Brief

Submitted to the Standing Senate Committee on Official Languages

For the study of Canadians’ Views about Modernizing the *Official Languages Act*

16 April 2018
Background

1. The Fédération acadienne de la Nouvelle-Écosse (FANE), which was incorporated on 14 October 1968, was established to promote the vitality and overall development of Nova Scotia’s Acadian and francophone community. It does this in partnership with its members, which are French-language regional, provincial and institutional organizations.

2. FANE is a true federation, bringing together 28 regional, sectoral and client organizations working to advance its mission.

3. FANE fulfills its mission by serving as the primary representative for Nova Scotia’s Acadian and francophone population; by facilitating cooperation and partnership among all organizations active in Nova Scotia’s Acadian and francophone community, while respecting the mandate of each; by providing services and programs that meet the needs of its members; and by supporting its members in promoting the development and vitality of Nova Scotia’s Acadian and francophone community.

4. As the representative organization for Nova Scotia’s Acadian community, for many years now FANE has been involved with official languages, particularly the application of the Official Languages Act (the Act) and its regulations. This brief will deal primarily with the preamble and purpose of the Act, as well as parts II, III, IV, V and VII.
5. In 1963, the federal government established a royal commission on bilingualism and biculturalism (Laurendeau-Dunton Commission). In its final report, the Commission recommended among other things that French be recognized as an official language of the federal government and that federal government services be available in French in areas where francophones are the majority or represent a significant minority [our underlining].

6. The spirit of the Laurendeau-Dunton Commission is well represented in the preamble and purpose of the *Official Languages Act*. Indeed, in addition to stating that the *Constitution of Canada* recognizes English and French as the official languages of Canada and that the two languages have equal rights and privileges, the preamble also mentions that the Constitution provides for guarantees relating to “the right of any member of the public to communicate with, and to receive available services from, any institution of the Parliament or government of Canada in either official language” [our underlining].

7. One of the purposes of the *Official Languages Act*, meanwhile, is to support the development of English and French minority communities and generally “advance the equality of status and use of the English and French languages within Canadian society” [our underlining].
8. Almost 50 years after the Official Languages Act was adopted, and nearly 20 years since its regulations were adopted, we must admit that the objectives stated in the preamble and purpose of the Act are still far from being realized.

**Part II of the Official Languages Act: Legislative and Other Instruments**

9. Subsection 11(1) of the Act states:

   A notice, advertisement or other matter that is required or authorized by or pursuant to an Act of Parliament to be published by or under the authority of a federal institution primarily for the information of members of the public shall,

   (a) wherever possible, be printed in one of the official languages in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that language and in the other official language in at least one publication in general circulation within each region where the matter applies that appears wholly or mainly in that other language; and

   (b) where there is no publication in general circulation within a region where the matter applies that appears wholly or mainly in English or no such publication that appears wholly or mainly in French, be printed in both official languages in at least one publication in general circulation within that region.

10. However, in recent years, community media have seen a marked decrease in the publication of notices and advertisements by federal institutions.
This has been followed by a significant reduction in revenues associated with publishing notices and advertisements, which these media have had to absorb out of their operating budgets. The precarious situation in which the majority of community media currently find themselves is not unrelated to the fact that federal institutions have begun to publish their notices and advertisements on their own websites rather than making use of community publications.

11. FANE must point out, however, that publishing notices and advertisements on the websites of federal institutions does not make the information more accessible to the public. Take for example shellfish advisories on the Fisheries and Oceans website. I challenge you to find these advisories on the federal institution’s website among the thousands of pages that are published. Yet, these advisories deal with public health and safety. As such, the decision of federal institutions to disseminate notices and advertisements on their websites contravenes subsection 11(1) of the Act.

12. Finally, FANE is concerned about the poor quality of French on the websites of federal institutions, as evidenced by the many blunders reported in the media recently, including on the website of Public Services and Procurement Canada.

**PART III of the Official Languages Act: Administration of Justice**

13. Section 14 of the Act reads as follows:
English and French are the official languages of the federal courts, and either of those languages may be used by any person in, or in any pleading in or process issuing from, any federal court.

14. However, while divorce proceedings are under federal jurisdiction, there are only two courts in Nova Scotia capable of hearing such cases in French: the family divisions of the Supreme Court in Halifax and Sydney. In every other region, family courts hear divorce cases, and because they are under provincial jurisdiction, it is not possible to use French in those hearings.

15. FANE is concerned that Nova Scotia is circumventing its official language obligations by failing to establish family divisions in other regions of the province. It is also concerned with the lack of progress in terms of access to justice in French in our province, particularly for probating wills and holding civil trials in French.

PART IV of the Official Languages Act: Communications with and Services to the Public
16. Section 21 of the Act states that “any member of the public has the right to communicate with and to receive services from federal institutions in accordance with this Part.”

17. FANE believes that the regulations defining “nature of the office” and “significant demand” considerably restrict the scope of the Act in terms of communications with and services to the public.

18. FANE recalls that one of the purposes of the Act adopted almost 50 years ago was to “advance the equality of status and use of the English and French languages within Canadian society” [our underlining].

19. FANE would like to point out that since the Act was adopted, many students have taken courses to develop proficiency in the other official language, not to mention all the public servants who receive such training every year, and our country should therefore have access to a bilingual workforce for providing communications with the public and delivering services in the official language of the public.

20. FANE believes it is high time that the services of the federal government be available in French in regions where francophones are in the majority or
represent a substantial minority, as indicated in the report of the Laurendeau-Dunton Commission. We define a substantial minority as a community whose vitality is measurable, primarily through the presence of French-language schools.

21. For several years FANE has been conducting a political analysis exercise that measures active offer and the delivery of services by federal institutions in Nova Scotia. In recent years, FANE has noted a marked decrease in active offer in person from federal institutions. In the most recent political analysis, only 21% of the federal institutions that were analyzed offered a bilingual reception.

22. FANE is very concerned about this marked decrease in active offer. It is also concerned that resistant federal institutions against whom complaints have been upheld by the Office of the Commissioner of Official Languages, like Stanfield International Airport in Halifax, have taken no remedial action to comply with the Act, apart from the Hello/Bonjour when passengers arrive at Security. It is concerned that in Nova Scotia, the RCMP chooses to drop charges rather than be forced by the court to offer bilingual services in a given region. FANE is concerned with this trend, or obvious complacency, on the part of federal institutions with regard to services in French.

**PART V of the Official Languages Act: Language of Work**
23. Section 34 of the Act stipulates that “English and French are the languages of work in all federal institutions, and officers and employees of all federal institutions have the right to use either official language in accordance with this Part.” This right is nevertheless dependent on whether the region or part of Canada or place outside Canada where they work has been designated bilingual for purposes of language of work.

24. FANE believes that the definition of parts, regions and places designated bilingual is too restrictive and that it prevents bilingual employees who do not work in these designated areas from maintaining their level of proficiency in the second language, or even in their mother tongue if the language of work is English for a francophone employee living in a minority situation.

25. Once again, FANE would point out that since the Act was adopted, many federal employees have taken second-language training, and nothing should prevent an employee from using English or French as the language of work, regardless of the part or region of Canada, or other place outside Canada.

PART VII of the Official Languages Act: Advancement of English and French
26. Subsections 41(1) and 41(2) of the Act read as follows:

41 (1) The Government of Canada is committed to

(a) enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and

(b) fostering the full recognition and use of both English and French in Canadian society.

(2) Every federal institution has the duty to ensure that positive measures are taken for the implementation of the commitments under subsection (1). For greater certainty, this implementation shall be carried out while respecting the jurisdiction and powers of the provinces.

27. FANE believes that, more than 10 years after these subsections were added to the Act, they are still poorly understood by federal institutions. FANE is of the opinion that ties between Nova Scotia’s Acadian community and federal institutions are practically non-existent, with the exception of the relationships with funding agencies and a few initiatives undertaken by FANE, notably the secondment/language practicum project and the training offered by some institutions to member organizations.

28. FANE finds that very few federal institutions take the necessary steps to understand the needs of Nova Scotia’s Acadian community and adopt policies
and programs that consider these needs, thereby truly contributing to the vitality of the Acadian community. We would offer by way of example the complaint against the Public Health Agency of Canada with regard to funding for daycare centres that is only available for English-language centres.

29. Furthermore, section 42 of the Act provides that the "Minister of Canadian Heritage, in consultation with other ministers of the Crown, shall encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41." FANE believes that this coordinating role should lie with the Privy Council, and that this would highlight the importance of both official languages in Canada. Without wanting to detract from the dynamism and conviction of the current minister of Canadian Heritage, FANE believes that it is difficult for a minister to call to order a colleague whose department is not respecting the Act.

Conclusion

30. In conclusion, FANE feels that in recent years, French as an official language has been neglected by the federal government, its institutions and its employees, and both the scope and the application of the Official Languages Act are still misunderstood or ignored.
31. FANE believes that a major effort is required to return French to its proper place of prominence, reaffirm the equality of status of both official languages, enhance the use of both our country’s official languages, and ensure that this use at long last becomes apparent throughout public institutions.

32. FANE sincerely hopes that this Senate study on Canadians’ views about modernizing the *Official Languages Act* will provide for implementing concrete recommendations and better promoting French as one of the two official languages of our country.

33. We thank you for your time.