

Office of the
Commissioner of
Official Languages



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In this report, the following abbreviated versions are used for ease of reference:

- ▶ “the Commissioner” for Commissioner of Official Languages Raymond Th  berge
- ▶ “the Office of the Commissioner” for the Office of the Commissioner of Official Languages
- ▶ “the Act” for the *Official Languages Act*
- ▶ “official language communities” for official language minority communities
- ▶ “federal institutions” for federal institutions and organizations that are subject to the *Official Languages Act*

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The Speaker of the House of Commons

Ottawa

Mr. Speaker,

Pursuant to section 66 of the *Official Languages Act*, I hereby submit to Parliament, through your good offices, the annual report of the Commissioner of Official Languages covering the period from April 1, 2018, to March 31, 2019.

Yours respectfully,

A handwritten signature in black ink, appearing to read "R. Th  berge". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

Raymond Th  berge

The Speaker of the Senate

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Preface

LEARNING FROM THE PAST, SHAPING THE FUTURE: 50 YEARS OF OFFICIAL LANGUAGES IN CANADA

The year 2019 marks the 50th anniversary of the *Official Languages Act*. It's therefore only natural that we as Canadians ask ourselves whether we've achieved the goals we set for ourselves collectively in terms of linguistic duality in Canada. This annual report will examine various aspects of that question. The federal government is in a unique position to ensure that our official languages continue to thrive and that future generations continue to have the opportunity to live in the official language of their choice from coast to coast to coast. With my first year as Commissioner of Official Languages now firmly under my belt, I'd like to make a blunt observation.

When I began my mandate, I ruffled a few feathers when I said publicly that official languages had no champions in the government. I was admonished—in private—for not recognizing this parliamentarian or that senior official for their dynamic efforts to advance various language issues. I'm not denying that work is being done; this annual report bears testimony to those often-painstaking efforts. The point I was making at the start of my mandate was that none of the Cabinet ministers had the words "official languages" in their title. Today, one of them does. But there's still a question of what resources are available to that minister to carry out her mandate. I'm not sure what message the government was trying to convey by that change during the July 2018 Cabinet shuffle, as the department responsible for official languages must have all of the resources and support it needs.

In my opinion, the division of official languages responsibilities within the government is confusing and inefficient. According to the Act, the Treasury Board of Canada is responsible for the application of parts IV, V and VI, and the Minister of Canadian Heritage is responsible for the coordination of Part VII. And now the Minister of Tourism, Official Languages and La Francophonie has a role to play, as well. There is no single minister or committee of ministers with exclusive jurisdiction over the implementation of the Act as a whole. The lack of a central authority is one of the problems my office is facing in processing the complaints we receive. Our investigations lead to dialogue with the federal institutions taken to task by Canadians—and generally rightly so, as shown by the findings of those investigations—for failing to meet their obligations under the Act. Most of the time, this dialogue yields positive results, with 80% of our recommendations being at least partially implemented (yes, we do check!). However, a federal institution's prompt response to the

recommendation from our investigation does not always result in a long-term commitment by that institution. The anticipated permanent change in behaviour does not necessarily happen automatically just because a recommendation is followed. And some of our recommendations fall on deaf ears, with the most stubborn federal institutions even dismissing our conclusions or passing the buck among themselves without taking any action. I've seen this happen a few times just in the short time I've been in office.

In the course of our public consultations on modernizing the Act, many people said that there should be a central government authority responsible for official languages, although they did not agree on which organization should take on that role. But that should not prevent the government from resolving this problem. And even though it missed the opportunity to do so when it released the *Action Plan for Official Languages 2018–2023: Investing in Our Future*, it can make up for that shortcoming now and during the much needed modernization of the Act that it has committed to undertake. When I table this annual report in Parliament, I will also be releasing a document that sets out my position on modernizing the Act and my recommendations to guide the government's deliberations.

The 2018–2023 Action Plan is a major initiative. It is the product of broad and meaningful consultations, and it includes significantly greater financial commitments. However, in light of the setbacks we saw across Canada in late 2018, I'm wondering whether this initiative alone is enough. I am therefore calling on the federal government to explore other ways of promoting the value of linguistic duality.

In addition, with the government's having committed to taking a "deliverology" approach to achieve its key objectives, we should expect that an action plan premised on \$2.7 billion in funding over five years would include specific targets and instructions so that ministers who are responsible for implementing the plan's initiatives can conduct ongoing and transparent assessments of their progress in achieving those targets. This was included in the "accountability and coordination framework" in the very first official languages action plan, and I encourage the government to develop and publish an accountability framework that includes specific performance measures for implementing the initiatives in its 2018–2023 Action Plan.

Meanwhile, alarming events across the country in the second half of 2018 cannot go unmentioned or be swept under the rug. For example, the Government of Manitoba announced that it had changed the status of the Bureau de l'éducation française within the Department of Education and that it was eliminating 11 full-time translator positions within its translation services branch. The Government of Quebec then announced that it planned to abolish all school boards in the province and replace them with service centres without the same powers or degree of direct community involvement. That sparked an uproar, particularly from Quebec's English-language school boards, which said they are prepared to take the issue all the way to the Supreme Court of Canada. Also troubling are the election of three new members to New Brunswick's legislative assembly who belong to a party that openly questions linguistic duality in the fields of health and education, and the provincial government's announcement that it will be reassessing the entry point for early French immersion.

And let's not forget the Government of Ontario's decision to eliminate the Office of French Language Services Commissioner, weakening one of the strongest defenders of Franco-Ontarian language rights for the past 10 years. That same office also promoted the achievements and contributions of the province's French-speaking community while analyzing the ground still to be covered in order for Franco-Ontarians' rights to be fully recognized. In November 2018, however, that ground suddenly increased exponentially. Equally shocking was the Government of Ontario's decision to withdraw funding for a French-language university in Toronto, even though the institution would have filled a vital need for Franco-Ontarians, the largest French-speaking community outside Quebec.

Last, but certainly not least, the Federal Court dismissed the Fédération des francophones de la Colombie-Britannique's application regarding alleged violations of the Act in connection with employment benefits and support measures in the federal-provincial labour agreement. I have filed an appeal of that decision.

Looking at these successive events happening across the country, I can only conclude that provincial leaders have lost sight of the constitutional principles that underlie language rights. I am still—and will always be—astounded that language issues of this magnitude are resurfacing half a century after Canada’s first Official Languages Act was passed. The Act is an integral part of Canadians’ collective memory and represents the very foundation of the social contract that unites us. However, setbacks like the ones in Ontario and elsewhere across the country are jeopardizing that contract.

How can a value that defines our identity be considered to be a remnant of the past, especially when linguistic duality is such a powerful symbol of openness, empathy and respect? If you remove the stones one by one from the base of a building, do you not risk bringing down the building? Similarly, if you remove fundamental language rights one by one, do you not risk bringing down the very foundation of Canadian identity?

In this 50th anniversary year of the Act, we are at a crossroads, confronted with choices that will have a lasting impact on the future of bilingualism in Canada. To keep the Act relevant and sustainable and to make sure that it is fully implemented, three things need to be done: stop the erosion of language rights, modernize the legislation and ensure clear and strong leadership by the federal government. The Government of Canada must continue to take the lead in promoting the values that support Canada’s linguistic duality.

As a protector of language rights, I can intervene before the courts to defend and advance those rights to help ensure that linguistic duality and Canadian values continue to be an integral part of government decision making. In 2018–2019, I appeared before the Supreme Court of Canada twice to assert the importance of people’s right to have full access to the courts in the official language of their choice. In *Mazraani v Industrial Alliance Insurance and Financial Services Inc.*, the Court upheld the fundamental nature of a person’s right to speak in the official language of his or her choice in federal courts and the role of judges and the courts to actively protect that right.

In *Joseph Roy Éric Bessette v Attorney General of British Columbia*, the Court had to determine whether British Columbians have the right to be tried in French for provincial offences punishable on summary conviction. As an intervenor before the Court, I argued that this right exists and that any violations must be remedied as quickly as possible because of the impact they can have on official language minority communities.

As a promoter of official languages, I can conduct studies to inform my positions and draw attention to specific issues. In my recent study on the French second-language education teacher shortage, I called on the federal government to lead a national strategy to help address the problem. Ensuring access to opportunities for Canadians to learn their second official language is a key to promoting the use of English and French in Canadian society and in the federal public service.

In promoting and protecting language rights, it is important to be innovative and to provide the federal public service with useful and effective tools to help it meet its official languages obligations. Even though federal institutions implement most of my recommendations after an investigation, this does not necessarily result in lasting change. In an effort to address systemic issues that cannot always be resolved through complaints and investigations, my office is launching a new diagnostic tool in June 2019—the Official Languages Maturity Model. This tool will provide an overview of current official languages practices within federal institutions and help them to make ongoing improvements. I urge the government to take advantage of this new tool to strengthen accountability among federal institutions. Deputy heads also stand to benefit greatly from applying the Maturity Model’s principles to obtain a thorough and accurate assessment of the state of official languages within their institutions and using it as a reference for making progress.

As Commissioner of Official Languages, I am mandated to support the protection and promotion of Canada’s two official languages. As a language rights advocate, I welcome the recent advances that have been made toward the promotion and protection of Indigenous languages—Canada’s first languages—most notably with

the tabling of an Indigenous languages bill. While fully recognizing that it will be up to First Nations, Métis and Inuit themselves to chart the best path forward, I am ready to share my experiences as an ombudsman and as an advocate of minority language rights and to work together with Indigenous and federal partners.

My office and I will also continue to undertake initiatives to support the advancement of language rights, to promote both official languages and to ensure that linguistic duality continues to be a national priority. However, we can't do this all by ourselves. This annual report is more than just a look back at the past 50 years. It underscores the need for elected officials of every political stripe to find tangible and lasting solutions to guard against the erosion of Canada's linguistic duality and to protect the language rights and achievements of our official language communities.

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Raymond Th  berge
Commissioner of Official Languages

Chapter 1

MODERNIZING THE *OFFICIAL LANGUAGES ACT*

Adopted in July 1969 in the wake of the recommendations of the Royal Commission on Bilingualism and Biculturalism, Canada's first *Official Languages Act* was a product of its time: the tumultuous 1960s, the Quiet Revolution in Quebec, and changes everywhere in Canadian society. The Act has evolved somewhat over the years to respond to changes in the constantly shifting linguistic and constitutional landscape. However, after half a century, it has become very clear that the Act needs major amendments and structural changes in order to reflect today's society and to remain relevant. While Parliament has several options when it comes to modernizing the Act, one thing is certain: simply updating the provisions of the Act without examining the means it has at its disposal to ensure compliance or without reviewing the responsibilities of the various key stakeholders would be a missed opportunity to create a truly strong Act that inspires exemplary implementation.

A little background...

The objective of the 1969 *Official Languages Act* was to strengthen national unity by recognizing the equal status of English and French and ensuring equal access to federal services in either official language. The right to be heard before the federal courts and the right to communicate with and obtain services from the federal government in either official language were enshrined in this first legislation.

The courts have also played a role in the evolution of the Act by handing down decisions that have had a major impact on the interpretation of its provisions, on the development of official language communities and on the status of English and French in Canadian society. The appearance of commissioners of official languages in various court proceedings has also helped to establish an extensive body of case law pertaining to language rights, which individuals and official language communities can cite when asserting rights guaranteed by the Act and by the *Canadian Charter of Rights and Freedoms*.

The Official Languages Act is passed, and the position of Commissioner of Official Languages is created

In response to a recommendation made by the Royal Commission on Bilingualism and Biculturalism, Pierre Elliott Trudeau's government passed the *Official Languages Act* in 1969.

The first *Official Languages Act* recognized the equality of status of both English and French in all federal institutions. Its primary goal was to ensure that Canadians had access to federal services in the official language of their choice.

The Act also stipulated the appointment of a Commissioner of Official Languages, whose role is to oversee the application of the Act, investigate complaints from the public, conduct studies and report to Parliament.

The most recent major stride came in 2005, when Parliament passed Bill S-3, *An Act to Amend the Official Languages Act (promotion of English and French)*, which imposes obligations on federal institutions with respect to Part VII and allows for court proceedings if those obligations are not met. Federal institutions are now required to take positive measures to foster the development and vitality of official language communities and to promote the full recognition and use of English and French in Canadian society. Apart from the amendment to Part VII in 2005, the Act has not undergone an extensive review since 1988.

Interventions under the *Official Languages Act*

Commissioners of official languages have been intervening in court cases relating to language rights under the Act since the early 1980s.

The following timeline lists sets out the milestones in commissioners' interventions that set precedents, resulted in legislative amendments and helped to advance language rights for the benefit of all Canadians.

INTERVENTIONS OF THE COMMISSIONERS OF OFFICIAL LANGUAGES



OUTCOMES

In 1990, Commissioner D'Iberville Fortier initiated legal proceedings before the Federal Court against Air Canada, whose problems complying with the Act have been recurrent.



Commissioner Fortier and the carrier ended up settling the case out of court, resulting in a memorandum of understanding on Air Canada's obligations.

In 1991, Commissioner Fortier returned to the Federal Court in *Canada v Viola* to argue that the authority to determine whether language requirements of positions comply with the provisions of the Act rests with the commissioner of official languages and with judges.



This case established that the 1988 Act was not an ordinary statute and that it belongs to quasi-constitutional legislation that reflects certain basic goals of our society and must be interpreted so as to advance the broad policy considerations underlying it. This principle is still relevant in interpreting the Act.

In 1991, complaints against VIA Rail Canada in the Toronto-Ottawa-Montréal triangle led Commissioner Victor Goldbloom to take legal action against the carrier.



Following the legal proceedings filed by Commissioner Goldbloom, VIA Rail took the necessary measures to correct matters, making the proceedings superfluous.

In 1997, Commissioner Goldbloom filed a reference application in the Federal Court to obtain clarification on the language obligations of Air Canada's regional carriers.



Following Commissioner Goldbloom's action, Parliament amended section 10 of the *Air Canada Public Participation Act* to require that all of the airline's affiliates comply with Part IV of the *Official Languages Act* with regard to air travel and related services.

In 1999, Commissioner Goldbloom was a respondent in *R. v Beaulac*, which pertained to the scope of the right to be heard in the official language of one's choice in criminal proceedings and marked a turning point in the interpretation of language rights.



Commissioner Goldbloom, who helped to defend a broad and liberal interpretation of language rights, noted that these rights could be enjoyed only if the means to do so were provided—for example, by federal institutions. This decision can be cited to assert a broad interpretation of the Act.

In 2003, Commissioner Dyane Adam was granted intervener status in a case against Air Canada concerning a lack of service in French aboard a flight by an Air Canada affiliate.



Commissioner Adam successfully argued that the Act also applies to Air Canada's affiliates and that the Act takes precedence over collective agreements, which has a significant impact on services to the travelling public.

In 2004, Commissioner Adam appealed all the way to the Supreme Court of Canada regarding the decision in *Forum des maires de la Péninsule acadienne v Canada (Food Inspection Agency)*. The case concerned the Canadian Food Inspection Agency's decision to transfer certain positions from one region to another and raised the question of remedies available to penalize infringements of the federal government's commitment regarding the development of official language communities.



Commissioner Adam's intervention highlighted a significant shortcoming of the Act—that Part VII was not enforceable before the Federal Court in the event of violations. Following the Supreme Court of Canada's decision to hear the appeal and faced with the prospect that debate on the enforceability of Part VII would be decided by the country's highest court, Parliament finally passed Bill S-3, *An Act to Amend the Official Languages Act (promotion of English and French)*, sponsored by Senator Jean-Robert Gauthier in 2005. This made Part VII enforceable and established the right to appeal before the courts.

In 2006, Commissioner Graham Fraser intervened in a judicial review launched by the Fédération des communautés francophones et acadienne du Canada against the decision by the Department of Canadian Heritage to eliminate the Court Challenges Program.



Just as the Federal Court was about to render its decision, the parties settled out of court, and the new Language Rights Support Program was created to provide funding for people wishing to assert their language rights before the courts.

In 2009, Commissioner Fraser appeared as co-appellant with the complainants in *DesRochers v Canada (Industry)*. In this case, the Supreme Court of Canada ruled for the first time since 1969 on the nature and scope of the principle of language equality in communications and the delivery of services under Part IV of the Act.



Commissioner Fraser successfully argued that the principle of substantive equality between English and French required the services provided by federal institutions to take into account the specific needs of each official language community in certain cases, depending on the nature of these services.

Following the *DesRochers* decision, the Treasury Board of Canada Secretariat urged federal institutions to apply the principle of substantive equality to their services and programs and developed a tool for them to use for that purpose.

This was a landmark decision for individuals wishing to assert their language rights before the courts.

In 2014, Commissioner Fraser once again appeared before the Supreme Court of Canada as co-appellant alongside the complainants in *Thibodeau v Air Canada*. The Court examined the interaction between Air Canada’s federal language obligations under the Act and the limitations imposed on the civil liability of air carriers by the *Montreal Convention*, an international agreement on air travel.



Commissioner Fraser argued that the *Montreal Convention* did not prevent monetary damages from being awarded following the violation of a language right; however, the Supreme Court of Canada dismissed that argument. Following the appeal, a bill was tabled in Parliament to specifically amend that rule of law, but it died on the order paper. And so, the debate continues over advancing the right of travellers to receive services in the official language of their choice.

In 2015, Commissioner Fraser intervened before the Federal Court in *Tailleur v Canada*, a case where the Court had to examine the interaction between the right of federal employees to work in the official language of their choice and the right of members of the public to receive services in the official language of their choice.



Following Commissioner Fraser’s intervention, the Federal Court clarified the scope of federal institutions’ obligation to ensure that employees in regions designated as bilingual for language-of-work purposes can work in the official language of their choice. The Court also stated that, in case of conflict, the right of members of the public to be served in the official language of their choice takes precedence over the right of federal employees to work in the official language of their choice.

In 2017, Interim Commissioner of Official Languages Ghislaine Saikaley intervened in a Federal Court case between the Fédération des francophones de la Colombie-Britannique and Employment and Social Development Canada. This case concerned a federal institution’s language obligations as part of a transfer payment agreement with a provincial government regarding the administration of employment benefits and support measures to help Employment Insurance recipients return to the labour market.



The Court ruled that the obligation of federal institutions to take positive measures under Part VII of the Act is only a general obligation that falls within the general framework of their mandate. Consequently, federal institutions are not obligated to take positive measures in implementing specific decisions that could affect certain official language communities.

Commissioner Raymond Théberge and the Fédération des francophones de la Colombie-Britannique appealed the decision.

In 2018, Commissioner Théberge intervened before the Supreme Court of Canada in *Mazraani v Industrial Alliance Insurance and Financial Services Inc.*, a case requiring a review of the scope of the obligations of federal courts under Part III of the Act.



Commissioner Théberge, along with the respondents and the other intervenors, defended the fundamental nature of a person’s right to speak in the official language of his or her choice in federal courts and the role of judges and the courts to actively protect that right. Canada’s highest court ruled that federal court judges must ensure that parties, witnesses and lawyers can speak in the official language of their choice.

Prime Minister's support for a modernized Act

In the summer of 2018, Prime Minister Justin Trudeau formally announced that the government would be modernizing the Act. A number of individuals and organizations had been asking for this, including Interim Commissioner Ghislaine Saikaley in her recommendation from her 2016–2017 annual report.

Fighting it out in court

In May 2018, the Federal Court handed down its decision in *Fédération des francophones de la Colombie-Britannique v Canada (Employment and Social Development)*—a decision that resulted in the Office of the Commissioner's having to change the way it was interpreting Part VII of the Act. The decision and the new interpretation are of great concern to the Commissioner.

In its decision, the Court stated that Part VII merely obliged federal institutions to take positive measures within the general framework of their mandate, and that positive measures did not have to target a specific program, decision-making process or initiative of a federal institution, or a specific factual situation that may have been the subject of a complaint to the Commissioner.

In the Commissioner's view, this new rule of law does not serve the purpose of Part VII, which is to foster the development of official language communities. The Court also decided to disregard any evidence of violations following the date of filing of the complaint. The Commissioner is of the opinion that this greatly limits complainants' and his office's ability to fully assert the rights guaranteed by the Act.

The Commissioner filed an appeal of the Federal Court's decision in June 2018 and plans to make a case for an interpretation of Part VII that truly reflects the purpose of the Act and the intent of Parliament. The Federal Court's decision highlights the need for a regulatory framework to support official language communities.

Review by the Standing Senate Committee on Official Languages

In May 2017, the Standing Senate Committee on Official Languages began a five-part study on modernizing the Act called *Examine and report on Canadians' views about modernizing the Official Languages Act*. The Committee heard testimony from young people, official language communities, federal institutions, stakeholders from the justice sector and those who have experienced the evolution of the Act. The Committee is slated to submit its report to the government by June 2019.

Complaints: Significant leverage

Pending the Federal Court of Appeal's ruling, the Commissioner wishes to remind Canadians that it is essential that they continue to file complaints if they think that a federal institution has infringed their language rights. The Commissioner wants to stay informed of alleged violations of the Act in order to continue to bring these issues to the attention of the appropriate officials and to intervene where possible, including by making specific recommendations that are still relevant in light of the modernization of the Act. He will use all of his authority under the Act to urge federal institutions to take the necessary positive measures to support the development of official language communities and to promote the full recognition and use of English and French in Canadian society.

The Federal Court's decision will affect the conclusions the Commissioner can make during the investigation of complaints under Part VII of the Act.

All talk, no action

On the 40th anniversary of the Act in 2009, Commissioner Graham Fraser noted that little progress had been made in the previous few years in terms of institutional bilingualism within the federal government. A decade later, that observation is still true. This inertia has had significant ramifications, particularly on the development of official language communities.

Despite the constitutional status of language rights and the major advances made before the courts over the years, continuity of language rights seems to be at the mercy of governments' changing priorities. Even though the federal government and its institutions subscribe to the principles of the Act, they do not always put their words into action.

There are a number of ongoing issues that continue to make it difficult for the Act's objectives to be fully achieved, including the inconsistent implementation of the Act by federal institutions because of things like the ambiguity of some of the sections or the challenges in applying certain provisions.

Many changes have shaped Canadian society since the last major review of the Act in the late 1980s—changes such as demographic and identity shifts, driven largely by immigration and exogamy, and the emergence of new technologies in federal government communications and service delivery. These changes underline the very real need to modernize the Act so that it continues to be an effective tool for protecting and promoting Canada's linguistic duality.

Official languages in social media

Since 2017, more than 20 complaints have been filed with the Office of the Commissioner about the predominance of English on the social media accounts of several major Canadian international airports, even though they are obligated to communicate in both official languages. The Act requires that all communications from federal institutions be published simultaneously in both official languages and that they be of equal quality. However, it does not clarify obligations for communications on social media, such as Twitter, Facebook, Instagram and YouTube. According to some, the interactive nature of social media sometimes complicates the way in which the provisions of Part IV of the Act are applied, considering that the Act was created at a time when federal institutions communicated with the public in a different way.



The complaints highlight the fact that the wording of the Act is not as clear-cut as it was before the advent of these new technologies. It has therefore become necessary to modernize the Act to ensure that it continues to be relevant and so that federal institutions can achieve full compliance even with changing means of communication.

High expectations for a modern Act

In 2017–2018, the Office of the Commissioner held public consultations to gather input from various stakeholders about modernizing the Act.

The Commissioner was very pleased with the enthusiastic response to the on-line consultations, which resulted in some 4,200 completed questionnaires. A sizeable majority of respondents (70%) felt that the Act needs to be updated to better reflect today's realities. The elements selected by most respondents as being most important in the modernization of the Act included language of work in federal institutions, languages used in communications and service delivery, and the inclusion of new technologies.

The results of the in-depth discussions with some 300 individuals across the country who were consulted in person can be grouped into three major categories: the need for a consistent and comprehensive Act that recognizes the interdependent nature of its parts; the need for a stronger Act that includes enforcement mechanisms; and the need for an Act that reflects Canada’s current and future values and realities. Many of the stakeholders who were consulted said that they had seen problems with governance and compliance and that the Act should be reviewed periodically to ensure that it stays relevant into the future.

RECOMMENDATION 1

The Commissioner of Official Languages recommends that the Prime Minister table a bill on modernizing the *Official Languages Act* by 2021.

The Commissioner’s vision

In December 2018, the Commissioner published his vision on modernizing the Act. More than simply an update, the modernization of the Act must generate results that have a real and tangible impact on the equal status and use of both English and French in Canadian society and on the vitality of official language communities. The modernized Act must recognize that its parts are interdependent—that there are, for example, intrinsic links between the representation of both language groups within the federal public service, the rights related to language of work, and the obligations related to communications with and services to the public, and that those rights and obligations have a broader impact on the other parts of the Act. This holistic approach stems from the three pillars on which the Commissioner’s vision is based: having an Act that is relevant, dynamic and strong.

AN ACT THAT IS RELEVANT

The modernized Act should, in every aspect, reflect both the current needs of Canadian society and its aspirations. The Act should also fully embrace linguistic duality. It must therefore be relevant to the environment in which it operates. To achieve this, a number of amendments need to be made to various parts of the Act. For example, the government must:

- ensure better access to the federal justice system in English and in French;
- clarify the obligations regarding communications with and services to the public and make sure they meet the needs of Canadians;
- update and clarify the rights and obligations regarding language of work within the federal public service; and
- develop a regulatory framework to deliver on its commitments to enhance the vitality of official language communities and to foster the full recognition and use of both official languages.



AN ACT THAT IS DYNAMIC

The modernized Act must be able to adapt not only to the many changes that have occurred in the past few years, but also to the many changes to come. This could be accomplished by:

- entrenching in the Act the key principles that have changed the way language rights are interpreted and applied today, such as substantive equality, the remedial nature of language rights and the Act's quasi-constitutional status;
- drafting a technology-neutral Act to ensure its relevance as new technologies emerge; and
- requiring that the Act undergo regular review.



AN ACT THAT IS STRONG

The current modernization exercise is the first opportunity since 1988 to make structural changes to the Act. It will be crucial for the government to think seriously about changes that could be made to the Act in terms of governance and compliance. With regard to governance, the next chapter includes a description of the five principles underpinning the Commissioner's vision for an effective official languages governance structure.

With regard to compliance, the possibility of conferring powers on the Commissioner of Official Languages was the subject of debate even before the 1988 Act was passed. More recently, it was included in specific recommendations by the House of Commons Standing Committee on Official Languages in its report, *Air Canada's Implementation of the Official Languages Act: Aiming for Excellence*. In fact, even though the Act already provides for broad investigatory and judicial powers, it does not include enough tools for ensuring that federal institutions comply with the Commissioner's recommendations and meet their obligations.

A number of solutions have already been put forward to guide the government's reflection on this issue, such as creating an administrative tribunal or giving the Commissioner more tools to ensure that his recommendations are implemented. The ability to impose administrative monetary penalties, coupled with the option of entering into enforceable agreements, was also mentioned as a way to promote better compliance with the Act and greater cooperation between federal institutions and the Office of the Commissioner. The revenue collected through penalties could be paid into a linguistic duality fund. All of these solutions could be among those examined by Parliament.

Chapter 2

FEDERAL INSTITUTIONS' IMPLEMENTATION OF THE *OFFICIAL LANGUAGES ACT*

The scope of the obligations in the first *Official Languages Act* in 1969 was mostly limited to certain areas. Over the years, successive commissioners of official languages have drawn the federal government and its institutions into other areas of interest, including active offer, language of work, equitable participation of English- and French-speaking Canadians in the federal public service and development of official language communities. However, there is still a lot of work to do in order to ensure that the government's delivery of services to the public fully meets its obligations in terms of access to bilingual services. Besides the pressing need to modernize the Act, there is also a need for federal institutions themselves to progress to the point where compliance with the Act is the natural product of a culture and processes that routinely take official languages into consideration.

Modernization of the *Official Languages (Communications with and Services to the Public) Regulations* is another issue of great concern to the Commissioner. Although the federal government's proposed amendments to the Regulations are a step in the right direction, the Commissioner does not think that they are comprehensive enough, that they allow for Canada's demographic changes or that they effectively protect Canada's official language communities. In the Commissioner's view, if the government fails to effect a true reform of the Act and the Regulations, taking both the needs of official language communities and today's realities into consideration, it will have missed a key opportunity to deliver a strong message that language rights are to be respected and protected.

With regard to Part V of the Act, it is worrisome to note that between 2008 and 2017, the results of the Public Service Employee Survey show that there was no significant progress on any of the issues pertaining to official languages, which suggests that the federal government is not doing enough to ensure that its employees feel comfortable using the official language of their choice at work. No progress in 10 years means that we are standing still—and likely even regressing.

The government is sending out mixed messages when it comes to language of work in the federal public service. On the one hand, it says that language of work is a priority and that it is engaging with the public service on this issue, which was the subject of a 2017 report by the Clerk of the Privy Council. On the other hand, it is not giving the same priority to implementing the recommendations in the Clerk's report. In fact, the timelines for implementing the Clerk's recommendations span months and even years.

Meanwhile, an inordinately high number of complaints continue to be filed with the Office of the Commissioner about the language requirements of positions in the federal public service. Our investigations show a general lack of knowledge in federal institutions about how to establish the language requirements of positions during staffing processes. The federal government and its institutions need to take action to resolve this widespread problem as quickly as possible.

The Office of the Commissioner's new Official Languages Maturity Model will make it easier to monitor federal institutions' progress in addressing systemic issues by helping them to identify the organizational obstacles that are preventing them from fully meeting their obligations under the Act. Federal institutions need to continue to improve and take responsibility by coming up with effective ways to deal with recurring compliance problems. The Maturity Model will help them to take action that is tailored to their specific needs and circumstances.

Achieving institutional bilingualism

When Keith Spicer was appointed as the first Commissioner of Official Languages of Canada in 1970, he knew that the job would not be without adversity and obstacles. He understood that it would be difficult to help the federal government achieve the institutional bilingualism required by the 1969 *Official Languages Act* and to convince Canadians—and federal employees in particular—not only that it was in their own and their country's best interests to meet that goal, but also that this ambitious objective was both reasonable and reachable.

Commissioners past and present have continued to strive toward that goal, recognizing that promoting linguistic duality is an integral part of protecting language rights. In fact, promotion and protection are programmed into the Office of the Commissioner's DNA. Promotion raises awareness of language rights and the sociological and practical reasons behind them. It also seeks to increase understanding among the majority communities and strengthen the political will needed to protect and enhance language rights, including the rights of official language minority communities.

Since the adoption of the *Official Languages Act* in 1969, the commissioners have drawn the federal government and its institutions into areas other than envisioned in the first Act. The 1988 Act includes several of the principles that were suggested over the first 20 years of official bilingualism: active offer, language of work, equitable participation of English- and French-speaking Canadians, and the development of official language communities and the promotion of linguistic duality. To a large extent, applying these principles has been and continues to be problematic. For example, active offer is not consistent, and the corporate culture within the federal public service is often not conducive to employees working in the official language of their choice.

Ongoing challenges in service to the public

Some of the complaints filed with the Office of the Commissioner point to significant and ongoing problems in certain federal institutions and to the fact that these institutions need to continue to improve their processes so that their official languages obligations are taken into full consideration. It is a question of culture, leadership and commitment.

For example, an investigation was recently completed (in March 2019) into complaints about Royal Canadian Mounted Police press conferences either held only in English or whose content was not equal in both official languages. The press conferences were held to inform Canadians about major events related to national security. The information was therefore required to be in both official languages—and of equal quality in each—in order to provide equal access to members of both language groups. This is not the first time that the issue of bilingualism at press conferences following events of national significance has been investigated.

Canada's national police service is not the only federal institution with these types of compliance issues. Other institutions, including the Canada Border Services Agency and Immigration, Refugees and Citizenship Canada, have had similar problems involving a lack of active offer and difficulties in communicating with the public and providing services of equal quality in both official languages. And even though these problems have been the subject of recommendations in the past, they continue to reoccur.

Between 2016 and 2018, four new complaints against Immigration, Refugees and Citizenship Canada were filed with the Office of the Commissioner about the fact that various services were not available in both official languages at visa application centres around the world. The centres are managed by VFS Global, which is a private company. In 2018, like his predecessors had, the Commissioner concluded that because the centres are providing services on behalf of the institution, they are third parties within the meaning of section 25 of the Act. Consequently, under the Act, services at visa application centres must be provided in both official languages, regardless of demand or the region in which the centre is located. The Commissioner urges Immigration, Refugees and Citizenship Canada to take responsibility, and he hopes that the follow-up to his recommendations will show that they have been implemented. Canada's image abroad is at stake.

Another issue that is generating complaints is that travellers in certain regions cannot always be sure of which official language they will have to use in their interactions with border services officers, which can cause discomfort and even anxiety. This problem is the result of insufficient bilingual capacity at the Canada Border Services Agency, as shown in the 2018 follow-up to the 2015 audit of the institution's delivery of bilingual services to travellers at airports and land-border crossings. Although the institution has taken a number of measures in response to the recommendations in the 2015 audit report, including recruitment and language training initiatives, it has not made any real progress in terms of its ability to provide services of equal quality in both official languages at designated bilingual points of entry. In fact, despite the recommendations made in the audit report and the commitments made by the institution, the number of bilingual supervisors and border services officers has not increased across Canada since 2015.



Hindering Canadians from exercising their right to vote

Even today, there is no guarantee that Canadian voters will receive services in the official language of their choice when they exercise one of the fundamental rights of our democracy—their right to vote in elections. Although Elections Canada has made some progress, complaints filed with the Office of the Commissioner suggest that the institution is having considerable difficulties meeting its obligations under the Act. Those challenges go beyond the difference of opinion between the Office of the Commissioner and Elections Canada regarding the interpretation of its obligation under the Act to provide services to voters in both official languages. The Commissioner maintains that Elections Canada's obligations apply everywhere in Canada, whereas Elections Canada holds that its obligations apply only in areas where there is a significant demand for services in the official language of the linguistic minority. Despite all of the Office of the Commissioner's efforts in conducting an audit and an audit follow-up, as well as various investigations, it still received complaints in 2017 following the most recent federal by-election in the Ottawa–Vanier riding, which has a large linguistic minority community and where recruiting bilingual election workers should not be difficult. Voting is one of the most important ways Canadians can influence government decision-making processes. Elections Canada has a duty to ensure that electors can exercise their right to vote in the official language of their choice.

Current status of official languages in the public service

Whether judging by the observations made by the Office of the Commissioner over the past few years or looking at the number of complaints that continue to be filed, one thing is certain: there is still a lot of work to do to ensure that language rights and obligations are ingrained in the corporate culture and processes of the public service and that federal institutions fully respect those rights and meet those obligations.

Complaints are one indication of how federal institutions are doing. The Public Service Employee Survey is another important source of information, especially about federal employee satisfaction with language of work. Since 2008, four consecutive surveys have shown that while 91–93% of English-speaking employees feel free to write in the official language of their choice at work, only 67–68% of French-speaking employees feel the same way. The 25% difference in satisfaction rates between the two linguistic groups has not budged in 10 years.

The results of the Survey with respect to questions about meetings show ongoing significant differences between the satisfaction rates of French-speaking federal employees and their English-speaking counterparts when it comes to feeling free to use the official language of their choice at meetings. The right to use the official language of one's choice when drafting documents and participating in meetings is an individual right with respect to language of work. The noticeable differences in satisfaction rates and the fact that these differences have been pronounced over multiple surveys indicate a lack of commitment on the part of senior management to respect that right.

Language requirements of positions: Systemic problem needs a systemic solution

Respect for linguistic duality in the federal public service tops the list of the Commissioner's concerns, particularly when it comes to ensuring that federal employees' language rights are respected and that members of the public have access to services of equal quality in both official languages. For that to happen, employees in the federal public service must have the language skills that their positions require.

Since 2014, commissioners of official languages have conducted more than 500 investigations into complaints involving more than 30 federal institutions regarding the language requirements of positions under section 91 of the Act. There is a systemic problem in the federal public service, and the Office of the Commissioner is conducting an in-depth analysis of this issue with a view to issuing recommendations to help resolve it. In the meantime, federal institutions need to acknowledge their responsibilities and take concrete action to ensure that the language requirements of positions are always established objectively.



Follow-up to the Clerk's recommendations on language of work

The Committee of Assistant Deputy Ministers on Official Languages is currently following up on the implementation of the recommendations contained in the Clerk of the Privy Council's 2017 report on language of work in the federal public service. However, the Committee's job has been made more difficult because the timetable for implementing the recommendations spans months, even years. Even though the Clerk's report was researched and written in 2016–2017, 10 of his 14 recommendations will not be implemented until 2021 or beyond. With such a long timeline, it is not surprising that some of the momentum has been lost. Regardless of the deadlines, however, federal institutions still need to get ready to implement the recommendations.

Draft Official Languages (Communications with and Services to the Public) Regulations

In November 2016, the government announced that it would be reviewing the Regulations. Subsequently, a number of meetings were held between the Office of the Commissioner and the Treasury Board of Canada Secretariat to discuss how the review was progressing. In May 2018, the Commissioner tabled a special report to Parliament recommending a principled approach to modernizing the Regulations. In October 2018, the government tabled its draft Regulations in Parliament.

In December 2018, the Commissioner issued a news release and wrote to the Minister of Tourism, Official Languages and La Francophonie and to the President of the Treasury Board to present his analysis of the draft Regulations and to raise three issues in particular that need to be addressed while there is still time.

Letter sent in December 2018 to the Minister of Tourism, Official Languages and La Francophonie and to the President of the Treasury Board

Dear Minister Joly and Minister Brison:

On October 25, 2018, draft regulations were tabled in Parliament to amend the *Official Languages (Communications with and Services to the Public) Regulations* (the Regulations). I am heartened by the Government of Canada's commitment to review the Regulations—a review my predecessors and I have been requesting for many years.

Given its legislative mandate, my office has the unique expertise required to recommend improvements that need to be made to the regulatory framework, which explains how to implement the quasi-constitutional language rights in Part IV of the *Official Languages Act*. I therefore submitted a special report to Parliament outlining my position on the modernization of the Regulations, which you will find attached to this letter.

After analyzing the draft regulations, I would like to share some observations with you. In general, the proposed amendments include evident improvements and offer protection for the continuation of services in certain official language minority communities, although these amendments are understated and not as substantial as expected.

There are three issues I would like to bring to your attention. First, I am very concerned about the fact that the draft regulations still contain the quantitative percentage-based criterion used to define official language minority communities. There are a number of factors that can diminish the relative weight of the linguistic minority within the general population. These have already been noted in my special report, which describes discrepancies in the delivery of services to official language minority communities of equivalent size based on this type of criterion. At present, strong majority growth due to various external factors could lead to the elimination of minority rights if the minority no longer reaches the 5% threshold. It seems unfair to me that our official language minority communities risk losing quasi-constitutional rights because of a restrictive accounting rule. The draft regulations provide some protection against the loss of rights, but it does

not apply to urban areas. To ensure true protection of rights for all official language minority communities, we need to remove the requirement that the minority population represent a certain percentage of the majority population over an entire region. Keeping the 5% threshold for some regions also creates the risk of discrepancies within communities, some of which may maintain their rights for historical reasons, while others would not be granted any because they do not reach the threshold, even if they are equal in size. As stated in my special report, the criterion in the amended Regulations should be changed from a percentage to an absolute number, in conjunction with the vitality criteria discussed below, to determine significant demand in official language minority communities.

The second issue that I would like to raise is the criterion of “vitality” of an official language minority community—namely, the presence of a school. According to the proposed amendments, the fact that the community has a school will mean that services must be provided in the official language of the linguistic minority. Although I am pleased with this improvement, I would caution you about the risk of favouring well-established communities at the expense of communities that are in the process of negotiating with their province or territory to obtain a school. As the communities’ ongoing fight for the right to govern their own schools shows, provincial and territorial governments are not always quick to respect minority language educational rights. The right to education in the official language of the linguistic minority applies only “where numbers warrant,” which means that the criterion is still *quantitative*. I therefore recommend that the presence of not only schools, but also other qualitative indicators—such as social, economic, cultural or media institutions—be added as vitality criteria for official language minority communities.

The third issue giving me cause for concern is the fact that the Regulations are still too complex for the average citizen to understand and therefore members of the public do not know when or where they may obtain service in the official language of their choice. Take, for example, the travelling public. The proposed amendments try to simplify things by stipulating that all railway stations and airports located in provincial or territorial capitals are bilingual offices. In practice, however, this adds only one bilingual airport to the list and does not change the fact that the travelling public is still losing language rights on routes between two bilingual airports. I would therefore like to reiterate the recommendation D’Iberville Fortier made as Commissioner in 1990: that all services to the travelling public be available in both official languages between two designated bilingual airports. My special report also suggests other avenues to further reduce the complexity of the Regulations.

The review of the Regulations is an opportunity to put a regulatory framework in place that is relevant and sustainable for official language minority communities. Although the draft regulations will result in a general advancement, I am certain that it is still possible to

make further improvements to ensure that the public can count on regulations that reflect the importance of Part IV of the *Official Languages Act*.

Given recent events, it is now more important than ever to have Regulations that are clear and comprehensive so that the Government of Canada can continue to defend the language rights of the public and enhance the vitality of official language minority communities.

I look forward to continuing to work with you to provide Canadians with modern and relevant Regulations.

The French version of this letter is enclosed.

Yours sincerely,



Raymond Th  berge

Issues related to open government

With today's new technologies, federal institutions can now engage in direct and ongoing dialogue with the public. The increased use of on-line collaboration tools and social media to involve the public in major government reviews and initiatives is a prime example of this. Federal institutions can also disseminate data, information and documents proactively through electronic channels—an option that did not exist before.

Through various initiatives aimed at achieving a more open government, these new possibilities offer unparalleled transparency and accessibility. However, they also raise official languages concerns.

The volume and nature of the information and documents made available in an open government should, in keeping with the spirit of the Act, advance the equal status of English and French.

The Government of Canada plays a key role in promoting an open and inclusive government that fosters the use of both official languages. Federal institutions also have their share of responsibility—making sure that both official languages are at the core of this new approach.

Action plan on open government

The Commissioner noted that *Canada's 2018-2020 National Action Plan on Open Government*, released in December 2018 by the Treasury Board of Canada Secretariat, calls for new technologies to be implemented to improve accessibility and availability of documents in both official languages.

The Action Plan also calls for the establishment of an independent National Advisory Council on Poverty to provide advice to the Minister of Families, Children and Social Development. The Council would be representative of Canada's diversity in terms of gender, ethnicity, regions, Indigenous people and official languages.

Canada is co-chairing the international Open Government Partnership initiative from October 2018 to September 2019. With its three priorities of inclusion, participation and impact, Canada has an unprecedented opportunity to show the world its leadership in official languages and open government by:

- working with Open Government Partnership members to ensure that all Partnership events in Canada and all documents provided to participants are bilingual;
- adding the topic of official languages to the agenda of the Partnership's May 2019 global summit in Ottawa, which will be a prime opportunity for Canada to make the connection between open government and the 50th anniversary of the Act; and
- incorporating official languages into its international open government strategy.

Service quality in the digital era

In this technology-driven era, federal institutions must continue to improve their services in both official languages, which is an essential ingredient of quality service. Although telephone and in-person service still play an important role in service delivery, information is increasingly becoming available and being provided on-line using a variety of platforms (e.g., websites, mobile applications, on-line chats) and social media (e.g., Twitter, Facebook, LinkedIn), making it imperative to ensure that the choice of technology platform does not affect the quality or equality of services in both official languages. Numerous complaints have been filed with the Office of the Commissioner about this new state of affairs.

Public safety in both official languages

Since May 2018, 60 complaints have been filed against the Canadian Radio-television and Telecommunications Commission, Public Safety Canada and Environment and Climate Change Canada regarding the National Public Alerting System. During the public testing on May 9, 2018, when emergency alerts were sent out to mobile devices across eight provinces and two territories, the alerts were broadcast only in English, although their titles were in both official languages. Similar problems were reported during the second test alert run on November 28, 2018. Complaints were also filed following the tornadoes that struck the Ottawa–Gatineau area on September 21, 2018.

The Act states that federal institutions have a duty to ensure that communications and services related to the health, safety or security of the public are in both official languages. In a situation involving an imminent or immediate threat, emergency alerts sent out in only one official language or unintelligible in English or French could put Canadians' safety at risk. The alerting system is a national warning system; therefore, Canadians across the country expect all levels of government involved to work together to ensure that their health, safety and security are always taken into account when emergency alerts are sent out and that the alerts are always sent out in both official languages. The Commissioner shares those expectations. When it comes to the public's health, safety and security, compromise is not an option.

Official languages governance

The shortcomings in the current official languages governance structure within the federal government are cause for serious concern. Better coordination is needed, along with accountability and monitoring mechanisms, to ensure greater accountability by federal institutions that fail to comply with the Act and greater transparency in general. At present, self-assessment is the only accountability mechanism there is for federal institutions. Reading these self-assessments, some of which seem to be couched in vague bureaucratese, sometimes gives the impression that either federal institutions are not reporting all of their compliance issues or they do not have the tools or expertise they need to identify their compliance issues. Either way, true transparency suffers. Since early 2010, there has been no central agency responsible for coordinating the federal government's official languages commitment. Apart from the Office of the Commissioner, which is an independent agent of Parliament, no other federal institution has general jurisdiction over monitoring official languages issues.

More support from the Treasury Board of Canada Secretariat

All of the players at the table must be active supporters and participants in order to achieve the Act's objectives and advance official languages. The Commissioner therefore urges the Treasury Board Secretariat to increase its involvement by providing ongoing guidance to federal institutions—and especially to newly created ones that are still unfamiliar with their language obligations—to help them fulfill the government's official languages commitment. The following are clear examples that the need to review and enhance official languages governance, including planning, support and monitoring, is not new.

In June 2010, the Canadian Museum of Immigration at Pier 21 became a national museum and thus part of the federal government. As Crown corporations, national museums must take into account the government's priorities and policy objectives on such subjects as official languages and employment equity. More than six months after it was designated as a national museum, however, the institution had still not received the anticipated guidance or direction from the Treasury Board Secretariat concerning its new official languages obligations regarding issues such as active offer and communications with and services to the public.

More recently, complaints have been filed against the Canada Infrastructure Bank, a new institution that was established in Toronto on June 22, 2017, about a lack of service to the public in both official languages. Canadians would have been better served by this new institution if it had received closer guidance from the Treasury Board Secretariat.

It would appear that, too often, the support provided by this central agency is passive, limited solely to the availability of its official languages policies. The Commissioner urges the Treasury Board Secretariat to play a more active role in helping federal institutions meet their official languages obligations, especially new federal institutions, so that it can meet its own obligations under the Act. Under section 46 of the Act, the Secretariat is responsible for the general direction and coordination of the policies and programs of the Government of Canada relating to the implementation of parts IV, V and VI in all federal institutions.

RECOMMENDATION 2

The Commissioner of Official Languages recommends that, before the end of fiscal year 2019–2020, the Prime Minister clarify official languages roles and responsibilities in the federal government, taking into account the following five principles in order to ensure an effective official languages governance structure:

- Establish clear direction and leadership at the most senior levels of the federal government.
- Establish a consistent accountability framework.
- Make official languages a top priority and a key aspect of government planning and activities.
- Ensure effective stewardship of official languages.
- Address setbacks while ensuring ongoing progress toward the substantive equality of official languages.

With regard to governance, the Act identifies the Treasury Board as being responsible for the general direction and coordination of the policies and programs of the Government of Canada relating to the implementation of parts IV, V and VI. The Minister of Canadian Heritage is identified as being responsible for encouraging and promoting a coordinated approach to the implementation of Part VII. This legislative structure raises various issues, especially for a statute that requires horizontal application to achieve its objectives.

Because a variety of models can be used to help create a strong legislative structure, it would be difficult to suggest a single solution. Nonetheless, the Commissioner believes that effective governance must be based on clear principles. He is therefore proposing five principles that could help the government in its analysis of a new official languages governance structure:

- Establish clear direction and leadership at the most senior levels of the federal government.
- Establish a consistent accountability framework.
- Make official languages a top priority and a key aspect of government planning and activities.
- Ensure effective stewardship of official languages.
- Address setbacks while ensuring ongoing progress toward the substantive equality of official languages.

Official Languages Maturity Model for federal institutions

Launched in 2019 to coincide with the 50th anniversary of the Act and the review to modernize the Act, the Office of the Commissioner's Official Languages Maturity Model is a modern approach that uses an on-line tool to track official languages integration within federal institutions in a more horizontal and comprehensive manner. Although similar maturity models have been used in other areas, this is the first known instance of the tool's being used for official languages.

Developed by the Office of the Commissioner in consultation with federal institutions, the Official Languages Maturity Model is designed to help institutions determine to what extent official languages are integrated within organizational disciplines such as strategic and operational



planning, human resource practices and service delivery. Federal institutions that use the tool will be better able to assess their strengths and weaknesses and identify areas that need improvement. Once the assessment has been made, the institution will have to take specific and targeted measures to make progress. In other words, the maturity model provides federal institutions with a roadmap for continuous improvement.

Using the Official Languages Maturity Model, federal institutions and the people who work within them will all have a common framework and share a common vision. All federal institutions will be able to use it to examine their processes, make their own diagnostic assessments and monitor their progress. Each year, the Office of the Commissioner will validate the self-assessment results of a selected number of institutions. At the end of each three- to five-year cycle, the data will give the Office of the Commissioner an overview of the state of official languages in the Government of Canada.

The Official Languages Maturity Model is an opportunity to highlight best practices, reward strong leadership, gain a better understanding of organizational issues and target effective interventions. It also gives the government another way to gather effective data on official languages and hold federal institutions accountable.

Chapter 3

ACTION PLAN FOR OFFICIAL LANGUAGES

The very first action plan for official languages was launched in 2003, in the wake of the federal government's formal commitment to make the promotion of Canada's linguistic duality one of the priorities of its mandate, both within the federal administration and in Canadian society in general, and to find the means to do that. This action plan is the only one that included a component that focused on changing the organizational culture in the public service. Successive governments have issued three subsequent action plans over the past 15 years, allocating funding and outlining initiatives to support issues like the development of official language communities.

The Commissioner applauds the federal government's most recent action plan, which testifies to its renewed commitment to official languages. He also wishes to underscore the importance of a coordinated, open and transparent approach to implementing the various measures in the action plan. And he wants the government to employ more ways to promote linguistic duality which, combined with the measures and initiatives contained in the current action plan, will have a tangible and meaningful impact on the vitality of official language communities.

The first action plan

The 2003–2008 action plan for official languages, titled *The Next Act: New Momentum for Canada's Linguistic Duality*, contained a total of \$1.9 billion in investments over five years in three priority areas: education, the development of official language communities, and the public service. For example, funding was allocated for an ambitious objective to double the proportion of 15- to 19-year-olds who can speak their second official language in 10 years. Funding was also allocated for the development of official language communities in areas such as health care and immigration and for enhancing the organizational culture in the public service. Perhaps more important than the funding itself, this first action plan contained an unprecedented accountability framework. The Official Languages Accountability and Coordination Framework gave the President of the Queen's Privy Council and Minister of Intergovernmental Affairs responsibility for coordinating the action plan and described enforcement procedures, roles and responsibilities, policy coordination mechanisms and a common communication strategy for all activities. Unfortunately, this type of framework was not included in subsequent action plans.

Origin of the action plan

In its January 2001 Speech from the Throne, the Government of Canada made a formal commitment to make the promotion of Canada's linguistic duality one of the priorities of its mandate. The then Prime Minister asked the President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs to coordinate the government's official languages policy, to chair meetings of interested ministers and to consider strong new measures that would continue to ensure the vitality of official language minority communities and to ensure that Canada's official languages were better reflected in the culture of the federal public service. This led to the first action plan for official languages.

The next two

The *Roadmap for Canada's Linguistic Duality 2008-2013: Acting for the Future* committed a total of \$2.2 billion in investments to encourage the participation of Canadians in linguistic duality and to support official language communities. This federal strategy targeted five priority sectors: health, justice, immigration, economic development, and arts and culture.

However, this roadmap did not include an accountability framework or any initiatives for the public service, nor did it provide any targets to guide federal institutions in their actions.

The *Roadmap for Canada's Official Languages 2013-2018: Education, Immigration, Communities* renewed the government's investment of \$2.2 billion over five years. However, in addition to not including monies for research and cutting back significantly on investments in education, this roadmap marked the end of funding for the Canada School of Public Service's pilot project that extended access to its language training and testing to university students wanting to attain the language proficiency needed to enter the public service.

The current action plan

The *Action Plan for Official Languages 2018–2023: Investing in Our Future*, released in March 2018, added \$500 million in new funds, bringing the total investment to \$2.7 billion over five years, the most ever earmarked for official languages support and promotion. The plan contains 15 new measures grouped under three pillars: strengthening our communities; strengthening access to services; and promoting a bilingual Canada. However, it still does not include an accountability framework or identify a central authority responsible for effectively coordinating government actions.

Successes

The government said that it developed the current action plan based on the results of its 2016 cross-Canada consultations. This could explain the new investments directly related to the specific needs of official language communities. The Commissioner applauds this approach and stresses the importance of the government's being open and flexible with regard to the unique challenges facing each official language community. He was also pleased to see the increased core funding for organizations that serve official language communities, and to hear about the decision by the Minister of Tourism, Official Languages and La Francophonie to increase funding for those organizations by 20% during the first year of implementation of the 2018–2023 Action Plan. This funding provides vital support for organizations that have been faithfully serving their communities for a long time, despite challenging financial circumstances.

The creation of a dedicated fund for Quebec's English-speaking communities is also noteworthy. These communities are in a very different situation than French-speaking communities outside Quebec, and they have their own unique priorities. It was time for the federal government to take those facts into account in designing initiatives to support the vitality of official language communities.

The Commissioner was also happy to see that funding for early childhood development had been reinstated in the current action plan. Early childhood development is the beginning of a continuum in education and is therefore crucial for ensuring the development of official language communities, and the lack of investments earmarked for early childhood development in the 2013–2018 Roadmap—despite an acute shortage of resources in that area everywhere outside Quebec—hampered the communities' efforts to strengthen the transmission of language in preschool-aged children. The new investments that were announced, coupled with the funding allocated under the *Multilateral Early Learning and Child Care Framework*, are a welcome change.

Challenges

Community stakeholders are eagerly waiting to see how the funding in the 2018–2023 Action Plan will be distributed and how funded initiatives will produce tangible results for official language communities. The terms and conditions of funding and programs are also very important. The federal government needs to take a flexible and transparent approach in setting the terms and conditions for programs, especially with regard to the application process, service standards and accountability mechanisms. The government also needs to maintain a free and open dialogue with official language communities where funding is concerned.

Even though the current action plan contains many encouraging investments, some organizations have raised concerns about the length of time it takes to grant funding. The Commissioner urges the federal government to disburse the amounts earmarked for official language communities as quickly as possible so as to not hinder their development.

Accountability

Since 2003, a limited number of federal government departments have been identified in the various action plans and roadmaps announcing significant federal investments in official languages. Although this funding is vital, it does not represent the entirety of the federal government's support for official languages. The Commissioner is therefore calling on the government to develop and publish an accountability framework with strict results assessment mechanisms for federal institutions that play a role in the 2018–2023 Action Plan.

It is important to note that federal institutions are required to consider the specific needs of official language communities when developing and delivering their regular programs and not just when implementing the initiatives and programs in the government's official languages roadmaps or action plans.

More than funding

The 2018–2023 Action Plan is a testament to the federal government's commitment to the development and vitality of official language communities. The substantial financial investments will help address many of the needs and issues identified by the communities. However, the government's commitment cannot stop at the initiatives contained in the plan, which involve less than a dozen federal institutions. Part VII of the Act states that all federal institutions must take positive measures to fulfill that commitment. And even though positive measures do not have to take the form of financial support, institutions must take the government's commitment into account when developing and implementing their programs and policies.

The Office of the Commissioner will continue to closely monitor how federal institutions are meeting their obligations under Part VII of the Act.

Concerns about federal-provincial-territorial agreements

Provincial, territorial and community stakeholders are deeply concerned about the federal government's lack of clarity when it comes to who plays what role in official languages issues. During consultations on the modernization of the Act, participants frequently mentioned ambiguities in federal-provincial-territorial agreements with respect to transparency, accountability and language clauses. Official language communities also stressed how important it is for these agreements to take their needs into account. Many cited the example of the Official Languages in Education Program, which has also been the subject of complaints to the Office of the Commissioner. Under this program, the government provides financial support for minority-language education and second-language instruction through cooperation agreements with the provinces and territories.

Implementation of the 2018–2023 Action Plan is one of the Office of the Commissioner's three priorities between now and 2025. The Commissioner will therefore be paying close attention to this file and will intervene, if necessary, with the federal institutions involved in order to ensure that the government remains accountable and achieves its objectives.

Strategic agreement on education

The Commissioner commends the efforts of official language communities, which found a novel way to assert their education needs when renegotiating the Official Languages in Education Program: through the first-ever strategic agreement on education in July 2017. The agreement was signed by Canadian Heritage and a number of organizations representing official language communities, including the Fédération nationale des conseils scolaires francophones, the Fédération des communautés francophones et acadienne du Canada and the Commission nationale des parents francophones. Under the agreement, the federal government has to advocate for greater consultation with official language communities when negotiating a new memorandum of understanding on funding with the provinces. However, the provinces are in no way bound by this agreement.

Although these demands are necessary and important, they do not mean anything if they do not succeed in securing the cooperation of the parties ultimately responsible for implementing the agreements—the provinces.

RECOMMENDATION 3

The Commissioner of Official Languages recommends that, when entering into agreements that directly concern official language minority communities, such as those under the *Protocol for Agreements for Minority-Language Education and Second-Language Instruction*, the Minister of Official Languages:

- consider adding specific clauses that require the provinces and territories to consult with official language minority communities and to take their needs into account; and
- clarify these language clauses and include transparency mechanisms that will enable the federal government to measure compliance by the provinces and territories.

RECOMMENDATION 4

For the proposed measures and initiatives in the *Action Plan for Official Languages 2018–2023: Investing in Our Future* to have a tangible and meaningful impact on the development of official language minority communities, the Commissioner of Official Languages recommends that the Minister of Official Languages:

- develop and publish an accountability framework by June 2020 that includes strict results assessment mechanisms for federal institutions that play a role in the action plan; and
- take a transparent approach in setting the terms and conditions for the investments set out in the action plan.

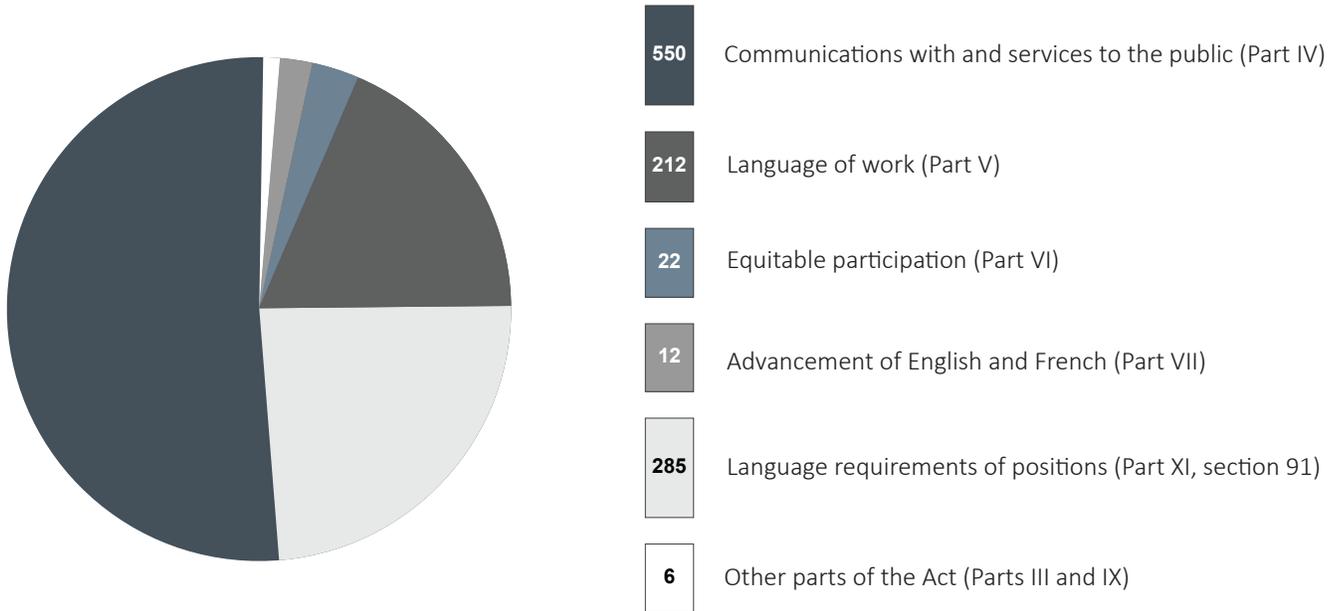
Chapter 4

STATISTICS ON ADMISSIBLE COMPLAINTS IN 2018–2019

This chapter provides an overview of admissible complaints processed by the Office of the Commissioner in 2018–2019.

Figure 1

ADMISSIBLE COMPLAINTS IN 2018–2019
BY PART/SECTION OF THE *OFFICIAL LANGUAGES ACT*



Total: 1,087

Table 1

ADMISSIBLE COMPLAINTS IN 2018–2019 BY PROVINCE AND TERRITORY
AND BY PART/SECTION OF THE *OFFICIAL LANGUAGES ACT*

LOCATION OF INCIDENT	SERVICE TO THE PUBLIC (PART IV)	LANGUAGE OF WORK (PART V)	EQUITABLE PARTICIPATION (PART VI)	ADVANCEMENT OF ENGLISH AND FRENCH (PART VII)	LANGUAGE REQUIREMENTS (PART XI, SECTION 91)	OTHER PARTS OR SECTIONS*	TOTAL
NEWFOUNDLAND AND LABRADOR	21	0	0	1	2	0	24
PRINCE EDWARD ISLAND	5	2	0	0	0	0	7
NOVA SCOTIA	18	2	0	0	2	0	22
NEW BRUNSWICK	41	19	4	1	0	0	65
QUEBEC	85	62	4	1	11	3	166
NATIONAL CAPITAL REGION (QUEBEC)	50	34	2	0	70	0	156
NATIONAL CAPITAL REGION (ONTARIO)	86	52	5	7	184	2	336
ONTARIO	108	34	5	0	5	1	153
MANITOBA	8	2	1	0	0	0	11
SASKATCHEWAN	11	0	0	1	2	0	14
ALBERTA	44	3	0	0	9	0	56
BRITISH COLUMBIA	23	0	1	1	0	0	25
YUKON	4	1	0	0	0	0	5
NORTHWEST TERRITORIES	7	0	0	0	0	0	7
NUNAVUT	0	0	0	0	0	0	0
OUTSIDE CANADA	39	1	0	0	0	0	40
Total	550	212	22	12	285	6	1,087

*This category contains the complaints that were filed under Part III (Administration of Justice) and Part IX (Commissioner of Official Languages).

Table 2

ADMISSIBLE COMPLAINTS OVER 10 YEARS (2009–2010 TO 2018–2019)

BY PROVINCE AND TERRITORY

LOCATION OF INCIDENT	2009 2010	2010 2011	2011 2012	2012 2013	2013 2014	2014 2015	2015 2016	2016 2017	2017 2018	2018 2019
NEWFOUNDLAND AND LABRADOR	11	6	11	8	18	12	14	28	16	24
PRINCE EDWARD ISLAND	17	7	3	3	4	4	2	5	2	7
NOVA SCOTIA	37	52	33	9	8	13	16	10	20	22
NEW BRUNSWICK	43	35	36	24	31	42	41	87	51	65
QUEBEC	68	505	55	70	59	56	68	148	129	166
NATIONAL CAPITAL REGION (QUEBEC)	93	57	49	49	37	64	121	92	96	156
NATIONAL CAPITAL REGION (ONTARIO)	141	209	200	152	182	193	351	429	307	336
ONTARIO	956	51	77	52	75	78	58	106	124	153
MANITOBA	27	10	25	20	20	13	14	13	18	11
SASKATCHEWAN	8	3	2	2	8	16	4	6	25	14
ALBERTA	25	11	12	9	9	28	8	43	49	56
BRITISH COLUMBIA	38	23	7	8	19	18	16	25	33	25
YUKON	1	3	0	0	0	1	1	1	1	5
NORTHWEST TERRITORIES	2	0	1	0	1	0	2	2	4	7
NUNAVUT	0	1	0	0	0	0	1	0	0	0
OUTSIDE CANADA	10	8	7	9	5	12	8	23	19	40
Total	1,477	981	518	415	476	550	725	1,018	894	1,087

Table 3

ADMISSIBLE COMPLAINTS OVER 10 YEARS

BY PART/SECTION OF THE *OFFICIAL LANGUAGES ACT* (2009–2010 TO 2018–2019)

	2009 2010	2010 2011	2011 2012	2012 2013	2013 2014	2014 2015	2015 2016	2016 2017	2017 2018	2018 2019
SERVICE TO THE PUBLIC (PART IV)	451	298	341	252	282	320	344	565	457	550
LANGUAGE OF WORK (PART V)	71	512	79	83	103	126	125	183	138	212
EQUITABLE PARTICIPATION (PART VI)	11	6	1	6	13	11	24	34	16	22
ADVANCEMENT OF ENGLISH AND FRENCH (PART VII)	904	109	45	39	30	37	62	32	50	12
LANGUAGE REQUIREMENTS (PART XI, SECTION 91)	33	51	42	30	44	45	156	192	222	285
OTHER PARTS OR SECTIONS*	7	5	10	5	4	11	14	12	11	6
Total	1,477	981	518	415	476	550	725	1,018	894	1,087

*This category contains the complaints that were filed under Part III (Administration of Justice) and Part IX (Commissioner of Official Languages).

A final word

AFTER 50 YEARS OF OFFICIAL LANGUAGES

Numbers aside, it's important to take stock of where we are as a society, 50 years after the first Act was passed. Unfortunately, when we look in the rear-view mirror to see how far we've come in terms of official languages, we realize that we have not come as far as we'd hoped. After five decades, the Commissioner should not have to be repeating the same things his predecessors said. We should be further along than this!

After 50 years of official languages:

- travelling in the official language of your choice is still far too often difficult;
- being greeted and served in the official language of your choice when communicating with federal institutions is still a long way from being routine;
- working or being supervised in the official language of your choice in regions designated as bilingual for language-of-work purposes is still not a given, even though it's an individual right—situations can change overnight with the arrival of a new supervisor or deputy minister;
- exercising the right to vote in the official language of your choice is still often difficult, if not impossible, even though it's a basic right; and
- being consulted, heard and taken into consideration as official language communities when the government establishes new policies or when it creates, modifies or eliminates programs, is still not common practice.

Of course, much progress has been made since the first Act was passed in 1969, but can we truly say that Parliament's vision has been achieved? What does the future hold if we continue to do the same things, make the same decisions and have the same reflexes? Should we expect anything other than limited progress in terms of official languages? Will there be visionaries and advocates in the federal government and in Canadian society who will support and promote official languages for the next 50 years?

There is still a tremendous amount of work to be done, both individually and collectively, to ensure that official languages rights and obligations are respected, understood and observed by everyone. An important part of this is a thorough modernization of the Act to make it relevant, dynamic and strong. The modernized Act will continue to be the foundation for language rights and obligations and should therefore be able to see us through the next 50 years.

Regardless of what the revamped Act looks like, the government in power will have to be a strong and decisive leader when it comes to the importance of official languages, the protection of language rights and the value of Canada's linguistic duality. Above all, government officials will have to have the political will and fortitude needed to ensure that the Act is fully implemented.

Throughout this past year, official language communities have come together in a show of strength, resolve and mutual support. Young people are continuing to inspire us with their openness and their innovative spirit and perspective. Hopefully, over the next 50 years, our political leaders will guide and inspire a country that is proud to be bilingual. Those leaders will have to support, promote and reaffirm linguistic duality as a Canadian value both in the federal public service and in Canadian society.