Office of the Commissioner of Official Languages
Commissariat aux langues officielles

PROTECTING LANGUAGE RIGHTS:
OVERVIEW OF THE COMMISSIONER'S INTERVENTIONS IN THE COURTS

2006–2016

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FOREWORD

Shortly after my appointment as Commissioner of Official Languages, I was invited to speak on the role of the courts in furthering the cause of language rights in Canada.

I reminded my listeners that the edifice of our language rights was built on the right to learn in the minority official language and the right to use the official language of one's choice, two rights whose nature and scope are the results of an ongoing and complex dialogue between the courts, the Parliament of Canada, the provincial and territorial legislatures and other levels of government.[1] This dialogue on the interpretation and application of language rights in turn receives input from many sources: the public, official language communities[2] and the associations that represent them and, of course, language ombudsmen.

During my mandate, I have contributed to this dialogue by participating in language-related cases whenever this was required. As Commissioner of Official Languages, not only do I have the option of intervening in language cases under the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act* that come before the courts, I am also empowered to file proceedings myself to enforce the language rights guaranteed under the Act. In fact, from 2006 to 2016, I acted as either litigant or party to 23 cases, including 9 before the Supreme Court of Canada.

As this report shows, legal interventions by the Office of the Commissioner of Official Languages can have a significant impact on official language communities and on Canadians in general. Traditionally viewed as a last resort, these interventions are considered essential for defining and defending language rights.

By way of example, in the *DesRochers* case, in which I participated as co-appellant, the Supreme Court of Canada formally defined the right to receive federal services of equal quality in both official

languages. In that case, the Court also stipulated that federal institutions must, in certain circumstances, take into account the needs of official language communities in delivering their services.

Among the cases pertaining to section 23 of the Charter in which I have intervened, the one between the Association des parents de l'école Rose-des-vents and the British Columbia Ministry of Education enabled the Supreme Court of Canada to reaffirm that the educational experience of the children of section 23 rights holders must be of meaningfully similar quality to the educational experience of majority-language students.[3] The Court also made important statements on the impact of government inaction, noting that "to the extent that there are disputes between a provincial ministry of education and a minority language school board over how best to ensure compliance with the requirements of section 23, these disputes should be worked out between those parties whenever possible."[4]

It is certainly preferable for the parties in a dispute to try to resolve it out of court. As the Supreme Court noted, resorting to litigation takes a heavy toll on official language communities and individuals, since the outcome of the proceedings is often determined years later.

Senator Serge Joyal once commented that no citizen should have to be a hero to defend his or her rights.[5] That is why language rights are at the heart of the Charter, and governments cannot rely on opting-out provisions to override them. Citizens should not need to make heroic efforts to have their constitutional rights upheld.

I would therefore like to thank all Canadians who have been driven to take action in defence of their own language rights and those of official language communities. These people, who often remain out of the limelight, have had a great influence on the development of Canada's language framework.

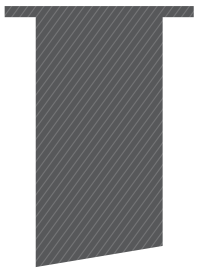
At the same time, I would like to invite the Government of Canada, the Parliament of Canada, federal institutions and provincial and territorial governments to take the measures needed to ensure full application and recognition of the language rights guaranteed by the Charter and by the Act, so that official language communities and individuals wanting to defend their language rights will have less need to resort to the courts to ensure that their rights are respected.

To attain this objective, it is essential that the dialogue initiated several decades ago between the judicial, legislative and executive branches carry on enthusiastically and openly and that citizens and official language communities be invited to join in.

I have no doubt that my successor will strive to enrich this dialogue through the judicious use of his or her power to intervene in court and through the generous sharing of expertise with official language communities and individuals anxious to affirm their rights through the courts.

Graham Fraser
Commissioner of Official Languages

"Breaches of quasi-constitutional rights established by the evidence require the opening of a 'dialogue' between the judicial and executive branches, the court providing some elements of the solution while granting the executive the necessary flexibility to develop appropriate solutions."[6]



INTRODUCTION

Over the years, the courts have contributed to the Canadian dialogue on language rights by rendering decisions that have had a profound impact on the development of official language communities and on the status of English and French in our society.

In the *Beaulac* decision,[7] for instance, the Supreme Court of Canada adopted a broad and liberal interpretation of language rights and noted that these rights could be exercised only if the means to do so were provided. Similarly, in the *DesRochers*[8] case, the Court stipulated that the principle of substantive equality between English and French required the services offered by federal institutions to take into account the specific needs of each official language community in certain cases, depending on the nature of these services.

Various factors explain why *Beaulac*, *DesRochers* and many other cases came before the courts:

- With the enactment of the *Canadian Charter of Rights and Freedoms*,[9] the courts became the guardians of the constitutional rights of citizens and minorities and were invested with broad remedial powers to be exercised whenever governments and public institutions failed to meet their obligations.
- The Court Challenges Program of Canada and the Language Rights Support Program enabled citizens and official language communities to receive financial support from the federal government to defend the language rights guaranteed by the Charter before the courts.
- In 1988, most of the obligations set out in the *Official Languages Act* (in particular those relating to services to the public) became enforceable; complainants obtained the right to bring situations where they felt that federal institutions had failed to meet their obligations under the Act before the courts.[10]

The participation of the Commissioner of Official Languages of Canada in various court proceedings has helped to establish a rich body of case law pertaining to language rights, which individuals and official language communities can refer to in asserting rights guaranteed by the Charter and the

Act. Since 1988, in the role of ombudsman and protector of language rights, the Commissioner of Official Languages has appeared before the courts, as either a party to the proceedings or an intervener, when federal institutions have failed to respond adequately to his investigations and recommendations or when a case has raised legal issues with serious implications for the interpretation and exercise of language rights.

The intent of this report is to inform the public, federal institutions and Parliament as to how the Commissioner of Official Languages has exercised his powers throughout the years. It details the factors that lead the Commissioner to file legal proceedings himself or to participate as intervener, as well as the profound and lasting effects that his participation can have on the judicial process.

The report also contains, for the benefit of the Government of Canada, parliamentarians and federal institutions, findings that should be taken into consideration in order to promote better dialogue on language rights and ultimately to strengthen the country's linguistic duality.

01

COMMISSIONERS IN THE COURTS: 1983–2006

FOUR KEY EVENTS IN THE HISTORY OF THE *OFFICIAL LANGUAGES ACT*

1969 Adoption of the first *Official Languages Act*

1982 Adoption of the *Canadian Charter of Rights and Freedoms*

1988 Adoption of the new *Official Languages Act*

2005 Adoption of amendments to the *Official Languages Act*

OFFICIAL LANGUAGES ACT COMES INTO FORCE

Adopted in 1969, the first *Official Languages Act* created the position of Commissioner of Official Languages, whose role as ombudsman was primarily to investigate complaints from individuals or official language communities and make recommendations to federal institutions that were not fulfilling their language obligations. The Act of 1969 gave neither complainants nor the Commissioner the power to take legal action to compel an institution to uphold the public's language rights.

Starting in the early 1980s, the Commissioner began to intervene in cases relating to the *Canadian Charter of Rights and Freedoms*. However, it was only in 1988 that the Parliament of Canada strengthened the Act by making it enforceable.[11] As the late Franco-Ontarian Senator Jean-Robert Gauthier remarked, thanks to Part X of the new Act, individuals or groups "who feel their rights have been breached will at least be entitled to legal recourse, which means they may be heard by a Court and seek redress. This is an entirely new concept."[12]

Part X also empowered the Commissioner of Official Languages to initiate legal proceedings himself with the complainant's consent, to appear in court on behalf of a complainant and to intervene in a legal action already started by a complainant. The Minister of Justice and Attorney General of Canada at the time, the Honourable Ray Hnatyshyn, explained that, while this measure was clearly not intended to "require recourse to the courts," it nonetheless provided the "commissioner and the individual complainant with rights if there is not a satisfactory resolution after a reasonable period of time or if the commissioner thinks a matter of importance requires judicial interpretation."[13]

Since 1988, the Commissioner of Official Languages has also been able to invoke the Act to intervene in cases relating to the status and use of English or French. In fact, subsection 78(3) of the new Act explicitly confers on the Commissioner the power to seek leave to intervene in all cases relating to the status or use of English or French, thereby making it possible to intervene in matters bearing on the language rights guaranteed by the Charter, as well as in proceedings against provincial or territorial governments.[14]

WHEN IS IT POSSIBLE TO APPLY FOR A REMEDY UNDER PART X?

Subsection 77(1) of the *Official Languages Act* sets out certain conditions that must be met before a person can apply to the court for a remedy: (1) the applicant must have filed a complaint with the Office of the Commissioner of Official Languages; and (2) the complaint must relate to a right or duty under sections 4 to 7, 10 to 13 or 91, Part IV (Communications with and Services to the Public), Part V (Language of Work) or Part VII (Advancement of English and French) of the Act. The deadlines specified in subsection 77(2) must also be met.[15]

THE COMMISSIONER'S POWERS BEFORE THE COURTS: AN INDISPENSABLE TOOL IN RELATION TO HIS OTHER POWERS

"The Commissioner has a toolbox at his disposal, like the formal investigation process and the facilitated resolution of complaints. He also has an education mandate to help the institutions under his jurisdiction understand their obligations under the *Official Languages Act*. But it's the fact that the Commissioner can intervene before the courts as a final resort that makes these different tools useful. Without that capacity, I'm afraid that the Commissioner's other powers would be moot."[16]

(Stephen Thompson, Director of Strategic Policy, Research and Public Affairs, Quebec Community Groups Network)

A FEW KEY CASES

From 1983 to 2006, all of Commissioner Fraser's predecessors intervened in several cases on the education-related language rights guaranteed by the Charter. Such cases have resulted in significant decisions that have provided the courts and the Supreme Court of Canada the opportunity to define the scope of language rights and specify governments' obligations regarding their implementation.

Similarly, the right to a remedy that is set out in Part X of the Act has resulted in many court remedies, some initiated by complainants and others by one of the commissioners of official languages who have held office successively from 1983 to 2006. This body of case law has served to clarify the scope and nature of the rights and obligations set out in the Act.

In 1983, Commissioner Maxwell Yalden intervened in *Reference re Education Act of Ontario and Minority Language Education Rights* to assert that the legislation violated the right of parents in the Franco-Ontarian community to exercise management and control over French-language educational institutions. In 1984, the Ontario Court of Appeal sided with the parents and the Commissioner and elaborated on the judicial and legislative powers with respect to the protection of Canadians' language rights:

> The judiciary is not the sole guardian of the constitutional rights of Canadians. Parliament and the provincial Legislatures are equally responsible to ensure that the rights conferred by the Charter are upheld. Legislative action in the important and complex field of education is much to be preferred to judicial intervention. Minority linguistic rights should be established by general legislation assuring equal and just treatment to all rather than by litigation.[17]

In 1986, Commissioner D'Iberville Fortier intervened before the Alberta Court of Appeal and then again before the Supreme Court of Canada in *Mahé v Alberta*. This case dealt with the level of management and control that parents of the Franco-Albertan community should have over the province's French-language schools. In 1990, the Supreme Court emphasized the remedial purpose of section 23 of the Charter, pointing out that the provisions pertaining to language rights, especially those relating to the right to instruction in the minority language, were intended to preserve Canada's two official languages and the cultures they represent. To this day, that decision is still frequently cited in litigation on language rights.

RESTORING THE BALANCE OF POWER

"The issue of language rights is complex, the operation of governments likewise. The legal powers of the Commissioner of Official Languages and his interventions restore the balance of power between citizens who seek to defend their rights and governments subject to obligations under the *Official Languages Act*, the *Canadian Charter of Rights and Freedoms* and other laws. [translation]"[18]

(Rénald Rémillard, Executive Director, Fédération des associations de juristes d'expression française de common law inc.)

In 1990, Commissioner Fortier initiated legal proceedings before the Federal Court against Air Canada, whose problems complying with the Act have been recurrent. The Commissioner and the carrier ended up settling the case out of court a year later.

In 1991, Commissioner Fortier returned to the Federal Court in *Canada v Viola*. This case established that the 1988 *Official Languages Act* was "not an ordinary statute. . . 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'."[19] This principle would be cited later in many cases interpreting the Act.

During his mandate, Commissioner Victor Goldbloom filed legal proceedings against two federal institutions serving the travelling public. In 1991, complaints against VIA Rail Canada in the Toronto-Ottawa-Montréal triangle led the Commissioner to take legal action against the carrier. VIA Rail Canada took the necessary measures to correct matters, so Commissioner Goldbloom dropped the proceedings in 1998.

During the same period, in 1997, Commissioner Goldbloom filed a reference application in the Federal Court to obtain clarification on the language obligations of Air Canada's regional carriers. In 2000, before the Court could render a decision, the Parliament of Canada amended section 10 of the *Air Canada Public Participation Act* to require that all of the airline's affiliates comply with Part IV of the Act with regard to air travel and related services.

In 1999, Commissioner Goldbloom intervened in *Arsenault-Cameron v Prince Edward Island*. The appellants were contesting the refusal by the Minister of Education of that province to establish a French-language school in Summerside. In 2000, the Supreme Court of Canada clarified the precise obligations of governments and school boards and defined parents' rights, explaining that official language minorities must be "treated differently, if necessary, according to their particular circumstances and needs, in order to provide a standard of education equivalent to that of the official language majority."[20] This decision was a major victory for all of the country's English-speaking and French-speaking minorities, as the Court was stating that the principle of substantive equality also applies to the enforcement of other language rights guaranteed by the Charter and by federal, provincial or territorial language schemes.

In 2003, Commissioner Dyane Adam was granted intervener status in a case filed by Michel Thibodeau against Air Canada concerning a lack of service in French aboard a Montréal-Ottawa flight by Air Ontario (at that time an Air Canada affiliate). The federal institution, then seeking protection under the *Companies' Creditors Arrangement Act* and undergoing restructuring, challenged the case, claiming that it was only obliged to make an effort to have its affiliates provide services to clients in both official languages, and not necessarily to achieve that result. Air Canada further alleged that in this case the collective agreement prevailed over the *Official Languages Act*.

In 2005, the Federal Court upheld Thibodeau's case against Air Canada and concluded not only that Air Canada had an obligation of result, but also that, in the case of incompatibility between a collective agreement under the *Canada Labour Code* and the implementation of the *Official Languages Act*, "the [Act] will prevail over the provisions of the collective agreement."[21]

Air Canada appealed this decision to the Federal Court of Appeal. In 2007, seven years after the incident that had given rise to the case, the Federal Court of Appeal dismissed Air Canada's appeal, criticizing it as "an appeal that seems far more oppressive than deserving."[22] This ruling was a victory for Thibodeau and the entire travelling public, nationwide, as it clarified the nature and scope of the obligations incumbent on Air Canada and its affiliates.

In addition to participating in *Thibodeau v Air Canada,* Commissioner Adam intervened in 2004 in a case between the Forum des maires de la Péninsule acadienne and the Government of Canada. In the investigation report prepared in response to the complaint, the Commissioner concluded that the Canadian Food Inspection Agency had made decisions that did not fully comply with Parts IV and VII of the Act. The case brought before the Court by the Forum revolved around whether or not Part VII of the Act was enforceable. In 2004, the Federal Court of Appeal rendered a decision in the case that significantly clarified the nature and scope of the right to remedy set out in Part X of the Act. It concluded, however, that Part VII of the Act "is declaratory of a commitment and does not create any right or duty that could at this point be enforced by the courts."[23] In the Court's view, the debate on the enforceability of Part VII needed to be conducted in Parliament.

In 2005, Commissioner Adam intervened decisively in a case between Edwidge Casimir and the Government of Quebec. The Supreme Court was asked to rule on the constitutionality of a provision of the *Charter of the French Language* that required, as a condition of eligibility to attend English-language public schools, that students must have received the "major part" of their education in English. While acknowledging the importance of this criterion, Commissioner Adam pointed out that its purely mathematical application did not take into account the interests of the students, their parents and the English-language community.

The Supreme Court concluded that the "major part" criterion is constitutional as long as it is interpreted broadly and liberally, taking into account students' entire school experience and demonstrated commitment to studying in the language of instruction of the minority. This case actually enabled the highest court in the land to remind provincial and territorial governments that their power to ensure application of section 23 of the *Canadian Charter of Rights and Freedoms* must be consistent with the remedial objectives of this provision.

CONSTRUCTIVE DIALOGUE

Following the complaint and legal action by the Forum des maires de la Péninsule acadienne and the ruling of the Federal Court of Appeal, the efforts and perseverance of the late Senator Jean-Robert Gauthier to have the *Official Languages Act* amended succeeded in 2005. After three bills had died on the Order Paper, Parliament finally amended the Act and made Part VII enforceable, imposing on all federal institutions the obligation to take positive measures and empowering the courts to order a remedy in the event of a failure to comply with Part VII.

02

COMMISSIONER FRASER IN THE COURTS

A TUMULTUOUS START

In September 2006, the Department of Canadian Heritage eliminated the federal Court Challenges Program, the objective of which was to provide financial support to complainants wishing to take legal action regarding the infringement of their rights guaranteed by the *Canadian Charter of Rights and Freedoms*. As a result of this decision, Canadians and official language communities found it harder to access the financial resources they needed to go to court and defend their language rights.

Commissioner Graham Fraser was appointed in October 2006, as the decision by Canadian Heritage was sparking more than a hundred complaints and an application for judicial review.[24] The Fédération des communautés francophones et acadienne du Canada (FCFA)[25] petitioned the Federal Court to reinstate the Court Challenges Program.

The FCFA's application for judicial review was suspended while the Commissioner investigated the matter; then, in 2007, legal proceedings began pursuant to Part X of the *Official Languages Act*. Further to his investigation, the Commissioner found that Canadian Heritage had failed to meet its obligations under Part VII of the Act and obtained intervener status before the Federal Court. This allowed him to participate in the first legal debate on the interpretation of the new obligations set out in Part VII of the Act following the adoption of Senator Gauthier's bill in 2005. On the eve of the Court's ruling, the parties settled out of court, ushering in the new Language Rights Support Program.

From 2006 to 2008, the Commissioner also intervened in three other cases: an appeal to the Supreme Court of Canada,[26] an appeal involving the Fédération franco-ténoise before the Court of Appeal of the Northwest Territories[27] and an appeal by Air Canada in Michel Thibodeau's case before the Federal Court of Appeal.[28]

THE COMMISSIONER'S ROLE BEFORE THE COURTS

This series of court cases, at the very outset of Commissioner Fraser's mandate, led to some reflection with his team on how he should approach his role before the courts. At least two other factors contributed to this reflection.

First, when he arrived in office, the Commissioner noted a certain stagnation of efforts by federal institutions to implement the Act. This resulted in an in-depth review of all the powers at the Commissioner's disposal to determine how he could seek greater compliance from federal institutions. "Despite the progress achieved here and there in recent years," he wrote in his 2007–2008 annual report, "the implementation of the Act is still largely incomplete and often prone to setbacks."[29]

Pierre Foucher, Professor of Law at the University of Ottawa, is of the same view and points out that the threat of legal action no longer appears to be yielding the anticipated results. He notes that, "in the first years after the 1988 Act took effect, many proceedings were launched, and many were abandoned. Could it be that the mere act of starting legal proceedings prompted federal institutions to settle? Conversely, . . . today . . . trials go ahead and decisions are rendered. Is this a sign that federal positions have toughened, even as the jurisprudence has become clearer? [translation] "[30]

Furthermore, the amendments to Part VII of the Act regarding the advancement of English and French have obliged federal institutions since 2005 to take positive measures to enhance the vitality of English and French linguistic minority communities and foster the recognition and use of English and French in Canadian society. Yet, by the late 2000s, there was still "a lack of understanding within the federal administration as to how the amended Part VII affects government obligations. Most federal institutions are still unclear on how to give form to these obligations in their respective areas of operation."[31] The Commissioner felt that it was important to include the courts in the dialogue that had just begun on Part VII.

This reflection culminated in a discussion session in Ottawa in February 2010, at which experts and practitioners studied the role that the Office of the Commissioner of Official Languages should be playing before the courts. The Commissioner also consulted representatives of official language communities, including the FCFA and the Quebec Community Groups Network, to get their viewpoints on this important matter.

Shortly thereafter, Commissioner Fraser clarified the principles that would guide how he exercises his right to participate in the judicial process.

NEW CRITERIA FOR INTERVENTION

In deciding whether to intervene in a case initiated by a complainant, the Commissioner will henceforth conduct a strategic analysis of the situation, applying the following criteria:

1. Does the case involve new issues in terms of interpreting language rights?
2. Does the case raise important procedural or preliminary questions pertaining to the court's powers or jurisdiction?[32]
3. Is the court decision likely to affect the Commissioner's mandate or powers?
4. To what extent could the decision create a precedent that might influence future court decisions?
5. What additional contribution could the Commissioner make to the debate in his role as Canada's language ombudsman?
6. What impact could the court decision have on official language communities?

OTHER FACTORS MAY INFLUENCE THE DECISION TO PARTICIPATE IN A CASE RELATED TO THE CHARTER

The Commissioner of Official Languages applies certain criteria when deciding whether to intervene in cases related to section 23 of the *Canadian Charter of Rights and Freedoms*, which establishes the rights of Canadians to receive education in the language of the minority, but he also takes account of the stage to which the proceedings have progressed (he normally intervenes at the appeal stage, especially before the Supreme Court of Canada).

BEYOND SYMBOLISM

According to Michel Doucet, Professor of Law at the University of Moncton and Director of the International Observatory on Language Rights, "the participation of the Commissioner of Official Languages in proceedings has a highly symbolic value, and it also helps complainants in very concrete ways. His expertise enables them to present better arguments and build a better case. Where resources are limited, his support is invaluable. [translation]"[33]

In deciding whether to take legal action on his own initiative, the Commissioner assesses whether all the other powers at his disposal for getting federal institutions to comply with their language obligations have been exhausted. Thus, in following up on an investigation, the Commissioner determines whether the federal institution that is the subject of the complaint has taken appropriate measures to implement his recommendations. If it has not, the Commissioner has 60 days to seek legal recourse. Alternatively, he may decide that a report to the Governor in Council is a better strategy.

Since 2009, Commissioner Fraser has sought to uphold and advance the language rights of Canadians and official language communities by applying a facilitated resolution process and working more proactively with federal institutions to help them resolve their compliance issues. Nevertheless, he will continue to exercise his power to appear before the courts when necessary, intervening in proceedings initiated by complainants or taking legal action himself, with the complainant's consent.

A NUMBER OF MAJOR CASES

Commissioner Fraser's participation in legal proceedings, like that of his predecessors, has helped to clarify the language obligations of provincial governments and federal institutions.

In 2008, Commissioner Fraser intervened in the Supreme Court in the *Nguyen* case, which sought to overturn a provision in the *Charter of the French Language* that excluded instruction at non-subsidized private English-language schools from calculations used to determine whether a child was eligible to attend public or subsidized English-language schools.

In his intervention, the Commissioner acknowledged that application of the rights guaranteed under section 23 of the *Canadian Charter of Rights and Freedoms* must take into account the specific linguistic dynamics of provinces and territories and the legitimate goal of protecting the French language in Quebec. However, the Commissioner contended that the provisions adopted by the National Assembly of Quebec could not set aside the criteria established by the Supreme Court in *Casimir* for determining whether a child had a genuine commitment to a minority-language education.

In 2009, the Supreme Court confirmed this position and concluded that, by refusing to consider a child's private school experience, the provision in the *Charter of the French Language* drastically limited the rights guaranteed under section 23 of the *Canadian Charter of Rights and Freedoms*.

In 2014, the Commissioner intervened in a case between the Association des parents de l'école Rose-des-vents and the British Columbia Ministry of Education. In 2015, the Supreme Court confirmed in a unanimous ruling that minority-language students are entitled, as the Commissioner affirmed, to an educational experience of meaningfully similar quality to that offered to majority-language students. The educational experience of minority-language children (including school infrastructure, busing times and programs offered) must be equivalent to the educational experience of majority-language students.

Commissioner Fraser's participation in certain cases has also resulted in clarification of the concept of substantive equality in government services. In 2008, the Commissioner responded to a ruling of the Federal Court of Appeal by taking the *DesRochers* case to the Supreme Court and acting as co-appellant alongside the complainants, the Centre d'avancement et de leadership en développement économique communautaire de la Huronie (CALDECH) and its director, Raymond DesRochers. CALDECH is a support agency created by Franco-Ontarians to remedy shortcomings in services

NO, IT'S NOT ALL RESOLVED!

"When I first arrived in British Columbia," says Joseph Pagé, "I thought that battles over minority children's school rights were a thing of the past and that the issue had been settled 20 years earlier. Like other parents, I was disappointed to find, after two years of sterile discussions with the British Columbia Ministry of Education and the British Columbia Francophone school board, that they were still not attuned to the potential reach of section 23 of the Charter. The Ministry of Education, in particular, seemed very reluctant to take steps to provide quality services to Francophone students in Vancouver even though the situation was critical. As a lawyer, I knew that taking matters to court would involve a long, costly and demanding struggle, but we had no option other than to apply to the court."

"The Association des parents de l'école Rose-des-vents was lucky in being able to count on the Language Rights Support Program and, in the Supreme Court, on the extensive expertise of the Commissioner of Official Languages," adds Pagé. "Without this combination of factors and the strong involvement of many parents, we would never have been able to get to the Supreme Court and win such a resounding victory! [translation]"[34]

provided by the North Simcoe Community Futures Development Corporation to Francophones in the Huronia region of Ontario.

This case dealt with the nature and scope of the principle of language equality in the delivery of services by federal institutions. The questions that this case set out to answer were the following: Does the right to equal services set out in subsection 20(1) of the Charter and in Part IV of the Act merely mean that Canadians have "linguistically equal access," in other words, the right to obtain federal services in the official language of their choice? Or do the Charter and the Act also imply equal "quality of services," which would guarantee communities the right to receive federal services of a quality equal to those available to the official language majority?

In 2009, the Supreme Court upheld the interpretation of the Commissioner, DesRochers and CALDECH and concluded that "it is difficult to imagine how the federal institution [North Simcoe Community Futures Development Corporation] could provide the . . . services mentioned in this description without the participation of the targeted communities in both the development and the implementation of programs."[35] This landmark decision confirmed that members of the public are entitled to services of equal quality and that federal institutions must consider the nature and purpose of the services they provide to Canadians in defining the extent of their language obligations.

The Treasury Board responded promptly to the Supreme Court ruling by urging federal institutions to apply the principle of substantive equality to their services and programs and giving them a tool for that purpose.[36]

In addition to the court interventions mentioned above, the Commissioner initiated proceedings against CBC/Radio-Canada in 2010 to obtain clarification from the Federal Court on his jurisdiction to investigate complaints into the broadcaster's programming operations and the extent of its obligations under Part VII of the Act.[37]

This action followed an investigation into 876 complaints received by the Commissioner in 2009–2010 with regard to CBC/Radio-Canada's decision to make budget cuts to CBEF 540 Windsor, a French-language AM radio station in southwestern Ontario. This decision resulted in the elimination of almost all local programming. The complainants felt that the Crown corporation had violated Part VII of the Act by failing to take into account the impact this decision would have on the Francophone community in Windsor.

CBC/Radio-Canada refused both to recognize the Commissioner's jurisdiction to investigate complaints and to implement the recommendations in the Commissioner's investigation report, which had concluded that the broadcaster had not complied with Part VII of the Act. This dispute led the Commissioner to exercise his power to take legal action of his own initiative, given the importance of the

REPERCUSSIONS OF A STRATEGIC DECISION

"Interventions by the Commissioner of Official Languages have enabled communities to achieve immense progress, not just theoretically, but also in practical terms," says lawyer Ronald Caza. "His decision to join the *DesRochers* case, for example, had an enormous impact because it led to clarification of the concept of language equality and its application in the field: in hospitals and in schools. [translation]"[38]

question of his jurisdiction to investigate CBC/Radio-Canada and the fact that the legal impasse on the matter had dragged on for several years.

In 2014, the Federal Court confirmed that the Commissioner had concurrent jurisdiction to that of the Canadian Radio-television and Telecommunications Commission and could investigate complaints filed against CBC/Radio-Canada under the Act, particularly Part VII. In its ruling, the Court also declared, for the first time, that federal institutions must not only promote the development of official language communities, but also act in a manner that does not hinder their development and vitality. In fact, in the Court's view, enhancing the vitality of official language communities "is a categorical, non-negotiable imperative"[39] for CBC/Radio-Canada and other federal institutions.

CBC/Radio-Canada decided to appeal this ruling on both the matter of the Commissioner's jurisdiction to investigate and the extent of the broadcaster's obligations under Part VII of the Act. In November 2015, the Federal Court of Appeal upheld CBC/Radio-Canada's appeal and quashed the order by the Federal Court on the grounds that the Court had made procedural errors. However, the Federal Court of Appeal made a point of stating that "the CRTC cannot reach any conclusion regarding breaches of the [Act]."[40] Thus, after five years of litigation, the important questions for which the Commissioner had hoped to obtain clarification from the courts remain unanswered.

While he was filing proceedings against CBC/Radio-Canada in 2010, Commissioner Fraser was also intervening in a Federal Court case filed by Michel and Lynda Thibodeau against Air Canada, after the Office of the Commissioner had concluded that several complaints they had filed were founded. This was the second case filed by Thibodeau against the airline. The facts had not changed substantially since the first one (which had resulted in a victory in the Federal Court of Appeal in 2007); the Thibodeaus had not been served in French on two international flights.

As in the first case, the Thibodeaus did not hire a lawyer, but rather represented themselves in Federal Court. In its response to the proceedings, Air Canada

COMMISSIONER VERSUS CBC/RADIO-CANADA: A LANDMARK CASE

According to Nicole Larocque, President of S.O.S. CBEF, "participation in the proceedings against CBC/Radio-Canada required major sacrifices on our part and caused a lot of stress. We had lawyers, but we needed to find money to pay them, and we needed to take time to work with the Commissioner's counsel to build the case and to take part in the cross-examination. At times, family life took a back seat."

By deciding to initiate proceedings against CBC/Radio-Canada himself, the Commissioner of Official Languages considerably lightened the burden borne by the Francophone community of southwestern Ontario. "Our counsel and Commissioner Fraser's counsel worked together from the outset, but everything was made easier by the Commissioner's taking full control of the case and letting us simply support him," says Larocque. "I hope that a verdict is reached before the end of his mandate. If we win the case, it will be thanks to him and his team. [translation]"[41]

did not dispute that it had violated the couple's rights under the Act eight times during a single trip. Instead, the company invoked the *Montreal Convention*, an international agreement on air travel that, in Air Canada's view, prevented the Court from granting the complainants financial compensation.

Thanks to the Commissioner's presence as intervener, the Court heard complete and sound arguments on how the Act and the *Montreal Convention* interact. In 2011, the Federal Court upheld the Commissioner's argument that, in the event of a conflict, the Act prevails.[42] Air Canada, however, decided to appeal this decision to the Federal Court of Appeal, and this court ruled in favour of the carrier in 2012.[43]

In 2013, the Supreme Court granted the Commissioner and the Thibodeaus leave to appeal the decision of the Federal Court of Appeal. In its 2014 ruling, the Supreme Court confirmed that the Act has a quasi-constitutional status.[44] It also validated the provision in the Act giving the Federal Court remedial powers where federal institutions fail to comply with the obligations set out in the Act. However, the Supreme Court concluded that there is no conflict between the Act and the *Montreal Convention*, but that the latter does prevent the Federal Court from awarding monetary damages to the Thibodeaus.

Even though the Supreme Court did not uphold the position taken by the Thibodeaus and the Commissioner, this case still contributed to the dialogue between the judicial and legislative branches. In fact, following the Supreme Court ruling in *Thibodeau*, Member of Parliament Stéphane Dion tabled a bill in April 2015 to establish that the *Montreal Convention* cannot infringe upon the fundamental rights set out in the Act. This bill died when the House of Commons was dissolved in August 2015.

NOT GIVING UP!

"We were very naive in the early 2000s," says Michel Thibodeau. "We didn't realize how hard it would be for ordinary citizens like ourselves to assert our language rights in court, even when a party as experienced as the Commissioner joins the case. We had to spend hundreds of hours mastering the rules of court procedure and preparing our case. We suffered a lot of stress because of the extremely negative response to our cause in some of the media. We even received anonymous calls and threats."

"That being said, if we had to go back to court a third time to force Air Canada to resolve its systemic problems and finally respect travellers' language rights, we would do so," continues the Ottawa resident. "It's not really what we would want—believe me, we would gladly spend our time on other things—but I was raised in a family and an environment where you never give up. Letting Air Canada or any other institution get away with violating the *Official Languages Act* will never be an option in my book. [translation]"[45]

03

COMMISSIONERS' PARTICIPATION IN LANGUAGE CASES

CHOOSING THE RIGHT CASE

Some people feel that the Commissioner of Official Languages could intervene more in the courts or be more legally proactive. For example, the FCFA is of the view that the Commissioner should make more use of the powers conferred on him by Part X of the *Official Languages Act*, given the enormous burden that litigation places on official language communities.

Diane Côté, Director of Community and Government Liaison at the FCFA, notes that "it is very hard for a non-profit organization like ours, operating with few employees and limited financial means, to seek redress in court. We would like to see the Commissioner, with his team of experienced legal counsel, initiate more proceedings himself in matters that are important to community development, such as the elimination of the mandatory long census form or the Court Challenges Program. [translation]"

"In fact," says Suzanne Bossé, the FCFA's executive director, "we feel that not only is the Commissioner better equipped than we are to take legal action, but he is also mandated by the Act to do so. We have a hard time understanding why, when an institution admits to violating Part VII of the Act or rejects the findings of an investigation or audit, the Commissioner does not initiate proceedings himself to clarify the institution's obligations or compel it to meet its obligations. When these things happen, the Commissioner should take action. [translation]"[46]

These expectations as to how the Commissioner should be exercising his powers to initiate court proceedings are entirely legitimate. That being said, there are various factors that account for why these powers are used sparingly, as mentioned in Chapter 2.

In general, the Commissioner will not take a case to court until all non-judicial means at his disposal to make a federal institution comply with its language obligations under the Act have been exhausted. He will therefore normally await the results of the follow-up to an investigation before determining that legal action is the only way to compel a federal institution to honour its language obligations. As Justice Paul Rouleau said in the discussions that took place at the Office of the Commissioner in 2010, "One must choose the right facts, the right cause and the right timing when it comes to official languages. The right choice is critical, since cases may serve to establish limits; decisions must therefore be made with a view to the future. [translation]"[47] These principles guide the Commissioner in deciding to take legal action.

That being said, data on the number of times the Commissioner has exercised his powers under Part X of the Act show that Commissioner Fraser has been just as active as his predecessors. Since 1984, commissioners of official languages have participated in 104 cases involving language rights. Commissioner Fraser participated in 23 cases from 2006 to 2016, 9 of which were before the Supreme Court.

WHAT THE NUMBERS SAY

As shown in Figure 1, Commissioner Fraser has appeared before the courts as an intervener 19 times and four times as a party to the case. By participating four times as a party to the case (before the Supreme Court in *DesRochers* and *Thibodeau*, and before the Federal Court and Federal Court of Appeal in the case against CBC/Radio-Canada), Commissioner Fraser followed in the footsteps of the other commissioners, who sought party status in 19% of cases.

FIGURE 1
COMMISSIONER FRASER'S PARTICIPATION IN LANGUAGE CASES, BY TYPE OF INTERVENTION

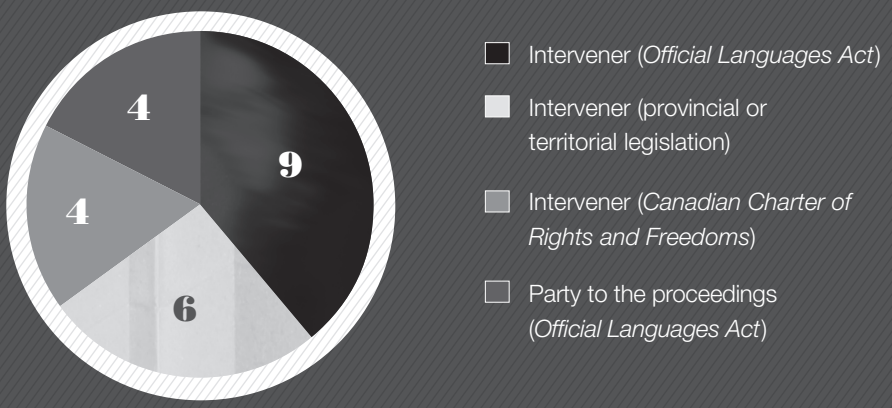


FIGURE 2
COMMISSIONER FRASER'S PARTICIPATION IN LANGUAGE CASES, BY TYPE OF CASE

Figure 2 shows that cases based on the Act represent 60% of Commissioner Fraser's involvement in legal proceedings from 2006 to 2016. About one fifth dealt with language rights protected under section 23 of the *Canadian Charter of Rights and Freedoms* (language of instruction). A similar proportion concerned issues arising primarily from provincial or territorial legislation.[48] These percentages are essentially the same as those reported by other commissioners between 1984 to 2006.

Legal action on issues pertaining to the Act, in which Commissioner Fraser and his predecessors participated, dealt chiefly with communications with and services to the public (Part IV), particularly the rights of the travelling public. This is hardly surprising, since the majority of complaints received by the Office of the Commissioner are related to these obligations.

On the other hand, very few cases have involved language of work in the federal administration (Part V) and the advancement of English and French in Canadian society (Part VII). Federal employees are reluctant to complain to the Commissioner and especially reluctant[49] to appear in court to defend their right to work in the official language of their choice. The scarcity of cases relating to Part VII is explained by the fact that it only became enforceable a decade ago.

In addition to these statistics, however, it is important to assess the impact of the Commissioner's involvement before the courts.

MAINLY FRANCOPHONE RIGHTS, BUT …

Since 1984, the Office of the Commissioner has participated more often in cases relating to the language rights of the country's Francophone minority communities than in those involving Quebec's English-speaking communities. According to Michael N. Bergman, a Montréal lawyer, "This is simply due to the fact that there have not been that many cases in the courts involving the English-speaking minority of Quebec. The opportunity for the different commissioners to intervene in a legal way has been limited. As a result, most of the jurisprudence created through their interventions comes from litigation involving Canada's Francophone minorities."[50]

Not only that, says Bergman, but "the dearth of cases from the English-speaking minority of Quebec, relative to the greater number of cases from the French-speaking minority in the rest of Canada, is due to the fact that language litigation in Quebec always necessitates challenging the *Charter of the French Language*; such challenges are controversial and may set off anew linguistic tensions."

Lawyer Ron Caza believes that the involvement of commissioners of official languages in cases dealing with access to English-language schools in Quebec has had positive repercussions. "They have lent credibility to difficult court cases addressing the issue of Anglophone rights in Quebec. They intervened to explain that, in looking at the big picture of the situation in this province, it is essential to allow for a broad interpretation of language rights. This took courage on their part. [translation]"[51]

LEGITIMACY AND SOLIDARITY

According to former Supreme Court judge Michel Bastarache, the Commissioner has a number of important tools at his disposal, but his power to intervene before the courts is particularly important, since it helps to rally official language communities behind individuals who have the courage to take a stand and defend their language rights in court.

Bastarache adds that "communities do not always show solidarity, because they are wary of taking a stand and confrontation. By intervening, the Commissioner reassures complainants, alleviates their sense of isolation and lends greater legitimacy to their positions."

"*Thibodeau v Air Canada* was the finest illustration of this," says Bastarache. "The media ridiculed the complainants, who were asserting their right to be served in French on international flights. Some journalists sneeringly questioned whether the *Canadian Charter of Rights and Freedoms* would uphold the right to ask for a 7UP in French. By intervening in the case and emphasizing that this was not the real issue, that it was more a matter of respect, that Air Canada had to respect individuals who wanted to be served in the official language of their choice and were entitled to this right, Commissioner Fraser lent weight to the Thibodeaus' case and diffused the ridicule."

"In stressing his role before the courts," concludes Bastarache, "Commissioner Fraser has raised the credibility and relevance of the institution he leads. [translation]"[52]

PARTICIPATION THAT LEADS TO CONCRETE RESULTS

Lawyer Mark Power feels that it is thanks to the Office of the Commissioner of Official Languages that *DesRochers v Canada (Industry)* reached the Supreme Court. "Without Commissioner Fraser's courageous decision to act as co-appellant in the case and place his expertise at the disposal of the complainants and the Court, it would be questionable to this day whether the principle of substantive equality applies beyond the field of education. [translation]"[53]

COURTS ALSO BENEFIT FROM THE COMMISSIONER'S INTERVENTIONS

Pierre Foucher, Professor of Law at the University of Ottawa, believes that the Commissioner's interventions have a positive influence on the entire legal system, since his involvement "throws a more impartial light on the questions that are put before the courts and a more comprehensive vision of how the *Official Languages Act* should be applied and the issues raised by cases. Judges appreciate the Commissioner's presence in a case because he helps them to grasp the scope of the decisions to be made. [translation]"[54]

Robert Décary, a retired judge of the Federal Court of Appeal, takes the same view. "The courts expect the Commissioner to take an independent position and be open to discussion, even when he is intervening on the side of a complainant. Applicants do not always understand the law and the real powers of the court, and when such situations arise, the Commissioner can and must bring a reality check to the battle being fought in the courts. [translation]"[55]

POWER TO INTERVENE OR TAKE LEGAL ACTION: A STRATEGIC TOOL

In short, the power to intervene or to take legal action is a tool that commissioners of official languages use strategically to contribute to the dialogue on language rights and to clarify and advance these rights. Commissioner Fraser, like his predecessors, has used this power many times, occasionally as the main party in a proceeding, and in many instances his involvement has had a significant impact.

CONCLUSION

INACTION HAS SERIOUS CONSEQUENCES

The number of cases in which the commissioners of official languages have been involved, where redress was sought under the *Canadian Charter of Rights and Freedoms* or the *Official Languages Act*, has not really fallen since 1988. This shows that federal, provincial and territorial governments are too frequently failing in their duty to protect the language rights of Canadians and official language communities properly.

Moreover, only a very low proportion of the legal proceedings filed over the past quarter century have led to the adoption of legislation intended to clarify the language obligations of federal institutions or the development of guidelines for applying decisions. In other words, it is far too rare for court rulings to result in the adoption of the corrective measures that are needed for the sustained advancement of the language rights of Canadians and official language communities.

In a case involving the minority-language education rights guaranteed by the Charter, the Supreme Court clearly expressed the adverse effects of government inaction on linguistic duality:

> . . . The right in section 23 is . . . *particularly vulnerable to government delay or inaction*. For every school year that governments do not meet their obligations under section 23, there is an increased likelihood of assimilation which carries the risk that numbers might cease to "warrant". Thus, particular entitlements afforded under section 23 can be suspended, for so long as the numbers cease to warrant, by the very cultural erosion against which section 23 was designed to guard. In practical, though not legal, terms, such suspensions may well be permanent. *If delay is tolerated, governments could potentially avoid the duties imposed upon them by section 23 through their own failure to implement the rights vigilantly.* [emphasis added][56]

The Supreme Court's words are a reminder of the importance of the dialogue that the judicial, legislative and executive branches must maintain. This dialogue, essential to the advancement of the language rights of Canadians and Anglophone and Francophone communities, must include the government body and public institutions that have a duty to comply with the language obligations set out in the Charter and the Act. This dialogue must also involve citizens and official language communities.

RESPONSIBILITIES OF PARLIAMENTARIANS

In 2005, a private member's bill tabled by Senator Jean-Robert Gauthier made the obligations that Part VII of the *Official Languages Act* imposes on federal institutions enforceable. In 2013, the *Language Skills Act*, tabled by Member of Parliament Alexandrine Latendresse, clarified the situation pertaining to the bilingualism of agents of Parliament at the federal level. In 2015, Member of Parliament Stéphane Dion tabled a bill to amend the *Carriage by Air Act* so that it would not infringe on the fundamental rights set out under the *Official Languages Act* and the *Canadian Human Rights Act*. All of these bills were tabled in response to legal action that had been taken in court and where results could not be obtained through litigation.

The Commissioner encourages federal parliamentarians to follow these examples and table bills that could help to clarify federal institutions' official languages obligations.

RESPONSIBILITIES OF GOVERNMENTS

Primary responsibility for clarifying legislated language obligations rests with governments. It is their duty to show leadership and promptly table bills to remedy any shortcomings identified by the courts.

Unfortunately, this leadership is not always present. During Commissioner Fraser's mandate, three bills were tabled by successive governments to clarify Air Canada's language obligations, which were being tested in court at the same time. None of these bills made it past the first reading.

The federal government should respond more vigorously to court rulings, and when it decides to table a bill in the House of Commons, it should also ensure that the matter is given the necessary priority so that the relevant parliamentary committees can study it diligently.

The Government of Canada has intervened in proceedings filed under the Charter by joining provincial or territorial governments in espousing a restrictive interpretation of Canadians' language rights, particularly their education rights. For example, in *Nguyen*, the Attorney General of Canada submitted an interpretation of section 23 of the Charter that was not favourable to the rights of official language communities. The Attorney General of Canada also recently joined an appeal filed by Gilles Caron to the Supreme Court, supporting the position of the Government of Alberta.

WHEN GOVERNMENTS CHOOSE TO JUSTIFY VIOLATING LANGUAGE RIGHTS GUARANTEED BY THE CHARTER

Like the federal government, provincial and territorial governments do not always respond sufficiently to requests made by official language communities or decisions rendered by the courts in language-related cases. For example, following the unanimous ruling of the Supreme Court of Canada in the case involving the Association des parents de l'école Rose-des-vents, the Government of British Columbia failed to promptly take measures to ensure respect of the rights guaranteed under section 23 of the *Canadian Charter of Rights and Freedoms*. Instead, it chose to return to court and argue its case, citing section 1 of the Charter and claiming that there were reasons why the government could not make the improvements to services requested by the Association des parents de l'école Rose-des-vents. "We are disappointed with the Government of British Columbia's response," says Joseph Pagé, "but we will continue the battle. We can't give up. I'm hoping that this will be my last language rights case, but I fear that, 10 years from now, other parents may have to go through the same struggle. [translation]"[57]

Such decisions are incompatible with the Government of Canada's commitment to promote the development of official language communities in accordance with Part VII of the Act. English-speaking communities in Quebec and the French-speaking community in Alberta are justified in feeling slighted by the Government of Canada's interventions in *Nguyen* and *Caron*.

RESPONSIBILITIES OF THE FEDERAL ADMINISTRATION AND FEDERAL INSTITUTIONS

It should be noted that the federal administration and federal institutions sometimes do react positively to court cases that are filed to protect the language rights of Canadians. The Treasury Board of Canada Secretariat responded rapidly to the Supreme Court ruling in *DesRochers* and drafted guidelines designed to help federal institutions apply the principles set out in this decision and, ultimately, deliver services of equal quality in both English and French.

That being said, the federal administration and federal institutions do not always have the best reflexes when they are the subject of a complaint and legal action is taken against them. For instance, Air Canada clearly prefers resorting to litigation rather than tackling the systemic problems that prevent it from meeting its language obligations. This unfortunate position contrasts with that of VIA Rail Canada, which chose to settle out of court in a case filed by Commissioner Goldbloom in the 1990s.

PARTICIPANTS IN LANGUAGE CASES MERIT RECOGNITION

The Act establishes the equality of English and French and grants language rights to citizens, federal employees and official language communities. The Charter guarantees the right to minority-language instruction. It is therefore perfectly understandable for any individuals or groups who feel that their language rights have not been upheld to turn to the courts for redress. What is not so easy to understand, however, is the number of cases relating to language rights that are still being filed nearly 35 years after adoption of the Charter, and almost 30 years after adoption of the 1988 Act.

The Commissioner recognizes that individuals and organizations that go to court to compel governments and institutions to meet their obligations take on a heavy burden and that their actions have substantial financial and human consequences, especially given the length of legal proceedings and the significant stress they entail.

The contribution that these individuals and organizations have made to the advancement of language rights deserves to be fully recognized. From the Association des parents de l'école Rose-des-vents to Michel and Lynda Thibodeau, not to mention Hong Ha Nguyen, the FCFA and the Fédération franco-ténoise, all have earned the respect and gratitude of Canadians because they are ensuring that Canada lives up to its reputation as a country that respects its official languages and its linguistic minorities.

Above all, these individuals and organizations, like all Canadians and all community organizations throughout the country, deserve to have the Government of Canada, federal institutions and provincial and territorial governments fully respect their language obligations. No one should have to resort to legal action to assert their rights.

ENDNOTES

1. Commissioner of Official Languages, *Notes for an address at a lunchtime talk at the University of Ottawa's Faculty of Law – Civil Law Section and Official Languages and Bilingualism Institute*, Ottawa, November 20, 2007, www.officiallanguages.gc.ca/html/speech_discours_20112007_e.php.
2. In this report, official language minority communities are designated by the term "official language communities."
3. *Association des parents de l'école Rose-des-vents v British Columbia (Education)*, 2015 SCC 21, [2015] 2 S.C.R. 139, at para 33.
4. *Association des parents de l'école Rose-des-vents v British Columbia (Education)*, 2015 SCC 21, [2015] 2 S.C.R. 139, at para 67.
5. Commissioner of Official Languages, *The Canadian Language Challenge: from Laurier to Harper, The Fourth Annual Laurier Lecture*, *Wilfrid Laurier University*, Waterloo, Ontario, November 21, 2006, www.officiallanguages.gc.ca/html/speeches_discours_21112006_e.php.
6. *Fédération franco-ténoise v Attorney General of Canada*, 2006 NWTSC 20 at para 883.
7. *R. v Beaulac*, [1999] 1 S.C.R. 768.
8. *DesRochers v Canada (Industry)*, 2009 SCC 8.
9. *Canadian Charter of Rights and Freedoms*: see *Constitution Act, 1982* (U.K.), constituting Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11, http://www.canlii.org/en/ca/laws/stat/schedule-b-to-the-canada-act-1982-uk-1982-c-11/latest/schedule-b-to-the-canada-act-1982-uk-1982-c-11.html.
10. *Forum des maires de la Péninsule acadienne v Canada (Canadian Food Inspection Agency)*, 2004 FCA 263 at para 17.
11. In 1977, two MPs, Pierre De Bané and Serge Joyal, had jointly tabled a private member's bill to amend the Act and the Commissioner's powers. This effort failed.
12. See Jean-Robert Gauthier, *Hansard Excerpts – Debates on Bill C-72 (amending the OLA of 1969)*, Canada, House of Commons Debates, 33rd Parliament, 2nd Session, February 8, 1988, p. 12712.
13. *Proceedings of the Legislative Committee on Adoption of Bill C-72*, 4:8.
14. For example, Commissioner Adam intervened in 2005 in a case filed by the Fédération franco-ténoise to enforce language rights guaranteed under the Northwest Territories *Official Languages Act*.
15. See Office of the Commissioner of Official Languages, *Court Remedy*, www.officiallanguages.gc.ca/en/language_rights/remedy.
16. Telephone conversation with the Office of the Commissioner on September 17, 2015.
17. *Reference re Education Act of Ontario and Minority Language Education Rights* (1984), 10 D.L.R. (4th) 491, p. 547 (C.A. Ont.).
18. Conversation with the Office of the Commissioner on September 17, 2015.
19. *Canada (Attorney General) v Viola*, [1991] 1 F.C. 373. (C.A.).
20. *Arsenault-Cameron v Prince Edward Island*, [2000] 1 S.C.R. 3.
21. *Thibodeau v Air Canada*, 2005 FC 1156.
22. *Air Canada v Thibodeau*, 2007 FCA 115 at para 27.
23. *Forum des maires de la Péninsule acadienne v Canada (Canadian Food Inspection Agency) (F.C.A.)*, 2004 FCA 263, [2004] 4 F.C.R. 276, http://recueil.fja-cmf.gc.ca/eng/2004/2004fca263.html.
24. *Fédération des communautés francophones et acadienne v Her Majesty the Queen*, T-1860-06 (Application for judicial review dated October 25, 2006).

25. *Fédération des communautés francophones et acadienne v Her Majesty the Queen*, T-1860-06 (Application for judicial review dated October 25, 2006).
26. *Société des Acadiens et des Acadiennes du Nouveau-Brunswick Inc. v Canada*, 2008 SCC 15.
27. *Northwest Territories (Attorney General) v Fédération franco-ténoise*, 2008 NWTCA 5.
28. *Air Canada v Thibodeau*, 2007 FCA 115.
29. Office of the Commissioner of Official Languages, *Annual Report 2007–2008*, Ottawa, 2008, p. 4, http://www.officiallanguages.gc.ca/html/ar_ra_2007_08_e.php.
30. Comments made by Professor Pierre Foucher at the strategic planning session on the Commissioner's role before the courts, February 25, 2010.
31. Office of the Commissioner of Official Languages, *Annual Report 2006–2007*, Ottawa, 2007, p. 4, http://www.officiallanguages.gc.ca/html/ar_ra_2006_07_e.php.
32. For example, the Commissioner intervened in the *Dionne* case in 2015 to assert the complainant's right to seek a remedy following receipt of the investigation follow-up report.
33. Conversation with the Office of the Commissioner on September 10, 2015.
34. Conversation with the Office of the Commissioner on October 9, 2015.
35. *DesRochers v Canada (Industry)*, 2009 SCC 8, at para 53.
36. *The Supreme Court of Canada Decision in the CALDECH (Desrochers) case and Analytical Grid*, www.tbs-sct.gc.ca/psm-fpfm/ve/ol-lo/olcsp-locsp/caldech/intro-eng.asp.
37. The VIA Rail Canada case raised similar issues.
38. Conversation with the Office of the Commissioner on September 10, 2015.
39. *Canada (Commissioner of Official Languages) v CBC*, 2014 FC 849 at para 42.
40. *CBC/Radio-Canada v Canada (Commissioner of Official Languages)*, 2015 FCA 251 at para 49.
41. Conversation with the Office of the Commissioner on September 21, 2015.
42. *Thibodeau v Air Canada*, 2011 FC 876.
43. *Air Canada v Thibodeau*, 2012 FCA 246.
44. *Thibodeau v Air Canada*, 2014 SCC 67.
45. Conversation with the Office of the Commissioner on October 9, 2015.
46. Conversation with the Office of the Commissioner on September 23, 2015.
47. Comments made by Justice Rouleau at the strategic planning session on the Commissioner's role before the courts, February 25, 2010.
48. For example, legal proceedings initiated under various provincial or territorial language legislation, including *Fédération franco-ténoise v Canada (NWTCA)* and *Gilles Caron, et al. v Her Majesty the Queen, et al.*
49. The identity of a federal employee filing a complaint against his or her employer is kept confidentiel while the Commissioner investigates. This no longer applies once a decision is made to take the case to court.
50. Conversation with the Office of the Commissioner on September 8, 2015.
51. Conversation with the Office of the Commissioner on September 10, 2015.
52. Conversation with the Office of the Commissioner on September 10, 2015.
53. Conversation with the Office of the Commissioner on September 14, 2015.
54. Conversation with the Office of the Commissioner on September 16, 2015.
55. Conversation with the Office of the Commissioner on September 14, 2015.
56. *Doucet-Boudreau v Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3, 2003 SCC 62 at para 29.
57. Conversation with the Office of the Commissioner on October 9, 2015.