

Task Force on Linguistic Policy

Legislative Brief to House of Commons and Senate Standing Committee(s) on Official Languages

Bill C-13, An Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts (short title: An Act for the Substantive Equality of Canada's Official Languages)

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[TRANSDUCTION]

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Who We Are

The Task Force on Linguistic Policy (“TFLP”) was formed by concerned citizens to advocate against the Government of Canada’s “White Paper” and Bill C-32 (now Bill C-13) and the Government of Québec’s Bill 96 and the proposed Constitutional amendment (proposed therein).

The TFLP was formed in late May 2021 and became public on June 21, 2021. At present it has a social media presence with thousands of engagements and followers and has amassed over \$30,000 in contributions – money that has been used effectively in advertising campaigns and to develop a profile in the Québec media.

Further, in the past year alone the TFLP has given dozens of interviews in the English and French news media, undertaken detailed research into the impact of Bills 96 (now Law 96) and C-13, and issued regular news and press releases.

It is the TFLP’s aim to represent individuals, partner with organisations, and help coordinate under-represented groups to advocate for a bilingual society; to do so the TFLP is taking action to expose and oppose legislative initiatives and other measures that (a) ignore, defy, or disregard linguistic rights and freedoms as inscribed in the Canadian constitution and the Québec Charter of Human Rights and Freedoms and/or (b) reduce or hinder the vitality of, and services for, communities because of linguistic restrictions.

Executive Summary

The TFLP submits that Bill C-13, the proposed modernization of the Official Languages Act (“OLA”), redefines and restructures Canada’s federal Official Languages framework in fundamental and, likely, undesirable ways. It introduces an unprecedented asymmetrical approach to the protection and promotion of Official Languages in Canada and, perhaps even more problematically, to the defence of the linguistic rights and recourses afforded to French speakers and English speakers, both in the Province of Québec, and across the country.

This linguistic re-engineering is incompatible with the cornerstone principle of Canada as a nation with two official languages, based on three founding peoples, and with official language minority communities in each province that are equally deserving of the right to protection and promotion from our federal government. The bill furthermore fails to address, in any meaningful way, the struggles of the languages of Canada’s indigenous communities, also founding peoples of this nation. **The future of this country as a truly bilingual entity (and/or a multilingual one, when traditional indigenous languages are considered), and the country’s national unity itself, could be weakened and seriously endangered by such a questionable, and even radical, shift of the whole official languages paradigm – a paradigm so central to Canadians’ national identity since Confederation, but even more concretely, for the past half-century.**

Taken in its entirety, the TFLP asserts that Bill C-13 ushers in a fundamental and ill-considered restructuring of Canada's bilingual and bi-cultural identity, by introducing into federal law and governance, a legislated distinction between the rights and recourses afforded to French minority Official Language communities and individuals outside of Québec, and those afforded to the English minority Official Language community/communities and individuals in Québec. It also introduces, for the first time, legislated distinctions between the linguistic rights and recourses of an English-speaking Quebecer versus those of a French-speaking Quebecer – an inequitable concept already unfortunately entrenched in Québec provincial legislation and policy, but one that would now appear to be creeping into federal legislation for the first time ever. As such, this proposed legislation redefines the relationship not only between citizens and the state, but also between individuals (both in Québec, and elsewhere in Canada), with negative implications immediately for English-speakers in Québec, but also potentially for French-speakers outside of Québec, further down the road.

Despite long-standing perceptions to the contrary, many English-speaking Quebecers are socio-economically disadvantaged. The English-speaking community today is a declining population, an ageing population, and burdened by a “missing-middle,” with a low proportion of people aged 15-44 and a “missing-out-middle,” meaning working age people, on average, have lower levels of income, education and employment than their French-speaking counterparts.

This brief sets out our objections to the proposed law, but it also offers several constructive suggestions as to how to improve it, strengthen it and ensure a balance in the provision of services by the Government of Canada.

- To remove all references to the Charter of the French Language (section 2 (3), section 24 (45.1 (1))).
- To commit the Government of Canada to protecting the English-speaking minority in Québec.
- For additional wording to be added to the Official Languages Act specifying that all rights are protected and cannot be diminished by legislation.
- To add a clarification specifying that no measures (legislative or otherwise), or policies, to protect and promote the French language may contravene, cancel or diminish the rights and freedoms guaranteed to individuals in Québec.
- To extend language rights accorded to French-speakers in federally regulated private businesses to English-speakers as well.
- To contemplate extending the purview of the Use of French in Federally Regulated Private Businesses Act to all of Canada (and not just to Québec and regions with a strong francophone presence).

Each of our recommendations are offered in good faith and with an abiding belief in the notion that bilingualism, both individual and institutional, is one of the great assets of modern Canada. As the late Queen Elizabeth said in 1982, “I have seen the vision of this country take shape in the lives of Canadians. There is now a greater confidence that people of the two official language communities can live fuller and richer lives together than in mutual isolation.” **Those words have profound meaning for the members of our community, who have worked alongside, married, fought together, and built this country and our province for centuries.**

Introduction

The Official Languages Act (R.S.C. 1985, c. 31, 4th Supplement) contains, in its Preamble, the following guiding principles (among others):

AND WHEREAS the Government of Canada is committed to enhancing the vitality and supporting the development of English and French linguistic minority communities, as an integral part of the of the two official language communities of Canada, and to fostering full recognition and use of English and French in Canadian society;

AND WHEREAS the Government of Canada is committed to cooperating with provincial governments and their institutions to support the development of English and French linguistic minority communities, to provide services in both English and French, to respect the constitutional guarantees of minority language educational rights and to enhance opportunities for all to learn both English and French;

AND WHEREAS the Government of Canada recognizes the importance of preserving and enhancing the use of languages other than English and French while strengthening the status and use of the official languages;

It is also noteworthy that one of the three stated Purposes of the Official Languages Act (“OLA”) reads as follows: *“support the development of English and French linguistic minority communities and generally advance the equality of status and use of the English and French languages within Canadian society...”* (s. 2(b)).

The guiding principles set forth in a Preamble, and in the Purpose, of a legislative act, would normally be expected to encapsulate the overall spirit and intent with which that piece of legislation has been drafted and enacted by the Parliament of Canada. This is no less true of our Official Languages Act. One particularly notable, and likely substantial, amendment to the OLA by Bill C-13 is effectively the addition of an entirely new eighth and tenth paragraph to the Preamble of the act – an amendment the implications of which would entail a fundamental, and, likely, undesirable re-definition and re-structuring of Canada’s federal official languages framework.

The following brief has been prepared in view of respectfully bringing to the attention of this Committee some of the serious concerns that the TFLP has, both with the general direction that this proposed legislative amendment has taken, and with several specific provisions proposed by the Bill.¹

¹ Note: contained within the bill are a great many provisions with which the TFLP agrees, most notably: measures providing additional assistance and support (legal, financial, institutional, etc.) to francophone communities outside of Québec, to help them promote the use of the French language within their communities and in Canadian society in general, and to help them combat the demographic/linguistic challenges they face due to the sheer attractive force of the continental majority language (and the de facto international language of business) that the English language undeniably represents; as well as new structures and alliances allowing for cooperation and collaboration between the official language minority community in Québec and official language minority communities outside of Québec.

It is our belief that the potential implications and consequences of the highlighted amendments could represent a significant danger and potential harm to the English-speaking minority in Québec, and by ricochet, possibly also to francophone minority official language communities in other provinces and territories. As such, the amendments could equally have consequences for Québec as a whole, for the status of the French language in Québec and the rest of Canada, and for Canadian national unity – consequences that may simply not have been contemplated by the bill’s sponsors (nor by at least some of the Members of Parliament who have so far voted in favour of these proposed legislative amendments).

The TFLP is of the opinion that it is of utmost importance these concerns be shared with this Committee before consideration of Bill C-13 goes any further, and before a point of no return is reached in terms of introducing these new troubling notions into Canadian official languages policy and law. The TFLP is also quite confident that these concerns are, or will be, shared by a large swath of Québec’s English-speaking community, its institutions, and its advocacy organisations.

I. Topic: recognition in federal law of Bill 101 (or, the *Charter of the French Language*), which itself recognizes French as Québec’s sole official language.

Section 2, Article 3; Section 24

2 (3) - The 10th paragraph of the preamble to the Act is replaced by the following:

AND WHEREAS the Government of Canada recognizes the diversity of the provincial and territorial language regimes that contribute to the advancement of the equality of status and use of English and French in Canadian society, including that...

Québec’s Charter of the French Language provides that French is the official language of Québec,

24 - Section 45 of the Act is replaced by the following:

Cooperation – provinces and territories

45.1 (1) The Government of Canada recognizes the importance of cooperating with provincial and territorial governments in the implementation of this Part, taking into account the diversity of the provincial and territorial language regimes that contribute to the advancement of equality of status and use of English and French in Canadian society, including that

(b) Québec’s Charter of the French Language provides that French is the official language of Québec;

Analysis:

- Putting into Canadian federal legislation any principle by which the Government of Canada recognizes a right (or even more disturbingly, a duty) of any provincial government, including Québec, to restrict, diminish or outright prohibit, the use of either one of Canada’s official languages, is directly contrary to the cited paragraphs of the Preamble to the OLA. But actually recognizing and enshrining such a provincial role in a law of the Parliament of Canada - the Official Languages Act, no less - constitutes a wholesale abandonment of the fundamental Canadian principles of “enhancing the vitality and supporting the development of English and French minority communities” and “fostering full recognition and use of English and French in Canadian society.” One might even question whether it constitutes a full capitulation to the Québec nationalist assertion that Québec is effectively not (or no longer) a part of “Canadian society.” Legitimising such divisive and harmful ideas could be incalculable and would likely become a formidable challenge for this or any future federal government to walk back and to reverse, when it becomes necessary. And it will inevitably become necessary to do so, when the political benefactors in Québec, of such a blatant abdication of federal authority and legitimacy, use it to demand that the federal government further retreat from its constitutional duties and spheres of jurisdiction within the province – and from what remains of its role to protect the official minority language community’s right to continue to exist and prosper in Québec.

- Any real or perceived weakening of the federal government’s role or resolve to stand up to those who seek to further the spreading notion that the English language is “not an official language in Québec” will not only contribute to emboldening and empowering these pro-unilingualism (or, anti-bilingualism) activists and movements in Québec – such developments will also undoubtedly be closely watched, with great interest, by the counterpart anti-bilingualism/anti-French activists and movements in other provinces. A resurgence of such anti-bilingualism movements outside of Québec would be entirely fathomable in the wake of Québec’s enactment of Bill 96, and what is likely to be perceived by many as a “complicit” federal adoption of a dangerous principle of asymmetry in regard to anglophone linguistic rights inside of Québec. Needless to say, such a resurgence could represent a serious risk to hard-fought advances and gains made, over many years, by francophone official language minority communities.

Recommendation:

- To remove all references to the Charter of the French Language (section 2 (3), section 24 (45.1 (1)).

II. Topic: changes to the interpretive framework for the OLA; commitment – protection and promotion of French; framing of the French-speaking minority community as the only minority language community in Canada (ignoring the English-speaking minority community in Quebec).

Section 2, Article 2; Section 21, Article 2, 5, & 6

2 (2) The seventh and eighth paragraphs of the preamble to the Act are replaced by the following:

AND WHEREAS the Government of Canada is committed to enhancing the vitality and supporting the development of English and French linguistic minority communities – taking into account their uniqueness, diversity, and historical and cultural contributions to Canadian society – as an integral part of the two official language communities of Canada, and to fostering full recognition and use of English and French in Canadian society.

AND WHEREAS the Government of Canada is committed to protecting and promoting the French language, recognizing that French is in a minority situation in Canada and North America due to the predominant use of English;

AND WHEREAS the Government of Canada is committed to cooperating with provincial and territorial governments and their institutions to support the development of English and French linguistic minority communities, to provide services in both English and French, to respect the constitutional guarantees of minority language educational rights and to enhance opportunities for all to learn both English and French;

Commitment – promotion and protection of French

(2) The Government of Canada, recognizing that French is in a minority situation in Canada and North America due to the prominent use of English, is committed to protecting and promoting the French language.

Duty of federal institutions – positive measures

(5) Every federal institution has the duty to ensure that the positive measures that it considers appropriate are taken for the implementation of the commitments under sub-sections (1) to (3).

Positive measures

(6) Positive measures taken under sub-section (5)

(a) Shall be concrete and taken with the intention of having a beneficial effect on the implementation of the commitments under sub-section(s) (1) to (3);

(b) Shall respect

(i) The necessity of protecting and promoting the French language in each province and territory, taking into account that French is in a minority situation in Canada and North America due to the predominant use of English, and

(ii) The necessity of considering the specific needs of each of the two official language communities of Canada, taking into account the equal importance of the two communities; and

Analysis:

- Renewed purpose: article (2) modifies the official languages act by adding an additional commitment/purpose clause recognizing the necessity of protecting and promoting French language; when considered alongside supplementary modifications and/or proposals contained within the bill (such as those mentioned above), it is abundantly clear that in both effect and intent, the protection and promotion of the French language (both inside and outside of Québec) is to be the main thrust of linguistic policy in Canada.
- The consequences which flow from the above modification are manifold (in particular, for the interpretation of language rights): to be sure, a commitment to protecting and promoting the French language is a noble and worthy one (and a commitment, in and of itself, is certainly no cause for alarm); but to elevate such a commitment to the level of purpose imbues it with interpretive and legislative significance far beyond that accorded to any comparable commitment to the English-speaking minority community in Québec – in direct contravention of the principle of equality of status, which, to date, has served as the base for linguistic duality in Canada.
- The addition of an entirely new eighth paragraph to the Preamble of the act (in conjunction with supplementary provisions contained within the bill), thus, introduces, into federal legislation, the notion of an asymmetrical approach to the protection of the English language, English-speakers and anglophone minority communities (specifically in Québec, where such protection is needed), versus the protection of the French language, French speakers and francophone communities (both in Québec and in the rest of Canada). This entirely new notion is one of the elements of Bill C-13 that is of utmost concern to the TFLP, in particular in regard to how the courts (and public servants tasked with the implementation of Canada’s Official Languages policies) may interpret such wording.
- To be sure, substantive equality is an expressly asymmetrical approach to equality: indeed, promoting the substantive equality of communities disadvantaged along similar lines sometimes requires an asymmetrical — that is, divergent — set of solutions to redress the disadvantage, because disadvantaged communities (even those disadvantaged along similar lines) are disadvantaged for a diversity of reasons which do not necessarily coincide or overlap, and, moreover, because disadvantage can manifest in a variety of ways); i.e., asymmetrical promotion.

- Thus, that the means (or positive measures) adopted by the federal government in order to promote the substantive equality of both official minority language communities (will) diverge is understandable — and even desirable — given the differences in characteristics and circumstances of the two minority communities.
- That said, the asymmetry which would inevitably result from the modification(s) outlined above is of a far different species: it would seriously restrict the means (or positive measures) considered warranted to ensure the vitality of the English-speaking minority community in Québec, while simultaneously it would greatly expand the means (or positive measures) considered warranted to ensure the vitality of the French-speaking minority community across Canada, precisely because the protection and promotion of the latter, and not of the former, is to be among the chief aims of linguistic policy – i.e., asymmetrical formulation (in stark contrast with asymmetrical promotion).
- **In sum, asymmetry, rather than being a by-product of the formulation of linguistic policy, is to be present from the very beginning, at the outset of the formulation of linguistic policy; such an outcome could seriously limit the scope for federal support to the English-speaking minority community in Québec.**

Recommendation(s):

- For additional wording to be added to (and enshrined in) the Official Languages Act specifying:
 - No measures (legislative or otherwise), or policies, to protect and promote one or both official languages may contravene, cancel or diminish the rights and freedoms guaranteed to individuals in any province, nor the constitutional or legislative protections afforded to minority official language speakers, or communities, in any province. Nor should any such measures be interpreted as doing so, by the courts.
- To add a clarification to the new eighth paragraph of the Preamble (or a new ninth paragraph) specifying that no measures (legislative or otherwise), or policies, to protect and promote the French language may contravene, cancel or diminish the rights and freedoms guaranteed to individuals in Québec, nor the constitutional or legislative protections afforded to English-speakers or to anglophone communities in Québec. Nor should any such measures be interpreted as doing so, by the courts.

III. Topic: use of French in Federally Regulated Private Businesses Act (FRPBA); codification/introduction of a new category of rights for French-speaking Quebecers (and French-speaking Quebecers alone) to be able to (receive services and work) in French in federally regulated private businesses in Québec (and in regions with a strong francophone presence).

Section 54, Article 7 (1, 3)...

Communications and services in French

7 (1) Consumers in Québec have the right to communicate in French with and obtain available services in French from a federally regulated private business that carries on business in Québec.

For greater certainty

(3) For greater certainty, the rights set out in sub-section (1) do not preclude customers from communicating with or obtaining services from the federally regulated private business in English or a language other than French if they wish to do so and the federally regulated private business is able to communicate or provide services in that language.

Analysis:

- Of note: the extent to which English-speaking consumers are entitled to receive communications and obtain services in English from a federally-regulated private business (operating in Québec) is predicated on the ability and willingness of that federally regulated private business to do so (i.e., federally regulated private businesses are not required to communicate with and provide services in English); C-13 (specifically the FRPBA) contemplates the creation of an entirely new category of rights for the speakers/users of only one of Canada's official languages.
- Towards a substantive equality of official languages in Canada (?): in failing to extend the newly contemplated language rights to both official language communities, the Canadian government is proposing the creation of an asymmetrical language regime that is French-preferential; to be sure, official languages policy in Canada is founded on the principle of equality of the English and French languages (expressed most evidently in the Canadian Charter of Rights and Freedoms and the OLA) – to grant new language rights to only one of Canada's official language groups amounts to the repudiation of a 50-year-plus commitment to the (formal and substantive) equality of English and French in Canada.
- Formal equality (vis-à-vis language rights) is achieved when members of the official language minority community are treated in the same way as those of the majority community through the provision of identical services in French and in English. In the absence of a guarantee for Québec's English-speaking minority community (such as the one accorded French-speakers in Article 7(1)) unequal treatment of English-speakers is inevitable; moreover, without recourse to a legal right, redress is far from certain.

- Unequal treatment is inimical to the achievement of substantive equality (in fact, the principle of substantive equality exists for the sole purpose of addressing and preventing instances of unequal treatment). Substantive equality is the norm in Canadian law, and, moreover, is the norm for the interpretation of language rights in Canada; indeed, the courts have recognized that formal equality alone is not enough of a guarantee – i.e., that the provision of language rights must, of necessity, be specially-tailored, by taking into account “the differences in characteristics and circumstances” unique to Canada’s many, variegated (official language) minority communities.²
- And yet neither the amendments to the OLA nor the proposed FRPBA explicitly recognize or take into account the current situation of the English-speaking minority in Québec – a situation which demands a more considered and thoughtful approach.
- For substantive equality to be achieved, one must provide “services with distinct content” or “use a different method of delivery to ensure that the minority receives services of the same quality as the majority,” and yet Bill C-13 makes no effort to do either for Québec’s English-speaking minority community, despite the overwhelming need for such an approach.³
- Practical implication(s): the arrangement prescribed is ultimately untenable (to be carried-out, it would require the government promote bilingualism outside of Québec, and actively discourage it within); effectively, it would ask of both the provinces (except for Québec) and the federally-regulated private businesses located therein that they to do more for the respective linguistic minority communities present there than is currently demanded (or even expected) of Québec.
- Such an arrangement poses a serious threat to national unity – a threat made all the more real by the fact that the provinces (in particular, the western provinces) have become especially sensitive to the ways in which Québec (and, to a lesser extent, Ontario) are frequently the disproportionate beneficiaries of federal-provincial arrangements.

Recommendation(s):

- To extend language rights accorded to French-speakers in federally regulated private businesses to English-speakers as well.
- To contemplate extending the purview of the Use of French in Federally Regulated Private Businesses Act to all of Canada (not just to Québec and regions with a francophone presence).

² See [Analytical Grid \(Substantive Equality\)](#), Government of Canada.

³ See [Analytical Grid \(Substantive Equality\)](#), Government of Canada.

Appendix A: Recommendations

Recommendation 1

- To remove all references to the Charter of the French Language (section 2 (3), section 24 (45.1 (1))).

Recommendation 2

- To include an additional commitment clause, committing the Government of Canada to protecting and promoting the English-speaking minority community in Québec.

Recommendation 3

- For additional wording to be added to (and enshrined in) the Official Languages Act (and, ideally, the Constitution itself) specifying that...
 - No measures (legislative or otherwise), or policies, to protect and promote one or both official languages may contravene, cancel or diminish the rights and freedoms guaranteed to individuals in any province, nor the constitutional or legislative protections afforded to minority official language speakers, or communities, in any province. Nor should any such measures be interpreted as doing so, by the courts.

Recommendation 4

- To add a clarification to the new eighth paragraph of the Preamble (or a new ninth paragraph) specifying that no measures (legislative or otherwise), or policies, to protect and promote the French language may contravene, cancel or diminish the rights and freedoms guaranteed to individuals in Québec, nor the constitutional or legislative protections afforded to English-speakers or to anglophone communities in Québec. Nor should any such measures be interpreted as doing so, by the courts (possibly a clause similar to the “Canada” clause proposed by the Charlottetown Accord).

Recommendation 5

- To extend language rights accorded to French-speakers in federally regulated private businesses to English-speakers as well.

Recommendation 6

- To contemplate extending the purview of the Use of French in Federally Regulated Private Businesses Act to all of Canada (and not just to Québec and regions with a strong francophone presence).