



**English-speaking Quebec and the Modernization of the *Official Languages Act***

Brief Submitted to the Standing Senate Committee on Official Languages

Study on Canadians' Views about Modernizing the *Official Languages Act*

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## Executive Summary

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Founded in 1995, the QCGN is a not-for-profit organization linking more than 56 English-language community organizations across Quebec.

The Quebec Community Groups Network (“QCGN”) welcomes this opportunity to contribute to this Committee’s study on modernizing the *Official Languages Act* (“the Act”). In the spirit of modernization, the QCGN takes this opportunity to present a picture of the contemporary English-speaking community of Quebec. As this Committee noted in 2011, there are certain widely-held myths regarding this community. The QCGN hopes to contribute to a modernized understanding of this community and its role as a unique and important official language minority community in Canada. In this regard, the QCGN puts forward three propositions:

- 1) The English-speaking community of Quebec is a unique official language minority community;
- 2) The English-speaking community of Quebec has transformed into a diverse, bilingual and resilient community, but public perception has not kept pace;
- 3) The vitality of the English-speaking community of Quebec does not threaten French in Quebec.

The *Official Languages Act* is a lifeline for English-speaking Quebec. The Act is the only language rights legislation that protects the interests of English-speaking Quebecers as a community. The Act sets out quasi-constitutional rights for English-speaking Quebecers, including the right to access federal services in English, the representation of English-speakers in the federal public service, and the right to work in English in the federal public service. Further, the Act provides the framework for much-needed financial support for the community’s institutions and networks.

In this brief, the QCGN presents proposals for a modernized Act.

From the perspective of English-speaking Quebec, a modernized Act must possess the following **key features**:

- As in the current Act, the central guiding principle must be the **equality of status of English and French**. There can be no separate status or approach for each language. Further, the Act must categorically guarantee this equality of status in all institutions subject to the Act across Canada.
- Two additional key features that must animate the Act are:
  1. **Substantive Equality**: In its implementation, the Act must enable adaptation to the specific contexts and needs of the different official language minority communities.

- 2. Capacity, Consultation, and Representation:** The *Act* should provide for robust, mandatory, and properly-resourced consultation at all levels, including a formal mechanism for consultation at the national level.

Further, a modernized *Act* should:

**Guarantee equity in services, language of work and participation in the public service:**

- a. Strive for coherence between Parts IV (services), V (language of work) and VI (participation);
- b. Reframe Part VI to ensure that English-speakers are fairly represented in federal institutions in Quebec;
- c. Ensure that services in both languages are of substantively equal quality;
- d. Update and broaden the language of work obligations;
- e. Support the administration of justice in both official languages (including the removal of the bilingualism exception for judges of the Supreme Court of Canada);
- f. Consider extending the application of Parts IV, V and VI of the *Act* to all federally-regulated private enterprises.

**Enhance the vitality of minority language communities:**

- a. Include clear definitions of “positive measure”, “enhancing the vitality of”, and “assisting in the development of” official language minority communities;
- b. Provide clearer lines of accountability for the obligations set out in Part VII;
- c. Require regulations to implement Part VII;
- d. Place strict transparency mechanisms in the *Act* to account for official languages investments;
- e. Create official languages obligations attached to all activities funded by federal resources;
- f. Require that all federal-provincial/territorial agreements be made in both official languages and be equally authoritative.

**Provide for effective implementation:**

- a. Central accountability for application of the entire *Act*;
- b. Mandatory and robust consultation with official language minority communities, including a clear duty to consult, a definition of consultation, a duty to provide resources and build capacity to consult, a formal National Advisory Council, and a declaration that membership of parliamentary official languages committees should reflect the composition of the official language minority communities;
- c. Enhanced and focused role of the Commissioner;
- d. Administrative tribunal with the power to sanction;
- e. Regular periodic review of the *Act* and *Regulations*.

## 1. Introduction: the QCGN and English-speaking Quebec

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### A. Introduction to the QCGN

[1] Founded in 1995, the Quebec Community Groups Network (“QCGN”) is a not-for-profit organization linking more than 56 English-language community organizations across Quebec. As a centre of evidence-based expertise and collective action, the QCGN identifies, explores and addresses strategic issues affecting the development and vitality of the English-speaking community of Quebec and encourages dialogue and collaboration among its member organizations, individuals, community groups, institutions and leaders.

[2] The QCGN’s vision for English-speaking Quebec is a diverse, confident, recognized and respected national linguistic minority that actively participates in and contributes to the social, economic, cultural and political life of Quebec and Canadian society.

[3] The QCGN traces its roots back to 1994 when Canadian Heritage brought together the 15 Quebec-based regional and sectoral organizations that were funded under the federal Official Language Communities Program. A year later, that ad-hoc group founded the Quebec Community Groups Network. By the turn of the second millennium, the QCGN had grown to 19 members that banded together to accomplish collectively what individual member organizations could not do on their own.

[4] In 2006, the QCGN was recognized by the Government of Canada and the Department of Canadian Heritage as the official representative and interlocutor of Quebec’s English-speaking community. In 2015, the QCGN celebrated its 20th anniversary, and has since grown to 56 member organizations that play a pivotal role in promoting the vitality of English-speaking Quebec and its communities.

### B. The English-speaking Community of Quebec

*“I have always thought that the English communities in Quebec suffer from a larger degree of misunderstanding than is the case for many other minority language communities.”<sup>1</sup>*

[5] In the spirit of modernization, the QCGN takes this opportunity to present a picture of the contemporary English-speaking community of Quebec. As this Committee noted in 2011,

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<sup>1</sup> Graham Fraser, Commissioner of Official Language (31 May 2010), cited in Senate, Standing Committee on Official Languages, [The Vitality of Quebec’s English-speaking Communities: From Myth to Reality](#) (May 2011) at 11 (Chair: Hon Maria Chaput) [*From Myth to Reality*].

there are certain widely-held myths regarding the English-speaking community in Quebec.<sup>2</sup> The QCGN hopes to contribute to a modernized understanding of this community and its role as a unique and important official language minority community in Canada. In this section, the QCGN advances three propositions:

- 1) The English-speaking community of Quebec is a unique official language minority community;
- 2) The English-speaking community of Quebec has transformed into a diverse, bilingual and resilient community, but public perception has not kept pace;
- 3) The vitality of the English-speaking community of Quebec does not threaten French in Quebec.

### **1) The English-speaking community of Quebec is a unique official language minority**

[6] Although English is the majority language in Canada, it is a minority language in the province of Quebec.

[7] The conception of English-speakers in Quebec as linguistic *minority*—in the same way that French-speakers outside Quebec are a minority—can trace its roots to the Royal Commission on Bilingualism and Biculturalism in 1963:

The principle of equality implies respect for the idea of minority status, both in the country as a whole and in each of its regions. [...] Since the English-speaking population is larger across the country, its members are less often in the minority; but they are in the minority in some areas, especially in the province of Quebec. The Francophones are usually in the minority outside Quebec. In either case, however, the principle of equality requires that the minority receive generous treatment.<sup>3</sup>

[8] According to the 2016 census, there are 1,103,480 people in Quebec whose first official language spoken is English. This represents approximately 13.7% of the population of Quebec.<sup>4</sup> Using the same census data and measurement (first official language spoken), the French-

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<sup>2</sup> *From Myth to Reality*, *supra* at 1.

<sup>3</sup> Canada, Royal Commission on Bilingualism and Biculturalism, *The Official Languages*, Book I, General Introduction, at xlvii, para 86 (emphasis added) [Royal Commission on Bilingualism and Biculturalism report].

<sup>4</sup> Statistics Canada, 2016 Census of Population, *First official language spoken in Quebec [Province] and Canada [Country]*, Catalogue No 98-316-X2016001 (29 November 2017) [2016 Census Data]. See also *From Myth to Reality*, *supra* at 4; Statistics Canada, Analytical Paper, *Portrait of Official-Language Minorities in Canada: Anglophones in Quebec*, by Jean-Pierre Corbeil, Brigitte Chavez & Daniel Pereira, Catalogue No 89-642-X No 002 (2010) [*Portrait of Official-Language Minorities*].

speaking community outside Quebec numbers 951,415. To further put things in perspective, the 215,200 English-speaking Quebecers who reside outside the Montreal metropolitan area outnumber any other provincial or territorial French linguistic community except Ontario and New Brunswick.

[9] As an official language minority, the English-speaking community faces similar challenges to those faced by the French-speaking minority communities. However, as recognized by this Committee in 2011, the English-speaking community of Quebec is a “unique social, political, economic and cultural context” deserving of recognition.<sup>5</sup> This unique context must be taken into account in any discussion on the modernization of the *Act*.

[10] English-speaking Quebec faces three major challenges.

[11] First, the political and cultural survival strategies of the two linguistic minority communities are different. While French-speakers outside Quebec struggle to build their institutions, English-speaking Quebec faces challenges in maintaining management and control of its existing institutions. While French-speakers outside Quebec strive to counter assimilation by creating francophone spaces, English-speaking Quebec struggles to integrate and connect with French-speaking Quebec society.

[12] Second, English-speaking Quebecers face a degree of economic exclusion not faced by French-speakers outside Quebec. English-speakers have a lower median income and a higher unemployment rate than their French-speaking counterparts in Quebec.<sup>6</sup> Aside from New Brunswick, Quebec is the only province where the linguistic minority has a lower median income than the majority.<sup>7</sup>

[13] Third, English-speaking Quebec is a linguistic minority within a linguistic minority. While French-speaking minorities outside Quebec benefit from various levels of linguistic protection at the provincial level, ranging from no protection to some protection,<sup>8</sup> Quebec is the only province where the primary purpose of the provincial language legislation is to protect the province’s majority language. Put another way, Quebec is the only province that legislates to

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<sup>5</sup> *From Myth to Reality*, *supra* at 99 and 80: “Recommendation 1: That the Government of Canada recognize that the Anglophone minority in Quebec” enjoys rights under the *Charter* and the *OLA*, and “has specific needs that deserve close attention from all federal institutions”.

<sup>6</sup> See *infra* notes 36, 38.

<sup>7</sup> 2016 Census Data, *supra*.

<sup>8</sup> See e.g. Ontario’s *French Language Services Act*, RSO 1990, c F32, and Manitoba’s *The Francophone Community Enhancement and Support Act*, CCSM c F157. Some provinces such as British Columbia have no legislation for minority language rights.



protect its majority language and not its minority language. This is a unique and complicated feature of the context for English-speaking Quebec.<sup>9</sup>

**2) The English-speaking community of Quebec has transformed into a diverse, bilingual and resilient community, but public perception has not kept pace**

*“Quebec society went through a rapid transformation over the last 50 years, and the English-speaking community adapted. Now the community must respond to new demographic and social challenges.”*<sup>10</sup>

[14] Quebec’s English-speaking community—along with Quebec society at large—has undergone a major transformation since the 1970’s. The community has changed dramatically in the past few decades, and this transformation is ongoing. Change is the only constant.

[15] However, while the community itself has changed, perceptions about this community have not kept pace with the change. Certain myths persist regarding the English-speaking population of Quebec,<sup>11</sup> particularly the “outdated conception of the community as a homogenous and privileged elite”.<sup>12</sup> Since perceptions remain quite out of step with reality, it is important to set out some key features of the English-speaking community of Quebec based in the facts as they are today.

[16] The challenges faced by the community in the 1970’s are well-documented.<sup>13</sup> The introduction of the *Charter of the French Language* in 1977 led to a decline in enrollment in

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<sup>9</sup> For a good discussion of how Quebec’s 20<sup>th</sup> century language policies have affected both French-speaking and English-speaking Quebec, see Richard Y. Bourhis, “Reversing Language Shift in Quebec”, in Joshua A. Fishman, ed, *Can Threatened Languages Be Saved? Reversing Language Shift, Revisited: A 21<sup>st</sup> Century Perspective* (North York, ON: Multilingual Matters, 2001) 101.

<sup>10</sup> Graham Fraser, “Quebec’s English-Speaking Community: Adapting to a New Social Context”, in Richard Y. Bourhis, ed, *Decline and Prospects of the English-Speaking Communities of Quebec*, (Ottawa: Canadian Heritage and Canadian Institute for Research on Linguistic Minorities, 2012) [Bourhis, *Decline and Prospects*] at 387.

<sup>11</sup> See *From Myth to Reality*, *supra* at 1; Official Languages Support Branch of the Department of Canadian Heritage, *A Portrait of the English-speaking Communities in Québec* (Ottawa: Innovation, Science and Economic Development Canada, June 2011) at 7 [Canadian Heritage 2011]; André Pratte, “Bridging the Two Solitudes”, in Bourhis, *Decline and Prospects*, *supra* at 383.

<sup>12</sup> Lise Palmer & Patrick Tomlinson, “[The Implementation of Part VII Community and Social Stakeholders’ Perspectives: The English-speaking Communities of Quebec. Report submitted to the Official of the Commissioner of Official Languages](#)” (Unofficial report submitted to the Official of the Commissioner of Official Languages), October 2009 at 1. See also William Floch & Joanne Pockock, “The Socio-Economic Status of English-Speaking Quebec: Those Who Left and Those Who Stayed”, in Bourhis, *Decline and Prospects*, *supra* at 129.

<sup>13</sup> See e.g. Floch Pockock, *supra*.

English public schools and an out-migration of many English-speakers.<sup>14</sup> In the course of its struggle to survive as a community, the Quebec's English-speaking community spearheaded some major constitutional language rights litigation that has shaped the law in Canada.<sup>15</sup>

[17] However, the community adapted and changed. As Graham Fraser remarked, “[t]he recent history of Quebec’s English-speaking community is really a success story of adapting to a new sociolinguistic environment.”<sup>16</sup>

[18] Here are three main characteristics of English-speaking Quebec today:

### **i. Diversity**

[19] The English-speaking community of Quebec is diverse in two ways.

[20] First, there are wide variations in the concentration of English-speakers throughout the province. While the vast majority of Quebec’s English-speakers are concentrated in Montreal,<sup>17</sup> 215,200 English-speakers live outside this metropolitan area, in various regions throughout the province. These regions vary widely in numbers, density, and demographics.<sup>18</sup> This creates major differences in the characteristics and needs of the different communities. While the institutional support and access to services for English-speakers in the Greater Montreal area is relatively good, the same cannot be said of the less concentrated regions.<sup>19</sup>

[21] Second, the English-speaking community is ethnically diverse. In the Greater Montreal area, the English-speaking community has a history of ethnically diverse communities.<sup>20</sup> With

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<sup>14</sup> See *Ibid*, and Patricia Lamarre, “English Education in Quebec: Issues and Challenges”, in Bourhis, *Decline and Prospects*, *supra* 175 at 180.

<sup>15</sup> See e.g. *Ford v Quebec (AG)*, [1988] 2 SCR 712; *AG (Que) v Quebec Protestant School Boards*, [1984] 2 SCR 66; *Nguyen v Quebec (Education, Recreation and Sports)*, 2009 SCC 47; *Solski (Tutor of) v Quebec (AG)*, 2005 SCC 14.

<sup>16</sup> Graham Fraser, “Quebec’s English-Speaking Community: Adapting to a New Social Context”, in Bourhis, *Decline and Prospects*, *supra* at 388.

<sup>17</sup> According to 2016 Census Data, *supra*, approximately 80% of Quebec’s English-speakers live in the Montreal Census Metropolitan Area. English-speakers comprise 21.9% of Montreal’s population.

<sup>18</sup> Aside from Montreal, the next highest concentration of English-speakers is in Gatineau, at 58,460, representing 17.8% of the local population and 5% of the province’s English-speakers. At the other end of the spectrum, there are 128,375 English-speakers living outside the four major cities (Montreal, Quebec, Gatineau, and Sherbrooke), geographically spread out over the rest of the province. For a narrative description of the different regional communities, see *From Myth to Reality*, *supra* at 6, 14-15. For a regional analysis of the 2006 Census Data, see *Portrait of Official-Language Minorities*, *supra* at 14-15.

<sup>19</sup> See e.g. the state of English services in certain rural regions as described in *From Myth to Reality*, *supra* at 37-38.

<sup>20</sup> See e.g. Community Health and Social Services Network, “Community Vitality Survey” (April 2010) at 20, cited in Quebec Community Groups Network, “[A New multi-year Official Languages Plan to Support Canada’s English Linguistic Minority Communities](#)” (2012) at 30: “When asked the question ‘Of which cultural community do you belong?’ 30 per cent of Laval English-speakers replied ‘Greek’, and 22 per cent answered Italian”.

more recent immigration, this history of ethnic diversity continues, and there is an ever-increasing proportion of English-speakers whose mother tongue is neither English nor French.<sup>21</sup>

## ii. Bilingualism

[22] Bilingualism—a key value underlying the *Official Languages Act*—is critical for the vitality of the English-speaking community in Quebec. English-speaking youth understand that bilingualism is the key to gaining good employment in the province,<sup>22</sup> and many English-speaking parents seek out opportunities for their children to become fluent in French in order to have a future in the province.<sup>23</sup>

[23] Quebec’s English-speaking community is an innovator in bilingualism. Notably, Canada’s now well-known French immersion curriculum started in a suburb of Montreal in the 1960s.<sup>24</sup> It was “driven by parents who felt a ‘change in the wind’ in the sixties and considered it normal that their children should learn French to remain in Quebec.”<sup>25</sup>

[24] In fact, Quebec’s English-speaking community has, by far, the highest proportion of bilingual speakers compared to English-speakers anywhere else in Canada. Further, the English-speaking community has become more bilingual over time.<sup>26</sup> Today, the rate of bilingualism among English-speaking Quebecers is higher than among French-speaking Quebecers.<sup>27</sup> Among youth, English-speaking Quebecers have a bilingualism rate of 73.6%—higher than their French-speaking counterparts in Quebec (60.7%) and three times higher than English-speaking youth in any other province.<sup>28</sup>

[25] This being said, there remain some communities of unilingual English-speakers in Quebec. These persons are often older, more vulnerable and prone to isolation.<sup>29</sup> They have

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<sup>21</sup> See Portrait of Official-Language Minorities, *supra* at 86; *From Myth to Reality*, *supra* at 7; Canadian Heritage 2011 Report, *supra* at 3-4.

<sup>22</sup> See e.g. Quebec Community Groups Network, “[Creating Spaces for Young Quebecers: Strategic Orientations for English-speaking Youth in Quebec](#)” (January 2009) at 19-20 [QCGN, Creating Spaces].

<sup>23</sup> For commentary, see Daniel Weinstock, [Language in Quebec Schools: It’s Time for a Rethink](#), *In Due Course*, 15 September 2014.

<sup>24</sup> See Lamarre, *supra* at 189; *From Myth to Reality*, *supra* at 23.

<sup>25</sup> Lamarre, *supra* at 189.

<sup>26</sup> According to the 2016 Census Data, *supra*, bilingualism among English-speakers increased from 37% in 1971, to 66.4% today. See also Canadian Heritage 2011, *supra* at 5.

<sup>27</sup> According to 2016 Census Data, *supra*, 66.4% of English-speakers in Quebec are bilingual, while 41.7% of French-speakers in Quebec are bilingual.

<sup>28</sup> According to 2016 Census Data, *supra*, the next most bilingual English-speaking youth are from New Brunswick, with a bilingualism rate of 26.1%.

<sup>29</sup> See e.g. the portrait of the North Shore and Lower North Shore, *From Myth to Reality*, *supra* at 14.

specific needs that must also be taken into account, particularly regarding access to government services in English.

### iii. Resilience and Vitality

[26] As discussed above, the English-speaking community has undergone a major transformation and adaptation since the advent of the *Charter of the French Language*. Although the English language itself is not threatened, the English-speaking community's challenge is in maintaining the community's vitality and survival in all regions of Quebec—particularly in rural areas.<sup>30</sup>

[27] The concept of vitality is much discussed in law and literature.<sup>31</sup> The Department of Canadian Heritage's framework presents vitality as follows:

1. **Individuals** who have a sense of belonging to the language community, who have linguistic aspirations and relevant practices.
2. A **community** that has a collective leadership and an ability to mobilize its people and community organizations.
3. An **environment** that: offers the possibility of receiving an education in your own language; provides recreational and cultural activities in your own language; includes the presence of institutions and an active offer of services; offers the possibility of participating in the economic and social expansion of the community; and encourages the visibility of language.
4. **Relationships with the majority** that lead to support and cooperation between the two language groups, recognition and respect of language rights, and influence and authority within the majority institutions.
5. **Demographic and demolinguistic renewal** through natural population growth, immigration, and language practices that ensure the retention and transmission of the language.
6. Lastly, the communities' ability to subscribe to a wider linguistic environment [emphasis added].<sup>32</sup>

[28] The challenges facing the English-speaking community's vitality centre on the **second, third and fourth** aspects of this framework.

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<sup>30</sup> *From Myth to Reality*, *supra* at 2.

<sup>31</sup> For a discussion and application of some leading frameworks, see Richard Y. Bourhis & Rodrigue Landry, "Group Vitality, Cultural Autonomy and the Wellness of Language Minorities", in Bourhis, *Decline and Prospects*, *supra* 23.

<sup>32</sup> Department of Canadian Heritage, Official Languages Support Programs – Support for the Community Sector, "Frame of Reference for the Vitality of Official-Language Minority Communities" (2013) (emphasis added).

[29] Regarding **community leadership (second aspect)**, community organizations in Quebec’s English-speaking community often lack the capacity to articulate and address the English-speaking community’s needs.<sup>33</sup>

[30] The community also faces a number of vitality challenges related to its **environment (third aspect)**. The particular challenges are the following:

1. **Education:** English-language public schools continue to face declining enrolment.<sup>34</sup> Further, the community struggles to maintain management and control over its public schools.<sup>35</sup>
2. **Economic:** Despite the stereotypes, the English-speaking community faces economic marginalization in Quebec. For example, the median income of English-speakers in Quebec is below the median income of French-speakers in Quebec.<sup>36</sup> Quebec is one of only two provinces where the linguistic minority has a lower median income than the majority.<sup>37</sup> The rate of unemployment for English-speakers—even bilingual English-speakers—is higher than that of French-speakers, whether unilingual or bilingual.<sup>38</sup> This rate is several times higher for Black English-speakers.<sup>39</sup>

[31] Regarding the **relationship to the majority (fourth aspect)**, English-speakers lack influence and authority within the majority institutions. English-speakers are not well-represented in state institutions. English-speakers are underrepresented in both the provincial

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<sup>33</sup> See Canada, Canadian Heritage, “[Evaluation of the Official Languages Support Programs](#)”, Evaluation Services Directorate Catalogue No CH7-18/2017E-PDF (16 May 2017), at 4.1.2.1: “in comparison with minority Francophone communities, English-speaking communities in Quebec have a relatively less extensive community network and must deal with decreasing enrolment in English schools and a political and legal framework that limits the use of English in public spaces”; Canadian Heritage 2011, *supra* at 12-13.

<sup>34</sup> See *From Myth to Reality*, *supra* at 21; Canadian Heritage 2011, *supra* at 11; and Lamarre, *English Education in Quebec*, *supra*.

<sup>35</sup> The community’s recent opposition to provincial education reform legislation centered on the management and control of education: see Quebec English School Boards Association, “[Brief to National Assembly Committee on Cultural and Education on Bill 105](#)”, September 2016.

<sup>36</sup> According to 2016 Census Data, *supra*, the median income of English-speakers is \$30,022 per annum, compared to \$33,933 for French-speakers.

<sup>37</sup> According to 2016 Census Data, *supra*, the other province is New Brunswick.

<sup>38</sup> According the 2016 Census Data, *supra*, the unemployment rate for English-speaking Quebecers was 8.9% while that of French-speaking Quebecers was 6.8%. See also Canadian Heritage 2011, *supra* at 6-7. For unilingual vs bilingual employment data, see Quebec, Advisory Board on English Education, [Educating Today’s Quebec Anglophone](#), brief presented to the Minister of Education, Recreation and Sports (March 2010) at 16 [*Educating Today’s Anglophone*].

<sup>39</sup> See Canadian Heritage 2011, *supra* at 6-7; *Educating Today’s Anglophone*, *supra* at 16.

and federal public services in Quebec—at the provincial level, quite radically so.<sup>40</sup> Until recently, the central agency of the provincial government did not recognize or interact with the English-speaking community as a community.<sup>41</sup>

[32] Regarding **demographic renewal (fifth aspect)**, the community’s well-documented demographic decline is reversing. In 1971, the community’s share of Quebec’s population was 16.1%, but dropped to a low point of 12.9% in 2001, before beginning its recovery. Until recently, out-migration of English-speakers, particularly youth, was seen as a major drain on the community and its future.<sup>42</sup> However, recently this out-migration has been somewhat offset by an in-migration of English-speakers from other provinces.<sup>43</sup> In addition, the aging population carries certain challenges that are specific to an aging minority language population.<sup>44</sup> Overall, though, the demographic decline that the community witnessed since the 1970s has reversed. Over the past decade, the community has grown in numbers, and Statistics Canada projects the size of English-speaking Quebec to continue to grow in the coming decades.<sup>45</sup>

### **3) The vitality of the English-speaking community in Quebec does not threaten French in Quebec**

[33] The prosperity of the two official language communities in Quebec is often seen as a zero-sum game: one community thrives at the expense of the other. However, this “zero-sum game” narrative is outdated. A modern perspective of English-speaking Quebec and the *Official Languages Act* recognizes that the vitality of a minority language community contributes to—and does not detract from—the cultural life of its province and the country as a whole.

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<sup>40</sup> According to 2016 Census Data, *supra*, English-speakers comprised only 9.7% of the core federal public administration outside the National Capital Region. According to recent data from Quebec, Secrétariat du Conseil du trésor, [Les membres de communautés culturelles, les anglophones, les Autochtones et les personnes handicapées](#) at 1, the proportion of “anglophones” in the provincial public service has remained constant at 1% from 2013-2017.

<sup>41</sup> *From Myth to Reality, supra* at 16. However, the QCGN is cautiously optimistic regarding the recently-created Secretariat for Relations with English-speaking Quebecers: see “[Framework of Secretariat for English-speaking Quebecers a Start](#)”, QCGN press release, November 24, 2017.

<sup>42</sup> *From Myth to Reality, supra* at 63. See also QCGN, *Creating Spaces, supra*.

<sup>43</sup> According to 2016 Census Data, *supra*, of the 92,320 interprovincial outbound migrants, 38.6% (35,645) were English-speaking. Of the 55,365 inbound migrants, 42.8% (23,686) were English-speaking.

<sup>44</sup> Seniors tend to be less bilingual; thus access to health and social services in English is even more important for this demographic, and the lack of these services—combined with the exodus of their families outside the province—is a more pressing problem: *From Myth to Reality, supra* at 7-8, 72-73.

<sup>45</sup> See Statistics Canada, 2016 Census of Population, [Language Projections for Canada, 2011 to 2036 Chapter 3. Population projections by language group](#), by René Houle & Jean-Pierre Corbeil, Catalogue No 89-657-X2017001 (25 January 2017) at Table 3.4.

[34] As discussed above, many misunderstandings and prejudices regarding the English-speaking community persist. Much of this is due to the feeling among French-speakers that the English-speaking community represents a threat to French in Quebec and is not in any way a threatened minority. André Pratte (now Senator Pratte) explains this phenomenon well:

[...] French speakers still feel their language, their culture is threatened. Why? Because English is everywhere! Look at the signs: Future Shop, Second Cup, Home Depot. Look at the movies, listen to the songs: Anglo-American culture dominates the world, for better or for worse. And in Quebec, that means it is still difficult to buy a computer with a French-language keyboard, or a French-language computer game.

Of course, Quebec Anglophones are not responsible for this situation. But the dominant position of English in the world makes it difficult for Francophone Quebecers to believe Quebec Anglophones are a threatened minority. Most Francophones ask: “How can you say you’re a threatened minority, when your language is spoken and sung everywhere around you? You have English schools, English universities, soon a major new English hospital, English TV stations and the Internet?”<sup>46</sup>

[35] To counteract this misunderstanding, it may be useful to refer back to the Royal Commission on Bilingualism and Biculturalism. In discussing the idea of equality and respect for minorities, the Commission found as follows:

Recognizing the rights of a linguistic minority does not reduce those of the majority: with a little good will, the rights of both can be exercised without serious conflict [...]. In other words, a majority does not abdicate when it resolves to take a minority into consideration; it remains the majority, with the advantages its situation implies, while at the same time demonstrating its humanity.<sup>47</sup>

[36] A modernized view of official languages in Canada and Quebec should take this “win-win” approach to the vitality of the English-speaking community in Quebec.

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<sup>46</sup> See Pratte, *supra* at 384.

<sup>47</sup> Royal Commission on Bilingualism and Biculturalism report, *supra* at xlvii para 87 (emphasis added).

## 2. A Modern Approach to the *Official Languages Act*

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[37] Given the discussion above, this section lays out what a modern approach to the *Official Languages Act* means for English-speaking Quebec.

### A. What does the *Act* mean to the English-speaking Community of Quebec?

[38] Simply put, the language guarantees in the *Canadian Charter of Rights and Freedoms* (“*Charter*”) and in the *Official Languages Act* are a lifeline for English-speaking Quebec. The *Official Languages Act* is the only language rights legislation that protects the interests of English-speaking Quebecers as a community.

[39] The *Charter* and the *Official Languages Act* have important symbolic and practical value for English-speaking Quebec. They recognize the equality of status of English and French in federal institutions across the country, including in Quebec. The *Official Languages Act* effectively recognizes the English-speaking community of Quebec as a minority language community. Further, the *Act* sets out quasi-constitutional rights for English-speaking Quebecers, such as the right to federal services in English, the participation of English-speakers in the federal public service, and the right to work in English in the federal public service. Further, the *Act* provides the framework for much-needed financial support for the community’s institutions and networks.

[40] In 1988, when the current *Act* was being debated in Parliament as Bill C-72, representatives of English-speaking Quebec articulated the importance of the *Act* to minority language communities. The same interests are alive today:

[...] English- and French-speaking Canadians should be guaranteed a generous complement of language rights and access to basic services in their own language across Canada. In this regard this legislation, Bill C-72, represents a significant act of leadership by the federal government. We particularly welcome the Government of Canada’s eloquent commitment, contained in the preamble of Bill C-72:

... to enhancing the vitality and supporting the development of English and French linguistic minority communities...

This is an important and historic commitment that represents a significant and necessary evolution over previous legislation.



An explicit commitment on the part of the federal government to assist in promoting in a tangible way the vitality of the English and French language minority communities is, in our opinion, crucial to the survival of these communities.<sup>48</sup>

## B. Why does the *Act* need to be modernized?

[41] The *Official Languages Act* has achieved much for English-speaking Quebec. However, it is time to modernize the *Act* for two major reasons:

[42] **First**, as with any legislation, the *Act* needs to be updated as the legal landscape changes. The legal landscape for language rights is constantly evolving. For example, the first *Official Languages Act* in 1969 was passed before Quebec’s *Charter of the French Language* (1977). After the *Charter* (1982) brought in new constitutional language guarantees, the *Official Languages Act* needed to be updated (1988). Except for one major amendment in 2005, the 1988 *Act* has not been updated in 30 years.

[43] Despite the lack of amendments to the *Act*, the legal landscape for language rights has changed since 1988. For example, the Supreme Court of Canada’s judgment in *R v Beaulac* recognized that language rights must always be given a purposive interpretation: they must be interpreted “in a manner consistent with the preservation and development of official language communities in Canada”.<sup>49</sup> Further, the Supreme Court of Canada’s decision in *Desrochers* recognized a concept of substantive equality in the provision of services in the minority language.<sup>50</sup> The 2005 amendment to the *Act* bolstered the obligations in Part VII and made them subject to the *Act*’s Federal Court remedy;<sup>51</sup> but over time, this amendment has not lived up to the hoped-for result of giving “teeth” to the *Act* and ensuring that Part VII imposes obligations on every federal institution.<sup>52</sup> It is time to revisit the entire *Act* and update it for the future.

[44] **Second**, Quebec’s English-speaking community has evolved and changed since 1988. The community now faces new challenges and opportunities. A modernized *Act* needs to provide concrete support to official language minority communities, but must also be flexible

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<sup>48</sup> Testimony of Royal Orr, President, Alliance Quebec, before Special Legislative Committee on Bill C-72, 27 April 1988 at 10:23-10:24 [Testimony of Royal Orr].

<sup>49</sup> *R v Beaulac*, [1999] 1 SCR 768 at para 25.

<sup>50</sup> *DesRochers v Canada (Industry)*, 2009 SCC 8 at para 31 [*Desrochers*].

<sup>51</sup> See *Act*, s 41(2). See also *An Act to Amend the Official Languages Act (promotion of English and French)*, 38th Parl, 1st sess, 2005 (Assented to on 25 November 2005), SC 2005 c 41.

<sup>52</sup> See [speech at Second Reading](#) of Bill S-3, *An Act to amend the Official Languages Act (promotion of English and French)* in *Debates of the Senate*, 38th Parl, 1st Sess, Vol 142, Issue 3 (6 October 2004) at 31 (Hon. Jean Robert Gauthier) [Bill S-3].

enough to adapt and respond to the changing contexts of these communities—both in Quebec and elsewhere.

### C. What key features must a modernized *Act* possess?

[45] A modernized *Act* must embody, as its central guiding principle, the equality of status of English and French as official languages of Canada. Two additional features of a modernized *Act* are the principle of substantive equality and the central role of capacity, consultation, and representation.

#### 1) Central guiding principle: Equality of status of English and French

[46] The guiding principle for a modernized *Official Languages Act* must be the fundamental principle, as set out in the *Charter*, that English and French have equality of status as official languages of Canada. Section 16(1) of the *Charter* and the first paragraph of the preamble of the current *Act* both provide as follows:

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

Le français et l'anglais sont les langues officielles du Canada; ils ont un statut et des droits et privilèges égaux quant à leur usage dans les institutions du Parlement et du gouvernement du Canada.

[47] This principle is front and centre in the current *Act*, and it must remain so in any modernized *Act*. Aside from its symbolic importance, what does this guiding principle mean for the rest of the *Act*?

[48] First, there can be no separate status or approach for each language. The *Act* must affirm that English and French are equal in status as official languages of Canada.

[49] Second, the *Act* must categorically guarantee this equality of status everywhere in Canada. The *Act* must provide for language rights that apply nationwide, regardless of other language legislation or policy that may exist at the provincial or territorial level. The rights conferred under the *Official Languages Act* cannot depend on provincial priorities or legislation.

[50] Of course, provinces and territories are free to provide more protection and rights to linguistic minorities than those provided in the *Official Languages Act*: the *Act* must provide a floor – not a ceiling – for minority language rights. Section 16(3) of the *Charter* clearly provides that Parliament can do more than the minimum to “advance the equality of status or use of English and French”. The *Act* can provide greater rights for linguistic minorities, but can leave

no room for lesser rights to be accorded to minority official languages under the *Act* in particular provinces.<sup>53</sup>

## 2) Features of a modernized *Official Languages Act* to support the development of official language minority communities

[51] One major purpose of the current *Act* is to support the development of minority language communities.<sup>54</sup> This purpose should continue to be central to the *Act*. To achieve this purpose, two key principles must animate the legislation: (1) substantive equality; and (2) capacity, consultation and representation.

[52] **Feature 1: Substantive Equality.** One central principle for supporting the development of minority language communities should be substantive equality. Substantive equality provides that, where necessary, the particular characteristics and circumstances of different groups must be taken into account to ensure that this group receives the same result.<sup>55</sup> Substantive equality is a recognized principle in language rights and in Canadian law more broadly.<sup>56</sup>

[53] Each official language minority community in Canada is distinct, and this is no less so for English-speaking Quebec. While recognizing the equality of status of English and French, the *Act* must enable, in its implementation, adaptation to the specific contexts and needs of the different official language minority communities across Canada.

[54] **Feature 2: Capacity, Consultation and Representation.** A modernized *Act* needs to enable true engagement and dialogue with the communities it seeks to support. In order to properly craft programs to promote the vitality of official language minority communities, these communities must be integral to the conception and implementation of such programs. Consultation must be central in the *Act*. However, at present, the *Act* includes very few and ill-defined options to consult official language minority communities.<sup>57</sup> There is no clear duty to consult, and no definition or parameters for consultation. A modernized *Act* should provide for robust, mandatory, and properly-resourced consultation at all levels, including a formal mechanism for consultation at the national level.<sup>58</sup>

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<sup>53</sup> The QCGN supports the Société de l'Acadie du Nouveau-Brunswick's proposal to include specific rights for the French-speaking community in New Brunswick that are rooted in the *Canadian Charter of Rights and Freedoms*.

<sup>54</sup> *Act*, s 2(b).

<sup>55</sup> See e.g. in the education context, *Arsenault-Cameron v Prince Edward Island*, 2000 SCC 1 at para 31 [*Arsenault-Cameron*].

<sup>56</sup> See *Association des parents de l'école Rose-des-vents v British Columbia (Education)*, 2015 SCC 21 at para 33; *Arsenault-Cameron*, *supra* at para 31; *Desrochers*, *supra* at paras 51-53.

<sup>57</sup> See for e.g. ss 43(2) and 84 of the *Act*.

<sup>58</sup> The QCGN endorses the recommendations in Fédération des communautés francophones et acadienne du Canada's brief to this Committee, [Giving New Momentum to Canada's Linguistic Duality! For a Modern and](#)

### 3. Equity in Services, Language of Work and Participation in the Public Service

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[55] The remainder of this brief deals with the rights and obligations set out in particular Parts of the *Act*.

#### A. Modernization Challenge

[56] The QCGN's community consultations have identified access to services and government information in English as the top priority for English-speaking Quebecers.<sup>59</sup> The *Official Languages Act* is a critical way for English-speaking Quebecers to receive services in English from federal institutions, to participate in the federal public service, and to work in the official language of their choice in federal institutions. However, the obligations in these Parts of the *Act* need to be more wide-ranging and coherent with one another.

[57] When it comes to accessing services in the minority language (Part IV) and using their language of choice in the public service (Part V), English-speaking Quebecers face challenges very similar to those of French-speakers outside Quebec. For example, English-speakers report difficulty in using English in federal institutions in Quebec.<sup>60</sup>

[58] When it comes to implementation, the three Parts of the *Act* dealing with services (Part IV), language of work (Part V), and participation in federal institutions (Part VI) are interconnected. For example, it is only when a work environment is conducive to the effective use of both official languages (under Part V) and when the composition of the office's workforce reflects the presence of both official language communities in the region (Part VI), that a federal office can properly provide services in both official languages (in situations where required under Part IV). However, rather than stress this interconnectedness, the current formulation of the *Act* contains incoherent obligations, leaving gaps in the logic and implementation of the *Act*. For example, the Part IV obligation to provide services outside the National Capital Region depends on "significant demand", and is governed by the *Regulations*.<sup>61</sup> By contrast, the Part V obligation to provide a work environment conducive to the use of both

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[Respected Official Languages Act](#) at paras 63-79: "Enshrine the principle of 'by and for': The OLA should enable official language minority communities to participate in its implementation" [*Giving New Momentum*].

<sup>59</sup> See e.g. Quebec Community Groups Network, "[A New multi-year Official Languages Plan to Support Canada's English Linguistic Minority Communities](#)" (June 2016) at 5-6; and Quebec Community Groups Network, "[2018-2019 Priorities of the English-speaking Community of Quebec and Annual Report of the Priority Setting Steering Committee](#)" at 4.

<sup>60</sup> See Canada, Office of the Commissioner of Official Languages, [Annual Report 2009-2010](#), vol 1 at 31 (details in [Vol II](#) of the report).

<sup>61</sup> See *Act*, s 22; *Official Languages (Communications with and Services to the Public) Regulations*, SOR/92-48; and the Government of Canada [Burolis](#) database (2018) of federal offices that provide services in both official languages.

official languages depends on whether the region is “prescribed”.<sup>62</sup> There is no necessary link between designated bilingual offices under the Part IV *Regulations* and the “prescribed” regions under Part V. This is problematic.

### **Case Study: Correctional Service Canada**

In its appearance at the House of Commons Standing Committee on Official Languages in the course of its study on the Canadian justice system, the QCGN described a vivid example of the shortcomings of the *Act*’s implementation in the corrections system. This example also demonstrates how Parts IV, V and VI of the *Act* are linked.<sup>63</sup>

To summarize, Correctional Service Canada manages its prison population at the national level, but despite its obligations under Part IV of the *Act*, it was unable to offer adequate services in English to English-speaking inmates in Quebec—many of whom come from outside the province. At times, this had acute effects on inmates’ liberty: for example, release to half-way houses was often delayed for English-speaking inmates because of lack of spaces in half-way houses that could provide services in English. English-speaking inmates also faced barriers in accessing educational programs, case workers, and even prison guards who could communicate in English.

At the same time, English-speakers were underrepresented in the staff at these institutions: only 2.9% of the staff were English-speaking, and only 3.8% of Parole Board members were English-speaking. Further, because working with English-speaking prisoners entailed a higher case load, bilingual employees had a disincentive to work in a bilingual position, and preferred to remain in a unilingual French position. The QCGN believes that these problems are “systemic in nature and therefore likely affecting English and French minority inmates in other institutions”.<sup>64</sup> This is a stark example of how services (Part IV), language of work (Part V) and representation (Part VI) are linked: where representation is weak, language of work and provision of services are also weak.

<sup>62</sup> See *Act*, s 35, and Government of Canada, “[List of Bilingual Regions of Canada for Language-of-Work Purposes](#)” (2002).

<sup>63</sup> See Quebec Community Groups Network, “[Brief to House of Commons Standing Committee on Official Languages: Full Implementation of the Official Languages Act in the Canadian Justice System](#)” (11 April 2017) at 3-5 [QCGN Brief on Justice].

<sup>64</sup> LANG, “Evidence”, 42nd Parl, 1st Sess (11 April 2017) at 1100 (Stephen Thompson, Director, Strategic Policy, Research and Public Affairs, Quebec Community Groups Network) [LANG Evidence], cited in House of Commons, Standing Committee on Official Languages, [Ensuring Justice is Done in Both Official Languages](#), (December 2017) at 27 (Chair: Hon Denis Paradis).

[59] Further, English-speaking Quebecers are underrepresented in the core federal public service in Quebec outside the National Capital Region. This fact is often missed when official languages data are examined at the national level. For example, a recent report commissioned by the Privy Council Office found that official languages were properly represented within the public service;<sup>65</sup> however, the study failed to disaggregate the data by province. When the data are disaggregated, one can see that English-speakers are underrepresented in the core federal public service in Quebec outside the National Capital Region.<sup>66</sup>

[60] By examining official languages issues at the national level, and not disaggregating by province, a great opportunity is lost: that of seeing how both the French-speaking and English-speaking minority language communities are affected by the incomplete implementation of the Act. In turn, this is a missed opportunity for the official language minority communities to address these challenges together.

[61] Finally, the range of services to be provided in the minority official language is not broad enough. It needs to extend to services within the justice system, and to services provided by federally-regulated private businesses.

## **B. Proposal**

### **A modernized *Official Languages Act* should:**

#### **a. Strive for coherence between Parts IV, V and VI**

[62] In principle, services (Part IV), language of work (Part V), and participation in the public service (Part VI) are all connected. These Parts should create clear obligations and be coherent with one another.<sup>67</sup> For example, in offices designated for bilingual services under Part IV, the office providing the services should also be required to ensure that the work environment is conducive to the effective use of both official languages (under Part V) and that the

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<sup>65</sup> Privy Council Office, [The next level: Normalizing a culture of inclusive linguistic duality in the Federal Public Service workplace](#), report by Patrick Borbey & Matthew Mendelsohn (2017).

<sup>66</sup> According to 2016 Census Data, *supra*, English-speakers comprised only 9.7% of the core federal public administration outside the National Capital Region. See also Canada, Treasury Board Secretariat, *Annual report on Official Languages 2015-16*, Catalogue No BT23-1E-PDF (2017) at Table 13 ([Participation of Anglophones and Francophones in the core public administration, in the Province of Quebec \(excluding the National Capital Region\)](#)), which shows 9.7% English-speakers in core public service outside the NCR.

<sup>67</sup> See also a similar recommendation in FCFA, [“The Implementation of the Official Languages Act – A new Approach, a New Vision”](#) (2009) at 12-13.

composition of the office’s workforce reflects the presence of both official language communities in the region (Part VI).

[63] Further, these Parts should set minimum requirements, without setting any maximum requirements. Departments and organizations should be held to the minimums set out in these Parts, while being encouraged and funded to surpass them.

**b. Reframe Part VI to ensure that English-speakers are fairly represented in federal institutions in Quebec**

[64] Part VI provides that the Government of Canada is committed to ensuring that English-speaking and French-speaking Canadians have “equal opportunities to obtain employment and advancement in federal institutions”, and that “the composition of the work-force of federal institutions tends to reflect the presence of both the official language communities of Canada [...]”.<sup>68</sup> The commitment in this Part has not been achieved in Quebec. English-speakers are underrepresented in the core federal public service in Quebec outside the National Capital Region.<sup>69</sup>

[65] It is not enough that the civil service reflect the composition of official language communities at the national level. The civil service must reflect official minority communities in each province. For the purposes of measuring the representation of English and French-speaking Canadians in federal institutions, the National Capital Region should be treated separately. Provincial data for Ontario and Quebec should exclude the National Capital Region, thereby giving a clearer picture of the representation of English and French-speakers in federal institutions in those provinces, outside the National Capital Region. Thus, the *Act* should specify that the obligations set out in Part VI must be implemented in each province. The *Act* should also make clear that this obligation is to be measured at the provincial level, excluding data from the National Capital Region.

[66] The *Act* should also include a mechanism for implementing the obligations in Part VI. The current *Act* provides that “[t]he Governor in Council may make such regulations as the Governor in Council deems necessary to carry out the purposes and provisions of this Part”.<sup>70</sup> No such regulations have ever been made. A modernized *Act* should provide for mandatory regulations to ensure compliance with Part VI in all provinces.

**c. Ensure that services in both languages are of substantively equal quality**

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<sup>68</sup> *Act*, ss 39(1) and (2).

<sup>69</sup> See sources cited *supra* note 66.

<sup>70</sup> *Act*, s 40 (emphasis added).

[67] Part IV of the *Act* provides that “[a]ny member of the public in Canada has the right to communicate with and receive available services from federal institutions in accordance with this Part”,<sup>71</sup> and that every federal institution has the duty to ensure this right within the National Capital Region, or outside this region where there is “significant demand”.<sup>72</sup> However, the *Act* does not require that these services be of substantively equal quality in both languages. A modernized *Act* must require substantively equal quality of services in both official languages.

[68] It is important to recall that Part IV directly implements a *Charter* right.<sup>73</sup> Furthermore, while the *Act* itself does not provide that services must be of equal quality, the Supreme Court of Canada has recognized that the duty to provide services includes the duty to ensure that the services are of equal quality in both official languages.<sup>74</sup>

[69] To keep stride with the jurisprudence, the *Act* needs to require the provision of substantively equal quality of services in English and French, and must include a definition of “substantively equal” quality of service.<sup>75</sup> The definition needs to take into account the increasing importance of electronic means of delivering services. Substantively equal quality includes equal accessibility, equal quality, and equally prompt delivery. Further, as the Supreme Court of Canada found in *Desrochers*, substantive equality may further require that the services be conceived or delivered differently in the minority language, in order to better address the needs of the minority community.<sup>76</sup>

[70] After *Desrochers* was rendered, the Treasury Board Secretariat Policy and Analytical Grid incorporated a definition of substantively equal levels of service.<sup>77</sup> The Treasury Board provides the following definition of “substantive equality”:

**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

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<sup>71</sup> *Act*, s 21.

<sup>72</sup> *Act*, s 22.

<sup>73</sup> Canadian *Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 20; *Desrochers*, *supra* at paras 45, 51.

<sup>74</sup> *Desrochers*, *supra* at para 3.

<sup>75</sup> See *Giving New Momentum*, *supra* at para 131.

<sup>76</sup> *Desrochers*, *supra* at para 51-53.

<sup>77</sup> See Canada, Treasury Board, [Secretariat Policy on Official Languages - Appendix 1: Definitions](#) (19 November 2012). See also Government of Canada, Treasury Board, [Secretariat Policy](#) and [Analytical Grid](#) (2011) [Treasury Board Analytical Grid].



minority receives services of the same quality as the majority. This approach is the norm in Canadian law.<sup>78</sup>

[71] A modernized *Act* needs to include such a definition.

#### **d. Update and broaden the language of work obligations**

[72] The right to work in the official language of one's choice should apply equally across the country.

[73] Section 34 of the *Act* provides a broad right: it provides 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".<sup>79</sup> However, the duties of the federal government to ensure the language of work are more limited: s. 35 provides that every federal institution has the duty to ensure that both official languages can be used within the National Capital Region and in certain prescribed regions.<sup>80</sup> In other regions, the federal institution's duty is more limited.<sup>81</sup>

[74] A modernized *Act* should remove this two-tiered obligation based on geography. In this way, the language of work in federal institutions can be English and French everywhere in Canada.<sup>82</sup> This would further support the interconnection between Parts IV, V and VI.

[75] The QCGN also echoes Fédération des communautés francophones et acadienne du Canada ("FCFA")'s recommendation that Part V include a government commitment to ensure a work environment where all employees can learn and use both official languages.<sup>83</sup> Improving bilingualism in federal institutions further enables all workers to use the official language of their choice.

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<sup>78</sup> See Treasury Board Analytical Grid, *supra*.

<sup>79</sup> *Act*, s 34.

<sup>80</sup> *Act*, s 35(1)(a).

<sup>81</sup> In such cases, the institution must only ensure that the treatment of both official languages in a work environment where one language predominates is "reasonably comparable" to the treatment of both official languages where the other language predominates: *Official Languages Act, supra*, s 35(1)(b).

<sup>82</sup> This is similar to the FCFA's recommendation to add a section setting out "the government's commitment to create a work environment within the federal public administration across the country where all employees can work in the official language of their choice and learn and use the other official language" (*Giving New Momentum, supra* at para 132).

<sup>83</sup> *Giving New Momentum, supra* at para 132.

[76] Further, given the major advancements in work information technology since the *Act* was last revised in 1988, the obligations under this Part need to be able to account for digital technology and modern work practices such as virtual work teams. In the modern digital work world, geographic considerations are becoming less and less important. Given these advancements in technology and the prevalence of virtual work teams, the removal of the geographical limitations on the language of work makes even more practical sense.

[77] Finally, Part V includes the power for the Governor in Council to make regulations prescribing measures that are to be taken to implement the obligations in this Part.<sup>84</sup> No such regulations have ever been made. A modernized *Act* should make such regulations mandatory.

#### **e. Support the administration of justice in both official languages**

[78] Access to justice in the official language of one's choice is of fundamental importance to linguistic minorities. The *Act* should support access to the administration of justice in the minority official language. The administration of justice includes not only access to a judge who understands the official language, but access to services in the minority official language throughout the entire justice system.<sup>85</sup>

[79] When it comes to the administration of justice, provinces play a major role: while the administration of justice at federal courts and tribunals falls under federal jurisdiction, the administration of justice at provincial and Superior courts falls under provincial jurisdiction.<sup>86</sup> Nonetheless, the *Act* can play an important role in supporting both the federal government and the provinces to provide access to the administration of justice in the minority official language. The *Act* should create an obligation for the federal government to support bilingualism in the provincially-administered courts and tribunals.

[80] Part III of the *Act* already provides a number of obligations for federal courts and tribunals regarding the administration of justice. These obligations should remain, and should be enhanced in one important way: the exception for Supreme Court judges in s. 16 should be removed. Judges of the Supreme Court should be able to understand the official language chosen by the parties, without the assistance of an interpreter.<sup>87</sup>

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<sup>84</sup> *Act*, s 38.

<sup>85</sup> See LANG Evidence, *supra* at 24, 25. See also LANG report, *Ensuring Justice is Done*, *supra* at 24.

<sup>86</sup> See *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5, s 92(14).

<sup>87</sup> The QCGN endorses the recommendation from LANG report, *Ensuring Justice is Done*, *supra*, Recommendation # 2 at 13; *Giving New Momentum*, *supra* at para 118; and the [letter from the Canadian Bar Association](#) (23 November 2017). The QCGN has supported this proposition in the past: see Quebec Community Groups Network, QCGN's Brief on Official Languages, *supra* at 2.

[81] Further, the *Act* should create a federal obligation under Part VII to encourage and assist provincial governments to ensure that access to the entire justice system is available in both official languages. Arguably, this is already part of the Department of Justice Canada's obligation under s. 41(2) of the *Act*. However, this specific obligation regarding access to justice, which falls on both the Department of Justice and the Department of Canadian Heritage, should be better spelled out in the *Act*.

**f. Consider extending the application of Parts IV, V and VI of the *Act* to all federally-regulated private enterprises**

[82] Quebec is no stranger to language obligations that apply to private businesses. In fact, the *Charter of the French Language* applies in Quebec to public as well as private workplaces, except those that fall under federal jurisdiction. As such, the only private businesses in Quebec that are not subject to the *Charter of the French Language* are federally-regulated businesses and undertakings such as chartered banks, telecommunications companies, and transportation companies. This leaves a "legislative void" in language regulation in Quebec: these are the only businesses in the province that are not subject to any language legislation.

[83] In particular, for those not subject to the *Charter of the French Language*, there is no legal right to work in French.<sup>88</sup> By a recent estimate, there are approximately 135,000 employees at federally-regulated private companies that are not subject to either the *Official Languages Act* or the *Charter of the French Language*.<sup>89</sup> While many of these federally-regulated companies have voluntarily complied with the *Charter of the French Language*,<sup>90</sup> this compliance remains voluntary, and there is no legal recourse for French-speaking employees who seek to work in French.

[84] To fill this legislative void, attempts have been made to extend the application of the obligations in the *Charter of the French Language* to these federally-regulated businesses. One

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<sup>88</sup> See speech at Second Reading of Bill C-307, [An Act to amend the Official Languages Act \(Charter of the French Language\) and to make consequential amendments to other Acts](#) in *House of Commons Debates*, 40th Parl, 2nd Sess (31 March 2009) at 1750 (Hon. Pierre Paquette).

<sup>89</sup> Human Resources and Skills Development Canada, [Language of Work in Federally Regulated Private Businesses in Quebec not subject to the Official Languages Act](#), ISBN: 978-1-100-21872-4, 2013 at 2.

<sup>90</sup> *Ibid* at 14-18. Companies employing roughly half of the federally-regulated employees not subject to any language legislation have voluntarily obtained *francization* certificates from the *Office Québécois de la langue française*. These include the major banks (National Bank, Royal Bank, CIBC, TD, and Scotiabank), and major telecommunications companies (Bell Canada, Vidéotron and Rogers). In total, 38% of federally-regulated business with over 100 employees, employing about 55% of all federally-regulated employees in companies with 100 or more employees, have obtained this certificate (at 4).

attempt was Bill C-455, a private member's Bill that proposed to add the obligations from the *Charter of the French Language* into the *Canada Labour Code*.<sup>91</sup> However, the Bill suffered from two major flaws. First, although the Bill did not purport to modify the *Official Languages Act*,<sup>92</sup> the Bill would have created "territorialized" federal official language obligations, wherein certain federally-mandated language requirements would apply in Quebec and not in other provinces. Second, the Bill did not ensure the equality of status of English and French, nor did it support the official language minority community in Quebec, which is antithetical to the purposes of the *Official Languages Act*.<sup>93</sup> From the perspective of official languages in Canada, this approach to filling the legislative void in Quebec is simply unacceptable.

[85] Another—more constitutionally coherent—way to fill this legislative void is to extend the application of the *Official Languages Act* to these same federally-regulated businesses. This would vastly improve the coherence of official languages legislation in two important ways. First, it would extend language protections to the only group of workers not currently covered by any language legislation in Quebec. Second, it would remove the inconsistency in the application of the *Official Languages Act* to certain federally-regulated transportation companies (such as Air Canada and CN Rail)<sup>94</sup> and not others—a recommendation this Committee has made in the past.<sup>95</sup>

[86] This approach would fulfill the purpose of the earlier Bills by providing French-speaking workers in Quebec the legal right to work in French, where no such legal right currently exists. It would provide French-speaking workers in Quebec a legal remedy if their right to work in

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<sup>91</sup> See e.g. Bill C-455, [An Act to Amend the Canada Labour Code](#), 40th Parl, 3rd Sess, 2009 (first reading 6 October 2009 and reinstated from previous sitting on 40th Parl, 2nd Sess). This Bill would have harmonized the language requirements for federally-regulated businesses to those under Quebec's *Charter of the French Language*.

<sup>92</sup> An earlier Bill did attempt to modify the *Official Languages Act* as well as the *Canada Labour Code* and the *Canada Business Corporations Act*: see Bill C-307, [An Act to amend the Official Languages Act \(Charter of the French Language\) and to make consequential amendments to other Acts](#), 40th Parl, 2nd Sess (first reading 10 February 2009 and defeated at second reading 3 June 2009), Sponsor: Pierre Paquette (Bloc Québécois).

<sup>93</sup> See Act, ss 2(a) and 2(b).

<sup>94</sup> These companies were formally Crown corporations subject to the *Official Languages Act*, and retained their official languages obligations when they were privatized. The Commissioner of Official Languages has suggested making all Canadian air carriers subject to linguistic obligations: see Office of the Commissioner of Official Languages, [Special Report to Parliament – Air Canada: On the Road to Increased Compliance Through an Effective Enforcement Regime](#) (June 2016) at 28. Air Canada is in favour of applying language obligations to all air carriers, to even the playing field: see [Air Canada's Implementation of the Official Languages Act: Aiming for Excellence](#), Report of the Standing Committee on Official Languages for 42nd Parl, 1st Sess, by Hon. Denis Paradis, Chair, (November 2017) at 17.

<sup>95</sup> This Committee has recommended extending the application of the Act to all air carriers: see Senate, Standing Committee on Official Languages, [Air Canada's Obligations Under the Official Languages Act: Towards Substantive Equality](#), (March 2012) at 27 (Chair: Hon Maria Chaput).

French has been breached, namely the ability to file a complaint to the Commissioner of Official Languages.

[87] In addition to filling the legislative void in Quebec, this approach would have much farther-reaching consequences for official language minorities across Canada. It would extend the language rights under the *Official Languages Act* to thousands of workers within federally-regulated businesses across the country. It would also provide a limited right for official language minority workers across Canada to work in the official language of their choice. Further, it would also create a right to services in the minority language for the services provided by federally-regulated businesses in every province. As such, it is a “win” for both French and English in Quebec, and a win for French-speaking minority language communities across the country.

## 4. Enhancing the Vitality of Minority Language Communities

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### A. Modernization Challenge

[88] Part VII of the *Act* provides that the Government of Canada is committed to “enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development”.<sup>96</sup> When this Part was included in the 1988 *Act*, it was heralded as a major advancement for linguistic minority communities.<sup>97</sup> Further, in 2005 when the duty in Part VII was enhanced and became subject to enforcement by the Federal Court, hopes were high that Part VII could provide much-needed additional support to official language minority communities.<sup>98</sup>

[89] Nonetheless, the shortcomings in the implementation of Part VII of the *Act* have been well-documented over the years, and they have continued notwithstanding the 2005 amendment. Federal government departments have not been doing everything necessary to implement Part VII in Quebec.<sup>99</sup> Moreover, there is a lack of transparency in federal funding and federal-provincial agreements for the benefit of minority language communities, for example, in education.<sup>100</sup> These problems are common to official language minority communities across the country.

### B. Proposal

**A modernized *Official Languages Act* should:**

- a. Include clear definitions of “positive measure”, “enhancing the vitality of”, and “assisting in the development of” official language minority communities**

[90] Part of the reason why Part VII is not fully implemented is because the obligations are not clear. For example, the *Act* provides that the Government of Canada is committed to “enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development”.<sup>101</sup> However, none of these terms are defined. Without clear definitions, it is difficult to determine whether a given department is fulfilling its

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<sup>96</sup> *Act*, s 41(1)(a).

<sup>97</sup> See e.g. Testimony of Royal Orr *supra* at 10:23-10:24.

<sup>98</sup> See legislative debates surrounding Bill S-3, *supra*.

<sup>99</sup> *From Myth to Reality*, *supra* at 16.

<sup>100</sup> See *From Myth to Reality*, *supra* at 32-34; *Giving New Momentum*, *supra* at para 111.

<sup>101</sup> *Official Languages Act*, *supra*, s 41(1)(a) [emphasis added].

obligations under the *Act*. Clear definitions of these key terms will help to ensure that the obligations are clearer and thus more enforceable.

**b. Provide clearer lines of accountability for the obligations set out in Part VII**

[91] Under Part VII, the Minister of Canadian Heritage is given responsibility to “encourage and promote a coordinated approach to the implementation by federal institutions of the commitments set out in section 41”.<sup>102</sup> However, the Minister of Canadian Heritage is not given the power to require other departments to effectively implement their obligations under this Part. This means that the lines of accountability for implementing Part VII are not clear. If a community believes a certain department is not fully implementing its obligations under Part VII, on which government door should it knock—the department, or Canadian Heritage? The lack of clarity in roles and responsibilities under Part VII has led to great frustration.<sup>103</sup>

[92] The lines of accountability need to be clearer. This includes replacing the soft language in this Part with executive authority: a department or central agency needs to be empowered to ensure compliance with Part VII across the federal government. This department or central agency must also be accountable for the success or failure to implement Part VII. The buck must stop somewhere.

**c. Require regulations to implement Part VII**

[93] At present, the *Act* provides that the Governor in Council “may make regulations [...] prescribing the manner in which any duties [...] under this Part are to be carried out”.<sup>104</sup> However, no such regulation has ever been made. A modernized *Act* should require regulations to be made, thereby ensuring that the necessary guidance and accountability will be provided to each organization responsible for implementing Part VII.

**d. Place strict transparency mechanisms in the *Act* to account for official languages investments**

[94] At present, the federal government supports official language communities through, among other things, federal-provincial/territorial agreements. For example, federal funding for official languages education is provided through a *Protocol for Agreements for Minority-Language Education and Second-Language Instruction* between the federal government and

<sup>102</sup> *Ibid*, s 42 (emphasis added).

<sup>103</sup> See discussion in Senate, Standing Committee on Official Languages, [Implementation of Part VII of the Official Languages Act: We Can Still do Better](#) (24 March 2010) at 39-43, 46-48 (Chair: Hon Maria Chaput).

<sup>104</sup> *Act*, s 41(3).

the Council of Ministers of Education.<sup>105</sup> However, the agreements under this Protocol do not include adequate transparency mechanisms: there is no way to trace how official languages investments under these agreements are actually spent within the provincial government, or to what extent they actually support the minority language community. This Committee has recommended improved transparency of these investments several times.<sup>106</sup> However, successive governments have failed to heed this recommendation. Thus, a modernized *Act* should provide for these mechanisms, thereby making transparency a mandatory feature of these agreements.

**e. Create official languages obligations attached to all activities funded by federal resources**

[95] The federal government exercises considerable spending power. Official languages obligations should be attached to all federal money. This can be achieved through mandatory language clauses in all federal-provincial/territorial agreements. These clauses would provide that the obligations in the *Act* apply to whatever program or activity is funded under the agreement. The *Act* should provide that such clauses are mandatory wherever federal money is involved.<sup>107</sup>

**f. Require that all federal-provincial/territorial agreements be made in both official languages and be equally authoritative**

[96] In the spirit of the above recommendation, it is only appropriate that all federal-provincial/territorial agreements be made in both official languages. At present, the *Act* provides that some such agreements be made in both official languages, depending on the

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<sup>105</sup> See Council of Ministers of Education, Canada, [Protocol for Agreements for Minority-Language Education and Second-Language Instruction 2013-2014 to 2017-2018 between the Government of Canada and the Council of Ministers of Education, Canada](#), signed on August 14, 2013, Ottawa.

<sup>106</sup> See e.g. *From Myth to Reality*, *supra* at 81 (Recommendation #2: “That when transfer payments affect activities for the benefit for Quebec’s English-speaking communities, federal institutions: (a) ensure at all times that transparent accountability mechanisms are established in cooperation with the province and the communities, and that mechanisms are simple to understand and accessible to the public...”); and, most recently, [Horizon 2018: Toward Stronger Support of French-language Learning in British Columbia](#) (May 2017) at 62 (Chair: Hon Claudette Tardiff): “The federal government has the power – and the duty – to demand greater transparency from the provinces and territories. The committee expects Canadian Heritage to provide lasting solutions in the negotiations on the next Protocol for Agreements on Education” (and Recommendation #14: “That the Minister of Canadian Heritage, in negotiating the next Protocol for Agreements on Education: (a) undertake to include more stringent provisions on money invested in federal-provincial/territorial agreements...”).

<sup>107</sup> See *From Myth to Reality*, *supra* at 96 (Recommendation #14); See also *Giving New Momentum*, *supra* at para 109.



language policies of the particular province.<sup>108</sup> For example, under the current *Act*, bilateral agreements between the federal government and the province of Quebec are generally not required to be made in English and French; they can be in French only.<sup>109</sup> A modernized *Act* should require that all such agreements be made in both official languages. Moreover, it should require that both English and French versions are equally authoritative.<sup>110</sup>

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<sup>108</sup> See *Act*, s 10(2).

<sup>109</sup> *Act*, s 10(2): where none of the three classes of agreements set out in this section applies, the federal government is not required to make the federal-provincial agreement in both official languages. In the case of a bilateral agreement with Quebec where such an agreement does not require approval of the Parliament or cabinet and Quebec does not request that the agreement be made in both languages, this agreement can be made in French only.

<sup>110</sup> See also *Giving New Momentum*, *supra* at para 112.

## 5. Effective Implementation

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### A. Modernization Challenge

[97] Put bluntly, the *Act* is not designed for full and effective implementation. The *Act* includes sweeping declarations and a number of broadly-defined rights. By contrast, the corresponding obligations are limited, the framework for implementation is incomplete, and the compliance mechanisms are weak.

[98] The 1988 *Act*, like its 1969 predecessor, contains a number of important symbolic and declaratory statements.<sup>111</sup> It provides a number of important rights; however, it does not provide for the corresponding obligations necessary to achieve these broad rights. Rather, it provides a number of more circumscribed, or simply unclear obligations. For example, it provides that “English and French are the languages of work in all federal institutions” and that employees of federal institutions have the right to use either official language.<sup>112</sup> In the very next provision, it provides a more limited duty for the government to ensure that the workplace is conducive to the use of both official languages.<sup>113</sup>

[99] In many respects, the 1988 *Act* was a clear improvement upon the 1969 *Act*. Importantly, the 1988 *Act* added a new recourse to the Federal Court. Under this recourse, a complainant can apply to the Federal Court for a remedy where the *Act* has been breached.<sup>114</sup>

[100] However, the 1988 *Act* left in place one major flaw from the 1969 *Act*: both versions of the *Act* provide for decentralized implementation. The *Act* provides that “[e]very federal institution” has duties under Parts IV, V, VI and VII.<sup>115</sup> However, there is no strong central accountability to ensure that “every federal institution” fulfills its duties. The Treasury Board has “responsibility for the general direction and coordination of the policies and programs of the Government of Canada relating to the implementation of Parts IV, V and VI”.<sup>116</sup> However, while the Treasury Board is given a number of powers to carry out its responsibilities, it is not

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<sup>111</sup> See e.g. *Official Languages Act*, RSC 1988, c 38, preamble, ss 2, 4(a), 14, 21, 34, 39(1), 41; *Official Languages Act* 1968-69, c 54, s 2.

<sup>112</sup> *Act*, s 34.

<sup>113</sup> *Ibid*, s 35.

<sup>114</sup> See *Ibid*, , Part X.

<sup>115</sup> *Ibid*, ss 22, 23, 24, 35(1), 36, 41(2).

<sup>116</sup> *Ibid*, s 46.

required to use any of them.<sup>117</sup> Meanwhile, as discussed above, the Minister of Canadian Heritage is given neither full authority nor accountability for Part VII across government.<sup>118</sup> As such, no government entity is truly accountable for the implementation of the *Act* throughout the entire government apparatus.

[101] Therefore, the QCGN agrees with the FCFA’s diagnosis of the systemic flaws in the *Act*, namely that there is no central accountability:

The absence of a “governing soul” in the OLA has led to systemic and recurring flaws in its implementation. Furthermore, the responsibilities it does impose are general, non-binding, or not accompanied by the necessary powers to discharge them.<sup>119</sup>

[102] The *Act* also fails to provide an effective enforcement mechanism. The *Act* creates a Commissioner of Official Languages with the duty and power to investigate complaints of non-compliance.<sup>120</sup> However, when the Commissioner finds a department or organization in breach of its obligations under the *Act*, the Commissioner has no power to order compliance. Rather, the Commissioner is limited to making reports.

[103] Further, while a complainant does have the ability to take their case to the Federal Court for enforcement,<sup>121</sup> this process is lengthy and costly. It places the burden squarely on individual complainants to ensure that the *Act* is enforced. While the Commissioner has the ability to intervene in these cases, and even to bring its own applications to Federal Court, the Commissioner rarely exercises this power.<sup>122</sup> Thus, while it is an improvement over the 1969 *Act*, this Federal Court remedy has severe limitations.

[104] If the *Act* is to provide quasi-constitutional official languages rights, it must also provide effective compliance and enforcement mechanisms to ensure that these rights are respected. Taken together, the *Act*’s compliance and enforcement regime falls well short of what is required. Without a robust compliance regime, these quasi-constitutional rights are merely illusory.

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<sup>117</sup> *Ibid*, s 46(2) (“In carrying out its responsibilities under subsection (1), the Treasury Board may” establish policies, recommend regulations, issue directives, monitor, audit and evaluate federal institutions, provide information, and delegate its powers) (emphasis added).

<sup>118</sup> See para 91 above.

<sup>119</sup> *Giving New Momentum*, *supra* at para 25.

<sup>120</sup> See *Act*, Part IX

<sup>121</sup> See *Ibid*, Part X.

<sup>122</sup> See Mark C Power and Justine Mageau, “Réflexions sur le rôle du Commissaire aux langues officielles devant les tribunaux” (2011) 41:1 *Revue Générale de Droit* 179.

## B. Proposal

### A modernized *Official Languages Act* should provide:

#### a. Central accountability for application of the entire Act

[105] As discussed above, central accountability is needed to ensure proper implementation of the entire *Act*. Put simply, someone needs to be responsible. Under the current *Act*, this responsibility is decentralized. This leaves gaps and the opportunity for organizations to shirk their obligations. As such, central accountability is required. This may entail giving a central agency like the Treasury Board the authority and duty to ensure implementation of the *Act* across government.

#### b. Mandatory and robust consultation

[106] In order to properly plan and implement its obligations under the *Act*, the government must meaningfully engage with the communities it seeks to support. Official languages programming must be “by and for” the official minority communities. As such, the *Act* needs to provide for clear and mandatory obligations with respect to consultation with official language minority communities. This applies not only to the obligations under Part VII, but also to the implementation of all Parts of the *Act*.

[107] To ensure mandatory and robust consultation, the *Act* should provide for the following:

- i. A clear **duty to consult** official language minority communities in the development and implementation of programs aimed at promoting the vitality of these communities;<sup>123</sup>
- ii. A clear **definition of “consultation”**. Such a definition should include the duty of the government interlocutor to give reasons if it decides not to adopt the recommendations put forth by the community representatives in a consultation;<sup>124</sup>
- iii. A duty to **provide resources and build capacity** among official language minority organizations to enable meaningful consultation. This duty is necessary to achieve productive and successful consultation with these

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<sup>123</sup> *Giving New Momentum, supra* at paras 65-69.

<sup>124</sup> *Giving New Momentum, supra* at para 64.

communities. In other words, the duty to consult requires the duty to provide resources for consultation;

- iv. A formal **National Advisory Council**, composed of members of officially-recognized representative organizations of the official languages communities.<sup>125</sup> The composition of this Council must be prescribed in the *Act*. It is essential that the individuals on this Council are truly connected and rooted in their official language minority community. As such, the *Act* must provide that the Council is composed of organizations that are the officially-recognized representatives of the official language minority community;
- v. A declaration that the membership of **parliamentary official languages committees**<sup>126</sup> should reflect the composition of official language minority communities across Canada.

### c. Enhanced and focused role of the Commissioner

[108] The Commissioner's primary role should remain the promotion and advancement of official languages and the investigation of potential breaches of the *Act*.<sup>127</sup>

[109] However, while the Commissioner should remain an ombudsman for official languages, the Commissioner should not have the power to order compliance or enforce sanctions. Such a power would fundamentally alter the Commissioner's role: it would transform the Commissioner into "judge, jury and executioner". The bundling of these functions is antithetical to natural justice and to the role of an agent of Parliament. Rather, the role of enforcement and sanction should lie with a separate entity.

[110] This being said, a modernized *Act* could reinforce the Commissioner's role by adding the requirement that institutions respond to reports by the Commissioner. Further, the *Act* could provide that the Commissioner is required to exercise its power to take legal action in certain circumstances,<sup>128</sup> or that the Commissioner is required to intervene or act as an *amicus curiae*

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<sup>125</sup> *Giving New Momentum, supra* at paras 77-79.

<sup>126</sup> Namely the House of Commons Standing Committee on Official Languages (LANG) and the Standing Senate Committee on Official Languages (OLLO).

<sup>127</sup> See *Act*, s 56.

<sup>128</sup> Currently, s 78(1) of the *Act* provides that the Commissioner may appear at the Federal Court on its own initiative, or on behalf of any person who has applied for the Federal Court remedy.

(friend of the Court) at the Federal Court or Federal Court of Appeal when an individual applicant is unrepresented.<sup>129</sup>

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<sup>129</sup> See *Giving New Momentum*, *supra* at para 96.

#### d. Administrative tribunal with the power to sanction

[111] In order to provide a more accessible yet effective enforcement mechanism, a modernized *Act* should create an administrative tribunal with the power to sanction and order compliance. Where a Commissioner’s investigation has found a breach of the *Act*, such an administrative tribunal could have the jurisdiction to adjudicate cases. The tribunal should have the power to hear evidence, make findings, adjudicate claims, order remedies, and sanction non-compliance.

[112] This idea is not new. The Fédération des francophones hors Québec requested such a tribunal in its submissions leading up to the 1988 *Act*,<sup>130</sup> and the FCFA has also suggested such a tribunal in its brief to this Committee.<sup>131</sup>

[113] This is similar to a recommendation by the House of Commons Standing Committee on Official Languages in its 2017 report on Air Canada’s compliance with the *Act*. In this report, the Committee recommended that a new administrative directorate be created under the office of the Official Languages Commissioner. This directorate would handle remedies and penalties for better enforcement of the *Act*.<sup>132</sup>

[114] The *Act* should also provide for a mechanism for complainants to apply for funding to pursue legal recourses.

#### e. Regular periodic review of the *Act* and *Regulations*

[115] The *Act* does not provide for any periodic review. Unsurprisingly, the *Act* has not been fully reviewed since 1988. Similarly, the 1991 *Regulations* also badly needed to be modernized after 25 years, yet the government only announced a review of the *Regulations* in 2016.<sup>133</sup> Without a mandatory review, there is no telling when the *Act* will next be reviewed. The QCGN echoes the FCFA’s request to provide, in the *Act*, for a comprehensive review of the *Act* and its *Regulations* every ten years.<sup>134</sup>

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<sup>130</sup> Legislative Committee on Bill C-72, Minutes of Proceedings and Evidence, No 7 (April 20, 1988), at 7:7; Fédération de francophones hors Québec, Mémoire de la Fédération des francophones hors Québec adressé au Comité législatif sur le projet de Loi C-72, Ottawa (April 20, 1988).

<sup>131</sup> *Giving New Momentum*, *supra* at para 89.

<sup>132</sup> See House of Commons, Standing Committee on Official Languages, [Air Canada’s Implementation of the Official Languages Act: Aiming for Excellence \(November 2017\)](#) at 26 (Chair: Hon Denis Paradis) (Recommendation #6).

<sup>133</sup> See Treasury Board of Canada Secretariat, News Release, [“Government of Canada to review Official Languages Regulations”](#) (17 November 2016).

<sup>134</sup> *Giving New Momentum*, *supra* at para 155.