

## English and French: Towards the substantive equality of official languages in Canada

### *Analysis*

On Friday, February 19, 2021, the Government of Canada released its [policy paper](#) on reforming the federal approach to Canada's Official Languages. The government's guiding paper builds on six themes:

1. The recognition of linguistic dynamics in the provinces and territories and existing rights regarding Indigenous languages;
2. The willingness to provide opportunities for learning both official languages;
3. Support for the institutions of official language minority communities;
4. The protection and promotion of French throughout Canada, including in Quebec;
5. The Government of Canada as an example through strengthening of the compliance of federal institutions; and,
6. An Act for the Canada of today and tomorrow: Mandatory review of the OLA and its implementation.

### **Summary Reaction**

The Government of Canada's paper on official language reform captures important demands made by the English-speaking community of Quebec during consultative processes related to the modernization of the Official Languages Act. There is reason for optimism around proposals for an expanded role of Treasury Board and power of the Commissioner of Official Languages in the implementation of the Act. And there are opportunities for increased support to our community's institutions and provisions for more transparency on federal transfers directed towards our vitality; proposals that are tempered by the need for provincial cooperation.

English-speaking Quebec should also be pleased that the paper reaffirms the Government of Canada's continued leadership on matters of official languages within its jurisdiction.

We are disappointed however that the community's concerns related to the provisions of public services in English, and employment in federal institutions in Quebec (outside of the National Capital Region) were studiously ignored in the proposed reform.

English-speaking Quebec should be wary of proposals to extend French language obligations to federally regulated businesses in Quebec. We demand that English consumers and workers are able to communicate with these businesses in the official language of their choice.

The interpretive impact on the rights of English-speaking Quebecers of legislative language that defines French as Canada's only minority language must be clearly understood.

## Background

For the past decade, the Government of Canada has been under pressure from English and French official language minority communities to modernize the Official Languages Act. These reforms began with an unsuccessful attempt to modernize Part IV of the Act (Communications with and Services to the Public) by way of an amending bill originating in the Senate. However, the recommendations made during this process were achieved through regulatory reform.

Undaunted, the Senate Standing Committee on Official Languages (OLLO) moved forward with a study beginning in April 2017, to examine and report on Canadians' view on modernizing the Act. This initiative produced five reports:

1. The Views of Young Canadians;
2. The Views of Official Language Minority Communities;
3. The Views of Stakeholders Who Have Witnessed the Evolution of the Act;
4. The Views of the Justice Sector; and,
5. The Views of the Federal Institutions and Recommendations.

Further consultations on modernizing the Act were conducted by the House Standing Committee on Official Languages (LANG), the Commissioner of Official Languages (OCOL), and the Minister of Official Languages Mélanie Joly.

Led by the Quebec Community Groups Network, English-speaking Quebecers were active participants in these consultative processes. The foundational policy document that outlined expectations of English-speaking Quebecers remains a brief submitted to OLLO and LANG in support of their studies, *English-speaking Quebec and the Modernization of the Official Languages Act*.

Public consultations on modernizing the Act were completed in 2019. However, the Official Languages Act affects every federal institution, and imposes statutory responsibilities on all Ministers. Moreover, Part VII of the Act (Advancement of English and French) involves the cooperation of the provinces and territories. As a result, inter-institutional and inter-governmental consultative processes were initiated in 2019.

These processes were impacted by the federal election in the fall of 2019. However, continuity on the file was maintained by the reappointment of Minister Joly to the official languages' portfolio, and modernizing the Act was (and remains) a part of her mandate letter.

Despite continuity in leadership and momentum to modernize the Act, COVID hit in March 2020. Despite this development, pressure continued on the government to move forward on modernizing the Act.

## Quebec

In 2018, the Coalition Avenir Québec (CAQ) campaigned on a vision of Quebec defined by, "...its historical heritage, the French language, its democratic ideals and the principles of the secularity of the State." Simon Jolin-Barrette, the current Minister Responsible for the French Language has promised a

suite of legislative and regulatory reforms to reinforce French as the “language of Government and the Law, as well as the normal and everyday language of work, instruction, communication, commerce and business.” These reforms have been long promised but have not been publicly released, although they have generated a great deal of press coverage and National Assembly resolutions.

The core expectation of Quebec is that it be afforded exclusive jurisdiction on matters related to language within its territory. This raised the question of applying the Charter of the French Language to federally regulated businesses. The implications of this idea will not be covered in depth here. They are discussed in detail in the [QCGN’s Analysis of Quebec’s Five Orientations to Modernize Canada’s Official Languages Act](#).

The Government of Canada was now under pressure on the language file from two fronts: Canada’s official language minority communities who had invested considerable effort in consultations to modernize the Official Languages Act; and, a popular resurgent demand by Quebec to protect French, with an underlying message of legislative supremacy in the eternal confederal push and pull.

This is the environment in which the Government of Canada now releases its policy paper on official languages in Canada, *English and French: Towards the substantive equality of official languages in Canada*.

### **What does English-speaking Quebec Want?**

The details of English-speaking Quebec’s expectations are contained in [English-speaking Quebec and the Modernization of the Official Languages Act](#). The following summarizes these expectations.

English-speaking Quebec insists that the central guiding principle in the Government of Canada’s modernization of legislative, regulatory and policy approaches to official languages remain the equality of status of English and French. We understand and support the legal principle of substantive equality, which requires government action to respond to the specific contexts and needs of the different official language minority communities. English-speaking Quebec also seeks robust, mandatory, and properly resourced institutional consultation at all levels, including a formal mechanism for consultation at the national level.

Further, a modernized official languages approach should:

- **Guarantee equity in services, language of work and participation in the public service:**
  - Strive for coherence between Parts IV (services), V (language of work) and VI (participation);
  - Reframe Part VI to ensure that English-speakers are fairly represented in federal institutions in Quebec;
  - Ensure that services in both languages are of substantively equal quality;
  - Update and broaden the language of work obligations;
  - Support the administration of justice in both official languages (including the removal of the bilingualism exception for judges of the Supreme Court of Canada);
  - Consider extending the application of Parts IV, V and VI of the Act to all federally-regulated private enterprises.

- **Enhance the vitality of minority language communities:**
  - Include clear definitions of “positive measure”, “enhancing the vitality of”, and “assisting in the development of” official language minority communities;
  - Provide clearer lines of accountability for the obligations set out in Part VII;
  - Require regulations to implement Part VII;
  - Place strict transparency mechanisms in the Act to account for official languages investments;
  - Create official languages obligations attached to all activities funded by federal resources;
  - Require that all federal-provincial/territorial agreements be made in both official languages and be equally authoritative.
  
- **Provide for effective implementation:**
  - Central accountability for application of the entire Act;
  - Mandatory and robust consultation with official language minority communities, including a clear duty to consult, a definition of consultation, a duty to provide resources and build capacity to consult, a formal National Advisory Council, and a declaration that membership of parliamentary official languages committees should reflect the composition of the official language minority communities;
  - Enhanced and focused role of the Commissioner;
  - Administrative tribunal with the power to sanction;
  - Regular periodic review of the Act and Regulations

### **English and French: Towards the Substantive Equality of Official Languages in Canada**

The Government of Canada’s policy paper on official languages goes well beyond modernizing the Official Languages Act. It is a suite of proposals that outlines complex legislative, regulatory, and policy changes. The government is proposing a generational systemic shift in its approach to official languages, with the protection and promotion of French at its centre. At the same time, it is attempting to fulfill its Constitutional obligations to Canada’s English linguistic minority communities.

On its face, English-speaking Quebec should be pleased with the overall direction of the government’s policy, which addresses the Canadian challenge of protecting and promoting the French language, while recognizing the importance of vital official language minority communities across the country. And it sets forth an historic vision that reconciles our national responsibility to support and promote the use of Indigenous languages with the Canadian value of linguistic duality.

Other proposals directly correspond to English-speaking Quebec’s expectations of a modernized Official Languages Act. It seeks to strengthen the role Treasury Board – a central agency – plays in the coordination of the Act and expands the powers of the Commissioner of Official Languages to ensure institutional compliance. The Court Challenges Program would be moved into the Act, securing this important mechanism for protecting language rights before the courts.

English-speaking Quebec should also be encouraged by proposals aimed at supporting its institutions, although this should be tempered because the federal spending power is likely limited by Quebec’s exclusive legislative authority over education (bounded by s.23 of the Charter of Rights and Freedoms)

and health and social services. This reality will also factor into the effectiveness of proposals to achieve transparency on federal transfers to support our community.

English-speaking Quebec is disappointed that the paper's proposals do not address our long-standing concerns related to Part VI (Participation of English-speaking and French-speaking Canadians) of the Official Languages Act. We are under-represented in more than 40 federal institutions in Quebec (outside of the NCR). For example, Correctional Services Canada has a workforce of 3800 in Quebec, only 110 of whom are English-speaking Quebecers. In the Minister's words, Canada's federal public service must lead by example, and whereas there are measures in the paper to improve the realization of Part V (Language of Work) of the Act, the paper is silent on fixing identified shortcomings to Part VI.

English-speaking Quebecers are highly education, bilingual, and their presence in federal institutions ensures employers' obligations to provide services in both English and French. English-speaking Quebec has an unemployment and poverty problem. The unemployment rate for English-speaking Quebecers is 2 per cent higher than that of the Francophone majority (8.9% vs 6.9%). For our youth (15-35) the gap in unemployment widens to 4 per cent (8% unemployment for Francophones and 12 per cent unemployment for English-speakers). The median income of English-speaking Quebecers is lower than the Francophone majority in Quebec, and 18 per cent of English-speaking Quebecers live below the Low-Income Cut Off (LICO), compared to 12 per cent for the francophone majority.

English-speaking Quebecers are chronically under-represented in the provincial civil service, Quebec's largest employer, making up a meagre 1 per cent of the public workforce. This makes the role of the federal government as an employer all the more important to the lives of English-speaking Quebec.

The government's paper begins its story from the mid-20<sup>th</sup> Century, and the reality that French – a founding national language – was not present in the workings of the federal government. The Royal Commission on Bilingualism and Biculturalism (the Bi and Bi Commission) was established in 1963 as a response to rising Quebec nationalism during the Quiet Revolution asking relevant questions on whether there still remained a place in Canada for French.

The Bi and Bi Commission's reports spawned the first Official Languages Act in 1969, that sought to make Canada an officially bilingual country, an objective that was entrenched in the Constitution Act, 1982.

Our Constitutional foundation rests on the clearly recognized unwritten principle of the protection of Canada's English and French linguistic minorities. Section 133 of the Constitution Act, 1867 for example made French and English the languages of Parliament and the Legislature of Quebec, and "any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec." Constitutional provisions also ensured the appointment of Senators from Quebec's English-speaking minority. The story of accommodation between English and French is a recurring theme in the Constitutional history of the Canadian state.

Another theme is the division of powers between the federal and provincial legislatures, and the continuing search for balance and clarity. This search is characterised by bright lines, and compromises.

English-speaking Quebec must be wary and remain vigilant on three proposals: the recognition of linguistic dynamics in the provinces and territories, official languages and federally regulate businesses; and the inclusion of wording that will be used by the courts to interpret legislation.

There is a fundamental assumption that “the demographic reality of North America is a permanent obstacle to the defence of the French language”. English is seen as the threat; the presence of 200 million Spanish speakers on the continent is never mentioned. Nonetheless, the paper proposes to ‘recognize the predominant use of English in Canada and North America and the fact that, given this context, it is imperative that French receive increase protection and promotion.” This will have profound effects on the interpretation of federal and provincial language rights for English-speaking Quebecers because it could be used by attorneys general to justify restrictions of these rights.

A similar, although less dramatic concern is expressed on the interpretative effect of the Government of Canada recognizing the unique linguistic dynamics of individual provinces and territories.

It is disappointing that the paper does not recognize the challenges faced by English-speaking Quebecers to receive public services in their official language. The assumption that these challenges are only faced by French Canadians is insulting, given the extensive testimony provided by organizations, institutions, and private citizens during consultations on the modernization of the Act. Our community’s continuing struggle to receive services in English in Quebec seems to have been wilfully ignored in this paper.

English-speaking Quebec must also be concerned about the White Paper’s proposal to extend French language obligations to federally regulated businesses. The QCGN and Fédération des communautés francophones et acadienne (FCFA) du Canada proposals to extend the Act to the enterprises would have extended the language rights of all Canadians, English and French across the country. The paper’s proposal is geographically limited – in the same way that communication in official language rights is limited – and restricted to the French language, ignoring English workers and consumers in Quebec. We look forward to consultations with the Committee of Experts set up to study how this policy aim will be implemented. The QCGN expects flexibility to ensure that federally regulated businesses must communicate with their employees and customers in the official language of their choice.

There are promising initiatives in the paper to improve second-language learning, assuming these initiatives are made available to Quebec’s English school system, which we should have every right to expect. Quebec’s English schools, which lead the nation in French core and immersion programs (which were invented by English-speaking parents in St. Lambert as a means to ensure their children could integrate in French into Quebec society), look forward to benefiting from the Governments of Canada and Quebec working together to increase the availability of qualified French teachers to join our educational community. And we urge the Government of Canada to consider bilingualism as a workplace skill and consider programs to help young Canadians gain experience working in their second language. This is a key demand of young English-speaking Quebecers, who are exiting the education system with excellent second-language results, but no workplace experience in French. Similar concerns were expressed by young Canadians appearing on behalf of linguistic duality organizations during the modernization consultative process.

We were pleased to see that the paper understands the role CBC/Radio-Canada must play in promoting Canada’s official languages and supporting official language minority communities. Special notice should

be made of the needs of isolated communities, and those lacking high-speed internet, for whom the public broadcasters may be the only English or French media source. We welcome specific requirements for all broadcasters to produce content that tells the stories of English and French OLMCs. The paper recognizes that Francophone minority communities “have developed language and cultural characteristics that deeply mark their identity.” The same is true of English-speaking Quebecers, who are culturally distinct from Canada’s English majority, a point made clear during the modernization consultations. The unique culture of English-speaking Quebec must be recognized and carried forward into media policy.

Finally, the paper’s ‘data for action’ component is a good start. However, statistical and non-statistical data collected by the Government of Canada must focus on the full range of vitality indicators, including socio-economic data. This will require additional investments to ensure official language variables are added to socio-economic data collection tools like the Labour Market Survey.