

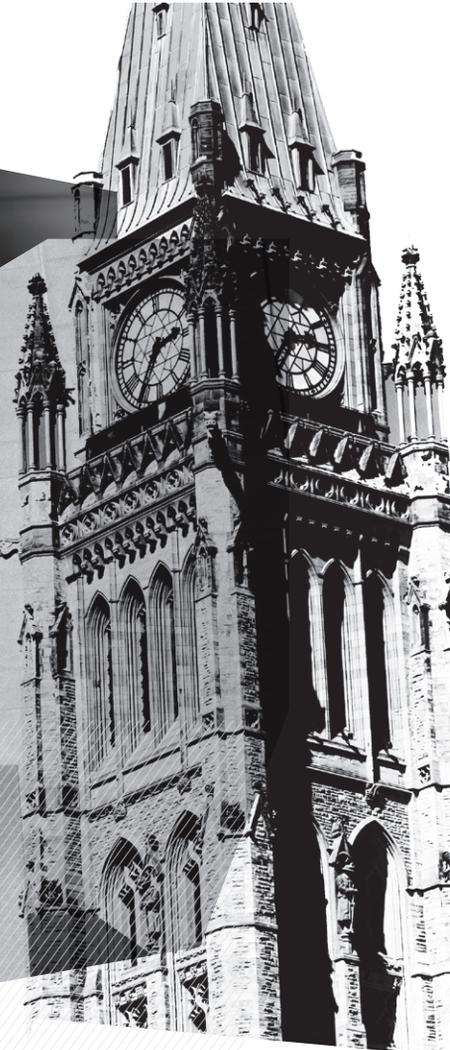
Office of the
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Official Languages



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aux langues
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THE SPEAKER OF THE SENATE

Ottawa

Mr. Speaker,

Pursuant to section 66 of the *Official Languages Act*, I hereby submit to Parliament, through your good offices, the annual report of the Commissioner of Official Languages covering the period from April 1, 2015, to March 31, 2016.

Yours respectfully,


Graham Fraser

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PREFACE

This is my tenth—and last—annual report as Commissioner of Official Languages. It has been an honour and a privilege to serve in this position: to work to achieve the equality of Canada's two official languages, to investigate complaints from those whose language rights have not been respected, to intervene before the courts, to promote the use of both official languages in the federal workplace and to promote the idea that Canada's linguistic duality is a key element in our national identity, and a value rather than a burden. Canada's official language minority communities are part of the fabric of our country and of its future.

In addition to reviewing 2015–2016, this report tries to assess how well some federal institutions have succeeded in meeting their responsibilities over the past decade. In brief, some have done better than others, but the effects of budget cuts and institutional reorganizations have been felt. Some institutional changes have been made in a way that does not suggest that official languages were a government priority. Some institutions have remained the same or regressed. However, our analysis of how 33 institutions have complied with the Act over 10 years shows that their overall

performance has improved. The challenges they face have changed over those 10 years: for many, the frameworks are now in place, but actual implementation is proving to be problematic.

Some institutions have found it difficult to maintain the same commitment to providing their employees with language training following the Deficit Reduction Action Plan of 2012; others have reorganized in a way that has resulted in employees in bilingual regions having to report to supervisors in unilingual regions, thereby compromising their language rights. At the same time, other institutions have made official languages a priority and have achieved considerable success.

Over the past 10 years, I have noticed that improvements often come with a change of leadership in departments and agencies. New leaders identify shortcomings that their predecessors have ignored or tolerated. Fresh eyes are often agents of change at any administrative level.

I came to realize and often said that granting federal employees the right to work in the official language of their choice in designated bilingual regions was a radical act. Consider the number of things in a

public servant's working life that are determined by someone else: the policy of the government of the day, ministerial decisions, departmental or branch priorities, the collective agreement, Treasury Board directives, human resources policies, job descriptions and classifications, access-to-information requirements . . . Public Works and Government Services Canada even has rules governing the size of a cubicle. There is one area, however, where employees themselves can decide on a critical element of their work: which official language they choose to work in.

Given the inevitable pressures, it takes a certain amount of courage for someone to say, "I choose to work in my preferred language," when that language is the minority language in the workplace. No one likes to be out of step, write memos that may go unread or insist on being evaluated in a language their supervisor may be uncomfortable speaking.

That is why it is essential for public service executives and managers not simply to tolerate or accommodate those who choose to speak the minority language, but to actively encourage them to do so. Otherwise, the use of both official languages in the workplace will shrivel up and die.

Agents of Parliament are in the influence business. However, because of our role, the administration of our own organizations must be above reproach. At times, we need to be very public in our criticisms of federal institutions, or else we will lose the confidence of the parliamentarians and citizens whose interests we defend. On other occasions, a more discreet intervention is more effective. What is important is achieving results.

In the days following the announcement of my nomination in 2006, the government abolished the Court Challenges Program. Any thoughts that I had had about quiet diplomacy regarding the adaptation to the newly amended Part VII of the *Official Languages Act* disappeared. Our investigation report was used by the Fédération des communautés francophones et acadienne du Canada in a court case in which I intervened. An out-of-court settlement resulted in the creation of the Language Rights Support Program.

During the mandate of my predecessor, Dyane Adam, work had already begun on the preparations necessary for the Vancouver 2010 Olympic and Paralympic Winter Games. With the exception of the opening ceremonies, the Games were a great success in terms of language, and we used our experience to develop a guide for organizers of major sporting events. This proved to be extremely helpful for organizers of the Canada Games in Sherbrooke, Quebec, and in Prince George, British Columbia, and for organizers of the Pan Am and Parapan Am Games in Toronto, Ontario. A similar guide was developed for organizers of major events such as celebrations of the 150th anniversary of Confederation in 2017.

There have been some ongoing issues that will not be resolved when I leave office in the fall of 2016. Active offer—greeting citizens with "Hello! Bonjour!" to make it clear that they can choose the official language in which they wish to receive service—is still not part of federal institutions' corporate culture. We continue to receive complaints from travellers that they are not served in the official language of their choice in airports, at security checkpoints, at border crossings and in their interactions with Air Canada. While technology has improved many government services, face-to-face

contact with travellers remains essential, and bilingual service is often a challenge. There continue to be problems in ensuring that a sufficient number of judges capable of hearing cases in either official language are named to the superior courts. The capacity of official language minority communities to recruit and welcome immigrants is still not fully developed. And, after five years, the courts have still not determined whether the Commissioner of Official Languages has jurisdiction to investigate complaints about CBC/Radio-Canada.

Last fall marked the 10th anniversary of the strengthening of Part VII of the Act, which requires federal institutions to take positive measures to enhance the vitality and support the development

of official language minority communities and to promote linguistic duality. The time has come to look at the possibility of developing a regulatory framework for this obligation.

The good news is that, after six changes of government since the Act was passed in 1969, Canada's language policy has continued to be a central part of Canadian values and Canadian identity. The commitment by the Government in its latest Speech from the Throne to "encourage and promote the use of Canada's official languages" opens the door to a renewed injection of energy and attention to both official languages in the lead-up to the celebrations of the 150th anniversary of Confederation in 2017.



Graham Fraser

INTRODUCTION

The 2015–2016 annual report begins by presenting the winner of the Award of Excellence—Promotion of Linguistic Duality, an honour that has been given by the Commissioner of Official Languages every year since 2009 to an individual or organization that has made an outstanding contribution to the promotion of linguistic duality or to the development of official language communities¹ across Canada.

The first chapter of this annual report provides an overview of the highlights and major events of 2015–2016. It summarizes a number of the Commissioner’s initiatives to promote bilingualism in Canada in a variety of areas, including the superior court judiciary and major sporting events, and to raise awareness among young Canadians of the importance of both official languages. It also examines the challenges regarding in-person active offer and reviews the follow-ups conducted by the Office of the Commissioner of Official Languages on issues that are of particular concern to official language communities, including immigration, funding for

organizations and support for early childhood development programs. This chapter provides a synopsis not only of the wide range of initiatives that were begun and completed in 2015–2016, but also of the many partnerships that made them possible.

The second chapter examines current issues related to implementing the *Official Languages Act*. From the bill to modernize Part IV of the Act to the way official language community vitality is determined, and from official languages governance to the challenges of managing virtual teams whose members work in different cities across the country, these issues will continue to take centre stage in the year ahead.

The third chapter of the annual report focuses on federal institutions’² compliance with the Act. It begins with the findings of a horizontal analysis of the report cards for 33 federal institutions that have been evaluated at least twice since 2006. It then examines the complaints that were processed in

2015–2016, gives an overview of the investigations conducted since 2006–2007 and takes a brief look at some of the key cases of the past decade. The chapter concludes with the results of the audits and audit follow-ups conducted by the Office of the Commissioner in 2015–2016.

The final chapter discusses court remedies and reviews six decisions rendered by the courts in 2015–2016 in cases involving the Commissioner. The chapter ends with an overview of the report on the Commissioner’s interventions before the courts, which is being released concurrently with this annual report.

This annual report contains two recommendations by the Commissioner with respect to the bilingualism of the superior court judiciary and modernization of Part IV of the Act.

Drawing on this review of 2015–2016 and on some of the aspects that characterized his 10 years in office, the Commissioner looks toward the future and shares with his successor some thoughts on the major challenges that lie in the years ahead.

AWARD OF EXCELLENCE — PROMOTION OF LINGUISTIC DUALITY

This year, the Commissioner of Official Languages will present the eighth annual Award of Excellence — Promotion of Linguistic Duality. This award recognizes the work of remarkable individuals or organizations that are not subject to the *Official Languages Act* but that have made an outstanding contribution to the promotion of linguistic duality in Canada or abroad, or to the development of Canada's official language communities. This year's recipient of the Award of Excellence is [Canadian Parents for French](#).³



Canadian Parents for French was created as a result of a conference organized in 1977 by Keith Spicer, the first commissioner of official languages. Its national network of volunteers is dedicated to the promotion and creation of French-second-language learning opportunities for young Canadians. Since 1977, Canadian Parents for French has been advocating at the national, provincial and community

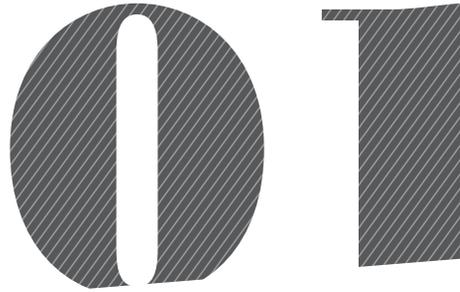
levels for access to quality French immersion and French-second-language programs in schools. What started as a group of parents with a simple vision has grown into a national network with 23,000 members that includes a national office, 10 provincial/territorial branches and some 150 volunteer-based chapters in communities across Canada. Canadian Parents for French has been a long-time partner of the Office of the Commissioner of Official Languages, both at the national level and in each of Canada's regions.

An active French-language advocate, Canadian Parents for French offers many youth activities to promote French as a second language, such as the *Concours d'art oratoire*, which was first introduced as a public-speaking festival in 1985. More recently, in partnership with Canadian Youth for French, Canadian Parents for French undertook an initiative to send young French-speaking performing artists to British Columbia, Yukon, Alberta, Saskatchewan and Ontario schools to engage students in musical and storytelling performances. The interactive project called *O Canada!* visited 120 schools and reached an

estimated 46,000 students. The goal was to encourage young people to celebrate their Canadian heritage. *O Canada!* was not only well received by students in French immersion and French-language schools, it also enjoyed a significant amount of public attention, including a mention on CBC's "George Stroumboulopoulos Tonight."

Canadian Parents for French has also become a reliable resource for parents looking for tools and research on French-second-language education. In its *State of French-Second-Language Education in Canada* reports, it has identified gaps and areas of improvement in French-second-language education and made recommendations to decision makers to improve the conditions and opportunities for English-speaking children to learn their second official language in schools.

The Commissioner congratulates Canadian Parents for French for its exceptional work in the area of research and promotion, for providing opportunities for young Canadians to learn French in schools and communities and supporting their sometimes unilingual parents, and for respecting French as an integral part of Canada.



HIGHLIGHTS OF 2015–2016

CANADA'S BILINGUAL CHARACTER

This section presents four initiatives taken by the Office of the Commissioner of Official Languages over the past year to enhance the status of English and French in Canadian society.

FOR A TRULY BILINGUAL JUDICIARY

In early 2016, with less than a year remaining until the 150th anniversary of judicial bilingualism in Canada, the Commissioner of Official Languages of Canada took the initiative to approach the new federal government with the recommendations from his 2013 study titled *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*⁴ which was launched with his provincial counterparts in Ontario and New Brunswick.

In 2013, the commissioners concluded that the process for appointing superior court judges did not guarantee a sufficient number of judges with the language skills needed to hear Canadians in the minority official language without additional delays and costs. They made a series of recommendations to remedy the situation and emphasized the importance of establishing a coordinated approach by the federal Minister of Justice, his provincial and territorial counterparts and the chief justices.

However, the federal Minister of Justice did not address these recommendations or discuss them with his provincial or territorial counterparts, despite the interest expressed by some of those counterparts, particularly those in Ontario and New Brunswick.

Nonetheless, some interesting initiatives were undertaken in both of those provinces. In the spring of 2015, Madeleine Meilleur, Ontario's Attorney General and Minister Responsible for Francophone Affairs, launched a pilot project to enhance access

to justice in French. The objective of the pilot, which places a strong emphasis on active offer of service, is to provide quality French-language services to French-speaking litigants and lawyers at the Ottawa courthouse. In New Brunswick, Provincial Court Judge Yvette Finn launched a language training pilot project in 2011 for provincially appointed judges across Canada.

Access to justice in both official languages is a priority for the Commissioner of Official Languages of Canada. Given the current prime minister's commitment to appoint bilingual judges to the Supreme Court of Canada, the Commissioner believes that he should also take the necessary steps to ensure that an appropriate number of bilingual judges are appointed to superior and appeal courts across Canada.

RECOMMENDATION 1

The Commissioner of Official Languages recommends that, by October 31, 2016, the Minister of Justice and Attorney General of Canada commit to implementing the recommendations issued in the 2013 study *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*.

PROVINCIAL COURT JUDGES IMPROVING THEIR LANGUAGE SKILLS

Since 2011, some 20 provincially appointed Canadian judges have been heading to the Acadian Peninsula every year to improve their language skills so that they can hear and interact with Canadians from French linguistic minority communities.

This innovative training program was created by New Brunswick Provincial Court Judge Yvette Finn, with the support of then Provincial Court Chief Justice Leslie Jackson. Participants take part in week-long intensive training sessions in a setting that reflects their legal activities. Led by a multidisciplinary team, the sessions involve the participation of judges, lawyers, police officers, actors and dozens of local volunteers. They include terminology workshops, practical exercises and simulations based on themes related to the most common charges in provincial court. Judges who commit to participating in the program are rewarded with improved French-language skills.

The program, provided in cooperation with the Centre canadien de français juridique inc., comes under the governance of the Provincial Court of New Brunswick and is funded by the Department of Justice Canada and the Government of New Brunswick. It also includes a language skills assessment component. The authors of this component initially developed a legal French proficiency scale and are now completing assessment tools for oral expression and comprehension in legal French. Proponents of the scale, including the Commissioner of Official Languages of Canada, would like to see the creation of national standards and tools to ensure that judges' language skills and training needs are assessed consistently throughout Canada.

Similar sessions have been offered since 2014 in the town of St. Andrews by-the-Sea for French-speaking judges wishing to improve their ability to hear cases in English.

THE ROAD TO 2017: BILINGUALISM AT MAJOR EVENTS

In 2015, Canada hosted three major events that brought together thousands of athletes and delighted fans from across the country and around the world. These three events eloquently illustrated the progress made in terms of bilingualism at high-level athletic meets since the Vancouver 2010 Olympic and Paralympic Winter Games, as well as the critical role of the Office of the Commissioner.

Organizers of the 2015 Canada Winter Games in Prince George, British Columbia, had to tackle a number of challenges so that the event could be delivered in English and French. The limited pool of bilingual people in the region made it difficult to recruit enough volunteers who could greet athletes and visitors in the official language of their choice at the airport and at the main venues of the Games. Officials occasionally had difficulty ensuring that information announced both before and during the Games had been translated properly.

Working in partnership with the Société canadienne-française de Prince George, Sport Canada and the Office of the Commissioner in the months leading up to the event, Games organizers succeeded in achieving many positive results. The Commissioner's visit during the Games and the vibrant presence of his office in the exhibition area—the photo booth was once again a big hit both on site and on Facebook—also helped to ensure that both official languages were equally prominent.

Like any organization that signs a memorandum of understanding with Sport Canada, the National Organising Committee for the FIFA Women's World Cup Canada 2015 had to abide by several conditions acknowledging the importance of Canada's two official languages. More than a year before the event, the Commissioner helped to support the Committee's efforts by holding a meeting with members of local organizing committees, regional representatives of his office and representatives of Sport Canada. Discussions that had begun during this initial meeting prompted the Office of the Commissioner to organize regional and local working meetings to give organizers

OFFICIAL LANGUAGES AT MAJOR EVENTS

The 2015 Canada Winter Games in Prince George, the FIFA Women's World Cup Canada 2015 and the Toronto 2015 Pan American and Parapan American Games once again showed how important it is to have a director of official languages on the organizing committee when major events are held in Canada.

an opportunity to meet with representatives of the official language communities involved. Organizers were thus able to develop a number of successful partnerships that helped to increase the visibility of English and French throughout the tournament. During the matches, the organizers' responsiveness led to the prompt resolution of issues: for example, by ensuring that key information on signage was translated. The Commissioner congratulated the organizers and encouraged them to continue promoting the use of English and French in Canadian soccer.

Officials of the 2015 Pan American and Parapan American Games, which were held in the summer in Toronto, Ontario, spared no effort to respect—and indeed to showcase—Canada's linguistic duality. On November 26, 2014, the organizing committee signed a memorandum of understanding with the Office of the Commissioner of Official Languages of Canada and the Office of the French Language Services Commissioner of Ontario to clarify their efforts to promote English and French throughout the Games and to expedite the resolution of complaints. Sport Canada was an effective partner in implementing the latter part of the agreement. In addition to this formal process, Games organizers followed the example of their Chief Executive Officer, Saäd Rafi, and pulled out all the stops to showcase linguistic duality and the vitality of the Franco-Ontarian community. Even though active offer of services in both official languages was occasionally lacking, Canada's official languages were well represented at the Games, thanks to the work by the Official Languages Division of the Games' organizing committee and by Sport Canada. Organizers set

up the *Forum francophone*, which brought together representatives of organizations from the Franco-Ontarian community and served as an advisory committee. The Forum also helped to organize high-level French cultural activities that received extensive publicity across Canada and abroad.

Canada's two official languages are at the heart of its identity. Just a few months away from kicking off the celebrations marking the 150th anniversary of Canada's Confederation in 2017, these examples should inspire the increasing number of people and groups who are hard at work organizing commemorative events in towns and cities across the country. Linguistic duality must be a key component in their efforts. To assist them, the Office of the Commissioner published *Celebrating Canada—A Guide to a Successful Bilingual Event*⁵ in 2014. More recently, it redoubled its efforts to make the guide even more widely available, including making it available through the resource library of 150Alliance, an open network of hundreds of organizations and individuals working to organize festivities across Canada. Canadian Heritage is also promoting the guide to its partners in preparation for celebrations marking the 150th anniversary of Confederation.

NEW TOOLS FOR THE CITIES OF OTTAWA AND GATINEAU

In April 2015, the Office of the Commissioner released two reports commissioned from Statistics Canada on official language groups in the Ottawa⁶ and Gatineau⁷ areas. These reports present new linguistic and socio-economic data on the ever-increasing population of these two cities that flank the Ottawa River.

The data indicates that, in Ottawa, the number of people who speak French as their first official language rose by 35% between 1981 and 2011, an addition of nearly 40,000 new French speakers. That fact is significant, even though over the same period, the proportion of people whose first official

language is French fell from 19.5% to 16.4%. The increase in the number of people who speak French as their first official language was largely due to the influx of French-speaking immigrants. This in turn resulted in a greater need for services in French, particularly in terms of recreation for youth and in terms of infrastructure, such as community centres for Francophones. The analysis also showed that the bilingualism rate across the city's districts has never fallen below 23%, regardless of the size of the French-speaking population in the districts.

Over this same period, the city of Gatineau welcomed a little over 18,000 new English-speaking residents, and the proportion of people whose first official language is English rose from 13.8% to 15.7%. This increase confirms the importance of the English-speaking community's contribution to the vitality of Gatineau.

The two studies also contain socio-economic data, such as level of education, income, age and sex, providing a comprehensive picture of the linguistic groups on both sides of the Ottawa River. City officials and community groups now have data that will help them to better meet the needs of the population and to promote the vitality of English and French in their respective areas. The data is also available on the Office of the Commissioner's Web site.

OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES' SCHOOL PRESENTATIONS TAKING OFF

The school presentations project, launched in 2013–2014 by the Office of the Commissioner's regional teams in the Atlantic provinces and in Manitoba and Saskatchewan, has now been expanded to eight provinces in Canada. Some 3,300 students have attended the presentations, including English-speaking Grade 7 and 8 students in French immersion, French-speaking high school students in linguistic minority communities and students in English- and French-language high schools in Quebec.

One of the project's great strengths—the main one, according to its creators—is that each presentation is a true reflection of the students' daily life. Presentations are very flexible and can incorporate numerous references to local organizations and situations. Each presentation also includes photos of participating students and their living environment. Presenters arrive with all of the materials they need to deliver a highly interactive presentation, which delights students and leaves a lasting impression. Project leaders have also received many enthusiastic comments from teachers, who like the fact that the presentations are tailored to students' lives and appreciate how the project is helping to strengthen their day-to-day work.

Presentations for French-speaking students are designed to foster their pride as Francophones, familiarize them with their language rights and encourage them to take action to ensure that their rights are respected. The presentations for immersion students focus on the benefits of knowing how to speak English and French and encourage students to continue studying their second official language.

The objectives of the presentations given in high schools in Quebec are to promote bilingualism, to briefly explain language rights and to present French linguistic minority communities in Canada and describe the cultural habits they share with the English community.

In 2015–2016, the project was expanded to Ontario, Prince Edward Island and Newfoundland and Labrador.

“HELLO! BONJOUR!”— THE CHALLENGES OF IN-PERSON ACTIVE OFFER

Anyone who has had the experience understands how important in-person active offer is in making users feel comfortable exercising their right to request and receive a service in the official language of their

choice. However, as noted by the Commissioner in his 2012–2013 annual report, most federal institutions have been having difficulty since 2006 honouring their obligations regarding in-person active offer, and it continues to be one of their weak points.

This unfortunate trend continues. To gain a better understanding of the situation, the Office of the Commissioner conducted a study on active offer that sheds new light on the issue by revealing the underlying factors.

Eleven federal institutions agreed to take part in the study. The findings are based on nearly a dozen focus groups consisting of front-line employees and supervisors from across the country, and as many interviews with key individuals from each institution.

The study shows that employees' behaviour is influenced by factors such as the number of requests for service in the minority language, the number of clients to be served and the type of clientele. Misperceptions also play a role. However, active offer is more likely to happen when institutions have strong leadership and when management explains how important it is to make the active offer and why.

The study also shows that federal institutions have many tools to improve the in-person active offer of bilingual service. For the situation to improve significantly, however, federal institutions should take measures that take into account the human aspects of front-line service—from the point of view of both the employee and the client.

The study is slated to be released in the summer of 2016.

Non-governmental organizations are also dealing with this issue, and some of them have tackled it wholeheartedly. One notable example is the Consortium national de formation en santé, which developed a comprehensive and easy-to-use [tool box](#)⁸ that promotes and facilitates the in-person active offer of quality service in French.

ISSUES OF CONCERN TO OFFICIAL LANGUAGE COMMUNITIES

This section examines some of the main issues for official language communities in 2015–2016: the decrease in funding for community support organizations, the status of minority community media, immigration and early childhood programs. Their specific characteristics aside, community partners are engaging with decision makers regarding the federal government's responsibilities and the resources allocated to support the development and vitality of official language communities.

FUNDING FOR ORGANIZATIONS: LESS MONEY, MORE RESTRICTIONS

The issue of static or reduced funding for community organizations working in official language communities is being raised more and more in the Commissioner's discussions with community representatives.

In 2015–2016, some organizations were forced to close, while others spent months on the brink of closing their doors, including La Girouette, a centre for Francophones in Chatham, Ontario. Some decided to join together to share services and reduce costs, and others chose to provide government programs for which they are compensated. This approach is contentious, however.

Many people are afraid that the preferred approach in recent years—turning organizations into service providers and imposing strict conditions on them—is limiting the organizations' ability to meet community needs. They believe that this approach may also hamper the communities' ability to decide for themselves on the priorities for their organizations. Some people also have reservations about the consultation process and about how grants are awarded.

MINORITY COMMUNITY MEDIA EVEN MORE FRAGILE

Minority community media are not immune from the significant challenges facing all traditional media—challenges such as competition from the Internet and social media. Their situation is directly linked to the vitality of official language communities. In 2015–2016, the Commissioner of Official Languages received several complaints in which the complainants maintain that federal institutions' decisions or inaction have affected minority community media and resulted in their increased vulnerability. These complaints, which the Commissioner is currently investigating, came from various regions across the country.

CHANGES TO IMMIGRATION PROGRAMS WORRY FRENCH-SPEAKING COMMUNITIES

Throughout 2015–2016, French-speaking minority communities and the Office of the Commissioner continued to focus their attention on immigration. Data from Statistics Canada's 2011 National Household Survey shows that less than 2% of immigrants outside Quebec are French speaking. Furthermore, major changes to the federal government's immigration system, including the creation of the Express Entry system and the elimination of the Francophone Significant Benefit program, compounded issues that had already existed for several years.

In 2015–2016, the Office of the Commissioner continued its discussions with Citizenship and Immigration Canada as part of the follow-up on the recommendations issued in its 2014 report titled *Time to Act for the Future of Francophone Communities: Redressing the Immigration Imbalance*,⁹ which was published jointly with the Office of the French Language Services Commissioner of Ontario. The Commissioner noted the encouraging steps the Department had taken, particularly the series of national consultations it had held with representatives of French-speaking communities, employers and other interested parties.

In March 2016, the Minister of Immigration, Refugees and Citizenship announced a new component to the International Mobility Program. The Mobilité Francophone stream, which will be launched on June 1, 2016, will essentially replace the Francophone Significant Benefit program.

However, the Commissioner expects the Department to present evidence showing the impact of the changes to the immigration system on French-speaking communities. He also expects a substantive action plan to be developed in cooperation with provincial and territorial governments to achieve the objective of the Provincial Nominee Program, which aims to stimulate the growth of official language communities.

The Commissioner completed his investigation into complaints received in September 2014 following the announcement of the elimination of the Francophone Significant Benefit program. He concluded that the decision process resulting in the elimination of the program was inconsistent with the Department's obligations under Part VII of the Act. In the coming months, the Commissioner will be following up on the recommendations he made in the investigation report.

OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES ORGANIZES A SECOND FORUM ON ANGLOPHONE IMMIGRATION IN QUEBEC

After a forum in Québec City in 2014, it was Sherbrooke's turn in July 2015 to host a forum on Anglophone immigration. The Eastern Townships Newcomers Forum, an initiative of the Office of the Commissioner of Official Languages, laid the foundation for dialogue between the Eastern Townships' English-speaking community and representatives of the linguistic majority (researchers, employers, representatives of the three levels of government, community organizations, etc.) about the community's active role in the integration process for English-speaking newcomers, including their learning French. During the event, participants talked about language training, employment, values and retention strategies. Several people shared their own experiences, giving a practical perspective to the discussions. This activity was part of the Office of the Commissioner's 2015–2017 action plan on immigration in English-speaking minority communities.

EARLY CHILDHOOD: A CRITICAL PHASE THAT MUST BE ADDRESSED

Funding for early childhood development that was included in the *Roadmap for Canada's Linguistic Duality 2008-2013: Acting for the Future*¹⁰ was not renewed for 2013–2018. However, experts agree on the need for adequate support for this critical phase in children's development, not only for the children themselves but also for the communities in which they live. The Ministerial Conference on the Canadian Francophonie has already expressed concern about this: in September 2013, its members adopted resolutions to facilitate the identification and foster the exchange of best practices in this field. The termination of funding was also criticized numerous times by members of official language communities and by the organizations that represent them.

In 2015–2016, the Office of the Commissioner developed an early childhood strategy for 2015–2018, the primary objective of which is to encourage the federal government to invest in early childhood development in the next five-year official languages plan.

As part of its strategy, the Office of the Commissioner initiated a dialogue with federal government representatives, researchers and interested groups at the national and regional levels, including the Commission nationale des parents francophones, the Fédération des communautés francophones et acadienne du Canada and the Fédération nationale des conseils scolaires francophones.

Consultations were also held with key partners in the winter of 2016 to validate the proposed approach. The Commissioner is slated to release a report in 2016–2017 that will include recommendations on practical measures the federal government will need to implement to include proper support for early childhood services in the next five-year official languages plan, which will cover 2018 to 2023.

02

ISSUES RELATED TO IMPLEMENTING THE *OFFICIAL LANGUAGES ACT*

COMMISSIONER LENDS HIS SUPPORT TO BILL S-205

In April 2015, the Commissioner of Official Languages presented his position in support of Bill S-205, which aimed to update Part IV of the *Official Languages Act*. In [his brief](#)¹¹ to the Standing Senate Committee on Official Languages, the Commissioner gave three reasons why Part IV needs to be updated.

First, he noted that the criteria set out in section 32(2) of the Act to assess potential demand for services in the minority language are not inclusive, because they do not take into account all of the people who use the minority language in the public or private sphere. For example, the current criteria as they

are applied exclude people whose first official language spoken is not the language of the minority but who:

- speak the minority language at home (as can be the case for francophiles, anglophiles and newcomers);
- speak the minority language in the workplace; or
- receive their education in the minority language.

Second, he pointed out that significant demand is defined in relation to the proportion of the minority population (i.e., the 5% rule). However, the chief factor to be considered in determining significant demand in a region served by federal offices should be the presence of an official language community that shows signs of vitality.

Third, he stressed that Bill S-205 is important because it codifies the principle of substantive equality by explicitly imposing on federal institutions the duty to provide service of equal quality in both official languages and to consult with the English and French linguistic minority population concerning the quality of those communications and services.

The Bill died on the order table after the federal election was called in August 2015 and was tabled again in December 2015 as Bill S-209. The Commissioner reiterated that this bill makes an undoubtedly significant contribution to fulfilling the purpose of Part IV of the Act and helps official language communities to strengthen their identity, to develop and to thrive.

ANALYSIS NEEDED OF THE IMPACT OF THE OFFICIAL LANGUAGES REGULATIONS ON THE VITALITY OF OFFICIAL LANGUAGE COMMUNITIES

In 2013, the Société franco-manitobaine made public a complaint that had been filed with the Office of the Commissioner concerning the *Official Languages (Communications with and Services to the Public) Regulations*.¹² The complaint alleged that the method used to determine the first official language spoken in order to establish what constitutes significant demand does not take into account large segments of the population that speak the minority language and would want or be likely to use it in federal offices.

The objective of the investigation was to determine the nature of the obligations incumbent upon the Treasury Board of Canada Secretariat under Part VII of the Act in the context of the Official Languages

Regulations Re-Application Exercise. The exercise seeks to review and update federal institutions' language obligations every 10 years using census data: in this case, data from the 2011 Census.

In the spring of 2015, the Commissioner released his final investigation report to the parties involved. The Commissioner concluded that the Treasury Board of Canada Secretariat had to identify the impact of the results of the re-application exercise on the vitality of official language communities that would no longer be receiving bilingual services because of changes in the linguistic designation of some federal offices. The Commissioner also concluded that the institution should present options to the President of the Treasury Board to mitigate the negative impact of these results.

Because the Treasury Board of Canada Secretariat had stated that it did not intend to conduct an analysis on the impact of the results, the Commissioner concluded that it had not met its obligations under Part VII of the Act and that the complaint was founded.

The Commissioner therefore recommended that the Treasury Board of Canada Secretariat undertake a thorough review of the impact of the Official Languages Regulations on the development and vitality of the official language communities affected by the results of the re-application exercise. He also recommended that the findings of the analysis be shared with the President of the Treasury Board, along with opinions and advice on solutions to be considered in order to mitigate any potential negative impact of the Regulations.

A follow-up is under way to determine whether the Treasury Board of Canada Secretariat will be taking the appropriate steps to implement the Commissioner's recommendations.

In February 2015, the Société franco-manitobaine applied for a court remedy in Federal Court under Part X of the Act. The Société petitioned the Federal Court to find that parts of the *Official Languages (Communications with and Services to the Public) Regulations* are inconsistent with section 20 of the *Canadian Charter of Rights and Freedoms* (and with several provisions of the Act) and to order the government to amend the Regulations. The Société maintained that:

- the Regulations contain an unduly restrictive definition of the word “Francophone,” i.e., they do not make allowances for the recent expansion of the Francophone space to include mixed families, newcomers, people who are bilingual and people who are able to converse in French;
- the use of formal numerical thresholds is inconsistent with the objectives of the Act; and
- the Regulations were adopted without consulting the French-speaking minority, and they have not undergone any significant review or consultation since they came into force in 1992.

The objective of Senator Maria Chaput’s Bill S-209 was to correct the very shortcomings cited by the Société franco-manitobaine in its court remedy. The Commissioner strongly urges the government to update Part IV of the Act and to review the criteria for defining significant demand.

RECOMMENDATION 2

The Commissioner of Official Languages recommends:

- that Parliament make Bill S-209 a priority so that the parliamentary committees examining it are able to conduct a diligent review; and
- that, by March 31, 2017, the Treasury Board undertake an evaluation, in consultation with official language communities, of the effectiveness and efficiency of its policies and directives for implementing Part IV of the *Official Languages Act*.

VIRTUAL TEAMS MUST BE ABLE TO HOLD BILINGUAL MEETINGS

Against a backdrop of budget cuts, new technologies have made it easier to create virtual teams whose members work in English and French in cities across the country. The situations that have emerged as a result of these changes have uncovered issues regarding the right of federal employees to work in the official language of their choice in regions designated as bilingual for language-of-work purposes and the related issue of managing bilingual meetings.

On September 10, 2015, the Office of the Commissioner released a new guide called *Effective practices for chairing bilingual meetings*.¹³ Managers now have a new tool to help them respect their employees’ rights and to enable those employees to take full part in discussions during meetings, regardless of where they work.

FEDERAL OFFICES HAVE A TANGIBLE IMPACT ON OFFICIAL LANGUAGE COMMUNITIES

Over the past 10 years and for a variety of reasons, federal institutions have had to review their service delivery models. In some cases, this has led to a reduction in the number of offices that provide in-person service. Beyond this reduction, federal offices that do provide service to the public have a tangible and significant impact on the identity and vitality of official language communities.

This concise but comprehensive guide presents a series of best practices for managing situations in which some meeting participants are fluently bilingual, some are unilingual and some have varying levels of bilingualism. It emphasizes the importance of leadership by the person chairing the meeting. This person must be skilled in both official languages, as must be the person in charge of taking notes during the meeting. The guide underscores the need to make relevant documents, such as agendas and minutes, available in both official languages at the same time. And it contains advice for meeting chairs: for example, explain how the bilingual meeting will be conducted, assign a “language keeper” to keep track of the balance between the use of English and French, summarize comments in the other official language.

A few weeks later, the Office of the Commissioner posted a [video](#)¹⁴ on YouTube explaining these best practices and providing examples. Other institutions followed suit, including the Canada School of Public Service. All of these tools were distributed across federal institutions through the Council of the Network of Official Languages Champions.

FOR BETTER OFFICIAL LANGUAGES GOVERNANCE

In recent years, there have been growing signs of the need for improved official languages governance in the top ranks of government.

The Commissioner drew attention to this issue in his 2009–2010 annual report. The budget cuts and major restructuring exercises undertaken by the government of the day prompted the Commissioner to consider the hazards associated with the decentralization process under way and the reduction in staffing and resources allocated to central agencies, such as the Treasury Board of Canada Secretariat and its Official Languages Centre of Excellence. Canadian Heritage, an institution that also guides federal institutions in taking actions related to implementation of Part VII of the Act, had its staffing levels reduced, as well.

After deciding in 2009 to assign responsibility for official languages governance to the deputy heads of federal institutions, the government failed to send a clear message that official languages were still one of its priorities. Some ways it could have shown or could show that official languages are a priority include insisting on the importance of assessing the impact of its decisions on compliance with every part of the Act, fulfilling its duty to consider the needs of the official language communities affected by administrative changes, and proposing solutions or contemplating ways of remedying situations caused by these changes.

Beyond mere words, this kind of approach would be a powerful and persuasive testimony to the central importance of both official languages.



FEDERAL INSTITUTIONS' COMPLIANCE WITH THE *OFFICIAL LANGUAGES ACT*

The Commissioner of Official Languages intervenes with federal institutions to ensure that they rectify—and prevent—shortcomings that undermine respect for the language rights established by the *Official Languages Act*. The report cards evaluate specific aspects of federal institutions' compliance; the investigations address complaints received by the

Office of the Commissioner of Official Languages; and the audits and their follow-ups focus on prevention by looking at how well institutions are meeting their obligations under the Act. Taken separately, none of these tools can generate an overall picture of federal institutions' compliance. However, when used together, they provide significant indicators.

SPECIAL REPORT TO PARLIAMENT ON AIR CANADA

In his annual reports, the Commissioner of Official Languages has reported regularly on issues concerning Air Canada's compliance. His predecessors did the same. After nine years of using his annual reports as a vehicle for this information, the Commissioner felt that it was important to bring specific issues involving Air Canada to Parliament's attention. A special report to Parliament on this topic is slated to be released in June 2016.

HORIZONTAL ANALYSIS OF THE REPORT CARDS FOR 33 FEDERAL INSTITUTIONS FROM 2006 TO 2016

The Commissioner has issued report cards to a number of federal institutions.¹⁵ These report cards evaluate specific aspects of the institutions' compliance with the Act. Working with the federal institutions, the Office of the Commissioner conducts interviews, makes observations and reviews documentation to evaluate them on key aspects of their language obligations. It then produces report cards that provide an overall assessment of each institution's efforts to comply with the Act.

In 2014–2015 and 2015–2016, the Office of the Commissioner produced 33 report cards¹⁶ for federal institutions that have been evaluated at least twice since 2006. After analyzing the 106 report cards produced by his office for these institutions over the past decade, the Office of the Commissioner was able to compile an overview of specific aspects of their compliance from 2006 to 2016. The findings have been grouped together according to the standard report card sections: Official Languages Program Management, Service to the Public (Part IV), Language of Work (Part V), Participation of English-speaking and French-speaking Canadians (Part VI), and Development of Official Language Minority Communities and Promotion of Linguistic Duality (Part VII).

It is important to note that because the Commissioner's findings are presented as a general overview, institutional characteristics and regional situations can sometimes be obscured. However, the federal institutions' report cards show progress in some

areas, particularly in terms of procedures and governance. To ensure that the measures they take are successful, these institutions have to instill leadership and individual commitment at every level.

OFFICIAL LANGUAGES PROGRAM MANAGEMENT

Compliance with the obligations set out in the Act depends largely on the importance federal institutions place on effectively managing their official languages program.

Institutions need to support their official languages programs with policies and action plans. Of the federal institutions that either had no policy instrument or relied on a general one, roughly half adopted specific policies, guidelines or action plans during the evaluation period. In most cases, these new instruments now address each part of the Act specifically or contain sections that address them. Some institutions that did not develop their own policy instruments said that they rely exclusively on Treasury Board policy instruments. However, institutions that had internal official languages instruments in addition to those offered by the Treasury Board could connect official languages more effectively to their own realities and responsibilities and thus integrate official languages more successfully within their organizations.

Of the federal institutions whose plans, policies or guidelines contained only general references to roles and responsibilities, more than half developed accountability frameworks that defined specific roles and responsibilities. Institutions that adopted this practice were generally those that were more successful in integrating official languages within their organizations.

The horizontal analysis also showed the importance of sound official languages governance and revealed differences between institutions in terms of that governance. Official languages committees or units that have formal and clearly identified activities tend to be more effective and influential within the organization. Federal institutions that performed well in official languages management during the most recent report card exercises had incorporated an official languages committee or unit into their decision-making structure, fostering direct discussions with senior management about official languages issues and priorities. The Commissioner cautions institutions that do not have an official languages governance structure and rely exclusively on the leadership of certain individuals: this kind of limited approach will compromise success in the long term.

Over the past 10 years, senior executives in most federal institutions have become more involved in official languages management. The official languages champions and the persons responsible for official languages are therefore more involved in the decision-making process (e.g., by holding key positions or participating in senior management meetings). Moreover, federal institutions that have seen a general improvement in official languages management are those where official languages issues are discussed by senior management and where the champions and persons responsible for official languages have decision-making authority and lead by example.

Although there is still work to be done, federal institutions are now more likely to use tools and procedures to take official languages into account when planning activities and making major decisions. By systematically integrating clear mechanisms into the decision-making process, institutions can identify and consider the impact that introducing,

modifying or eliminating programs or policies will have on compliance with their obligations under the various parts of the Act. The Commissioner has noted that, among the reasons why institutions have been having difficulty with managing official languages programs since 2006, either there are no procedures for taking into account the potential effects of decisions on official languages, or the existing tools are too general or used irregularly.

Federal institutions that have governance instruments are also in the habit of updating them regularly. This helps them to assess their initiatives, analyze their successes and difficulties, and determine the changes that need to be made to their documents, tools or procedures in order to resolve any issues. This approach has proven to be effective in creating a dynamic governance structure in federal institutions, which in turn makes interactions with the Office of the Commissioner more productive during complaint resolution processes. The most recent report card exercises revealed that most federal institutions are proactive in working with the Office of the Commissioner during investigations, which results in greater cooperation when implementing solutions to rectify official languages problems.

Interestingly, many institutions said that they had used the findings of the Commissioner's report cards, investigations, audits, studies or annual reports to resolve issues or rectify problems related to official languages. By implementing specific action plans for shortcomings identified by the Commissioner or by taking corrective action in response to his comments, suggestions or recommendations, most federal institutions either gained a better understanding of the Act and its parts, complied more effectively with one or more parts of the Act or continued to perform well in meeting their official languages obligations.

Through anonymous observations of service to the public in person, by telephone and by e-mail, the report cards evaluate federal institutions' performance in the delivery of service to the public. Observations concerning service in person and by telephone were made throughout the Commissioner's decade in office, while observations of service by e-mail were not made until 2008–2009. The report cards also evaluate visual and verbal greetings in both official languages, which are commonly referred to as the active offer of service.

With respect to service by telephone, the results of observations for active offer and availability of service in the official language of the linguistic minority have been generally good and have even improved over the past decade. The growing use of automated systems by federal institutions is a clear factor in these good results. With respect to service by e-mail, the observations showed that while most federal institutions provide service in both official languages, there are still significant variations in response times in English and French, most often at the expense of French. With respect to service in person, the observations revealed that visual active offer—visual greetings in both official languages (through signage, for example)—is no longer a problem for most federal institutions. Nonetheless, the availability of service in the official language of the linguistic minority still varies among institutions, and they still have considerable difficulty with in-person active offer, which has received the lowest ratings every year since 2006. The Commissioner was disappointed to see that, of the federal institutions evaluated for in-person active offer in the most recent report card exercises, two thirds continued to score in the range of 0 to 50%.

The Supreme Court of Canada's ruling in the 2009 *DesRochers*¹⁷ case highlighted the importance for federal institutions to respect the principle of substantive equality when delivering their services to English- and French-speaking Canadians. Depending on the nature of their services, institutions may have to adapt services to the needs of the two language communities in order to meet their obligations fully under Part IV of the Act. In their efforts to meet their Part IV obligations, federal institutions must make it a priority to understand the particular needs of official language communities in order to respect the principle of substantive equality as expressed by the Court. Since the decision was handed down, the Commissioner has been evaluating this aspect as part of the report card exercise in order to determine to what extent federal institutions are taking the needs of official language communities into account when delivering their services.

Although federal institutions had barely begun to familiarize themselves with the decision when they were evaluated on it for the first time, nearly two thirds of them have since reflected on the need to tailor their programs and services to the needs of official language communities—for example, by using the analytical grid developed by the Treasury Board of Canada Secretariat or other assessment tools created for that purpose. However, many institutions are still having difficulty understanding the principle of substantive equality. Some are confusing it with the availability of services to the public in both official languages, while others are incorrectly equating it with the Part VII obligation to support the development of official language communities. Our analysis revealed that very few federal institutions that assessed their programs

and services saw any need to adapt them. The Commissioner believes that it is important for federal institutions to be rigorous in their assessment, making sure that they have a good understanding of what substantive equality is and determining which programs and services should be tailored to the needs of official language communities.

Some institutions have misconceptions about who the public is.¹⁸ The Commissioner would like to remind federal institutions that they all communicate in one way or another with the public, whether it be the general public or a specific client group. Consequently, they all have a duty to communicate with the public in both official languages, as set out in Part IV of the Act.

SERVICE CANADA AND THE *DESROCHERS* CASE

Following the Supreme Court of Canada's ruling in the *DesRochers* case, Service Canada reviewed its programs and services in 2011 using the analytical grid developed by the Treasury Board of Canada Secretariat. The results were presented to the Program and Service Delivery Committee, and a plan was created to ensure that programs and services meet the needs of official language communities. The Official Languages Service for Citizens division (Partnerships Development and Management Directorate) and the Corporate Planning and Management Directorate are responsible for implementing the plan to ensure a systematic review of all new policies, programs, Treasury Board submissions, memoranda to Cabinet and transfer payments. In 2012, an update of the service review and implementation of the *DesRochers* decision within Service Canada was presented to the Service Management Committee.

TABLE 1RESULTS OF OBSERVATIONS¹⁹ OF SERVICE TO THE PUBLIC
(2014–2015 AND 2015–2016)

	IN PERSON			BY TELEPHONE		BY E-MAIL	
	VISUAL ACTIVE OFFER (%)	ACTIVE OFFER (%)	AVAILABILITY OF SERVICE (%)	ACTIVE OFFER (%)	AVAILABILITY OF SERVICE (%)	AVAILABILITY OF SERVICE*	RESPONSE TIME** (%)
Aboriginal Affairs and Northern Development Canada	***	***	***	82	52	100	68
Agriculture and Agri-Food Canada	94	28	72	81	85	95	42
Atlantic Canada Opportunities Agency	96	55	100	81	89	95	32
Business Development Bank of Canada	89	24	72	100	100	80	35
Canada Council for the Arts	90	80	100	100	100	100	76
Canada Economic Development for Quebec Regions	***	***	***	88	98	95	36
Canadian Food Inspection Agency	86	37	77	87	81	85	100
Canadian Heritage	100	67	100	77	95	95	48
Canadian Institutes of Health Research	N/A	N/A	N/A	100	100	95	92
CBC/Radio-Canada ****	72	27	85	100	100	95	48
Destination Canada	N/A	N/A	N/A	100	***	27	***
Environment Canada	***	***	***	48	68	85	49
Industry Canada	98	35	75	98	94	100	55
Infrastructure Canada	N/A	N/A	N/A	85	100	100	85
Library and Archives Canada	***	***	***	100	100	90	77
National Arts Centre	100	96	100	100	100	82	29
National Capital Commission	100	66	96	92	100	100	78
National Defence and the Canadian Armed Forces	100	25	85	83	74	95	58
National Film Board	N/A	N/A	N/A	100	100	100	90
National Research Council Canada	89	9	79	82	94	100	19
Natural Resources Canada	85	7	81	87	76	75	56
Natural Sciences and Engineering Research Council of Canada	100	6	100	68	89	90	32

	VISUAL ACTIVE OFFER (%)	IN PERSON		BY TELEPHONE		BY E-MAIL	
		ACTIVE OFFER (%)	AVAILABILITY OF SERVICE (%)	ACTIVE OFFER (%)	AVAILABILITY OF SERVICE (%)	AVAILABILITY OF SERVICE*	RESPONSE TIME**
NAV CANADA	88	30	80	94	100	100	96
Public Health Agency of Canada	78	10	88	65	87	95	57
Public Safety Canada	***	***	***	96	82	85	76
Public Service Commission of Canada	***	***	***	100	100	100	95
Public Works and Government Services Canada	***	***	***	87	84	90	86
Royal Canadian Mounted Police	69	26	68	71	65	90	74
Service Canada	98	77	85	100	100	N/A	N/A
Social Sciences and Humanities Research Council	100	6	100	***	***	95	88
Transport Canada	95	13	81	85	85	95	92
Treasury Board of Canada Secretariat	N/A	N/A	N/A	100	100	N/A	N/A
Western Economic Diversification Canada	100	***	100	83	100	90	68

*Availability of service by e-mail indicates the difference between the response rates for English e-mails and the response rates for French e-mails. The smaller the difference is between the response rates, the higher the score.

**E-mail response time indicates the difference between the average response times for English and French e-mails. The smaller the difference is between the response times, the higher the score.

***Because insufficient data was obtained during the observations, the results are not published. Various reasons explain why the Office of the Commissioner of Official Languages did not have sufficient data for some observations. In person: too many service points did not provide service to the public without an appointment; too many service points were not accessible to the public (e.g., doors were locked and entry was by access code only); observers were recognized and their anonymity was compromised; too many service points had a commissionaire monitoring access to the offices and observers had to wait for an employee to come to the commissionaire's desk to answer questions. By telephone: too many observers' calls were routed to voice mail. By e-mail: no responses were received in English and/or French.

****Only administrative services were evaluated.

LANGUAGE OF WORK — PART V OF THE
OFFICIAL LANGUAGES ACT

All federal institutions have a duty to create and maintain a work environment that is conducive to the effective use of both official languages in regions designated as bilingual for language-of-work purposes. The Commissioner has noted that, since 2006, the measures taken by federal institutions have become increasingly focused. Most institutions have developed instruments and tools on bilingual meetings, internal communications, employees' rights and supervisors' obligations. In addition to taking more specific measures to meet their obligations, institutions are also developing more directives, work plans and action plans that either include Part V of the Act or are specifically dedicated to it.

The Commissioner has also noted that the federal institutions that have improved overall in terms of Part V in recent years are those that place greater importance on raising employees' awareness of language of work. In most cases, measures and procedures have been put in place to inform employees about their language-of-work rights and obligations. These include regular reminders about language rights in the workplace and Part V orientation sessions for new employees.

Most federal institutions examined many of the language-of-work issues they face, including the availability of work tools and opportunities for employees to participate in meetings, obtain training, draft documents and be supervised in the official language of their choice. Nonetheless, recent report cards show that only half of federal institutions are making ongoing efforts to address shortcomings involving language of work.

To assess the impact of measures put in place to inform employees about their language-of-work rights and obligations, many institutions now use the results of the language-of-work questions in the Public Service Employee Survey.²⁰ The most recent report card exercises showed that some institutions not only analyzed the results from the 2011 and 2014 surveys (or from other internal evaluation mechanisms), but also produced a report whose recommendations were included in targeted action plans. However, when analyzing the findings of the Public Service Employee Survey, federal institutions often tend to look only at the overall results, without considering the detailed results by language group. The Commissioner therefore urges federal institutions to analyze not only the overall results of the Public Service Employee Survey, but also the results by language group in each part of the organization, taking into account the linguistic designation of the region for language-of-work purposes, in order to address shortcomings that are not apparent in the overall results.

AGRICULTURE AND AGRI-FOOD CANADA

Agriculture and Agri-Food Canada assesses the impact of the measures it takes by following up on the results of internal and external performance analyses. Its Official Languages Program Performance Measurement and Evaluation Framework contains language-of-work indicators such as supervision, access to personal and central services, and communications between unilingual and bilingual regions, including monitoring the content of *AgriWiki*, an internal Agriculture and Agri-Food Canada social media tool. In addition, official languages are one of the five areas of improvement in the departmental action plan adopted in response to the results of the 2008 and 2011 Public Service Employee Survey.

Assessing the measures they have taken continues to be a challenge for federal institutions. The Commissioner believes that it is essential for federal institutions to implement mechanisms to evaluate their actions so that they can take appropriate and effective measures in order to rectify any problems that come up. By assessing the effectiveness of these measures, institutions can ensure that they are focusing their efforts in the right areas.

PARTICIPATION OF ENGLISH-SPEAKING AND FRENCH-SPEAKING CANADIANS — PART VI OF THE *OFFICIAL LANGUAGES ACT*

The Act stipulates that the composition of the workforce of federal institutions should tend to reflect the presence of both the official language communities of Canada, taking into account the institutions' mandates, the public they serve and their location. The report cards provide institutions with data to help them understand this objective and to identify steps they need to take to achieve it.

There is still some confusion among federal institutions about what Part VI of the Act means and what obligations it imposes. The most recent report card exercises—and the measures the institutions have taken to achieve their objectives in terms of representation—show that some institutions still seem to be confusing the first official language spoken by their employees and by candidates for federal public service jobs (the subject of Part VI) with the linguistic identification of positions in terms of service to the public.

CANADIAN FOOD INSPECTION AGENCY

The Canadian Food Inspection Agency used data from March 31, 2013, on the representation of English- and French-speaking Canadians in its workforce. It conducted a gap analysis of the representation and is working on a strategy to close the gaps in the various regions. For example, in Quebec, it is implementing a strategic plan to attract qualified applicants from the province's English-language universities and colleges.

While several institutions still have work to do, many of those who had difficulty in meeting their Part VI obligations during earlier report card exercises have now put measures in place to ensure that their workforce tends to be representative of both of Canada's official language communities. The Commissioner noted that one of the main strategies the institutions are using focuses on initiatives with educational institutions in official language communities to promote employment opportunities. However, the Commissioner also noted that in Quebec, the workforces of three quarters of federal institutions do not tend to reflect the demographic weight of the English-speaking population in that region. Similarly, elsewhere in Canada, the workforces of one third of federal institutions do not tend to reflect the demographic weight of the French-speaking population.

Some institutions whose workforces are representative of the English- and French-speaking population have focused on the reasons for this equitable representation. Over the years, with full support from senior management, they have developed mechanisms to ensure regular, ongoing monitoring in order to maintain equitable representation of both official language communities in their workforce.

Recent workforce reductions following the 2011–2012 Strategic and Operating Review and the 2011 Deficit Reduction Action Plan had an impact on recruitment and, consequently, on the institutions' ability over the short term to correct any shortcomings in terms of equitable representation of English- and French-speaking employees. The Commissioner would like to emphasize the fact that, regardless of any decline in available resources, it is important for federal institutions to pay close attention to this part of the Act in order to ensure that their workforces are representative of the two official language communities in Canada and that members of these communities are able to participate fully and equitably.

DEVELOPMENT OF OFFICIAL LANGUAGE
MINORITY COMMUNITIES AND PROMOTION OF
LINGUISTIC DUALITY — PART VII OF THE *OFFICIAL
LANGUAGES ACT*

The Commissioner noted that federal institutions' implementation of Part VII of the Act has changed considerably since he took office and has even improved in some respects. Institutions seem to be paying closer attention to this part of the Act and the obligations it entails. They have gradually embraced the concepts it contains and have developed structured approaches, complete with guidelines and even action plans, to address them.

Federal institutions have a generally good understanding when it comes to identifying official language communities. However, this must lead to dialogue and consultation, which continues to be a challenge for a number of institutions. Although the Commissioner has seen an improvement over the past decade among several of these, the mere fact of participating in meetings or general events that are attended by community associations—but where there may not necessarily be any direct dialogue between the participants—continues to be wrongly perceived as meeting the obligation to consult with official language communities. Institutions struggling with these kinds of issues would do well to engage in a genuine dialogue in which the participants have formal discussions and where the official language community's needs and feedback are taken into consideration by the institutions when making decisions and conducting assessments regarding positive measures.

Federal institutions have a better understanding of the objectives of Part VII of the Act than they did 10 years ago. They no longer see the duty to take positive measures as a major hurdle. The first report cards that were issued following the amendment of the Act in 2005 found that many federal institutions did not quite understand what “positive measures” meant and had difficulty ensuring that measures were, in fact, positive for a specific community. More recent report cards have revealed a significant

NATURAL RESOURCES CANADA

Following the 2009–2010 report card exercise, Natural Resources Canada tackled the issues related to the implementation of Part VII of the Act and defined the means to fulfill its obligations in that regard, taking into account its mandate and mission. Subsequently, recommendations for implementing Part VII were made by an external consultant, a working group was set up and a regional action plan was drawn up. The working group established a regional network of official languages champions made up of representatives of each sector in the regions. The mandate of the Regional Champions Network is to promote, facilitate and coordinate implementation of Part VII at the regional level. The working group developed a strategic framework for Part VII, set up specific partnerships in the regions and took concrete action.

change: federal institutions are increasingly putting measures in place that target the needs expressed by official language communities, developing action plans to define and implement those measures and making the measures part of a coordinated effort.

Most institutions that had difficulty meeting their Part VII obligations have a broad interpretation of the relationship between the act of taking positive measures, the target official language community and the resulting benefits for that community. These institutions feel that their initiatives, which are intended for the general public and designed to enhance the vitality of all communities, are already meeting the needs of official language communities. They maintain that, because members of these communities are members of the public, they also benefit from the initiatives, which can therefore be considered as positive measures. The Commissioner would like to reiterate that a positive measure is a targeted action taken by a federal institution with the goal of having a specific and tangible effect on the vitality of official language communities, on advancing the equal status of English and French in Canadian society and on the future of linguistic duality in Canada.

LIBRARY AND ARCHIVES CANADA

Library and Archives Canada has taken positive measures to foster the development of official language communities. In 2014, it implemented a social media communications strategy targeting official language communities and highlighting their specific needs. This strategy consists of developing a thematic series of posts and tweets to be published on a regular basis, intended for Anglophones in Quebec and Francophones outside Quebec.

The Anglo-Quebec digitization initiative is an example of a theme that Library and Archives Canada uses to showcase the history of official language communities. It involves developing and making available a bank of heritage pieces showcasing the history of Montréal's English-speaking community. In addition, this initiative addresses a need expressed by official language communities, who want to be kept informed about and have access to Library and Archives Canada's collections on topics that concern them.

PUBLIC HEALTH AGENCY OF CANADA

With respect to the promotion of linguistic duality in Canadian society, through the initiative to adapt and translate French-language scientific research and articles produced by the Institut national de santé publique du Québec and Quebec researchers in the field of public health, the Public Health Agency of Canada enables English-speaking partners and networks in Quebec and across Canada to access this research. Through the Pan-Canadian Public Health Network, which distributes these scientific articles, the initiative contributes to promoting French-language research across the country.

A shortcoming seen in most institutions is the lack of permanent mechanisms to assess the impact of the measures taken so that they can be modified, as necessary, to be more effective. Putting formal control mechanisms and tools in place to assess the impact of the measures they take helps institutions to review the measures' relevance and tailor them to the needs expressed by official language communities. Institutions that assess their measures tend to do a better job when it comes to Part VII.

Generally, the duty to enhance the vitality and support the development of official language communities is better understood than the duty to promote linguistic duality in Canadian society. Although many federal institutions are making efforts to meet their obligations in this regard, they still do not have a firm grasp of what promoting linguistic duality is and often confuse it with service to the public, in the case of external promotion (in Canadian society), or with language of work, in

the case of internal promotion (within the institution or the public service). The Commissioner encourages federal institutions to reflect more deeply on the measures they can take—within the scope of their mandates—to foster the full recognition and use of English and French in Canadian society as a whole.

SUMMARY

Not one of the federal institutions obtained an overall rating of “Exemplary” on its most recent report card. The way in which federal institutions assess the measures they take to meet their obligations under the Act continues to be problematic. Some practices continue to hinder federal institutions' progress, in some cases even causing them to regress.

Despite this, the horizontal analysis of the report card findings shows that over the past decade, federal institutions have improved their practices with regard to certain aspects of the Act. In general, institutions have a better understanding of their official languages obligations. Moreover, integrating official languages within organizational structures and implementing specific procedures and processes for official languages are more commonplace now than in 2006. Nonetheless, taking measures and putting governance procedures, processes and structures in place ultimately need to produce tangible results: members of the public receiving services of equal quality in both official languages, federal employees working in the official language of their choice, and official language communities being actively supported in their development.

INDUSTRY CANADA

In addition to the Official Languages Filter, Industry Canada developed a performance measurement strategy to measure the impact of its initiatives on the development of official language communities and the impact of activities related to the promotion of linguistic duality. The results of the projects for which it provides funding are also discussed during dialogue days and by monitoring committees. Initiatives are adapted to take into account the feedback received. Following these impact assessments, some initiatives were modified and implemented in other communities, based on their needs and economic situation.

OVERVIEW OF FINDINGS

PRACTICES OR FACTORS THAT RESULTED IN PROGRESS

- Implemented internal policy instruments
- Developed an accountability framework
- Gave decision-making authority to the persons responsible for official languages
- Implemented a dynamic governance structure
- Assessed the need to tailor services to official language communities' needs in order to achieve substantive equality
- Educated employees about their language-of-work rights and obligations
- Made language-of-work instruments and tools available and encouraged their use
- Implemented or used tools to measure employee satisfaction with language of work
- Implemented mechanisms to evaluate measures and developed action plans to address shortcomings
- Understood and embraced the objectives of Part VII of the Act
- Engaged in dialogue with official language communities to identify their needs
- Took targeted, deliberate and well-defined positive measures, and assessed their impact regularly in cooperation with official language communities

PRACTICES OR FACTORS THAT HINDERED PROGRESS

- Limited leadership to a single person
- Failed to take official languages into account fully or at all in decision-making processes
- Failed to make in-person active offer regularly or at all
- Did not understand what substantive equality means
- Misinterpreted who the public is
- Was not aware of shortcomings and did not try to rectify them
- Had no mechanisms to evaluate the impact of the measures taken
- Did not understand Part VI (equitable participation) of the Act
- Took the needs of official language communities into account only superficially through ineffective and inadequate means
- Failed to align measures with needs expressed by official language communities
- Did not understand the duty to promote linguistic duality

COMPLAINTS

Complaints sent to the Office of the Commissioner are not automatically admissible simply because they were filed. To be admissible, a complaint must involve a federal institution, relate to a failure to meet an obligation under the Act, and concern a specific incident or series of incidents. Since he entered into office in 2006, the Commissioner has investigated more than 7,000 admissible complaints. This section presents an overview of the complaints that were received and processed by the Office of the Commissioner in 2015–2016 and provides a summary of the complaints that were investigated over the past decade.

Table 2 shows the admissible complaints that were processed in 2015–2016, by province and territory and by part or section of the Act. A very high proportion of them concern incidents that occurred in Quebec and Ontario, including the National Capital Region. To provide a more accurate picture of the situation, complaints concerning federal institutions that have offices in the National Capital Region are divided into two separate categories: National Capital Region (Quebec) and National Capital Region (Ontario). More than half of the admissible complaints came from the National Capital Region alone.

Complaints are also classified according to the parts of the Act under which the investigations were conducted. Nearly half of all complaints received concerned the right of members of the public to communicate with and receive services from federal institutions in the official language of their choice (Part IV). Of this number, a significant proportion came from the National Capital Region (Ontario), followed by Ontario, which is home to more than half of the French-speaking population outside Quebec.²¹

Complaints made under section 91 (Part XI) of the Act relate to the establishment of official languages requirements during staffing processes. Many federal institutions use generic work descriptions with multiple linguistic profiles, which can result in staffing positions for which the language requirements are often inadequate and do not take into account the specific tasks to be performed. The Commissioner continues to maintain that supervisory positions in regions designated as bilingual for language-of-work purposes should be identified as bilingual and include higher language requirements—i.e., a linguistic profile with a level C in written comprehension and oral proficiency—so that federal employees can fully exercise their right to work in the official language of their choice. For example, a supervisory position in a region designated as bilingual for language-of-work purposes should have a linguistic profile of at least CBC/CBC.

Social media use generated a number of complaints and raised concerns about how the Act is implemented. The Commissioner's investigations showed that these issues are real. Official languages obligations are still the same in the world of 2.0. With social media use on the rise, representatives of federal institutions have a duty to continue to respect the letter and spirit of the Act.

Table 3 presents an overview of the complaints received over the past decade, by province and territory. Although the geographical distribution of complaints remained relatively constant, the total number of admissible complaints, after a fairly steady decline until 2012–2013, has been rising for the past three years.

TABLE 2

ADMISSIBLE COMPLAINTS IN 2015–2016, BY PROVINCE/TERRITORY
AND BY PART/SECTION OF THE *OFFICIAL LANGUAGES ACT*

LOCATION OF INCIDENT	SERVICE TO THE PUBLIC (PART IV)	LANGUAGE OF WORK (PART V)	EQUITABLE PARTICIPATION (PART VI)	ADVANCEMENT OF ENGLISH AND FRENCH (PART VII)	LANGUAGE REQUIREMENTS (PART XI, SECTION 91)	OTHER PARTS OR SECTIONS	TOTAL
Newfoundland and Labrador	14	0	0	0	0	0	14
Prince Edward Island	1	0	1	0	0	0	2
Nova Scotia	15	1	0	0	0	0	16
New Brunswick	16	20	2	0	3	0	41
Quebec	34	19	2	0	11	2	68
National Capital Region (Quebec)	44	31	8	27	10	1	121
National Capital Region (Ontario)	124	47	5	32	132	11	351
Ontario	51	4	1	2	0	0	58
Manitoba	10	2	2	0	0	0	14
Saskatchewan	4	0	0	0	0	0	4
Alberta	7	0	1	0	0	0	8
British Columbia	13	1	1	1	0	0	16
Yukon	0	0	1	0	0	0	1
Northwest Territories	2	0	0	0	0	0	2
Nunavut	1	0	0	0	0	0	1
Outside Canada	8	0	0	0	0	0	8
Total	344	125	24	62	156	14	725

TABLE 3

ADMISSIBLE COMPLAINTS OVER 10 YEARS (2006–2007 TO 2015–2016),
BY PROVINCE/TERRITORY

LOCATION OF INCIDENT	2006 2007	2007 2008	2008 2009	2009 2010	2010 2011	2011 2012	2012 2013	2013 2014	2014 2015	2015 2016
Newfoundland and Labrador	2	5	7	11	6	11	8	18	12	14
Prince Edward Island	30	16	17	17	7	3	3	4	4	2
Nova Scotia	59	58	42	37	52	33	9	8	13	16
New Brunswick	81	49	49	43	35	36	24	31	42	41
Quebec	93	90	66	68	505	55	70	59	56	68
National Capital Region (Quebec)	88	33	67	93	57	49	49	37	64	121
National Capital Region (Ontario)	229	167	163	141	209	200	152	182	193	351
Ontario	89	95	105	956	51	77	52	75	78	58
Manitoba	31	50	19	27	10	25	20	20	13	14
Saskatchewan	7	7	6	8	3	2	2	8	16	4
Alberta	33	27	28	25	11	12	9	9	28	8
British Columbia	22	22	22	38	23	7	8	19	18	16
Yukon	2	3	1	1	3	0	0	0	1	1
Northwest Territories	0	3	3	2	0	1	0	1	0	2
Nunavut	0	0	0	0	1	0	0	0	0	1
Outside Canada	8	9	11	10	8	7	9	5	12	8
Total	774	634	606	1,477	981	518	415	476	550	725

The high-number anomalies in the table reflect complaints from people who contended that federal institutions' decisions did not take linguistic duality or the needs of official language communities into account. For example, 876 of the 956 complaints received from Ontario in 2009–2010 concerned the budget cuts made by CBC/Radio-Canada at CBEF Windsor radio station, which resulted in the elimination of all radio programs in French produced by the station. The Commissioner's investigation concluded that CBC/Radio-Canada had failed to meet the requirements of Part VII of the Act.

In 2010–2011, 438 of the 505 complaints from Quebec were filed by Air Canada maintenance employees who alleged that their employer had violated Part V of the Act, which covers language of work. As part of a service agreement, many of them had been on loan to Aveos, a private company responsible for Air Canada's aircraft maintenance. The workers said that their employer had not respected their right to be trained and supervised in French and to have access to work tools in

French. The Commissioner's investigation found that the employees on loan under the service agreement between the two companies were still Air Canada employees and still had language-of-work rights.

The sudden jump in the number of complaints from Alberta in 2014–2015 was the result of many complaints filed against the Calgary-based National Energy Board (NEB) about its decision to post 30,000 pages of documents on its Web site that

had been produced only in English by TransCanada, the proponent of the Energy East project. The Commissioner's investigation concluded that the National Energy Board had failed to comply with Part VII of the Act because it had not taken steps to enable and encourage Canada's two official language communities to participate in its public hearing process.

Table 4 provides an overview of the admissible complaints, by part of the Act, received by the Commissioner since he first took office.

TABLE 4

ADMISSIBLE COMPLAINTS OVER 10 YEARS (2006–2007 TO 2015–2016),
BY PART/SECTION OF THE *OFFICIAL LANGUAGES ACT*

	2006 2007	2007 2008	2008 2009	2009 2010	2010 2011	2011 2012	2012 2013	2013 2014	2014 2015	2015 2016
Service to the public (Part IV)	425	432	382	451	298	341	252	282	320	344
Language of work (Part V)	108	112	107	71	512	79	83	103	126	125
Equitable participation (Part VI)	6	12	11	11	6	1	6	13	11	24
Advancement of English and French (Part VII)	137	36	29	904	109	45	39	30	37	62
Language requirements (Part XI, section 91)	80	39	71	33	51	42	30	44	45	156
Other parts or sections*	18	3	6	7	5	10	5	4	11	14
Total	774	634	606	1,477	981	518	415	476	550	725

* This category contains the complaints that were filed under all of the other parts of the Act. Most of the complaints pertained to Part III (Administration of Justice) and Part VIII (Responsibilities and Duties of Treasury Board in Relation to the Official Languages of Canada).

After a general decrease until 2012–2013, the number of complaints made under Parts IV, V and VI of the Act has risen.

Some of the high-number anomalies in this table pertain to the files mentioned above, such as the unprecedented number of complaints generated by CBC/Radio-Canada's budget cuts at CBEF Windsor radio station in 2009–2010, and those against Air Canada about language of work in Montréal in 2010–2011.

The elimination of the Court Challenges Program in 2006–2007 generated an unusually large number of complaints under Part VII of the Act. The Fédération des communautés francophones et acadienne du Canada was among the complainants who took legal action against the government. The case ended with the creation of the Language Rights Support Program in September 2009. The fairly high number of complaints received in 2010–2011 under Part VII was the result of the elimination of the long-form census questionnaire, a decision that has been reversed by the current government.

OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES IMPROVES ITS COMPLAINT HANDLING PROCESSES

When he took office in 2006, the Commissioner of Official Languages quickly realized that there was a fairly high number of complaints to be processed and that nearly 60% of them had been made more than a year earlier. To clear the backlog, the Commissioner made inventory management a priority, and his office established standards and practices to prevent this situation from reoccurring.

Clearing the backlog and managing the complaint inventory made it possible not only to raise client service standards overall, but also to fine-tune investigation practices, to define the skills required to be an investigator and adjust hiring processes accordingly, to plan human resources requirements more effectively and to improve professional development programs.

All of these efforts produced tangible results. The Commissioner will end his time in office with only a slight backlog of complaints—just over 10% of the cases currently being processed.

AUDITS AND AUDIT FOLLOW-UPS

Through his audits, the Commissioner determines to what extent federal institutions are meeting their obligations under the Act. Once an audit report has been issued, the Office of the Commissioner follows up to determine whether the institution has implemented the Commissioner's recommendations or has begun to take steps to implement them.

TREASURY BOARD OF CANADA SECRETARIAT: FULFILLING ITS RESPONSIBILITIES BETTER

On January 12, 2016, the Commissioner published an audit report highlighting shortcomings in the way the Treasury Board of Canada Secretariat complied with Part VII of the Act during the 2011–2012 Strategic and Operating Review.

The decision to conduct this audit was an extension of one of the recommendations the Commissioner made in his [2012–2013 annual report](#): a recommendation to the President of the Treasury Board and the Minister of Canadian Heritage and Official Languages to determine the impact of budget cuts as a result of the 2011 Deficit Reduction Action Plan.²² As early as 2007, the Commissioner had conducted an investigation following the federal government's major cutbacks in 2006. One of the Commissioner's recommendations, which he repeated in his [2007–2008 annual report](#), was for the Treasury Board of Canada Secretariat to ensure that expenditure reviews are conducted in full compliance with its duties and its role under Part VII of the Act.²³

The Commissioner's audit focused mainly on the Treasury Board of Canada Secretariat's supervisory and support role in developing tools and guidelines for federal institutions, in analyzing their proposals and in providing recommendations to the Treasury Board during the 2011–2012 Strategic and Operating Review. The auditors' work was complicated by the fact that the Secretariat cited Cabinet confidence

and did not provide them with some parts of its submissions or analyses pertaining to official languages, nor would it discuss the content of any document related to the 2011–2012 Strategic and Operating Review.

The information gathered during the audit revealed the Treasury Board of Canada Secretariat's narrow interpretation of its obligations under Part VII of the Act. The Commissioner issued three recommendations to help the institution improve the way in which it meets its Part VII obligations during expenditure reviews. The Commissioner was satisfied with the way in which the Secretariat proposed to address the first two recommendations, which were to develop and implement a detailed official languages action plan and accountability framework. However, the Commissioner was only partially satisfied with the institution's plans for implementing the third recommendation on official languages requirements in the drafting guidelines given to federal institutions during strategic and operating reviews, and determined that it therefore had not fully met its Part VII responsibilities.

ELECTIONS CANADA: A REPORT THAT CONCERNS ALL VOTERS

The Commissioner's audit report on Elections Canada, which was published on July 31, 2015, found that the institution needed to make major improvements in order to meet all of its obligations under the Act.

The Office of the Commissioner conducted the information-gathering part of the audit in the year before the 2015 general election and during by-elections that were held in June 2014 in four ridings in Ontario and Alberta. In his report, the Commissioner issued nine recommendations to help Elections Canada improve services in terms of communication with voters in English and French and the delivery of bilingual services.

Elections Canada submitted an action plan to address some of the shortcomings noted in the report: for example, staff training and the delivery of bilingual services. However, complaints received by the Office of the Commissioner during the October 15, 2015, general election confirm that the federal institution needs to redouble its efforts in those areas and to implement all of the Commissioner's recommendations promptly. The Commissioner maintains that during an election—the most important moment in a democratic society—all voters must be able to exercise their right to vote in the official language of their choice everywhere in Canada.

2015 GENERAL ELECTION

Again this year, the Office of the Commissioner of Official Languages received complaints during a general election. Most of the complaints regarding the October 2015 election pertained to a lack of service in French and came from regions with a high concentration of official language communities.

CANADA BORDER SERVICES AGENCY: ON THE RIGHT TRACK

Border services officers are often the first representatives of Canada encountered by the tens of millions of people who travel to Canada each year. The Commissioner's audit report, which was published on May 28, 2015, confirmed that over the past few years, the Canada Border Services Agency has strengthened its commitment to official languages.

The institution has made significant progress over the past 10 years. The Commissioner's report notes that the institution's senior executives have demonstrated leadership by drafting clear policies and directives and by developing a management framework to help implement its official languages program. The report acknowledges that the Canada Border Services Agency has a number of challenges to meet in order to provide service in English and French at all times and at all points of service as

required by the Act, which include the 117 land border crossings and 16 international airports designated as bilingual in Canada. There are various measures the institution could take to meet its obligations fully: for example, recruiting and training more employees who can communicate in English and French, or putting an official monitoring mechanism in place to determine whether services are being actively offered and delivered consistently in both official languages.

The Commissioner was satisfied with the measures and timelines that the Canada Border Services Agency proposed to meet four of his eight recommendations. However, he stressed that it needs to implement all of the recommendations in order to meet its obligations fully in terms of communicating with the public and delivering bilingual services.

CANADIAN AIR TRANSPORT SECURITY AUTHORITY: FINDING A SOLUTION TO RECURRING PROBLEMS

For some time now, the delivery of services in both of Canada's official languages by the Canadian Air Transport Security Authority has been the subject of recurring complaints, which indicates systemic problems. In December 2015, the Commissioner initiated an audit of the federal institution to identify the areas in which it needs to improve the services it is required to provide to its customers in English and French.

Each year, the Canadian Air Transport Security Authority screens more than 57 million passengers at 89 airports in Canada. It employs some 6,000 screening officers through agreements with three private companies. The Commissioner's audit focuses on the institution's primary area of activity—screening passengers, their carry-on luggage and their personal belongings—and seeks to show how the institution, through third parties acting on its behalf, provides services to the public in both official languages where required by the Act.

The examination phase of the audit was completed in early 2016, and the final report is scheduled to be released in the fall of 2016.

PARKS CANADA: AUDIT FOLLOW-UP UNDER WAY

In his audit report published in 2012, the Commissioner made nine recommendations to help Parks Canada improve the experience of visitors who wish to be served in the official language of their choice when they go to the national parks, national marine conservation areas and national historic sites that it manages. The audit follow-up, which will be completed in 2016–2017, will document and assess the measures taken by Parks Canada to implement the Commissioner's recommendations.

ACCOUNTABILITY CONCERNING TRANSFER PAYMENTS TO THE PROVINCES

The 2013 horizontal audit of accountability for official languages transfer payments to the provinces involved Health Canada, Citizenship and Immigration Canada and Canadian Heritage. Through the audit, the Commissioner was able to conclude that Health Canada was meeting its obligations. The audit follow-up currently under way focuses only on the other two institutions. The report will be published in 2016–2017.

CONCLUSIONS ON COMPLIANCE

Taken individually, the report cards, complaint investigations, audits and audit follow-ups reflect only a part of federal institutions' compliance with the Act. Together, they provide a more complete picture of the situation.

After 10 years in office, the Commissioner has concluded that the wide range of results obtained with these tools reflects the many issues that federal institutions are having in complying fully with the Act, even though significant progress has been made in some respects.

These results, coupled with an increasing number of complaints and with what is generally felt among interested parties—in particular, the deep concerns and lagging momentum in official language communities and even among those responsible for official languages in the regions—are cause for concern. This is why the government must demonstrate an ongoing commitment to official languages. To do this, federal institutions must take concrete action to improve their compliance with the Act, which is a quasi-constitutional statute that must be respected at all times.

04

COURT REMEDIES

The courts play a key role in the evolution of language rights. Their rulings serve to clarify the nature and scope of federal institutions' obligations under the *Official Languages Act*, and their case law is a significant tool for promoting linguistic duality in Canadian society. In 2015–2016, the Supreme Court of Canada handed down three important language-rights decisions. The Federal Court also issued two judgments that advanced the interpretation of the provisions of the Act. On a less positive note, the Federal Court of Appeal wrapped up a major case concerning the jurisdiction of the Commissioner of Official Languages without, however, resolving any of the legal issues that were raised, thus sending the parties back to square one.

CARON CASE: FRENCH ROOTS RUN DEEP IN WESTERN CANADA

On November 20, 2015, the Supreme Court of Canada handed down its judgment in the *Caron* case.²⁴ In a split decision, the Supreme Court ruled that the legislative bilingualism that existed prior to the annexation of Rupert's Land to Canada was not constitutionalized. The Court concluded that Alberta does not have a duty to enact, print or publish its laws and regulations in both English and French.

This legal saga began in 2003, when Gilles Caron and Pierre Boutet were charged with traffic offences under the *Traffic Safety Act*, an Alberta statute enacted in English only. Mr. Caron and Mr. Boutet

argued that the Act and its regulation were unconstitutional because they had not been enacted in French. They also maintained that Alberta's *Languages Act* was inoperative because it abrogated what they claimed was a constitutional obligation on the part of Alberta to enact, print and publish its laws and regulations in both English and French. Their challenge was successful at trial but was rejected by the summary conviction appeal court and by the Alberta Court of Appeal.

In 1870, the western territories controlled by the Hudson's Bay Company became part of Canada following negotiations and an agreement between Canadian officials and representatives of the territories. The result was that the new province of Manitoba was added, as well as a vast land mass

called the North-Western Territory and Rupert's Land—which includes most of what is now Alberta, Saskatchewan, Nunavut, Yukon, the Northwest Territories and parts of Ontario and Quebec. Although Manitoba was annexed by virtue of the *Manitoba Act, 1870*, which expressly provided for legislative bilingualism, the remainder of the lands under federal administration were annexed under the *1870 Order*, which does not contain such an explicit guarantee.

The Supreme Court had to rule on whether language rights were guaranteed by the promise made by Parliament in 1867 (the *1867 Address*), which was incorporated into the *1870 Order*.

The Supreme Court dismissed Mr. Caron and Mr. Boutet's position, ruling as follows:

- Never in Canada's constitutional history have the words "legal rights," used in the *1867 Address*, been understood to confer language rights.
- Legislative bilingualism, if it had been granted, would have been granted in explicit language.
- Contemporaneous discussions show that neither Canada nor the representatives of the territories ever considered that "legal rights" referred to language rights.
- The contemporaneous evidence also shows that the territorial representatives considered that language rights had been assured through the *Manitoba Act, 1870*, not the *1867 Address* nor the *1870 Order*.
- Federal legislation and the related debates in relation to the new North-West Territories in 1875 and 1877 show that no one involved thought that there had been any guarantee of legislative bilingualism in 1870.
- The Supreme Court held in the 1988 *Mercury* case²⁵ that there was no entrenched right to legislative bilingualism in Saskatchewan and that the constitutional position of Alberta on this point is indistinguishable from that of its neighbour.

The Supreme Court ruled that the historical record and the underlying principles of constitutional interpretation did not support Caron and Boutet's position and that in the absence of an entrenched guarantee, a province has the authority to decide the language or languages to be used in its legislative process.

Three of the judges gave dissenting opinions as to why they would have allowed the appeal and concluded that Alberta is constitutionally required to enact, print and publish its laws in both English and French. These judges based their argument on the fact that the historic agreement between the Canadian government and the inhabitants of Rupert's Land and the North-Western Territory contained a promise to protect legislative bilingualism. That agreement is constitutionally entrenched by virtue of the *1867 Address*. In their interpretation of the *1867 Address*, the judges focused on the expression of the will of the people, an argument presented by the Commissioner in his intervention before the Supreme Court. The judges reached the following three conclusions:

- It can be seen from the historical record that legislative bilingualism was in effect throughout the territories before the annexation.
- Representatives of the territories demanded legislative bilingualism as a peremptory condition for annexation, and Canadian representatives gave assurances that this demand would be met.
- The *1867 Address* enshrined the promise of legislative bilingualism, and this interpretation is supported by subsequent documents.

ROSE-DES-VENTS CASE: MEASURING EQUAL CHOICES IN EDUCATION

On April 24, 2015, the Supreme Court of Canada handed down a seminal decision regarding our understanding of the scope of constitutional rights with respect to instruction in the official language of the linguistic minority. The ruling in the *Rose-des-vents* case²⁶ upheld the legal positions put forward by the parents, the Conseil scolaire francophone de la Colombie-Britannique and the Commissioner: namely, that children attending minority language schools in a province are entitled to receive an education equivalent in quality to that provided by majority language schools.

In 2010, the Association des parents de l'école Rose-des-vents in British Columbia began a legal battle against the provincial government to obtain a declaration that the school—very small, overcrowded and less accessible than the English-language schools in the same area—was unable to provide students from the minority language community with an education equal in quality to that provided to students in majority language schools.

The main issue before the Supreme Court was how to measure the equivalence of instruction and educational facilities provided to the minority community and those provided to the majority. The Supreme Court stated that the focus should be on substantive equivalence, which takes into account all of the factors likely to influence the exercise of minority language education rights, such as the educational facilities, travel time and the quality of instruction, rather than on formal equivalence, which compares the cost per student or focuses on treating official language majority and minority groups alike. "What is paramount is that the educational experience of the children of s. 23 [of the *Canadian Charter of Rights and Freedoms*] rights holders . . . be of meaningfully similar quality to the educational experience of majority language students."²⁷

This comparison must be made based on the choices available to the parents, which means examining the majority language schools in the same area that would be a realistic alternative for the parents, not majority language schools elsewhere in the province. The question is whether reasonable parents would be deterred from sending their children to a minority language school because it is inferior to a majority language school in the same area.

The Supreme Court confirmed that the trial court judge's analysis was correct with respect to the relative weight of the various factors that the parents had to consider. It also endorsed the judge's finding that the disparity between this school and the majority language schools had limited enrolment and contributed to assimilation. The Supreme Court then called on the government to promptly address the inadequate facilities at Rose-des-vents school, noting that section 23 of the Charter requires good faith on the part of all interested parties and stating that "the situation is urgent."²⁸

YUKON FRANCOPHONE SCHOOL BOARD CASE: SUPREME COURT OF CANADA'S RULING ADVANCES THE CAUSE

On May 14, 2015, in a case that pitted the Yukon Francophone School Board against the Yukon government,²⁹ the Supreme Court of Canada ruled that the trial judge's comments and conduct had given rise to a reasonable apprehension of bias. However, his involvement in the Fondation franco-albertaine had not given rise to the same apprehension.

The Commissioner defended that position. He also intervened in the issue of whether the Yukon Francophone School Board had the unilateral right to admit children of parents who are not automatically rights holders under section 23 of the *Canadian Charter of Rights and Freedoms*.

Even though the Supreme Court determined that the Government of Yukon had not delegated the function of setting admission criteria to the Yukon Francophone School Board, it stated that “this does not preclude the Board from claiming that the Yukon has insufficiently ensured compliance with s. 23, and nothing stops the Board from arguing that the Yukon’s approach to admissions prevents the realization of s. 23’s purpose.”³⁰

The Supreme Court also ruled that the issue of whether the Yukon Francophone School Board could be considered a member of the public and, as such, require the Government of Yukon to communicate with and provide information to it in French had to be decided at a new trial.

The Supreme Court’s decision helped to re-establish dialogue between the school board and the government. The Yukon government also announced the construction of a new French school and gave the Yukon Francophone School Board formal authority to admit French-speaking students. The Commissioner is continuing to follow developments in this case.

CBC/RADIO-CANADA CASE: STILL NO DECISION ON THE MERITS

In 2009–2010, CBC/Radio-Canada made substantial budget cuts throughout the country. As a result, a significant part of the budget was cut for CBEF Windsor, the only French-language radio station serving the Francophone community of southwestern Ontario. After having received hundreds of complaints, the Commissioner concluded that CBC/Radio-Canada had not met its language obligations under Part VII of the *Official Languages Act*. Specifically, the broadcaster had not considered the impact of its decision on the development and vitality of the French-speaking community in southwestern Ontario, nor had it tried to mitigate that impact. CBC/Radio-Canada refused to cooperate in the investigation and maintained that the

Commissioner had no jurisdiction in the matter. Consequently, the Commissioner and a representative of the French-speaking community filed an application to the Federal Court.

In September 2014, the Federal Court confirmed an earlier ruling that the Commissioner has jurisdiction to investigate complaints filed against CBC/Radio-Canada under the Act, more specifically under Part VII.

CBC/Radio-Canada appealed, asking the Federal Court of Appeal to determine, among other things, whether the Canadian Radio-television and Telecommunications Commission has exclusive jurisdiction over official language complaints related to programming.

In its decision on November 12, 2015,³¹ the Federal Court of Appeal overturned the September 2014 ruling. The decision to allow the appeal, which set aside the Federal Court decision and dismissed the Commissioner’s application under section 77 of the Act, was based on an examination of procedural flaws in the Federal Court’s two previous decisions, rather than on the substantive issues raised by the appellants.

In the first Federal Court decision, the judge had opined on the question of jurisdiction. However, the resulting order, which included a stay of proceedings, was not reflective of this reasoning. In the second Federal Court decision, the judge appeared to reiterate his reasoning on the question of jurisdiction although, having refused to lift the stay of proceedings imposed in his prior decision, he could not make a determination in law.³²

Among the principal issues raised by the Federal Court of Appeal was the failure of the Federal Court to determine whether a violation had occurred under section 77(4) of the Act prior to addressing the question of remedy. Furthermore, the Court never considered the evidence, nor did it make any factual findings. As a result, the Federal Court of Appeal was unable to address the issue of jurisdiction, having no findings on which to base its analysis.³³

The impact of the Federal Court of Appeal's decision was to overturn the [Federal Court's decision](#), including its statement that federal institutions have an obligation under Part VII not only to support the development of official language communities but also to act in a manner that does not hinder their development and vitality.³⁴

Despite the fact that the Federal Court of Appeal failed to address the merits of the case, it did state that “the CRTC does not have the power under the [Broadcasting Act] to determine whether there has been a breach of the provisions of the [Official Languages Act],”³⁵ in effect confirming that only the Commissioner has jurisdiction to deal with matters under the *Official Languages Act*.

Although it is empowered, pursuant to subsection 46(4) of the [Broadcasting Act], to “have regard to the principles and purposes of the [Official Languages Act]” in determining whether broadcasting services should be renewed and/or extended, the CRTC cannot reach any conclusion regarding breaches of the [Official Languages Act].³⁶

TAILLEUR CASE: WHICH TAKE PRECEDENCE – THE PUBLIC'S LANGUAGE RIGHTS OR FEDERAL EMPLOYEES' LANGUAGE RIGHTS?

The decision handed down by the Federal Court in the *Tailleur* case³⁷ on October 30, 2015, concerns the scope of the obligations set out in Part IV (Communications with and Services to the Public) of the Act compared with that of Part V (Language of Work). In a detailed ruling that echoed the Commissioner's position in large part, the Federal Court remarked on the importance of language rights in Canada, calling them a “cornerstone of Canadian society”³⁸ and describing the Act as a fundamental law with quasi-constitutional status. Significantly, the Federal Court noted that Parts IV and V of the Act both have a constitutional foundation in the *Canadian Charter of Rights and Freedoms*.

Luc Tailleu, a taxpayer services agent at a Canada Revenue Agency call centre in Montréal, filed a complaint with the Office of the Commissioner of Official Languages because his employer forced him to write a note in a taxpayer's file in the taxpayer's preferred official language of service, as opposed to Mr. Tailleu's preferred language of work. He claimed that the institution had deprived him of his right to work in the official language of his choice. The Canada Revenue Agency contended that it had explored all reasonable measures to meet Mr. Tailleu's request, but that its duty to serve Canadian taxpayers in the language of their choice prevented it from doing so, because calls would not be able to be managed consistently, regardless of the taxpayer's language. The Federal Court ruled

that, in this case, it is impossible to reconcile duties and language rights in terms of both communications with and services to the public (Part IV) and language of work (Part V). Given the need to provide equal service to English- and French-speaking taxpayers, Part IV of the Act must take precedence in the circumstances.

In its analysis of section 36(2) of the Act, the Federal Court determined that the common meaning arising from the English and French versions of the section was that federal institutions were required to take “any other measures that it is reasonable to take”³⁹ in addition to the minimum obligations set out in section 36(1). The Federal Court, reiterating the Commissioner's position, established that federal institutions have a duty to take the measures set out in section 36(2). This interpretation is also consistent with Parliament's intent as revealed by the legislative history confirming the intent that “these measures must assist in establishing and maintaining, in a realistic and practical manner, work environments that are conducive to the effective use of both official languages.”⁴⁰

Accordingly, the onus is on the federal institution to justify why a measure would not be reasonable. Taking into account the three relevant criteria put forward by the Commissioner in analyzing the

reasonableness of a measure, the Federal Court concluded that in this case, the measure imposed by the institution—namely, that notes in a taxpayer’s file must be written in the language of the taxpayer’s choice—is essential and necessary for the federal institution to provide service of equal quality in both official languages.

Citing the Supreme Court’s 1999 decision in the *Beaulac* case,⁴¹ the Federal Court noted that the language proficiency of individuals is not a factor in determining language rights, thereby dismissing the institution’s argument concerning the bilingual nature of Mr. Tailleux’s position.

According to the Federal Court, if the notes in a taxpayer’s file are not in the taxpayer’s official language, then a unilingual agent may not be able to respond to the taxpayer, and the delay caused by having to transfer the call would result in service of lesser quality for the taxpayer. The taxpayer would also have to repeat information to the agent who takes over. The Federal Court dismissed Mr. Tailleux’s application. In this case, the Canada Revenue Agency took all reasonable measures to enable Mr. Tailleux to work in the official language of his choice. However, the requirement that notes in a taxpayer’s file must be written in the official language of the taxpayer’s choice is necessary to ensure service of equal quality in both official languages and therefore must take precedence.

DIONNE CASE: FEDERAL COURT CONFIRMS RIGHT OF APPEAL

The Federal Court confirmed⁴² that individuals who believe that a federal institution is not meeting its obligations toward them under the Act and who file a complaint with the Office of the Commissioner may also apply to the courts for a remedy, even if the Commissioner states in his final follow-up report to the investigation that the institution implemented his recommendations and took sufficient measures to meet its obligations.

This ruling was handed down on July 14, 2015, after the Attorney General of Canada filed a preliminary objection to proceedings initiated by André Dionne. According to the Attorney General of Canada, an individual who has filed a complaint with the Office of the Commissioner cannot initiate court proceedings if the follow-up report to an investigation states that the Commissioner is satisfied that the institution has implemented his recommendations. Mr. Dionne was of the opinion that his employer—the Office of the Superintendent of Financial Institutions—was still not respecting his language-of-work rights, despite the fact that the Commissioner’s follow-up report was favourable toward the institution, and he chose to apply to the Federal Court for a remedy.

The Commissioner intervened before the Federal Court to ask for a broad and liberal interpretation of the right to legal recourse under the Act. The Federal Court upheld the Commissioner’s position whereby a complainant’s right to file proceedings does not depend on the findings of the Commissioner’s follow-up report. The court stated that the Attorney General of Canada’s interpretation “constitutes an approach devoid of practical meaning, [translation]”⁴³ which would be tantamount to rendering the Office of the Commissioner’s follow-up process largely ineffective and would lead to an excessive number of court cases on issues concerning the Act. The case is therefore proceeding in Federal Court.

PROTECTION OF LANGUAGE RIGHTS: OVERVIEW OF THE COMMISSIONER’S INTERVENTIONS BEFORE THE COURTS

Nearing the end of his time in office, the Commissioner felt that it was important to report⁴⁴ to the public, to federal institutions and to Parliament about how he exercised his authority to participate in court cases as an intervenor or applicant.

Between 1983 and 2016, the various commissioners of official languages appeared before the courts 104 times. Commissioner Graham Fraser participated in 22 court cases, 9 of which were before the

Supreme Court of Canada. Sixty percent of the court cases in which he participated between 2006–2007 and 2015–2016 concerned language rights under the Act whereas roughly 20% concerned language rights protected by section 23 (minority language educational rights) of the Charter.

The decision of whether to intervene in a case or to initiate legal action is made following a strategic analysis that takes a series of factors into account. Generally speaking, the Commissioner will go to court only if he has exhausted all of the non-judicial means at his disposal to persuade a federal institution to meet the language obligations set out in the Act. He will therefore usually wait for the results of his follow-up to an investigation before determining that a court remedy is the only way to compel a federal institution to meet its language obligations.

He will also consider the following:

- Will the case raise new issues with respect to the interpretation of language rights?
- Will the case raise significant procedural or preliminary issues regarding the Federal Court's jurisdiction or powers?
- Is the court's decision likely to have an effect on the Commissioner's mandate and powers?
- What is the likelihood that the decision will set a precedent that will influence future court decisions?
- What additional contribution could the Commissioner make to the debate as Canada's language ombudsman?
- What impact could the court's decision have on official language communities?

Experience over the past decade has shown that, too often, legal action still has to be initiated to compel governments and federal institutions to meet their obligations under the Charter and the Act. This imposes a heavy burden in terms of human and financial resources on the people and organizations who have to go to court to ensure that their rights are respected.

The Commissioner therefore calls on the government of Canada, the Parliament of Canada, federal institutions and the provincial and territorial governments to take action to ensure that the language rights guaranteed by the Charter and the Act are fully recognized and respected, thereby reducing the need for Canadians, official language communities and other parties concerned with defending language rights to resort to legal proceedings. To achieve this goal, the dialogue initiated several decades ago between the judicial, legislative and executive branches needs to continue actively and openly, and Canadians and official language communities need to be invited to take part.

LETTER TO MY SUCCESSOR

UP THE DOWN ESCALATOR

To begin with, let me congratulate you on becoming Commissioner of Official Languages. It is one of the most interesting and challenging positions imaginable, and I consider myself very privileged to have held the job for the past decade. I am proud to pass on a strong team of highly competent, dedicated employees whose commitment to their work made it a pleasure for me to go to work every day.

The mandate represents an ideal that is echoed throughout the *Official Languages Act*: the equality of English and French as Canada's official languages. This is spelled out in terms of the federal government's commitments: ensuring that English and French are the official languages of Canada and have equality of status; enhancing the vitality and supporting the development of English and French linguistic minority communities; fostering full recognition and use of English and French in Canadian society; enhancing the bilingual character of the National Capital Region; and encouraging the business community, labour organizations and voluntary organizations in Canada to foster the recognition and use of English and French.

Just to be clear, the federal government is committed to doing all that. But it is not easy and, unfortunately, even after more than four decades, not automatic. A minority of any kind is always a minority, and majorities are never instinctively sensitive to their needs. Without requirements, reminders, encouragement and inspiration—and your role covers this range—the natural tendency of the majority to ignore the concerns of the minority will prevail.

The toughest phrase in the Act is “equality of status.” “Equality” is a big word. It does not mean a series of accommodations, nor does it mean supplementary service for the unilingual. It means that the service must be of equal quality. Both English-speaking Canadians and French-speaking Canadians have a right to the same quality of service. No member of the public should be required to learn or use the other official language to deal with a federal institution.

Your job is to report to Parliament on whether federal institutions and other institutions subject to the *Official Languages Act* are actually living up to the ideals and obligations expressed in the Act. In symbolic terms, are both official languages visible and audible in national events and in the national public space? In practical terms, are federal institutions

serving members of the public in the official language of their choice? Are federal employees in designated bilingual regions able to work in the official language of their choice? Is there a fair representation of English-speaking and French-speaking Canadians in federal institutions? And are federal institutions taking positive measures to promote the growth and development of linguistic minority communities?

At this point, I would like to sketch out a few of the challenges that I think you will be facing as you take the helm. Some of them I have discussed during my time in office, but I see no likelihood of these issues disappearing in the next few years.

If there is one thing that I have been asked more than anything else, it has been some variation of whether the *Official Languages Act* is still relevant in the face of Canada's changing demography. As a way to answer that, we organized a series of forums on cultural diversity and linguistic duality in Toronto, Vancouver, Halifax and Montréal; published a report with Ontario's French Language Services Commissioner on Francophone immigration and linguistic minority communities; and devoted a significant part of last year's annual report to the subject of immigration. In my view, the *Official Languages Act* is all the more important because of the demographic changes brought on by immigration. Canada's newcomers need to understand the realities of our language policies and the reasons behind them. And immigration needs to be understood as a tool for the growth and development of official language minority communities, not as a threat to their future.

Let me say a word about these communities. Building vital, thriving official language minority communities is like running up the down escalator: stop, and they are carried backwards. The pressures from the majority and the market are constant. But I have been awed by the communities' determination to

ensure that children receive quality education, that health care is available and that social and community services thrive in the minority language.

But the current methods of determining whether services should be available—including measuring whether the minority community represents 5% of the population—contribute to the insecurity of these communities. It means that the right to service in the minority is defined by the growth of the majority. That is why I have endorsed the bill proposed by Senator Maria Chaput that calls for the use of indices of community vitality, such as schools and community centres, for the purpose of designating offices to provide services in both official languages. You may conclude that the time has come for a broader look at the need to revise and modernize the *Official Languages Act* as its 50th anniversary approaches in 2019. The new bill tabled by Senator Chaput is only one aspect of the conversation that should take place.

One transformative change that has occurred over the past decade has been the explosion of social media. When I became Commissioner in 2006, LinkedIn was three years old, Facebook was two years old and Twitter had been launched just six months earlier. Since then, it has become possible to apply for passports, pay income taxes, apply for pensions and receive a wide range of government information on-line. This has fundamentally changed the way federal institutions communicate and has had a similar impact on language use. This has led me to reflect on two aspects of the realities we all deal with: language spaces and language networks.

By language spaces, I mean the linguistic landscape that indicates that there is a language community present, a landscape that consists of signs, posters and directions, as well as schools and government services available in the minority language. These are the visible indications that a community exists.

They are important not only for the members of the community, but also so that the majority community is aware of the presence of the minority community. These visual markers can also provide critical information for travellers who may otherwise feel that there is no place where their language needs are acknowledged, let alone served.

Language networks are quite different. They can be services that are available on-line or through networks that connect schools, medical clinics or community centres. Canadians can get more and more government services without having to visit a government office and line up at a counter to speak to an official.

Increasingly, these networks are becoming the preferred tool for governments to provide services in the official language of the minority. It is much easier to have a machine helping travellers to check in at the airport in the official language of their choice than it is to have a bilingual employee at the counter. It is much easier to provide bilingual services on-line or at a call centre than at a counter in a government office.

We should not minimize the advantages that these networks offer to individuals seeking services from the state. But we should also recognize that they do very little to strengthen communities. They are invisible. They do not provide a public space where the language is spoken and heard. In fact, they can be deceptive, suggesting to users that both official languages are used publicly more than they actually are.

A few years ago, I spoke to a group of French-speaking immigrants to Canada who told me that they had thought Canada was bilingual coast to coast and were surprised to find that French was rarely seen, spoken or heard in public in Toronto. When I asked them how they had come to believe that English

and French were spoken equally in all parts of Canada, they replied that they had got this impression from the bilingual federal Web sites that they had checked out before coming to Canada. It was an indication to me that a language network—a virtual space—could be quite deceptive about the language space.

I first became conscious of this distinction when I was living in Québec City. The capital of the province of Quebec, Canada's only officially French-speaking province, has a population of over 500,000 and an English-speaking community of about 15,000: around 3%. I was aware that the post office provided services in both official languages, but I also realized that if I were unable to buy stamps in French, I would have a difficult time living in Québec City. What was much more important for me and my family was the presence of English schools, health services and community organizations like an English library and the Scout movement. It made me understand that the needs of a minority community, who live in a language space, are very different from the needs of the travelling public, who want access to a language network that can provide them with individual service.

Years later, an Ottawa TV host who had been very critical of federal language policy confessed to me privately that when he had been in Québec City covering a political conference, he had felt a sense of relief in the taxi going to the airport, because he knew he could get service in English when he got there.

There is another dual way of looking at the provision of services in both official languages: symbolic and practical. It is a distinction that I have used in talking to organizers of major sporting events in Canada. The presence of both languages sends a symbolic message about the country: this is who we are, this is our identity, we have two official languages.

But there is also a practical need. Canada is really two primarily unilingual language communities that live side by side. Some 90% of English-speaking Canadians do not speak French, while some 60% of French-speaking Canadians do not speak English. So, at a major sporting event, like the Canada Games, it is almost certain that there will be athletes, coaches and parents who do not speak the majority language of the community hosting the Games and who will need brochures, signs and volunteers to provide information in their own language.

These two elements, the symbolic and the practical, will come together in the celebrations of the 150th anniversary of Confederation in 2017. Language has been at the core of the Canadian experience for a century and a half, plus the decades leading up to Confederation. It was discussed at the very beginning and at the very end of the Confederation Debates over the *British North America Act*. Next year will be an important benchmark that will show us how far we have come and how far we still have to go to achieve the ideal of language equality that is laid out in the *Official Languages Act*.

The next seven years will be an exciting time for official languages. I wish you good fortune and hope that you enjoy your time as Commissioner of Official Languages as much as I have enjoyed mine.



Graham Fraser

RECOMMENDATIONS

RECOMMENDATION 1

The Commissioner of Official Languages recommends that, by October 31, 2016, the Minister of Justice and Attorney General of Canada commit to implementing the recommendations issued in the 2013 study *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*.

RECOMMENDATION 2

The Commissioner of Official Languages recommends:

- that Parliament make Bill S-209 a priority so that the parliamentary committees examining it are able to conduct a diligent review; and
- that, by March 31, 2017, the Treasury Board undertake an evaluation, in consultation with official language communities, of the effectiveness and efficiency of its policies and directives for implementing Part IV of the *Official Languages Act*.

APPENDIX

COMMISSIONER'S ACTIVITIES: 2006–2016

To defend the language rights of Canadians, promote linguistic duality or communicate the results of his work, the Commissioner appears before Parliament, intervenes in the media, takes part in legal cases and engages in a dialogue with members of the public and employees of the public service during private meetings and public events. The following tables show the breadth and scope of the Commissioner's activities between 2006 and 2016.

TABLE 1
APPEARANCES BEFORE PARLIAMENT

COMMITTEE	NUMBER OF APPEARANCES
House of Commons	37
Standing Committee on Official Languages	30
Standing Committee on Canadian Heritage	2
Standing Committee on Justice and Human Rights	3
Standing Committee on the Status of Women	1
Standing Committee on Access to Information, Privacy and Ethics	1
Senate	21
Standing Committee on Official Languages	17
Standing Committee on Legal and Constitutional Affairs	2
Committee of the Whole	1
Standing Committee on National Finance	1
Total	58

TABLE 2
INTERVENTIONS IN PRINT MEDIA

PLACE OF PUBLICATION	NAME OF PUBLICATION (NUMBER OF OPINION LETTERS)	NAME OF PUBLICATION (NUMBER OF EDITORIAL MEETINGS)
Yukon	-	Aurore boréale (1)
British Columbia	The Vancouver Sun (1)	The Vancouver Sun (1)
Alberta	Calgary Herald (1) Edmonton Journal (1) Edmonton Sun (1)	Calgary Herald (1)
Saskatchewan	Leader-Post (1)	The StarPhoenix (1)
Manitoba	Winnipeg Free Press (1)	Winnipeg Free Press (1)
Ontario	Ottawa Citizen (13) National Post (5) The Globe and Mail (5) Le Droit (4) Ottawa Sun (2) The Windsor Star (2) L'Express (1) The Kingston Whig-Standard (1) Toronto Star (1)	The Globe and Mail (3) Maclean's (2) Toronto Star (1)
Quebec	Le Devoir (9) La Presse (4) The Gazette (4) Chevery News (1) Le Quotidien (1) Policy Options (1)	Le Devoir (3) La Presse (2) La Tribune (1) The Gazette (1) The Record (1)
New Brunswick	Acadie Nouvelle (1)	-
Nova Scotia	-	The Chronicle Herald (1)
Total	61	20

TABLE 3
MEDIA INTERVIEWS

FISCAL YEAR	NUMBER OF INTERVIEWS
2006–2007	146
2007–2008	139
2008–2009	90
2009–2010	90
2010–2011	61
2011–2012	50
2012–2013	75
2013–2014	40
2014–2015	35
2015–2016	21
Total	747

TABLE 4
COURT REMEDIES*

FISCAL YEAR	NUMBER OF REMEDIES
2006–2007	1
2007–2008	2
2008–2009	4
2009–2010	1
2010–2011	2
2011–2012	2
2012–2013	1
2013–2014	1
2014–2015	6
2015–2016	2
Total	22

* Court remedies are listed according to the date on which the Commissioner told the Court that he intended to participate in the remedy.

TABLE 5
SPEECHES BY YEAR

FISCAL YEAR	NUMBER OF SPEECHES
2006–2007	34
2007–2008	74
2008–2009	43
2009–2010	62
2010–2011	53
2011–2012	48
2012–2013	47
2013–2014	61
2014–2015	78
2015–2016	28
Total	528

TABLE 6
SPEECHES BY AUDIENCE TYPE

AUDIENCE	NUMBER OF SPEECHES
Federal employees	115
General public (festivities, service clubs, etc.)	67
Students, parents and elementary or high school staff	34
Official language minority community groups	63
Universities and the research community	74
Language industry professionals	11
Legal professionals	18
Other	146
Total	528

ENDNOTES

1. In this report, the term “official language communities” is used to designate official language minority communities.
2. In this report, the term “federal institutions” is used to designate federal institutions and organizations that are subject to the *Official Languages Act*. Because most of the activities involving these institutions and described in this report took place before the change of government on November 4, 2015, the names used in this report are those that were in effect before that date.
3. For more information, please see the Canadian Parents for French Web site at <http://cpf.ca/en/>.
4. Office of the Commissioner of Official Languages of Canada, Office of the French Language Services Commissioner of Ontario and Office of the Commissioner of Official Languages for New Brunswick, *Access to Justice in Both Official Languages: Improving the Bilingual Capacity of the Superior Court Judiciary*, Ottawa, August 2013. On-line version (www.officiallanguages.gc.ca/en/publications/studies/2013/access-to-justice-in-both-official-languages-improving-the-bilingual-capacity-of-the-superior) accessed March 31, 2016.
5. Office of the Commissioner of Official Languages, *Celebrating Canada – A Guide to a Successful Bilingual Event*, Ottawa, 2014. On-line version (www.officiallanguages.gc.ca/en/publications/celebrating-Canada) accessed March 31, 2016.
6. Office of the Commissioner of Official Languages, *Portrait of Official Languages Groups in the Ottawa Area*, Ottawa, April 2015. On-line version (www.officiallanguages.gc.ca/en/publications/linguistic-portrait-ottawa) accessed March 31, 2016.
7. Office of the Commissioner of Official Languages, *Portrait of Official Languages Groups in the Gatineau Area*, Ottawa, April 2015. On-line version (www.officiallanguages.gc.ca/en/publications/linguistic-portrait-gatineau) accessed March 31, 2016.
8. Consortium national de formation en santé, *Boîte à outils pour l'offre active*. On-line version (www.offreactive.com/english-resources) accessed March 31, 2016.

9. Office of the Commissioner of Official Languages of Canada and Office of the French Language Services Commissioner of Ontario, *Time to Act for the Future of Francophone Communities: Redressing the Immigration Imbalance*, Ottawa, November 2014. On-line version (www.officiallanguages.gc.ca/en/publications/redressing-immigration-imbalance) accessed March 31, 2016.
10. Canadian Heritage, *Roadmap for Canada's Linguistic Duality 2008-2013: Acting for the Future*, Ottawa, 2008. On-line version (www.pch.gc.ca/eng/1358261860237) accessed March 31, 2016.
11. Commissioner of Official Languages, *Bill S-205: Brief submitted to the Standing Senate Committee on Official Languages*, Ottawa, April 20, 2015. On-line version (www.officiallanguages.gc.ca/en/publications/brief-bill-s205) accessed March 31, 2016.
12. *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48. On-line version (<http://laws.justice.gc.ca/eng/regulations/SOR-92-48/FullText.html>) accessed March 31, 2016.
13. Office of the Commissioner of Official Languages, *Effective practices for chairing bilingual meetings*, Ottawa, September 2015. On-line version (www.officiallanguages.gc.ca/en/resources/public-servants/bilingual-meetings) accessed March 31, 2016.
14. Office of the Commissioner of Official Languages, "Effective practices for chairing bilingual meetings," October 26, 2015. On-line version (www.youtube.com/watch?v=4JLYtPhqpJQ) accessed March 31, 2016.
15. In Chapter 3, the terms "federal institutions" and "institutions" refer to the 33 federal institutions that were evaluated.
16. The report cards and list of results for the federal institutions that were assessed in 2014–2015 and 2015–2016 are available on the Office of the Commissioner of Official Languages' Web site at www.officiallanguages.gc.ca/en/publications/report-cards/2014-2016.
17. *DesRochers v Canada (Industry)*, 2009 SCC 8. On-line version (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6899/index.do>) accessed March 31, 2016. A summary of the decision is available on the Office of the Commissioner of Official Languages' Web site at www.officiallanguages.gc.ca/en/language-rights/court-decisions/desrochers-v-canada-industry-2009.
18. The Treasury Board's Policy on Official Languages defines the public as "any person, group of persons (professional associations or others) or organization or company (other than a Crown corporation) in Canada or abroad, any representative of another level of government communicating with or receiving a service from an institution, excluding officers and employees of institutions subject to the [Official Languages Act] when carrying out their duties."
19. For more information on how institutions were evaluated, the rating guide is available on the Office of the Commissioner of Official Languages' Web site at www.officiallanguages.gc.ca/en/publications/report-cards/2014-2016.
20. The results of the 2014 Public Service Employee Survey are available at www.tbs-sct.gc.ca/psm-fpfm/modernizing-modernisation/pses-saff/index-eng.asp.
21. Statistics Canada, "Number of persons with French mother tongue and relative weight of Ontario Francophones within the overall Francophone population outside Canada [*sic*], 1951 to 2006," Table 2.1.3, in *Portrait of Official-Language Minorities in Canada: Francophones in Ontario*, Statistics Canada catalogue no. 89-642-X no. 001, Ottawa, 2010, p. 11. On-line version (www.statcan.gc.ca/pub/89-642-x/2010001/article/section2-eng.htm) accessed March 31, 2016.

22. Office of the Commissioner of Official Languages, "Recommendation 6," *Annual Report 2012–2013*, Ottawa, 2013. On-line version (www.officiallanguages.gc.ca/en/publications/annual_reports/2012-2013#recommend) accessed March 31, 2016.
23. Office of the Commissioner of Official Languages, "Recommendation 6," *Annual Report 2007–2008*, Ottawa, 2008. On-line version (www.officiallanguages.gc.ca/html/ar_ra_2007_08_summary_sommaire_e.php) accessed March 31, 2016.
24. *Caron v Alberta*, 2015 SCC 56. On-line version (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15629/index.do>) accessed March 31, 2016.
25. *R v Mercure* [1988] 1 SCR 234. On-line version (<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/6897/index.do>) accessed March 31, 2016.
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