The Honourable René Cormier, Senator
Chair of the Standing Senate Committee
on Official Languages
The Senate
Ottawa, Ontario K1A 0A6

Dear Senator Cormier:

Further to the appearance before your committee on February 25, 2019, I would like to clarify an important point on the quasi-constitutional status of the Official Languages Act in response to the following question from Senator McIntyre, as cited in the unedited transcript of proceedings:

Senator McIntyre: Je remarque que les parties I à IV de la Loi sur les langues officielles ont préséance sur toutes les autres lois fédérales, à l’exception de la Loi canadienne sur les droits de la personne. Pouvez-vous préciser votre pensée à ce sujet?

In the same unedited transcript, Ms. Keith replied as follows:

Ms. Keith: My understanding is that parts following Part IV are not quasi-constitutional in nature, and this means that the duties imposed on organizations by the Official Languages Act are not quasi-constitutional in nature. It is not an area that I practise in, so I would not offer any further comment except to say that under the Canadian Human Rights Act, the entire legislation is treated as quasi-constitutional in nature.

It is well established that the 1988 Official Languages Act is no ordinary statute. The entire Act has quasi-constitutional status. This gives it a special place within the Canadian legal system and means that the Act takes precedence over all other "ordinary" legislation. It belongs to a privileged category of quasi-constitutional legislation that reflects "certain basic goals of our society" and must be so interpreted "as to advance the broad policy considerations underlying it." (Canada (Attorney General) v Viola, [1991] 1 F.C. 373 (FCA), p. 386.)
The Supreme Court of Canada has confirmed the Act’s quasi-constitutional status a number of times:

The importance of these objectives and of the constitutional values embodied in the *Official Languages Act* gives the latter a special status in the Canadian legal framework. Its quasi-constitutional status has been recognized by the Canadian courts. . . . The constitutional roots of that Act, and its crucial role in relation to bilingualism, justify that interpretation. (*Lavigne v Canada (Office of the Commissioner of Official Languages)*, 2002 SCC 53, [2002] 2 S.C.R. 773, para. 23. See also: *Thibodeau v Air Canada*, 2014 SCC 67, [2014] 3 S.C.R. 340, para. 12.)

I deemed it important to correct this statement in order to clear up any confusion on this issue.

In response to the specific point raised by Mr. McIntyre, the purpose of section 82 of the *Official Languages Act* is to provide a mechanism to resolve the conflicts of law that occur from time to time. For example, in *Lavigne v Canada (Office of the Commissioner of Official Languages)*, the Court had to decide on the application of the *Official Languages Act* and the *Privacy Act*—both of which are quasi-constitutional statutes and on equal footing within the Canadian legal system—in relation to each other. In its analysis, the Court cited section 82 of the *Official Languages Act* to resolve the specific conflict of law before it. Section 82 is therefore not the “source” of the quasi-constitutional status of the *Official Languages Act*; rather, it provides a legislative interpretation tool in the event of conflict with other statutes.

If you have any questions or need further clarification, please do not hesitate to contact me.

The French version of this letter is enclosed.

Yours sincerely,

[Signature]

Raymond Théberge

Encl.

c.c.: Ms. Fiona Keith, Senior Counsel,
Canadian Human Rights Commission