

## Quebec Community Groups Network

Brief

**Senate Standing Committee on Official Languages (OLLO)**

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

*Ottawa, June 2023*

## ***Executive Summary***

The QCGN has participated in every step of the modernization of the *Official Languages Act*, beginning with Bill S-209; an initiative of this Chamber led by the Honourable Maria Chaput. English-speaking Quebec worked closely and in good faith with our Francophone counterparts in the rest of Canada, Ministers of Canadian Heritage and Official Languages and this Committee during its historic study to modernize the Act, beginning in 2017.

But we have deep concerns about Bill C-13. The *Official Languages Act* is a lifeline for English-speaking Quebec, now more than ever. That lifeline is about to be seriously frayed.

We have been actively engaged in the lead-up to and debate on Bill C-13, expressing our deep concerns over the Government of Canada's unprecedented and dangerous new approach toward official languages first expressed in the 2020 Speech from the Throne, then the 2021 discussion paper *English and French: Towards a substantive equality of official languages in Canada*, and C-32, *An Act for the Substantive Equality of French and English and the Strengthening of the Official Languages Act*.

The QCGN believes there are a number of positive aspects of Bill C-13 passed at Third Reading in the House of Commons. The bill goes some way in improving Part VII of the *Official Languages Act* (OLA), and now makes mention of the Court Challenges Program – a federal program critical to the defence and advancement of equality and language rights.

We remain, however, deeply concerned about the effects of Bill C-13 on the English-speaking community of Quebec, and on the increased asymmetry with respect to Quebec in Canada's federation.

Throughout this journey, the QCGN has consistently communicated four messages:

1. Our organization – and the linguistic-minority community it represents – understands and supports the continuing need for all levels of government in Canada to support and promote the French language. By choice and by necessity, we are the most bilingual group of English-speaking Canadians.
2. The QCGN and English-speaking Quebec believe the protection and promotion of French in Canada can be achieved without sacrificing the language rights of our minority community. The version of Bill C-13 now under study will insert the *Charter of the French Language* in three key places within the OLA: in the preamble, in Part VII of the Act, and, most worrying, in the purpose clause, which affects the entire Act.

Moreover, Bill C-13 will incorporate by reference the *Charter of the French Language* into a new federal act, the *Use of French in Federally Regulated Businesses Act* (FFRBA). The *Charter of the French Language*, as amended last year by Bill 96, infringes upon the Constitutional language rights of English-speaking Quebecers. Parts of the new *Charter of the French Language* have

already been suspended, while litigation claiming that the law violates section 133 of the *Constitution Act 1867* makes its way through the courts.<sup>1</sup>

**The *Charter of the French Language* also now operates notwithstanding the protections of the Canadian *Charter of Rights and Freedoms* and subordinates the rights protections contained in Quebec's *Charter of Human Rights and Freedoms*. Our minority – indeed all Quebecers – now live in a 'Charter free zone' where our fundamental human rights have been vacated in the name of protecting and promoting the French language. This is the principal reason why the QCGN has been adamant that references to the *Charter of the French Language* must not be included in Canada's *Official Languages Act*.**

3. The *Official Languages Act* needs to be updated, particularly Part VII of the Act. Canada's French and English linguistic minorities agreed on the way forward here. Although progress has been made, we do not believe that Bill C-13 has gone far enough to meet the needs of our communities, or the precedent set in *Canada (Commissioner of Official Languages) v. Canada (Employment and Social Development)*, 2022 FCA 14.
4. Canada has a duty to extend equal language rights in law to its two official languages. The FFRBA, embedded within Bill C-13, will create new language rights with respect to French only. This section of Bill C-13 has been amended by the House, implementing an undisclosed agreement between Canada and Quebec that has yet to be made public. The FFRBA is permissive in allowing for federally regulated businesses to communicate in language other than French and contains some protections for existing employees of these enterprises. However, it does not create corresponding language rights for English-speaking employees and customers. There is no evidence to suggest that this asymmetry will do anything to protect and promote French. There is every reason to believe that the FFRBA will adversely affect the future hiring decisions of federally regulated businesses and it will certainly strain Canada's linguistic peace.

The QCGN submitted a brief to this committee in its pre-study of C-13.<sup>2</sup> This brief builds on that work, with particular attention to the subsequent debates and amendments in the House of Commons.

As amended, Bill C-13 will amplify the effects of the *Charter of the French Language* as modified by Quebec's Bill 96, particularly in areas of federal-provincial cooperation. It will endorse a provincial law that sweepingly and pre-emptively invokes the notwithstanding clause of the Canadian *Charter* – which should be of concern to all Canadians. Bill C-13 also gives license for governments and courts to interpret language rights asymmetrically – i.e. more narrowly – for Quebec's minority. Bill C-13 also provides the framework to restrict federal support to English-speaking Quebec.

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<sup>1</sup> See for example *Mitchell v. Attorney General of Québec*, [2022 QCCS 2983](#). For a case summary, see *Legal challenge to Bill 96: Temporary suspension of legal entities' obligation to produce certified translations of proceedings written in English*, Dentons, October 5, 2022.

<https://www.dentons.com/en/insights/articles/2022/october/5/legal-challenge-to-bill-96-temporary-suspension-of-legal>, accessed May 30, 2022.

<sup>2</sup> June 7, 2022, available at [https://sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2022-06-13\\_OLLO\\_SM-C-13\\_Brief\\_QCGN\\_e.pdf](https://sencanada.ca/Content/Sen/Committee/441/OLLO/briefs/2022-06-13_OLLO_SM-C-13_Brief_QCGN_e.pdf), accessed May 30, 2022.

Finally, Bill C-13 endorses and advances Quebec's broader policy of increased asymmetry within the Canadian federation. It will enshrine this asymmetry in quasi-constitutional legislation. This ought to be a matter of discussion for all provinces and territories.

## **1. Introduction**

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### **a) The Road to Modernization**

The Quebec Community Groups Network and its community partners and stakeholders have been active participants in the movement to modernize the *Official Languages Act* starting with Senator Maria Chaput's Bill S-205 in 2013. Along with our community, we worked diligently and in collaboration with Canada's Francophone minority towards a modernized Act, between 2017 and 2019. The consensus reached on a way forward was lost following the 2019 election. It was during that summer and fall that talks began between Canada and Quebec on Quebec's expectations of a modernized Act. The 2020 Speech from the Throne, the 2021 discussion paper *English and French: Towards a substantive equality of official languages in Canada*, Bill C-32, *An Act for the Substantive Equality of French and English and the Strengthening of the Official Languages Act*, and finally Bill C-13, *An Act for the Substantive Equality of Canada's Official Languages* ushered in a new federal approach to its official languages. A longer history of the QCGN's participation in the national discussion to modernize the *Official Languages Act* is contained in our June 7, 2022 brief to this Committee.

### **b) Bill C-13: A Sea Change in Policy, to the Detriment of English-speaking Quebec**

The QCGN's June 7, 2022, brief explores how this policy shift threatens the language rights of English-speaking Quebecers. That brief went into great detail about English-speaking Quebec's concerns regarding C-13.

Our concerns since the legislation was amended by the House at Third Reading, however, have been amplified. An additional reference to Quebec's *Charter of the French Language*, which provides that French is the sole official language of Quebec, will now be inserted into the purpose clause of the *Official Languages Act*.

As detailed below, this measure will compound the tangible negative effects on federal support to – and the language rights of – English-speaking Quebecers.

### **c) English-speaking Quebec: A Unique Official Language Minority**

We refer the Committee to paragraphs 7 to 19 of our June 2022 brief for a fuller discussion of the English-speaking Community of Quebec.

During debate in the House of Commons, and consideration of C-13 by the House Standing Committee on Official Languages, some Members of Parliament advanced the notion that English-speaking Quebec is not a minority. Since this contention was used to justify the asymmetry contained in the version of the legislation now before this Committee, we will take this opportunity to respond.

The protection of minority rights is “an independent principle underlying our constitutional order”.<sup>3</sup> The genesis of this principle was the product of historic compromises made at Confederation to protect French and Catholic and English and Protestant minorities within the founding provinces. This principle is echoed in other underlying constitutional principles, like federalism, which “facilitates the pursuit of collective goals by cultural and linguistic minorities which form the majority within a particular province”.<sup>4</sup> The composition of the Senate itself is designed to ensure “that minorities, originally the Anglophone population of Quebec and Francophone minorities in other provinces, would be represented” in the Upper Chamber.<sup>5</sup>

The protection of minority rights has evolved and expanded since the *Constitution Act, 1867*, especially after the entrenchment of the *Canadian Charter of Rights and Freedoms*. But within the *Charter*, we see the echoes of the original compromise. Sections of the *Charter* enumerate fundamental human rights, legal and democratic rights for example. And there are separate sections that protect the language rights of Canadians with respect to the country’s two official languages, English and French. We refer the Committee to paragraphs 20 to 31 of our June 2022 brief for a fuller discussion.

Canada thus has two official-language minorities. There is one English-speaking minority, the English-speaking Community of Quebec, a community of 1.3 million people that is distinct from the English-speaking majority in the rest of Canada.

There are two groups of Francophone minorities within Canada; the Francophone majority in Quebec; and the Francophone minorities in the other provinces and territories.

This Committee’s report of October 2011 – *The Vitality of Quebec’s English-speaking Communities: From Myth to Reality* – correctly noted that English-speaking Quebec is not preoccupied with the preservation of its language. The report did however note that the English-speaking Community of Quebec faced many of the same challenges faced by Francophones outside of Quebec with respect to obtaining government services in their language, and fully benefiting from their Constitutional language rights. The Committee noted, “that the federal government must protect and promote the rights of the English-speaking minority while respecting Quebec’s authority to legislate in its own area of jurisdiction”.<sup>6</sup>

It went on to say:

“It is important to understand that a win for the rights of the Anglophone minority does not necessarily threaten the aspirations of the Francophone majority. The goals of the two communities do not have to be mutually exclusive and can be achieved in an atmosphere of respect for the rights of both. We must take what has long been seen as a win-lose

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<sup>3</sup> *Reference re Secession of Quebec*, [1998] 2 SCR 217 at para 80.

<sup>4</sup> *Ibid* at para 59.

<sup>5</sup> The Honourable Judith Seidman, *Role in the Protection of Regional and Minority Representation*, Senate of Canada, May 18, 2016. <https://sencanada.ca/en/speeches/speech-by-senator-judith-g-seidman-on-the-role-in-the-protection-of-regional-and-minority-representation-inquiry-debate-adjourned/> accessed May 24, 2023.

<sup>6</sup> *The Vitality of Quebec’s English-speaking Communities: From Myth to Reality*, Report of the Standing Senate Committee on Official Languages, October 2011, at p.3.

situation and change it into a win-win scenario for two segments of a single population. Quebec’s English-speaking minority cannot hope to achieve its full potential unless both levels of government are involved in ensuring respect for their rights (ibid).”

The Quebec Community Groups Network’s Access to Justice Project has so far published four in-depth reports on the challenges already faced by English-speaking Quebecers: access to Quebec Courts in English; senior care services in English in Quebec; obtaining federal correctional services in Quebec; and online access to Quebec government services.<sup>7</sup> These research reports provide evidence that there are systemic barriers to:

- accessing justice in English in Quebec courts;
- accessing information and services in English on Quebec government websites across multiple ministries; and,
- English-speaking seniors having access to Support Program for the Autonomy of Seniors (SAPA) services in English, in Centre local de services communautaires (CLSCs), long-term care facilities, and other health care institutions across Quebec.

The Provincial Employment Roundtable (PERT) recently released *CENSUS 2021 Update: A brief review of the latest data on employment among Québec’s English speakers* that demonstrates that English-speaking Quebecers face an unemployment rate of 10.9 per cent – four percentage points higher than French majority’s 6.9 per cent. This difference has doubled since the 2016 Census, when the gap was two percentage points. Moreover, despite higher educational attainment than the majority, English speakers continue to earn lower incomes compared with French speakers across the province, a gap that has also widened significantly from the previous Census.<sup>8</sup>

This Committee recently heard from the Community Health and Social Services Network (CHSSN) about the challenges faced in accessing these services in English in Quebec.<sup>9</sup>

The federal government has always approached its Part VII obligations toward the English and French linguistic-minority communities from the perspective of substantive equality. For example, despite having the largest population of any official-language minority community (OLMC), English-speaking Quebec, Canadian Heritage’s *per capita* investment in our community is less than \$50. For comparison purposes, the *per capita* investment for Franco-Ontarians is \$134.99.<sup>10</sup> As for the federal official-language strategic policies – the most recent being the *Action Plan for Official Languages 2023–2028: A historic federal investment in official languages*, English-speaking Quebec receives approximately 20 per cent of funding programs available, the bulk of which involves inter-governmental transfers in the education and health and social-services sectors.<sup>11</sup>

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<sup>7</sup> See Justice Project Updates and Resources <https://www.qcgnjustice.ca/projects/>, accessed May 24, 2023.

<sup>8</sup> See <https://pertquebec.ca/reports/census-2021-update-a-brief-review-of-the-latest-data-on-employment-among-quebecs-english-speakers/>, accessed May 24<sup>th</sup>, 2023.

<sup>9</sup> Community Health and Social Services Network appearance, May 1<sup>st</sup>, 2023.

<sup>10</sup> Canadian Heritage, *Annual Report on Official Languages 2020–2021* <https://www.canada.ca/en/canadian-heritage/services/official-languages-bilingualism/publications/annual-report-2020-2021.html>, accessed May 24<sup>th</sup>, 2023.

<sup>11</sup> The Committee’s 2011 report concluded that English-speaking Quebec received 13 per cent of available funding from the 2008-13 Roadmap.

To be clear, the objective of providing support to the English-speaking community of Quebec, directly or through the province, is not to “anglicize” Quebec. It has been demoralizing to hear recent comments in the House and elsewhere that question why English-speaking Quebec gets any support at all from the federal government. We note the negativity felt by and the attacks on English-speaking Quebecers in some media and from some political leaders. Distinguished members of Parliament, doing what they think is right for their constituents and their minority community, were pilloried and accused of being “anti-French” for opposing the more egregious parts of C-13; the inclusion of the *Charter of the French Language* as amended by Bill 96 into the quasi-constitutional *Official Languages Act*, and its incorporation by reference in the *Use of French in Federally Regulated Businesses Act*. **Little consideration seems to have been given to the implications of acceding to Quebec’s pre-emptive use of the notwithstanding clause.**

## **2. QCGN Concerns with Bill C-13 as Amended at the House of Commons**

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Bill C-13 has been debated and amended since this Committee did its pre-study of the bill in 2022. Below, we highlight two key changes that raise major concerns for the English-speaking community of Quebec. The first pertains to the undisclosed bilateral agreement on federally regulated businesses. The second pertains to a new reference to the *Charter of the French Language* added in the purpose clause of the OLA. These two features amplify and compound the concerns raised in the QCGN’s first brief to this Committee.

### **a) Undisclosed Quebec-Canada bilateral agreement on Federally Regulated Businesses**

On the last day of committee study at the House, amendments were made to the *Use of French in Federally Regulated Businesses Act*, which is embedded in C-13. These last minute amendments were the result of private negotiations between Canada’s Minister of Official Languages and Quebec’s Minister of the French Language.<sup>12</sup>

We have demonstrated the connection and importance of equal language rights between English and French Canadians in the development of our Constitution. This foundational constitutional element is being modified by C-13 through undisclosed agreements that are free from debate and scrutiny.

Confidential agreements have also been reached with CN and Air Canada – both of whom are subject to the *Official Languages Act* under their federal incorporating acts – and the Government of Quebec. Both companies have registered with the Office Québécois de la langue française pursuant to the *Charter of*

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<sup>12</sup> Hansard 196 May 12, 2023, at 1235.



*the French Language* as amended by Bill 96, *An Act respecting French, the official and common language of Québec*.<sup>13</sup>

The QCGN continues its strong opposition to the historic move by the Government of Canada to create new language rights applicable to only one of the country's official languages.<sup>14</sup> The wording of the amended *Use of French in Federally Regulated Businesses Act* tracks closely with the *Charter of the French Language*, permitting the use of languages other than French, but not requiring the use of English. There are provisions to protect current English-speaking employees in their current positions. There are no rights created for future English-speaking employees, or those seeking advancement, and there are no language-of-service rights. In the not-too-distant future, a customer entering a Bell retail outlet in Kirkland or Gatineau will have the right to be served in French – something that will not be the case for customers who want to be served in English.

The undisclosed bilateral agreement between Quebec and Canada is deeply troubling. This agreement undermines the principles of transparency and support for official-language minorities in federal-provincial agreements as articulated in the Federal Court of Appeal's ruling in *Canada (Commissioner of Official Languages) v. Canada (Employment and Social Development)*.<sup>15</sup>

This undisclosed bilateral agreement is emblematic of the new asymmetry in federal legislation we see with Bill C-13. The official-language minority in Quebec has been written out of the script. Our community had no input into this agreement, even though it clearly implicates official languages in the province. The federal government is ceding significant official-language policy to the province, a lifeline that is fraying for English-speaking Quebecers.

**b) New reference to *Charter of the French Language* in the Purpose Clause of the *Official Languages Act***

In the version of the bill previously studied by this Committee, the legislation proposed to insert references to Quebec's *Charter of the French Language* into the OLA's preamble and Part VII of the Act. The concerns we expressed in 2022 remain.<sup>16</sup>

In his testimony before this Committee in 2022, former Supreme Court Justice Michel Bastarache expressed opposition to the inclusion of the *Charter of the French Language* in the federal OLA:

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<sup>13</sup> *CN announces its official registration with the Office québécois de la langue française*, CN Press release, Globe Newswire, March 16, 2023. <https://www.cn.ca/en/news/2023/03/cn-announces-its-official-registration-with-the-office-qubcois-d/>, accessed May 24, 2023. *Air Canada Registers With the Office québécois de la langue française*, Air Canada press release, CNW, March 20, 2023. <https://www.newswire.ca/news-releases/air-canada-registers-with-the-office-quebecois-de-la-langue-francaise-886603636.html>, accessed May 24, 2023.

<sup>14</sup> See QCGN Brief to OLLO, 2022, paras 123-132.

<sup>15</sup> 2022 FCA 14.

<sup>16</sup> See QCGN brief to OLLO, 2022, paras 77-92.

I am personally opposed to a reference to a provincial act in a federal act. I believe that the federal language regime is very different from the provincial regime. The role of the Commissioner of Official Languages is very different from the role of the Office de la langue française. I would not want to see federal institutions subjected to investigations by the Office de la langue française with respect to their compliance with obligations stemming from Quebec statutes that have not been adopted by the federal Parliament. My view is that federally regulated companies should be governed by a federal regime.

As my colleague mentioned, some provincial statutes may apply, but not in a field of that kind. It would have to be in areas that are more material, such as environmental and other similar legislation. People should not be confused. The Quebec Official Language Act, with respect to languages other than French, is more a statute on non-discrimination. It is not an act pertaining to the promotion of English, whereas the federal act promotes minority languages.

When the very purpose of each of the acts is not the same or not compatible, I can't see the point of it. If the government agrees with certain provisions of the Quebec act, it merely needs to adopt these provisions itself.”<sup>17</sup>

It is also worth recalling the testimony of Robert Leckey, Dean of the Faculty of Law of McGill University, about the references to the *Charter of the French Language* in the federal bill:

Bill C-13 would add references to the Charter of the French Language to the Official Languages Act. These references would endorse the Charter because they presuppose that the objectives and means promoted by the provincial legislation are consistent with those of the federal legislation and the constitutional responsibilities of the Government of Canada. However, this premise is not sound.

[*English*] Pegging the Official Languages Act to Quebec's Charter of the French language and, by implication, Bill 96, which amended it, raises four points.

First, the notwithstanding clause. Bill C-96 invokes the notwithstanding clause in the Canadian *Charter* and the Quebec *Charter* sweepingly and pre-emptively. It adds that derogation to the *Charter of the French Language*. Quebec has thus signalled that protecting French is not compatible with fundamental rights and freedoms but opposed to them. Are you endorsing that approach? Furthermore, questions about the notwithstanding clause, including whether such broad usage is constitutional, are under consideration by the Ontario and Quebec courts of appeal. These debates reach far beyond language issues. Are you comfortable with Parliament implicitly weighing in on these broader constitutional debates? Is the Standing Senate Committee on Legal and Constitutional Affairs alert to this aspect of your work?

[*Translation*] Let us talk about the relationship between provincial and federal language policies. As I told the House committee, there is an inherent tension between federal and provincial language priorities. The provinces tend to favour the interests of their linguistic majorities, in keeping with the autonomy guaranteed to them by our federal system. On the other hand, federal policy tends, quite rightly, to be more concerned with the protection of linguistic

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<sup>17</sup> Proceedings of Standing Senate Committee on Official Languages, October 3, 2022.

minorities within the federation. Bill 96 increases this tension. Let us not forget that it has been perceived as antagonistic to non-French speakers in the province, namely English speakers, immigrants and native language speakers.

Let us talk about the language guarantees in the Constitution of Canada. Certain provisions of Bill 96 appear to contravene section 133 of the *Constitution Act, 1867* and judicial independence. Indeed, constitutional challenges are already underway. Is it consistent for the federal *Official Languages Act* to endorse a provincial law that appears to infringe on language rights enshrined in the Constitution of Canada?

[English] Fourth and finally is Quebec’s purported amendments to the *Constitution Act, 1867*. Bill 96 purported to add to the 1867 act that Quebecers form a nation with French as the only official language. As of last week, Justice Canada has not made those additions to its online versions, but Quebec is distributing amended versions. Court challenges to those purported amendments are foreseeable. And recall that we lawyers try to make each word in an instrument mean something. It is thus foreseeable that courts may decide that those change, perhaps fundamentally, how the established case law on official languages applies in Quebec. How fully have you canvassed this possibility and its long-term consequences? I urge you to consider the implications of Bill 96’s process, aims and means for federal language policy.<sup>18</sup>

This Committee took note of these concerns in its report on pre-study of Bill C-13.<sup>19</sup>

In its brief, the QCGN recommended removing these references from the OLA.

However, this recommendation was not adopted by the House of Commons. Rather, at Committee in the House, the bill was amended to add an additional reference, this time in the purpose clause of the OLA, as follows:

<p>2 La présente loi a pour objet : [...] b.1) de favoriser, au sein de la société canadienne, la progression vers l’égalité de statut et d’usage du français et de l’anglais, en tenant compte du fait que le français est en situation minoritaire au Canada et en Amérique du Nord en raison de l’usage prédominant de l’anglais <b>et que la <i>Charte de la langue française du Québec</i> vise à protéger, à renforcer et à promouvoir cette langue;</b></p>	<p>2 The purpose of this Act is to [...] (b.1) advance the equality of status and use of the English and French languages within Canadian society, taking into account that French is in a minority situation in Canada and North America due to the predominant use of English <b>and that the goal of the <i>Charter of the French Language</i> is to protect strengthen and promote that language; and</b></p>
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<sup>18</sup> Proceedings of Standing Senate Committee on Official Languages, October 24, 2022.

<sup>19</sup> [Report of the Standing Senate Committee on Official Languages on the Subject Matter of Bill C-13](#), November 17, 2022, pp 2-3.

This amendment seems to act on a request by the Government of Quebec.<sup>20</sup> It signals a further alignment between federal and Quebec language policies. It further entrenches the *Charter of the French Language* in the OLA and creates an explicit legal alignment between the federal and provincial legislation.

Moreover, it advances a territorial orientation for federal language policy – a major shift from the principle of linguistic duality embedded in the current OLA. By privileging local provincial policy, which is distinctly restrictive toward the interests of its official-language minority, this weakens the federal lifeline for English-speaking Quebec. Some have noted that this shift could have similar and negative consequences for other official-language minorities in Canada.<sup>21</sup>

It is this addition to the purpose clause that greatly amplifies our concerns. Governments and courts are required to take the purpose clause into account when interpreting any provision of the OLA. Thus, the provisions of Part III, IV, V, VI, and VIII of the OLA will all be interpreted through this asymmetrical lens with respect only to Quebec.

What could this mean in practice?

#### **Example: Federal services in Quebec**

The reference to the *Charter of the French Language* in the purpose clause could result in asymmetrical implementation of Part IV in Quebec—resulting in reduced federal services in English in Quebec. The Official Languages Regulations Re-Application Exercise (OLRRE) is now under way. This Exercise reassesses the language obligations of individual points of federal service and is guided by the *Official Languages (Communications with and Services to the Public) Regulations*, which the Committee will recall were subject to a major overhaul in 2019. In short, the regulations were amended to make protecting and expanding bilingual points of service easier. When the results of the OLRRE are implemented early next year, it is anticipated that there will be a significant increase in the number of bilingual points of service across Canada. Such an increase in the number of bilingual points of service in Quebec is likely to attract political and media attention. Claims would likely be made that increasing the number of bilingual Post Offices, for example, contributes to the “anglicization” of Quebec. An *Official Languages Act* as amended by C-13 will allow the federal government to asymmetrically apply the results of the OLRRE, since Part IV of the Act will be interpreted under the new purpose clause.

#### **Example: federal language of work in Quebec**

Part V language-of-work rights are similarly threatened. Complaints filed with the Commissioner of Official Languages can be interpreted differently, depending on whether the subject of the complaint is a lack of French or a lack of English, and whether the complaint arises in Quebec or elsewhere.

<sup>20</sup> See Government of Quebec [brief](#), p 3.

<sup>21</sup> See Jeffery Vacante, “[Francophone minorities should worry about the Liberals’ language plans](#)”, *Globe and Mail*, May 17, 2023.

### c) Result: Harms to Quebec’s English-speaking minority

In its 2022 brief, the QCGN argued that Bill C-13 would harm English-speaking Quebec. This harm arises from the asymmetrical application of federally guaranteed language rights in Quebec, which Bill C-13 will mandate. This compounds the harm experienced by the community already from Quebec’s overhaul of its own language law under Bill 96.

In short, the alignment of federal official languages policy with Quebec’s policy is detrimental to English-speaking Quebec.

The amended Bill C-13 has only increased QCGN’s concerns in this regard.

One major manifestation of the new policy will filter through the federal support provided under Part VII. Bill C-13 overhauls the framework for Part VII. The framework for Part VII is modified in two key ways:

First, it adds the obligation for the federal government to take into account the protection of French in all provinces in all Part VII support;<sup>22</sup>

Second, it emphasizes the importance of federal-provincial cooperation, taking into account provincial language regimes and specifically referencing the *Charter of the French Language*.<sup>23</sup> The combined effect of these provisions is an increased federal alignment with Quebec’s restrictive policies.

Quebec’s strengthened policy objectives in support of a single official language are clear in Bill 96. The new Part VII framework in Bill C-13 encourages and enables the federal government – with its two official languages – to take into account Bill 96 and its policy objectives in providing official-language support in Quebec.

#### **Example: Limits to federal support in Quebec based on Bill 96 framework**

Quebec’s Bill 96 limits access to provincial services in English to those who are eligible for English education in Quebec, leaving out a large percentage of English-speaking Quebecers.<sup>24</sup> By contrast, federal support to the community has never been limited this way. Following the framework in the new Part VII and taking into account the “linguistic dynamics in the province,” a future federal government could decide to limit federal support based on the Bill 96 definition.

<sup>22</sup> Bill C-13, s 21, adding OLA s 41(6)(b)(i) (“Positive measures.... shall respect the necessity of protecting and promoting the French language in each province and territory”).

<sup>23</sup> Bill C-13, s 24, adding OLA s 45.1(1)(b).

<sup>24</sup> There is little correlation between those eligible to attend English schools in Quebec – *les ayant droit* – and the English-speaking Community of Quebec. For example, in 2012, 37.2 per cent of eligible students attending English schools outside of the Montreal region were mother-tongue Francophones.

**Cooperation with Quebec:** The government of Quebec has always demanded that all federal support for official languages be provided via the Quebec government through bilateral agreements, cutting out any direct federal support to English-speaking Quebec’s community sector. In other words, Quebec wants full control over federal support for official languages in Quebec. Given Quebec’s policy toward its linguistic minority, it is not hard to see how this new Part VII framework will effectively restrict federal funding to English-speaking Quebec.

Moreover, gains within Bill C-13 towards improving accountability and transparency over federal transfers to the provinces and territories destined to support English and French linguistic minorities will not likely be realized with respect to inter-governmental agreements between Canada and Quebec. Quebec is required by its own law to ensure that “the constitutional jurisdiction of Québec and the integrity of its institutions are respected” and typically resists provisions of an agreement that require reporting on federal transfers.<sup>25</sup>

The combined effect of taking into account Quebec’s language policy and allowing Quebec to control federal official languages funding – in other words, the full alignment between federal and provincial policy – is likely to diminish the availability and breadth of federal support for English-speaking Quebec.

**Example: Limits to federal support in Quebec through bilateral agreements**

The federal government funds programs related to employment for English-speaking Quebec. Right now, funding is not limited based on any provincial definition of who belongs to the minority. Under the new Part VII framework, Quebec could demand that the federal support come through a bilateral federal-provincial agreement and could successfully negotiate this limitation into the agreement.

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<sup>25</sup> *Act respecting the Ministère du Conseil exécutif*, [CQLR c M-30](#), s. 3.5.

### 3. Conclusion

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Although aspects of Bill C-13 move the *Official Languages Act* forward, the amended version of the bill now before this Committee exacerbates some key problems the QCGN identified in its June 2022 brief to this Committee.

Specifically, references to the *Charter of the French Language* – which as amended by Bill 96 now operates notwithstanding the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Human Rights and Freedoms* – will be added to the purpose clause of the quasi-constitutional *Official Languages Act*. This will fundamentally alter the courts' interpretation of the Constitutional language rights of 1.3 million English-speaking Quebecers. It will also change – to their detriment – the way federal institutions implement obligations to this official-language minority community, and inevitably impede the direct relationship between English-speaking Quebecers and the Government of Canada.

The Minister of Official Languages during her appearance before this Committee on February 6, 2023, made clear that the benefits of the new *Action Plan for Official Languages 2023–2028: Protection-Promotion-Collaboration* were not contingent on the passing of Bill C-13. There is no rush to pass this legislation.

Our hope is that the Senate will carefully consider the version of the legislation now before it; C-13 in its current form represents a monumental change to the quasi-constitutional OLA, a law that has national unity implications.

Appendix A sets out recommendations for amendments to Bill C-13. We urge this Committee to study the bill carefully and consider not only its impacts on the English-speaking community of Quebec, but also its constitutional effects.

## Appendix A: Recommendations

Given the amendments to C-13 at the House of Commons, the following are slightly modified from the List of Recommendations provided in the 2022 brief.

### RECOMMENDATION 1

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

### RECOMMENDATION 2

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

### RECOMMENDATION 5

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

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

### RECOMMENDATION 6

Add a requirement that

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

### RECOMMENDATION 7

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

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

### RECOMMENDATION 8

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