

**Quebec Community Groups Network Brief to House of Commons Standing Committee on Official Languages:  
Full Implementation of the Official Languages Act in the Canadian Justice System  
11 April 2017**

Introduction

The Quebec Community Groups Network (QCGN) is pleased to submit the following brief to the House of Commons Standing Committee on Official Languages' (LANG) study on the *Full Implementation of the Official Languages Act in the Canadian Justice System*. We understand the Committee's objective is to examine how and to what extent the Official Languages Act is applied in areas of justice that fall under federal jurisdiction.

The Committee should know that English-speaking Quebec does not yet possess the level of capacity in this sector represented by organizations like the Fédération des associations de juristes d'expression française de common law, the Centre canadien de français juridique, or the Réseau national de formation en justice. We do not have researched and coherent policy proposals, nor even a developed Quebec-wide network of English-speaking jurists.

We are hopeful however that this capacity will develop, and the QCGN continues to actively support the newly formed Association of English-speaking Jurists of Quebec (AESJQ), who have submitted their own brief towards this study.

Sources of Information

The QCGN wishes to highlight the following key documents and sources of information of relevance to the study:

- Dr. Linda Shohet's recent literature review, *Access to Justice for Minority Populations: Focus on the English-speaking Communities of Quebec 2000–2016*, produced for the QCGN with the assistance of Justice Canada's *Access to Justice in Both Official Languages Support Fund* (copy provided to LANG Clerk and Analyst);
- [\*The Language of Statutes and Judgments Conference\*](#), held on October 21<sup>st</sup>, 2015, and co-sponsored by the Barreau de Montreal, Commissioner of Official Languages, Language Rights Support Program, and the QCGN. The conference program included:
  - An address by Mr. Graham Fraser, Commissioner of Official Languages: *The Efforts of the Commissioner of Official Languages for Access to Justice in Both Official Languages Across Canada*;
  - Presentation by Ms. Geneviève Boudreau, Director of the Language Rights Support Program (LRSP): *Clarification and Advancement of Constitutional Language Rights and Access to Justice: The Contribution of the Legal Community and the LRSP*;
  - Two panels moderated by Robert Leckey, now the Dean of the Law Faculty of McGill University;

- *English Version of Quebec Laws: Quality, Judicial and Constitutional Consequences*; and,
- *Lack of Visibility of Quebec Jurisprudence in the Rest of Canada: Impact and Solutions*, which included The Honourable J. J. Michel Robert, former Chief Justice of Quebec as a panelist.<sup>1</sup>

## Comment

We have been asked to provide our community's feedback on the following list of topics:

- the Supreme Court of Canada judicial appointment process;
- the bilingualism of judges in Canada's superior courts;
- access to justice in both official languages;
- linguistic duality in the RCMP; and
- linguistic duality in the correctional system.

*The Supreme Court of Canada Judicial Appointment Process* – The QCGN supports a process for appointing Supreme Court of Canada Justices that is transparent, inclusive, and accountable to Canadians. To this end, we support a process that relies on an independent and non-partisan advisory board of legal professionals that makes recommendations regarding qualified, functionally bilingual candidates who reflect a diversity of backgrounds and experiences for appointment to the Supreme Court of Canada.

The QCGN supports legislation that would make functional bilingualism without the aid of an interpreter a requirement for appointment to the Supreme Court of Canada. In an officially bilingual country, with Constitutionally guaranteed language rights, functional bilingualism is a fundamental skill required by Supreme Court Justices.

*Bilingualism of Judges in Canada's Superior Courts* – We understand there are two issues at play when discussing the bilingualism of Superior Court Judges, and Provincial and Territorial Courts of Appeal Justices. First, where rights exist, there must be a systemic capacity for justices to hear cases and render decisions in both official languages. It is the QCGN's understanding that this is possible in Quebec, and we fully support the notion that it should be the case across Canada.

Second, the language skills of judges at this level must be sufficient to ensure stare decisis in the evolution of Canadian law. We refer the Committee to the referenced 2015 Conference, and the concerns expressed by The Honourable J. J. Michel Robert, former Chief Justice of Quebec. Since provincial and territorial superior courts' and courts of appeals' judgements are not always translated into both languages, can justices at this level fully consider the corpus of relevant decisions in rendering their judgments?

The QCGN would suggest therefore that like Supreme Court justices, functional bilingualism is a job requirement for Superior Court Judges, and Provincial and Territorial Courts of Appeal Justices. Perhaps all Canadian law schools and provincial bars, if they are not already, should be encouraging bilingual jurists.

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<sup>1</sup> Conference materials available here: <https://www.barreaudemontreal.qc.ca/en/avocats/activite/conference-language-statutes-and-judgments>

*Access to Justice in Both Official Languages* – We will not dwell on this point now, since it is the subject of a major research project developed by the QCGN with funding from Justice Canada. This research project has been handed over to the Association of English-speaking Jurists of Quebec (AESJQ), who are in the process of seeking funding for it from non-federal sources. A copy of the research plan has been provided to the Committee’s Clerk and Analyst.

We will however provide three thoughts:

- Possessing rights, and having a bilingual judiciary is of limited value if the infrastructure surrounding access to justice is not able to operate to provide services in both languages. In Quebec – including Montreal - access to justice in English is limited by a lack of bilingual clerks, stenographers, and other support staff. We will discuss this further in our comments related to the correctional system;
- Access to justice is not a clearly defined term, but seems to refer, “broadly to the access that citizens have to dispute resolution tools of justice including but not limited to courts.”<sup>2</sup> There is also a socio-economic aspect attached to the idea; opening broad access to these tools for the ‘common’ citizen, the “poor and middle class”, and in our case, linguistic minorities.<sup>3</sup> In any event, a common, authoritative definition would be helpful, especially when discussing and developing evidenced-based public policy; and,
- As mentioned, English-speaking Quebec is just beginning to develop community capacity to operate collectively in this sector. However, program funding is no longer available from the federal partner for these types of organizations, which now live from project to project. This is challenging enough for established networks; it is especially hard for a fledgling organization. The ability for Justice Canada to provide stable seed-money for an initial 2-3-year growth period for access to justice community groups would be most welcome.

*Linguistic Duality in the RCMP* – the QCGN does not have a specific opinion on this matter, but in general, supports all initiatives that expand Canadians’ linguistic rights, and the availability of public services in both official languages no matter the level of government.

#### *Linguistic Duality in the Correctional System*

The QCGN had an opportunity to lead a community delegation that included literacy, education, and legal information specialists on a visit to Correctional Service Canada’s (CSC) Federal Training Centre in Laval, Quebec this past February. Our tour focused on official languages’ oriented issues related to inmate programs, educational opportunities, staff-inmate interaction, and living and working environments. We also discussed staff and management challenges related to complying with official languages’ obligations. The tour – which took a year to organize – was an excellent introduction to the official languages’ challenges faced by inmates and staff within CSC’s institutions in Quebec. The visit was a CSC regional initiative, and we would like to acknowledge the outstanding work that Mr. Alain Tousignant, Regional Deputy Commissioner, Warden Geneviève Thibault, and their team did in making this visit possible.

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<sup>2</sup> Canadian Forum on Civil Justice

<sup>3</sup> See for example the description of the Canadian Bar Association’s Access to Justice Committee’s mandate.

During our visit to the Federal Training Centre, the QCGN delegation identified several serious concerns related to the application of the Official Languages Act within CSC's Quebec institutions. We expect these concerns are also relevant to French-speaking inmates and staff at CSC institutions outside of Quebec.

In no order, the following observations are offered:

1. Inmate social services are largely volunteer driven, and a lack of English-speaking volunteers impacts the equitable availability of these services. CSC is actively seeking links to English-speaking community groups to alleviate the situation, but does not have a public information campaign to help attract English-speaking volunteers. On a related matter, there are a lack of placement opportunities for inmate to do community service in English.
2. CSC employs a 'national population management' system, and it was not at all clear that the ability to offer substantively equal services to inmates in the official language of their choice was a factor in facility assignment. During our visit to the Federal Training Facility, on several occasions we heard "we get along" from the inmates and "we do what we can" from staff in response to questions related to official languages.
3. We found instances of prima facie linguistic discrimination against English-speaking inmates. For example, programs required for parole require at least a 1:10 staff-inmate ratio. If there are less than 10 English-speaking inmates, needed programs are delayed until there are sufficient numbers. Release to half-way houses is often delayed for English-speaking inmates because of a lack of bed-spaces in half-way houses in Montreal. The situation is exacerbated in the regions. As a result, English-speaking inmates are more likely to remain incarcerated after their parole date. Finally, we heard that inmates are moving from minimum to medium institutions to have access to required programs in English. This is an unacceptable situation.
4. We visited a unit housing English-speaking inmates, where none of the guards could communicate in English. This raises serious safety concerns, as well as being evidence of two service levels inconsistent with Part IV obligations.
5. Educational programs at the Federal Training Centre are supported – on contract with CSC – by two majority French educational institutions, the Commission scolaire de la Seigneurie-des-Mille-Iles, and Cégep Marie-Victorin. We were told that CSC approaches provincial ministries of education to provide these services within institutions on contract. This raises questions related to the capacity of a majority educational institution to provide these services in the minority language, and the lost Part VII opportunity.
6. We heard disturbing reports of a disincentive for bilingual employees to work with inmates who indicate English as their preferred language. They don't like to do it because it is harder to find supports for those inmates, increasing staff case load. For many, the \$800 bilingual bonus is not worth it, and they actively seek to move from bilingual to unilingual positions; and,
7. Part of CSC's challenge might be in its disappointing Part VI numbers. Out of a workforce of 3823 full-time employees, only 110, or 2.9% are English-speaking, despite a 13.5% provincial Official language minority percentage. We also note that the Parole Board of Canada employs 53 people in Quebec, only 2 of whom are English-speaking.

We could go on. The QCGN is committed to working with CSC to help alleviate its challenges related to the Official Languages Act. We have every reason to believe that CSC is motivated to do better, witnessed by the commitment we have experienced from senior Regional CSC management to the front line. But

they need help, in terms of resources, and official languages expertise. This is a very complex situation that we suggest would merit its own study.

### Conclusion

The QCGN is concerned that English-speaking Quebec does not yet possess adequate research, situational awareness, and capacity to fully understand and articulate its needs in the areas under current study by the Committee. We are however optimistic that initiatives like the Association of English Speaking Jurists of Quebec, with the support of Justice Canada and other levels of government, the continued cooperation of important community stakeholders like Éducaloi and offers of cooperation and advice from the *Réseau national de formation en justice*, and *La Fédération des associations de juristes d'expression française de common law*, will help us close the policy gaps our community has in this critical sector.