Access to Justice in French in the context of modernizing the *Official Languages Act* of Canada

Brief submitted to the Senate Committee on Official Languages on November 15, 2018
Foreword

The mandate of the Fédération des associations de juristes d’expression française (FAJEF), which encompasses seven associations of French-speaking lawyers (AJEFs), is to promote access to justice in French in the majority anglophone provinces and territories of Canada. There are associations of French-speaking lawyers in the four Western provinces and in Ontario, New Brunswick and Nova Scotia. The seven associations of French-speaking lawyers together represent approximately 1,700 legal professionals and the number of French-speaking lawyers increases every year.

The FAJEF works closely with the network of AJEFs, national legal organizations such as the Canadian Bar Association (CBA), and the Fédération des communautés francophones et acadienne du Canada (FCFA). In fact, the FAJEF is a member of the FCFA. In addition, the FAJEF has worked actively for about three years within the Réseau national de formation en justice (RNFJ). The RNFJ membership is made up of educational institutions outside Quebec such as the jurilinguistic centres in Moncton and Ottawa, the Centre canadien de français juridique inc., a number of francophone colleges and universities in Canada, and several anglophone Canadian universities.
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I. INTRODUCTION

To begin, the Fédération des associations de juristes d’expression française de common law inc. (FAJEF) has most of the same general concerns about the Official Languages Act of Canada (OLA) as the Fédération des communautés francophones et acadienne du Canada (FCFA), particularly concerning the weaknesses in the implementation of the Act. For that reason, the FAJEF supports the recommendations made by the FCFA that are set out in the brief submitted in March 2018, and the following three recommendations in particular:

(a) Have a central agency responsible for coordinating official languages issues within the federal government, such as the Treasury Board, specifically;
(b) Modernize the oversight and accountability mechanisms in the OLA;
(c) Enable minority official language communities to participate in the implementation of the OLA.

II. A COMPLEX AND DECENTRALIZED SYSTEM

The justice system in Canada has at least two major characteristics that influence any analysis and any recommendation to enhance access to justice in French in Canada. They are:

- The justice system is composed of multiple actors who often act independently of one another, including the provincial and territorial law societies, the various courts, law faculties, provincial, territorial and federal judiciaries, provincial, territorial and federal ministers of justice, private bar associations, police forces, correctional services, and so on.

- The justice system in Canada is not just complex, it is also heavily influenced by federalism and the division of powers between the federal government and the provinces: for example, the Criminal Code and the Divorce Act are federal statutes, while the administration of justice is under provincial jurisdiction; there are also judges who are appointed by the federal government and others appointed by the provinces and territories; there are federal, territorial and provincial courts and provincial, territorial and federal ministers of justice; and so on.

Since the justice system in Canada is very decentralized and to a large extent under divided jurisdictions, any reform to enhance access to justice in French strongly requires concerted effort on the part of multiple actors and numerous governments. In these circumstances, a federal leadership role is absolutely essential in order to ensure greater access to justice in French in Canada. For that reason, the entire OLA, or any regulations
made under the Act, should expressly identify the federal objectives in relation to the administration of justice in French.

III. MAIN RECOMMENDATIONS RELATING TO THE JUSTICE SYSTEM

While what follows is not an exhaustive list, these are our main recommendations for improving access to justice in French in Canada. For ease of reading and comprehension, we have divided our recommendations into two categories. The first is recommendations concerning the Official Languages Act, and the second relates to other federal statutes.

Main recommendations dealing with the Official Languages Act

(a) Federal objectives relating to access to justice in French in Canada – The federal objectives for providing equal access to justice in French should be made explicit in the OLA or any regulations made under that Act, and include the following objectives:

- Promoting and ensuring full access to justice in French at the federal level.
- Actively promoting the use and status of French in the justice system in Canada.
- Promoting and ensuring full access to justice in French in all areas under federal jurisdiction, including those administered by the provincial and territorial courts, such as divorce, bankruptcy, the Criminal Code, and so on.
- Promoting and supporting access to justice in French in all legal systems and the administration of justice in the provinces and territories, including by having the decisions of the courts of appeal of the provinces and territories translated, carrying out standardization work, developing legal and jurilinguistic tools in French, contributing to the availability of language training, in particular for provincially and territorially appointed judges, and so on.

(b) Strengthening Part VII in order to better promote access to justice in French – The obligations in Part VII of the OLA should be clarified in order to better promote access to justice in French in Canada.

(c) The English and French versions of all judgments of the federal courts to be of equal weight – Judgments of the federal courts should be published in both official languages, within as little time as possible. However, there should be a
maximum acceptable time – for example, six months. The English and French versions of judgments should also be of equal weight.

(d) Right to be understood in the official language of one’s choice without the assistance of interpretation in the Supreme Court of Canada – Any new OLA should repeal the exemption of the Supreme Court of Canada from the application of section 16 of the OLA so that the right to be understood in the official language of one’s choice without the assistance of interpretation in the Supreme Court of Canada is recognized.

(e) Language training for the federal judiciary – Any new OLA should guarantee that language training will be offered to judges of the federal courts and to any other federally appointed judge.

(f) Mandatory assessment of the language skills of candidates for the federal judiciary – The federal process for appointing judges should ensure equal access to justice in French by requiring an assessment of the language skills of candidates for the federal judiciary.

(g) Assessment of language skills and designation of bilingual positions in the federal judiciary to ensure equal access to justice in French at the various federal, provincial and territorial courts – The federal process for appointing judges should ensure equal access to justice in French by periodically assessing, and then designating, bilingual positions in the federal judiciary, to ensure equal access in French at the various federal, provincial and territorial courts.

(h) Court challenges program for language rights – Any new OLA should guarantee the existence of a court challenges funding program for language rights.

(i) A bilingual constitution – Any new OLA should provide that Canada’s various constitutional instruments must be enacted in French as they currently are in English, in order to implement section 55 of the Constitution Act, 1982.

Main recommendations dealing with other federal legislation

(a) Divorce Act and Bankruptcy and Insolvency Act – Canadian litigants should all be able to obtain a divorce or go bankrupt in the official language of their choice and to have the right to use French at all stages of the case, whether or not it takes place in court. This would apply particularly to divorce, given its consequences for families and children. In addition, there should also be a right to use French on appeal.
(b) *Criminal Code* – Canadians who appear in court should also all have the right to use French at all stages of the case, whether or not it takes place in court, both at trial and on appeal.

(c) *Supreme Court of Canada Act* – The judges of the Supreme Court of Canada should all be bilingual and thus be able to understand French without the assistance of interpretation.

**IV. CONCLUSION**

Access to justice in French is an important issue for Canadians. At present, we believe that the federal approach to access to justice in French has too often been fragmented and incomplete. While certain federal initiatives may certainly have helped to promote access to justice in French in Canada, the FAJEF believes that the above recommendations would allow for a more systemic approach that would, at the same time, be better adapted to the complexity and decentralized nature of the justice system, in order to enhance access to justice in French in Canada.