of the French Language* to federally regulated businesses, and in August 2020, Minister Simon-Jolin Barrette announced that Quebec would

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<sup>3</sup> See [La FCFA passe à l'action : proposition d'un nouveau libellé de la Loi sur les langues officielles](#), 5 mars 2019, at paras 135, 168, 175; and [English-speaking Quebec and the Modernization of the Official Languages Act](#), Brief submitted to the Standing Senate Committee on Official Languages, May 18, 2018 at paras 82-87.

<sup>4</sup> See [Modernizing the Official Languages Act: The View of Federal Institutions and Recommendations](#). Senate Standing Committee on Official Languages, June 2019, at Recommendation 9.1: "Amend the *Official Languages Act* to extend the obligations regarding communications with and services to the public to federally regulated private carriers".

<sup>5</sup> 39<sup>th</sup> Parliament, C-482, 40<sup>th</sup> Parliament C-307, 41<sup>st</sup> Parliament, C-320.

<sup>6</sup> Morello, Vincenzo. *Conservative Leader Erin O'Toole said he will respect Quebec's secularism law*, Radio Canada International, September 15, 2020. <https://bit.ly/2PHSu0s> accessed on March 29, 2021.

take unilateral action to do so as part of a suite of reforms to defend and promote the French language.<sup>7</sup> This announcement coincided with a report by the Office québécois de la langue française, *Enquête sur les exigences linguistiques auprès des entreprises, des municipalités et des arrondissements de Montréal* which has been interpreted as proving a decline in French in Montreal. However, the report is more nuanced, and must be read and understood carefully.<sup>8</sup>

The challenge is that there are multiple conversations concerning language happening simultaneously using common terms. For Quebec politicians and media, the focus is on the proportional decline of the French mother-tongue population (the same type of decline is being experienced in the English mother-tongue population). Population growth in Quebec (and in Canada) is through immigration. Looking beyond first-generation immigrants, French is increasing as a language of use at home in Montreal. And as a language of service, it is remaining steady at 96 per cent. In other words, there is no evidence in the OQLF report that French as a language or use in the public sphere is declining in Montreal.<sup>9</sup> The purpose of Charter has always been to ensure that French remain *la langue publique commune*. In this regard, it has been an unequivocal success.

We also draw the panel's attention to Industry Canada's (as it was then known) 2013 report, *Language of Work in Federally Regulated Private Businesses in Quebec not subject to the Official Languages Act*, which concluded "that employees of federally regulated private-sector businesses in Quebec (not subject to the OLA) seem generally able to work in French in their workplaces."

We raise these matters to demonstrate that this is an intensely political matter, being driven by short-term calculations, not by the evidence.

#### *The 2021 Government of Canada Proposal*

In its recent paper on official languages, *English and French: Towards a Substantive Equality of Official Languages in Canada*, the Government of Canada makes a legislative proposal to, "[s]pecify a power to encourage federally regulated private businesses to promote the equal status of official languages in order to increase the use of French (active offer) as a language of work everywhere in the country (p.23)." The paper goes on to outline specific proposals to provide rights to work and rights to services in French in federally regulated private businesses in Quebec and in "other regions with a strong Francophone presence".

Pursuant to this paper, the Government has established this Expert Panel on Language of Work and Service in Federally Regulated Private Businesses. This Panel's task is to make recommendations on possible recourses for workers and consumers, the criteria for recognizing regions "with a strong Francophone presence outside of Quebec", and the choice of legislative and regulatory instruments to implement the Government's proposal.

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<sup>7</sup> Richer, Jocelyne. *Quebec to expand language law to federally regulated businesses*, Presse Canadienne, August 19, 2020. <https://bit.ly/3m0G8MQ> accessed March 29, 2021.

<sup>8</sup> Pratte, André. *Questioning whether French is in decline should not be heresy*, Montreal Gazette, November 27, 2020. <https://bit.ly/3rw8tff> accessed March 29, 2021.

<sup>9</sup> For an overview of this issue, see Jean-Pierre Corbeil's (Statistics Canada, Assistant Director) testimony at the House of Commons Standing Committee on Official Languages, March 9, 2021.

This Panel has been asked to “build on existing implementation mechanisms (federal and provincial) with respect to language of work and language of service.” In particular, the Panel has been asked to consider the possibility of establishing an administrative agreement with the Government of Quebec regarding the application of the new federal regime to businesses that choose to voluntarily obtain a francization certificate issued by the Office québécois de la langue française.

*The Government of Canada’s proposal is unacceptable*

As currently conceived, the current Government of Canada proposal is unacceptable because it would grant language rights to one official language group and not the other. Further, it risks territorializing language rights by creating a special regime for language rights in Quebec.

The right to work in one’s official language of choice in federal institutions is one of the most important language rights provided in the *Official Languages Act*. It showcases the dignity and autonomy that language rights can confer. As the Supreme Court has noted—in relation to the right to express oneself in English in Quebec:

“Language is not merely a means or medium of expression; it colours the content and meaning of expression. It is, as the preamble of the *Charter of the French Language* itself indicates, a means by which a people may express its cultural identity. It is also the means by which the individual expresses his or her personal identity and sense of individuality.”<sup>10</sup>

To create rights for one language group and not the other strikes at the very purpose of the *Official Languages Act* and of federal language rights in Canada.

Further, the proposal to create rights only for French-speakers will lead to unpalatable results. How will a federal Minister of Labour explain to an English-speaking airline employee in Quebec that she does not have the same rights as her French-speaking colleague? How will this kind of asymmetry affect the mobility of workers into and out of Quebec?

**2. *Where do we go from here? The QCGN’s recommendations***

The Quebec Community Groups Network has accepted the invitation to appear before the Panel. In this capacity, the QCGN makes the following two recommendations for the Panel:

**Recommendation 1: Any language rights in federally regulated businesses must apply to both English-speakers and French-speakers.**

The Government of Canada’s proposal to grant language rights to one language group and not the other

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<sup>10</sup> *Ford v Quebec (Attorney General)*, [1988] 2 SCR 712 at para 40.

runs counter to the purpose of the *Official Languages Act* and offends the government's constitutional obligation to ensure respect for English and French as the official languages of Canada.

We agree that legislative changes should be focused on substantive equality. However, substantive equality cannot be used to undermine the equality of status of official languages.

The measures proposed by the government are not simply measures to protect and promote the French language but include language of work rights. Languages do not hold positions, people do, and there is nothing more important for the vitality of a community than the ability to work. There is nothing more important for a community to be able retain its youth than the ability to find employment.

Although the English language itself is not threatened in Quebec, English-speaking Quebecers face challenges as a minority. For example, the poverty rate in Quebec is far higher for English-speaking Quebecers than the majority (18% vs 12%) and the unemployment rate is 2 per cent higher even though a majority of English-speaking Quebecers, particularly in younger age groups, are bilingual.<sup>11</sup> English-speaking Quebecers hold only 1 per cent of jobs in the provincial civil service, but we could rationally expect better of the federal civil service.<sup>12</sup> Yet, outside the National Capital Region, federal institutions subject to the *Official Languages Act* under-employ members of our community. For example, Corrections Services Canada employs 3800 people in Quebec; just over 100 of them are English-speaking Quebecers.<sup>13</sup> The creation of rights to language of work and service in federally regulated enterprises will work toward substantive equality for the English-speaking minority in Quebec.

Substantive equality requires measures to support all official language minority communities – English- and French-speaking. If the committee of experts is truly concerned with the principle of substantive equality, then they should inform the Minister that their mandate cannot be fulfilled as written and recommend that any measures to create language of work and service obligations in federally regulated businesses be applied to both English and French.

**Recommendation 2: Any creation of language rights in federally regulated businesses must be done in an instrument other than the *Official Languages Act*.**

The *Official Languages Act* is quasi-constitutional legislation. It implements constitutionally imposed duties on Parliament and the Government of Canada in relation to official languages. These duties pertain to the relationship between citizens and their government: this is a public relationship, not a private one. The *Official Languages Act* should remain the primary vehicle for implementing the language rights in ss. 16-20 of the *Charter of Rights and Freedoms*, rather than the vehicle for creating analogous rights in private business. As such, any newly created language rights in federally regulated private businesses should be provided outside the *Official Languages Act*.

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<sup>11</sup> Census 2016

<sup>12</sup> Treasury Board Secretariat (Quebec), *Proportion des membres de groupes cibles dans l'effectif régulier de mars 2014 à mars 2018* Government of Quebec. <https://bit.ly/31uuCzW> accessed March 29, 2021

<sup>13</sup> Treasury Board of Canada, *Participation of Anglophones and Francophones in the core public administration, in the Province of Quebec (excluding the National Capital Region), 2018* (Table created at the request of QCGN and available on request).

Any asymmetrical or territorialized language rights added into the *Official Languages Act* could have devastating consequences. It would undercut the basic purpose and structure of the *Official Languages Act*, to the detriment of all official language minorities. Further, it would have harmful effects for the interpretation of the rights of English-speaking Quebecers in the future. It could result in narrower interpretation of our community's remaining languages rights – not only those in the *Official Languages Act*, but all language rights that concern English-speaking Quebecers.

Further, any new federal language rights and obligations must be implemented through the federal apparatus and not by way of partnership with the Government of Quebec. As mentioned above, English-speaking Quebecers make up less than 1 per cent of the provincial public service. Its involvement in the extension of official language obligations to enterprises operating within federal jurisdiction is problematic and will only serve to further alienate our community.

As recently as 2019, the Government of Quebec passed legislation eliminating school boards, contrary to our right to manage and control our schools under s. 23 of the *Canadian Charter of Rights and Freedoms*. Quebec's Bill 10 effectively stripped English-speaking Quebecers from the management of their health and social service institutions. The Office québécois de la langue française is viewed with distrust by the community because of orders like the one to remove the word "emergency" from the Lachute community hospital sign despite objections from both Francophone and Anglophone residents alike. The only language rights protection English-speaking Quebecers enjoy is through the Constitution and the *Official Languages Act*, and the federal government living up to its obligations therein. The Government of Canada must be solely responsible for implementing and enforcing official language obligations related to federally regulated businesses.