

BRIEF

SUBMITTED TO THE

STANDING SENATE COMMITTEE

ON

OFFICIAL LANGUAGES

IN THE COURSE OF THE STUDY OF
BILL C-13, AN ACT TO AMEND THE OFFICIAL LANGUAGES ACT

BY

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ON

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FRENCH VERSION OF THE *CONSTITUTION ACT, 1867*

1. Section 2 of the *Official Languages Act* (OLA) and section 16(1) of the *Canadian Charter of Rights and Freedoms* (the Charter) affirm the principle of the equality of status and equal rights and privileges of English and French as to their use in all institutions of the Parliament and Government of Canada, and the underlying principle of the ongoing advancement and the equality of status and use of the two official languages.
2. Over the years, courts have provided a further interpretation of the principles of the OLA set out in section 2, and the principles in section 16(1) of the Charter.
3. This interpretation states that equality of status has not yet been achieved and that there are obstacles to address and overcome. It recognizes that we have to constantly advance the equality of status.
4. There is therefore a clear obligation of means in practice, a requirement to fulfil a duty if we want to achieve the equality of status and use of the two languages.
5. According to Supreme Court case law, these rights in the OLA and the Charter (sections 16 to 23) are to be interpreted in a “purposive and liberal” manner.
6. There is another implicit aspect that has now been recognized in Bill C-13: consideration of the duty to remedy wrongs caused by past neglect, to compensate for the negative effects of decades of measures that encouraged assimilation and a mean-spirited approach to the use of either minority language, considering that English and French have been recognized as equal in status for 55 years.
7. The SUMMARY of Bill C-13 reflects the remedial duty inherent in sections 2 of the OLA and 16(1) of the Charter in order to achieve equality of status and equal rights and privileges of the two languages.
8. Applying this remedial duty means specific initiatives must be taken to achieve this substantive equality objective.
9. One of the fundamental objectives that should be shared from the outset is the adoption of an official French version of the *Constitution Act, 1867*. As the Supreme Court recognized many years ago, only the English version of the *Constitution Act, 1867*, is authoritative.
10. As a result, when senators and members of parliament need to refer to the 1867 Constitution, the supreme law of the land, they can only refer to the English version of these constitutional texts, even though the Department of Justice has provided a French translation, which is not authoritative. This is also true for all Canadiens and provincial and municipal governments who need to refer to the 1867 Constitution.
11. If Canada wants to live up to its status as an officially bilingual country, it must respect the commitment in section 55 of the *Constitution Act, 1982*, that stipulates that it must take all necessary steps to ensure that an official French version of the 1867 Act is adopted.
12. Section 55 of the *Constitution Act, 1982*, states that all constitutional texts referred in the schedule shall be prepared and enacted in French:

French version of Constitution of Canada

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

Version française de certain textes constitutionnels

55. Le ministre de la Justice du Canada est chargé de rédiger, dans les meilleurs délais, la version française des parties de la Constitution du Canada qui figurent à l'annexe; toute partie suffisamment importante est, dès qu'elle est prête, déposée pour adoption par proclamation du gouverneur général sous le grand sceau du Canada, conformément à la procédure applicable à l'époque à la modification des dispositions constitutionnelles qu'elle contient.

13. Section 55 imposes a duty to act expeditiously. The French version of the Constitution of Canada shall be prepared "as expeditiously as possible" and any portion thereof sufficient to warrant action being taken shall be put forward for enactment.
14. In the *Proposed Resolution Respecting the Constitution of Canada*, published on 6 October 1980, section 55 (at the time section 54) included the following explanatory note: "New. Many of the documents composing the Constitution of Canada were enacted by the United Kingdom Parliament, which enacted them only in English. While unofficial French versions appear in the Statutes of Canada, they do not have legal status. This section would provide for the enactment of official French versions of those documents."
15. Additionally, section 56 of the *Constitution Act, 1982*, confirms that the French version of constitutional texts enacted under section 55 of the *Constitution Act, 1982*, are equally authoritative:

English and French versions of certain constitutional texts

56. Where any portion of the Constitution of Canada has been or is enacted in English and French or where a French version of any portion of the Constitution is enacted pursuant to section 55, the English and French versions of that portion of the Constitution are equally authoritative.

Version française et anglaise de certains textes constitutionnels

56. Les versions française et anglaise des parties de la Constitution du Canada adoptées dans ces deux langues ont également force de loi. En outre, ont également force de loi, dès l'adoption, dans le cadre de l'article 55, d'une partie de la version française de la Constitution, cette partie et la version anglaise correspondante.

16. Given the government's inaction since 1990, i.e., 33 years, Professor François Laroque from the University of Ottawa's Faculty of Law and I initiated legal proceedings in the Quebec Superior Court on 30 August 2019, with the objective of having the various Canadian constituent parties adopt an official version of the 1867 Act (and its 22 subsequent amendments).
17. However, at this stage of the proceedings, it is important to mention that, as of 5 June 2023, the Attorney General of Canada denies that he has an obligation to act, as do all attorney generals from the other provinces.
18. This is an untenable legal situation, and an obligation we can no longer ignore because a right to a French version of the 1867 Constitution was clearly recognized in section 55 in 1982.
19. And yet, no one is taking any action to follow up on this essential correction for a State like Canada, which claims to be bilingual.
20. How can Canada claim to defend the equal status and use of the two languages when its constitution, its supreme law, is in English only?
21. The substance of the motion adopted unanimously by the Senate at the initiative of Senator Pierre Dalphond on 29 March 2022, stating that

[T]he Senate calls upon the government to consider, in the context of the review of the *Official Languages Act*, the addition of a requirement to submit, every five years, a report detailing the efforts made to comply with section 55 of the *Constitution Act, 1982*.

warrants an amendment to Bill C-13.

22. We recommend Bill C-13 be amended to add a new subparagraph 2(a) to clause 41 paragraph 2. to be worded as follows:

41 (2) (a)

The federal government, recognizing the obligation to adopt a French version of the Constitution Act 1867 (and its subsequent amendments) must table in the Senate and in the House of Commons, every 12 months a report detailing the efforts made to comply with section 55 of the Constitution Act, 1982.

41 (2) a)

Le gouvernement fédéral, reconnaissant l'obligation d'adopter une version française du texte de la loi constitutionnelle de 1867 (et de ses amendements subséquents) s'engage à soumettre au Sénat et à la chambre des communes un rapport aux 12 mois détaillant les efforts déployés pour assurer le respect de l'article 55 de la loi constitutionnelle de 1982.

VISIBILITY OF FRENCH IN THE DIGITAL SPACE AND ARTIFICIAL INTELLIGENCE SYSTEMS

1. Bill C-13 recognizes the government's formal obligation to take proactive measures to advance the equality of status of the two languages and the vitality of official language minority communities.
2. A key point for advancing the equality of status of the two languages is the adoption of a holistic approach encompassing all means, institutions, bodies, regulatory powers and programs under the responsibility of the Canadian government, both at home and abroad, to serve the underlying principle affirming French, as Bill C-13 requires.
3. The SUMMARY of Bill C-13 refers to the socio-cultural and economic environment in which English and French are evolving in Canada and Quebec, and the various pressures and conditions from within and outside Canada on their use. One reality that was not on the radar in 1969, in 1982 or in 1988, but has since become a major issue, is the advent of large digital platforms such as Google, Amazon, Meta, Apple and Microsoft (GAMAM) and artificial intelligence (AI), considered by experts as "the tipping point of a new computing era."
4. It seems clear that this new reality in fact has much more of an impact on the future of the use of French than what the current political debate, which tends to focus on agenda-setting federal-provincial conflicts on the status of languages, rather than on the contemporary socio-cultural and economic conditions in which languages are evolving in a global digital space in the face of unprecedented transformation caused by new artificial intelligence systems. Younger generations' digital consumption habits and changes in day-to-day life that the multiple use of AI at all levels will cause are completely disrupting the context in which French is evolving.
5. Digital platforms are already reaching almost 92% of all households in Quebec, or close to seven million people. There seems to be a clear need to take action and set strategic targets when we know that with the exception of English, languages, including indigenous languages, are on the margins of the digital space.
6. English is the language of major American and Chinese platforms. Platforms offer an infinite choice of connections determined by algorithms completely outside the user's control; these users have no say in the choice of English, the dominant language.
7. The priority, in our view, is the visibility of French-language work, creation and research of any nature, which means making sure that it is visible on the digital space and is freely promoted and easily accessible in AI systems.
8. Canada cannot solve this problem alone, but with the help of Quebec, Francophonie member countries, and countries that use other languages, other than English, as well as relevant international organizations, it can make its voice heard even more strongly to

adopt effective international regulations to ensure the visibility and use of French and other minority languages.

9. However, a coalition of a majority of UNESCO member countries could be successful, as was the case in 2005 with the adoption of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* where Canada played a key role to get the Convention passed.
10. This priority should form a broad and robust consensus, first among the member countries of the Francophonie (Organisation internationale de la Francophonie) then the European Union (EU) and a large number of UNESCO member countries.
11. The real Trojan horse undermining the importance and visibility of French for current and future generations is in the digital space and AI systems dominated by giant inward-looking American – and potentially Asian – giants.
12. This reality should be brought to the attention of the government and the ministers responsible. All political resources and political will should be primarily focused on this issue.
13. The contemporary world is changing at a fast pace, and the new Bill C-13 must reflect this if we do wish to wait until it is too late to adopt it.
14. We recommend adopting an amendment to clause 43 of Bill C-13 to add a new subparagraph h (i.e., 43 1.1 (a)... (h)), to clause 43 1.1:

43 (1) The Minister of Canadian Heritage shall advance the equality of status and use of English and French in Canadian society, and to that end may take measures to:

(1.1) ... (a) to (h)

(h) to take all initiatives, adopt directives, regulations or others measures to facilitate the accessibility and visibility of any work, creation, research of any nature in the French language on all web platforms, and in any system of Artificial Intelligence and with the assistance of concerned ministers to obtain the support and concurrence of foreign governments and international organizations which value cultural diversity in order to conclude any agreements and adopt any regulations that would be required to give effect to linguistic diversity.

h) pour adopter toutes les initiatives, directives, règlements ou autres mesures, visant à assurer la présence et la découvrabilité de toute œuvre, création, recherche de quelque genre en langue française dans l'espace numérique, de même que dans les systèmes d'Intelligence Artificielle, et en suscitant avec le concours des ministres concernés l'appui et la concertation des autres pays et organismes internationaux qui valorisent la diversité culturelle en vue de conclure toutes ententes et adopter toutes réglementations qui pourraient être requises pour donner effet à la diversité linguistique.