

**Quebec Community Groups Network**

**Brief to House of Commons  
Standing Committee on Official Languages**

**Bill C-13,  
*An Act for the Substantive Equality of Canada's Official Languages***

**May 2022**

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## Executive Summary

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The *Official Languages Act* is a lifeline for English-speaking Quebec. With Quebec's Bill 96, the community needs this lifeline more than ever. But with Bill C-13, this lifeline is fraying.

Founded in 1995, the Quebec Community Groups Network ("QCGN") is a not-for-profit organization linking English-language community organizations across Quebec. The QCGN—like the community it serves—is proud to support the protection and promotion of the French language in Canada. The QCGN advocates for linguistic duality in every province and territory.

The English-speaking minority in Quebec is a diverse, bilingual, and resilient community that is facing serious economic challenges—in the face of persistent myths and stereotypes. Although the English language itself is not threatened, the English-speaking community's challenge is in maintaining the community's vitality and survival in all regions of Quebec.

The QCGN has been an active participant in the process to modernize the *Official Languages Act* ("OLA"). The foundational policy document that outlined the expectations of English-speaking Quebecers remains a 2018 brief submitted to this committee.<sup>1</sup> By and large, the proposals in that brief were a matter of consensus with other official language minority groups across Canada. 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 the 2019 conference to celebrate the 50<sup>th</sup> Anniversary of the OLA.

It did not work out that way. Following the 2019 election, the political playing field shifted from the official language minority communities to Quebec, and the process to modernize the OLA shifted accordingly. Quebec's Bill 96, introduced in May 2021, altered the complexion of the debate. Finally, Bill C-32 *An Act to amend the Official Languages Act and to make related and consequential amendments to other Acts*, tabled the week before Parliament rose, was intensely focussed on the protection and promotion of French in Quebec.

Bill C-13 is not the bill that the official language minorities asked for. In Bill C-13, the federal government is poised to abandon half a century of official language policy and turn the OLA into legislation aimed at the protection and promotion of one official language. It also pushes Canada toward a more asymmetrical federalism, creating a special language regime in Quebec and enshrining this framework into a quasi-constitutional statute. Bill C-13 further explicitly references the very provincial law that will seriously harm the English-speaking minority in Quebec. In so doing, Bill C-13 weakens the minority's federal lifeline when it is most needed.

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<sup>1</sup> [English-speaking Quebec and the Modernization of the Official Languages Act, November 2018](#) ["QCGN 2018 Brief"].

This brief is organized in three parts. **Part 1** presents the context: Who is English-speaking Quebec, and why does English-speaking Quebec need the OLA? **Part 2** presents the “rocky road” to modernization: How did we get here? Finally, **Part 3** presents the QCGN’s positions and recommendations for Bill C-13.

The full list of Recommendations is in **Appendix A**. They are summarized as follows:

- A. **Purpose and interpretation:** The QCGN is pleased to see the ongoing recognition of Quebec’s English-speaking minority. However, the QCGN is concerned that the asymmetrical treatment of official languages may cause problems in the future. The QCGN is concerned that the recognition of French as a minority language in Canada may create confusion with the concept of an official language minority community. The QCGN recommends:
  - (1) clarifying the definition of an official language minority community; and
  - (2) adding interpretive language to state to specify that nothing in the OLA diminishes the rights of linguistic minority communities.
- B. **References to the *Charter of the French Language*:** The modernized OLA will specifically and exclusively recognize Quebec’s *Charter of the French Language*—no other provincial language regimes are mentioned. The *Charter of the French Language* is inconsistent with the policy goals of the OLA. Further, under Bill 96, the *Charter of the French Language* will be transformed and will operate notwithstanding fundamental rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms* and the Quebec *Charter of Human Rights and Freedoms*. The QCGN recommends:
  - (3) removing references to the *Charter of the French Language*.
- C. **Part VII:** Despite the sustained efforts of all OLMC’s, Bill C-13 does not fix the problems with Part VII. Despite the additional detail, it may fall short of creating an enforceable legal obligation for federal institutions to take positive measures to ensure the vitality of official language minorities. Further, the asymmetry in Part VII may choke federal support to English-speaking Quebec. The QCGN recommends:
  - (4) modifying the language of Part VII to ensure the obligations are legally enforceable;
  - (5) make funding the Court Challenges Program mandatory;
  - (6) adding a requirements for federal-provincial agreements to protect OLMC’s; and
  - (7) amending the Bill to ensure that Part VII does not receive a narrower application for English-speaking Quebec.

D. **Federally Regulated Private Businesses:** Despite the QCGN's proposals to extend OLA rights to federally regulated private businesses, Bill C-13 creates a regime for language rights 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. The QCGN recommends:

- (8) any language rights in federally regulated businesses should apply to both English-speakers and French-speakers.

## 1. The Context: English-Speaking Quebec and the Official Languages Act

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### A. The Quebec Community Groups Network

[1] Founded in 1995, the Quebec Community Groups Network (“QCGN”) is a not-for-profit organization linking English-language community organizations across Quebec. As a centre of evidence-based expertise and collective action, the QCGN identifies, explores and addresses strategic issues affecting the development and vitality of the English-speaking community of Quebec and encourages dialogue and collaboration among its member organizations, individuals, community groups, institutions and leaders.

[2] The QCGN’s vision for English-speaking Quebec is a diverse, confident, recognized, and respected national linguistic minority that actively participates in and contributes to the social, economic, cultural, and political life of society.

[3] The QCGN—like the community it serves—is proud to support the protection and promotion of the French language, including the unique cultures of Francophones in minority communities across Canada, and the French language in our home province of Quebec.

[4] The QCGN has participated in the consultations and dialogue around the modernization of the *Official Languages Act* (“OLA”). In particular:

- In May 2018, the QCGN submitted a brief to the Standing Senate Committee on Official Languages, setting out a series of recommendations for a modernized OLA.<sup>2</sup>
- In March 2021, the QCGN submitted a brief to the Expert Panel on Language of Work and Service in Federally Regulated Private Businesses.<sup>3</sup>
- In April 2021, the QCGN submitted a brief to the Standing Senate committee on Official Languages, responding to the Government of Canada policy paper presented in February 2021.<sup>4</sup> This brief presented 9 recommendations in response to the Government of Canada policy paper. The QCGN also appeared before the Standing Senate Committee on May 31, 2021.<sup>5</sup> At this appearance, the QCGN also voiced its concerns regarding Quebec’s recently-tabled Bill 96.
- On June 15, 2021, Bill C-32, *An Act to amend the Official Languages Act and to make related and consequential amendments to other Acts* (“Bill C-32”) was introduced in the House of Commons. The QCGN published a preliminary analysis of Bill C-32.<sup>6</sup>

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<sup>2</sup> QCGN, [English-speaking Quebec and the Modernization of the Official Languages Act](#), May 2018.

<sup>3</sup> QCGN [Brief to the Expert Panel on Language of Work and Service in Federally Regulated Private Businesses](#), March 2021.

<sup>4</sup> QCGN [Brief to Standing Senate Committee on Official Languages, April 2021](#).

<sup>5</sup> Transcript available online: <https://sencanada.ca/en/Content/Sen/Committee/432/OLLO/55248-e>.

<sup>6</sup> QCGN, [Preliminary Analysis of Bill C-32](#), June 2021.

## B. The English-speaking Community of Quebec

“I have always thought that the English communities in Quebec suffer from a larger degree of misunderstanding than is the case for many other minority language communities.”<sup>7</sup>

[5] An enduring myth portrays English-speaking Quebecers as a pampered elite minority. The truth is that contemporary English-speaking Quebec is a diverse, bilingual, and resilient community that is facing serious economic challenges.

[6] As the Standing Senate Committee on Official Languages (“OLLO”) noted in 2011, there are certain widely-held myths regarding the English-speaking community in Quebec.<sup>8</sup> In this section, the QCGN advances three propositions: First, the English-speaking community of Quebec is a unique official language minority community. Second, the English-speaking community of Quebec has transformed into a diverse, bilingual and resilient community, but public perception has not kept pace. Third, the vitality of the English-speaking community of Quebec does not threaten French in Quebec.

### I. The English-speaking community of Quebec is a unique official language minority

[7] Although English is the majority language in Canada, it is a minority language in the province of Quebec. English-speaking Quebec is a linguistic minority community and has been recognized as such in Canada’s constitutional order since Confederation.<sup>9</sup> Arguments that English-speaking Quebecers are simply an extension of Canada’s English majority belie this fundamental feature of the Canadian constitution.

[8] According to the 2016 census, there are 1,103,480 people in Quebec whose first official language spoken is English. This represents approximately 13.7% of the population of Quebec.<sup>10</sup> Using the same census data and measurement (first official language spoken), the French-speaking community outside Quebec numbers 951,415. To further put things in perspective, the 215,200 English-speaking Quebecers who reside outside the Montreal metropolitan area outnumber any other provincial or territorial French linguistic community except Ontario and New Brunswick.

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<sup>7</sup> Graham Fraser, Commissioner of Official Language (31 May 2010), cited in Senate, Standing Committee on Official Languages, [The Vitality of Quebec’s English-speaking Communities: From Myth to Reality](#) (May 2011) at 11 (Chair: Hon Maria Chaput) [*From Myth to Reality*].

<sup>8</sup> *From Myth to Reality*, *supra* at 1.

<sup>9</sup> See e.g. *Constitution Act, 1867*, s 133; *Reference re Senate Reform* 2014 SCC 32 at 92.

<sup>10</sup> Statistics Canada, 2016 Census of Population, [First official language spoken in Quebec \[Province\] and Canada \[Country\]](#), Catalogue No 98-316-X2016001 (29 November 2017) [2016 Census Data]. See also *From Myth to Reality*, *supra* at 4; Statistics Canada, Analytical Paper, [Portrait of Official-Language Minorities in Canada: Anglophones in Quebec](#), by Jean-Pierre Corbeil, Brigitte Chavez & Daniel Pereira, Catalogue No 89-642-X No 002 (2010) [*Portrait of Official-Language Minorities*].

[9] As recognized by OLLO in 2011, the English-speaking community of Quebec is a “unique social, political, economic and cultural context” deserving of recognition.<sup>11</sup>

## II. The English-speaking community of Quebec has transformed into a diverse, bilingual and resilient community, but public perception has not kept pace

*“Quebec society went through a rapid transformation over the last 50 years, and the English-speaking community adapted. Now the community must respond to new demographic and social challenges.”<sup>12</sup>*

[10] Quebec’s English-speaking community—along with Quebec society at large—has undergone a major transformation since the 1970’s. However, while the community itself has changed, perceptions about this community have not kept pace with the change. Certain myths persist regarding the English-speaking population of Quebec,<sup>13</sup> particularly the “outdated conception of the community as a homogenous and privileged elite”.<sup>14</sup> Since perceptions remain quite out of step with reality, it is important to set out some key features of the English-speaking community of Quebec based in the facts as they are today.

[11] The challenges faced by the community in the 1970’s are well-documented.<sup>15</sup> The introduction of the *Charter of the French Language* in 1977 led to a decline in enrollment in English public schools and an out-migration of many English-speakers.<sup>16</sup> In the course of its

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<sup>11</sup> *From Myth to Reality, supra* at 99 and 80: “Recommendation 1: That the Government of Canada recognize that the Anglophone minority in Quebec” enjoys rights under the *Charter* and the *OLA*, and “has specific needs that deserve close attention from all federal institutions”.

<sup>12</sup> Graham Fraser, “Quebec’s English-Speaking Community: Adapting to a New Social Context”, in Richard Y. Bourhis, ed, *Decline and Prospects of the English-Speaking Communities of Quebec*, (Ottawa: Canadian Heritage and Canadian Institute for Research on Linguistic Minorities, 2012) [Bourhis, *Decline and Prospects*] at 387.

<sup>13</sup> See *From Myth to Reality, supra* at 1; Official Languages Support Branch of the Department of Canadian Heritage, *A Portrait of the English-speaking Communities in Québec* (Ottawa: Innovation, Science and Economic Development Canada, June 2011) at 7 [Canadian Heritage 2011]; André Pratte, “Bridging the Two Solitudes”, in Bourhis, *Decline and Prospects, supra* at 383.

<sup>14</sup> Lise Palmer & Patrick Tomlinson, “[The Implementation of Part VII Community and Social Stakeholders’ Perspectives: The English-speaking Communities of Quebec. Report submitted to the Official of the Commissioner of Official Languages](#)” (Unofficial report submitted to the Official of the Commissioner of Official Languages), October 2009 at 1. See also William Floch & Joanne Pockock, “The Socio-Economic Status of English-Speaking Quebec: Those Who Left and Those Who Stayed”, in Bourhis, *Decline and Prospects, supra* at 129.

<sup>15</sup> See e.g. Floch Pockock, *supra*.

<sup>16</sup> See *Ibid*, and Patricia Lamarre, “English Education in Quebec: Issues and Challenges”, in Bourhis, *Decline and Prospects, supra* 175 at 180.



struggle to survive as a community, the Quebec’s English-speaking community spearheaded some major constitutional language rights litigation that has shaped the law in Canada.<sup>17</sup>

[12] However, the community adapted and changed. As Graham Fraser remarked, “[t]he recent history of Quebec’s English-speaking community is really a success story of adapting to a new sociolinguistic environment.”<sup>18</sup>

[13] Here are three main characteristics of English-speaking Quebec today:

[14] **Diversity:** The English-speaking community of Quebec is both regionally and ethnically diverse. Regionally, there are wide variations in the concentration of English-speakers throughout the province. While the vast majority of Quebec’s English-speakers are concentrated in Montreal,<sup>19</sup> 215,200 English-speakers live outside this metropolitan area, in various regions throughout the province. These regions vary widely in numbers, density, and demographics.<sup>20</sup> While the institutional support and access to services for English-speakers in the Greater Montreal area is relatively good, the same cannot be said of the regions.<sup>21</sup> Ethnically, the English-speaking community is also diverse. In the Greater Montreal area, the English-speaking community has a history of ethnically diverse communities.<sup>22</sup> With more recent immigration, this history of ethnic diversity continues, and there is an ever-increasing proportion of English-speakers whose mother tongue is neither English nor French.<sup>23</sup>

[15] **Bilingualism:** This is critical for the vitality of the English-speaking community in Quebec. English-speaking youth understand that bilingualism is the key to gaining good employment in

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<sup>17</sup> See e.g. *Ford v Quebec (AG)*, [1988] 2 SCR 712; *AG (Que) v Quebec Protestant School Boards*, [1984] 2 SCR 66 [*Quebec Protestant School Boards*]; *Nguyen v Quebec (Education, Recreation and Sports)*, 2009 SCC 47; *Solski (Tutor of) v Quebec (AG)*, 2005 SCC 14.

<sup>18</sup> Graham Fraser, “Quebec’s English-Speaking Community: Adapting to a New Social Context”, in Bourhis, *Decline and Prospects*, *supra* at 388.

<sup>19</sup> According to 2016 Census Data, *supra*, approximately 80% of Quebec’s English-speakers live in the Montreal Census Metropolitan Area. English-speakers comprise 21.9% of Montreal’s population.

<sup>20</sup> Aside from Montreal, the next highest concentration of English-speakers is in Gatineau, at 58,460, representing 17.8% of the local population and 5% of the province’s English-speakers. At the other end of the spectrum, there are 128,375 English-speakers living outside the four major cities (Montreal, Quebec, Gatineau, and Sherbrooke), geographically spread out over the rest of the province. For a narrative description of the different regional communities, see *From Myth to Reality*, *supra* at 6, 14-15. For a regional analysis of the 2006 Census Data, see *Portrait of Official-Language Minorities*, *supra* at 14-15.

<sup>21</sup> See e.g. the state of English services in certain rural regions as described in *From Myth to Reality*, *supra* at 37-38.

<sup>22</sup> See e.g. Community Health and Social Services Network, “Community Vitality Survey” (April 2010) at 20, cited in Quebec Community Groups Network, “[A New multi-year Official Languages Plan to Support Canada’s English Linguistic Minority Communities](#)” (2012) at 30: “When asked the question ‘Of which cultural community do you belong?’ 30 per cent of Laval English-speakers replied ‘Greek’, and 22 per cent answered Italian”.

<sup>23</sup> See *Portrait of Official-Language Minorities*, *supra* at 86; *From Myth to Reality*, *supra* at 7; Canadian Heritage 2011 Report, *supra* at 3-4.

the province,<sup>24</sup> and many English-speaking parents seek out opportunities for their children to become fluent in French in order to have a future in the province.<sup>25</sup> Among youth, English-speaking Quebecers have a bilingualism rate of 73.6%—higher than their French-speaking counterparts in Quebec (60.7%) and three times higher than English-speaking youth in any other province.<sup>26</sup> This being said, there remain some communities of unilingual English-speakers in Quebec. These persons are often older, more vulnerable and prone to isolation.<sup>27</sup> They have specific needs that must also be taken into account, particularly regarding access to government services in English.

[16] **Resilience and Vitality:** Although the English language itself is not threatened, the English-speaking community’s challenge is in maintaining the community’s vitality and survival in all regions of Quebec.<sup>28</sup> Some key challenges to community vitality include the following:

- a. **Community leadership:** community organizations in Quebec’s English-speaking community often lack the capacity to articulate and address the English-speaking community’s needs.<sup>29</sup>
- b. **Education:** English-language public schools continue to face declining enrolment.<sup>30</sup> Further, the community struggles to maintain management and control over its public schools, particularly in light of Quebec’s attempt to abolish locally-controlled English school boards.<sup>31</sup>
- c. **Economic:** The median income of English-speakers in Quebec is below the median income of French-speakers in Quebec.<sup>32</sup> The rate of unemployment for

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<sup>24</sup> See e.g. Quebec Community Groups Network, “[Creating Spaces for Young Quebecers: Strategic Orientations for English-speaking Youth in Quebec](#)” (January 2009) at 19-20 [QCGN, Creating Spaces].

<sup>25</sup> For commentary, see Daniel Weinstock, [Language in Quebec Schools: It’s Time for a Rethink](#), *In Due Course*, 15 September 2014.

<sup>26</sup> According to 2016 Census Data, *supra*, the next most bilingual English-speaking youth are from New Brunswick, with a bilingualism rate of 26.1%.

<sup>27</sup> See e.g. the portrait of the North Shore and Lower North Shore, *From Myth to Reality*, *supra* at 14.

<sup>28</sup> *From Myth to Reality*, *supra* at 2.

<sup>29</sup> See Canada, Canadian Heritage, “[Evaluation of the Official Languages Support Programs](#)”, Evaluation Services Directorate Catalogue No CH7-18/2017E-PDF (16 May 2017), at 4.1.2.1: “in comparison with minority Francophone communities, English-speaking communities in Quebec have a relatively less extensive community network and must deal with decreasing enrolment in English schools and a political and legal framework that limits the use of English in public spaces”; Canadian Heritage 2011, *supra* at 12-13.

<sup>30</sup> See *From Myth to Reality*, *supra* at 21; Canadian Heritage 2011, *supra* at 11; and Lamarre, *English Education in Quebec*, *supra*.

<sup>31</sup> See in particular Quebec’s *An Act to amend mainly the Education Act with regard to school organization and governance*, currently subject to a constitutional challenge before the Superior Court of Quebec: Superior Court file 500-17-112190-205. See also *Procureur général du Québec c. Quebec English School Board Association*, 2020 QCCA 1171 (stay application).

<sup>32</sup> According to 2016 Census Data, *supra*, the median income of English-speakers is \$30,022 per annum, compared to \$33,933 for French-speakers.

English-speakers—even bilingual English-speakers—is higher than that of French-speakers, whether unilingual or bilingual.<sup>33</sup> This rate is several times higher for Black English-speakers.<sup>34</sup>

- d. **State institutions:** English-speakers lack representation and influence within state institutions. English-speakers are underrepresented in both the provincial and federal public services in Quebec—at the provincial level, quite radically so.<sup>35</sup>

### III. The vitality of the English-speaking community in Quebec does not threaten French in Quebec

[17] The recognition of English-speaking Quebec’s existence and challenges in no way constitutes a denial of the real challenges faced by the French-speaking majority to protect and preserve the French language.

[18] Many misunderstandings and prejudices regarding the English-speaking community persist. Much of this is based on a conflation of the dominance of the English language in the world at large with the realities of the English-speaking minority within Quebec. The former is a challenge to the vitality of the French language in Quebec; the latter is not.<sup>36</sup>

[19] The prosperity of the two official language communities in Quebec is often seen as a zero-sum game: one community thrives at the expense of the other. As discussed below, this is the approach taken in Quebec’s Bill 96. However, this “zero-sum game” narrative is outdated. A modern perspective of English-speaking Quebec and the OLA recognizes that the vitality of a minority language community contributes to—and does not detract from—the cultural life of its province and the country as a whole.

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<sup>33</sup> According to the 2016 Census Data, *supra*, the unemployment rate for English-speaking Quebecers was 8.9% while that of French-speaking Quebecers was 6.8%. See also Canadian Heritage 2011, *supra* at 6-7. For unilingual vs bilingual employment data, see Quebec, Advisory Board on English Education, [Educating Today's Quebec Anglophone](#), brief presented to the Minister of Education, Recreation and Sports (March 2010) at 16 [*Educating Today's Anglophone*].

<sup>34</sup> See Canadian Heritage 2011, *supra* at 6-7; *Educating Today's Anglophone*, *supra* at 16.

<sup>35</sup> According to 2016 Census Data, *supra*, English-speakers comprised only 9.7% of the core federal public administration outside the National Capital Region. According to recent data from Quebec, Secrétariat du Conseil du trésor, [Les membres de communautés culturelles, les anglophones, les Autochtones et les personnes handicapées](#) at 1, the proportion of “anglophones” in the provincial public service has remained constant at 1% from 2013-2017.

<sup>36</sup> See André Pratte, “Bridging the Two Solitudes”, in Bourhis, *Decline and Prospects*, *supra* at 384.

### C. Canada's Constitutional Framework for Official Languages

[20] One of the main reasons why Canada became a federal state was to enable Quebec, the only French-speaking province, to maintain its distinct identity, religion, and legal tradition.<sup>37</sup> Thus, the province of Quebec takes the lead in protecting and promoting the French language in Quebec.

[21] By contrast, the Constitution provides a different role for the federal government. The *Canadian Charter* declares that English and French are the two official languages of Canada, and have equality of status and rights as to their use in all institutions of Parliament and the government of Canada.<sup>38</sup> The OLA implements this framework.

[22] The Government of Canada has a role in protecting official language minorities in every province. Part VII of the OLA declares that the government of Canada is committed to “enhancing the vitality of English and French linguistic minority communities”.<sup>39</sup>

[23] Further, the Government of Canada has a constitutional duty to protect official language minorities. This duty arises from the recognition of the “protection of minorities” as an unwritten constitutional principle. This constitutional principle “give[s] rise to substantive legal obligations”<sup>40</sup> on the part of the federal government to protect linguistic minorities across Canada. Thus, the federal partner has a unique responsibility towards Canada's official language minorities. It has and must maintain a national perspective on official languages policy.

[24] In Canada's federal context, there is a tension between the roles and obligations of the federal and provincial governments when it comes to language. In his appearance before this Committee in April 2021, Robert Leckey, Dean of the Faculty of Law at McGill University, put it this way:

Let's be clear. Robust and meaningful official bilingualism at the federal level is often at odds with provinces' laws, policies and spending priorities. In each province, official language minorities thus look to the federal level for support and defence of their rights. We saw this most recently in the cry for help regarding post-secondary education in French in Ontario. The same is true in my home province of Quebec, the sole jurisdiction where the official language minority is English speaking.

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<sup>37</sup> *Reference re Secession of Quebec*, [1998] 2 SCR 217, para 59 [*Secession Reference*].

<sup>38</sup> *Charter*, s. 16.

<sup>39</sup> OLA, s 41(2)

<sup>40</sup> *Secession Reference*, para 54; *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 at para 49.

The idea that there could well be linguistic laws, rules, regimes, programs and priorities at the two orders of government is kind of hard-wired into our constitutional structure, if you will. As I hinted, at times there's a bit of tension between them, in the sense that the kind of bilingual dual regime at the federal level certainly isn't one that each province would have adopted. It can be a fruitful tension, as tensions can be. At times, of course, various stakeholders will perceive that tension as less fruitful.<sup>41</sup>

[25] While the provinces have varying levels of obligations and commitment to linguistic duality, the Government of Canada has a constitutional obligation to ensure that English and French have equality of status and equal rights and privileges as to their use within areas of federal jurisdiction. A country with two official languages treats its languages equally. This is what the OLA has done over the past 50 years, and it is what Canadians expect from the Government of Canada. Recent polling by the Commissioner of Official Languages found 95% support for the OLA amongst Quebecers.<sup>42</sup> Canadians expect the Government of Canada to approach official languages from a national perspective that respects both official languages.

#### D. English-speaking Quebec and Canada's Constitutional Framework

[26] The recognition of the English-speaking minority in Quebec is baked into Canada's constitution. In fact, Quebec's English-speaking population has been central to the unfolding of language law in Canada.<sup>43</sup>

[27] As the Supreme Court of Canada recognized in the *Secession Reference*, the protection of minority communities – including Quebec's English-speaking community – has been a central thread in the development of Canada's constitutional landscape:

The concern of our courts and governments to protect minorities has been prominent in recent years, particularly following the enactment of the *Charter*. Undoubtedly, one of the key considerations motivating the enactment of the *Charter*, and the process of constitutional judicial review that it entails, is the protection of minorities. However, it should not be forgotten that the protection of minority rights had a long history before the enactment of the *Charter*. Indeed, the protection of minority rights was clearly an essential consideration in the design of our constitutional structure even at the time of Confederation.<sup>44</sup>

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<sup>41</sup> Robert Leckey, evidence at LANG, [April 29, 2021](#), 1540 and 1605.

<sup>42</sup> *Two Years into the Pandemic, Canadians' Support for Core Values of Official Bilingualism and Diversity Remains High*, Office of the Commissioner of Official Languages, Gatineau, Quebec, March 14, 2022. <https://www.clo-ocol.gc.ca/en/news/releases/2022/2022-03-14> accessed April 3, 2022.

<sup>43</sup> See generally: Marion Sandilands, "[If We Do It Right, It Will Hurt: The Official Languages Act, Nation-Building, and English-Speaking Quebec](#)" (2021) 17 *Linguistic Minorities and Society* 76 at 78-83.

<sup>44</sup> *Secession Reference*, para 81.

[28] The importance of Quebec's English-speaking minority in Canada's constitution is evident in three key ways.

[29] First, Quebec's English-speaking minority is the reason certain language rights were included in the *Constitution Act, 1867*. While Canada's federal structure allows Quebec a significant level of autonomy to protect the unique French language, culture, and civil law tradition, the drafters nevertheless designed certain provisions of the constitution to protect the English-speaking minority in Quebec. These provisions include s. 133 (protecting the use of English in the Quebec legislature and Courts), and s. 93 (protecting Protestant denominational schools in Quebec, which were largely English-language schools).

[30] Second, protections for English-language education in Quebec are one of the underlying aims of section 23 of the *Canadian Charter*. Section 23 provides for the right to be educated in the minority language within the province. The language of s. 23 was modelled on the language of s. 73 of the *Charter of the French Language*, and, as the Supreme Court has stated, was a direct response to that more restrictive language.<sup>45</sup>

[31] Third, English-speaking Quebec formed the basis for the 1988 *Official Languages Act's* recognition of both English and French language minority communities. The 1988 OLA introduced the concept of English- and French-speaking minority communities. Since there is only one province with an English-speaking minority – the province of Quebec – the 1988 OLA specifically recognizes the English-speaking minority community in Quebec. One of the stated purposes of the 1988 OLA was to support the development of these minority.<sup>46</sup>

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<sup>45</sup> *Quebec Protestant School Boards*, paras 79-80, 84.

<sup>46</sup> OLA, s 2(b).

## E. The Importance of the *Official Languages Act* to the English-speaking Community of Quebec

[32] The OLA is a lifeline for English-speaking Quebecers. Indeed, it is an essential tool for maintaining the vitality of the English-speaking community in Quebec. It does so by:

- Recognizing the equal status of English and French in federal institutions;
- Guaranteeing the right to federal services in English;
- Guaranteeing the right to work in English in the federal public service and the participation of English-speakers in the federal public service in Quebec; and
- Creating a framework for financial support for community organizations that serve English-speaking Quebec.

[33] The OLA is the only language legislation that protects the interests of English-speaking Quebecers as a minority. While Quebec's Bill 96 recognizes French as the sole official and common language of Quebec, the OLA advances the equality of both of Canada's languages.

[34] In 1988, when the current OLA was being debated in Parliament as Bill C-72, representatives of English-speaking Quebec articulated the importance of the Act to minority language communities. The same interests are alive today:

[...] English- and French-speaking Canadians should be guaranteed a generous complement of language rights and access to basic services in their own language across Canada. In this regard this legislation, Bill C-72, represents a significant act of leadership by the federal government. We particularly welcome the Government of Canada's eloquent commitment, contained in the preamble of Bill C-72:

... to enhancing the vitality and supporting the development of English and French linguistic minority communities...

This is an important and historic commitment that represents a significant and necessary evolution over previous legislation.

An explicit commitment on the part of the federal government to assist in promoting in a tangible way the vitality of the English and French language minority communities is, in our opinion, crucial to the survival of these communities.<sup>47</sup>

[35] In addition to this very important symbolic recognition, the OLA provides a framework for federal support to English-speaking Quebec and some of its institutions.

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<sup>47</sup> Testimony of Royal Orr, President, Alliance Quebec, before Special Legislative Committee on Bill C-72, 27 April 1988 at 10:23-10:24 [Testimony of Royal Orr].

## 2. The Rocky Road to Modernization of the *Official Languages Act*

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### A. The 2018 Consensus

[36] For the past decade, the Government of Canada has been under pressure from English and French official language minority communities (“OLMCs”) to modernize the OLA. The QCGN has been an active participant in the national discussion.

[37] These reforms began with an unsuccessful attempt to modernize Part IV of the Act (Communications with and Services to the Public) by way of an amending Bill originating in the Senate led by Senator Chaput and her colleagues on OLLO.<sup>48</sup> However, the recommendations made during this process were achieved through regulatory reform. The *Official Languages (Communications with and Services to the Public) Regulations* were updated in 2019 following an effective consultation process.

[38] Through this first step in the OLA’s modernization process, OLMCs discovered common ground and learned how to work together. By 2017, when OLLO began a major study on modernizing the OLA, key players in government, Parliament, academia, and the OLMCs were not only familiar with each other, but with the interests of their fellow stakeholders.

[39] In April 2017, OLLO undertook a massive study on modernizing the OLA. This initiative produced five reports, including a comprehensive set of Recommendations for a modernized OLA.<sup>49</sup> Further consultations on modernizing the OLA were conducted simultaneously by this Committee<sup>50</sup>, the Commissioner of Official Languages (OCOL)<sup>51</sup>, and the Minister of Official Languages, Mélanie Joly.

[40] Led by the QCGN, English-speaking Quebecers were active participants in these processes. The foundational policy document that outlined expectations of English-speaking Quebecers remains a 2018 brief submitted to OLLO and LANG in support of their studies.<sup>52</sup> By and large, the proposals in the brief were a matter of consensus with other official language minority groups from across Canada.

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<sup>48</sup> S-220, *An Act to amend the Official Languages Act (communications with and services to the public)* 40<sup>th</sup> Parliament, 3<sup>rd</sup> Session.

<sup>49</sup> Senate, Standing Senate Committee on Official Languages, *Modernizing the Official Languages Act: The Views of Federal Institutions and Recommendations* (June 2019) (Chair: René Cormier) [“OLLO 2019 Report”].

<sup>50</sup> House of Commons, Standing Committee on Official Languages, *Modernization of the Official Languages Act* (June 2019) (Chair: Denis Paradis) [“LANG 2019 Report”].

<sup>51</sup> Parliament, Office of the Commissioner of Official Languages, *Modernizing the Official Languages Act: The commissioner of Official Languages’ Recommendations for an Act that is Relevant, Dynamic and Strong* (May 2019) (Raymond Théberge) [“OCOL 2019 Report”].

<sup>52</sup> QCGN, *English-speaking Quebec and the Modernization of the Official Languages Act, May 2018* [“QCGN 2018 Brief”].



[41] A summary of the QCGN's proposals for a modernized OLA can be found at **Appendix B**.

[42] Over the next two years, consensus was reached between Canada's English and French linguistic minority communities on a path forward to substantially modernize the OLA. Although the recommendations from each community covered the entire breadth of the OLA, the core focus of each community was the modernization of Part VII – Advancement of English and French, which breathes life into s. 16(3) of the *Canadian Charter*. The committees and the Commissioner recommended several measures to enhance the implementation of the OLA, and to strengthen the vitality of OLMC's in particular. Notably, neither the OLLO nor OCOL reports recommended any differential treatment for either official language.<sup>53</sup> Further, while the LANG 2019 Report contained some recommendations specific to the French language, it did not recommend an asymmetrical framework. Although it made several recommendations regarding the purpose and framework of the Act, asymmetry was not among them.<sup>54</sup> Thus, according to this consensus, the equality of status of both official languages would have been maintained.

[43] There was great optimism when the English and French OLMCs, federal institutions, and linguistic duality organizations met at the National Arts Centre in the spring of 2019 to celebrate the 50<sup>th</sup> Anniversary of the OLA.

## B. Quebec Joins the Conversation

[44] In 2018, the Coalition Avenir Québec (CAQ) campaigned on a vision of Quebec defined by, "...its historical heritage, the French language, its democratic ideals and the principles of the secularity of the State."<sup>55</sup>

[45] In February 2021, the Government of Quebec released its position on the modernization of the OLA.<sup>56</sup> The core expectation of Quebec is that it be afforded exclusive jurisdiction on matters related to language within its territory. Quebec advocated for subjecting federally regulated private enterprises to the obligations from *Charter of the French Language*.<sup>57</sup>

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<sup>53</sup> See OLLO 2019 Report, *supra*; and OCOL 2019 Report, *supra*.

<sup>54</sup> LANG 2019 Report, *supra*, especially Recommendation 1.

<sup>55</sup> *Taking Action for the Future*, Action plan presented by the Coalition pour l'avenir du Québec, 2011.

<sup>56</sup> [Position du Gouvernement du Québec : Modernisation de la Loi sur les langues officielles](#) : 5 February 2021 [« Quebec Position »]]. For QCGN's analysis of Quebec's position, see [QCGN's Analysis of Quebec's Five Orientations to Modernize Canada's Official Languages Act, 8 February 2021](#).

<sup>57</sup> See Quebec Position at p 5.

### C. The federal policy shift

[46] After the 2019 federal election returned a minority government in Ottawa, the focus of OLA modernization shifted. In the September 2020 Speech from the Throne, the Government of Canada stated that it is “committed to strengthening [the *Official Languages Act*] among other things, taking into consideration the unique reality of French.”

[47] In February 2021, the Government of Canada released its policy paper on reforming the federal approach to Canada’s Official Languages, entitled *English and French: Towards the Substantive Equality of Official Languages in Canada*.<sup>58</sup> The policy is aimed primarily at protecting and promoting the French language in Canada. The policy paper goes well beyond modernizing the OLA. It is a suite of legislative, regulatory, and policy proposals that turns half a century of official language policy on its head.

[48] In April 2021, the QCGN filed a brief with the OLLO, expressing fundamental concerns with several features of the Policy Paper.<sup>59</sup>

### D. The Purported Decline of French in Quebec

[49] There is a widespread belief that French is in decline in Canada. While there is clear evidence of the decline of French outside Quebec, there is no clear evidence of the decline of French in Quebec.

[50] Quebec society is changing. Population growth – critical to our economic success – is reliant on immigration. In 1951, the mother tongue Francophone population of Quebec was 82.5%, and English mother tongue population 13.8% of the total.<sup>60</sup> Between 1951 and 2016, the population with a mother tongue other than French or English increased from 3.7% to 13.8% of the total population of Quebec.<sup>61</sup>

[51] It is important to distinguish between the demographic changes happening in Quebec and the vitality of the French language itself. The two reports of the Office québécois de la langue française (OQLF) that have recently garnered attention - *Scénarios de projection de*

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<sup>58</sup> Canada, Canadian Heritage, *English and French: Towards a Substantive Equality of Official Languages in Canada*, Catalogue number: CH14-50/2021E-PDF (Ottawa: Canadian Heritage, 2021).

<sup>59</sup> QCGN, *The Quebec Community Groups Network’s Response to English and French: Towards the substantive equality of official languages in Canada*, April 2021 [“QCGN 2021 Brief”].

<sup>60</sup> Jean-Pierre Corbeil, Brigitte Chavez & Daniel Pereira, *Portrait of Official-Language Minorities in Canada - Anglophones in Quebec*, Analytical Paper, Catalogue no. 89-642-X – No 002 (Ottawa: Statistics Canada, September 2010), at Table 2.1.1, p 11.

<sup>61</sup> *Ibid.* See also: Statistics Canada, *Quebec [Province] and Canada [Country] (table)*, 2016 Census Catalogue no. 98-316-X2016001, (Ottawa: Statistics Canada, 2017).

*certaines caractéristiques linguistiques de la population du Québec (2011-2036)* and *Langues utilisées dans diverses situations de travail au Québec en 2018*<sup>62</sup> – note an increase in the use of other languages in Quebec, but not a decline in the use of French in the public space. These reports also demonstrate that in terms of language migration, French is the winner for the children of newcomers to Quebec. These findings are consistent with demographers, such as Calvin Veltmann or Jean-Pierre Corbeil, who also question the purported decline in the use of French in Quebec.<sup>63</sup>

## E. Bill 96

[52] On May 13, 2021, the Government of Quebec introduced Bill 96. Bill 96 is the most sweeping overhaul of language legislation in Quebec since the advent of the *Charter of the French Language*. It represents a fundamental change to the structure of the Quebec state and legal order that will affect many areas of life for all Quebecers.

[53] Bill 96 transforms Quebec’s language legislation through an overhaul of the *Charter of the French Language* and amendments to 24 other provincial statutes. It also blocks the application of the Quebec *Charter of Human Rights and Freedoms* and the *Canadian Charter* through an unprecedented application of the notwithstanding clause, while also purporting to unilaterally amend the *Constitution Act, 1867*.

[54] Bill 96 is deeply problematic. Its measures are based on outdated and odious approaches to enforcing the use of the French language. It will create barriers and mistrust. It upsets a social and linguistic peace that has lasted for decades. And it sends a signal to speakers of other languages: no matter how integrated into Quebec society or how willing to speak French in the public space, speakers of other languages are not fully “members” of Quebec society.

[55] Indeed, Bill 96 empowers a new Minister of the French Language, whose mandate is to “promote, assert the value of and protect the French language and its status [...]”.<sup>64</sup> The Minister’s powers are broad and expansive, touching on the entire civil administration. By

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<sup>62</sup> *Scénarios de projection de certaines caractéristiques linguistiques de la population du Québec (2011-2036)*, 2021, Office québécoise de la langue française; *Langues utilisées dans diverses situations de travail au Québec en 2018*, 2021, Office québécoise de la langue française.

<sup>63</sup> See e.g.: Jean-Pierre Corbeil, « [Le «déclin» du français, aveuglement volontaire et pensée magique](#) » *Le Devoir* (5 October 2021); Calvin Veltman, « Lecture sociolinguistique du recensement canadien : succès inespéré de la Loi 101 » (8 March 2022), online : [Études récentes | La situation linguistique au Québec | études sociolinguistiques \(mobilitelinguistiqueveltman.net\)](#). See also: Jean-Benoît Nadeau, « [Pour en finir avec le déclin de la langue française](#) », *L’actualité* (9 April 2022).

<sup>64</sup> *Bill 96, An Act respecting French, the official and common language of Québec*, s 94 [“Bill 96”]; *Modified Charter of the French Language*, s 155 [“MCFL”].

virtue of the notwithstanding clause, none of these powers can be challenged under either the *Quebec Charter of Human Rights and Freedoms* or the *Canadian Charter*.

[56] In addition, Bill 96 purports to amend the *Constitution Act, 1867* by adding the following after section 90:<sup>65</sup>

FUNDAMENTAL CHARACTERISTICS OF QUEBEC	CARACTÉRISTIQUES FONDAMENTALES DU QUÉBEC
90Q.1. Quebecers form a nation.	90Q.1. Les Québécoises et les Québécois forment une nation.
90Q.2. French shall be the only official language of Quebec. It is also the common language of the Quebec nation.	90Q.2. Le français est la seule langue officielle du Québec. Il est aussi la langue commune de la nation québécoise.

[57] Never before has a province attempted to unilaterally amend the *Constitution Act, 1867*. This amendment raises many novel constitutional questions. Further, it is inconsistent with the fundamental philosophy of language equality in the *Canadian Charter* the OLA. It has been put forward with very little consultation or debate. It is purported to be brought into law based on a regular majority of the National Assembly, with no special process that would befit an amendment to the Constitution.

[58] Bill 96 also employs the most sweeping use of s. 33 of the *Canadian Charter* in 40 years. Since it also overrides the entire *Quebec Charter of Human Rights and Freedoms*, Bill 96 essentially vacates the fundamental rights and freedoms of all Quebecers with respect to Quebec's new paramount statute: the *Charter of the French Language*.<sup>66</sup>

[59] Bill 96 has not yet received Assent, but is expected to pass before the end of Quebec's spring parliamentary session. Over and above the negative effects on all Quebecers, Bill 96 will have the following specific consequences for English-speaking Quebecers:

- a. It restricts the availability of services in English to those who are eligible for English primary and secondary instruction—which is itself quite restricted in Quebec.<sup>67</sup>

<sup>65</sup> *Bill 96*, s 159, purporting to amend *Constitution Act, 1867*, (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5 [*Constitution Act, 1867*].

<sup>66</sup> See the QCGN [Brief to the National Assembly Committee on Culture and Education, Special consultations on Bill 96](#), September 28, 2021.

<sup>67</sup> The *Charter of the French Language* restricts eligibility for English-languages school to certain categories of children, namely children of citizens who were educated in English in Canada, and siblings of those children, with some narrow exceptions: see *Charter of the French Language*, ss 72-88.

- b. It freezes overall enrollment in English CEGEPs. Further, the requirement for English-speaking CEGEP students to take substantive courses in French may negatively impact graduation rates and academic opportunities of students.<sup>68</sup>
- c. It restricts the use of English in the courts and the bilingualism of judges, which will increase the cost of using English in courts, may cause delays in receiving judgments or in being able to be heard before an English-speaking judge, and/or may lead litigants to avoid using English altogether.
- d. It restricts temporary permits for international students to attend English schools, which will further contribute to declining enrolment.
- e. It restricts the ability of municipalities to provide services in English if they do not pass a resolution to maintain their “designated” bilingual status.
- f. It restricts the ability to use English in the workplace, including in contracts and official documents.

[60] It is disappointing that Parliament – which was quick to pass a Bloc Québécois motion on June 16, 2021 recognizing French as the common language of the Quebec nation – remains silent on Bill 96.

#### F. Bill C-32

[61] On June 15, 2021, the Government of Canada introduced Bill C-32. This Bill largely implemented the proposals in the 2021 Policy Paper. It did not respond to any of the concerns the QCGN had expressed regarding the Policy Paper.

[62] The QCGN expressed its disappointment with Bill C-32.<sup>69</sup>

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<sup>68</sup> See *The future of English CEGEPs*, Montreal Gazette Editorial Board, March 25, 2022 <https://montrealgazette.com/opinion/editorials/editorial-the-future-of-english-cegeps>, accessed April 3 2022.

<sup>69</sup> [QCGN Statement on Government of Canada’s Proposed Changes to Official Languages Act](#), June 15, 2021.

### 3. Recommendations for Bill C-13

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[63] C-13 appears to implement some of the recommendations emerging from the 2019 Consensus. Overall, however, Bill C-13 is not the bill that the official language minorities asked for. Bill C-13 (and its predecessor Bill C-32) push Canada toward a more territorial and asymmetrical federalism, enshrining this framework into a quasi-constitutional statute.

[64] The QCGN participated in good faith in the consensus building in 2018-2019. However, as **Appendix B** illustrates, almost none of the QCGN's recommendations were taken up in Bill C-13. In contrast, the principles that the QCGN put forward as foundational to the OLA have been upended.

[65] The OLA as modified by Bill C-13 will territorialize language rights, particularly in Quebec. This will undermine the federal role in official languages, and ultimately will undermine the policy goal of language equality coast to coast.

[66] On close examination, while C-13 adds more detail that appears to address some of the QCGN's recommendations, it does not create new enforceable legal obligations to fix the deeper problems with the OLA. Thus, the deepest problem with the OLA – namely that its implementation ultimately depends on political and bureaucratic will rather than enforceable legal obligations – remains unsolved.

[67] This section discusses four areas of Bill C-13; for each area, the QCGN puts forward recommendations to improve the Bill. The areas are (a) purpose and interpretation; (b) references to the *Charter of the French Language*; (c) Part VII; and (d) federally regulated private businesses. A summary of all recommendations is found at **Appendix A**.

#### A. Purpose and Interpretation

[68] In its 2018 Brief, the QCGN emphasized that, as a fundamental principle, the OLA ought to maintain the equality of status of English and French, guarantee this equality of status everywhere in Canada, and not create separate status for each language.<sup>70</sup> Substantive equality should be the guiding principle in implementation of the OLA. This was to be the “central guiding principle”:

As in the current *Act*, the central guiding principle must be the **equality of status of English and French**. There can be no separate status or approach for each language. Further, the *Act* must categorically guarantee this equality of status in all institutions subject to the *Act* across Canada.

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<sup>70</sup> QCGN 2018 Brief, paras 46-50.

Two additional key features that must animate the *Act* are:

- 1. Substantive Equality:** In its implementation, the *Act* must enable adaptation to the specific contexts and needs of the different official language minority communities.
- 2. Capacity, Consultation, and Representation:** The *Act* should provide for robust, mandatory, and properly-resourced consultation at all levels, including a formal mechanism for consultation at the national level.<sup>71</sup>

[69] This was also a matter of consensus in 2018-2019. As discussed above, neither OLLO, nor the Commissioner, nor this Committee made any recommendation that the *Official Languages Act* should depart from the principle of equality of status. No-one recommended changing the purpose of the OLA.

[70] Bill C-13 takes a different path, stating that “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”.<sup>72</sup> Bill C-13 modifies the purpose of the OLA, adding similar language to the purpose clause.<sup>73</sup> While it is incontrovertible that French is in a minority situation in Canada as a whole, this legal asymmetry creates a number of complications for Canada’s official languages framework.

[71] The QCGN is very concerned that this language in the OLA could potentially have serious and profound consequences for the interpretation of language rights. It places the two official languages on a different legislative plane, with one language (French) being more in need of promotion and protection. This may have disastrous consequences for Quebec’s English-speaking minority: it might lead to a narrower interpretation of our language rights. This narrow interpretation could apply not only to rights in the OLA, but to all federal and provincial language rights that concern English-speaking Quebecers—including *Canadian Charter* rights. For example, it could be used by Attorneys General to justify restrictions of rights, and it could be used by courts to give narrower interpretation of statutory and constitutional rights, or to justify restrictions.

[72] We understand and support the legal principle of substantive equality, which requires government action to respond to the specific contexts and needs of the different official language minority communities. As stated in the QCGN’s 2018 brief, this principle ought to be applied in the implementation of the OLA. However, the notion of substantive equality cannot subvert or override the equality of status in law of both official languages.

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<sup>71</sup> QCGN 2018 Brief, pp 4-5 (emphasis added).

<sup>72</sup> Bill C-13: OLA preamble; see similar language in ss 2(b.1), 41(2), 41(6)(b)(i).

<sup>73</sup> Bill C-13, s 3, Modified *Official Languages Act* (“MOLA”) s 2(b.1).

[73] The QCGN is happy to see the ongoing recognition of the English-speaking linguistic minority community.<sup>74</sup> As set out above, Quebec’s English-speaking minority does not face the decline of the English language, but does face a number of challenges related to being a minority language community in the province.

[74] However, asymmetry also complicates the recognition and support of Quebec’s English-speaking minority because the meaning of “linguistic minority community” becomes unclear in Bill C-13: if French is recognized as a minority language in Canada, does “linguistic minority community” (“*minorités francophones out anglophones*”) now apply to a minority within Canada as a whole, or a minority within a province? This question is relevant particularly in Part VII, which commits the Government of Canada to “enhancing the vitality of the English and French linguistic minority communities in Canada [...]”<sup>75</sup> In Quebec, to what “minority” does this now refer?

[75] The QCGN wishes to ensure that the recognition of the minority status of French in Canada as a whole does not diminish, in any way, the recognition of English as the minority official language in Quebec, and the federal support that flows to this linguistic minority community. Further, the QCGN wishes to ensure that the recognition of French as a minority language within Canada does not diminish in any way the interpretation of the constitutional or statutory language rights of English-speaking Quebecers.

### **Recommendations:**

[76] The QCGN proposes adding a clear definition of “linguistic minority community”, to distinguish official language minorities in each province from the minority status of French in Canada as a whole.

#### **RECOMMENDATION 1**

Include a clear definition of “linguistic minority community” or “official language minority community”, defined as the linguistic minority in any given province or territory.

#### **RECOMMENDATION 2**

In section 3.1, add interpretive language to specify that nothing in the OLA diminishes the constitutional or statutory rights and entitlements of linguistic minority communities in each province.

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<sup>74</sup> Bill C-13 s.2(1)-(3), s.3, s.21; MOLA preamble, s.2(b), s.41.

<sup>75</sup> Bill C-13 s 21; MOLA s 41(1)(a).



## B. References to *Charter of the French Language*

[77] In its 2018 Brief, the QCGN emphasized that the OLA can leave no room for ‘territorialization’, that is to say, it can leave no room for lesser rights to official language minorities in particular provinces.<sup>76</sup> The QCGN expressed its dismay that the Policy Paper promoted a federal regime that would acknowledge the differences in language regimes in specific provinces and territories.<sup>77</sup>

[78] As with Bill C-32, Bill C-13 explicitly recognizes provincial and territorial language regimes. The basic concept is introduced in a new preamble clause, which reads:

<p>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</p> <p>the Constitution of Canada provides every person with the right to use English or French in the debates of the Houses of the Legislature of Quebec and those of the Legislature of Manitoba and the right to use English or French in any pleading or process in or from the courts of those provinces,</p> <p>Quebec’s <i>Charter of the French language</i> provides that French is the official language of Quebec,</p> <p>the Constitution of Canada provides that English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick, and</p>	<p>qu’il reconnaît la diversité des régimes linguistiques provinciaux et territoriaux qui contribuent à la progression vers l’égalité de statut et d’usage du français et de l’an- 40 glais dans la société canadienne, notamment:</p> <p>que la Constitution accorde à chacun le droit d’employer le français ou l’anglais dans les débats des chambres de la Législature du Québec et de celles de la Législature du Manitoba et le droit d’utiliser le fran- 45 çais ou l’anglais dans toutes les affaires dont sont saisis les tribunaux de ces provinces et dans tous les actes de procédure qui en découlent,</p> <p>que la Charte de la langue française du Québec dispose que le français est la langue officielle du Québec,</p> <p>que la Constitution dispose que le français et l’anglais sont les langues officielles du Nouveau-Brunswick et qu’ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions de la Législature et du gouvernement du Nouveau-Brunswick,</p> <p>qu’elle dispose que la communauté linguistique française et la communauté</p>
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<sup>76</sup> QCGN 2018 Brief, para 50.

<sup>77</sup> QCGN 2021 Brief, p 7.

<p>the Constitution of Canada provides that the English linguistic community and the French linguistic community in New Brunswick have equality of status and equal rights and privileges;</p>	<p>linguistique anglaise du Nouveau-Brunswick ont un statut et des droits et privilèges égaux;</p>
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[79] This recognition is novel in the OLA. In fact, no current federal statute references the *Charter of the French Language* or any other province’s language legislation.

[80] This formulation is present in two places in the OLA as amended by Bill C-13:

- 1) The new Preamble clause (quoted above).
- 2) Part VII, with respect to federal-provincial cooperation in federal support to official language minorities.<sup>78</sup>

[81] The QCGN is deeply concerned about the explicit references to the *Charter of the French Language*, for three reasons:

**I. The *Charter of the French Language* is antithetical to the *Official Languages Act***

[82] As currently drafted, the most obvious interpretation is that the OLA recognizes that the *Charter of the French Language* itself contributes to the advancement of the equality of status of English and French in Canadian society. This is false. The *Charter of the French Language*—particularly as amended by Bill 96—is aimed at the protection and promotion of French only. This difference in approach is more pronounced with Bill 96, which declares French to be the “only” official language of Quebec. This is the antithesis of the linguistic duality that the OLA supports.

[83] In terms of its purpose and its treatment of linguistic minorities, the *Charter of the French Language* is antithetical to the OLA. While the OLA encourages the use of English and French, the *Charter of the French Language* imposes the use of French, and restricts the use of other languages. This approach is amplified in Bill 96. Further, while the OLA embraces linguistic duality as a national value, the *Charter of the French Language* explicitly embraces—and sometimes imposes—unilingualism. Finally, while the OLA explicitly aims to promote the vitality of the English-speaking minority in Quebec, the *Charter of the French Language* does not.

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<sup>78</sup> See: Bill C-13 s 24, C-13 MOLA s 45.1(1)(b).

## II. Why has the *Charter of the French Language* been singled out?

[84] Bill C-13 acknowledges the “diversity of provincial and territorial language regimes”. Of the four clauses, three recognize constitutionally enshrined language rights, and one recognizes a provincial statute—the *Charter of the French Language*. Notably, this is the only clause that recognizes a provincial statute.

[85] Bill C-13 does not acknowledge any of the other provincial or territorial statutes, some of which also recognize French as an official language in the province or territory, including New Brunswick’s *Official Languages Act*,<sup>79</sup> Ontario’s *French Language Services Act*,<sup>80</sup> Manitoba’s *Francophone Community Enhancement and Support Act*,<sup>81</sup> Prince Edward Island’s *French Language Services Act*,<sup>82</sup> Nova Scotia’s *French-language Services Act*,<sup>83</sup> Yukon’s *Languages Act*,<sup>84</sup> the Northwest Territory’s *Official Languages Act*,<sup>85</sup> and Nunavut’s *Official Languages Act*.<sup>86</sup>

[86] Why has the *Charter of the French Language* been singled out for recognition in the OLA? This formulation, with only Quebec’s provincial statute singled out for recognition, seems to territorialize language rights in a particular way. Given the *Charter of the French Language*’s antithetical policy objectives, this is cause for great concern for English-speaking Quebecers. However, this approach also opens the door to territorial differences for other provinces.

## III. Quebec’s Bill 96 transforms the *Charter of the French Language*

[87] The reference to the *Charter of the French Language* becomes particularly problematic in light of Bill 96, which transforms the *Charter of the French Language* into a quasi-constitutional statute in Quebec. By virtue of the broad and pre-emptive use of the notwithstanding clause, Quebec’s *Charter of the French Language* will override and overtake the *Canadian Charter of Rights and Freedoms* and Quebec’s own *Charter of Human Rights and Freedoms* at the pinnacle of Quebec’s legal order.<sup>87</sup>

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<sup>79</sup> SNB 2002, c O-0.5.

<sup>80</sup> RSO 1990, c F.32: provides that “in Ontario the French language is recognized as an official language in the courts and in education”.

<sup>81</sup> CCSM c F157

<sup>82</sup> RSPEI 1988, c F-15.2.

<sup>83</sup> SNS 2004, c 26

<sup>84</sup> RSY 2002, c 133

<sup>85</sup> RSNWT 1988, c O-1

<sup>86</sup> SNU 2008, c 10.

<sup>87</sup> Bill 96 ousts the application of both the Quebec and Canadian *Charters* by pre-emptively invoking the notwithstanding clause and applying it to the entire *Charter of the French Language* and remainder of Bill 96. This effectively makes the Charter of the French Language the cornerstone and pinnacle of Quebec’s legal order. See the QCGN [Brief to the National Assembly Committee on Culture and Education, Special consultations on Bill 96](#), September 28, 2021, pp 15-17 [“QCGN Bill 96 brief”].

[88] The problems with Bill 96 are detailed in Section 2E above.

[89] Bill 96 also contains a number of features that are deeply troublesome to Quebec’s linguistic minority, including restrictions on public services in English,<sup>88</sup> prohibitions on using languages other than French in the public sector and in private business,<sup>89</sup> and restrictions on admissions to English post-secondary institutions.<sup>90</sup>

[90] Bill 96 also contains features that are worrisome from a public governance perspective, including broad and centralized executive power, harsh penal provisions, and some extremely broad and unchecked statutory search powers -- language inspectors can conduct broad and intrusive searches without warrants, and without a reasonable grounds requirement.<sup>91</sup> All of these are sheltered by the notwithstanding clause. If Bill 96 is adopted, the *Charter of the French Language* will take on an ominous new character. The explicit nod to this version of the *Charter of the French Language*, in a federal quasi-constitutional statute, is troubling indeed.

[91] Considering the new status of the *Charter of the French Language* as modified by Bill 96, when the *Charter of the French Language* is placed alongside constitutionally enshrined language rights in the OLA, it seems to confer a federal recognition of the *Charter of the French Language* as being equivalent to these other constitutionally enshrined language rights, thereby conflating a provincial statute and the Constitution of Canada. This compounds the problem.

### **Recommendation:**

[92] The usefulness of acknowledging the “diversity of [...] provincial and territorial language regimes” in the OLA is dubious. What is this meant to accomplish? On the one hand, the references to constitutional rights are unnecessary, since they exist whether or not they are reference in the OLA. On the other hand, the singular reference to a provincial statute—the *Charter of the French Language*—is deeply problematic for the reasons outline above. Thus, the QCGN recommends removing these references.

### **RECOMMENDATION 3**

Remove the references to the *Charter of the French Language* in the preamble and in s. 45.1.

<sup>88</sup> Bill 96 introduces complicated constraints on use of English across the civil service. This essentially entails the exclusive use of French in written and oral communications within the civil administration and with the public, except in defined/permitted situations. See: Bill 96, s 15, MCFL, s 22.2; and QCGN Bill 96 brief, pp 35-38.

<sup>89</sup> For example, in the private sector, Bill 96 limits the ability of employers to require knowledge of a language other than French for hiring and promotion: see Bill 96, ss 35-36.

<sup>90</sup> Under Bill 96, enrollment at English-language CEGEPs is capped. It is unclear how this will affect post-secondary opportunities for English-speaking students. See QCGN Bill 96 brief, pp 41-42.

<sup>91</sup> See Bill 96, s 111, MCFL s 174; and QCGN Bill 96 brief, pp 24-25.

## C. Part VII

[93] Part VII of the OLA has been a source of concern since its introduction in 1988. Other parts of the OLA are focussed on the operations of federal institutions. However, Part VII has a very different character. The policy objective of this part of the OLA is to provide public support to Canada's English and French linguistic minority communities and foster the full recognition and use of English and French in Canadian society. The language used in Part VII is vague and aspirational, but its enforceability is lacking. This was one of the main impetuses for modernization.

[94] The QCGN raises concerns in two areas: First, does the overhaul create enforceable obligations? Second, does the overhaul work for English-speaking Quebec?

### I. Does the overhaul to Part VII create enforceable obligations?

[95] In 2018, official language minority communities were united in their desire for a modernized OLA to improve Part VII. Among other things, the QCGN recommended that a modernized Part VII:

1. Include clear definitions of "positive measure", "enhancing the vitality of", and "assisting in the development of" official language minority communities;
2. Provide clearer lines of accountability for the obligations set out in Part VII;
3. Require regulations to implement Part VII;
4. Place strict transparency mechanisms in the OLA to account for official languages investments;
5. Create official languages obligations attached to all activities funded by federal resources;
6. Require mandatory and robust consultation with official language minority communities, including a clear duty to consult, a definition of consultation, a duty to provide resources and build capacity to consult, a formal National Advisory Council, and a declaration that membership of parliamentary official languages committees should reflect the composition of the official language minority communities.

[96] Both the Senate and the Official Languages Commissioner made recommendations to improve Part VII.<sup>92</sup>

[97] Of the QCGN's recommendations above, only the first, second, and sixth have been addressed. In all instances, they have only been partially addressed.

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<sup>92</sup> OLLO 2019 Report; OCOL 2019 Report

[98] **The QCGN is pleased to see a clearer definition of “positive measures” in Bill C-13**, namely the additional detail at the new s. 41(6). This partly addresses the first point above. In addition, federal institutions would now be required to “establish evaluation and monitoring mechanisms” in relation to the positive measures they determine and undertake.<sup>93</sup> This is healthy for internal accountability.

[99] **The QCGN is pleased to see new provisions for consultation with OLMCs.** New in Bill C-13, Federal institutions are required to carry out analyses to determine what positive measures they should take.<sup>94</sup> These analyses are required to be founded “to the extent possible,” on dialogue and consultation.<sup>95</sup> The objective of this dialogue and consultation is to permit the priorities of OLMCs “and other stakeholders” to be taken into account.<sup>96</sup>

[100] In terms of implementation, **the QCGN is pleased to see the roles of the Minister of Heritage and Treasury Board enhanced.** However, QCGN is disappointed that there is still no central agency responsible for Part VII, and indeed the entire Act.

[101] **The QCGN is pleased to see the legislative mention of the Court Challenges Program.** Under C-13, the Minister of Heritage may fund a program for test cases in language rights.<sup>97</sup> However, the Bill does not make this funding mandatory. Since the Court Challenges Program already exists, it is unclear what obligation this new provision adds.

[102] **However, the QCGN is concerned that the new language in s. 41(5) fatally washes away a substantive legal obligation for “positive measures”.**

[103] On January 28, 2022, the Federal Court of Appeal rendered its decision in *Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)* (“FFCB”), reversing the lower court’s decision on the interpretation of Part VII.<sup>98</sup> The Federal Court of Appeal interpreted Part VII to create specific and legally enforceable obligations. They set out the following two-part test to ascertain Part VII obligations (emphasis added):

As suggested by the Commissioner, when interpreted this way, the obligation set out in Part VII lends itself to a two-step analysis. Federal institutions must first be sensitive to the particular circumstances of the country’s various official language minority communities and determine the impact that the decisions and initiatives that they are called upon to take may have on those communities. Second, federal institutions must,

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<sup>93</sup> Bill C-13 s 21, C-13 MOLA s 41(10).

<sup>94</sup> Bill C-13 s 21, C-13 MOLA s 43(7).

<sup>95</sup> Bill C-13 s 21, C-13 MOLA s 41(8)

<sup>96</sup> Bill C-13 s 21, C-13 MOLA s 41(9).

<sup>97</sup> Bill C-13 s 22, C-13 MOLA s 43(1)(c).

<sup>98</sup> *Canada (Commissioner of Official Languages) v Canada (Employment and Social Development)*, 2022 FCA 14 [FFCB]..

when implementing their decisions and initiatives, act, to the extent possible, to enhance the vitality of these communities; or where these decisions and initiatives are susceptible of having a negative impact, act, to the extent possible, to counter or mitigate these negative repercussions.<sup>99</sup>

[104] This is both a procedural and substantive obligation. It is procedural because the federal institution must take these steps. It is substantive because the Commissioner and eventually a Court can review the outcome in order to decide whether a federal institution has in fact taken appropriate positive measures.

[105] In the general obligation for positive measures (the new s. 41(5)), Bill C-13 adds language that was not in Bill C-32, namely that federal institutions must take the positive measures “it considers appropriate”.

[106] Bill C-13 further adds the following provision (also not in Bill C-32):

<b>Potential to take positive measures and negative impacts</b>	<b>Potentiel de prise de mesures positives et impacts négatifs</b>
<p>41 (7) In carrying out its mandate, every federal institution shall, on the basis of analyses <u>that the federal institution considers appropriate</u>,</p> <p>(a) consider whether positive measures could potentially be taken under subsection (5); and</p> <p>(b) take into account the direct negative impacts that its structuring decisions may have on the commitments under subsections (1) to (3) in order to consider the possibilities for mitigating those negative impacts.</p>	<p>41(7) Dans la réalisation de leur mandat, les institutions fédérales, sur la base des analyses <u>qu’elles estiment indiquées</u>:</p> <p>(a) considèrent le potentiel de prise de mesures positives au titre du paragraphe (5);</p> <p>(b) prennent en compte les impacts négatifs directs que leurs décisions structurantes pourraient avoir sur les engagements énoncés aux paragraphes (1) à (3), et ce afin de considérer les possibilités d’atténuer ces effets négatifs.</p>

[107] These new provisions mirror to a large extent the test set out in the Federal Court of Appeal decision. At first blush, this may appear to “codify” that decision. However, combined with the qualification that federal institutions must take positive measure *they consider appropriate*, this codification may substantially water down the obligation. In particular, the wording of the new s. 41(5) seems to focus exclusively on the procedural obligation, and may actually eliminate the substantive obligation. This would essentially eliminate the major gains from the Federal Court of Appeal decision.

<sup>99</sup> *FFCB*, para 163 (emphasis added).

**RECOMMENDATION 4**

Modify the language of Part VII in order to ensure that the obligations on government institutions are legally enforceable.

For example, in ss. 41(5) and 41(7), remove the clause “that [the federal institution] considers appropriate”.

**RECOMMENDATION 5**

Make the funding of the Court Challenges Program mandatory: in s. 43(1), deleted “such measures as that Minister considers appropriate” and change “may” to “shall”, at least as it concerns s. 43(1)(c), as follows:

**43 (1)** The Minister of Canadian Heritage shall take ~~such~~ measures ~~as that Minister considers~~ appropriate to advance the equality of status and use of English and French in Canadian society and, without restricting the generality of the foregoing, ~~may~~ **shall** take measures to

**II. Does Part VII work for English-speaking Quebec?****a. Asymmetry may narrow the scope of federal support available to English-speaking Quebec**

[108] The QCGN is concerned that the asymmetry in the new Part VII framework may restrict support to English-speaking Quebec.

[109] Bill C-13 includes some new requirements for positive measures. Among other things, positive measures “shall” respect two necessities:

- First, positive measures must respect “the necessity of protecting and promoting the French language in each province and territory”.<sup>100</sup> Bill C-13 already provides that federal institutions are committed to the protection of French (under new s. 41(2)); thus, what does the requirement add to this commitment? If it does not add anything, does it qualify or narrow the scope of positive measures available to English-speaking Quebec?

<sup>100</sup> Bill C-13 s 21, C-13 MOLA s 41(6)(a).



- Second, positive measures must respect 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” (new in C-13).<sup>101</sup> This clause refers to “official language communities” rather than “official language minority communities”. In the context of Quebec, which linguistic community does this refer to? Does it affect the scope of federal support available to Quebec’s English-speaking minority?

[110] The federal institution’s obligation to take specific positive measures would thus depend on whether the contemplated measures impacts the protection and promotion of French in Quebec. At a minimum, when faced with a choice of measures to enhance the vitality of the English-speaking community in Quebec, a federal institution would be required to choose measures that are consistent with the protection and promotion of French in Quebec.

[111] Thus, the new provisions in Bill C-13 may well reduce the scope of federal intervention to protect the vitality of the English-speaking community. It would further transform the question of compliance with Part VII of the OLA into a question of balancing the English-speaking community’s vitality with the protection and promotion of the French language, opening a complex, a likely highly politicized, debate opposing different views of what measures are necessary to protect and promote French in Quebec.

[112] This problem is exacerbated with the increase in deference to Quebec’s policy, the lack of requirement for linguistic clauses, and the absence of measures for transparency in federal-provincial agreements to implement Part VII, as described below.

**b. A move further away from transparency in federal-provincial agreements, particularly in Quebec, will exacerbate this problem**

[113] Bill C-13 adds a new section about federal-provincial cooperation, identical to what was added in Bill C-32. While the importance of cooperation is included in the current OLA,<sup>102</sup> Bill C-13 adds a new and expanded section on cooperation. This section states that:

<p>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 the equality of status and use of English and French in Canadian society, including that</p>	<p>45.1 (1) Le gouvernement fédéral reconnaît l’importance de la collaboration avec les gouvernements provinciaux et territoriaux dans la mise en oeuvre de la présente partie, compte tenu de la diversité des régimes linguistiques provinciaux et territoriaux qui contribuent à la progression vers l’égalité de statut et d’usage du français et de l’anglais dans la société canadienne, notamment</p>
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<sup>101</sup> Bill C-13 s 21, C-13 MOLA s 41(6)(b).

<sup>102</sup> See e.g.: OLA Preamble and s 45.

<p>[...]</p> <p>(b) Quebec's <i>Charter of the French language</i> provides that French is the official language of Quebec [...]</p>	<p>[...]</p> <p>b) que la Charte de la langue française du Québec dispose que le français est la langue officielle du Québec [...]</p>
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[114] This new clause acknowledges the importance of provincial/territorial cooperation, while acknowledging the differences in provincial/territorial regimes with respect to language—and singles out Quebec's *Charter of the French Language* as such a regime. What does this mean? How does it modify how federal support to English-speaking Quebec will be provided?

[115] The QCGN is very concerned about the reference to the *Charter of the French Language* in the new clause about federal-provincial cooperation. The QCGN is deeply concerned that this reference may radically narrow the scope for federal support to English-speaking Quebec, particularly in light of Quebec's Bill 96. As discussed above, the policy objectives of the *Charter of the French Language*—particularly as amended by Bill 96—are incompatible with the OLA's objective of protecting and promoting the vitality of the official language minority in Quebec.

[116] Despite the requests of many OLMC organizations including the QCGN and the recommendations of OLLO and this Committee,<sup>103</sup> Bill C-13 does not include any new obligations for federal-provincial agreements to include provisions for official language minorities; nor does it include provisions for the transparency and accountability of federal-provincial agreements regarding official languages support. In fact, Bill C-13 moves in the opposite direction: this clause seems to support the power of provinces—especially Quebec—to temper, modify or block federal support for official language minorities.

[117] The combined effect of the requirement that positive measures must protect French and the reference to the *Charter of the French Language* in the context of federal-provincial cooperation (s. 45.1) is of great concern. This creates room for the Quebec government to block federal support to English-speaking Quebec: Quebec can assert that a particular measure proposed by a federal institution to enhance the vitality of the English-speaking community of Quebec should not be adopted because it is inconsistent with the promotion and protection of French, or that a measure to mitigate a negative repercussion on the vitality of the English-speaking community of Quebec should not be taken because of the necessity of protecting or promoting the French language.

<sup>103</sup> See OLLO 2019 Report, Recommendation 3; LANG 2019 Report, Recommendation 8.

[118] Of course, protecting and promoting the vitality of the English-speaking minority and protecting the French language in Quebec is not a zero-sum game. However, as the policy objectives of Bill 96 amply demonstrate, provincial policy in Quebec often couches it as such.

[119] Quebec already exerts considerable control over federal funding to the province. Quebec restricts and controls federal funding to many organizations in the province, particularly by way of the *Act respecting the Ministère du Conseil exécutif* (commonly known as M-30).<sup>104</sup>

[120] The vitality of English-speaking Quebec should not be left to Quebec. The current Quebec government would almost certainly object to a federal institution including linguistic clauses to protect English-speaking Quebec in federal-provincial agreements. In pursuit of its current objectives, the Quebec government will likely seek to preserve full authority to take measures that have negative repercussions on the vitality of the English-speaking community.

[121] This is precisely why federal law and policy on official languages ought to be separate and distinct from provincial law and policy.

[122] This additional reference in the OLA, filtered through Quebec's policy objectives in the *Charter of the French Language* as amended by Bill 96, may ring the death knell for federal funding to many minority language organizations in Quebec.

### Recommendations:

#### RECOMMENDATION 6

Add a requirement that

- all federal-provincial agreements include provisions to protect and promote the vitality of the official language minority in the province; and
- transparency mechanisms are required for all official language investments.

#### RECOMMENDATION 7

In order to ensure that Part VII does not receive narrower application for English-speaking Quebec:

- remove s. 41(6)(b);
- remove the reference to the *Charter of the French Language* in s. 45.1(b).

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<sup>104</sup> CQLR c M-30, see especially 3.11, 3.12 and 3.12.1. As a result, many non-governmental organizations in Quebec cannot receive federal funding without explicit permission from the province.

## D. Federally Regulated Private Businesses

[123] Federally regulated private businesses are not presently subject to any rules concerning the language of work and service.<sup>105</sup> To fill this legislative void, legislative attempts have been made in Parliament to extend the application of the *Charter of the French Language* to these federally regulated businesses.<sup>106</sup> These Bills suffered from two major flaws. First, they would have created “territorialized” federal official language obligations, wherein certain federally-mandated language requirements would apply only in Quebec. Second, they would have created language rights for one official language group and not the other.

[124] In their proposals for the modernization of the OLA, both the QCGN and the Fédération des communautés francophones et acadienne du Canada (FCFA) proposed another—more constitutionally coherent—way to fill this legislative void. The consensus was to extend language of work and service obligations provided in the OLA to federally regulated businesses Canada-wide.<sup>107</sup> The Senate Standing Committee on Official Languages partially adopted this proposal in its recommendations for a modernized OLA.<sup>108</sup> In addition to filling the legislative void in Quebec, this approach would have created language rights for thousands of minority francophone clients and workers within federally-regulated businesses across Canada. It would have been a win for French- and English-speakers in Quebec, and for French-speaking minority language communities across Canada.

[125] The FCFA endorsed this idea, and included it in their 2019 proposal for a modernized OLA.<sup>109</sup>

[126] However, this recommendation was not taken up. In its Policy Paper, the Government of Canada made a legislative proposal to create language of service and work obligations for

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<sup>105</sup> The exception being former Crown corporations such as Air Canada, Canadian National Railway, and NAV Canada, which are all subject to the *Official Languages Act*.

<sup>106</sup> See e.g. Bill C-455, *An Act to Amend the Canada Labour Code*, 40th Parl, 3rd Sess, 2009 (first reading 6 October 2009 and reinstated from previous sitting on 40th Parl, 2nd Sess). This Bill would have harmonized the language requirements for federally-regulated businesses to those under Quebec’s *Charter of the French Language*; 39<sup>th</sup> Parliament, C-482, 40<sup>th</sup> Parliament C-307, 41<sup>st</sup> Parliament, C-320, and most recently and most recently Bill C-254, 43<sup>rd</sup> Parliament, *An Act to amend the Canada Labour Code, the Official Languages Act and the Canada Business Corporations Act*.

<sup>107</sup> See *La FCFA passe à l’action : proposition d’un nouveau libellé de la Loi sur les langues officielles*, 5 mars 2019, at paras 135, 168, 175; and QCGN 2018 brief, at paras 82-87.

<sup>108</sup> See OLLO 2019 Report, at Recommendation 9.1: “Amend the *Official Languages Act* to extend the obligations regarding communications with and services to the public to federally regulated private carriers”.

<sup>109</sup> See *La FCFA passe à l’action : proposition d’un nouveau libellé de la Loi sur les langues officielles*, 5 mars 2019 at para 168: “Enfin, la FCFA s’inspire de la demande du Quebec Community Groups Network et propose que le Parlement étende l’application de dispositions particulières de la partie IV à certaines entreprises fédérales” and para 174 : « De plus, la FCFA s’inspire de la demande du Quebec Community Groups Network et propose que le Parlement étende l’application de dispositions particulières de la partie V de la LLO à certaines entreprises fédérales ».

French in federally regulated private businesses in Quebec and regions with a strong francophone presence. The QCGN strongly opposed this proposal.<sup>110</sup> In its brief to the Expert Panel on Language of Work and Service in Federally Regulated Private Businesses, the QCGN stated:

As currently conceived, the current Government of Canada proposal is unacceptable because it would grant language rights to one official language group and not the other. Further, it risks territorializing language rights by creating a special regime for language rights in Quebec.

[...]

To create rights for one language group and not the other strikes at the very purpose of the *Official Languages Act* and of federal language rights in Canada.<sup>111</sup>

[127] Before that Panel, and later before the Senate Standing Committee on Official Languages, the QCGN made two recommendations:

Recommendation 1: Any language rights in federally regulated businesses must apply to both English-speakers and French-speakers.

Recommendation 2: Any creation of language rights in federally regulated businesses must be done in an instrument other than the *Official Languages Act*.

[128] Neither of these recommendations was taken up in Bill C-32. **While the QCGN is again disappointed that the first recommendation was not taken up in Bill C-13, the QCGN is pleased that the second has been taken up.**

[129] As explained before the Expert Panel, the proposal to create rights only for French-speakers will lead to unpalatable results. How will a federal Minister of Labour explain to an English-speaking airline employee in Quebec that she does not have the same rights as her French-speaking colleague? How will this kind of asymmetry affect the mobility of workers into and out of Quebec?

[130] Further, the new *Use of French in Federally Regulated Private Businesses Act* creates the option for a federally regulated private business to choose to be subject to the new federal Act or the *Charter of the French Language*.<sup>112</sup> The Minister of Canadian Heritage may enter into an

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<sup>110</sup> QCGN, [Brief to the Expert Panel on Language of Work and Service in Federally Regulated Private Businesses](#), March 2021 (“QCGN FRPB 2021 Brief”).

<sup>111</sup> QCGN FRPB 2021 Brief, p 5.

<sup>112</sup> Bill C-13 s 43, creating *Use of French in Federally Regulated Private Businesses Act*, s 6 [“FRPBA”].

agreement with the Government of Quebec to give effect to this provision.<sup>113</sup> Giving private business the choice of which law to be subject to is a novel concept indeed. It is an abdication of federal constitutional jurisdiction and responsibility, and a dangerous precedent to set in federal legislation.

[131] Further, the QCGN is concerned that this regime is unworkable outside Quebec. How will the “regions with a strong francophone presence” be determined? How will this territorial regime affect the interprovincial operations of federally regulated business with pan-Canadian scope?

### **Recommendation**

[132] The QCGN repeats its recommendation first made in 2018:

**RECOMMENDATION 8**

Any language rights in federally regulated businesses should apply to both English-speakers and French-speakers.

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<sup>113</sup> FRPBA s 6(3).

## Appendix A: List of Recommendations

### RECOMMENDATION 1

Include a clear definition of “linguistic minority community” or “official language minority community”, defined as the linguistic minority in any given province or territory.

### RECOMMENDATION 2

In section 3.1, add interpretive language to specify that nothing in the OLA diminishes the constitutional or statutory rights and entitlements of linguistic minority communities in each province.

### RECOMMENDATION 3

Remove the references to the *Charter of the French Language* in the preamble and in s. 45.1.

### RECOMMENDATION 4

Modify the language of Part VII in order to ensure that the obligations on government institutions are legally enforceable.

For example, in ss 41(5) and 41(7), remove the clause “that [the federal institution] considers appropriate”.

### RECOMMENDATION 5

Make the funding of the Court Challenges Program mandatory: in s. 43(1), deleted “such measures as that Minister considers appropriate” and change “may” to “shall”, at least as it concerns s. 43(1)(c), as follows:

**43 (1)** The Minister of Canadian Heritage shall take ~~such measures as that Minister considers appropriate~~ to advance the equality of status and use of English and French in Canadian society and, without restricting the generality of the foregoing, ~~may~~ **shall** take measures to

**RECOMMENDATION 6**

Add a requirement that

- all federal-provincial agreements include provisions to protect and promote the vitality of the official language minority in the province; and
- transparency mechanisms are required for all official language investments.

**RECOMMENDATION 7**

In order to ensure that Part VII does not receive narrower application for English-speaking Quebec:

- remove s. 41(6)(b);
- remove the reference to the *Charter of the French Language* in s. 45.1(b).

**RECOMMENDATION 8**

Any language rights in federally regulated businesses should apply to both English-speakers and French-speakers.



## Appendix B: Comparison of QCGN proposals in 2018 brief, C-32, C-13

Topic	QCGN Proposal (References are to QCGN's 2018 brief paragraphs unless otherwise noted)	Bill C-32	Bill C-13
Approach/interpretation	Equality of status of English and French [46-50]. <ul style="list-style-type: none"> <li>- No separate status for each language [48]</li> <li>- Guarantee this equality of status everywhere in Canada [49].</li> <li>- The Act can provide greater rights for linguistic minorities, but can leave no room for lesser rights to OL minorities in particular provinces [50].</li> </ul>	NO <ul style="list-style-type: none"> <li>• Specific new commitment to “protecting and promoting the French language” (Preamble, purpose clause, Part VIII)</li> <li>• Specific mention of “diversity of the provincial and territorial language regimes” including the <i>Charter of the French Language</i></li> </ul>	NO <ul style="list-style-type: none"> <li>• Specific new commitment to “protecting and promoting the French language” (Preamble, purpose clause, Part VIII)</li> <li>• Specific mention of “diversity of the provincial and territorial language regimes” including the <i>Charter of the French Language</i></li> </ul>
Part III (Justice)	<ul style="list-style-type: none"> <li>• Support access to justice in the minority OL; obligation to support provinces in this regard [78-79, 81]</li> <li>• Remove exception for Supreme Court judges bilingualism</li> </ul>	<ul style="list-style-type: none"> <li>• New optional positive measure to support justice sector (Bill C-32 MOLA s 41(2)(e))</li> <li>• Yes, s 11.</li> </ul>	<ul style="list-style-type: none"> <li>• New optional positive measure to support justice sector (Bill C-13 MOLA s 41(6)(c)(v))</li> <li>• Yes, s 11.</li> </ul>
Part IV	<ul style="list-style-type: none"> <li>• Strive for coherence between Parts IV, V, VI</li> <li>• Ensure that services in both languages are of substantively equal quality</li> </ul>	none	none
Part V	<ul style="list-style-type: none"> <li>• Update and broaden the language of work obligations</li> </ul>	none	none
Part VI	<ul style="list-style-type: none"> <li>• Re-frame Part VI to ensure English-speakers are fairly represented in federal institutions in Quebec</li> </ul>	none	none

Federally-regulated businesses	<p><b>2018 Brief:</b> consider extending the application of Parts IV, V and VI to federally-regulated private enterprises</p> <p><b>2021 Brief to Expert Panel on Language of Work and Service in Federally Regulated Private Businesses:</b></p> <ol style="list-style-type: none"> <li>1) Any language rights in federally regulated businesses must apply to both English-speakers and French-speakers</li> <li>2) Any creation of language rights in federally regulated businesses must be done in any instrument other than the Official Languages Act</li> </ol>	<ol style="list-style-type: none"> <li>1) No - Language rights extended to French but not English</li> <li>2) No - Language rights created in OLA</li> </ol>	<ol style="list-style-type: none"> <li>1) No - Language rights extended to French but not English</li> <li>2) Yes - Language rights created in a separate statute (FRPBA)</li> </ol>
Part VII	Clear definitions: “positive measure”; “enhancing vitality of”; “assisting development of OLMCs” [90]	Partly: List of potential positive measures elaborated (s 41(2))	Partly: List of potential positive measures elaborated, including consultation and evaluation requirements (s 41(5) – 41(10))
	Clearer lines of accountability for Part VII obligations (Minister of Heritage is to “encourage and promote a coordinated approach” to implementation of s. 41 commitments, but not given power to <u>require</u> implementation). A department or agency needs to be <u>empowered</u> to ensure Part VII compliance, and must also be <u>accountable</u> for implementation. [91-92]	Partly: enhanced powers for Minister of Heritage and Treasury Board (s 4, s 23, s 33, s 44)	Partly: enhanced powers for Minister of Heritage and Treasury Board; further requirements for Treasury Board (s 4, s 22, s 25, s 26)
	Require regulations for Part VII [93]	None – regulations still optional	None – regulations still optional
	Transparency mechanisms for OL investments [94]	None – higher emphasis on fed-prov cooperation but not transparency	None – higher emphasis on fed-prov cooperation but not transparency
	OL obligations for all federally funded activities	None	None
Accountability	Central accountability for application of the entire Act (“might entail giving a central authority like Treasury Board the authority and duty to ensure implementation of the Act across government” [105])	No central accountability, but added role for Treasury Board (see above)	No central accountability, but added role for Treasury Board (see above)

	<p>Consultation:</p> <ul style="list-style-type: none"> <li>• mandatory and robust consultation with OLMCs with duty to consult;</li> <li>• definition of consultation;</li> <li>• duty to provide resources and capacity;</li> <li>• formal National Advisory Council;</li> <li>• declaration that membership in parliamentary OL committees should reflect composition of OLMCs</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> <li>• None</li> <li>• None</li> <li>• None</li> </ul>	<ul style="list-style-type: none"> <li>• Possibly: New consultation requirements for federal institutions in determining positive measures (C-13 MOLA s 41(8)-(9).</li> <li>• None</li> <li>• None</li> <li>• None</li> <li>• None</li> </ul>
	<p>Enhanced and focused role for Commissioner</p> <ul style="list-style-type: none"> <li>• Commissioner should <u>not</u> have power to order compliance or enforce sanctions [109]</li> <li>• Add requirement that institutions respond to reports by Commissioner; add requirement that Commissioner must take legal action or intervene</li> </ul>	<ul style="list-style-type: none"> <li>• No -- Commissioner given power to enter into compliance agreements; make compliance orders</li> <li>• No; but option for Commissioner to make reports public (Bill s 42, MOLA s 63.1)</li> </ul>	<ul style="list-style-type: none"> <li>• No -- Commissioner given power to enter into compliance agreements; make compliance orders; and impose administrative monetary penalties for certain institutions</li> <li>• No; but option for Commissioner to make reports public (Bill C-13 s 35, C-13 MOLA s 63.1)</li> </ul>
	Admin tribunal with power to sanction	None – see above – powers given to Commissioner	None – see above – powers given to Commissioner
	Regular periodic review of <i>Act</i> and <i>Regulations</i>	Yes -- 10-year review of Act s. 56	Yes – 10-year review of Act s. 50