

Senate



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CANADA

LANGUAGE RIGHTS IN CANADA'S NORTH: NUNAVUT'S NEW *OFFICIAL LANGUAGES ACT*

Final Report

**A Special Study on the motion that the
Senate concur in the June 4, 2008 passage of
the *Official Languages Act* by the
Legislature of Nunavut**

The Honourable Joan Fraser
Chair

The Honourable Pierre Claude Nolin
Deputy Chair

**Standing Senate Committee
on Legal and Constitutional Affairs**

June 2009

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MEMBERSHIP

THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

40th Parliament, 2nd Session

(January 26, 2009 - ...)

The Honourable Joan Fraser
Chair

The Honourable Pierre Claude Nolin
Deputy Chair

and

The Honourable Senators:

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George Baker, P.C.
John G. Bryden
Larry W. Campbell
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Fred Dickson
Serge Joyal, P.C.
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The committee wishes to thank all the staff, including those not named above, who worked very long hours in order to complete this report on deadline. Their efforts are greatly appreciated.

ORDER OF REFERENCE

Extract from the *Journals of the Senate*, Thursday, June 4, 2009:

Resuming debate on the motion of the Honourable Senator Comeau, seconded by the Honourable Senator Adams:

That, in accordance with section 38 of the Nunavut Act, chapter 28 of the Statutes of Canada, 1993, the Senate concur in the June 4, 2008 passage of the Official Languages Act by the Legislative Assembly of Nunavut.

After debate,

In amendment, the Honourable Senator Joyal, P.C., moved, seconded by the Honourable Senator Robichaud, P.C., that the motion be referred to the Standing Senate Committee on Legal and Constitutional Affairs for study and report; and

That the committee report no later than June 11, 2009.

After debate,

The question being put on the motion in amendment, it was adopted, on division.

Paul C. Bélisle
Clerk of the Senate

RECOMMENDATION 1

The committee recommends that the Senate adopt the following motion, moved by the Honourable Senator Comeau, seconded by the Honourable Senator Adams: “That, in accordance with section 38 of the *Nunavut Act*, chapter 28 of the Statutes of Canada, 1993, the Senate concur in the June 4, 2008 passage of the *Official Languages Act* by the Legislative Assembly of Nunavut.”

INTRODUCTION

On 4 June 2009, the Standing Senate Committee on Legal and Constitutional Affairs (the committee) received an order of reference from the Senate to study the following notice of motion:

That, in accordance with section 38 of the *Nunavut Act*, chapter 28 of the Statutes of Canada, 1993, the Senate concur in the June 4, 2008 passage of the *Official Languages Act*¹ by the Legislative Assembly of Nunavut.

Nunavut’s new *Official Languages Act* is designed to repeal and replace the *Official Languages Act*² that is currently in force in Nunavut, a statute that was originally enacted by the Legislative Assembly of the Northwest Territories (NWT).³

Under the current Act, English and French are granted official language status for the purposes of providing all territorial government services described in that Act, including the right to use either of these languages in debates and proceedings in the Legislative Assembly,⁴ in the issuance of instruments directed to the public by the legislature, the government, judicial, quasi-judicial and administrative bodies, and Crown corporations,⁵ in decisions and orders issued by any judicial or quasi-judicial body,⁶ and

¹ S. Nu., 2008, c. 10.

² R.S.N.W.T. 1988, c. O-1.

³ When the *Nunavut Act*, S.C. 1993, c.28 came into force on 1 April 1999, it not only created the territory of Nunavut out of an area that was formerly considered part of the NWT (section 3), but also provided that the ordinances of the NWT and the laws made under them that had not been repealed by the time that the *Nunavut Act* came into force would be duplicated “to the extent that they can apply in relation to Nunavut, with any modifications that the circumstances require” (section 29(1)).

⁴ *Official Languages Act*, R.S.N.W.T. 1988, c. O-1, section 9.

⁵ *Ibid.*, section 11.

⁶ *Ibid.*, sections 13(1) to 13(3).

in communications to and services received from territorial government offices.⁷ The current Act also recognizes six other languages⁸ as having official language status in Nunavut: Chipewyan, Cree, Dogrib, Gwich'in, Inuktitut⁹ and Slavey.¹⁰ However, these languages are not considered official languages for all purposes.¹¹ Except for the right to use the other six languages in debates and proceedings in Nunavut's Legislative Assembly,¹² the Act gives discretion to Nunavut's Commissioner,¹³ and, in some instances, the territorial courts, to determine whether or not services in those languages will be provided.¹⁴ With respect to communications to and receipt of services from territorial government institutions, service will generally be provided in languages other than French or English only where there is a significant demand in the community for services in one or more of those other languages, or if, due to the nature of the office providing the service, it is reasonable that communications with and services from that office be provided in those other languages.¹⁵

On 4 June 2008, the Nunavut Legislative Assembly passed a new *Official Languages Act* for that territory. The new Act essentially gives the "Inuit Language," which is defined as Inuktitut for most of Nunavut, and as Inuinnaqtun in some of Nunavut's Western communities,¹⁶ the same status as English and French for the purposes of providing territorial government services. It also removes Chipewyan, Cree, Dogrib, Gwich'in, and Slavey from the list of official languages contained in the current Act. However, Nunavut's new *Official Languages Act* is not in force yet because section 38 of the *Nunavut Act* states that the Nunavut Legislative Assembly may not amend or repeal the *Official Languages Act* that Nunavut inherited from the NWT in a way that

⁷ Ibid., section 14

⁸ All of the official languages recognized by Nunavut's current *Official Languages Act* are listed in section 4 of the Act.

⁹ Under section 1 of Nunavut's current *Official Languages Act*, "Inuktitut" is defined to include Inuvialuktun and Inuinnaqtun. The Committee has been advised that Inuvialuktun is more commonly referred to as Inuvialuit.

¹⁰ Under section 1 of Nunavut's current *Official Languages Act*, "Slavey" is defined to include both North Slavey and South Slavey.

¹¹ Supra note 4 at section 8(1).

¹² Ibid. at section 9.

¹³ The Commissioners of Canada's three territories perform a role roughly equivalent to that of the Lieutenant Governors of the provinces.

¹⁴ For examples of instances where the Commissioner has this discretion see supra note 4 at sections 10(2), 11 and 12(2). For an example of an instance where the territorial courts have this discretion, see section 13(4).

¹⁵ See supra note 4 at sections 14(1)(a) and (b) and 14(2).

¹⁶ See section 1 of the Nunavut's new *Official Languages Act*, supra note 1 and section 1(2) of the *Inuit Language Protection Act*, S. Nu., 2008, c. 17.

diminishes any of the rights and services guaranteed by it, unless Parliament concurs by way of resolution.

A motion seeking concurrence with the Nunavut's Legislative Assembly's decision to adopt a new *Official Languages Act* was introduced in the House of Commons on 1 June 2009 and was passed, without debate, by that chamber.

On 2 June 2009, the Motion for Concurrence in the Legislative Assembly of Nunavut's passage of the *Official Languages Act* (Motion No. 26) was introduced in the Senate.¹⁷ When some Senators raised concerns regarding the content and effect of Nunavut's new Act on individuals who speak languages other than the Inuit Language, debate on the motion was postponed and resumed on 4 June 2009.¹⁸

Some Senators wished to ensure that the rights of linguistic minorities in Nunavut are not detrimentally affected by the coming into force of the new *Official Languages Act*. Senators were concerned about a number of issues pertaining to linguistic minority rights including whether:

- there were any available statistics demonstrating whether these five languages were still in use in Nunavut;
- as a result of the coming into force of the bill, francophone and anglophone minority rights guaranteed by the Constitution would be affected or diminished in Nunavut;
- as a result of the Senate's concurrence to this motion, francophone and anglophone minority rights guaranteed by the Constitution could be affected or diminished in other parts of Canada;
- the new Act imposes any obligation on the Nunavut government to promote the development and vitality of minority languages and linguistic communities in the territory;
- all territorial institutions were subject to the provisions of the Act and if not, why some institutions were excluded from its application and the obligations therein and the effect that would have on linguistic minority rights.

¹⁷ Senate, *Debates*, 2nd Session, 40th Parliament, 2 June 2009, http://www.parl.gc.ca/40/2/parlbus/chambus/senate/deb-e/040db_2009-06-02-E.htm?Language=E&Parl=40&Ses=2#57

¹⁸ Senate, *Debates*, 2nd Session, 40th Parliament, 4 June 2009, http://www.parl.gc.ca/40/2/parlbus/chambus/senate/deb-e/042db_2009-06-04-E.htm?Language=E&Parl=40&Ses=2.

Given its role in terms of safeguarding regional interests and minority rights, including minority language rights, the Senate decided to refer this motion to this committee for further study. In accordance with the order of reference our committee received from the Senate on 4 June 2009, we are required to report our views and recommendations with respect to the motion no later than 11 June 2009.

Both the Senate and this committee fully support the vision that led to the creation of Nunavut's new *Official Languages Act*. It is an important step in ensuring and enhancing the vibrancy and presence of the Inuit language in each and every aspect of Nunavummut life. As such we are committed to supporting what many witnesses who appeared before this committee characterized as a dream that began with the creation of the Nunavut as Canada's newest territory.

After hearing all the witness, this committee is convinced that study of this motion was essential to gaining a full understanding of the context in which the new *Official Languages Act* was created, the consultation process that preceded its creation and the significance of this legislative framework for the people of Nunavut.

BACKGROUND AND CONTEXT

As stated previously, the *Official Languages Act* that is currently in force in Nunavut is one that was initially adopted and passed by the legislature of the NWT. Because of this, it is necessary to briefly outline the evolution of minority language rights in that territory, of which Nunavut was formerly a part, before turning to an examination of the provisions of Nunavut's new *Official Languages Act*.

A. Evolution of the NWT *Official Languages Act* Adopted by Nunavut when Nunavut Became a Territory

In 1969, Parliament adopted its first federal *Official Languages Act*.¹⁹ This Act:

- declared French and English to be Canada's two official languages;
- held that these languages had equal status; and
- set out the rights of Canadians to communicate with the federal government and its institutions in their official language of choice.

¹⁹ S.C. 1968-69, c. 54.

In 1970, following the enactment of this statute, the federal government created the Office of the Commissioner of Official Languages. The Commissioner of Official Languages, among other things, functions as ombudsman in relation to the implementation of the rights guaranteed in the *Official Languages Act*, with the capacity to receive and resolve complaints with respect to the unavailability or lack of quality of service in one's official language. The same year that the federal Office of the Commissioner of Official Languages was created, Parliament also enacted the *Northwest Territories Act*, R.S.C. 1970, c. N-22, the predecessor to the current *Northwest Territories Act*.²⁰ Under the *Northwest Territories Act* of 1970, the status of French as an official language in that territory remained unaddressed. This raised questions as to what extent, if any, the provision of territorial government services in French was guaranteed under the first federal *Official Language Act*. This matter became even more important for both the federal and NWT governments to resolve following the enactment of the *Canadian Charter of Rights and Freedoms* (the Charter),²¹ which provides constitutional guarantees of official language rights to members of the public in terms of communication with and receipt of available services from Parliament and federal government institutions.²²

Following a 1983 Yukon Territorial Court decision where a judge found that a violation ticket written only in English was not invalid by virtue of the fact that it was not also written in French, and that section 20 of the Charter applied only to federal

²⁰ R.S.C. 1985, c. N-22.

²¹ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

²² Section 16(1) of the Charter states:

16. (1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

Section 20(1) of the Charter states:

20. (1) Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French, and has the same right with respect to any other office of any such institution where

(a) there is a significant demand for communications with and services from that office in such language; or

(b) due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.

government, not territorial institutions,²³ Parliament took steps to ensure that the linguistic guarantees contained in the federal *Official Languages Act* and the Charter would apply to the provision of territorial government services. On 24 March 1984, the government of the day introduced Bill C-26, An Act to amend the Northwest Territories Act and the Yukon Act. Had this bill been enacted, it would have inserted provisions equivalent to section 16(1) and 20(1) of the Charter into both the *Northwest Territories Act* and the *Yukon Act*, subjected both territories to several provisions contained in the federal *Official Languages Act*, and invalidated any ordinance, bylaw, rule, order, regulation or proclamation in both territories that had not been published in both English and French by 1 January 1988.

Territorial reaction to the introduction of Bill C-26 was not favourable, as the governments, as well as the public, in both territories, saw the bill as attempting to infringe on an area of territorial jurisdiction. Having said this, there were fewer objections to the bill in the NWT than there were in the Yukon, because the NWT was already offering some territorial government services in the six Aboriginal languages that eventually became official languages under the NWT's first territorial *Official Languages Act*. Accordingly, shortly after the introduction of Bill C-26, the NWT's Executive Council entered into negotiations with the federal government over the content of that bill and sought funding from the federal government for the provision of both French and Aboriginal language services.

In June of 1984, the NWT's Executive Council reached an agreement with the federal government, under which the federal government agreed to withdraw those portions of Bill C-26 that applied to the NWT in exchange for the NWT enacting its own territorial *Official Languages Act*. The NWT's new *Official Languages Act* would recognize French as an official language for all purposes in terms of providing territorial government services, and would grant special status to the six Aboriginal languages most commonly used in the NWT. In addition, under the terms of the agreement reached between the federal and NWT governments, the Government of Canada agreed to assume all costs related to the provision of French language services to the public in the NWT, as well as all costs related to implementing French as an official language of the NWT, in

²³ See *St. Jean v. R*, Yukon T.C., June 1983 (unreported), as cited in the appeal decision *St. Jean v. R* (1986), 2 Y.R. 116 (Y.S.C.)

perpetuity. The federal government also consented, under the terms of the agreement, to provide \$16 million to the NWT between 1984 and 1989 to preserve and promote Aboriginal languages in that territory. Finally, in order to ensure that minority language rights (both French and the six Aboriginal languages) were preserved, Bill C-26 was amended to insert a provision into the *Northwest Territories Act* to state that the NWT's *Official Languages Act* could not be amended without the concurrence of Parliament.

Although Bill C-26 was never enacted (it died on the Order Paper due to an election call in 1984), the NWT's first *Official Languages Act*, which formed part of the agreement reached between the NWT and the Government of Canada came into force on 28 June 1984, and the Government of Canada began providing the funding agreed upon to the territorial government. Subsequently, in 1988, with the coming into force of a new, federal *Official Languages Act*, the Government of Canada fulfilled the remaining commitments it made to the NWT under the 1984 agreement. Firstly, Parliament amended section 3 of the federal *Official Languages Act* to exclude territorial institutions from the definition of "federal institution," under that Act. Secondly, it amended section 7 of that Act to exclude territorial laws and ordinances from requirements applicable to federal legislative instruments. Finally, under Bill C-72, Parliament added section 43.1 to the version of the *Northwest Territories Act* that is currently in force to stipulate that the NWT's *Official Languages Act* could not be amended without the concurrence of Parliament. This control was preserved for Nunavut under section 38 of the *Nunavut Act*, although section 38 of the *Nunavut Act* is slightly less restrictive, as parliamentary concurrence is only required for Nunavut when the Nunavut Legislative Assembly amends the *Official Languages Act* it inherited from the NWT in such a way as to diminish the rights and services provided for in that Act.

B. The Decisions of NWT Courts in *Fédération Franco-Ténoise v. Canada (Attorney General)*

Notwithstanding all of the various efforts taken by the federal and NWT governments to ensure the protection of French language rights in that territory, complaints have been made over the years that the services provided to the NWT's Francophone minority by the government of that territory are inadequate. One of the most recent, as well as one of the most comprehensive, court decisions rendered on this

subject is the 2006 decision of the of the NWT Supreme Court in *Fédération Franco-Ténoise v. Canada (Attorney General)*,²⁴ in which a number of plaintiffs sued both the NWT and federal governments, alleging breaches of the rights guaranteed to them under section 16 and 20 of the Charter, as well as under various sections of the NWT’s *Official Languages Act*,²⁵ on the basis of inadequate service that they had received from territorial institutions in French. The court declined to rule on the Charter arguments, and dismissed the claims made against the federal government,²⁶ but found that the territorial government had engaged in repeated and systemic breaches of various sections of the NWT’s *Official Languages Act*.²⁷ The Court further found that, given the quasi-constitutional nature of the rights guaranteed by the *Official Languages Act*, the territorial government was obligated to achieve substantive equality in the use of the French language when offering services.²⁸ In doing so, the court rejected the argument advanced by the territorial government that the standard it was required to meet in terms of providing services in the French language was one of “good faith and reasonableness.”²⁹

As a consequence of its findings and conclusions regarding the systemic nature of the problem, the court made four declaratory orders with respect to communications and provision of services in French by government institutions, with respect to the publication of debates of the NWT Legislative Assembly in French, and with respect to job postings and calls for tender by the government.³⁰ It also ordered the government to develop and publish a regulation that would outline specifically which institutions would be bound by the provisions contained in the *Official Languages Act*, rather than relying on non-binding policy guidelines, which was its practice at the time the decision was rendered.³¹

The NWT government appealed the decision of the NWT Supreme Court to the NWT Court of Appeal,³² which reversed the judgment of the trial court in part, on the grounds that in making some of the specific declaratory orders, the trial judge had given

²⁴ 2006, NWTSC 20.

²⁵ Supra note 4.

²⁶ Supra note 24 at paras. 846 to 859.

²⁷ Ibid. at para. 784.

²⁸ Ibid. at para. 132.

²⁹ Ibid. at para. 144.

³⁰ Ibid. at para. 903.

³¹ Ibid. at para. 904.

³² See *Fédération Franco-Ténoise v. Canada*, 2008 NWTCA 6.

“inadequate weight to the overall context of the NWT and failed to take proper account of how the nature of the service being sought might affect the way in which the service was provided.”³³ However, the NWT Court of Appeal upheld the trial court’s determination that the Government of the NWT was required to make regulations to specify which territorial institutions would be bound by the provisions of the NWT *Official Languages Act*.³⁴ The NWT Court of Appeal further noted that, following the trial court’s judgment in this case, the NWT government had taken steps to comply with this part of the judge’s order by making the *Government Institution Regulations*.³⁵

The committee views the decisions of the NWT Supreme Court and NWT Court of Appeal in *Fédération Franco-Ténoise v. Canada (Attorney General)*³⁶ as illustrative of some of the difficulties inherent in delivering services to the minority Francophone population in Northern Canada, and as worthy of its consideration when examining the impact that Nunavut’s new *Official Languages Act* might have on service delivery to linguistic minorities in that territory.

NUNAVUT’S NEW *OFFICIAL LANGUAGES ACT*

As stated previously in this report, Nunavut’s new *Official Languages Act* would elevate the Inuit Language (Inuktitut for most of Nunavut, and Inuinnaqtun for some of Nunavut’s Western communities) to the status of English and French for the purposes of the Nunavut Legislative Assembly, proceedings in Nunavut’s courts, and services provided by territorial government offices.³⁷ Section 2 of the Act affirms the constitutional guarantees afforded to English and French under the Charter as well as the Aboriginal and treaty rights outlined in section 35 of the Charter, and states that “nothing in this Act shall be construed so as to abrogate or derogate from” these rights. Section 3 of the Act then establishes the Inuit Language, English and French as the official languages of Nunavut. No mention is made in the Act of the other five languages,

³³ Ibid. at para. 133.

³⁴ Ibid. at paras. 103 to 110.

³⁵ N.W.T. Reg. 082-2006.

³⁶ Leave to Appeal this decision to the Supreme Court of Canada was refused in September 2008.

³⁷ This Committee was advised the Inuktitut and Inuinnaqtun are both dialects of the Inuit Language. The written script of these dialects is different, but they are versions of the same language. The Nunavut Commissioner of Official Languages has indicated to the Committee that these dialects are in the process of converging rather than diverging.

Chipewyan, Cree, Dogrib, Gwich'in, and Slavey, which are considered official languages under the current *Official Languages Act*. If the new Act comes into force, these five languages will no longer be considered official languages in Nunavut.

In terms of exactly which rights Nunavut's new *Official Languages Act* would guarantee in respect of English, French and the Inuit Language, the Act provides that:

- Debates in Nunavut's Legislative Assembly may be conducted in any of the three official languages (section 4(1)).
- Records and journals of the Legislative Assembly shall be published in English and French, and may be published in the Inuit Language as well, if the Speaker requires it to be done (section 4(2)).
- All Acts of the Legislative Assembly shall be published in English and French and both versions are equally authoritative. They may also be published in the Inuit Language if the Commissioner in Executive Council required this to be done, by order. In addition, the Legislative Assembly may, by resolution, designate an Act in the Inuit Language to be authoritative (sections 5(1), 5(3) and 5(4)).
- All statutory instruments must be published in the *Nunavut Gazette* in English and French in order for them to have force and effect, and may be published in the Inuit Language by order of the Commissioner in Executive Council. The Commissioner in Executive Council may also require an Inuit Language version of an instrument to be published in the *Nunavut Gazette* (section 7).
- Individuals in judicial or quasi-judicial proceedings may use any of the three official languages for the purposes of participation and pleadings. Persons participating in civil proceedings are also entitled to request interpretation services in their official language of choice and are entitled to be informed of that right (sections 8(1) to 8(3)). A judicial or quasi-judicial body can also order interpretation to be provided for the public if the body considers the proceedings to be of general public interest, or if it finds it desirable to order this for the benefit of members of the public in attendance (section 8(4)).
- Persons appearing before a judicial or quasi-judicial body are entitled to request and receive final decisions, orders or judgments from that body in the official language of their choice (section 9(1)).
- Final orders, decisions and judgments will be translated into the other official languages if the judicial or quasi-judicial body determines a question of law of general public interest. They will also be translated into another official language if a question of law of specific interest or importance affecting the official

language community in question is decided, or if the body determines a question of significant interest or importance to a participant who used the official language in question during the proceedings (section 9(2)).

- Territorial institutions are required to provide all signs, notices to the public and instruments in all official languages, and administrative heads of these institutions are charged with establishing and maintaining operational policies to ensure that this is done (section 11).
- Members of the public in Nunavut have the right to communicate with and receive services from territorial institutions in the official language of their choice, from the head office of the institution, at minimum, and in other offices of the institution where there is a significant demand for communications with and services from the office in question in the language, or, if, due to the nature of the office, it is reasonable that communications and services be available in the official language in question (sections 12(1) to 12(4)).
- The Commissioner in Executive Council may also order a service to be made available in one or more official languages in the event of special concern about language loss or assimilation, on the grounds that delivering a service in a particular official language is likely to have a revitalizing impact on or promote the use of a language indigenous to an affected area or group (section 12(5)).
- The provisions in section 12 of the Act with respect to communications with and services offered by territorial institutions apply to both oral and written communications (section 12(6)).
- Administrative heads of territorial institutions have a duty to make an active offer of service to members of the public in accordance with the provisions outlined in sections 12(2) to 12(5) of the Act (section 12(7)).
- Administrative heads of municipalities also have a duty to ensure that service is provided in an official language by that municipality if there is a significant demand in that community for communications with and services in that language (section 12(8)).

In addition to the above provisions, Nunavut's new *Official Languages Act* makes the Minister of Languages, appointed by the Commissioner on advice of the Premier, responsible for administering the Act and regulations made under it (section 13(1)). Among his or her other duties, the Minister of Languages is required to promote and advocate the status of the three official languages (section 13(2)(a)), develop and maintain a comprehensive plan to implement the obligations outlined in the Act, and monitor and evaluate the performance of territorial government departments or public agencies in fulfilling their obligations under the Act (sections 13(3)(a) and 13(3)(b)(iii)).

The Minister is also required to designate a sufficient number of staff positions in the public service for the discharge of the obligations and duties set out in the Act (section 13(3)(b)(ii)).

The new Act also establishes an Official Languages Promotion Fund as a special account in the Consolidated Revenue Fund (section 13.1(1)). The money in the Official Languages Promotion Fund may only be used for certain designated purposes, one of which is to strengthen the vitality of the Francophone and Inuit Language communities in Nunavut (section 13.1(2)(f)). Among other things, the fund will be comprised of all monies required by court order to be paid into the fund, fines collected under the *Summary Conviction Procedures Act* in relation to fines levied for convictions under section 27 of the Act³⁸ or under section 33 of the *Inuit Language Protection Act*, monies that come from donations and bequests, and monies appropriated from the Nunavut Legislative Assembly (section 13.1(3) of the Act). The Act further allows the Minister of Languages to enter into agreements with the Government of Canada respecting the promotion and protection of official languages (section 14).

In addition to outlining the role of the Minister of Languages in relation to the Act, the Act also establishes the office and duties of Nunavut's Language Commissioner (sections 16 and 22). The Language Commissioner's duties include investigating whether or not the requirements of this Act as well as any other Act, policy or regulation with respect to official languages have been met, developing mediation and other methods consistent with Inuit Qaujimajatuqangit (traditional knowledge) to resolve concern regarding the performance of obligations under the Act, and commenting on the implementation activities and performance of territorial institutions and municipalities in respect of their obligations under the Act (section 22(2)).

Finally, Nunavut's new *Official Languages Act* contains a review clause requiring the Nunavut Legislative Assembly or a committee of the Legislative Assembly to review the provisions and operation of the Act every five years from the date that the Act comes into force (section 37).

³⁸ Section 27 of Nunavut's new *Official Languages Act* makes it an summary conviction offence to impose a penalty or discriminate against persons who file complaints, give evidence or assist in an investigation conducted by the Language Commissioner, and imposes fines for commission of such an offence.

NUNAVUT'S NEW *INUIT LANGUAGE PROTECTION ACT*

It should be noted that Nunavut's new *Official Languages Act* is designed to complement the territory's new *Inuit Language Protection Act*.³⁹ While Parliament must concur with the enactment of Nunavut's new *Official Languages Act*, it is not required to concur with the enactment of the *Inuit Language Protection Act*, and parts of the latter Act are already in force. The *Inuit Language Protection Act* guarantees, among other things, the right to Inuit Language instruction in Nunavut's school system and the right to work in the Inuit Language in territorial government institutions. It also specifies that governments, municipalities, community organizations and businesses can use the Inuit Language in reception and customer services, on signs, posters and advertising, for essential, household, residential and hospitality services, and in municipal services concerning public safety and welfare. Like Nunavut's new *Official Languages Act*, the *Inuit Language Protection Act* also provides a statutory mandate to the Minister of Languages and the Language Commissioner in relation to that Act. The provisions governing the Minister's role in relation to the *Inuit Language Protection Act* are already in force, with the implementation of the other provisions being phased in over time.⁴⁰

PRIOR STUDY OF NUNAVUT'S NEW *OFFICIAL LANGUAGES ACTS* AND *INUIT LANGUAGE PROTECTION ACT*

Before receiving assent from Nunavut's Legislative Assembly in 2008, both the new *Official Languages Act* and the *Inuit Language Protection Act* were subject to substantial study by the Legislative Assembly, in consultation with stakeholders. The process began in 2000, when Nunavut's Legislative Assembly struck a special committee of MLAs to review the *Official Languages Act* that Nunavut had inherited from the NWT. In all, there have been at least four rounds of study and consultations of these two pieces of legislation, the first occurring in the period between 2000 and 2003, when the special committee was developing recommendations for a new Act; the second during the period between 2004 and 2007, when the Department of Culture, Language, Elders and

³⁹Supra note 16.

⁴⁰ For example, under section 49(4) of the *Inuit Language Protection Act*, the provisions guaranteeing the right to be educated in the Inuit Language come into force for Kindergarten to Grade Three on 1 July 2009, and for all other primary and secondary grades on 1 July 2019. Similarly, under section 49(6), the provisions that guarantee the right to work in territorial institutions in the Inuit Language come into force on 18 September 2010, three years after the day the Act received assent.

Youth was working on developing and drafting the new Act; the third between March 2007 and October of 2007, when the Minister of Culture, Languages, Elders and Youth tabled the two proposed bills (the new *Official Languages Act* was Bill 6 and the *Inuit Language Protection Act* was Bill 7) in the Legislature to stimulate further public discussion and released a consultation paper requesting further input from stakeholders; and the fourth between October and December 2007, when the Standing Committee Ajauqtiit was studying both bills. Some of the consultation methods used by the government and Legislative Assembly during this period were nine roundtables with stakeholders including the federal government, surveys, focus groups, community consultations and public meetings. The government and Legislative Assembly also invited the receipt of written submissions, both through the publication of the March 2007 consultation paper, and through the Standing Committee Ajauqtiit, which issued its own call for submissions.⁴¹

WITNESSES WE HEARD FROM

With respect to our own study of the motion referred to us by the Senate, the committee heard from the following witnesses:

- From the Legislative Assembly of Nunavut, the Honourable Paul Okalik, Member of the Legislative Assembly;
- From the Government of Nunavut: the Honourable Louis Tapardjuk, Minister of Languages, Stéphane Cloutier, Special Advisor, and Kate Darling, Legal Counsel;
- From the Office of the Commissioner of Official Languages: Graham Fraser, Commissioner (by videoconference), Johane Tremblay, Acting Assistant Commissioner, Policy and Communications Branch, and Pascale Giguère, Acting Director and General Counsel, Legal Affairs Branch;
- From the Association des francophones du Nunavut : Daniel Cuerrier, Director General;
- From the Office of the Languages Commissioner of Nunavut: Alexina Kublu, Languages Commissioner of Nunavut;

⁴¹ For further information about the territorial government's consultations with the public and stakeholders in relation to these two Acts, please see the Department of Culture, Language, Elders and Youth's website at: <http://www.gov.nu.ca/cley/english/langlegconsult.html>.

- From the Qikiqtani Inuit Association: Joe Attagutaaluk, Board Member, Navarana Beveridge, Director, Social Policy;
- From the Nunavut Tunngavik Inc.: Laurie Pelly, Lawyer, Legal Department;
- From the Department of Justice Canada: Michael Aquilino, Counsel, Official Languages Law Group, Jo Ann Lagendyk, Counsel, Canadian Heritage, Legal Services, Renée Soublière, Senior Counsel and Litigation Coordinator, Official Languages Law Group.

WHAT THE COMMITTEE HEARD

As mentioned above, one of the concerns raised by Senators both during debate on this motion in the Senate and during the committee's hearings was the removal of official language status for the following Aboriginal languages: Chipewyan, Cree, Dogrib, Gwich'in, and Slavey (Slavey includes both North Slavey and South Slavey). The committee heard testimony to the effect that 86% of Nunavummiut have Inuktitut as their mother tongue, and that less than 1% of the total population of the territory speak any of the other aforementioned Aboriginal languages. Statistics Canada's 2006 Census reports that in some cases, there are no native speakers of these languages now in Nunavut and in other cases, there are as few as ten.⁴²

The committee was advised that currently, there are three main languages spoken in Nunavut: Inuit is the language spoken by the majority of the population, with French being the mother tongue of a small minority. English is the mother tongue of approximately 27% of the population, but the committee was advised that increasingly, English is the language of the public administration, as well as the language used in commerce and the home. The new *Official Languages Act* is designed to ensure the delivery of equality of services in all three official languages: English, French and the Inuit Language. Its companion piece of legislation, the *Inuit Language Protection Act* (which is not before the committee for concurrence) is designed to work proactively to protect, restore and revitalize the Inuit Language throughout Nunavut. We were assured

⁴² Statistics Canada, *Detailed Mother Tongue*, 2001 and 2006 Censuses, <http://www12.statcan.ca/english/census06/data/topics/RetrieveProductTable.cfm?ALEVEL=3&APATH=3&CATNO=&DETAIL=0&DIM=&DS=99&FL=0&FREE=0&GAL=0&GC=99&GK=NA&GRP=1&IPS=&METH=0&ORDER=1&PID=89201&PTYPE=88971&RL=0&S=1&ShowAll=No&StartRow=1&SUB=701&Temporal=2006&Theme=70&VID=0&VNAMEE=&VNAMEF=&GID=838093>.

by several witnesses that the consultation process in which the Government of Nunavut engaged prior to the creation of this legislation was comprehensive and transparent. Public consultations were held in all of Nunavut's communities and every means of communication was employed to invite citizens to voice their concerns and provide their input into the changes that the Act would introduce. We understand that there was no opposition to the Act from native speakers of those Aboriginal languages.

Further, we were advised by a representative of the Association des francophones du Nunavut that the rights granted to speakers of other Aboriginal languages under the current Act (which Nunavut inherited from the Northwest Territories) were largely in name only and that native speakers received, at best, a discounted service in their language of choice.

Having said this, populations may become more mobile over the coming years due to the development of the Arctic and repercussions of climate change. The composition of the population of Nunavut may change accordingly, and thus it is our view that Statistics Canada should monitor the composition of Nunavut's population to identify whether other Aboriginal languages become more commonly used.

RECOMMENDATION 2

That Statistics Canada monitor and report on the composition of Nunavut's population to identify the use of the five Aboriginal languages that will no longer be considered official languages in Nunavut (Chipewyan, Cree, Dogrib, Gwich'in, and Slavey).

During this study, the committee identified certain concerns regarding the rights guaranteed by the new Act and their implementation in practice. In particular, issues regarding the provision of hearings in the language of choice of a party, and the language of decisions issued by judicial or quasi-judicial bodies (sections 8 and 9 of the new Act) were raised.

The committee was concerned that section 8 of the new Act would remove a party's right to be heard by a presiding member of a judicial or quasi-judicial body fluent in the party's official language of choice. Witnesses assured the committee that in

practice, court sessions are scheduled to guarantee that parties are heard by presiding members fluent in the chosen official language.

Witnesses also assured the committee that in terms of decisions, orders and judgments, the rights guaranteed by section 9 of the new Act are actually broader than those provided for in the current Act in that translations of decisions in any of the three official languages shall be provided not only to parties to litigation, but also to other participants, such as witnesses, who have a significant interest in the proceedings (section 9(2)(c)).

The question of the determination of what constitutes “significant demand” for the purposes of the provision of certain services in accordance with sections 12(3) and 12(8) of the new Act was also raised. The committee heard that applicable standards under federal official language legislation may not be adequate to evaluate significant demand in Nunavut because of its small population and large geographic size. The committee was assured that significant demand would be determined according to the specific circumstances of individual cases, as pre-determined standards could not necessarily apply to Nunavut’s minority language population which is sparse and spread out across the territory. Amongst other things, the nature of the services requested, the number of minority language speakers in the community as well as their proportion within the community, are all factors that could help in determining whether significant demand exists.

Finally, the committee has specific concerns regarding the protection of rights of francophones in Nunavut and the promotion and enhancement of the vitality of francophone communities. We were encouraged to hear from the Association des francophones du Nunavut that the francophone community actively participated in the development of the legislation and that their recommendations were integrated into the new Act. Similarly, we were encouraged to hear that the suggestions made by the federal Commissioner of Official Languages in his May 2007 letter to the Nunavut Minister of Languages were also addressed in the new legislation.⁴³

⁴³ Letter from Graham Fraser, Commissioner of Official Languages, to the Honourable Louis Tapardjuk, Nunavut Minister of Languages, 2 May 2007, tabled in the Senate on 4 June 2009.

According to the Association des francophones du Nunavut, this Act represents a new paradigm for official languages in the North given the collaborative process that led to the development of the legislation. It appears that all the parties involved demonstrated good faith and a spirit of cooperation throughout the creation of the legislation, in stark contrast to the relationship between the francophone community in the Northwest Territories and its territorial government, which was largely adversarial and detrimental to the survival of the francophone community in that territory. The Association des francophones du Nunavut assured the committee that the Government of Nunavut was sensitive to its needs and concerns as a small official language minority and that they would continue to work together in the next phase of implementation of this new official language legislation. The committee recognizes the deep commitment of the francophone community of Nunavut to the vision expressed by the new *Official Languages Act*. Moreover, the committee wishes to underscore how remarkable the collaborative efforts between stakeholders and the Government of Nunavut have been. They are a veritable model for language relations in Canada.

This committee is encouraged by the comprehensive consultation process in which the Government of Nunavut engaged prior to passing its new *Official Languages Act*. We further note that section 13(3) of the Act requires the Nunavut Minister of Languages to develop and maintain a plan “for the implementation of language obligations, policies, programs and services by departments of the Government of Nunavut and public agencies”. We understand that planning will get under way as soon as this new Act receives Parliamentary concurrence. It remains to be seen how the concerns expressed above will be addressed in the implementation plan, through the regulations and in practice. We note that section 37 of the Act provides for a statutory review of its provisions five years after the Act comes into force and every five years thereafter. This should provide both the Government and stakeholders the opportunity to redress any problems or concerns that may arise over time.

Having said this, it should be noted that this Act and its objectives are bold and wide in scope. The committee noted with interest that there has been cooperation in the development of the legislation with the federal Commissioner of Official Languages, and we hope that this relationship continues. We encourage, in particular, the Office of the Commissioner of Official Languages of Canada continue to make its expertise and advice

available, upon request, to the Government of Nunavut and Nunavut's Commissioner of Official Languages for this purpose.

RECOMMENDATION 3

That, upon request by the Government of Nunavut or Nunavut's Commissioner of Official Languages, the Office of the federal Commissioner of Official Languages continue to make its expertise and advice available to assist in the implementation of the Act and its objectives.

As stated by many witnesses, and as stated previously in this report, Nunavut's new *Official Languages Act* represents the implementation of a vision, which existed both before, but particularly since, the creation of the territory of Nunavut. We heard much from witnesses regarding the erosion of the Inuit Language as the language spoken in the home, and as a working language, and the detrimental effect that this erosion has had, particularly on the youth and elders, in Nunavut. Witnesses testified that today, even government services are provided mainly in English and that this has the effect of making Inuit Language speakers feel like they are strangers in their own land. This Act could go a long way to addressing and remedying these problems and indeed, its preamble sets out a number of ambitious goals, especially with regards to the revitalization of the Inuit Language in the territory.

Sufficient funding must be available to create the infrastructure and support the initiatives necessary to implement the provisions of the Act, and to realize its stated objectives. Indeed, insufficient funding could well have the opposite effect, and could be detrimental to the cultural cohesion of Nunavut and create a climate of mistrust. In concurring with the passage of this Act, Parliament is expressing a commitment to ensuring that the objectives of the Act can be achieved.

We were advised by witnesses that the Government of Canada provides financial support to francophones in Nunavut in the amount of approximately \$4,000 per

individual annually; funding to support Inuit language initiatives pales in comparison, reaching \$44 per Inuit.⁴⁴

For Nunavut's new *Official Languages Act* to fulfill its objectives, objectives with which Parliament expressly concurs, this situation must change.

As was stated by Thomas R. Berger, who was instrumental in entrenching the rights of the Aboriginal peoples of Canada in the *Canadian Charter of Rights and Freedoms*, the surrender of Aboriginal title by the Inuit of Nunavut to Canada was “of the first importance to Canada. Indeed, Canada acknowledged in 1993, when it signed the Nunavut Land Claims Agreement, ‘the contributions of Inuit to Canada’s history, identity and sovereignty in the Arctic.’”⁴⁵ In our view, in exchange for this surrender of territory, the Government of Canada committed itself to supporting the Inuit’s rights as an Aboriginal people, including their cultural and linguistic rights. This commitment must be expressed not only through “fine words,”⁴⁶ but also by providing adequate and sustained financial resources to the citizens of Nunavut and assisting in their efforts to enhance, promote and protect their linguistic heritage.

Your committee notes that in the preamble to the *Official Languages Act*, the Nunavut Legislature is “Determined to advocate for and to achieve the national recognition and constitutional entrenchment of the Inuit Language as a founding and official language of Canada within Nunavut.” We further note that section 2(1) of the new *Official Languages Act* reaffirms that the passing of the Act does not abrogate or derogate from constitutional rights granted with regards to the English and French languages, as well as Aboriginal rights protected by virtue of section 35 of the *Canadian Charter of Rights and Freedoms*. That section reads as follows:

⁴⁴ Statement by the Honourable Louis Tapardjuk, Nunavut Minister of Languages, to the 8th Session of the United Nations Permanent Forum on Indigenous Issues, New York, 21 May 2009.

⁴⁵ 1 March 2006 letter from Thomas R. Berger to Jim Prentice, former Minister of Indian Affairs and Northern Development, tabled with the Committee on 10 June 2009.

⁴⁶ Testimony of Daniel Cuerrier, Director General, Association des francophones du Nunavut, 10 June 2008.

2. (1) Nothing in this Act shall be construed so as to abrogate or derogate from

(a) the status of or any constitutional or other rights in respect of the English or French languages;

(b) any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*, including but not limited to,

(i) the objectives, rights and obligations affirmed in the Nunavut Land Claims Agreement;

(ii) any responsibility for implementation that is required to give effect to the Nunavut Land Claims Agreement;

(c) any legal or customary right or privilege acquired or enjoyed by Inuit with respect to their language, either before or after the coming into force of this Act; or

(d) any responsibility of the Parliament and Crown of Canada concerning the linguistic or cultural rights or heritage of Inuit or other linguistic minorities in Nunavut.

This committee also notes that the Government of Canada's responsibility towards the protection and preservation of Canada's other Aboriginal languages remains undiminished. In particular, we wish to underline the presence of individuals who speak an Inuit dialect (Inuvialuit) in the Northwest Territories. There is an even larger Inuit community in Nunavik (in Northern Quebec) and in Northern Labrador. We urge both the Government of Canada and the Nunavut government to remain cognizant of the need to strengthen support for these linguistic minorities.

RECOMMENDATION 4

That, in light of Parliament's decision to concur in the passage of the *Official Languages Act* by the Legislative Assembly of Nunavut, the Government of Canada make adequate and sustained funding available to the Government of Nunavut for the continued protection and promotion of official languages in the territory, as is consistent with the government's legal obligations.

Section 38 of the *Nunavut Act* states that the Northwest Territories' *Official Languages Act* "may not be repealed, amended or otherwise rendered inoperable by the Legislature without the concurrence of Parliament by way of a resolution, if that repeal, amendment or measure would have the effect of diminishing the rights and services provided for" in the current Act. Section 17 of the *Constitution Act, 1867* defines the Parliament of Canada as "consisting of the Queen, an Upper House styled the Senate, and the House of Commons." On this basis, it would be advisable to seek the concurrence of the Governor General, as the representative of Her Majesty the Queen of Canada, in the passage of Nunavut's new *Official Languages Act*. Officials from the Department of Justice told the committee that their interpretation led them to believe that concurrence of the Governor General was not necessary. Having heard their arguments, your committee nonetheless believes that, given the importance and quasi-constitutional nature of the rights guaranteed in this new Act,⁴⁷ the Governor General's concurrence would ensure unquestionable compliance with section 38 of the *Nunavut Act*.

RECOMMENDATION 5

That, for greater certainty, the concurrence of the Governor General, as the representative of Her Majesty the Queen of Canada, in the passage of the *Official Languages Act* by the Legislative Assembly of Nunavut be sought in order to ensure unquestionably that section 38 of the *Nunavut Act* is complied with in full.

⁴⁷ The preamble to Nunavut's new Official Languages Act expresses the understanding that "because of the fundamental character of the values expressed and the important federal, territorial and Inuit objectives reflected in this Act . . . the *Official Languages Act* shall enjoy quasi-constitutional status."

RECOMMENDATIONS

RECOMMENDATION 1

The committee recommends that the Senate adopt the following motion, moved by the Honourable Senator Comeau, seconded by the Honourable Senator Adams: “That, in accordance with section 38 of the *Nunavut Act*, chapter 28 of the Statutes of Canada, 1993, the Senate concur in the June 4, 2008 passage of the *Official Languages Act* by the Legislative Assembly of Nunavut.”

RECOMMENDATION 2

That Statistics Canada monitor and report on the composition of Nunavut’s population to identify the use of the five Aboriginal languages that will no longer be considered official languages in Nunavut (Chipewyan, Cree, Dogrib, Gwich’in, and Slavey).

RECOMMENDATION 3

That, upon request by the Government of Nunavut or Nunavut’s Commissioner of Official Languages, the Office of the federal Commissioner of Official Languages continue to make its expertise and advice available to assist in the implementation of the Act and its objectives.

RECOMMENDATION 4

That, in light of Parliament’s decision to concur in the passage of the *Official Languages Act* by the Legislative Assembly of Nunavut, the Government of Canada make adequate and sustained funding available to the Government of Nunavut for the continued protection and promotion of official languages in the territory, as is consistent with the government’s legal obligations.

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WITNESSES

June 10, 2009

Legislative Assembly of Nunavut:

The Honourable Paul Okalik, Member of the Legislative Assembly

Government of Nunavut:

The Honourable Louis Tapardjuk, Minister of Languages
Stéphane Cloutier, Special Advisor
Kate Darling, Legal Counsel

Office of the Commissioner of Official Languages:

Graham Fraser, Commissioner (by videoconference)
Johane Tremblay, Acting Assistant Commissioner, Policy and Communications Branch
Pascale Giguère, Acting Director and General Counsel, Legal Affairs Branch

Association des francophones du Nunavut:

Daniel Cuerrier, Director General

Office of the Languages Commissioner of Nunavut:

Alexina Kublu, Languages Commissioner of Nunavut

Qikiqtani Inuit Association:

Joe Attagutaaluk, Executive Member
Navarana Beveridge, Director, Social Policy

Nunavut Tunngavik Inc.:

Laurie Pelly, Legal Counsel

Department of Justice Canada:

Michael Aquilino, Counsel, Official Languages Law Group
Jo Anne Legendyk, Counsel, Canadian Heritage, Legal Services
Renée Soublière, Senior Counsel and Litigation Coordinator, Official Languages Law Group