

Office of the
Commissioner of
Official Languages



Commissariat
aux langues
officielles

A large, colorful graphic of the year '1969' in a bold, sans-serif font. The numbers are layered and semi-transparent, with colors including teal, green, yellow, orange, brown, pink, and red. The '1' is teal, the first '9' is green, the '6' is yellow, and the second '9' is pink. The numbers are set against a white background with some light blue and yellow speckling around the '1' and the bottom of the '9's.

1969

MODERNIZING *THE OFFICIAL LANGUAGES ACT*

The Commissioner of Official Languages' Recommendations
for an Act that is Relevant, Dynamic and Strong

MAY 2019

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MESSAGE FROM THE COMMISSIONER OF OFFICIAL LANGUAGES

Our official languages form the foundation of Canada's diverse and inclusive society. They are central to our identity, as evidenced by the languages of our institutions, our democracy, our schools, our universities, our public spaces and our business community.

The *Official Languages Act* is celebrating its golden jubilee in 2019. The Act has helped us achieve many things over the past 50 years: greater representation of our two language communities within the federal government; improved access to federal services in both official languages; the advancement of English and French in Canadian society; and support and assistance for the development of official language minority communities. However, challenges are springing up from everywhere, and the Act as we know it is no longer up to the task.

A true modernization of the Act is needed so that official languages can thrive in today's Canada and in our country's future. We need a modernized Act that fosters the vitality of linguistic minorities and guides federal institutions in complying with their duties to the Canadian public.

This position paper outlines many findings and presents my recommendations for an Act that is relevant, dynamic and strong. It is the result of a lengthy process of consultation, discussion and review by my office,

supplemented by decades of experience in overseeing the Act, and it reflects my team's ongoing commitment to the promotion and recognition of both official languages. I would like to extend my sincere thanks to all those who participated in our national consultation, which had a significant impact on my vision for a modernized Act.

If my recommendations are followed, modernizing the Act will have a tangible impact on the status and use of English and French in Canada. The recommendations are intended to guide Parliament in passing legislation that will help achieve its objectives, which are paramount to our social contract. My vision for modernization, which is based on the principles of a relevant, dynamic and strong act, is that the Commissioner needs more tools to be able to carry out its mandate more effectively. Ultimately, however, it is still up to federal institutions to meet their obligations.

Indeed, my vision for modernizing the Act extends well beyond legislative and regulatory changes. In addition to a modernized Act, leadership in official languages and a cultural shift are required. I am calling on everyone to take the necessary action to ensure that linguistic duality can thrive throughout Canada.

A handwritten signature in black ink, reading 'R. Th  berge'.

Raymond Th  berge



EXECUTIVE SUMMARY

It has been 50 years since the first *Official Languages Act* was passed. While we celebrate the progress and many successes achieved since 1969, it is a good time to conduct an in-depth review of official languages needs and think about whether the tools offered by the Act meet those needs effectively.

The Commissioner's repeated calls to modernize the Act have been echoed across Canada by both language groups, highlighting the urgent need to review the current legislative framework and draft new regulations to meet the expectations and reflect the realities of all Canadians.

The Commissioner is therefore recommending a holistic approach to modernizing the Act that goes well beyond legislative and regulatory change. To create a cultural shift so that linguistic duality can reach its full potential across Canada, he has made 18 recommendations under the three pillars of his vision for an Act that is relevant, dynamic, and strong.

These recommendations are based on the experience and expertise of the Office of the Commissioner of Official Languages dating back to the introduction of the first Act, coupled with a range of studies and analyses, as well as months of public consultations with the Canadian public.

During the consultations, many participants said the modernized Act should be designed to be applied as a consistent and seamless whole. The Commissioner agrees with this approach and has sought to make it a priority, both through his recommendations and, more generally, through this document.

The following pages propose legislative changes and new regulatory frameworks in the areas of justice, communications with and services to the public, language of work in the federal public service, governance, compliance, advancement of Canada's two official languages, and the vitality and development of official language minority communities.

“After all the work that has been done over the past half-century, I believe we need to re-examine our social contract. Official languages are everyone’s business.”¹

Raymond Th  berge, *Commissioner of Official Languages (2018 – present)*



OVERVIEW OF THE CHANGES THAT HAVE SHAPED THE OFFICIAL LANGUAGES ACT

The first *Official Languages Act* was passed unanimously in July 1969 and came into effect on September 7 of the same year. A new Act was passed 19 years later, in July 1988, and came into effect on September 15 of that year. Aside from an amendment to Part VII in 2005, the Act has not been reviewed in depth since 1988.

After five decades, we can safely say that linguistic duality is part of Canada’s national narrative and that the Act has been instrumental in its growth. However, we should note that linguistic duality as a Canadian value has not always been something on which Canadians have agreed.

The 1969 and 1988 acts addressed the specific social contexts and realities of their times. In fact, when drafting the 1969 Act, the legislators’ objective 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.² By making English and French the official languages of Canada, the then government endorsed the spirit of the recommendations made by the Royal Commission on Bilingualism and Biculturalism.³ The right to be heard before the federal courts⁴ and to communicate with and obtain services from the federal government in either language⁵ were enshrined in the first Act.

Language-related resolutions, policies and regulatory measures followed, including the *Resolution on Official Languages in the Public Service*,⁶ which was adopted by Parliament in 1973 to ensure equal access to federal government positions and to enable public servants to work in the official language of their choice; the *Consumer Packaging and Labelling Regulations*,⁷ which came into effect in 1974 and stipulated that certain product packaging information to be in both English and French; and the 1977 government policy paper entitled

A National Understanding,⁸ which explained the historical reasons for Canada’s language policy and presented an overview of its application. In 1982, the *Canadian Charter of Rights and Freedoms* constitutionalized not only the equal status of both official languages, but also language rights, including the educational rights for official language minority communities.⁹ Collectively, these measures sought to put an end to over a century’s worth of debate and ambiguity about whether Canada was an English-speaking country with a French-speaking Quebec or a bilingual country big enough for both official languages to thrive.¹⁰

The enactment of the Act in 1969 and the years that followed resulted in significant advancements in terms of official languages and Canadian identity, despite the fact that the scope of the Act was still relatively limited and ensured only the public’s right to communicate with and receive services from the federal government in either official language.¹¹

It was against this backdrop that the 1988 *Official Languages Act* gave new momentum to linguistic duality by defining language-of-work rights and recognizing the importance of advancing English and French and enhancing the vitality of official language minority communities. In fact, the addition of Part VII to the Act was partially an attempt to address the demographic challenges experienced by these communities¹² and to support them after the tabling of the 1987 Meech Lake Accord, which would have amended the Constitution and recognized Quebec as a “distinct society” within Canada.¹³ By being an extension of the constitutional language guarantees enshrined in the 1982 *Canadian Charter of Rights and Freedoms* and having quasi-constitutional status,¹⁴ the 1988 Act greatly expanded the scope of linguistic duality.

The last major amendments to the Act were made in 2005, when the duty to implement the commitments set out in Part VII of the Act was added, making this part enforceable.¹⁵ This meant that federal institutions now had specific obligations under Part VII of the Act and that an application could be made for a court remedy if these obligations were not met. As a result of these amendments, federal institutions now have to take positive measures to support the development of official language minority communities and to foster the full recognition and use of both official languages in Canadian society.

This legislative process has consolidated and codified the legal foundation on which Canada's linguistic duality rests. The challenge now is to ensure complete implementation of the Act to give it full effect. Considering the Office of the Commissioner of Official Languages' experience and the current context, it is clear that this cannot be accomplished without making major amendments and structural changes to the Act.



WHY MODERNIZE THE *OFFICIAL LANGUAGES ACT*?

Even today, people throughout the country are still asking questions about the importance of linguistic duality as a Canadian value. Despite the constitutional status of English and French and the major language rights advances made before the courts over the years, the perpetuity of Canada's official languages is at the mercy of the changing priorities of whichever government is in power. That is why modernizing the Act is an opportunity to breathe new life into linguistic duality, both to preserve its gains and to ensure its continued growth.

On the Act's 40th anniversary in 2009, then Commissioner of Official Languages Graham Fraser was already noticing that the Act had reached a plateau in terms of its implementation. He described how institutional bilingualism within the federal government had made little progress in the preceding years:

Federal services are not always automatically offered in both languages everywhere in designated bilingual offices, and the situation regarding language of work is stagnating. What is more, the problem of chronic under-representation of Anglophones in the federal public service in Quebec persists. All-too-frequent cutbacks and a continuing lack of leadership are causes for concern.¹⁶

These words are still as relevant today as they were a decade ago. This inertia has also had other serious consequences, particularly for the development of official language minority communities.

Although there has been significant progress, a number of recurring issues continue to impede the successful achievement of the Act's objectives. After half a century, the Office of the Commissioner has found federal institutions generally take a fragmented approach in applying the provisions of the Act. There are several reasons for this, including ambiguity and the difficulties that arise in trying to apply certain provisions, such as those based on geographic divisions that date back nearly 40 years. Beyond these considerations, the Act could include new provisions to address issues that were missed by the drafters of the 1988 Act.

The current Commissioner, Raymond Th  berge, believes that modernizing the Act is crucial in light of the many changes that have shaped Canadian society since the last major review in the late 1980s—changes such as demographic and identity shifts, as well as the growing importance of new technologies in government communications and service delivery. These changes alone demonstrate 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.

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 minority communities. Canada needs a modern Act that reflects the reality of present and future generations, and this can be achieved only through legislative and regulatory changes.



PROGRESS MADE SINCE THE RECOMMENDATIONS OF THE 2016–2017 ANNUAL REPORT

A lot of the groundwork has been laid since 2017 in terms of discussions and consultations on modernizing the now 50-year-old Act, not only by the Office of the Commissioner but also by a variety of official languages stakeholders.

In her 2016–2017 annual report, Interim Commissioner of Official Languages Ghislaine Saikaley recommended that the government “assess the relevance of updating the Act, with a view to establishing a clear position in 2019.”¹⁷ In the spring of 2017, the Standing Senate Committee on Official Languages began a five-part study on modernizing the Act, with plans to hear evidence from young Canadians, official language minority communities, legal experts, federal institutions, and stakeholders who have witnessed the evolution of the Act.¹⁸ The House of Commons Standing Committee on Official Languages has also been focusing on the issue over the past two years, beginning its study on the modernization of the Act¹⁹ and making various recommendations for the government on this issue in other studies.²⁰

In the summer of 2017, the Office of the Commissioner formed an internal working committee on modernizing the Act, and the issue soon became one of the organization’s top priorities. In the fall of 2017, the Office of the Commissioner began a series of informal discussions with official language minority community leaders and other key stakeholders to update them on its efforts and explore issues regarding possible changes to the Act. In the spring of 2018, it conducted an on-line public survey and received more than 4,200 responses from Canadians in every province and territory. It also

conducted formal consultations across Canada with individuals and groups who have specific experience in official languages. After the last formal meeting in late summer 2018, the Office of the Commissioner had met with more than 300 people and received several written submissions. The collaborative spirit that emerged from the public and formal consultations did much to shape the Commissioner’s vision for a modernized Act, and the ensuing recommendations reflect many of the participants’ suggestions.

In addition to the Office of the Commissioner’s efforts, many individuals and organizations have been asking for the Act to be changed to better reflect the future of linguistic duality in Canada and the new realities of Canadian society, especially those of official language minority communities. The Standing Senate Committee on Official Languages has received many detailed briefs and proposals,²¹ from which a clear consensus has emerged about the Act’s flaws and about possible amendments.

On June 6, 2018, Prime Minister Justin Trudeau officially announced that the Government of Canada would modernize the Act,²² a strong and direct response to the Interim Commissioner’s 2017 recommendation. On March 11, 2019, the Minister of Tourism, Official Languages and La Francophonie announced the launch of her review to modernize the Act.²³ As the government begins its contemplation on how to amend the Act, the Office of the Commissioner is lending its unique outlook to the public debate, a perspective developed over nearly half a century of experience in ensuring compliance with the Act.



VISION OF THE COMMISSIONER OF OFFICIAL LANGUAGES

As Canadian society looks to the future, the Act must do likewise. The last time the Act underwent a major revision, there was no Internet or social media, and none of today's younger generations had been born yet. Today's youth are eager to learn about each other's culture, and they dream of a country where living in English and French is the norm. They want the federal government to commit to long-term leadership in making this dream come true. There is no denying that the 1988 Act has aged and that the younger generations do not identify with it.

During the consultations on modernizing the Act conducted by the Office of the Commissioner in the spring and summer of 2018, many stakeholders said that the modernized Act would need to be designed in such a way as to be applied as a whole. They noted that a coordinated application of all parts of the Act would have a positive impact on every obligation contained therein and most especially on the duty to take positive measures to enhance the vitality of official language minority communities.

To make this vision a reality, the modernized Act must recognize that its parts are interdependent—that there are, for example, intrinsic links between the representation for 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. Federal institutions whose workforces reflect the presence of both language groups, whose positions are staffed with proper language requirements, and whose culture promotes the equality of English and French are more likely to communicate with and provide services to the public in both official languages, to support official language minority communities with real action, and to advance linguistic duality in Canadian society.

Taken together, the recommendations made by the Commissioner in this document are intended to result in an Act that is structurally logical and clearly consistent throughout all of its parts. The approach described in the following pages, and the ensuing recommendations, stem from the three pillars on which the Commissioner's vision is based: having an Act that is relevant, dynamic, and strong.

The changes the Commissioner is proposing were not developed in isolation. On the contrary, most are designed to have cross-effects throughout the Act. If the current legislation is not changed so that it can be implemented holistically, and if appropriate effective regulatory tools are not developed to support it, then the *Official Languages Act* will remain static and become increasingly outdated.



AN ACT THAT IS RELEVANT

For the Commissioner, the main reason to modernize the Act is to make it current and relevant. The modernized Act should, in every aspect, reflect both the current needs of Canadian society and the future aspirations of that society to be a country that fully embraces linguistic duality.

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 French, it must clarify the obligations regarding communications with and services to the public and make sure they meet the needs of Canadians; it must update and clarify the rights and obligations regarding language of work within the federal public service; and it must develop a regulatory framework to deliver on its commitments to enhance the vitality of official language minority communities and to foster the full recognition and use of both official languages.

Providing better access to the federal judicial and quasi-judicial systems in both official languages

“[T]he role of federally constituted courts remains vital to the preservation and continued evolution of a legal system composed not only of civil and common law elements, but also characterized by the use of English and French in all regions of the country.”²⁴

Victor Goldbloom, *Commissioner of Official Languages (1991–1999)*

Part III of the Act sets out the language rights and obligations in the administration of justice at the federal level. Federal courts, including quasi-judicial bodies created by Parliament, have obligations regarding the use of English and French in civil proceedings.

Serious flaws have been noted in recent decades. For example, the Act does not guarantee that everyone can be heard and understood in the official language of their choice before the Supreme Court of Canada without the assistance of an interpreter.²⁵ Other shortcomings include the difficulties surrounding the publication of federal court decisions of public interest and importance in both official languages and the problems involved in posting English and French versions of publicly reported decisions simultaneously.

Changes need to be made to this part of the Act must be amended so it can fulfill one of its basic principles: full and equal access to courts in both official languages.²⁶

(1) Ensuring that all Canadians can be heard and understood in the official language of their choice before the Supreme Court of Canada

Section 16 of the Act stipulates that, in civil proceedings before federal courts, the person hearing the case must understand English or French, or both, depending on the language(s) chosen by the parties. However, section 16 also specifically exempts the Supreme Court of Canada from this requirement.

The Commissioner and his predecessors have always maintained that “bilingualism is a fundamental skill for Supreme Court judges.”²⁷ Parliamentarians and other official languages stakeholders have also been saying similar things for years.²⁸

The Act is not concerned with the appointment of Supreme Court justices. Removing this exemption would ensure that anyone who appears before Canada’s highest court can be understood by the judges in the official language of his or her choice without the assistance of an interpreter.

Although this proposal does not completely resolve the problem of appointing bilingual judges to the Supreme Court of Canada, the amendment would improve access to justice for many Canadians in the official language of their choice.

RECOMMENDATION 1:
The Commissioner of Official Languages recommends that the exemption for the Supreme Court of Canada be removed from section 16 of the *Official Languages Act*.

(2) Improving access to federal court decisions of public interest and importance

Final decisions rendered by federal court judges must be filed with the court registry and be made available to the public in both official languages. This step is part of a court process governed by Part III of the Act. However, when decisions are “made available,” they have not yet been “communicated” within the meaning of Part IV of the Act.²⁹

Furthermore, a decision does not necessarily have to be made available to the public simultaneously in both official languages. Section 20 of the Act states that final decisions must in some cases be made available simultaneously in both official languages and in other cases be issued first in one official language and then, as soon as possible, in the other.³⁰

Applying this provision has long been a challenge for federal courts. As far back as 1999, then Commissioner Victor Goldbloom said that operational constraints³¹ made it hard for some courts to meet their section 20 obligations³² and recommended legislative amendments to address the issue.³³ More recently, the Courts Administration Service, which provides services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada, and the Tax Court of Canada, said that insufficient resources and consequent delays make it much harder to meet section 20 requirements.³⁴

Though two decades old, Victor Goldbloom's recommendations are no less relevant today. The federal courts' obligation to make all final decisions available in both official languages is broad in scope, requiring that even factual decisions of no public importance be translated into the other official language. This means that many federal courts must issue bilingual versions of numerous factually bound decisions arising out of unilingual proceedings.³⁵ A review should be conducted of the rationales for requiring these types of decisions to be made available in both official languages.³⁶

This review would help to ensure that rulings or decisions of public importance are made available more quickly in both official languages, and that the funding allocated to federal courts to translate these decisions is more effectively managed.

RECOMMENDATION 2:

The Commissioner of Official Languages recommends that the public's access, in both official languages, to final decisions of public interest and importance issued by federal courts be improved through legislation.

(3) Ensuring that federal court decisions are issued simultaneously in both official languages

Decisions by federal courts are made public, on-line and otherwise, after the judgement is handed down. Unlike the process by which these decisions are "made available," as noted above, this service or communication falls beyond the scope of Part III of the Act³⁷ but within the requirements set out in Part IV.

However, clarification is needed to ensure that courts communicate their decisions to the public simultaneously in both official languages.

This problem has been noted several times in recent years, not only by then Commissioner of Official Languages Graham Fraser in 2016³⁸ but also by the House of Commons Standing Committee on Official Languages in 2017.³⁹

The current difference in interpretation as to whether section 20 or Part IV should be applied to federal court decisions that are posted on-line is a major barrier for Canadians to access the decisions in the official language of their choice because many important rulings end up being available in just one official language.⁴⁰

Therefore, either section 20 or Part IV of the Act must be amended in order to clarify the language obligations.

RECOMMENDATION 3:

The Commissioner of Official Languages recommends that decisions by federal courts and tribunals be required through legislation to be made available simultaneously in both official languages.

Ensuring that communication and service delivery requirements are clear and meet Canadians' needs

“The public’s fundamental right to communicate with and to receive services from federal institutions in either official language is established in section 20 of the Canadian Charter of Rights and Freedoms. Although section 20 of the Charter acknowledges that this right can be exercised by the public, its purpose is mainly remedial, since its primary goal is to enable official language minorities to develop, thrive, strengthen their identity and promote their vitality.”⁴¹

Graham Fraser, *Commissioner of Official Languages (2006–2016)*

In the wake of various past and recent legislative efforts to amend Part IV of the Act and its regulations,⁴² the Commissioner tabled a special report to Parliament in May 2018 on the review of the *Official Languages (Communications with and Services to the Public) Regulations*. Among other serious issues, the report found that the exclusively quantitative definition of “significant demand” had an exclusionary effect on official language minority communities, that the Regulations were applied inconsistently and incoherently, and that they failed to provide details that could facilitate the implementation of active offer.⁴³

The new draft Regulations tabled in Parliament in October 2018 contain key improvements, but there are still shortcomings, such as exclusively quantitative criteria, that had been pointed out in the Commissioner’s special report. Although the new vitality criterion seems to be qualitative at first glance, it is based on minority language education rights, which may be claimed only “where numbers warrant.”⁴⁴ This approach to providing services in both official languages is inconsistent with the vision of an Act whose parts and regulations are designed to fully achieve its purpose.

Modernizing the Act gives the government an opportunity to review some of these shortcomings and make changes that reflect the key role Part IV of the Act plays when Canadians interact with federal institutions. The five

principles outlined in the special report to Parliament⁴⁵ are just as relevant for the government’s broader review of modernizing the Act.

In addition to these concerns, there are two other aspects of Part IV, also noted in the special report to Parliament, that warrant careful consideration and are the focus of specific recommendations. First, the obligations of federal institutions that

serve the travelling public need to be clarified. Second, the scope and substance of the requirement to make an active offer must be defined.

(1) Clarifying the obligations of federal institutions that serve the travelling public

Federal institutions that serve the travelling public are often the first point of contact for visitors to Canada. Unfortunately, some have trouble understanding and appreciating the fact that English and French must be treated equally at all times in their interactions with the public. In his 2010–2011 annual report, then Commissioner of Official Languages Graham Fraser noted that most major Canadian airport authorities had a minimalist interpretation of the Act and continued “to interpret their language obligations in a very narrow way, as if they only applied to the travelling public and not the general public, and as if the Act only applied to the area restricted to travellers but not the rest of the airport.”⁴⁶ This interpretation does not seem to be consistent with the legislative intent seen in the 1988 debates.⁴⁷

The 2010–2011 annual report also contained a recommendation calling for legislative changes;⁴⁸ however, it was never implemented, and the problem remains unresolved.

Modernizing the Act is an opportunity to clarify the wording of section 23 so that federal institutions that serve the travelling public do not confine their obligations to a narrow interpretation of sections 22 and 23.

RECOMMENDATION 4:

The Commissioner of Official Languages recommends that the legislation be amended to clarify the obligations of federal institutions that serve both the travelling public and the general public.

(2) Defining the scope and substance of the active offer obligation

Active offer is one of the keys to effectively applying Part IV of the Act. Added when the new Act was passed in 1988, this obligation requires federal institutions to make “an open invitation to the public to use one of our two official languages . . . when communicating with or receiving a service from the federal government. Active offer includes a bilingual greeting, such as ‘Hello! Bonjour!’, and visual cues, such as signs, that support this invitation.”⁴⁹

During the Office of the Commissioner’s consultations in 2018, participants said that some federal institutions repeatedly failed to make an active offer and that interpretations of the scope of this obligation varied widely from one institution to the next, as did the execution. As a result, federal institutions struggle to provide an active offer routinely and consistently in situations where they are in direct contact with the public.⁵⁰ However, the obligation is vital to advancing the equality of status and use of both official languages.⁵¹ Its importance, especially in the context of linguistic insecurity, was confirmed during the Office of the Commissioner’s 2018 consultations with official language minority communities.

The consultations also showed that the active offer obligation is meaningless unless the quality of the subsequent service is equal in both official languages.

The Commissioner is therefore recommending that the obligation’s scope and substance be clarified by making regulations under section 33 of the Act to supplement the current regulations made under section 32 of the Act.

Proposals to regulate active offer are not new. Commissioner D’Iberville Fortier was already raising the issue as early as 1990, noting that given active offer’s central role, the conditions for its existence should be clearly established, as should the rights of the public and the obligations of the federal government.⁵²

Regulations could include a preamble or interpretive clause stating that active offer is important in terms of progress toward substantive equality and that, when required under Part IV of the Act, it is the first step in providing services of equal quality in both official languages.⁵³

Regulations could also set out clear rules regarding who is required to make an active offer, when it must be made and how to transition from making an active offer to providing the communication or service in the official language chosen by the member of the public. Accountability mechanisms, application principles, guidelines, instructions or policies could also be developed to ensure that this obligation is met.

The Commissioner is of the view that regulations on active offer should include the following:

Who has to make an active offer

Guidance on who is required to make an active offer (e.g., employees in unilingual positions may need to make a verbal active offer in some situations).

When and how to make an active offer

Guidelines on when an active offer must be made and when other visual or technological means may or must be used.⁵⁴

How to transition to a communication or service

Procedures and standards on how to follow the active offer with service in either official language while respecting the principle of substantive equality (e.g., referring the client to a bilingual colleague, developing standards for waiting times).

How to maintain organizational capacity

General rules for federal institutions on how to plan services and organize employees to ensure that they always have the capacity to actively offer services in both official languages, including verbally, where required under the Act.

Where services are required to be provided in both official languages

Rules for informing the public as to where services can be obtained in both official languages (e.g., which offices have language requirements, whom to contact to obtain these services). This is key to effectively meeting the active offer obligation. The information would also be required to be updated regularly.

Promoting available services to official language minority communities

Encouragement for all offices of federal institutions (whether designated as bilingual or unilingual) to promote⁵⁵ the services they provide in both official languages, especially those that meet the specific needs of official language minority communities. The regulations should also encourage offices of federal institutions to provide information on where these services can be obtained in the event that they are not available in the minority official language and to put processes in place to consult and obtain feedback from the communities so that services are provided appropriately.⁵⁶

Ensuring good governance

Reporting and accountability mechanisms.⁵⁷

What principles, guidelines, instructions or policies are required

A requirement for the responsible central agency⁵⁸ to develop application principles, guidelines, instructions or policies to help federal institutions implement all of the obligations set out in the regulations. The regulations could also include an incentive system for federal employees that could help to change their perception of the active offer obligation⁵⁹ and cast it in a more positive light, thus helping to improve both their attitudes and those of their superiors.

Recommendation 5:
The Commissioner of Official Languages recommends that the scope and substance of the obligation to make an active offer be clarified through regulations.

Ensuring that public service language-of-work rights and obligations are relevant and clear

"We must ensure that it becomes easy to use and learn official languages in the workplace. By educating public servants in this way, we are reiterating our commitment to offer services to Canadians in both English and French."⁶⁰

Raymond Th  berge, Commissioner of Official Languages (2018 – present)

In its current form, Part V of the Act grants rights that are subject to specific geographical limitations. Language-of-work obligations for federal institutions are limited to the National Capital Region and to the regions designated as bilingual for language-of-work purposes listed in Treasury Board and Public Service Commission Circular No. 1977-46,⁶¹ a document that dates back to 1977.

Canadian society and public service workplaces have changed a great deal since the Circular was issued and even since language-of-work rights were added to the Act in 1988. Federal institutions are offering their employees workers more flexibility and mobility than could even be imagined in the late 20th century. The advent of virtual teams,⁶² the impact of restructuring in many institutions, the increasing popularity of teleworking and the relocation of head offices are all new situations that are not covered by Part V of the Act.

In addition, current language-of-work rights are based on defined geographical divisions that have not been updated in more than 40 years. These divisions are now completely disconnected from the fluctuating values of "significant demand" in Part IV of the Act, which determine the offices where federal employees are required to communicate with and provide services to the public in both official languages. This disconnect creates a conflict in the way parts IV and V of the Act are applied and prevents their aims from being fully achieved. Employees who are required to communicate with or serve the public in both official languages (Part IV) can perform their duties much better if their work environment

is conducive to the effective use of both official languages (Part V). In other words, federal institutions that value the equality of English and French in their work environments are more likely to communicate with and provide quality services to the public in both official languages.

The consultations conducted by the Office of the Commissioner confirmed that a federal workplace conducive to the effective use of both official languages does a great deal to achieve the aims set out in Part IV of the Act.

Part V is clearly in need of a major update, as it is based on geographic divisions that result in an inconsistent and ineffective application of the Act.

To address these concerns and to ensure consistency between parts IV and V of the Act, the Commissioner is recommending that language-of-work rights under Part V apply to all federal offices and facilities that are required to communicate with and serve the public in both official languages under Part IV.

The Commissioner is also recommending that regulations be made in accordance with section 38 of the Act. The regulations could have a provision ensuring the preservation of language-of-work rights in regions that are currently designated by Circular No. 1977-46 as being bilingual for language-of-work purposes. They could also require the list of these regions to be updated regularly to reflect any changes to the bilingual designation of offices under Part IV. The updated list could be appended to the regulations as a schedule.

RECOMMENDATION 6:

The Commissioner of Official Languages recommends that specific legislative amendments and regulations be made regarding language-of-work rights in order to:

1. ensure that language-of-work rights are consistent with the communications and service delivery requirements in Part IV of the *Official Languages Act* and in the *Official Languages (Communications with and Services to the Public) Regulations*; and
2. preserve language-of-work rights in regions designated as bilingual for language-of-work purposes and ensure that the list of these regions is updated.

Aside from the issue of where federal employees should have language-of-work rights, the nature of the services that federal institutions must provide to their workers in both official languages (currently listed in section 36 of the Act) is not always consistently interpreted, nor is the obligation to provide those services consistently applied. Barring a court ruling that would clearly define these services, the Act needs to be amended and regulations need to be made to clarify its content and include the right to training in both official languages throughout the public service—a key factor in achieving the aims of Part V of the Act.

The Commissioner is recommending that the regulations include a non-exhaustive list of the rights and services set out in subsections 36(1)(a) and (b) of the Act, which would be guaranteed to employees in federal offices designated as bilingual under Part IV of the Act and in regions designated as bilingual for language-of-work purposes under Part V of the Act. The Commissioner is also recommending that rights involving training, services provided to individuals and services that are centrally provided⁶³ be guaranteed for employees of all federal institutions in Canada. Given that nearly all federal institutions already have the capacity to provide these services to their employees in both official languages, either through the Canada School of Public Service or through centralized administrative services, the services should be provided throughout the federal public service. New regulations should also contain a non-exhaustive list of individual and centrally provided services covered by the new provision on training.

RECOMMENDATION 7:

The Commissioner of Official Languages recommends that:

1. specific legislative amendments be made to give all federal employees in Canada rights involving training, services provided to individuals and services that are centrally provided; and
2. a non-exhaustive list of services provided to individuals and services that are centrally provided be included in regulations regarding language-of-work rights.

Lastly, federal employees' right to be supervised in the official language of their choice is an important part of ensuring that the work environment is conducive to effective use of both official languages. At present, subsection 36(1)(c)(i) of the Act is interpreted inconsistently and often applied too narrowly. As Interim Commissioner Ghislaine Saikaley noted in her 2016–2017 annual report:

The Treasury Board's *Directive on Official Languages for People Management* stipulates that, in regions designated as bilingual for language-of-work purposes, only employees who occupy "bilingual or either/or" positions have the right to be supervised in the language of their choice. The Office of the Commissioner maintains that the Act gives the right to every employee in these regions, regardless of the language requirements of their position.⁶⁴

The wording of subsection 36(1)(c)(i) of the Act should therefore be amended so that the modernized Act stipulates that all employees in regions designated as bilingual for language-of-work purposes have the right to be supervised in the official language of their choice, regardless of the language requirements of their position.

RECOMMENDATION 8:

The Commissioner of Official Languages recommends that the *Official Languages Act* state that all employees in regions designated as bilingual for language-of-work purposes have the right to be supervised in the official language of their choice, regardless of the language requirements of their position.

Developing regulations that strengthen the government's commitment to enhance the vitality of official language minority communities and promote both official languages

"The Government of Canada must ensure that the concept of positive measures is understood and that all federal institutions meet their obligations. Part VII objectives must be seen to be concrete. They must be planned and executed by government departments and agencies to ensure the vitality of official language [minority] communities and the promotion of linguistic duality in Canadian society."⁶⁵

Graham Fraser, *Commissioner of Official Languages (2006–2016)*

Implementing Part VII of the Act is a challenge for many federal institutions. There are very few guidelines, and none have the force of law. The latter was made abundantly clear in May 2018 during the *Fédération des francophones de la Colombie-Britannique v Canada (Employment and Social Development)* case when a Federal Court justice made the following brusque statement:

It is undeniable, in my opinion, that the scope of the duty contained in section 41 is hamstrung by the absence of regulations. And, it must be said, this regulatory silence and the resulting vagueness are probably detrimental to the linguistic minorities in Canada, who may be losing a potential benefit under Part VII.⁶⁶

Unsurprisingly, this was echoed when the Office of the Commissioner consulted with official language minority communities. Community members said federal institutions did not do enough to promote the recognition and use of both official languages, did not understand the communities' realities, did not follow the principle

of substantive equality to address the unique needs of official language minority communities across Canada, and did not understand the overall impact of the Act's various sections on their vitality.

Subsection 41(3) of the Act states that the Governor in Council may make regulations prescribing the manner in which federal institutions' duties under Part VII are to be carried out. Although it has been discussed at length, this power has never been exercised. In 2004, Senator Jean-Robert Gauthier, who sponsored a bill that led to amendments of the Act the following year, pushed for regulations to clarify the obligations of federal institutions in the development of official language minority communities.⁶⁷ In 2010, then Commissioner of Official Languages Graham Fraser also noted that federal institutions' approach to implementing Part VII obligations was fragmented.⁶⁸

Regulations for Part VII would help achieve the objective of advancing the equality of status and use of both official languages.

In terms of content, they could clarify some of the concepts that characterize this part of the Act and set parameters for implementing the obligations that require federal institutions to take positive measures to enhance the vitality and support the development of official language minority communities and foster the full recognition and use of English and French in Canadian society. The following are suggestions for Part VII regulations that could help federal institutions meet their obligations proactively:

Preamble

A preamble stating the principles and objectives on which the regulations are based, including the advancement of the equality of status and use of both official languages, and the obligation of federal institutions to act in a manner that does not hinder the development and vitality of Canada's Anglophone and Francophone minorities.⁶⁹

Definitions

Definitions that could help clarify the scope of the two commitments in subsection 41(1) of the Act:

- The commitments to enhance the vitality of the English and French linguistic minority communities in Canada and to support and assist their development could be explained in more detail by including concepts regarding the culture, economic prosperity and institutional autonomy of official language minority communities (i.e., their active involvement in federal decision-making processes that affect their development and vitality).
- The scope of the commitment to foster the full recognition and use of both English and French in Canadian society could be described as having an impact on all English-speaking and French-speaking people in Canada, as requiring federal institutions make efforts to advance the equality of status and use of both official languages in all fields of endeavour, and as being subject to change in order to reflect Canada's diversity. It could also include a more inclusive description of linguistic duality by recognizing that many Canadians no longer consider themselves to be a member of just one official language community.

Directives

Clear directives that could include the following statements to guide federal institutions in taking positive measures:

- Positive measures cannot be actions that are already required under another provision of the Act or under other Canadian legislation.
- Positive measures cannot be taken without first determining and understanding the needs and interests of official language minority communities in areas concerning their development and vitality.
- Taking positive measures means that, from initial planning to final reporting, federal institutions must proactively take the two commitments in Part VII of the Act into account when making decisions on matters such as policies, programs and funding agreements.

Designation of federal institutions with specific duties

A list of federal institutions designated to be assigned specific duties based on their key role under Part VII of the Act, especially those that may have a bigger impact on official language minority communities or on the recognition and use of both official languages. The duties may involve:

- setting up an advisory committee of official language minority community members to counsel senior officials from designated federal institutions on the priorities and needs of their communities;
- actively and publicly reporting on steps taken by designated federal institutions to meet their Part VII commitments, including those based on advisory committee recommendations; and
- sharing knowledge and best practices with other federal institutions.

It would be understood that designating institutions in no way changes the obligation of all federal institutions to comply with Part VII.

Government-wide action plan

A requirement for a central agency to coordinate the implementation of a government-wide action plan on official languages that would include current federal commitments to form partnerships with official languages stakeholders, communities, and organizations; to invest in official languages in order to address public concerns; to ensure government transparency and accountability; and to favour evidence-based policy decisions.⁷⁰

Part VII regulations that included the aforementioned suggestions would be invaluable in helping Canada to ensure that linguistic duality and official language minority communities continue to thrive and be a government priority for decades to come. It is time to give full effect to the will of Parliament, as reflected in Part VII of the Act, by making such regulations.

RECOMMENDATION 9:
The Commissioner of Official Languages recommends that the Governor in Council make regulations prescribing the manner in which the duties of federal institutions under Part VII of the *Official Languages Act* are to be carried out. This should be done in consultation with official language minority communities across Canada and other interested groups.



AN ACT THAT IS DYNAMIC

To stay relevant over time, legislation must be dynamic so that it can be applied even as Canadian society changes, while resting on a solid foundation so that it can withstand whatever challenges the future may hold.

This could be accomplished by entrenching in the Act the key principles that have changed the way language rights are interpreted and applied today, by drafting a technology-neutral Act to ensure its relevance as new technologies emerge, and by requiring that the Act undergo a regular review.

Codifying legal principles that have shaped the nature and scope of language rights in Canada

The key role of case law in developing language rights is well worth noting. Codifying case law principles in the Act's preamble would confirm that, even after a major reform, they would continue to be just as important in interpreting and applying the Act. Although there is no specific need to codify them, the principle of substantive equality,⁷¹ the remedial nature of language rights,⁷² and the Act's quasi-constitutional status⁷³ clearly deserve a prominent place in the legislation. Because these three principles are key to the legislation, it is vital for official language minority communities that they be included in the Act and upheld.

The preamble of an act is not a source of positive law, but it does have important legal effects,⁷⁴ and its interpretive nature is vital to understanding an Act's purpose and scope.⁷⁵

There are legislative examples where legal principles have been codified in a preamble, including *An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference*.⁷⁶ Although it was adopted in a unique political context, this federal statute is still of interest in that its preamble cites what the Supreme Court of Canada has "confirmed," "stated," and "determined."

Nunavut's *Official Languages Act* is also of interest in that its preamble states: "Understanding, because of the fundamental character of the values expressed and the important federal, territorial and Inuit objectives reflected in this Act, that the *Official Languages Act* shall enjoy quasi-constitutional status in law."⁷⁷

For federal legislation, for example, we might consider adding this text to the preamble:

AND WHEREAS the *Official Languages Act* has quasi-constitutional status;

AND WHEREAS language rights are remedial in nature and must in all cases be interpreted purposively, in a manner consistent with the preservation and development of English and French linguistic minority communities in Canada;

AND WHEREAS substantive equality is the correct norm to apply in language rights;

The Commissioner is of the opinion that codifying these legal principles would help federal institutions apply them more effectively and understand their importance in relation to the obligations under the various parts of the Act.

RECOMMENDATION 10:

The Commissioner of Official Languages recommends that the principle of substantive equality, the remedial nature of language rights and the Act's quasi-constitutional status be codified in the preamble to the *Official Languages Act*.

Considering the impact of new technologies on official languages

Advances in digital technologies have had a clear impact on federal institutions' official languages obligations and have far surpassed what the drafters of the 1969 and 1988 acts could have foreseen.

Federal institutions are using new technologies to provide information and services to unlimited numbers of people simultaneously. In addition to this one-way communication, they can now engage in instant and ongoing dialogue with the public. A good example is the increased use of social media and on-line collaborative tools to get Canadians involved in major debates and government initiatives. Federal institutions can also proactively share data, information and documents electronically, which could not be done before. These new opportunities, available through various initiatives aimed at having a more open government, are providing unparalleled transparency and access; however, they are also raising official languages issues.

One of the challenges in the shift to a more open government will be creating enough space for both official languages.

Making the Act technology-neutral is a good way to ensure that it can adapt to ongoing changes in Canadian society. Participants in the Office of the Commissioner's consultations used the term many times in reference to laws whose purposely broad language makes them adaptable to both recent and future changes. Rather than be outstripped by technological advances, the modernized Act needs to stay relevant over time.

A technology-neutral Act will help federal institutions effectively apply the principle of substantive equality by ensuring that they follow the principle's basic tenets (equality of status and use of both official languages;⁷⁸ access to services of equal quality⁷⁹) regardless of the tool or technology being used. The previous recommendation to codify the principle of substantive equality is therefore needed so that the principle continues to be applicable no matter what new tools federal institutions may develop or use to engage with Canadians.

While the Act must be interpreted in today's context,⁸⁰ the Commissioner sees this approach as a chance for Parliament to pass a modernized statute that ensures full respect for the rights enshrined in it while leveraging opportunities and benefits from rapid technological change.

To this end, every provision contained in the Act must be reviewed to ensure that there is no reference to specific communications tools, whether new or conventional.

The government could also take a page out of the *Library and Archives of Canada Act*⁸¹ and include definitions of terms relating to communications, publication and documentation so that the chosen format or method is not restrictive.⁸² For example, because the terms "printed," "recording," or "online" could limit the application of a provision, they would need to be defined so as not to limit the Act's scope as technology changes.

The Commissioner does note, however, that that a technologically neutral Act would not diminish the importance of federal institutions' obligation to communicate effectively and efficiently with the public, especially with official language minority communities.⁸³ On the contrary, effective communication means federal institutions must choose the means of communicating that best suits the target group's needs and circumstances. Print media may be the best way to reach these communities in some cases, as it is a clear expression of substantive equality.

RECOMMENDATION 11:
The Commissioner of Official Languages recommends that a technology-neutral Act be drafted to ensure full adherence to the principle of substantive equality.

Reviewing the Act regularly

In the past three decades, implementing the Act has grown more challenging as modern forms of communication, new work environments and opportunities in the federal public service, and the general evolution of language rights have revealed legislative shortcomings. As a result, we find ourselves with an Act that can keep pace only through its interpretation by the courts and that cannot easily adapt to a rapidly changing Canadian society.

A regular review of the Act would be a good opportunity for Parliament to assess how well the Act is working and to consider ways to improve it.

This proposal is consistent with the federal government's recent proposal to add a provision to the *Official Languages (Communications with and Services to the Public) Regulations* requiring that they be reviewed every 10 years.⁸⁴ It would also address the concerns of stakeholders who feel that the Act must be able to adapt to any official languages issues that arise at any given time.

Similar obligations have been added to legislation at the federal, provincial and territorial levels.⁸⁵ The Commissioner is of the opinion that, as with New Brunswick's *Official Languages Act*, any provision requiring a review of the Act must include a time limit for the review.⁸⁶ To ensure transparency, the review process should also include public consultations.⁸⁷

Requiring the Act to be reviewed at regular intervals for potential issues would offer an unprecedented opportunity to keep the legislation from becoming outdated.

RECOMMENDATION 12:

The Commissioner of Official Languages recommends that a provision be added to the *Official Languages Act* requiring a regular review of the legislation.



AN ACT THAT IS STRONG

Although it is vital to ensure that the Act is relevant and dynamic, the legislation cannot be properly implemented unless it is sufficiently strong and has a clear and comprehensible structure. The government therefore needs to think seriously about the structural changes that need to be made to the Act in terms of factors such as governance and compliance. With regard to compliance, it must consider the tools the Commissioner needs use to conduct thorough investigations or ensure that recommendations are followed.

The terms “reporting,” “accountability” and “law with teeth” were repeated often during the Office of the Commissioner’s public consultations. Most stakeholders made it clear that they felt the Act had governance and compliance issues and that a modernized Act needed enforcement mechanisms to ensure more effective implementation and compliance.

A clear consensus emerged from the consultations: if the review of the Act is limited to simply updating the provisions without also reviewing the responsibilities of the various key stakeholders or examining how compliance can be ensured, it will be a missed opportunity to create a truly strong Act that inspires exemplary implementation.

Removing barriers to compensation for language rights violations

In 2013, then Commissioner Graham Fraser argued before the Supreme Court of Canada⁸⁸ that damages for breach of the fundamental rights enshrined in the *Official Languages Act* should not be limited by other instruments such as the *Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal Convention).⁸⁹

In 2015, the Honourable Stéphane Dion tabled a bill to amend the *Carriage by Air Act* to state that it would not restrict the fundamental rights guaranteed under the *Official Languages Act* and the *Canadian Human Rights Act*.⁹⁰ In doing so, he stated the following:

This bill solves a problem that we as legislators need to solve, a problem that undermines the basic rights of Canadians. This bill will correct one of the flaws undermining the rights that protect us all.

The bill would clearly establish that a Canadian citizen, when taking an international flight under Canada's jurisdiction, could be entitled to damages if her or his rights are not respected with regard to the *Official Languages Act* or the *Canadian Human Rights Act*.⁹¹

Being able to claim damages following an infringement of rights under the Act is a recognition of their basic value and an assurance that breaches will be penalized. The availability of a right of remedy is important and fulfills an essential function in ensuring the effectiveness of fundamental rights that Parliament wanted to protect.

As Dion said when he called for the *Carriage by Air Act* to be amended, modernizing the *Official Languages Act* is another opportunity to correct this flaw. A subsection could be added to section 77 stating that nothing in instruments such as the Montreal Convention shall abrogate or derogate from the rights provided for under the Act, especially as concerns the award of damages in cases where those rights have been infringed.

RECOMMENDATION 13:

The Commissioner of Official Languages recommends that the Federal Court be given the ability to award damages for any breach of the *Official Languages Act*, without exception or exclusion.

Giving the Commissioner of Official Languages more flexibility for investigations

Excellence is one of the Office of the Commissioner's key values, which is why it is always striving to provide better service to the Canadian public by continuously improving its investigative processes. Delays and their impact on complainants, even on whole communities, are a major concern for the Commissioner, and so his office works tirelessly to address the issue by all available means. The

Commissioner has come to the conclusion, however, that without amendments to make the Act clearer and more flexible, the optimal efficiency and effectiveness he is seeking will remain just out of reach.

With the right tools, the Commissioner can be more effective in fulfilling his role not only as a protector of language rights but also as a promoter of those rights in order to help the federal government and its institutions meet their obligations. If the Commissioner has the means to bring lasting change to federal institutions, the Canadian public will see tangible benefits.

Modernizing the Act is an opportunity to review the Commissioner's investigation tools and determine how his investigative process could better serve Canadians. It is also an opportunity to identify ways in which he might be able to be more flexible so that the public can reap the full benefit of his strategic and targeted actions in his role as an agent of change.

Although there are several solutions could help to achieve these objectives, three changes are being proposed to give the government a deeper understanding of the issue.

(1) Process complaints more effectively

Section 58 of the Act states that "the Commissioner shall investigate any complaint made,"⁹² with some exceptions listed in subsection 58(4). The Commissioner may thus refuse or cease to investigate any complaint if the subject matter is trivial, if the complaint is frivolous, vexatious, or not made in good faith, or if the subject-matter does not involve a contravention or failure to comply with the spirit and intent of the Act or does not come within the authority of the Commissioner.

Official languages commissioners have found it difficult to apply some of the exceptions under subsection 58(4), and few exceptions have ever been used. Clearer and more specific provisions regarding exceptions would make it easier for the Commissioner to decide where to make exceptions so that he could take strategic action to address systemic official languages issues.

Other legislation on language rights, human rights and freedom of information are more flexible. For example, an investigation into a complaint may be refused or ceased if: 1) the subject matter of the complaint has already been investigated and dealt with;⁹³ 2) the complaint is received

after a limitation period has expired (e.g., one year after the incident);⁹⁴ 3) the federal institution has already taken corrective action at the time of the complaint or during the investigation;⁹⁵ or 4) there is insufficient evidence to pursue the investigation.⁹⁶

The Commissioner could also be allowed to refuse or cease to investigate a complaint on any other grounds he deems appropriate, which would ensure enough latitude to address any other situations that do not fit the categories set out in subsection 58(4) of the Act. However, it should be noted that whatever exceptions are added to subsection 58(4), the Commissioner will always be required to give reasons for refusing or ceasing to investigate, in accordance with subsection 58(5).

The examples above are a good starting point for the government's review of this issue, as they would help ensure that the Commissioner's investigations are effective in serving the Canadian public by addressing issues that are new, are relevant, or would have a significant impact on official language minority communities.

RECOMMENDATION 14:
The Commissioner of Official Languages recommends that the *Official Languages Act* give the Commissioner more flexibility in investigations.

(2) Clarify the obligation to conduct investigations in private

Subsection 60(1) of the Act requires that the Commissioner's investigations be conducted in private to safeguard the integrity of the process and to encourage complainants and witnesses to come forward by protecting them from any damage or harm that may result from being involved in a complaint. Confidentiality is a key element in ensuring the proper conduct of investigations,⁹⁷ which is one of the Commissioner's chief duties under the Act.

While recognizing the importance of conducting investigations in private, the Commissioner is of the opinion that this obligation does not prohibit him from making the recommendations, findings or summaries of investigations available to the public. Not only do these tools help to support the Commissioner in other aspects of his duties—as advocate, educator, agent for change, etc.—they also promote transparency and, more importantly, help to raise awareness among federal institutions and the Canadian public.

To give him more flexibility in his work and to specify the means he has at his disposal to raise awareness among federal institutions of their obligations (including consequences if they are not met), the Commissioner is calling on the government to consider clarifying the wording of subsection 60(1) of the Act.

RECOMMENDATION 15:
The Commissioner of Official Languages recommends that the *Official Languages Act* clearly state that the Commissioner may make the recommendations, findings and summaries of investigations available to the public.

(3) Clarify the Commissioner of Official Languages' discretion to submit investigation reports to the President of the Treasury Board

If, after carrying out an investigation, the Commissioner concludes that the complaint is founded, he must report this conclusion to the President of the Treasury Board and to the federal institution concerned.⁹⁸

If the Commissioner were given the discretion to decide which investigation reports should be sent to the President of the Treasury Board, he would be able to focus his efforts on the more serious issues or systemic language rights violations.

This could be done by changing the wording of subsection 63(1) of the Act in order to make this obligation a discretionary power.

It is important to note that if, after carrying out an investigation, the Commissioner concludes that one of the measures set out in subsection 63(1)(b) must be taken, and particularly where an act or its regulations or any directives of the Governor in Council or the Treasury Board should be reconsidered, the Commissioner would still have to report his conclusions to the President of the Treasury Board.

RECOMMENDATION 16:

The Commissioner of Official Languages recommends that the *Official Languages Act* state that the Commissioner, in his discretion, may submit certain investigation reports to the President of the Treasury Board.

Adding new compliance mechanisms to the Commissioner of Official Languages' powers

The Commissioner already has broad investigative powers under the Act, such as summoning and enforcing the attendance of witnesses,⁹⁹ making reports,¹⁰⁰ issuing recommendations,¹⁰¹ reviewing regulations or directives made under the Act or that affect the status or use of official languages,¹⁰² and appearing as a party or intervenor in adjudicative proceedings.¹⁰³

During the Office of the Commissioner's consultations, concerns were raised several times about the effectiveness of the Commissioner's powers once investigations are complete (i.e., power to make reports and issue recommendations). Many suggestions have already been made with regard to new mechanisms, for either the Commissioner or another entity, to improve federal institutions' compliance with the Act.

The issue of giving the Commissioner more enforcement powers to improve compliance was the subject of debate even before the 1988 Act was passed.¹⁰⁴ More recently, it was included in specific recommendations by the House of Commons Standing Committee on Official Languages.¹⁰⁵ The Commissioner is of the opinion that it is vital for the government to consider new compliance mechanisms to supplement his power to investigate, report and make recommendations so that he is fully equipped to help federal institutions improve their compliance with the Act.

Although there are a number of options that are worth exploring for the government, the Commissioner is proposing three solutions that align with his mandate of ensuring full compliance with the Act:

1. Give the Commissioner the power to impose administrative monetary penalties.
2. Give the Commissioner the power to enter into enforceable agreements with federal institutions subject to the Act, coupled with administrative monetary penalties.
3. Add provisions to ensure that monies from these penalties are put into a linguistic duality fund.

(1) Give the Commissioner of Official Languages the power to impose administrative monetary penalties

An administrative monetary penalty is a sanction or penalty that may be imposed when a law is violated. The purpose of this administrative mechanism is to promote compliance with an act and not to punish.¹⁰⁶ It is meant to be transparent, predictable, detailed, consistent, fair, and impartial.¹⁰⁷

In other words, the aim of administrative monetary penalties is to promote compliance with specific provisions of an act by counterbalancing the financial incentives associated with non-compliance. Given the nature of this mechanism, it would be necessary for the violation of one or more of these provisions to have occurred prior to the filing of the complaint. Penalties could be based on the type of violation, and the amounts could vary depending on mitigating or aggravating factors.¹⁰⁸ This tool would thus be an effective way to promote compliance with a given statute.

Having the power to impose administrative monetary penalties would help the Commissioner address a wide range of non-compliance issues and protect both the public's language rights and those of federal employees. To ensure that the Commissioner's new power would not undermine his impartiality, credibility or independence as an investigator, a new administrative directorate would have to be created that was responsible for handling penalties and separate from the Investigations Directorate.¹⁰⁹

Various federal statutes already have this mechanism, including the *Conflict of Interest Act*,¹¹⁰ the *Pay Equity Act*,¹¹¹ the *Environmental Violations Administrative Monetary Penalties Act*,¹¹² and the *Environmental Violations Administrative Monetary Penalties Regulations*.¹¹³ The *Pay Equity Act*¹¹⁴ and the *Environmental Violations Administrative Monetary Penalties Act*¹¹⁵ also have provisions to impose administrative monetary penalties on government institutions.

The model for the future Accessibility Commissioner, a position created under Bill C-81, *An Act to ensure a barrier-free Canada*, is instructive. Appointed by the Governor in Council,¹¹⁶ the Accessibility Commissioner can impose administrative monetary penalties on all regulated entities,¹¹⁷ including federal institutions,¹¹⁸ for contravening various provisions of the *Accessible Canada Act* or of regulations made by the Governor in Council.¹¹⁹ In conjunction with this power, the Accessibility Commissioner can also enter into a compliance agreement with the regulated entity, which may result in the reduction of all or part of the penalty for the violation.¹²⁰ Compliance or enforceable agreements are thus intended to complement administrative monetary penalties. A similar model could be considered for the Commissioner of Official Languages. Provisions on administrative monetary penalties would have to be detailed in regulations or in a new part of the *Official Languages Act*.¹²¹

(2) Give the Commissioner of Official Languages the power to enter into enforceable agreements and impose administrative monetary penalties

Under an enforceable agreement, also called a compliance agreement,¹²² an organization agrees to take measures to meet its obligations, whether statutory or non-statutory. In other words, an enforceable agreement is a voluntary agreement to ensure that organizations comply with legislation and/or meet their commitments within a specified time frame.

If the Commissioner had the power to enter into enforceable agreements, he could sign an agreement with any federal institution subject to the Act in order to ensure that specific commitments were honoured. These

commitments could correspond to the recommendations issued in the Commissioner's investigation report in the event that a complaint was deemed to be founded or if a breach of the Act was confirmed.

This is an attractive solution in light of the fact that in some cases it has become very difficult for the Office of the Commissioner to ensure that institutions honour their commitments. Air Canada is the most obvious example. Whenever Air Canada agrees to implement the Commissioner's recommendations following an investigation, it can be difficult to effectively monitor that implementation under the current system, despite the many resources that are committed to this process. This issue is explored at length in Commissioner Graham Fraser's June 2016 special report to Parliament: "[D]espite the passing years and repeated interventions by the commissioners of official languages, the situation has not changed much, and setbacks have been much more frequent than progress. As things currently stand, systemic problems are a barrier to lasting improvements."¹²³

Supplementing administrative monetary penalties with enforceable agreements would encourage federal institutions to improve their compliance because, among other things, the Commissioner would not be able to file legal proceedings or intervene in an action brought by the complainant while the agreement is in force.¹²⁴ Changes to Part X of the Act would therefore need to be considered.

Other federal commissioners have an option in their enabling statute to enter into agreements with private organizations, including the Privacy Commissioner of Canada under the *Personal Information Protection and Electronic Documents Act*,¹²⁵ the Commissioner of Canada Elections under the *Canada Elections Act*,¹²⁶ and the Commissioner of the Financial Consumer Agency of Canada under the *Financial Consumer Agency of Canada Act*.¹²⁷

Enforceable agreements can also be considered for government institutions. As noted earlier, Bill C-81 authorizes the Accessibility Commissioner to enter into compliance agreements with federal institutions (included in the definition of "regulated entities") to supplement the use of administrative monetary penalties.¹²⁸

This model is entirely feasible for the *Official Languages Act*, as it could apply to all types of organizations, whether public or private. The formal nature of enforceable agreements is an asset. Giving the Commissioner the power to enter into these agreements with federal institutions subject to the Act would help him to follow up more effectively on whether and how they are meeting their commitments.

Adding this mechanism to the Act would promote cooperation by giving the institution the opportunity to address the issue. It would also ensure penalties for continued non-compliance. In addition, it would bring certainty and clarity to the process, which are currently lacking.

(3) Ensure that monies from penalties are put into a linguistic duality fund

Monies collected through administrative monetary penalties could be used to set up a linguistic duality fund, much like the one that was created for the environment. The *Environmental Violations Administrative Monetary Penalties Act* states that revenue obtained by the Receiver General through administrative penalties is to be used “for purposes related to protecting, conserving or restoring the environment or for administering that Fund.”¹²⁹

The Commissioner is recommending that the modernized Act include a similar mechanism. The fund could be managed by an organization operating at arm’s length from the government and from the Office of the Commissioner, and members of the public could submit proposals for projects that align with fund objectives. It would thus be used for priority projects that will benefit both of Canada’s official language groups.¹³⁰

The fund would in no way lessen federal institutions’ obligation to support official language minority communities and to promote linguistic duality. In other words, federal institutions would not be able to consider payment into the fund as fulfillment of either of those obligations. The fund would be an opportunity to use the revenue generated by the administrative monetary penalties for projects that promote linguistic duality in Canada.

RECOMMENDATION 17:

The Commissioner of Official Languages recommends that new mechanisms be added to the *Official Languages Act* to improve compliance with the legislation, including the power to impose administrative monetary penalties, the power to enter into agreements with federal institutions subject to the Act, and the creation of a linguistic duality fund.

Improving official languages governance

“[T]here is no universal model for horizontal governance, but rather a variety of approaches that are tailored to each specific situation. However, [I] would like to point out that official languages clearly stand out from other horizontal issues because all federal institutions must fulfill common obligations and this issue is related to fundamental values and national unity.”¹³¹

Graham Fraser, Commissioner of Official Languages (2006–2016)

The current governance structure for Canada’s official languages has numerous flaws. While many can be addressed through legislation, others will need major changes at all levels within the federal government.

Under the current Act, the Treasury Board 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,¹³² and the Minister of Canadian Heritage must encourage and promote a coordinated approach to the implementation of Part VII.¹³³ Aside from these specific tasks, federal institutions have a shared obligation to achieve the Act’s objectives.

This legislative structure raises a number of issues. For example, the Treasury Board has broad discretion to carry out its duties but no responsibility for Part VII. And the role of Canadian Heritage is limited to promoting a coordinated approach to implementing Part VII, which means that it does not have the same guidance and support as parts IV, V, and VI.

Since federal institutions share many of the same obligations, they need to work together to collectively achieve better results for all Canadians, including official language minority communities.¹³⁴ In practice, this requires a horizontal approach, which has been proven to be complex and difficult to manage.¹³⁵

To ensure that federal institutions meet their obligations and carry out their responsibilities, the government has introduced a number of mechanisms over the years to coordinate official languages governance, with varying success. Since the early 2000s, it has tried making a central agency, and then a department, responsible for official languages, it has appointed official languages champions in institutions, and it created (and then scrapped) an interdepartmental committee of deputy ministers.¹³⁶

None of the mechanisms have thus far produced the expected results, and it will be impossible to find one that ensures strict adherence to the Act until key aspects of effective and efficient governance are in place.

Governance issues are not unique to government and extend well beyond the federal administration. During the Office of the Commissioner's consultations, many stakeholders said they noted serious governance problems, especially in terms of transparency and accountability, and even proposed solutions to help create a stronger and clearer framework.

For example, it was suggested that, similar to New Brunswick's *Official Languages Act*,¹³⁷ the federal government be required to prepare an overall implementation plan for the Act and that federal institutions be required to prepare their own action plans and status reports.¹³⁸ The latter could report on the strategies used and progress made in meeting objectives, and include an accountability framework for each obligation. This would mean major changes to the Act, such as adding a section¹³⁹ or making regulations¹⁴⁰ on these specific requirements.

During the consultations, it was often pointed out that the Act does not give anyone full authority or responsibility for administering the legislation, unlike New Brunswick's *Official Languages Act*, which states that the Premier is responsible for the administration of the Act.¹⁴¹ It was also often suggested—by various stakeholders—that the Act assign this responsibility to a central agency like the Treasury Board or Privy Council Office.¹⁴² Many also proposed adding Part VII obligations to the responsibilities the Treasury Board already has under subsection 46(2)¹⁴³ and replacing “may” with “must” at the start of the provision to make these responsibilities a positive obligation.

These solutions are based on the premise that central agencies are often best able to promote horizontality in the public service since they oversee policy-making throughout the government. Central agencies, especially the Privy Council Office, “play an important role in horizontal issues management particularly in clarifying relationships among ongoing initiatives, in establishing priorities, and in managing the policy load of departments.”¹⁴⁴

The issue has largely become a debate about which government body should be tasked with overseeing and administering the Act as a whole.

Although many of these solutions, either singly or in combination, would help lay a solid foundation for a better legislative structure for governance, the government can achieve this only with major structural changes. It will be up to the government to decide which solution or combination is best.

The Commissioner is more concerned with the question of *how* good governance can be achieved. Regardless of the governance structure provided for in the Act, defining everyone's responsibilities clearly and unequivocally

will help ensure more comprehensible and coordinated official languages governance. Good official languages governance should take the following five principles into account:

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

(1) Establish clear direction and leadership at the most senior levels of the federal government

Since official languages leaders must be able to influence government horizontally, the minister and senior officials in each federal institution need to set the tone for leadership. Making official languages a key factor in government decisions shows they are a priority throughout the Government of Canada.

(2) Establish a consistent accountability framework

The Act needs a clear accountability framework to ensure continued government-wide commitment to meeting official languages obligations. Because official languages are a horizontal issue, implementing the Act is a shared responsibility for all federal institutions. The Act must therefore set out clear responsibilities and make one or more authorities accountable for drafting regulations, ensuring compliance, providing oversight and coordinating the implementation of all parts of the Act.

(3) Make official languages a top priority and a key aspect of government planning and activities

In order for linguistic duality to thrive, central agencies must make official languages a government-wide priority. This will ensure that they will be reflected in activities, action plans and all other tools that federal institutions use to deliver on the government's priorities.

To give full effect to the spirit and intent of the Act, the government structure and responsibilities for official languages must be consistent and appropriate at each level. A strong show of leadership will help federal institutions ensure that official languages obligations are clearly understood at each level, that planning is done properly and that outcomes are monitored effectively.

(4) Ensure effective stewardship of official languages

Promoting official languages is a fundamental part of achieving the Act's objectives. The federal government must therefore provide shared leadership to ensure that linguistic duality is promoted as a fundamental Canadian value. All senior federal officials, including deputy ministers and their management teams, must be committed to the Act's objectives and show that commitment by promoting them in the workplace. They need to take all appropriate measures in their areas of activity to implement the Act, both in spirit and intent. For example, maintaining sufficient bilingual capacity at all times can help ensure ongoing respect promotion of official languages. Senior officials must also recognize the added value that official languages and linguistic duality bring to a results-oriented culture that values initiative.

(5) Address setbacks while ensuring ongoing progress toward the substantive equality of official languages

Inertia or simply a lack of progress can lead to setbacks or decline, and when this affects substantive equality, proactive measures must be taken to get back on track. When it comes to implementing the Act, standing still is not an acceptable result for the Commissioner. When language rights are endangered by government action or inaction, the federal administration has a responsibility to review the official languages governance structure to make sure it aligns with government programs and services that are constantly changing to reflect the needs of Canadian society. The government also needs to take measures to provide proper protection for official languages and ensure continued progress toward substantive equality. It is important to note that all federal employees have a collective duty to ensure that progress is being made toward substantive equality for all aspects of the Act.

Taken together, these five principles are meant to help the government build a functional official languages governance system. The Commissioner cannot overstate the need for a strong and effective governance structure, without which the federal government's commitment to official languages will always be less than 100%.

RECOMMENDATION 18:

The Commissioner of Official Languages recommends that the government adhere to the following five principles to ensure clear and coordinated governance of the *Official Languages Act*:

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



STAKEHOLDER SUGGESTIONS THAT DESERVE A CLOSER LOOK

During public discussions on the need to modernize the Act, ideas were proposed by stakeholders from across Canada with experience and expertise in a variety of fields.

Many suggestions were made as part of the Standing Senate Committee on Official Languages' study on Canadians' views on modernizing the *Official Languages Act*, before the House of Commons Standing Committee on Official Languages, and during the Office of the Commissioner's consultations. Below are just a few examples of proposals that deserve further study by the government. Because discussions on modernizing the Act are still taking place, other suggestions may also need to be examined to ensure a thorough review.

Court Challenges Program

A number of stakeholders suggested that the Court Challenges Program—and, more specifically, the language rights component of the program—be enshrined in the Act to ensure its continued existence.¹⁴⁵ The language rights component has already been the subject of legal action,¹⁴⁶ which led to the creation of the Language Rights Support Program in 2009.

Given that the Court Challenges Program has been eliminated and reinstated by various governments over the years, the Commissioner agrees that the current government should consider this proposal for legislating the continued existence of a body that funds language rights court cases.

Special nature of New Brunswick

Various stakeholders proposed that the Act recognize New Brunswick's constitutional specificity.¹⁴⁷ While the proposal encompasses several specific suggestions, the general aim is to recognize and give effect to New Brunswick's special status as Canada's only officially bilingual province.

Since this status is recognized in the *Canadian Charter of Rights and Freedoms*, it would be useful to examine this issue in more detail.

Part VI of the Act

Part VI of the Act has been discussed at great length, both in the Office of the Commissioner's consultations and during studies conducted by both parliamentary committees on official languages.¹⁴⁸

Part VI states that the government is committed to ensuring that English- and French-speaking Canadians have equal opportunities for employment and advancement in federal institutions and that the workforce of federal institutions tends to reflect the presence of both official language groups in Canada. Through these commitments, Part VI plays a vital role in making sure that the other parts of the Act are better implemented. The Commissioner is of the opinion that ensuring equitable representation of both language groups in federal institutions (Part VI) and giving employees the opportunity to work in the official language of their choice (Part V) will improve the quality of services in both official languages (Part IV).

Therefore, the Commissioner agrees that the government could consider better oversight to help this part of the Act achieve its objective and address the concerns of Quebec's English-speaking community.

Section 55 of the *Constitution Act, 1982*

Section 55 of the *Constitution Act, 1982*, provides for the drafting and enactment of French versions of constitutional documents that are officially available only in English.¹⁴⁹

Though much effort went into implementing this section, the goal of having constitutional documents in both official languages has still not been achieved.

That is why, as some stakeholders have proposed (including the Canadian Bar Association), the government should consider adding a provision to the *Official Languages Act* specifically requiring the Minister of Justice to make every effort to enact the French versions of constitutional documents¹⁵⁰ so that all of the documents are officially bilingual.

The Commissioner agrees that, to ensure that this constitutional promise is kept, Parliament must closely monitor the government's progress in implementing section 55 of the *Constitution Act, 1982*. Considering that these documents are the very foundation of our country, it is inexcusable for this promise to remain unfulfilled.

Administrative tribunal

Many stakeholders said that an administrative tribunal specializing in language rights issues would be an effective enforcement mechanism and be more accessible to Canadians. The tribunal would have jurisdiction over all matters concerning not only the Act but also other federal laws affecting language rights. Some stakeholders even suggested that it should have the power to impose fines or issue compliance orders.¹⁵¹

In the Commissioner's opinion, the effectiveness of an administrative tribunal would depend largely on the mandate and powers Parliament chose to give it. While it will be important to clarify how it would work, it is an option that clearly warrants more study.



A LOOK AHEAD

Canada has distinguished itself by being a global leader in linguistic duality and support for official language minority communities. It should be proud of the progress it has made in the past five decades to turn linguistic duality into a strength and a quality that has helped shape our national identity. However, Canadians need to continue to should stay vigilant so that this value remains part of our collective consciousness. There is still a lot of work to be done before we can achieve all the goals of the Act, our key tool for safeguarding Canada's linguistic duality.

Modernizing the Act has become a key step in order for English and French to be truly equal in status. The Office of the Commissioner's years of experience and expertise in overseeing the Act give it a unique and insightful perspective on the best solutions for modernization.

The Act needs to be easy for federal institutions to understand and apply, and it should both reflect and adapt to a changing Canadian society. It should also have a clear structure and mechanisms so that stakeholders understand their rights and obligations and can navigate its enforcement framework. Above all, it should be a consistent and coherent whole, such that the interdependence of its parts should be evident, as each has a critical impact on the others.

The Commissioner is confident that if the legislative amendments and regulatory frameworks proposed in this document are adopted in their entirety, they will have tangible benefits for the implementation of all parts of the Act—whether it be communications with and services to the public, language of work in the federal public service, the advancement of English and French in Canadian society, or the development and vitality of official language minority communities (the beating heart of the Act).

That is why the Commissioner's vision is based on having a relevant, dynamic, and strong Act that is structurally logical and clearly consistent.

In other words, he is simply proposing that all of the components of the modernized Act—its various parts and its future regulations—be reviewed and reformed holistically.



LIST OF RECOMMENDATIONS

1. The Commissioner of Official Languages recommends that the exemption for the Supreme Court of Canada be removed from section 16 of the *Official Languages Act*.
2. The Commissioner of Official Languages recommends that the public's access, in both official languages, to final decisions of public interest and importance issued by federal courts be improved through legislation.
3. The Commissioner of Official Languages recommends that decisions by federal courts and tribunals be required through legislation to be made available simultaneously in both official languages.
4. The Commissioner of Official Languages recommends that the legislation be amended to clarify the obligations of federal institutions that serve both the travelling public and the general public.
5. The Commissioner of Official Languages recommends that the scope and substance of the obligation to provide an active offer be clarified through regulations.
6. The Commissioner of Official Languages recommends that specific legislative amendments and regulations be made regarding language-of-work rights in order to:
 1. ensure that language-of-work rights are consistent with the communications and service delivery requirements in Part IV of the *Official Languages Act* and in the *Official Languages (Communications with and Services to the Public) Regulations*; and
 2. preserve language-of-work rights in regions designated as bilingual for language-of-work purposes and ensure that the list of these regions is updated.
7. The Commissioner of Official Languages recommends that:
 1. specific legislative amendments be made to give all federal employees in Canada rights involving training, services provided to individuals and services that are centrally provided; and
 2. a non-exhaustive list of services provided to individuals and services that are centrally provided be included in regulations regarding language-of-work rights.
8. The Commissioner of Official Languages recommends that the *Official Languages Act* state that all employees in regions designated as bilingual for language-of-work purposes have the right to be supervised in the official language of their choice, regardless of the language requirements of their position.
9. The Commissioner of Official Languages recommends that the Governor in Council make regulations prescribing the manner in which the duties of federal institutions under Part VII of the *Official Languages Act* are to be carried out. This should be done in consultation with official language minority communities across Canada and other interested groups.
10. The Commissioner of Official Languages recommends that the principle of substantive equality, the remedial nature of language rights and the Act's quasi-constitutional status be codified in the preamble to the *Official Languages Act*.

11. The Commissioner of Official Languages recommends that a technology-neutral Act be drafted to ensure full adherence to the principle of substantive equality.
12. The Commissioner of Official Languages recommends that a provision be added to the *Official Languages Act* requiring a regular review of the legislation.
13. The Commissioner of Official Languages recommends that the Federal Court be given the ability to award damages for any breach of the *Official Languages Act*, without exception or exclusion.
14. The Commissioner of Official Languages recommends that the *Official Languages Act* give the Commissioner more flexibility in investigations.
15. The Commissioner of Official Languages recommends that the *Official Languages Act* clearly state that the Commissioner may make the recommendations, findings and summaries of investigations available to the public.
16. The Commissioner of Official Languages recommends that the *Official Languages Act* state that the Commissioner, in his discretion, may submit certain investigation reports to the President of the Treasury Board.
17. The Commissioner of Official Languages recommends that new mechanisms be added to the *Official Languages Act* to improve compliance with the legislation, including the power to impose administrative monetary penalties, the power to enter into agreements with federal institutions subject to the Act, and the creation of a linguistic duality fund.
18. The Commissioner of Official Languages recommends that the government adhere to the following five principles to ensure clear and coordinated governance of the *Official Languages Act*:
 1. Establish clear direction and leadership at the most senior levels of the federal government.
 2. Establish a consistent accountability framework.
 3. Make official languages a top priority and a key aspect of government planning and activities.
 4. Ensure effective stewardship of official languages.
 5. Address setbacks while ensuring ongoing progress toward the substantive equality of official languages.

Endnotes

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 - ² G  rard Pelletier, “1968: Language Policy and the Mood in Quebec,” *Towards a Just Society: The Trudeau Years*, Thomas S. Axworthy and Pierre Elliott Trudeau (eds.), Markham, Viking, 1990, pp. 207–225. See esp. page 223.
 - ³ Privy Council Office of Canada, *Report of the Royal Commission on Bilingualism and Biculturalism. General Introduction, Book I: Official Languages / Andr   Laurendeau and A. Davidson Dunton, co-chairs*, Ottawa, 1967, p. 91.
 - Canada, *Official Languages Act*, RSC 1968-69, c 54, section 2.
 - ⁴ Canada, *Official Languages Act*, RSC 1968-69, c 54, section 11.
 - ⁵ Canada, *Official Languages Act*, RSC 1968-69, c 54, section 9.
 - ⁶ Parliament of Canada, *Journals of the House of Commons*, 29th Parliament, 1st Session, Vol. 119, No. 97, June 6, 1973, p. 386 (motion adopted). For the content of the resolution, see p. 384.
 - ⁷ Canada, *Consumer Packaging and Labelling Regulations*, CRC, c 417, section 6.
 - ⁸ Privy Council Office of Canada, *A National Understanding: Statement of the Government of Canada on the Official Languages Policy: The Official Languages of Canada*, Ottawa, 1977.
 - ⁹ Canada, *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11, sections 16–23.
 - ¹⁰ Parliament of Canada, *House of Commons Debates*, 25th Parliament, 1st Session, Vol. III, December 17, 1962, speech by Lester B. Pearson, pp. 2,722–2,726.

See esp. p. 2,722:

Confederation, however, also involved another price which too many of us either forget or do not wish to pay because perhaps it is inconvenient for us to pay it. Confederation meant the rejection not only of political and economic annexation by the United States but also of the American melting-pot concept of national unity. Confederation may not have been technically a treaty or a compact between states, but it was an understanding or a settlement between the two founding races of Canada made on the basis of an acceptable and equal partnership. That settlement provided that national political unity would be achieved and maintained without the imposition of racial, cultural or linguistic uniformity.

I sometimes think that the understanding was more academic than actual. Outside Quebec, and as Canada grew from coast to coast, this understanding was more often honoured in the breach than in the observance and for reasons which any of us who know about the development of Canada can understand. As a result, there has grown up in this country two different interpretations of confederation. It is this difference in interpretation of confederation itself which has created and is creating today confusion, frustration and indeed some conflict.

To French speaking Canadians confederation created a bilingual and bicultural nation. It protected their language and their culture throughout the whole of Canada. It meant partnership, not domination. French speaking Canadians believed that this partnership meant equal opportunities for both the founding races to share in all phases of Canadian development.

English speaking Canadians agree, of course, that the confederation arrangements protected the rights of French Canadians in Quebec, in parliament and in federal courts; but most felt—and I think it is fair to say this—that it did not go beyond those limits, at least until recently. This meant that, for all practical purposes, there would be an English speaking Canada with a bilingual Quebec. What is called the “French fact” was to be provincial only.

- ¹¹ Canada, *Official Languages Act*, RSC 1968-69, c 54, sections 9 and 10.
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- ¹² For example, see the following annual reports of the Office of the Commissioner of Official Languages of Canada:
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- Office of the Commissioner of Official Languages of Canada, *Annual Report 1984*, Ottawa, 1985, p. 179.
- ¹³ Office of the Commissioner of Official Languages of Canada, *Annual Report 1988*, Ottawa, 1989, pp. 6 and 28.
- See also:
- Michael Behiels, *Canada's Francophone Minority Communities: Constitutional Renewal and the Winning of School Governance*, Montréal, McGill-Queen's University Press, 2004, pp. 245–284.
- ¹⁴ *Canada (Attorney General) v Viola*, [1991] 1 FC 373 (CA), p. 386.
- ¹⁵ Canada, *An Act to amend the Official Languages Act (promotion of English and French)*, SC 2005, c 41.
- ¹⁶ Office of the Commissioner of Official Languages of Canada, *Annual Report 2008–2009: Two Official Languages, One Common Space: 40th anniversary of the Official Languages Act*, Ottawa, 2009, p. 18.
- ¹⁷ Office of the Commissioner of Official Languages of Canada, *Annual Report 2016–2017*, Ottawa, 2017, p. 10.
- ¹⁸ Parliament of Canada, *Journals of the Senate*, 42nd Parliament, 1st Session, No. 110, April 6, 2017, pp. 1515–1516.
- Parliament of Canada, Standing Senate Committee on Official Languages, *Modernizing the Official Languages Act: The Views of Young Canadians*, February 16, 2018.
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- Parliament of Canada, Standing Senate Committee on Official Languages, *Modernizing the Official Languages Act: The Views of the Justice Sector*, April 10, 2019.
- ¹⁹ Parliament of Canada, House of Commons Standing Committee on Official Languages, *Minutes of Proceedings*, 42nd Parliament, 1st Session, October 2, 2018, www.ourcommons.ca/DocumentViewer/en/42-1/LANG/meeting-111/minutes accessed May 1, 2019.
- ²⁰ See:
- Parliament of Canada, House of Commons Standing Committee on Official Languages, *Growing Up in French in Western Canada: A Review of Federal Support for Early Childhood Education*, May 2018, p. 39 (Recommendation 6).
- Parliament of Canada, House of Commons Standing Committee on Official Languages, *Ensuring Justice is Done in Both Official Languages*, December 2017, p. 13 (Recommendation 2).
- Parliament of Canada, House of Commons Standing Committee on Official Languages, *Air Canada's Implementation of the Official Languages Act: Aiming for Excellence*, November 2017, p. 20 (Recommendation 6).
- ²¹ Parliament of Canada, Standing Senate Committee on Official Languages, “Briefs,” *Examine and report on Canadians' views about modernizing the Official Languages Act*, 42nd Parliament, 1st Session, <https://sencanada.ca/en/committees/ollo/Briefs/42-1>, accessed May 1, 2019.
- On March 5, 2019, the Fédération des communautés francophones et acadienne du Canada submitted a draft bill for a new *Official Languages Act*:
- Fédération des communautés francophones et acadienne du Canada, “A Modernized *Official Languages Act*,” Schedule B to *Time for Action: The FCFA proposes a new Wording of the Official Languages Act*, brief submitted to the Standing Senate Committee on Official Languages for its study to *Examine and report on Canadians' views about modernizing the Official Languages Act*, March 5, 2019.
- ²² Parliament of Canada, *House of Commons Debates*, 42nd Parliament, 1st Session, Vol. 148, No. 309, June 6, 2018, p. 20386.
- ²³ Canadian Heritage, “Minister Joly Announces a Review of the *Official Languages Act* to Support the Vitality of Official Languages Across Canada and the Full Recognition of English and French in Canadian Society,” News release, Ottawa, March 11, 2019, www.canada.ca/en/canadian-heritage/news/2019/03/ministerjoly-announces-a-review-of-the-official-languages-act-to-support-the-vitality-of-official-languages-across-canada-and-the-full-recognition-.html, accessed May 1, 2019.
- ²⁴ Office of the Commissioner of Official Languages of Canada, *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers*, Ottawa, 1999, p. 8.

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- ²⁵ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), subsection 16(1).
- ²⁶ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), preamble.
- ²⁷ Parliament of Canada, House of Commons Standing Committee on Official Languages, *Evidence*, 40th Parliament, 3rd Session, No. 021, June 8, 2010, evidence of Graham Fraser, Commissioner of Official Languages of Canada, p. 2.
- ²⁸ See, for example:
- Mark Power and Marc-André Roy, “De la possibilité d’être compris directement par les tribunaux canadiens, à l’oral comme à l’écrit, sans l’entremise de services d’interprétation ou de traduction,” *Revue générale de droit*, Vol. 45, No. 2, 2015, pp. 403–441.
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- ²⁹ Office of the Commissioner of Official Languages of Canada, “Appendix A: Final investigation report of the Commissioner of Official Languages – Complaints Concerning the Unilingual Posting of Certain Decisions,” *Report to Parliament of the Commissioner of Official Languages on the investigation into the Courts Administration Service under subsection 65(3) of the Official Languages Act*, Ottawa, November 2016, p. 9:
- The phrase “made available” in subsection 20(1) of the Act means the moment that the court’s decision (more specifically, its content) is publicly available, that is, the moment the decision has been rendered by the court and is no longer in the hands of the decision maker. This phrase (“made available”) by necessity cannot include the dissemination of the decision, which is a completely separate step and has no direct or immediate connection with the exercise of judicial functions.
- ³⁰ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), subsections 20(1) and 20(2).
- ³¹ Office of the Commissioner of Official Languages of Canada, “Executive Summary,” *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers*, Ottawa, 1999, p. 5:
- Statutory obligations with respect to the language in which decisions are issued are broad. Federal courts and tribunals face operational constraints which make it difficult to issue all decisions, including those of no jurisprudential value, in both English and French.
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- ³³ Office of the Commissioner of Official Languages of Canada, *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers*, Ottawa, 1999, p. 52 (recommendations 6 and 7).
- ³⁴ Parliament of Canada, Standing Senate Committee on Official Languages, *Evidence*, 42nd Parliament, 1st Session, Issue 31, October 29, 2018, evidence of Daniel Gosselin, Chief Administrator of the Courts Administration Service.
- ³⁵ Office of the Commissioner of Official Languages of Canada, *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers*, Ottawa, 1999, p. 40.
- ³⁶ Office of the Commissioner of Official Languages of Canada, *The Equitable Use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-Judicial Powers*, Ottawa, 1999, p. 53.
- ³⁷ Office of the Commissioner of Official Languages of Canada, *Report to Parliament of the Commissioner of Official Languages on the Investigation into the Courts Administration Service under Subsection 65(3) of the Official Languages Act*, Ottawa, November 2016, p. 6.
- ³⁸ Office of the Commissioner of Official Languages of Canada, *Report to Parliament of the Commissioner of Official Languages on the Investigation into the Courts Administration Service under Subsection 65(3) of the Official Languages Act*, Ottawa, November 2016. See esp. p. 7.

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- ³⁹ Parliament of Canada, House of Commons Standing Committee on Official Languages, *Ensuring Justice is Done in Both Official Languages*, December 2017, p. 42 (Recommendation 9).
- ⁴⁰ Office of the Commissioner of Official Languages of Canada, *Report to Parliament of the Commissioner of Official Languages on the Investigation into the Courts Administration Service under Subsection 65(3) of the Official Languages Act*, Ottawa, 2016, p. 7.
- ⁴¹ Commissioner of Official Languages of Canada, *Brief submitted to the Standing Senate Committee on Official Languages – Bill S-205: An Act to amend the Official Languages Act (communications with and services to the public)*, brief submitted to the Standing Senate Committee on Official Languages for its review of Bill S-205, *An Act to amend the Official Languages Act (communications with and services to the public)*, Ottawa, April 20, 2015, p. 2.
- ⁴² Canada, Canada Gazette, Part 1, Vol. 153, No. 2, *Regulations Amending the Official Languages (Communications with and Services to the Public) Regulations*, January 12, 2019, pp. 77–86.
- Bill S-209, *An Act to amend the Official Languages Act (Communications with and Services to the Public)*, 42nd Parliament, 1st Session, 2015 (referred to Standing Senate Committee on Official Languages November 17, 2016).
- Bill S-205, *An Act to amend the Official Languages Act (Communications with and Services to the Public)*, 41st Parliament, 2nd Session, 2013.
- Bill S-211, *An Act to amend the Official Languages Act (Communications with and Services to the Public)*, 41st Parliament, 1st Session, 2012.
- Bill S-220, *An Act to amend the Official Languages Act (Communications with and Services to the Public)*, 40th Parliament, 3rd Session, 2010.
- ⁴³ Office of the Commissioner of Official Languages of Canada, *Special Report to Parliament: A Principled Approach to the Modernization of the Official Languages (Communications with and Services to the Public) Regulations*, Ottawa, 2018, pp. 10, 11 and 13.
- ⁴⁴ Canada, *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c 11, subsection 23(3).
- ⁴⁵ Office of the Commissioner of Official Languages of Canada, *Special Report to Parliament: A Principled Approach to the Modernization of the Official Languages (Communications with and Services to the Public) Regulations*, Ottawa, 2018, p. 5.

The report “[urges] that the following five principles be incorporated into the government’s forthcoming draft regulations:”

- Increase access to services of equal quality in both official languages.
- Seek to achieve substantive equality, taking into account the particular characteristics of official language minority communities.
- Consider the remedial nature of language rights, including the fact that these rights are designed to counter the gradual decline of official language minority communities.
- Include incentives to ensure that services are provided by federal institutions in both official languages.
- Reflect a clear and simplified regulatory approach.

- ⁴⁶ Office of the Commissioner of Official Languages of Canada, *Annual Report 2010–2011: Leadership, Action, Results*, Ottawa, 2011, p. 53.
- ⁴⁷ Parliament of Canada, House of Commons Legislative Committee on Bill C-72, *An Act respecting the status and use of the official languages of Canada*, *Minutes of Proceedings and Evidence*, 33rd Parliament, 2nd Session, June 2, 1988, Issue No. 19, pp. 19:47–19:48.

In the June 2, 1988, debates, the meaning of the terms “il est entendu que/for greater certainty” was the main focus of discussions between the Honourable Jean-Robert Gauthier (Member of Parliament for Ottawa–Vanier) and Mary E. Dawson (Assistant Deputy Minister, Public Law Sector, Department of Justice):

Mr. Gauthier: My proposed amendment would remove the English words *for greater certainty* from the start of Section 22 [now Section 23]. What use does it serve? Do we want to emphasize that it is a Section 21 [now Section 22] right and not an additional right? Are we trying to clarify the meaning of Section 21 in Section 22?

I do not understand why the words *for greater certainty* are in this section, since all similar sections start with *every federal institution*. This is the case in Section 23 [now Section 24] and Section 24 [now Section 25], where there is no question of *for greater certainty*. Here, though, someone saw fit to add this phrase, for reasons I cannot fathom.

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- Ms. Dawson: Though in principle this service is likely offered to the travelling public under Section 21, we have chosen to add Section 22 to ensure the rights of the travelling public in this situation are respected.
- ⁴⁸ Office of the Commissioner of Official Languages of Canada, *Annual Report 2010–2011: Leadership, Action, Results*, Ottawa, 2011, p. 53 (Recommendation 4).
- ⁴⁹ Office of the Commissioner of Official Languages of Canada, *Active offer: A Culture of Respect, a Culture of Excellence*, Ottawa, 2017.
- ⁵⁰ Office of the Commissioner of Official Languages of Canada, *Bilingual Greetings in Federal Institutions: Let's Talk About It!*, Ottawa, 2016, p. 1.
- ⁵¹ *R v Gaudet*, 2010 NBQB 27, para 42:
- The notion of “active offer” is of the utmost importance in terms of progression towards the equality of status of the two official languages. This coincides well with the notion that *Charter* language rights are remedial in nature having regard to past injustices.
- ⁵² Office of the Commissioner of Official Languages of Canada, *Regulations on Communications and Services: Brief by the Commissioner of Official Languages to the Standing Joint Committee on Official Languages*, December 5, 1990, p. 19, para 56.
- ⁵³ *R v Beaulac*, [1999] 1 SCR 768, para 39:
- [I]n the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages.
- ⁵⁴ See, for example:
- Prince Edward Island, *French Language Services Act General Regulations*, PEI Reg EC845/13, section 4.
- ⁵⁵ During consultations conducted by the Office of the Commissioner of Official Languages of Canada, stakeholders said that actively promoting these services could increase demand for them.
- ⁵⁶ Martin Normand, *Effective Representation, Active Offer and Positive Measures: Possible Approaches to Modernizing the Official Languages Act*, brief submitted to the Standing Senate Committee on Official Languages for its study to *Examine and report on Canadians' views about modernizing the Official Languages Act*, April 30, 2018, p. 3.
- The brief concerns a 1982 Treasury Board directive requiring departments to develop feedback systems. See:
- Canada, Treasury Board and Public Service Commission, *The Federal Official Languages Policies and Programs within the Federal Public Service: Actions Required, 1982*, Circular No. 1982-6, File No. 4500-0, January 29, 1982, p. 6, section 4.4:
- Members of the minority official language population must be able to make their views known on the linguistic aspects of services provided to the responsible departmental officials.
- See also sections 4.4.1 and 4.4.3 regarding feedback systems.
- ⁵⁷ Ontario's French Language Services Commissioner made a similar recommendation. See:
- French Language Services Commissioner of Ontario, *Modernizing the Official Languages Act: Seeking areas of interjurisdictional harmonization*, brief submitted to the Standing Committee on Official Languages for its study to *Examine and report on Canadians' views about modernizing the Official Languages Act*, June 11, 2018, pp. 29–30.
- ⁵⁸ Under subsection 46(2) of the *Official Languages Act*, the Treasury Board of Canada currently has this discretionary power with regard to Part IV in general.
- ⁵⁹ Office of the Commissioner of Official Languages of Canada, *Bilingual Greetings in Federal Institutions: Let's Talk About It!*, Ottawa, 2016, p. 4.
- ⁶⁰ Mélanie Guay and Julie Morin, “Linguistic Duality According to Raymond Thériault, Commissioner of Official Languages,” *Our Languages* blog, Language Portal of Canada, Translation Bureau, September 10, 2018, www.noslangues-ourlanguages.gc.ca/en/blogue-blog/linguistic-duality-dualite-linguistique-eng, accessed May 1, 2019.
- ⁶¹ Canada, *Treasury Board and Public Service Commission Circular No. 1977-46*, Annex B of “Official Languages in the Public Service of Canada: A Statement of Policies,” September 30, 1977, www.canada.ca/en/treasury-board-

secretariat/services/values-ethics/official-languages/list-bilingual-regions-canada-language-of-work-purposes.html, accessed May 1, 2019.

- ⁶² The term “virtual teams” refers to work teams whose members are in different locations across Canada and work together through the use of new technology. Team members may work in regions designated as bilingual for language-of-work purposes or in designated unilingual regions.
- ⁶³ Treasury Board of Canada, *Policy on Language of Work*, 2004 (rescinded November 19, 2012), www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12520, accessed May 1, 2019.

The Treasury Board’s *Policy on Language of Work*, which came into effect on April 1, 2004, and was rescinded on November 19, 2012, included a list of examples of personal and central services. New regulations could list which services federal institutions would be required to provide to employees as individuals—without limiting the generality of subsection 36(1)(a) of the *Official Languages Act*—such as pay, benefits and health care services. They could also list services required to be provided centrally by the institution to help employees perform their duties—again, without limiting the generality of subsection 36(1)(a)—such as legal, administrative, security, library and procurement services.

- ⁶⁴ Office of the Commissioner of Official Languages of Canada, *Annual Report 2016–2017*, Ottawa, 2017, p. 14.
- ⁶⁵ Commissioner of Official Languages of Canada, *Statement by the Commissioner of Official Languages on the fifth anniversary of the changes to Part VII of the Official Languages Act*, November 25, 2010, www.officiallanguages.gc.ca/en/news/releases/2010/2010-11-25, accessed May 1, 2019.
- ⁶⁶ *Fédération des francophones de la Colombie-Britannique v Canada (Employment and Social Development)*, 2018 FC 530, para 293.
- ⁶⁷ Parliament of Canada, *Debates of the Senate*, statement by the Honourable Jean-Robert Gauthier, 38th Parliament, 1st Session, Vol. 142, No. 7, October 21, 2004, pp. 112–113.
- ⁶⁸ Office of the Commissioner of Official Languages of Canada, *Annual Report 2010–2011: Leadership, Action, Results*, Ottawa, 2011, p. 19.
- ⁶⁹ *Canada (Commissioner of Official Languages) v CBC*, 2014 FC 849, para 33.
- ⁷⁰ Canada, *Action Plan for Official Languages – 2018–2023: Investing in Our Future*, Ottawa, 2018, p. 12.

Some provinces have passed legislation regarding government-wide planning and/or planning by government agencies. See, for example:

New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, section 5.1.

Nova Scotia, *French-language Services Act*, SNS 2004, c 26, subsection 10(1)(a).

Nova Scotia, *French-language Services Regulations*, NS Reg 233/2006.

Prince Edward Island, *French Language Services Act*, RSPEI 1988, c F-15.2, section 10.

- ⁷¹ In *R v Beaulac*, [1999] 1 SCR 768, paragraphs 22 and 24, a majority of the Supreme Court of Canada ruled that section 2 of the *Official Languages Act* affirmed the principle of the substantive equality of language rights and stated it was the correct norm to apply in Canadian law. In the decision, the majority said this principle means that language rights that are institutionally based require government action for their implementation and therefore create obligations for the State. A decade later, in *DesRochers v Canada (Industry)* [2009] 1 SCR 194, 2009 SCC 8, paragraph 51, the Supreme Court clarified the principle’s substance and scope in the provision of government services.
- ⁷² In *Reference re Public Schools Act (Man.)*, s 79(3), (4) and (7), [1993] 1 SCR 839, pp. 850–851, the Supreme Court of Canada confirmed the remedial nature of language rights by ruling that minority language rights “should be construed remedially, in recognition of previous injustices that have gone unredressed and which have required the entrenchment of [their] protection.” The Supreme Court later reaffirmed this in *Arsenault-Cameron v Prince Edward Island*, [2000] 1 SCR 3, 2000 SCC 1, paragraph 27. The matter has also been taken up in provincial courts, including the Court of Appeal of New Brunswick in *Charlebois v Mowat*, 2001 NBCA 117, paragraph 52, and the Court of Queen’s Bench of New Brunswick in *R v Gaudet*, 2010 NBQB 27, paragraph 35.
- ⁷³ The quasi-constitutional status of the *Official Languages Act* was affirmed by the Federal Court of Appeal in 1991 in *Canada (Attorney General) v Viola*, [1991] 1 FC 373 (CA), p. 386, and reaffirmed by the Supreme Court of Canada in 2002 in *Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, [2002] 2 SCR 773, paragraph 23; in 2014 in *Thibodeau v Air Canada*, 2014 SCC 67, [2014] 3 SCR 340, paragraph 12; and in 2018 in *Mazraani v Industrial Alliance Insurance and Financial Services Inc.*, 2018 SCC 50, paragraphs 25 and 27. Since the Act extends the rights and

protections recognized in the *Canadian Charter of Rights and Freedoms*, “it belongs to that privileged category of quasi-constitutional legislation which reflects ‘certain basic goals of our society’ and must be so interpreted ‘as to advance the broad policy considerations underlying it’” – *Canada (Attorney General) v Viola*, [1991] 1 FC 373 (CA), p. 386.

⁷⁴ *Refré Remuneration of Judges of the Prov. Court of P.E.I.; Refré Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, [1997] 3 SCR 3, paras 94–95)

⁷⁵ Canada, *Interpretation Act*, RSC 1985, c I-21, section 13: “The preamble of an enactment shall be read as a part of the enactment intended to assist in explaining its purport and object.”

⁷⁶ *An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference*, SC 2000, c 26, preamble.

It should be noted that legislation from other Canadian jurisdictions makes similar references to the Supreme Court of Canada: *Moose Conservation Closure Regulation*, Man Reg 122/2011, preamble; *Cervid Protection Regulation*, Man Reg 209/2014, preamble; *Provincial Judges and Masters in Chambers Registered and Unregistered Pension Plans*, Alta Reg 196/2001, preamble.

⁷⁷ Nunavut, *Official Languages Act*, SNU 2008, c 10, preamble.

⁷⁸ Canada, *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11, subsection 16(1).

See also:

Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), preamble, section 2 and section 43.

⁷⁹ *R v Beaulac*, [1999] 1 SCR 768, para 22.

⁸⁰ Canada, *Interpretation Act*, RSC 1985, c I-21, section 10.

For example, see the following decision where the issue of new technologies was explained by the Court of Appeal for Ontario:

Regina v McMullen, [1979] OJ No 4300, 25 OR (2d) 301:

As noted by Linden, J., the basic purpose of s. 29 is to avoid the inconvenience to financial institutions and their customers of original bank records being removed from banks for production in legal proceedings and to facilitate the proof of matters entered in bank records. The fact that computerized bank records could not have been within the contemplation of Parliament when s. 29 was first enacted in 1927 (see 1927 (Can.), c. 11, s. 2, and, also, the *Bankers' Books Evidence Act*, 1879 (U.K.), c. 11) is no reason to deny the provision's application to computer records today if such evidence reasonably comes within its language and purpose. The section should be considered as “always speaking” and “be applied to the circumstances as they arise ...”: *Interpretation Act*, R.S.C. 1970, c. I-23, s. 10: see *Attorney-General v Edison Telephone Co. of London (Ltd.) (1880)*, 6 Q.B.D. 244, and *Cash v. George Dundas Realty Ltd.* (1974), 1 O.R. (2d) 241 at p. 248, 40 D.L.R. (3d) 31 at p. 38; judgment affirmed [1976] 2 S.C.R. 796, 59 D.L.R. (3d) 605, 6 N.R. 469. In short, I agree with Linden, J.'s approach.

See, more generally:

Bell ExpressVu Limited Partnership v Rex, [2002] 2 SCR 559, 2002 SCC 42, para 37.

See also:

Nancy McCormack, *How to Understand Statutes and Regulations*, 2nd Edition, Thomson Reuters, Toronto, 2017, p. 162:

The *Interpretation Act* in all Canadian jurisdictions states that they “shall be considered as always speaking.” This means that, in general, the correct approach to the words in a statute is not simply a historical one (i.e. the meaning of the words when the statute was first enacted) but an updated or ambulatory one.

⁸¹ Canada, *Library and Archives of Canada Act* SC 2004, c 11, section 2 (“record” and “publication”).

⁸² New Brunswick's *Official Languages Act* is another interesting example, where the definitions of the terms “communication,” “communicate,” “publication,” and “published” include electronic format:

New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, section 1 (“communication” and “communicate”; “publication” and “published”).

⁸³ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), section 30.

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- ⁸⁴ Canada Gazette, Part I, Vol. 153, No. 2, *Regulations Amending the Official Languages* (Communications with and Services to the Public) Regulations, section 13, January 12, 2019, pp. 85–86.
- ⁸⁵ Federal:
- Canada, *Pay Equity Act*, SC 2018, c 27, s 416, section 184 (assented to December 13, 2018).
- Canada, *Conflict of Interest Act*, SC 2006, c 9, s 2, section 67.
- Canada, *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, section 29.
- Canada, *Lobbying Act*, RSC 1985, c 44 (4th Supp), section 14.1.
- Bill C-58, *An Act to amend the Access to Information Act and the Privacy Act and to make consequential amendments to other Acts*, 42nd Parliament, 1st Session, 2017 (second reading in Senate June 6, 2018), subsection 93(1):
- It should also be noted that Bill C-58 would add a provision to the *Access to Information Act* and the *Privacy Act*—both quasi-constitutional acts, just like the *Official Languages Act*—requiring a review of the act every five years.
- Provincial/territorial:
- New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, section 42.
- Northwest Territories, *Official Languages Act*, RSNWT 1988, c O-1, section 35.
- Nunavut, *Inuit Language Protection Act*, SNu. 2008, c 17, section 43.
- Nunavut, *Official Languages Act*, SNu. 2008, c 10, section 37.
- ⁸⁶ New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, section 42.
- ⁸⁷ New Brunswick’s Commissioner of Official Languages made this suggestion in a brief to the Standing Senate Committee on Official Languages:
- Office of the Commissioner of Official Languages for New Brunswick, *Brief submitted by the Office of the Commissioner of Official Languages for New Brunswick to the Standing Senate Committee on Official Languages as Part of Its Study on Canadians’ Views about Modernizing the Official Languages Act*, brief submitted to the Standing Senate Committee on Official Languages for its study to *Examine and report on Canadians’ views about modernizing the Official Languages Act*, October 26, 2018, p. 28, para 70.
- ⁸⁸ *Thibodeau v Air Canada*, [2014] 3 SCR 340, 2014 SCC 67.
- ⁸⁹ *Convention for the Unification of Certain Rules for International Carriage by Air*, 2242 UNTS 309 (*Montreal Convention*), May 28, 1999 (entered into force in Canada on November 4, 2003).
- ⁹⁰ Bill C-666, *An Act to amend the Carriage by Air Act (fundamental rights)*, 41st Parliament, 2nd Session, 2015.
- ⁹¹ Parliament of Canada, *House of Commons Debates*, remarks by the Honourable Stéphane Dion, 41st Parliament, 2nd Session, Vol. 147, No. 199, April 23, 2015, p. 12905.
- ⁹² Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), section 58.
- ⁹³ Ontario, *French Language Services Act*, RSO 1990, c F-32, subsection 12.3 (1)(c).
- ⁹⁴ Canada, *Canadian Human Rights Act*, RSC, 1985, c H-6, subsection 41(1)(e).
- ⁹⁵ Newfoundland and Labrador, *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2, subsection 45(1)(a).
- ⁹⁶ Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), subsection 100(1)(a).
- ⁹⁷ *Lavigne v Canada (Office of the Commissioner of Official Languages)*, [2002] 2 SCR 773, 2002 SCC 53, para 42.
- ⁹⁸ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), subsection 63(1).
- ⁹⁹ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), subsection 62(1)(a).
- ¹⁰⁰ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), sections 63 and 65–67.

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- ¹⁰¹ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), section 63.
- ¹⁰² Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), section 57.
- ¹⁰³ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), section 78.
- ¹⁰⁴ The late Honourable Senator Pierre De Bané introduced a bill in 1978, when he was an MP, to make the Commissioner's decisions enforceable so that federal institutions would implement them immediately or face fine or imprisonment. See Bill C-202, *An Act to amend the Official Languages Act*, 30th Parliament, 3rd Session, 1977 (introduced October 31, 1977, reached second reading). The same bill was reintroduced in 1978 (Bill C-294, *An Act to amend the Official Languages Act*, 30th Parliament, 4th Session, 1978) and did not get past first reading. It was introduced a third time in 1980 (Bill C-398, *An Act to amend the Official Languages Act*, 32nd Parliament, 1st Session, 1980) and again did not get past first reading.
- ¹⁰⁵ Parliament of Canada, House of Commons Standing Committee on Official Languages, *Air Canada's Implementation of the Official Languages Act: Aiming for Excellence*, November 2, 2017, p. 20 (Recommendation 6).
- ¹⁰⁶ See, for example:
Canada, *Pay Equity Act*, SC 2018, c 27, s 416, section 126 (assented to December 13, 2018).
Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), section 78.
- ¹⁰⁷ See, for example:
National Energy Board of Canada, *Administrative Monetary Penalties Process Guide*, 2015, p. 4.
- ¹⁰⁸ See, for example:
Canada, *Pay Equity Act*, SC 2018, c 27, s 416, section 127 (assented to December 13, 2018).
Canada, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, sections 73.1 and 73.11.
Canada, *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*, SOR/2007-292, sections 5 and 6.
Canada, *Administrative Monetary Penalties Regulations (National Energy Board)*, SOR/2013-138, section 4.
Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), subsection 91(1).
- ¹⁰⁹ Parliament of Canada, House of Commons Standing Committee on Official Languages, *Evidence*, 42nd Parliament, 1st Session, No. 073, October 3, 2017, evidence of Pierre Foucher, University of Ottawa Faculty of Law professor, p. 13.
- ¹¹⁰ Canada, *Conflict of Interest Act*, SC 2006, c 9, s 2, sections 52–62 (see esp. sections 53, 56, and 57).
The Conflict of Interest and Ethics Commissioner of Canada may impose administrative monetary penalties on public office holders who violate the terms of the *Conflict of Interest Act*.
- ¹¹¹ Canada, *Pay Equity Act*, SC 2018, c 27, s 416, sections 125–146 (assented to December 13, 2018).
- ¹¹² Canada, *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126.
- ¹¹³ Canada, *Environmental Violations Administrative Monetary Penalties Regulations*, SOR/2017-109.
- ¹¹⁴ Canada, *Pay Equity Act*, SC 2018, c 27, s 416, subsection 3(2) and section 129 (assented to December 13, 2018).
- ¹¹⁵ Canada, Environment and Climate Change Canada, *Policy Framework of the Administrative Monetary Penalty Regime at Environment and Climate Change Canada to Implement the Environmental Violations Administrative Monetary Penalties Act*, Ottawa, 2017, pp. 2 and 9.
- ¹¹⁶ Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), section 148.
Canada, *Canadian Human Rights Act*, RSC 1985, c H-6, section 439.
- ¹¹⁷ Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), section 77.

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- ¹¹⁸ Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), section 2 (“regulated entity”) and subsection 7(1).
Canada, *Financial Administration Act*, RSC 1985, c F-11, schedules I to V.
- ¹¹⁹ Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), subsections 77(1) and 117(1).
- ¹²⁰ Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), subsection 82(1).
- ¹²¹ See, for example:
Canada, *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17, sections 73.1–73.5.
Canada, *Proceeds of Crime (Money Laundering) and Terrorist Financing Administrative Monetary Penalties Regulations*, SOR/2007-292.
Canada, *Administrative Monetary Penalties Regulations (National Energy Board)*, SOR/2013-138.
Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), sections 77–93.
- ¹²² See, for example, the following legislation, which also uses this term:
Canada, *Canada Elections Act*, SC 2000, c 9, sections 517–521.
Canada, *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, section 17.1.
Canada, *Bank Act*, SC 1991, c 46, section 661.
Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), section 82.
- ¹²³ Commissioner of Official Languages of Canada, *Special Report to Parliament – Air Canada: On the road to increased compliance through an effective enforcement regime*, Ottawa, 2016, p. 6.
- ¹²⁴ Canada, *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, subsection 17.1(3).
- ¹²⁵ Canada, *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, section 17.1.
- ¹²⁶ Canada, *Canada Elections Act*, SC 2000, c 9, section 517.
- ¹²⁷ Canada, *Financial Consumer Agency of Canada Act*, SC 2001, c 9, subsection 5(1).
See also:
Canada, *Payment Card Networks Act*, SC 2010, c 12, s 1834, subsection 5(8).
Canada, *Bank Act*, SC 1991, c 46, section 661.
Canada, *Insurance Companies Act*, SC 1991, c 47, section 698.
Canada, *Trust and Loan Companies Act*, SC 1991, c 45, section 520.5.
Canada, *Cooperative Credit Associations Act*, SC 1991, c 48, section 452.5.
- ¹²⁸ Bill C-81, *An Act to ensure a barrier-free Canada*, 42nd Parliament, 1st Session, 2018 (referred to the Standing Senate Committee on Social Affairs, Science and Technology March 21, 2019), subsection 82(1).
- ¹²⁹ Canada, *Environmental Violations Administrative Monetary Penalties Act*, SC 2009, c 14, s 126, subsection 27(3).
- ¹³⁰ See, for example:
Canada, *Environmental Damages Fund*, www.canada.ca/en/environment-climate-change/services/environmental-funding/programs/environmental-damages-fund.html, accessed May 1, 2019:
The Environmental Damages Fund (EDF) is a specified purpose account, administered by Environment Canada, to provide a mechanism for directing funds received as a result of fines, court orders, and voluntary payments to priority projects that will benefit our natural environment. The Environmental Damages Fund (EDF) follows the Polluter Pays

Principle to help ensure that those who cause environmental damage or harm to wildlife take responsibility for their actions.

¹³¹ Office of the Commissioner of Official Languages of Canada, *Annual Report 2007–2008*, Ottawa, 2008, p. 33.

¹³² Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), subsection 46(1).

¹³³ Canada, *Official Languages Act*, RSC 1985, c 31 (4th Supp), section 42.

¹³⁴ Office of the Commissioner of Official Languages of Canada, *Annual Report 2007–2008*, Ottawa, 2008, p. 33.

¹³⁵ In its May 2007 report on the relocation of head offices, the Standing Senate Committee on Official Languages asked the Commissioner of Official Languages to review horizontal management:

Parliament of Canada, Standing Senate Committee on Official Languages, *Relocation of Head Offices of Federal Institutions: Respect for Language Rights*, 39th Parliament, 1st Session, 2007, p. 23:

The Committee feels that the Commissioner of Official Languages must take a critical look at the impact that the transfer of the Official Languages Secretariat from the Privy Council Office to the Department of Canadian Heritage has had on managing official languages. The Commissioner should recommend any necessary changes to ensure that there is genuine horizontal coordination of the government's official languages policies.

Recommendation 9

That the Commissioner of Official Languages:

- a) Assess the impact that the transfer of the Official Languages Secretariat from the Privy Council Office to the Department of Canadian Heritage has had on managing official languages;
- b) Make recommendations to the government to enhance the horizontal coordination of the government's official languages policies.

In response to this request, the Office of the Commissioner of Official Languages issued the following report:

Office of the Commissioner of Official Languages of Canada, *Horizontal Management of Official Languages*, Ottawa, March 2008.

The Commissioner of Official Languages also made recommendations in his 2007–2008 annual report:

Office of the Commissioner of Official Languages of Canada, *Annual Report 2007–2008*, Ottawa, 2008, pp. 34–35.

¹³⁶ Office of the Commissioner of Official Languages of Canada, *Annual Report 2007–2008*, Ottawa, 2008, p. 31.

¹³⁷ New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, section 5.1.

¹³⁸ For examples, see:

Prince Edward Island, *French Language Services Act*, RSPEI 1988, c F-15.2, section 10.

New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, section 5.1.

Nova Scotia, *French-language Services Act*, SNS 2004, c 26, subsection 10(1)(a).

Nova Scotia, *French-language Services Regulations*, NS Reg 233/2006, sections 4-10.

¹³⁹ New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, subsection 5.1(1).

Prince Edward Island, *French Language Services Act*, RSPEI 1988, c F-15.21, section 10.

¹⁴⁰ Nova Scotia, *French-language Services Act*, SNS 2004, c 26, subsection 10(1)(a).

Nova Scotia, *French-language Services Regulations*, NS Reg 233/2006, sections 4–10.

¹⁴¹ New Brunswick, *Official Languages Act*, SNB 2002, c O-0.5, section 2.

Similarly, the Minister Responsible for Acadian and Francophone Affairs in PEI is responsible for administering that province's legislation:

Prince Edward Island, *French Language Services Act*, RSPEI 1988, c F-15.21, subsection 7(1).

¹⁴² Parliament of Canada, Standing Senate Committee on Official Languages, “Briefs,” *Examine and report on Canadians’ views about modernizing the Official Languages Act*, 42nd Parliament, 1st Session, <https://sencanada.ca/en/committees/ollo/Briefs/42-1>, accessed May 1, 2019.

See the following briefs:

Office of the French Language Services Commissioner of Ontario, *Letter to expand on the testimony given by the French Language Services Commissioner*, August 14, 2018, pp. 6–7.

Quebec Community Groups Network, *English-speaking Quebec and the Modernization of the Official Languages Act*, May 28, 2018, p. 36, para 105.

Fédération des communautés francophones et acadienne du Canada, *Giving New Momentum to Canada’s Linguistic Duality! For a Modern and Respected Official Languages Act*, March 26, 2018, p. 22, para 57.

Société de la francophonie Manitobaine, *Brief*, February 15, 2018, pp. 4–5, para 22.

¹⁴³ The then Commissioner of Official Languages of Canada, Graham Fraser, had already recommended this in 2011:

Office of the Commissioner of Official Languages of Canada, *Annual Report 2010–2011: Leadership, Action, Results*, Ottawa, 2011, p. 20 (Recommendation 1).

¹⁴⁴ Privy Council Office of Canada, *Managing Horizontal Policy Issues*, Ottawa, December 1996, pp. 11–12.

¹⁴⁵ Parliament of Canada, Standing Senate Committee on Official Languages, “Briefs.” *Examine and report on Canadians’ views about modernizing the Official Languages Act*, 42nd Parliament, 1st Session, <https://sencanada.ca/en/committees/ollo/Briefs/42-1>, accessed May 1, 2019.

See the following briefs:

Association des juristes d’expression française de l’Ontario, *Modernizing the Official Languages Act: A Matter of Access to Justice*, November 30, 2018, p. 7, para 25.

Fédération des associations de juristes d’expression française de common law inc., *Access to Justice in French in the context of modernizing the Official Languages Act of Canada*, November 15, 2018, p. 3, Recommendation (h).

Quebec Community Groups Network, *English-speaking Quebec and the Modernization of the Official Languages Act*, May 28, 2018, p. 39, para 114.

Fédération des communautés francophones et acadienne du Canada, *Giving New Momentum to Canada’s Linguistic Duality! For a Modern and Respected Official Languages Act*, March 26, 2018, p. 37, para 125.

¹⁴⁶ Canadian Heritage, Evaluation Services Directorate, *Evaluation of the Language Rights Support Program*, February 5, 2016, p. i:

The Language Rights Support Program (LRSP) was created following an out of court agreement reached in 2008 between the Canadian federal government, the Fédération des communautés francophones et acadienne du Canada (FCFA) and the Commissioner of Official Languages (COL). This out of court agreement occurred as part of a legal remedy initiated by the FCFA in response to the Canadian government’s decision to eliminate the Court Challenges Program (CCP) in 2006.

¹⁴⁷ Parliament of Canada, Standing Senate Committee on Official Languages, “Briefs,” *Examine and report on Canadians’ views about modernizing the Official Languages Act*, 42nd Parliament, 1st Session, <https://sencanada.ca/en/committees/ollo/Briefs/42-1>, accessed May 1, 2019.

See the following briefs:

Office of the Commissioner of Official Languages for New Brunswick, *Brief submitted by the Office of the Commissioner of Official Languages for New Brunswick to the Standing Senate Committee on Official Languages as Part of Its Study on Canadians’ Views about Modernizing the Official Languages Act*, October 26, 2018, pp. 22–23, paras 46 and 52.

Office of the French Language Services Commissioner of Ontario, *Modernizing the Official Languages Act: Seeking areas of interjurisdictional harmonization*, June 11, 2018, p. 19, para 51.

Association francophone des municipalités du Nouveau-Brunswick, *Appearance before the Standing Senate Committee on Official Languages*, April 23, 2018, pp. 3–4.

Société de l'Acadie du Nouveau-Brunswick, *Let's Finally Recognize the Specificity of New Brunswick in the Official Languages Act!*, April 16, 2018, pp. 12, 16–17, 19 and 22–23, paras 40, 52, 59 and 69.

Fédération des communautés francophones et acadienne du Canada, *Giving New Momentum to Canada's Linguistic Duality! For a Modern and Respected Official Languages Act*, March 26, 2018, pp. 31 and 38, paras 100 and 130.

- ¹⁴⁸ Parliament of Canada, Standing Senate Committee on Official Languages, “Briefs,” *Examine and report on Canadians' views about modernizing the Official Languages Act*, 42nd Parliament, 1st Session, <https://sencanada.ca/en/committees/ollo/Briefs/42-1>, accessed May 1, 2019.

See the following briefs:

Groupe Vision Management Consulting, *Modernization of the Official Languages Act: Practical Perspectives*, October 9, 2018, pp. 4–5.

Townshippers' Association, *Brief: Modernization of the Official Languages Act*, June 4, 2018, p. 3.

Quebec Community Groups Network, *English-speaking Quebec and the Modernization of the Official Languages Act*, May 28, 2018, p. 23, paras 65–66.

Fédération des communautés francophones et acadienne du Canada, *Giving New Momentum to Canada's Linguistic Duality! For a Modern and Respected Official Languages Act*, March 26, 2018, p. 39, para 135.

See also:

Parliament of Canada, House of Commons Standing Committee on Official Languages, *Evidence*, 42nd Parliament, 1st Session, No. 125, December 6, 2018, evidence of Raymond Thériault, Commissioner of Official Languages of Canada, p. 13.

Parliament of Canada, House of Commons Standing Committee on Official Languages, *Evidence*, 42nd Parliament, 1st Session, November 27, 2018, evidence of Stephen Thompson, Quebec Community Groups Network Director of Policy, Research and Public Affairs, p. 12.

- ¹⁴⁹ Canada, *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11, section 55:

A French version of the portions of the Constitution of Canada referred to in the schedule shall be prepared by the Minister of Justice of Canada as expeditiously as possible and, when any portion thereof sufficient to warrant action being taken has been so prepared, it shall be put forward for enactment by proclamation issued by the Governor General under the Great Seal of Canada pursuant to the procedure then applicable to an amendment of the same provisions of the Constitution of Canada.

- ¹⁵⁰ Parliament of Canada, Standing Senate Committee on Official Languages, “Briefs,” *Examine and report on Canadians' views about modernizing the Official Languages Act*, 42nd Parliament, 1st Session, <https://sencanada.ca/en/committees/ollo/Briefs/42-1>, accessed May 1, 2019.

See the following briefs:

Fédération des associations de juristes d'expression française de common law inc., *Access to Justice in French in the Context of Modernizing the Official Languages Act of Canada*, November 15, 2018, p. 3, Recommendation (i).

Canadian Bar Association, French Speaking Common Law Members Section and Constitutional and Human Rights Section, *Access to Justice in French and English in the Context of Modernizing the Official Languages Act*, October 29, 2018, p. 8, para 33.

Fédération des communautés francophones et acadienne du Canada, *Giving New Momentum to Canada's Linguistic Duality! For a Modern and Respected Official Languages Act*, March 26, 2018, p. 44, para 156.

- ¹⁵¹ Parliament of Canada, Standing Senate Committee on Official Languages, “Briefs,” *Examine and report on Canadians' views about modernizing the Official Languages Act*, 42nd Parliament, 1st Session, <https://sencanada.ca/en/committees/ollo/Briefs/42-1>, accessed May 1, 2019.

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