



# AIR CANADA'S OBLIGATIONS UNDER THE *OFFICIAL LANGUAGES ACT*: TOWARDS SUBSTANTIVE EQUALITY

Report of the Standing Senate  
Committee on Official Languages

The Honourable Maria Chaput, Chair  
The Honourable Andrée Champagne, P.C., Deputy Chair

March 2012



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## **MEMBERS**

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### **THE STANDING SENATE COMMITTEE ON OFFICIAL LANGUAGES**

*Senators who have participated in this study:*

The Honourable Maria Chaput, Chair  
The Honourable Andrée Champagne, P.C., Deputy Chair

and

The Honourable Senators:

Pierre De Bané, P.C.  
Suzanne Fortin-Duplessis  
Rose-Marie Losier-Cool  
Percy Mockler  
Rose-May Poirier  
Hugh Segal  
Claudette Tardif

*Ex officio members of the Committee:*

The Honourable Senators James S. Cowan (or Claudette Tardif) and  
Marjory LeBreton, P.C. (or Claude Carignan).

### **THE STAFF MEMBERS**

*Analyst from the Parliamentary Information and Research Service  
of the Library of Parliament:*

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*Committee Clerk:*

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## ORDER OF REFERENCE

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Excerpt from the *Journals of the Senate*, of Wednesday, 2 November 2011:

The Honourable Senator Chaput moved, seconded by the Honourable Senator Munson:

That the Standing Senate Committee on Official Languages be authorized to examine and report on Air Canada's obligations under the *Official Languages Act*;

That the documents received, evidence heard and business accomplished on this subject by the committee since the beginning of the Second Session of the Thirty-Ninth Parliament be referred to the committee; and

That the committee report from time to time to the Senate but no later than March 31, 2012, and that the committee retain all powers necessary to publicize its findings until June 30, 2012.

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

Gary W. O'Brien

*Clerk of the Senate*



## AIR CANADA'S OBLIGATIONS UNDER THE OFFICIAL LANGUAGES ACT: TOWARDS SUBSTANTIVE EQUALITY

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"For us, serving our clients in the official language of their choice simply makes good business sense."

Air Canada, *Presentation to the Standing Senate Committee on Official Languages*,  
28 November 2011.

### INTRODUCTION

Undertaking to serve clients in the language of their choice is one thing. Undertaking to provide service of equal quality in both English and French is another. Substantive equality between the two official languages when they are used to deliver services is one of the principles which the Supreme Court of Canada recognized in 2009 in the *DesRochers* appeal.<sup>1</sup> All institutions subject to the *Official Languages Act* (OLA)<sup>2</sup> should take the Supreme Court decision into account when providing services to the public. So, too, should third parties which provide services on behalf of those institutions. The Treasury Board Secretariat, in collaboration with the Department of Canadian Heritage, devised a strategy last year "to ensure that federal government programs and services complied with the principle of substantive linguistic equality in the delivery of services."<sup>3</sup>

Air Canada (also referred to in this report as "the Corporation") has been our country's national carrier since 1964. It was a Crown corporation from 1964 to 1988, when it was privatized. Since then, Air Canada has gone through a number of reorganizations, including a merger, airline takeovers and internal restructuring. The Corporation is still undergoing constant change as the air carrier providing the most services to Canadian passengers in the domestic and international markets.

Air Canada is the only Canadian carrier subject to the OLA. This obligation was in place before the airline was privatized. When the OLA was passed in 1969, Air Canada was designated a "federal institution" within the meaning of the Act. Air Canada's language obligations were carried over into section 10 of the *Air Canada Public Participation Act*,<sup>4</sup> which received Royal Assent in August 1988 and resulted in the Corporation being privatized.

In the fall of 2011, the Standing Senate Committee on Official Languages conducted a study of Air Canada's obligations under the OLA. This was the second time the Senate Committee had scrutinized the Corporation's language obligations.

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<sup>1</sup> *DesRochers v. Canada (Industry)* [2009] 1 S.C.R. 194.

<sup>2</sup> *Official Languages Act*, R.S.C., 1985, c. 31 (4<sup>th</sup> Supp.).

<sup>3</sup> Treasury Board of Canada Secretariat, *Annual Report on Official Languages 2009-2010*, 2011, p. 16.

<sup>4</sup> *Air Canada Public Participation Act*, R.S.C., 1985, c. 35 (4<sup>th</sup> Supp.).

The report on the first study, which examined bilingual staff at Air Canada, was released in June 2008.<sup>5</sup>

The starting point for the 2011 study was the audit report on the delivery of bilingual services to Air Canada passengers that was released by the Office of the Commissioner of Official Languages last September.<sup>6</sup> The Committee heard evidence from Air Canada representatives; the Commissioner of Official Languages (Graham Fraser); two ministers (the Honourable James Moore, Minister of Canadian Heritage and Official Languages, and the Honourable Tony Clement, President of the Treasury Board); and representatives of the two main umbrella groups for official language minority communities (the Fédération des communautés francophones et acadienne du Canada and the Quebec Community Groups Network). The Committee had also invited the Minister of Transport, Infrastructure and Communities to appear, but the invitation was declined.<sup>7</sup>

In this report, the Senate Committee highlights the principal findings of the Commissioner's audit and other recent developments regarding Air Canada. The Committee also reviews the recommendations it made in June 2008 and the actions taken in response. It identifies the main challenges Air Canada has to meet in order to fulfill its obligations under the OLA, and makes six recommendations which identify ways the Corporation can improve its performance. In the last section of the report, the Senate Committee takes a brief look at the issues surrounding Bill C-17: An Act to amend the Air Canada Public Participation Act,<sup>8</sup> which was tabled in the House of Commons on 17 October 2011.

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<sup>5</sup> Standing Senate Committee on Official Languages, *Bilingual Staff at Air Canada: Embracing the Challenge and Moving Forward*, Fifth Report, 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, June 2008.

<sup>6</sup> Office of the Commissioner of Official Languages, *Audit of Service Delivery in English and French to Air Canada Passengers*, Ottawa, September 2011.

<sup>7</sup> In their response to the invitation to appear, Transport Canada staff stated that the department has no responsibilities related to monitoring of the application of the OLA. They therefore could not comment on the matters raised in the Commissioner of Official Languages' audit report.

<sup>8</sup> Bill C-17: An Act to amend the Air Canada Public Participation Act, first reading on 17 October 2011.

"[...] there are problems with French-language services (outside of Quebec), both in the air and on the ground."

Office of the Commissioner of Official Languages, *Audit of Service Delivery in English and French to Air Canada Passengers*, September 2011, p. 12.

## PRINCIPAL FINDINGS OF THE COMMISSIONER OF OFFICIAL LANGUAGES' AUDIT, AND AIR CANADA'S LINGUISTIC ACTION PLAN

This section presents the principal findings of the report released by the Commissioner of Official Languages in September 2011. In April 2010, the Office of the Commissioner of Official Languages began an audit to evaluate the services provided in English and French to Air Canada passengers both in the air and on the ground. The four specific objectives of the audit, which was completed in January 2011, were to determine whether:

- Air Canada's senior management had made a commitment to offer services of equal quality to passengers in both official languages;
- Air Canada actively offered and provided bilingual services in the air, on the ground, on its website and at its call centres;
- Air Canada consulted representatives of official language minority communities in the various regions to identify their bilingual service needs; and
- Air Canada effectively monitored the quality of its service delivery performance in the language of the official language minority community, both in the air and on the ground.<sup>9</sup>

According to the Commissioner of Official Languages, year after year, Air Canada is one of the three institutions that are regularly the subject of complaints to his office. This has been a problem since the first *Official Languages Act* was passed in 1969. Between 2005 and 2010, complaints about Air Canada pertained to bilingual services provided in airports (67%) and in the air (33%).<sup>10</sup> In 2010–2011, however, more than 9 out of 10 complaints related to language of work.<sup>11</sup>

In his audit report, the Commissioner of Official Languages made 12 recommendations to Air Canada. In response, the airline developed an action plan that took account of the concerns raised in the Commissioner's report.<sup>12</sup> The Commissioner stated that he was happy with Air Canada's proposed measures and

<sup>9</sup> Office of the Commissioner of Official Languages (September 2011), p. I.

<sup>10</sup> Office of the Commissioner of Official Languages (September 2011), p. 2.

<sup>11</sup> Office of the Commissioner of Official Languages, *Annual Report 2010-2011*, Ottawa, 2011, p. 42.

<sup>12</sup> Air Canada, *Air Canada Linguistic Action Plan – Communications with and Services to the Public – 2011-2014*, 2011.

timelines for implementing his recommendations, with one exception: the Corporation's commitment to official language minority communities. The Senate Committee delves deeper into this matter in section E of this report, "Support for the development of English-speaking and French-speaking minority communities, and promotion of linguistic duality (Part VII)".

Air Canada's Linguistic Action Plan for 2011–2014 covers management's commitment and leadership, recruitment, communication and training, service standards, audits and performance, and communities. The objectives of the plan are to:

- confirm senior management's commitment to providing the public with high-quality service in both official languages as required by the OLA and Air Canada's language policy;
- clarify the Company's language commitments to its employees; and
- guide managers and employees in implementing the language policy.<sup>13</sup>

The 2011–2014 Linguistic Action Plan states, "Linguistic Affairs is one of the few departments at Air Canada that has not sustained budget cuts or a reduction of its programs over the years."<sup>14</sup> To maintain its commitment, Air Canada will:

- systematically review findings and actions at the Senior Executive level; and
- conduct regular meetings with key internal stakeholders on the development progress of the business processes in support of the official languages.<sup>15</sup>

The President of the Treasury Board undertook to examine more closely the recommendations in the Commissioner's report.<sup>16</sup> The Minister of Canadian Heritage and Official Languages, however, chose not to comment.<sup>17</sup> Finally, the Minister of Transport, Infrastructure and Communities stated that the issues raised in the audit report are not within the mandate of his department.<sup>18</sup>

The Senate Committee acknowledges that the Linguistic Action Plan is a step in the right direction and will help Air Canada meet its obligations under the OLA.

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<sup>13</sup> Air Canada (2011), p. 4.

<sup>14</sup> Air Canada (2011), p. 3.

<sup>15</sup> Office of the Commissioner of Official Languages (September 2011), p. 28.

<sup>16</sup> The Hon. Tony Clement, President of the Treasury Board, *Proceedings of the Standing Senate Committee on Official Languages*, Issue No. 2, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 27 October 2011, p. 37.

<sup>17</sup> The Hon. James Moore, Minister of Canadian Heritage and Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, Issue No. 3, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 17 November 2011, p. 76.

<sup>18</sup> Memo sent to the members of the Standing Senate Committee on Official Languages, *Reference Material – Study on Air Canada – Transport Canada*, 2 December 2011.

However, the public hearings showed that full compliance with the legislation is still a long way off. The Commissioner's audit found that the carrier has to make official languages a more integral part of its operations. The following section of the report is a snapshot of the main challenges the Corporation faces with regard to official languages.

"We do recognize that there is still work to be done to better standardize our bilingual services throughout the country."

Air Canada (28 November 2011).

## AIR CANADA'S MAIN CHALLENGES IN MEETING ITS LANGUAGE OBLIGATIONS

This section discusses the main challenges Air Canada faces in meeting its obligations under the OLA. A brief statement of the language obligations of the airline and its associates is followed by a description of the main challenges the carrier faces in complying with parts IV, V, VI and VII of the OLA. The Senate Committee reviews the recommendations it put forward in its June 2008 report and makes new recommendations to help the Corporation fulfill its official languages obligations.

### A. Language obligations of Air Canada and its associates

Air Canada is the only carrier in Canada that is subject to the OLA. Its language obligations are set out in section 10 of the *Air Canada Public Participation Act*. That Act was amended in 2000 and now requires Air Canada's subsidiaries to comply with the service delivery provisions of the OLA. Since then, however, the organizational structure of the Corporation has undergone many drastic changes, ranging from a merger with Canadian Airlines International in the early 2000s to acquisition by parent corporation ACE Aviation Holdings Inc. (ACE) in 2004 to numerous internal reorganizations the last of which was very recent.

Amid all the restructuring that has taken place in the past few years, the language obligations of Air Canada and its associates have been interpreted in different ways. Many observers take the view that there is a legal void in this area: the OLA applies to Air Canada, but not to ACE and the entities that were once an integral part of the Corporation.<sup>19</sup> The lack of legal clarity extends to Air Canada associates, such as Jazz and other carriers that operate under the Air Canada Express banner.<sup>20</sup>

Air Canada is subject to the OLA in its entirety. The *Air Canada Public Participation Act* compels the airline not only to communicate with and provide services to the public in both official languages (Part IV of the OLA), but also to maintain a bilingual workplace (Part V). In addition, Air Canada is subject to provisions that

<sup>19</sup> The situation is particularly fuzzy for ACE given that its financial involvement in Air Canada has fluctuated constantly in recent years. When it was created in 2004, the parent corporation held 100% of the shares in Air Canada. By 31 January 2012, its interest was only 11.11%. Source: ACE Aviation website, "ACE Aviation Holdings Overview," <http://www.aceaviation.com/en/about/index.html>.

<sup>20</sup> These include Jazz (Jazz Air), Air Georgian (Air Alliance), Exploits Valley Air Services (EVAS) and Sky Regional Airlines.

ensure equal opportunity for employment and advancement, as well as a requirement that its workforce reflect the presence of both official language communities (Part VI). Air Canada is further required to implement the provisions pertaining to the development of official language minority communities and the promotion of linguistic duality (Part VII). Finally, the Commissioner of Official Languages is authorized to investigate complaints against the carrier (Part IX) and may seek remedy where the carrier fails to comply with the provisions of the OLA (Part X).

The above obligations do not, however, apply to Air Canada associates other than carriers which are bound by a service contract and act as a third party on behalf of the Corporation. Companies that operate under the Air Canada Express banner currently have contractual obligations under Part IV of the OLA that includes an obligation to provide services in both official languages pursuant to section 25 of the OLA.<sup>21</sup> This obligation applies on some routes<sup>22</sup> and according to the "significant demand" criterion as specified in the *Official Languages (Communications with and Services to the Public) Regulations*.<sup>23</sup>

The obligations arising from parts IV, V, VI and VII of the OLA and the challenges associated with those obligations are described in detail in the following pages, taking into account the evidence heard by the Committee in the fall of 2011.

## **B. Delivery of bilingual services (Part IV)**

Air Canada and the carriers bound to it by a service contract must comply with the language requirements set out in Part IV of the OLA (communications with and services to the public). The scope of Air Canada's responsibilities is specified in the *Official Languages (Communications with and Services to the Public) Regulations*.<sup>24</sup> The obligation to provide services in both official languages in flight and on the ground applies at Air Canada headquarters, on some routes, in communications pertaining to passenger safety or health,<sup>25</sup> and according to the "significant

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<sup>21</sup> Section 25 of the OLA requires federal institutions to ensure that in Canada and elsewhere, members of the public can communicate with and obtain services from third parties acting on behalf of the institution in either official language.

<sup>22</sup> That is: on a route that starts, has an intermediate stop or finishes at an airport in the National Capital Region, the Montréal Census Metropolitan Area or the City of Moncton; on a route that starts and finishes at airports between provinces that have a linguistic minority equal to at least 5% of the total population (i.e., Quebec, New Brunswick and Ontario); and on a route that links two bilingual regions.

<sup>23</sup> That is: at an airport that serves at least 1,000,000 passengers a year; where the demand for services in the official language minority community is at least 5%; and at local offices required to meet the "significant demand" criterion that provide ticketing and reservation services, information on routes and tariffs, customer services at the airport, baggage and freight claims and client relations.

<sup>24</sup> *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48.

<sup>25</sup> This obligation applies to all air carriers, including Air Canada.

demand" criterion as specified in the *Official Languages (Communications with and Services to the Public) Regulations*.

### 1. Active offer

Section 28 of the OLA sets out the conditions related to the active offer of services in both official languages. Air Canada customers should always know where and when they can expect to be served in the language of their choice. There are two types of active offer: oral (in-person and telephone greetings) and visual (signage, notices, posters and literature). The Commissioner wrote in his audit report, "It is apparent that the active offer of bilingual services is nonexistent in the vast majority of airports."<sup>26</sup> The percentage of complaints received by the Commissioner's office shows that ground services are the biggest source of problems. The Air Canada

**Bilingual ground services: the poor cousin of services to the public**

*"Significant shortcomings were noted in all airport service areas, where services were rarely of equal quality in both official languages or were not available in French, which explains the high percentage of complaints received by the Office of the Commissioner of Official Languages against Air Canada on this issue (67%)."*

Office of the Commissioner of Official Languages (September 2011), p. 14.

representatives who appeared before the Senate Committee stated, "Normally, there should always be someone who can respond in both languages."<sup>27</sup>

The Commissioner found that signage indicating the availability of bilingual services is not consistent from airport to airport and therefore recommended that the Corporation set uniform standards for visual active offer. The Air Canada representatives told the Committee that they were in the process of reviewing service standards in all areas of customer service and would communicate them to all staff in order to ensure compliance.<sup>28</sup>

Air Canada employees are encouraged to wear an "English/Français" pin if they are bilingual and a "J'apprends le français" [I am learning French] pin while they are on language training. The Air Canada representatives stated, "We have already noticed a positive impact from this initiative, which aims to instil the necessary confidence in employees who are not qualified in French to promote the active offer. [...C]ustomers are more understanding and speak less quickly to someone seeing wearing the pin. This in turn encourages employees who were previously intimidated to address customers in French to do so more often."<sup>29</sup>

<sup>26</sup> Office of the Commissioner of Official Languages (September 2011), p. 13.

<sup>27</sup> Air Canada, *Proceedings of the Standing Senate Committee on Official Languages*, Issue No. 4, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 28 November 2011, p. 60.

<sup>28</sup> Air Canada (28 November 2011), p. 51.

<sup>29</sup> Air Canada (28 November 2011), p. 51.

With regard to in-person greetings, a video titled *Hello/Bonjour* presents the Corporation's language obligations and the procedure for enabling employees to actively offer services in both official languages. The problem is that very few employees seemed to be aware of the video at the time of the audit. The Commissioner therefore recommended that Air Canada devise a strategy for making sure that employees understand the rationale for oral active offer. In response to that recommendation, Air Canada made a commitment to "communicate, on a systematic and regular basis, its language policy and obligations under [Part IV of] the [OLA]."<sup>30</sup>

When they appeared before the Senate Committee, the Air Canada representatives handed out a booklet titled *The Aero-Vocabularies* that was designed to help employees quickly find the word or phrase they need to convey their message in their second language. The Committee thinks the booklet is an excellent incentive for employees to actively offer services to customers in either official language.

**Active offer of services: unawareness of obligations**

*"[...] agents do not make an active offer mainly because they do not know their obligations in this respect."*

Office of the Commissioner of Official Languages (September 2011), p. 13.

Other procedures are in place to enable unilingual employees to find help when bilingual services are needed,<sup>31</sup> but they apparently are not enough to guarantee the availability of services in French at all times. In most cases, there is no active offer because employees are unaware of their obligations.

The Commissioner's audit showed that few employees have been given training on Air Canada's obligations under the OLA.<sup>32</sup> Air Canada stated that language training is one of the preferred ways of increasing the number of bilingual agents and improving the delivery of services to the public in both English and French.<sup>33</sup> This subject is discussed later in this report, in the section headed "Language training."

The Commissioner's audit showed that few employees have been given training on Air Canada's obligations under the OLA.<sup>32</sup> Air Canada stated that language training is one of the preferred ways of increasing the number of bilingual agents and improving the delivery of services to the public in both English and French.<sup>33</sup> This subject is discussed later in this report, in the section headed "Language training."

With regard to telephone greetings, the audit did not reveal any major problems apart from a slightly longer wait time when the "français" option is selected. The Air Canada representatives told the Senate Committee that the Corporation has stepped up its efforts to hire bilingual staff for its call centres. This subject is discussed in greater detail in the section headed "Recruitment of bilingual staff."

It is clear from the responses contained in the audit report, Air Canada's Linguistic Action Plan and the evidence given before the Senate Committee that the Corporation is taking measures to improve its performance in terms of active offer

<sup>30</sup> Office of the Commissioner of Official Languages (September 2011), p. 33.

<sup>31</sup> Air Canada (28 November 2011), p. 59.

<sup>32</sup> Office of the Commissioner of Official Languages (September 2011), p. 8.

<sup>33</sup> Office of the Commissioner of Official Languages (September 2011), p. 33.

of services, but there is still work to be done on that front. In fact, Air Canada remains one of the three institutions that are the subject of the greatest number of complaints to the Office of the Commissioner of Official Languages, year after year. During the 2010 Olympic and Paralympic Games in Vancouver, Air Canada showed that it is capable of actively offering services and making employees aware of their official languages obligations. The Senate Committee urges the Corporation to remain on that path by collaborating with airport authorities and communicating regularly with its employees in order to meet its obligations under Part IV of the OLA.

## 2. Services of equal quality

In Canada, members of the public are entitled under the OLA to receive services of equal quality. When he appeared before the Senate Committee, the Commissioner described substantive equality as “one of the most important principles” established in the Act.<sup>34</sup> The President of the Treasury Board, meanwhile, pointed out that the government has a constitutional duty “to provide services of equal quality in both official languages.”<sup>35</sup> His department has devised a strategy for ensuring that institutions subject to the OLA observe the principle of substantive equality in delivering services. It has “developed a grid to help federal institutions ensure their programs and services [conform] with the Supreme Court decision [in *DesRochers*].”<sup>36</sup> In his annual report released in December 2011, the President of the Treasury Board noted that “the decision is not being implemented consistently or at the same pace in all institutions.”<sup>37</sup> The Senate Committee was unable to determine whether Air Canada actually used the grid.<sup>38</sup>

The Commissioner’s audit pointed out that Air Canada is of the opinion that the decision in *DesRochers* does not apply to the Corporation and that the Corporation does not have “an obligation to consult the national, provincial and regional representatives of the official language minority communities in a structured and coordinated manner to identify specific needs regarding how they would like to

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<sup>34</sup> Graham Fraser, Commissioner of Official Languages, *Proceedings of the Standing Senate Committee on Official Languages*, Issue No. 2, 1st Session, 41<sup>st</sup> Parliament, 24 October 2011, p. 12.

<sup>35</sup> The Hon. Tony Clement (27 October 2011), p. 37.

<sup>36</sup> The Hon. Tony Clement (27 October 2011), p. 37. The analytical grid is available online at Treasury Board of Canada Secretariat, [Analytical Grid \(Substantive Equality\)](#).

<sup>37</sup> Treasury Board of Canada Secretariat, *Annual Report on Official Languages 2010-2011*, Ottawa, 2011, p. 4.

<sup>38</sup> In its 2010–2011 review submitted to the Treasury Board Secretariat, the “not applicable” option was chosen by Air Canada for the following questions: “1.f) The institution has taken steps to implement the Caldech/DesRochers Supreme Court of Canada decision in the delivery of its services and programs by using the analysis grid prepared by the Office of the Chief Human Resources Officer” and “4.c) The institution has taken into consideration the analysis grid for the implementation of the Caldech/DesRochers decision in its service contracts and agreements with third-parties.” Source: Air Canada, *Review on Official Languages 2010–2011*, submitted to the Treasury Board of Canada Secretariat.

receive the services."<sup>39</sup> Air Canada rationalizes this by saying that the services provided are neither consulting nor development services, but rather services "more in the nature of a 'product'."<sup>40</sup>

The Senate Committee does not share Air Canada's interpretation in this regard, primarily because the Corporation has a duty to take measures to deliver equal services in English and French to all travellers and to consider the needs of Canada's Anglophone and Francophone minorities. Another reason is that the rights of Francophones are too often violated. In light of the evidence, one observation remains: it is difficult to obtain bilingual services in some regions. The Committee acknowledges the Corporation's efforts to reverse the trend, but the fact of the matter is that the Corporation is still not able to provide English- and French-speaking travelling public with service of equal quality.

#### **Substantive equality: a key principle**

*"Substantive equality is achieved when one takes into account, where necessary, the differences in characteristics and circumstances of minority communities and provides services with distinct content or using a different method of delivery to ensure that the minority receives services of the same quality as the majority. This approach is the norm in Canadian law."*

Treasury Board of Canada Secretariat,  
[\*Analytical Grid \(Substantive Equality\)\*](#).

As the Supreme Court wrote in *DesRochers*, "Substantive equality, as opposed to formal equality, is to be the norm, and the exercise of language rights is not to be considered a request for accommodation."<sup>41</sup> The Court added that uniformity in services does not necessarily guarantee substantive equality. Services with separate content can be provided in some cases to ensure that the official language minority is served equally. Air Canada claims it cannot provide services "in a differentiated manner" and is mandated to provide them "consistently."<sup>42</sup> The evidence and the findings of the Commissioner's audit suggest that specific measures must be taken to ensure that English- and French-speaking travelling public receive services of equal quality in all regions of the country.

The decision in *DesRochers* states clearly that institutions subject to the OLA have a duty to take the needs of Anglophones and Francophones into account in delivering their services. The principle of substantive equality means equal access to services of equal quality for the members of Canada's two linguistic communities. Air Canada takes the view that the duty to consult communities does not apply to decisions that affect the planning of its services. How can the Corporation be certain it is providing services equal in quality to Anglophones and Francophones if it does not know what the two groups need? The Commissioner of

<sup>39</sup> Office of the Commissioner of Official Languages (September 2011), p. 31.

<sup>40</sup> Office of the Commissioner of Official Languages (September 2011), p. 31.

<sup>41</sup> *DesRochers v. Canada (Industry)*, para. 31.

<sup>42</sup> Office of the Commissioner of Official Languages (September 2011), p. 31.

Official Languages asked the same question in his audit report. In response to Air Canada's comments, the Commissioner wrote:

[...] we maintain that air transportation services provided by Air Canada must be of "equal quality" for both official language communities that make up the travelling public. To fulfill this obligation, Air Canada must not only listen to the needs of community members, but must also take into account the needs of official language minority communities, particularly when making decisions that impact flights, routes or bilingual services. Consulting minority-language communities to provide services of equal quality to both official language communities, as required by the *Official Languages Act*, does not contravene the *Canada Transportation Act* or the *Canadian Human Rights Act*. We will in time examine the steps taken by Air Canada to consult the communities.<sup>43</sup>

The Commissioner wrote that he would be checking the Corporation's performance in this regard and added that applying the *DesRochers* ruling "would not prevent Air Canada from respecting its organizational priorities."<sup>44</sup> The Air Canada representatives, for their part, assured the Senate Committee that they would be reviewing their monitoring system to make certain that services provided in both official languages, both in flight and on the ground, are of equal quality.<sup>45</sup> In fact, last July, the Federal Court of Canada ordered the Corporation to implement a monitoring system designed to identify, document and quantify potential violations of language rights.<sup>46</sup> It must also be remembered that section 25 of the OLA requires the Corporation to ensure that carriers bound to it by contract provide equal services in English and French.

The Senate Committee is of the opinion that Air Canada's commitment to service quality has to be unequivocal. The Corporation must take measures to ensure that the quality of the air services it provides to the travelling public, whether directly or through a third party bound to it by contract, is the same for both of Canada's linguistic communities. A Francophone passenger flying with Air Canada (or a Canadian carrier that operates flights on Air Canada's behalf) is entitled to the same experience in the air and on the ground as an Anglophone passenger using the same services. Consequently, the Senate Committee recommends:

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<sup>43</sup> Office of the Commissioner of Official Languages (September 2011), p. 32.

<sup>44</sup> Office of the Commissioner of Official Languages (September 2011), p. 19.

<sup>45</sup> Air Canada (28 November 2011), p. 52.

<sup>46</sup> *Thibodeau v. Air Canada*, [2011] FC 876. Air Canada appealed the decision in late September. The Federal Court of Appeal should render its judgment in April of this year.

**Recommendation 1:****That Air Canada Corporation:**

- a) **take all steps necessary to provide services of equal quality in both English and French and give an account of those measures in its annual report to the Treasury Board Secretariat.**
- b) **ensure that carriers bound to it by contract provide services of equal quality in both English and French.**
- c) **work with the Office of the Commissioner of Official Languages to determine how it can provide services of equal quality for the two official language communities that make up the travelling public.**
- d) **use the grid developed by the Treasury Board Secretariat to ensure that its programs and services respect the Supreme Court decision in *DesRochers* and share the results of its analysis with the Senate Committee.**

Pursuant to the *Official Languages (Communications with and Services to the Public) Regulations*, the Corporation's language obligations are restricted to airports where there is a significant demand and to some routes as specified in the Regulations. The Senate Committee believes that Air Canada should guarantee access to services of equal quality in both official languages, anywhere and anytime. This measure would guarantee the travelling public access to services in the language of their choice in all regions of the country. The Regulations would have to be amended accordingly. The Treasury Board Secretariat will soon begin a compliance review of the Regulations and could take this opportunity to amend the criteria concerning the travelling public. The Corporation must also take steps to implement those amendments. Consequently, the Senate Committee recommends:

**Recommendation 2:**

**That the Treasury Board Secretariat, in consultation with official language minority communities, amend the *Official Languages (Communications with and Services to the Public) Regulations*, to guarantee that members of the public travelling with Air Canada have full access to services of equal quality in both English and French, anywhere and anytime.**

**Recommendation 3:**

**That Air Canada Corporation implement the amended Regulations to guarantee that members of the travelling public have full access to services of equal quality in both English and French, anywhere and anytime.**

### 3. Recruitment of bilingual staff

One of the reasons why it is difficult to provide services in both official languages in every region of Canada is that Air Canada had to absorb a large number of unilingual Anglophone employees when it merged with Canadian Airlines International in the early 2000s. Another is that the Corporation is still having trouble finding bilingual staff in some parts of the country.

Recruiting bilingual staff is among the biggest challenges the Corporation faces in the area of official languages. It is also one of the main themes the Senate Committee focused on in its June 2008 report. The report contained two recommendations intended to enable the Corporation to meet its recruitment objectives (see box on this page).

#### **Previous Recommendations of the Senate Committee (June 2008)**

That Air Canada develop partnerships with community groups and educational institutions in minority communities so as to reach its goal of recruiting bilingual staff.

That Air Canada consider holding recruitment campaigns outside major urban centres such as Toronto and Montreal so that campaigns are accessible to members of official-language minority communities.

Finding bilingual employees is a problem in most provinces. Only in Quebec are all of the employees who serve the public capable of doing so in both official languages. The proportion of bilingual employees in the other provinces is 55% or lower.<sup>47</sup>

The Corporation's representatives stated that unilingual Anglophones "are the exception at Air Canada."<sup>48</sup> According to the data in the Commissioner's audit and the

annual review submitted to the Treasury Board Secretariat, it seems that the Corporation is painting a very different picture of the situation. The Commissioner of Official Languages made comments along the same lines: "The interviews we conducted with agents and managers as well as our review of work schedules revealed that there is a lack of bilingual agents across Canada, except at Montréal's Pierre Elliott Trudeau International Airport. We also noted a lack of bilingual agents on some work shifts and a significant lack of bilingual agents in various service areas."<sup>49</sup>

The Air Canada representatives attributed the problems to several factors:

<sup>47</sup> In some cases, such as Saskatchewan and Manitoba, there are simply no staff serving the public in airports who can deliver services in French. The percentage of staff serving the public in French is below 10% at the airports in Calgary, AB, and Richmond, BC, and below 15% in St. John's, NL, and Dartmouth, NS. As for telephone communications, 61% of employees are able to provide services in French. Source: Official Languages Information System (OLIS II), 3 March 2011.

<sup>48</sup> Air Canada (28 November 2011), p. 58.

<sup>49</sup> Office of the Commissioner of Official Languages (September 2011), p. 17.

- the pool of potential candidates with the required language skills remains small in some regions, and Air Canada has to compete with federal institutions and private companies for bilingual employees;
- potential candidates who attended an immersion school or took second language courses may not have had many opportunities to put their language skills to use and are simply unable to carry on a conversation in their second language at the time they enter the labour market;
- part-time or seasonal employment is a disincentive for some potential candidates who are bilingual, although that may change because Air Canada has planned to hire more full-time staff over the next year.<sup>50</sup>

The Air Canada representatives told the Senate Committee that they have worked with official language minority communities, colleges and universities to improve the recruitment of bilingual staff. The Corporation has also run advertisements in French-language newspapers outside Quebec, as prescribed by section 30 of the OLA. The Air Canada Linguistic Action Plan states that the Corporation will, over the next year, develop a better strategy for recruiting bilingual candidates that includes "finding new ways to establish useful links with minority communities."<sup>51</sup> The Senate Committee urges the Corporation to stay that course.

The Air Canada representatives stated that they have held Canada-wide recruitment campaigns, but the growth base is still in Toronto and a few other major cities (Montreal, Vancouver, Winnipeg). Individuals who want to work for the airline usually have to be willing to live in those places. The representatives told the Committee that the Corporation is stepping up efforts to hire bilingual staff for its call centres. There is even a pilot project under way in Calgary to provide customer service through virtual centres. Initiatives of that kind make it possible for the Corporation to hire from a bilingual pool without having to compel employees to move to another part of the country.

That said, the Linguistic Action Plan sets out clear recruitment objectives, including a review of the hiring policy and process "used by our recruiters to ensure that language components are adequately considered and included in the various hiring steps."<sup>52</sup> The Corporation is also committed to "[improving] the orientation kit for new employees by adding a section on language obligations (online)."<sup>53</sup> Finally, the Corporation will "review and update language levels according to requirements" for positions at Air Canada, carriers operating under the Air Canada Express banner and any other providers offering services on behalf of Air

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<sup>50</sup> Air Canada (28 November 2011), p. 50.

<sup>51</sup> Air Canada (2011), p. 7.

<sup>52</sup> Air Canada (2011), p. 7.

<sup>53</sup> Air Canada (2011), p. 8.

Canada.<sup>54</sup> The Senate Committee urges the Corporation to continue its efforts to meet the challenge of recruiting bilingual staff.

Added to this is the matter of planning bilingual services. The audit carried out by the Commissioner of Official Languages showed that in order to provide services of equal quality in English and French, both in the air and on the ground, Air Canada must have bilingual staff available where language obligations exist. This means that the Corporation has to look at the way it plans its services, taking into account the requirements of the OLA and regional circumstances. To improve the way its bilingual services are planned, Air Canada undertook to:

- conduct an analysis to review the minimum number of bilingual employees required in all services areas;
- review training programs for front line employees; and
- document the business process.<sup>55</sup>

That commitment appears in Air Canada's Linguistic Action Plan for 2011–2014. The Senate Committee expects Air Canada to observe the spirit of the OLA by providing services of equal quality in both English and French. To that end, the Corporation must ensure that its linguistic capability is adequate and its bilingual services are properly planned. As we will see in section E of this report, the Senate Committee firmly believes that Air Canada should consult official language minority communities in the course of analyzing the way its bilingual services are planned.

### **C. Language of work (Part V)**

Although there are language obligations under Part V of the OLA (language of work), they apply only to Air Canada, not to carriers bound to Air Canada by a service contract. In other words, Air Canada employees have certain language rights, such as the right to work instruments in both official languages and the right to language training. Employees of carriers operating under the Air Canada Express banner have no such recognized rights.

#### **1. Language training**

Language training is commonly used by institutions subject to the OLA to help employees maintain their language skills. In its June 2008 report, the Senate Committee highlighted the challenges associated with language training for Air Canada staff. Because of the labour dynamics, employees who want to take advanced courses have to take them voluntarily, during or after working hours. The Senate Committee made a recommendation encouraging the Corporation to assess various ways of making language training mandatory during working hours. That, in the Committee's eyes, was a way for the Corporation to send a clear signal about fulfilling its obligations regarding the OLA. The Senate Committee also

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<sup>54</sup> Air Canada (2011), p. 8.

<sup>55</sup> Office of the Commissioner of Official Languages (September 2011), p. 31.

**Previous Recommendations of the Senate Committee (June 2008)**

That Air Canada do everything in its power to make language training mandatory on company time in order to increase its bilingual capacity.

That Air Canada develop a plan in which it sets out its priorities and objectives regarding the language training of its staff so that your Committee may examine it, and the progress made under it, next time it hears from Air Canada representatives.

That the Government of Canada assess the possibility of supporting Air Canada in the development and implementation of its language training plan by offering both financial support and the expertise it has acquired in the field of language training.

recommended that Air Canada develop a language training plan and emulate the practices used by other institutions subject to the OLA (see box on this page).

In his audit, the Commissioner of Official Languages observed that access to language training is still limited: "Although Air Canada stated that language training could help increase the number of bilingual agents, we noted that this approach is not used often enough."<sup>56</sup> Further, many employees said that even when language training materials exist, they do not have access to them.<sup>57</sup> The Commissioner expressed the view that the Corporation "must take measures to offer language training in the

workplace" and encouraged it to "consider other training methods, such as providing access to language learning software."<sup>58</sup>

The Corporation did not respond directly to the Senate Committee's previous recommendations, but did acknowledge that it "need[s] to be creative in developing new training models and encouraging employees to use them."<sup>59</sup> That is why it is producing online language courses to give employees the opportunity to develop their skills when and where it is convenient for them. The Corporation also offers lunch-hour workshops to help staff maintain their language skills, an approach it believes offers more flexibility. Employees who travel around the world and want to learn or practise French can do so as it suits them.

There is no indication that the Corporation has adopted measures making language training mandatory during working hours. However, the Corporation wrote in its Linguistic Action Plan that it would raise training issues at its next meetings with its unions. The Plan contains other measures designed to improve communication and training practices. The Corporation acknowledges that "a more organised and systemic approach is required to improve consistency."<sup>60</sup> The Corporation is also committed to enhancing "online initial and recurrent training for

<sup>56</sup> Office of the Commissioner of Official Languages (September 2011), p. 8.

<sup>57</sup> Office of the Commissioner of Official Languages (September 2011), p. 8.

<sup>58</sup> Office of the Commissioner of Official Languages (September 2011), p. 9.

<sup>59</sup> Air Canada (28 November 2011), p. 51.

<sup>60</sup> Air Canada (2011), p. 9.

employees who interact with the public.<sup>61</sup> It also encourages staff who are taking language courses to wear a "J'apprends le français" [I am learning French] pin. As well, special courses are offered to unilingual Anglophones who previously worked for Canadian Airlines International.<sup>62</sup>

Finally, the Air Canada representatives confirmed for the Committee that the federal government has not provided additional resources to help it meet its language training objectives.

## 2. Employees' language-of-work rights

Employees of carriers operating under the Air Canada Express banner and some Air Canada associates located in unilingual regions have no recognized language-of-work rights. In recent years, there has been much criticism from the Commissioner of Official Languages and parliamentary committees regarding language of work at Air Canada and its associates. In the second volume of his 2009–2010 annual report, the Commissioner recommended that the government "make Jazz directly subject to the [OLA]."<sup>63</sup> The aim of that recommendation was to impose on Jazz Part V of the OLA.

The Commissioner of Official Languages observed in his audit that language training is awarded to Jazz flight attendants in order of seniority in accordance with their collective agreement.<sup>64</sup> The Commissioner described that arrangement as ineffective: "This approach prevents Jazz from adequately fulfilling its obligations to passengers on a long-term basis."<sup>65</sup> However, he was unable to make recommendations to help Jazz improve its practices, because the carrier is not subject to Part IX of the OLA. Bill C-17 seeks, among other things, to fill this gap. This issue is discussed in the section of this report headed "Amendments to the *Air Canada Public Participation Act*".

In 2010–2011, the Commissioner's office received more than 400 complaints about language-of-work issues. It was clear from the Air Canada representatives' comments that those complaints were linked specifically to AVEOS, whose status as an independent corporation was confirmed last year. Because they were no longer considered to be Air Canada employees, AVEOS staff lost their language-of-work rights.<sup>66</sup> The change triggered a flood of complaints to the Commissioner.

There are parallels to be drawn between that specific case and another case which the Senate Committee studied several years ago, namely the Canadian Tourism

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<sup>61</sup> Air Canada (2011), p. 9.

<sup>62</sup> Air Canada (28 November 2011), pp. 57 and 58.

<sup>63</sup> Office of the Commissioner of Official Languages, *Annual Report 2009-2010 – Volume II*, Ottawa, 2010, p. 17.

<sup>64</sup> Office of the Commissioner of Official Languages (September 2011), p. 10.

<sup>65</sup> Office of the Commissioner of Official Languages (September 2011), p. 10.

<sup>66</sup> Air Canada (28 November 2011), p. 62.

Commission (CTC). In 2005, the government announced that the CTC's head office was being moved from Ottawa to Vancouver. Because they were relocating from a bilingual region to a unilingual region, CTC employees were at risk of losing the language-of-work rights they had previously enjoyed. The government announced in June 2005 an implementation principle that provided interim protection for employees' language-of-work rights:

[...] whenever a head office currently located in a bilingual region for language-of-work purposes is required to move to a unilingual region, the status quo pertaining to language-of-work rights of employees choosing to move will be maintained by the institution in order to enable Ministers to carry out appropriate consultations and consider the necessary adjustments. Once these consultations are completed and a general policy decision is made relating to language of work, this implementation principle will be cancelled or replaced.<sup>67</sup>

In its May 2007 report, the Senate Committee concluded that the CTC had decided to be proactive and grant language-of-work rights to all its employees in Vancouver because the temporary measure put forward by the government was limited in scope. The Commission pressed ahead with its own plan for preserving its employees' language rights. The Senate Committee had pointed out how important it was for the federal government to develop regulations on language of work in order to protect the rights of federal employees in the event of future moves, but the government did not act on the recommendation.<sup>68</sup>

In the case of Air Canada, a number of AVEOS employees who had previously had language-of-work rights lost those rights as a result of organizational restructuring. Recent newspaper reports highlighted another case involving a plan to transfer more than 130 jobs from Montreal to Brampton, a suburb of Toronto;<sup>69</sup> the employees in those jobs are responsible for assigning Air Canada pilots and flight attendants. The unions fear the transferred employees will lose their language-of-work rights.<sup>70</sup> The transfer is expected to take place in 2014, and according to the media, there will be more relocations in 2015.<sup>71</sup>

There is currently no policy that protects the rights of employees of Air Canada or its associates. AVEOS employees are no longer covered by the OLA and are not protected under the *Air Canada Public Participation Act*. In the case of jobs moved

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<sup>67</sup> Treasury Board of Canada Secretariat, *Treasury Board Policy pursuant to paragraph 46(2)(a) of the Official Languages Act to give effect to Part V of the Act, concerning language of work*, effective on 27 June 2005.

<sup>68</sup> Standing Senate Committee on Official Languages, *Relocation of Head Offices of Federal Institutions: Respect for Languages Rights*, Eight Report, 1<sup>st</sup> session, 39<sup>th</sup> Parliament, May 2007.

<sup>69</sup> Vincent Larouche, "Les syndicats craignent l'unilinguisme," *La Presse*, 8 December 2011, p. 21 [TRANSLATION].

<sup>70</sup> Ibid.

<sup>71</sup> Mélanie Collet, "Air Canada: Tremblay s'oppose au transfert d'emplois," *Agence QMI*, 19 January 2012 [TRANSLATION].

from Quebec to Ontario, employees who previously worked in a region designated bilingual for language-of-work purposes (Montreal) will now be in a unilingual region (Toronto).<sup>72</sup> Employees of Jazz and other carriers bound to the Corporation by a contract will have no language-of-work rights because their employers will not be subject to Part V of the OLA.

This situation raises a number of concerns. Given the many reorganizations that have occurred in the past few years, should measures be taken to protect the language-of-work rights of employees within and outside the Corporation? The Senate Committee is of the opinion that the government would be perfectly justified in adopting a measure similar to the one put forward in 2005 to protect the rights of employees who would be working in Toronto. The following principle must be reiterated: the status quo pertaining to language-of-work rights of employees who agree to move at their employer's request must be maintained by the institution. Consequently, the Senate Committee recommends:

**Recommendation 4:**

**That the Treasury Board Secretariat set out as soon as possible a policy making Part V of the *Official Languages Act* binding so that Air Canada employees who currently have language-of-work rights keep those rights after they move. This policy must apply to all types of transfer that the Corporation imposes on its employees.**

The Air Canada representatives stated before the Senate Committee that it would be inappropriate to impose language-of-work obligations on its other associates, such as Jazz. They said that imposing such obligations would be very costly and would require considerable resources; the Corporation might even run the risk of seeing its contracts with those companies cancelled.<sup>73</sup> The Committee, meanwhile, thinks the government should give serious thought to the issue of language-of-work rights outside the Corporation, especially since it is planning to pass a bill (C-17) to clarify Air Canada's and its associates' language obligations. This issue is discussed in the section of this report headed "*Amendments to the Air Canada Public Participation Act*".

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<sup>72</sup> It is interesting to note that, similar to what happened when the Canadian Tourism Commission moved to Vancouver, a large number of employees who currently work in Montreal have no intention of moving to Ontario. A union survey showed that 95% of the staff in Montreal are not planning to move. Source: Vincent Larouche (8 December 2011). The Canadian Tourism Commission had to refill 80% of its positions once it relocated. That did not, however, stop the Commission from being proactive and preserving employees' language-of-work rights. Source: Standing Senate Committee on Official Languages (May 2007).

<sup>73</sup> Air Canada (28 November 2011), p. 64.

## D. Equitable participation of English-speaking and French-speaking Canadians (Part VI)

There are language obligations under Part VI of the OLA (equitable participation) that require Air Canada to ensure that both linguistic communities enjoy equal opportunities for employment and advancement. These obligations do not extend beyond Air Canada.

The 2010–2011 review submitted to the Treasury Board Secretariat<sup>74</sup> shows that French is the first official language of 4,755 of the Corporation's 27,563 employees (just over 17%). The proportions of employees whose first official language is French are very low in western Canada (2.7% in British Columbia, 3.7% in Alberta, 2.2% in Saskatchewan). The same is true in the Atlantic provinces (3.2% in Nova Scotia and 2.7% in Newfoundland and Labrador). There are no Francophone employees in the territories. Most of the Francophone employees work in operations (78%). English is the first language of almost 83% of the Corporation's employees. Anglophone employees are in the majority in all types of positions, and three quarters work in operations.

In terms of participation, the proportion of English-speaking Canadians is higher in all sectors and all provinces, even Quebec, where they make up approximately 48% of the Corporation's workforce. This imbalance appears to be reinforced by the fact that the Corporation, by its own admission, does not hire unilingual Francophones: "Air Canada is a Canadian company that serves the world. It is important for us to be able to serve our clients in both official languages, English and French first of all. I believe that only having French would limit us in the service we could provide."<sup>75</sup>

Employees whose first official language is French remain under-represented in all provinces, even provinces with a large French-speaking population, such as Quebec and New Brunswick. According to the available data, the Corporation has trouble ensuring equitable participation by English- and French-speaking Canadians. The Corporation must improve its performance in implementing Part VI of the OLA. Consequently, the Senate Committee recommends:

### **Recommendation 5:**

**That Air Canada Corporation take all steps necessary to ensure full implementation of Part VI of the *Official Languages Act* in all regions of Canada.**

<sup>74</sup> Air Canada, *Review on Official Languages 2010–2011*, submitted to the Treasury Board of Canada Secretariat. Data in the following paragraphs are taken from: Official Languages Information System (OLIS II), 3 March 2011.

<sup>75</sup> Air Canada (28 November 2011), p. 57.

### **E. Support for the development of English-speaking and French-speaking minority communities, and promotion of linguistic duality (Part VII)**

Although it has obligations under Part VII of the OLA (development of official language minority communities and promotion of linguistic duality), Air Canada is not required to submit an annual report to the Department of Canadian Heritage on the implementation of section 41 of the OLA. Nevertheless, Air Canada, like all institutions subject to the OLA, has a duty to ensure that positive measures are taken to implement the commitment set out in Part VII. The carriers bound to Air Canada by a service contract are not subject to these obligations.

It is interesting to note at the outset that this was the first time representatives of official language minority communities were invited to appear before a parliamentary committee regarding Air Canada's language obligations. The Senate Committee welcomed representatives of the Fédération des communautés francophones et acadienne du Canada (FCFA) and the Quebec Community Groups Network (QCGN).

According to the 2010–2011 annual review Air Canada submitted to the Treasury Board Secretariat:

Air Canada consults and participates with the [official] language minority communities for special occasions or events such as the Vancouver Olympic [G]ames, la Place de la Francophonie, les Rendez-vous de la Francophonie and le Festival du Voyageur. It also consults with minority communities for recruiting activities. Air Canada is sensitive to all community members' needs and is constantly looking at improving its service and meeting the needs of customers.<sup>76</sup>

It appears that Air Canada focuses more on French-language minority communities, but we do not know which ones it consulted or under what circumstances. There seems to be no formal mechanisms for consulting these communities, which is confirmed in the Office of the Commissioner of Official Languages audit report.

In its Linguistic Action Plan, Air Canada makes commitments to official language minority communities. Two actions are planned for this year: "Develop and document a list of resource persons in the various official language minority communities in Canada" and "Develop and document a communication plan and protocol with [...] communities to better understand their service needs and establish a mutually beneficial partnership."<sup>77</sup>

Before the Senate Committee, the QCGN commented briefly on Air Canada's linguistic obligations under Part VII of the OLA. The director general of the

<sup>76</sup> Air Canada, *Review on Official Languages 2010–2011*, submitted to the Treasury Board of Canada Secretariat.

<sup>77</sup> Air Canada (2011), p. 13.

organization stated, "The QCGN knows of no evidence that Air Canada fails to live up to Part IV and V obligations relating to the English language, I assure you. For our community, the issue is not language, the focus of Parts IV and V, but the vitality and sustainability of our communities."<sup>78</sup> In fact, the Corporation had never consulted the QCGN and did not plan to do so for the following reasons: "Air Canada had not yet planned to meet with the Quebec English Communities as our focus is mainly with the French minorities groups outside Quebec. The reason for this decision is mainly due to our challenge to provide an equal service to the French speaking population in general."<sup>79</sup> However, the QCGN pointed out that Air Canada had recently agreed to a meeting to determine how it could better meet the needs of Quebec's English-speaking communities.<sup>80</sup>

The FCFA, meanwhile, initially declined to comment on Air Canada's language obligations to foster the development of Francophone and Acadian communities, but subsequently sent a letter explaining its position: "First, it is unacceptable that many Francophones passengers are continuing to pay the price for Air Canada's inability to serve travellers consistently in the official language of their choice."<sup>81</sup> The FCFA is of the opinion that "a number of Francophones who are denied service in French do not complain to the Commissioner. Others are disheartened and do not even ask for service in French. Still others are not aware of their rights, particularly regarding service in French in airports".<sup>82</sup>

**Problems reported by representatives of official language minority communities**

- lack of active offer at airports;
- lack of pictograms;
- lack of bilingual agents at check-in counters for domestic and international flights: passengers who request service in French can receive it provided that they are able to wait;
- lack of bilingual announcements, even when the agent at the boarding gate is bilingual;
- lack of bilingual agents at baggage services;
- lack of active offer of bilingual services inflight (except on board flights to Montreal and Ottawa);
- longer wait times to receive services from call centres when the "French" option is chosen; and
- negative attitude of Air Canada employees and lack of openness regarding official languages.

Office of the Commissioner of Official Languages (September 2011), p. 18.

<sup>78</sup> Quebec Community Groups Network, *Proceedings of the Standing Senate Committee on Official Languages*, Issue No.3, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 14 November 2011, p. 44.

<sup>79</sup> Quebec Community Groups Network (14 November 2011), p. 45.

<sup>80</sup> Quebec Community Groups Network (14 November 2011), p. 45.

<sup>81</sup> Fédération des communautés francophones et acadienne du Canada, Letter sent to the clerk of the Standing Senate Committee on Official Languages, 8 December 2011.

<sup>82</sup> Fédération des communautés francophones et acadienne du Canada (8 December 2011).

The FCFA stated that it agrees with the recommendations in the Commissioner's audit report and shares the Commissioner's concerns about consultation of official language minority communities. The federation expressed the view that "[i]t is hard to understand how Air Canada expects to offer truly equal service in both official languages if it does not make sure it knows the needs of the communities it serves. That is why we believe Air Canada should develop a framework for regular, formal consultations on this subject. We recommend that other federal institutions with responsibilities under the Act also take this step."<sup>83</sup> Further, the FCFA would have liked the Commissioner's audit to look at the Corporation's compliance with parts V, VI and VII of the OLA.

According to the available data, there appear to be persistent gaps in the Corporation's consideration of the needs of official language minority communities. This is the only element with which the Commissioner expressed dissatisfaction in his audit report.

Several Francophone members of the Senate Committee stated that they have encountered similar problems when flying Air Canada. The Commissioner's audit report and testimony before the Committee confirmed that Francophones get the worst service from the Corporation. In that context, it is hard to imagine how Air Canada can improve its services to Francophone communities outside Quebec if those communities are not involved in making decisions about the planning of bilingual services.

The Air Canada representatives told the Committee that "[...] the obligation to consult in order to [...] adjust the service to the community would be contrary to our other obligations under other acts that govern us."<sup>84</sup> The Committee rejects that interpretation. It is of the view that the Corporation has to take the needs of official language minority communities into account, especially when making decisions that affect the planning of flights, routes and bilingual services. Such consultations could help the Corporation better meet its objectives under parts IV and VII of the OLA. Considering the needs of official language minority communities would benefit minorities and the majority alike. The community representatives clearly expressed interest in taking part in consultations. Consequently, the Senate Committee recommends:

**Recommendation 6:**

**That Air Canada Corporation take all steps necessary to ensure full implementation of Part VII of the *Official Languages Act* in all its operations. To meet that objective, the Corporation must establish a framework for formal, regular consultation with official language minority communities. It must undertake to consult those communities when making decisions that affect the planning of flights, routes and bilingual services.**

<sup>83</sup> Fédération des communautés francophones et acadienne du Canada (8 December 2011).

<sup>84</sup> Air Canada (28 November 2011), p. 56.

The Committee is of the opinion that the government should give serious thought to Air Canada's obligations regarding the development of official language minority communities and the promotion of linguistic duality, especially since it is planning to pass a bill (C-17) to clarify the language obligations of the Corporation and its associates with it. This issue is discussed in the next section.

### **AMENDMENTS TO THE AIR CANADA PUBLIC PARTICIPATION ACT**

This section takes a brief look at the issues surrounding Bill C-17: An Act to amend the Air Canada Public Participation Act, which was tabled in the House of Commons last fall. In the past few years, several bills have been introduced for the purpose of clarifying the language obligations of Air Canada and its associates, but none was ever passed. In its public hearings, the Senate Committee of course took a great deal of interest in the issues surrounding the introduction of Bill C-17. It put questions on the subject to all the witnesses, but only a few ventured a reply. The Committee recognizes that the bill has not reached committee stage and that the Senate has not given it the authority to study the bill. Nevertheless, the Committee questioned all witnesses regarding the issues surrounding the introduction of Bill C-17 and would like to take this opportunity to make a few comments.

First of all, it must be remembered that Bill C-17 seeks to:

- extend the application of parts IV, IX and X of the *Official Languages Act* to designated air carriers under contract with Air Canada;
- deem the articles of ACE Aviation Holdings Inc. to include provisions respecting the location of its head office and the right of persons to communicate with that corporation in either official language; and
- exempt Air Canada from the application of section 25 of the *Official Languages Act* with respect to air services provided or made available by air carriers with which it has only code-sharing arrangements.<sup>85</sup>

The Commissioner appeared before both parliamentary official languages committees on 24 and 25 October 2011. He commented briefly on Bill C-17, stating that he felt it was a step in the right direction. The Commissioner noted that several important elements were missing, such as language of work. The bill does not require associates companies designated by order to be subject to the obligations in Part V of the Act. However, he had made a recommendation to that effect in recent years, calling for Jazz to be made directly subject to the OLA.

In his annual report last year, the Commissioner wrote that the fact that he cannot investigate Jazz directly is a problem. At present, "[...] the Commissioner can make recommendations regarding Air Canada if the Act's provisions are contravened, but Air Canada remains responsible for ensuring that Jazz takes corrective

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<sup>85</sup> Bill C-17: An Act to amend the Air Canada Public Participation Act, first reading on 17 October 2011.

measures.”<sup>86</sup> In its current form, Bill C-17 seems to give the Commissioner the authority to intervene directly with companies designated by order.

The President of the Treasury Board and the Minister of Canadian Heritage and Official Languages have not commented on Bill C-17. The Honourable Tony Clement simply stated that “it is important to clarify Air Canada’s linguistic obligations.”<sup>87</sup> According to the Honourable James Moore: “That is the best way to proceed to make sure that Air Canada is accountable for respecting the official languages of Canada.”<sup>88</sup> The Minister of Transport, Infrastructure and Communities, meanwhile, stated that he would withhold comment on the bill until it reached the committee stage in the Senate and the House of Commons.<sup>89</sup>

The representatives of the two main organizations that advocate for official language minority communities had the following to say. The representatives of the QCGN simply reiterated how important it is for the Corporation to support “the vitality and sustainability” of English-speaking communities in Quebec.<sup>90</sup> The representatives of the FCFA, for their part, said that they would not take a stance until the bill had followed its course.<sup>91</sup>

The Senate Committee did not study the implications of Bill C-17, because its fall 2011 public hearings did not pertain to that legislation. At the time of writing, Bill C-17 was still at first reading in the House of Commons.

After hearing comments of witnesses, the Committee would nevertheless like to seize this opportunity to point out a number of anomalies. First, it questions the relevance of making ACE Aviation subject to the OLA. In its current form, Bill C-17 seems to require ACE to guarantee members of the public the right to communicate with and obtain services from its head office in either official language. The bill also seems to require the company to keep its head office in Montreal. The Air Canada representatives wondered before the Committee whether that provision is relevant now that the company holds only a minority interest.<sup>92</sup> Further, newspaper articles in the spring of 2011 suggested the company was planning to wind up its operations.<sup>93</sup> The Minister of Transport, Infrastructure and

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<sup>86</sup> Office of the Commissioner of Official Languages (2010), p. 17.

<sup>87</sup> The Hon. Tony Clement, President of the Treasury Board (27 October 2011), p. 52.

<sup>88</sup> The Hon. James Moore, Minister of Canadian Heritage and Official Languages (17 November 2011), p. 76.

<sup>89</sup> Memo sent to the members of the Standing Senate Committee on Official Languages (2 December 2011).

<sup>90</sup> Quebec Community Groups Network (14 November 2011), p. 44.

<sup>91</sup> Fédération des communautés francophones et acadienne du Canada, *Proceedings of the Standing Senate Committee on Official Languages*, Issue No. 3, 1<sup>st</sup> Session, 41<sup>st</sup> Parliament, 14 November 2011, p. 30.

<sup>92</sup> Air Canada (28 November 2011), p. 53.

<sup>93</sup> Ross Marowits, “ACE Aviation expects to wind up operations in the next year,” *Canadian Press*, 10 May 2011.

Communities should therefore examine this issue closely within the framework of the study of Bill C-17.

In light of the evidence it heard, the Committee continues to believe that the language obligations of the Corporation and the carriers bound to it need to be clarified. A bill like this has been a long time coming. C-17 seems to address some of the concerns the Commissioner of Official Languages and parliamentary committees have voiced in the past few years, but some elements seem to be missing.

The interpretation of Air Canada's obligations regarding the development of official language minority communities remains a problem. So, too, does respect for employees' language-of-work rights. Bill C-17 is the perfect opportunity to reflect on the language rights that must be imposed on carriers bound by contract that act as a third party on behalf of the Corporation. These companies operate flights for Air Canada and are an integral part of the Corporation's strategy and presence in the Canadian and North American markets. The Committee is therefore seizing this opportunity to remind the Minister of Transport, Infrastructure and Communities that thought should be given to the linguistic obligations of Air Canada's associates. As part of the study of Bill C-17, the minister must consider making those companies subject to other parts of the Act and not just the provisions in Part IV, in particular with regard to the application of parts V and VII.

It must also be remembered that the first *Official Languages Act*, adopted in 1969, contained provisions guaranteeing travellers' language rights. The Senate Committee is of the opinion that now, more than 40 years on, it is time for the federal government to consider extending the obligations established in the OLA to other airlines. Without question, Air Canada is the air carrier that provides the greatest number of services to Canadian passengers. Its obligations stem from its status as a former Crown corporation and the federal government's desire to preserve those obligations when the airline was privatized in the late 1980s. Other airlines, such as WestJet, are also very active in certain regions of the country. Last fall, WestJet took a series of measures enabling it to provide services in French.<sup>94</sup> The Senate Committee therefore strongly urges the Minister of Transport, Infrastructure and Communities to consider this matter in reference to the study of Bill C-17 so that all Canadian travellers who request them can obtain services in the language of their choice.

Finally, all indications are that the organizational structure of the Corporation and its associates will continue to change. Attempts to amend the *Air Canada Public Participation Act* in recent years and the debate sparked by those attempts showed that if legislation is too static, there is a chance it will become obsolete in a relatively short time. The Senate Committee is of the opinion that criteria must be written into the statute to enable the government to reassess the situation on a regular basis. In other words, legislation must be flexible enough to evolve as changes and reorganizations occur in the short, medium and long term. Some

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<sup>94</sup> Canada Newswire, [Vacances WestJet offre à ses invités ses produits en français](#), 23 November 2011 [TRANSLATION].

provincial statutes, such as New Brunswick's *Official Languages Act* and Nunavut's *Official Languages Act*, already contain review clauses. Consequently, the Senate Committee urges the Minister of Transport, Infrastructure and Communities to consider this point when it studies Bill C-17 so that the language obligations which Air Canada and its associates are required to meet can be reassessed at prescribed intervals, perhaps every 10 years.

Given the above, the Committee encourages the Minister of Transport, Infrastructure and Communities to consider a number of elements in the study of Bill C-17. The Committee will attentively follow the bill's progress in the coming months.

*"In 2010, as the official carrier of the Olympic and Paralympic Winter Games, Air Canada rose to the challenge of offering thousands of visitors, dignitaries, journalists, and athletes service in both official languages, something that very few believed possible. ... Our overall performance on linguistic duality was successful mainly as a result of its complete integration into an intensive overall preparedness exercise for the Games, demonstrated leadership and commitment from the executive team and the Olympic Preparedness Project Manager. In retrospect, the resources allocated by the company to ensure a successful performance during the Games actually exceeded demand in Vancouver. While Air Canada cannot afford to maintain this level of support on an ongoing basis as many participants were volunteers, best practices have been identified to improve on existing initiatives in place in Vancouver and other Canadian airports according to needs and capacity."*

Air Canada (28 November 2011).

## CONCLUSION

Air Canada fared well during the 2010 Winter Olympics and Paralympics, investing the resources needed to meet its language obligations, but it must be acknowledged that the Corporation still has chronic problems serving Francophone passengers.

The aim of the recommendations in this report is to help the airline meet its goal of serving its customers in the official language of their choice. The road to delivering services to the public in English and French anywhere and anytime is sometimes a bumpy one. One of the hurdles the airline had to overcome was the arrival of a large number of unilingual Anglophone employees as a result of several reorganizations in the early 2000s.

Providing services that are equal in quality in English and French is probably the biggest challenge Air Canada will face in the next few years. If it is to ensure substantive equality in its services, the Corporation has to involve official language minority communities. It must also offer its employees more language training so that they become more aware of the Corporation's linguistic obligations.

The Senate Committee firmly believes that the recommendations in this report must be taken seriously. It strongly urges the Corporation to keep it informed as to how it will go about implementing them. The long-term goal is for Francophone passengers who deal with Canada's biggest air carrier have an experience equal in quality to that of Anglophone passengers.



**Recommendation 1**

**That Air Canada Corporation:**

- a) **take all steps necessary to provide services of equal quality in both English and French and give an account of those measures in its annual report to the Treasury Board Secretariat.**
- b) **ensure that carriers bound to it by contract provide services of equal quality in both English and French.**
- c) **work with the Office of the Commissioner of Official Languages to determine how it can provide services of equal quality for the two official language communities that make up the travelling public.**
- d) **use the grid developed by the Treasury Board Secretariat to ensure that its programs and services respect the Supreme Court decision in *DesRochers* and share the results of its analysis with the Senate Committee.**

**Recommendation 2**

**That the Treasury Board Secretariat, in consultation with official language minority communities, amend the *Official Languages (Communications with and Services to the Public) Regulations*, to guarantee that members of the public travelling with Air Canada have full access to services of equal quality in both English and French, anywhere and anytime.**

**Recommendation 3**

**That Air Canada Corporation implement the amended Regulations to guarantee that members of the travelling public have full access to services of equal quality in both English and French, anywhere and anytime.**

**Recommendation 4**

**That the Treasury Board Secretariat set out as soon as possible a policy making Part V of the *Official Languages Act* binding so that Air Canada employees who currently have language-of-work rights keep those rights after they move. This policy must apply to all types of transfer that the Corporation imposes on its employees.**

**Recommendation 5**

**That Air Canada Corporation take all steps necessary to ensure full implementation of Part VI of the *Official Languages Act* in all regions of Canada.**

**Recommendation 6**

**That Air Canada Corporation take all steps necessary to ensure full implementation of Part VII of the *Official Languages Act* in all its operations. To meet that objective, the Corporation must establish a framework for formal, regular consultation with official language minority communities. It must undertake to consult those communities when making decisions that affect the planning of flights, routes and bilingual services.**

**APPENDIX B:  
WITNESSES**

Name of Organization and Spokesperson	Date
<b>Office of the Commissioner of Official Languages</b> <ul style="list-style-type: none"> <li>• Graham Fraser, Commissioner of Official Languages</li> </ul>	2011.10.24
<ul style="list-style-type: none"> <li>• Ghislaine Charlebois, Assistant Commissioner, Compliance Assurance Branch</li> <li>• Lise Cloutier, Assistant Commissioner, Corporate Management</li> <li>• Johane Tremblay, General Counsel, Legal Affairs Branch</li> <li>• Robin Cantin, Director, Strategic Communications and Production</li> </ul>	
<b>Treasury Board of Canada Secretariat</b> <ul style="list-style-type: none"> <li>• The Honourable Tony Clement, P.C., M.P., President of the Treasury Board</li> </ul>	2011.10.27
<ul style="list-style-type: none"> <li>• Corinne Charrette, Chief Information Officer of the Government of Canada</li> <li>• Mimi Lepage, Executive Director, Information and Privacy Policy</li> <li>• Daphne Meredith, Chief Human Resources Officer</li> <li>• Marc Tremblay, Executive Director, Official Languages Centre of Excellence, Office of the Chief Human Resources</li> </ul>	
<b>Fédération des communautés francophones et acadienne du Canada</b> <ul style="list-style-type: none"> <li>• Diane Côté, Director of Government and Community Relations</li> <li>• Serge Quinty, Director of Communications</li> </ul>	2011.11.14
<b>Quebec Community Groups Network</b> <ul style="list-style-type: none"> <li>• Sylvia Martin-Laforge, Director General</li> <li>• Stephen D. Thompson, Director of Policy, Research and Public Affairs</li> </ul>	2011.11.14
<b>Canadian Heritage</b> <ul style="list-style-type: none"> <li>• The Honourable James Moore, P.C., MP, Minister of Canadian Heritage and Official Languages</li> </ul>	2011.11.17
<ul style="list-style-type: none"> <li>• Hubert Lussier, Acting Assistant Deputy Minister, Citizenship and Heritage</li> <li>• Amanda Cliff, Director General, Broadcasting and Digital Communications Branch</li> </ul>	
<b>Air Canada</b> <ul style="list-style-type: none"> <li>• Priscille Leblanc, Vice President of Corporate Communications</li> <li>• Susan Welscheid, Senior Vice President, Customer Service</li> <li>• Louise-Helen Senecal, Assistant General Counsel</li> <li>• Chantal Dugas, General Manager, Linguistic Affairs</li> </ul>	2011.11.28

## **APPENDIX C: BRIEFS SUBMITTED TO THE SENATE COMMITTEE**

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Air Canada, *Presentation to the Standing Senate Committee on Official Languages*, 28 November 2011.

Fédération des communautés francophones et acadienne du Canada, Letter sent to the clerk of the Standing Senate Committee on Official Languages, 8 December 2011.

Memo sent to the members of the Standing Senate Committee on Official Languages, *Reference Material – Study on Air Canada – Transport Canada*, 2 December 2011.

Quebec Community Groups Network, *Remarks to the Standing Committee on Official Languages: A study on Air Canada's obligations under the Official Languages Act*, 14 November 2011 [in English only].