

## MODERNIZING THE OFFICIAL LANGUAGES ACT: HOW THE FEDERAL GOVERNMENT GOT IT WRONG WITH C-13

Bill C-13 is new legislation proposed by the Government of Canada to modernize the *Official Languages Act* (OLA). It also proposes to enact a new law – the *Use of French in Federally Regulated Private Businesses Act*.

The Quebec Community Groups Network (QCGN) opposes C-13 and is concerned about the new direction being proposed by the Government of Canada, in particular the long-term effects resulting from this change on the application of the OLA and on the language rights of English-speaking Quebecers. Read [our brief](#), submitted to the House and Senate Standing Committees on Official Languages.

During national-level discussions over more than a decade centred on the OLA's modernization, the QCGN has actively advocated for English-speaking Quebec. Our experience and expertise in this policy area have led us to conclude that C-13 as currently constituted constitutes a threat to the future vitality of English-speaking Quebec and to the fundamental Canadian value of linguistic duality. We must, as a community, make our concerns known to Parliamentarians while this bill proceeds through the legislative process. If C-13 cannot be stopped, it must be amended significantly to protect our rights and interests.

First, we must understand the fundamentals of the Official Languages Act, its core importance to our community, and the story behind the development of C-13...

### **Why is the Official Languages Act Important to the English-speaking Community of Quebec?**

The OLA is a federal statute that gives life to the official language rights of Canadians contained in the Constitution. The OLA is a special kind of law; it is 'quasi-constitutional.' This provides it with primacy – a first among equals stature – in relation to all other federal laws.

The importance of the OLA to the basic fabric of modern Canada cannot be overstressed. The original OLA was enacted in 1969, response to the work of the Royal Commission on Bilingualism and Biculturalism. That body was mandated to recommend steps to develop the country on the principle of equality between English and French. The 'B & B Commission,' as it was dubbed, was established to respond to severe strains placed on Canadian unity over the issue of language. These had been thrust into the forefront during the 1960s. The OLA continues to serve as a critical tool for national unity. It was built around the principle of 'linguistic duality,' a country centred around two official languages – French and English.

What is an official language? Normally, an official language refers to the language or languages a government must use in its internal and external communications. In Canada, this definition has been expanded. It includes not only the official communications of the federal government, but also of society. Section 16(3) of the *Canadian Charter of Rights and Freedoms*, for example, permits Parliament and the provincial and territorial legislatures to advance the equality of status or use of English and French.

The OLA is a very complex. The Act consists of 14 parts. These cover such areas as the proceedings of Parliament, the administration of justice, and the obligation of federal institutions to communicate with the public in both official languages. Part VII of the OLA, the Advancement of English and French, is particularly important to English-speaking Quebecers. It provides the legal foundation through which the Government of Canada and its institutions take positive measures to enhance the vitality of the English and French linguistic minority communities in Canada. These positive measures are mostly contained in the Government of Canada's official languages' strategies, embodied in suites of policies and programs. These are referred to as 'Action Plans'. The latest of these is the *Action Plan for Official Languages – 2018-2023: Investing in Our Future*, which frames a multi-billion-dollar strategy through which federal investments in this area are channeled. Regarding English-speaking Quebec, this funding is provided directly to community-sector organizations, or through inter-governmental agreements with the Government of Quebec. These federal resources target important sectors including health and social services; education; access to justice; employment and economic development; and research. This type and level of support provides the lifeblood of many community organizations.

### **Why did the OLA need to be modernized?**

A major overhaul of the original OLA was carried out in 1988, in order to implement new government official-language obligations contained in the *Canadian Charter of Rights and Freedoms*. This was done via the creation of Part VII of the Act. However, this part of the Act relied on aspirational language. Accountability was vague. By the early 1990s, problems with Part VII had become evident to Parliament as well as to the English and French linguistic minority communities in Canada. 'Fixing' Part VII is a major concern that drives the current efforts to modernize the Act.

Following initial passage of the OLA, the proportional rate of bilingualism rose in Canada. However, it began falling in the 1980s, a trend that continues. This, coupled with a proportional decline of Francophones, constitutes an existential threat to the national vision of linguistic duality. It was felt that modernizing the OLA could help to reverse this trend.

Enforcement of the Act has provided another source of problems. Currently, the Commissioner of Official Languages can investigate complaints of breaches to the Act. However, he or she has

no remedial power. The Commissioner is limited to determining whether a breach has occurred and reporting it to the President of the Treasury Board and the institution concerned, and making recommendations. The power to impose financial penalties and provide other remedies rests with the Federal Court of Canada, a complex and expensive process.

### **English-speaking Quebec and the Modernization Process**

The current process to modernize the OLA began in 2009. It was focussed on legislation updating Part IV, Communications with and Services to the Public. Eventually, these improvements were successfully implemented by updating the Official Languages (Communications with and Services to the Public) Regulations. The QCGN and many community partners and stakeholders took part in this process, working closely with our Francophone counterparts from across the nation. Much was learned about cooperation and collaboration. Good relationships were formed and strengthened.

In 2017, the Senate Standing Committee on Official Languages began a multi-year study on modernizing the OLA. This time, the focus was placed on Part VII and accountability and enforcement. By spring 2019, English and French linguistic minority communities achieved a consensus on a way forward to modernize the Act. This consensus was captured in the Senate Standing Committee's recommendations on modernizing the OLA. It was further solidified in the recommendations of the Commissioner of Official Languages, and through the lead-up to a 2019 conference to celebrate the 50th Anniversary of the OLA.

That consensus included a plan to ensure: real consultation between the federal government and Canada's official language minority communities; a framework for addressing leadership and cooperation regarding implementation of the Act; a proper approach to compliance and enforcement; and measures to enhance judicial bilingualism.

### **Shifting Sands**

Two events took place in 2019 that would change the federal government's historic approach to its official languages: the Oct. 21 federal election returned a minority government; and the language debate in Quebec was re-ignited in advance of reforms to the *Charter of the French Language* (Bill 101). As a result, the federal political playing field shifted dramatically, from a focus on official language minority communities to a focus considerably more concentrated on the demands of Quebec. The process to modernize the OLA – and the legislative proposals that grew out of it—shifted accordingly.

The 2020 Speech from the Throne embodied this shift, by proposing to focus on the decline of French in Canada as a whole *and* within Quebec. A federal policy discussion paper – *English and French: Towards a substantive equality of official languages in Canada* – was published in early 2021. It outlined an asymmetric (different) approach to English and French as Canada's official

languages. It also re-introduced the long-rejected option of ‘territorializing’ language rights of Canadians. Instead of ensuring consistent federal language rights for Canadians no matter where they lived, a new regime would be developed that would create a patchwork of rights. An example of this was the proposal to create new language rights *for French only* with respect to communications with federally regulated businesses (notably banks, telecommunications companies, and airlines) operating in Quebec.

With the exception of the Green Party of Canada, every federalist party supported the thrust of these policy changes. The Bloc Québécois demanded that Ottawa withdraw completely from all matters related to language and culture within the territory of Quebec.

Bill C-32, *An Act to amend the Official Languages Act and to make related and consequential amendments to other Acts*, was tabled just before Parliament rose in 2021 in advance of the Sept. 21 snap federal election. This proposed legislation was intensely focussed on the protection and promotion of French in Quebec. When a Liberal minority government was returned, a slightly modified version of C-32, 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*, was subsequently introduced, in March 2022.

### **C-13 and English-speaking Quebec**

Bill C-13 represents a sea change in federal official languages policy that will adversely impact the English-speaking community of Quebec. The QCGN is concerned that the asymmetrical treatment of official languages may cause problems in the future. C-13 recognizes – for the first time – French as a minority language in Canada. This is likely to create confusion with the concept of official language minority communities. We have therefore recommended to Parliament that clarifying language be included in C-13. These clarifications would specifically differentiate official language minority communities, and interpretive language would be added to specify that nothing in the OLA diminishes the rights of these linguistic minority communities to support from federal institutions.

C-13 also proposes to specifically and exclusively recognize Quebec’s *Charter of the French Language* within the OLA. No other provincial language regimes are mentioned. The *Charter of the French Language* is not only inconsistent with the stated policy goals of the OLA. As amended under Bill 96, the Quebec Charter now operates notwithstanding fundamental rights and freedoms guaranteed under the *Canadian Charter of Rights and Freedoms*. The QCGN has therefore recommended that references in the proposed OLA to the *Charter of the French Language* be removed.

Despite the sustained efforts of Canada’s French and English linguistic minority communities and the consensus achieved in 2019 on modernizing the OLA, Bill C-13 does not address the problems with Part VII. Despite the additional measures in the latest OLA proposal, the QCGN

believes this approach falls short of creating an enforceable legal obligation for federal institutions to take positive measures to ensure the vitality of official language minorities.

Further, asymmetry in Part VII – making the protection and promotion of French a key element of the federal obligations – may choke federal support to English-speaking Quebec. Among other elements, the QCGN has recommended amending C-13 to ensure that Part VII does not receive a narrower application for English-speaking Quebec.

Finally, C-13 creates a regime for language rights with respect to federally regulated businesses in one official language only, and on a territorial basis. The QCGN has consistently stated that any language rights in federally regulated businesses must apply to both English-speakers and French-speakers. Accordingly, the QCGN has recommended that any language rights regarding federally regulated businesses should apply for both English-speakers and French-speakers.

### **What can I do?**

Individuals and groups can reach out to their [Member of Parliament](#), and [Senator](#) to share concerns about C-13.

C-13 is now being studied before the House of Commons Standing Committee on Official Languages. It is also before the Senate Standing Committee on Official Languages, for pre-study. Groups and individuals can submit a brief on C-13 early this fall, to either Committee. Note that a brief does not have to be a complex piece of work written by lawyers and policy experts! Both Committees want to hear from Canadians on this important piece of legislation, and are especially welcoming of practical experiences, experiences, and recommendations.

Community groups and institutions may also wish to pass resolutions in support of the QCGN's position and recommendations regarding C-13 that are contained in our [brief](#). Individuals are encouraged to send letters of support for our position to each Committee, with a cc to the QCGN.

For more information and to answer any questions, please contact Stephen Thompson, QCGN Director, Government Relations, Policy, and Research at [stephen.thompson@qcgnc.ca](mailto:stephen.thompson@qcgnc.ca)