

**ASYMMETRICAL FEDERALISM AND  
MINORITY FRANCOPHONE  
COMMUNITIES IN CANADA**

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## ASYMMETRICAL FEDERALISM AND MINORITY FRANCOPHONE COMMUNITIES IN CANADA

### INTRODUCTION

This document explores the concept of asymmetrical federalism as one way of approaching official languages issues in Canada. It begins by summarizing the legislative and historical contexts that have affected official languages since the end of the 1960s. Secondly, it considers the diversity of language contexts in Canada. It then discusses how legal action has shaped the circumstances of minority francophone communities over the past 30 years. Fourthly, it examines the concept of asymmetrical federalism, which aims to respect the particular characteristics of these communities while relying less on active recourse to legal action. Finally, it shows that the management of official languages in Canada is increasingly characterized by asymmetrical practices that can meet the needs of Canada's francophone and Acadian communities to varying degrees.

### CONTEXT

The power to legislate in language matters is not clearly defined in the Constitution. Rather, it is an “ancillary power,” related to the exercise of jurisdiction by Parliament or the provincial legislatures in their respective fields of competence.

Over the years, the federal government has undertaken certain constitutional and legislative measures in order to recognize and further the development of official language minority communities. From the beginnings of Confederation, section 133 of the *Constitution Act, 1867*<sup>(1)</sup> allowed for the use of English and French in parliamentary debates and court proceedings, and in the printing and publication of laws by the Parliament of Canada and the Quebec legislative assembly. Similar obligations applied to the Manitoba legislature pursuant to section 23 of the *Manitoba Act, 1870*.<sup>(2)</sup>

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(1) *British North America Act* (S.C. 1867, c. 3 [reprinted R.S.C. 1985, App. II, No. 5]).

(2) *Manitoba Act, 1870* (S.C. 1870, c. 3 [reprinted R.S.C. 1985, App. II, No. 8]).

In 1969, the federal government enacted the first *Official Languages Act*,<sup>(3)</sup> which made English and French the official languages of Canada. This Act gives both languages equal status within the institutions of Parliament and the Government of Canada. The Act led to the creation of the role of Commissioner of Official Languages. In 1988, a revised version of the *Official Languages Act*<sup>(4)</sup> was passed; it stated that the public has the right to be served in the official language of its choice, and that employees of the federal public service have the right to work in French or in English within certain designated bilingual regions. One of the key additions to the Act, Part VII, expresses the government's commitment to "enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development; and fostering the full recognition and use of both English and French in Canadian society." The Department of Canadian Heritage is responsible for the implementation of that commitment. Moreover, Part X of the Act includes a right of recourse allowing any complainant to apply to the Federal Court to have his or her language rights enforced.

In 1982, the federal government enacted the *Canadian Charter of Rights and Freedoms*,<sup>(5)</sup> agreed to by 9 of the 10 provinces. Sections 16 to 20 of the Charter gave French and English constitutional status as official languages of Canada and New Brunswick. These sections entrenched the equality of status of the two official languages, confirmed the right to use either language in parliamentary debates or before the courts, mandated the printing and publication of legislation in both languages, and guaranteed the public's right to receive services in the language of one's choice, under the applicable criteria of "significant demand" and "nature of the office." Section 23 of the Charter guarantees the right to education in the minority language "where numbers warrant."

Legislation furthering the recognition of both languages has also been passed in certain provinces. For instance, New Brunswick, which has had its own *Official Languages Act*<sup>(6)</sup> since 1969, recognized the equality of French and English language communities within

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(3) *Official Languages Act* (R.S.C. 1970, c. O-2, s. 2).

(4) *Official Languages Act* (R.S. 1985, c. 31 (4<sup>th</sup> supp.)). This new Act replaces the 1969 Act.

(5) *Canadian Charter of Rights and Freedoms* (R.S.C. 1985, App. II, No. 44, schedule B).

(6) *Official Languages Act* (S.N.B. 2002, c. O-0.5 (R.S.N.B. 1973, c. O-1)).

the Charter.<sup>(7)</sup> Ontario passed a law guaranteeing services in French “where numbers warrant,” that is, within 23 designated regions, where at least 10% of the population is French-speaking.<sup>(8)</sup> Certain provinces such as Prince Edward Island,<sup>(9)</sup> as well as Yukon,<sup>(10)</sup> the Northwest Territories<sup>(11)</sup> and Nunavut<sup>(12)</sup> also have laws specifying the extent of services offered by the government in the minority language. In Manitoba, a policy on French language services, promulgated in 1989 and revised in 1999, authorizes the provision of French language services within three designated regions where the demographic concentration of French speakers is the highest. However, this policy does not have force of law. Language laws in Alberta<sup>(13)</sup> and Saskatchewan<sup>(14)</sup> declare these provinces to be unilingual (English) but allow the use of French in debates in the legislative assembly or before certain designated courts. No language laws have yet been enacted in Newfoundland and Labrador, Nova Scotia and British Columbia.

In Quebec, the adoption of the *Charter of the French Language*<sup>(15)</sup> in 1977 made French the official language of that province, while recognizing the status of the English language in certain institutions such as school boards, municipalities and health care institutions. With the passage of Bill 101, Quebec asserted its role as protector of the French language at the provincial level. The acknowledgement of Quebec’s power to legislate on language was at the same time a recognition of the need for an asymmetrical application of language rights in Canada.

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(7) The *Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick* (S.N.B. 1981, c. O-1.1), enacted in New Brunswick in 1981, was entrenched in the *Canadian Charter of Rights and Freedoms* in 1993, s. 16.1.

(8) The *French Language Services Act* (R.S.O. 1990, c. F-32), enacted in Ontario in 1986, does not give French official language status, but nevertheless designates 185 organizations that must offer French language services.

(9) *French Language Services Act* (S.P.E.I. 1999, c. 13).

(10) *Yukon Languages Act* (S.Y. 1988, c. 13).

(11) *Official Languages Act* (R.S.N.W.T. 1988, c. O-1).

(12) *Ibid.*

(13) *Languages Act* (R.S.A. 1988, c. L-7.5).

(14) *Language Act* (R.S.S. 1988-1989, c. L-6.1).

(15) *Charter of the French Language* (R.S.Q. 2002, c. C-11 (1977, 5)), also known as Bill 101.

This affirmation of Quebec's rights caused a rift between Quebec and Canada's francophone and Acadian communities. Until the 1990s, minority francophone communities had demanded the strict application of the principle of linguistic duality in Canada, which presupposed equality between the language rights granted to Quebec's anglophone community and those granted to francophone and Acadian communities in the rest of the country. This approach often proved incompatible with Quebec's nationalist actions and aspirations.

With the adoption of the *Canadian Charter of Rights and Freedoms*, minority francophone communities launched an increasing number of court actions to have their rights recognized, invoking the need for the symmetrical application of language rights throughout Canada. Because of past intolerance on the part of provincial governments with regard to the rights of francophone minority communities, these communities feared the possibility that the power to legislate in matters of language might be decentralized to the provinces. Over the years, francophone communities preferred, rather, to turn to the federal government, which intervened increasingly in the issue through a range of official languages programs and policies. According to Pierre Foucher, active recourse to the judicial system, together with increased federal intervention in language matters, was seen by these communities as the only way of effectively protecting their rights.<sup>(16)</sup>

Over the past 10 years, there has been some recognition of the concept of asymmetrical federalism within Canada's francophone and Acadian communities. These communities continue to feel that the French language is threatened throughout Canada. It remains true today that policies are shaped by the dominance of English in the surrounding demographic context (Canadian, North American or global). Official language minority communities all have specific needs with regard to the protection and promotion of their language. They all have very different means, needs and chances of survival: "linguistic duality exists in Canada by virtue of the recognition of the two official languages, but there is no symmetry in the way francophone and anglophone minorities experience linguistic reality" [translation].<sup>(17)</sup> In its recently released Action Plan for Official Languages, the Government of Canada acknowledged that "Because English- and French-speaking communities experience their minority status differently, they expressed specific needs."<sup>(18)</sup>

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(16) Pierre Foucher, "Fédéralisme et droits des minorités : tension ou complémentarité?" in Jean Lafontant, ed., *L'État et les minorités*, Les Éditions du Blé, Saint-Boniface, 1993, pp. 201-227.

(17) Rodrigue Landry, "Les éléments essentiels pour avoir des communautés minoritaires de langues officielles vibrantes," *Bulletin of the Canadian Centre for Linguistic Rights*, Vol. 5, No. 1, 2000, p. 13.

(18) Government of Canada, *The Next Act: New Momentum for Canada's Linguistic Duality. The Action Plan for Official Languages*, National Library of Canada, Ottawa, 2003, p. 7.

From that perspective, the adoption of an asymmetrical approach could promote greater recognition of linguistic diversity within Canadian federalism. Without opposing the equality principle, asymmetrical federalism strengthens the vision adopted by the Supreme Court of Canada in the *Andrews* case,<sup>(19)</sup> which posits respect for differences as the essence of true equality. This implies that the country's various groups must enjoy equal treatment, taking their specific needs into account, but does not necessarily entail the implementation of uniform measures, legislation or rights across all groups. The following quote from Ronald Watts aptly summarizes the necessity of taking into account the specific needs of each of the communities within a federation:

The more diversified the society, the greater is the need for providing some effective political means of articulating the diverse interests. Thus, a federal system, if it is to survive, will need to be able to accommodate the particular demands of the society on which it is based. The spectrum of societies will, therefore, require a spectrum of varying federal solutions, each adapted to the needs of its own society. Moreover, since the balance of forces within a federal society rarely remains constant but alters under the pressures of economic and social development, a federal political system must be flexible and able to adapt to changing social conditions and demands.<sup>(20)</sup>

## **DIVERSITY OF LANGUAGE CONTEXTS IN CANADA**

The Canadian population can be divided into three language groups: French-speaking; English-speaking; and those whose mother tongue is neither French nor English. Anglophones make up the majority of Canada's population (59.1%). That percentage has remained fairly constant since 1991. A growing number of immigrants have a mother tongue that is neither French nor English. The size of this group (allophones) rose from 15.3% in 1991 to 18% in 2001. The French-speaking population has somewhat declined over the same period, dropping from 24.3% to 22.9%. Table 1 provides a breakdown by mother tongue of the Canadian population, based on 2001 census data.

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(19) *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

(20) Ronald L. Watts, *Multicultural Societies and Federalism*, Report presented to the Royal Commission on Bilingualism and Biculturalism, Ottawa, May 1966, pp. 26-27.



**Table 1 – Breakdown of the Canadian Population  
by Mother Tongue, 2001**

Language	Total Population	Number	%
French	29,639,040	6,782,290	22.9
English		17,521,895	59.1
Non-official language		5,334,855	18.0

The situation of Canada’s francophones varies across the country. Quebec’s French-speaking population is concentrated in a territory wherein it is the majority. Will Kymlicka refers to the concept of “national minority” to refer to the members of that community, who “fought to form themselves (or rather to maintain themselves) as separate and self-governing societies.”<sup>(21)</sup> Quebec’s francophone population was about 81.4% of its overall population in 2001.

Minority francophone communities have very specific linguistic contexts which vary according to the concentration of minority speakers in any given region. Thus, it is easier to live in French in New Brunswick, the only officially bilingual province, than in British Columbia, where no law protects the francophone minority. Similarly, it is easier to live in French if you live in the eastern or northeastern parts of Ontario, where close to two-thirds of the province’s francophone population is concentrated, rather than in the northwest, where the proportion of francophones is less than 2%. The same is true of Quebec’s anglophone community; it is easier to live in English in Montréal, where there is a strong concentration of English-speakers, than in the Gaspé region, where English-speakers are very dispersed. Table 2 provides a breakdown by province and territory of Canada’s minority language population, based on 2001 census data.

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(21) Will Kymlicka, “Multinational Federalism in Canada: Rethinking the Partnership,” in Guy Laforest and Roger Gibbins, eds., *Beyond the Impasse, Toward Reconciliation*, Institute for Research on Public Policy, Montréal, 1998, p. 15.

**Table 2 – Characteristics of Canada’s Minority  
Language Population, 2001**

Province	Total Population	Mother Tongue		Language Spoken at Home		Linguistic Continuity
		Number	%	Number	%	%
Newfoundland & Labrador	508,080	2,350	0.5	995	0.2	42.3
Prince Edward Island	133,385	5,885	4.4	2,820	2.1	47.9
Nova Scotia	897,570	35,375	3.9	19,790	2.2	55.9
New Brunswick	719,710	239,355	33.3	217,775	30.3	91.0
Quebec (anglophones)	7,125,580	591,380	8.3	746,900	10.5	126.3
Ontario	11,285,550	509,265	4.5	307,300	2.7	60.3
Manitoba	1,103,695	45,930	4.2	20,895	1.9	45.5
Saskatchewan	963,150	18,630	1.9	4,805	0.5	25.8
Alberta	2,941,150	62,240	2.1	20,565	0.7	33.0
British Columbia	3,868,875	58,890	1.5	16,905	0.4	28.7
Yukon	28,520	930	3.3	430	1.5	46.2
Northwest Territories	37,105	1,035	2.8	395	1.1	38.2
Nunavut	26,670	420	1.6	225	0.8	53.6
<b>Totals</b>						
Minority language population	29,639,040	1,571,685	5.3	1,359,800	4.6	86.5
Francophone population (not including Quebec)	22,513,460	980,305	4.4	612,900	2.7	62.5

## LEGAL ACTION AND OFFICIAL LANGUAGES

### A. Judicial Power and the Federal Government in Support of Minority Official Language Communities

At the end of the 1970s, the federal government introduced the Court Challenges Program, to assist official language minority communities in initiating court proceedings to clarify and affirm their language rights. This program originated in a context where the protection of language rights was called into question in Quebec in the *Blaikie* case,<sup>(22)</sup> the courts had to determine whether the *Charter of the French Language* adversely affected the application of sections 93 and 133 of the Constitution. Likewise, the *Forest*<sup>(23)</sup> case in Manitoba sought to

(22) *Blaikie v. Attorney General of Quebec*, [1979] 2 S.C.R. 1016.

(23) *Attorney General of Manitoba v. Forest*, [1979] 2 S.C.R. 1032.

determine whether restrictions on the use of the French language imposed in 1890 by that province contravened the rights protected by the Constitution pursuant to section 23 of the *Manitoba Act, 1870*. The government decided to fund these two cases in order to clarify the scope of the protection afforded to official language minorities by the Constitution.

In 1982, entrenchment of the *Canadian Charter of Rights and Freedoms* in the Constitution made it possible to guarantee a range of rights and freedoms to official language minority communities, and affirmed the equality of status and privilege of the two official languages of Canada. The Court Challenges Program was then broadened so as to provide financial support to individuals and groups wishing to challenge the laws, policies and practices of the federal government with regard to rights newly entrenched in the Charter. Over the years, minority francophone communities increasingly turned to the courts to have their linguistic rights enforced.

Francophone and Acadian communities often justified their recourse to the courts by invoking equal rights and the parity that should logically exist with Quebec anglophones. The equal rights rationale posits that the citizens of a country have the same rights and must obey the same rules, no matter where they live in the federation. It also rests on the notion that minority communities must receive services comparable to those of the majority and to those of other minorities within the federation, in this instance the anglophone minority of Quebec.

Minority francophone communities have undoubtedly derived certain collective advantages from turning to the courts to have their rights protected. Since 1982, certain Supreme Court rulings have clarified the scope of language rights in Canada. For instance, the *Mahé*<sup>(24)</sup> case in 1990 confirmed the right of francophone communities to manage their French-language schools. “Since 1990, nearly all of the provinces and territories have institutionalized a school governance structure for the French-speaking minorities (provincial or regional school board) and the confirmation of their rights has given new assurance to the French-speaking communities.”<sup>(25)</sup>

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(24) *Mahé v. Alberta*, [1990] 1 S.C.R. 342.

(25) Office of the Commissioner of Official Languages, “Ten years ago, the *Mahé et al.* decision of the Supreme Court of Canada transformed education in the official language minority communities,” News Release, 14 March 2000.

More recently, in the *Beaulac*<sup>(26)</sup> case, the Supreme Court ruled that linguistic rights must be construed in a broad and generous way by the courts. The decision “established a new framework for the recognition of language rights in the judicial system. That judgment held that the federal and provincial governments have an obligation to establish institutional bilingualism in the courts and to ensure that individuals and minority official language communities have equal access to services of equal quality.”<sup>(27)</sup> The Court concluded that the language rights contained in the Charter created obligations for the State and required that government measures be put in place to ensure that official language communities be maintained and allowed to flourish. More specifically, the *Beaulac* ruling recognized that anyone charged with a criminal offence had the right to a trial in the official language of his or her choice.

In the *Arsenault-Cameron*<sup>(28)</sup> case, the Supreme Court recognized that the true equality of both official languages meant that, if necessary, the minority communities could be treated differently, taking their particular situation and needs into account so as to provide a level of education services equivalent to that of the majority. The obligations set out in section 23 of the Charter have a remedial character, which implies the adoption of affirmative measures to promote the development of official language communities.

The *Reference re Secession of Quebec*<sup>(29)</sup> led to the recognition of four fundamental principles that are not entrenched in the Constitution but are part of the conventions of the Canadian political system: federalism; democracy; constitutionalism and the rule of law; and respect for minorities. The protection of minority rights constitutes, according to the Supreme Court, an “underlying principle” or a “Constitutional value” which must be taken into account in exercising constitutional and political power. In the case of official language communities, the interpretation of such principles has often highlighted the importance of protecting community institutions that serve the purpose of maintaining and developing those communities.

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(26) *R. v. Beaulac*, [1999] 1 S.C.R. 768.

(27) *Environmental Scan: Access to Justice in Both Official Languages*, final report submitted to Justice Canada by PGF Research, 26 July 2002, p. 8.

(28) *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3.

(29) *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217.

In the Montfort Hospital case<sup>(30)</sup> in Ottawa, the Ontario Court of Appeal recognized that the hospital was an institution essential to the survival and development of the Franco-Ontarian community. The decision to massively reduce the health services offered by that hospital, as proposed by the Health Services Restructuring Commission, would have contravened the unwritten Constitutional principle of respect for the rights of minorities. This decision has had repercussions throughout the country, since its conclusions are increasingly being used to highlight the importance of maintaining community institutions to further the development of official language minority communities.

Such decisions show that the end purpose of language rights must be the further development of minority official language communities. These rights must be interpreted in context, taking into consideration the specific situation of each community and the particular linguistic dynamics of each province and territory. This implies that there can be different responses and measures to take the diversity of situations into account.

Court remedies will not, however, provide solutions to all the problems experienced by francophone and Acadian communities. In a study published in 2001, Angéline Martel notes, for instance, that only half of the target school population (that is to say, the offspring of parents who have French as their mother tongue) is currently registered in French schools. Twelve years after the ruling handed down in the *Mahé* case, the author notes that a significant proportion of francophone children are not going to French schools, which no doubt contributes to diminishing the vitality of minority francophone communities.<sup>(31)</sup> According to Pierre Foucher: “If language rights are interpreted in the absence of their political and social contexts, they become incomprehensible and, ultimately, useless” [translation].<sup>(32)</sup> Thus, the development of minority official language communities does not depend solely on jurists. Their development will only really be assured when these communities take on and truly exercise power. In this regard, Michael Mandel believes that:

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(30) *Lalonde v. Ontario (Health Services Restructuring Commission)*, [2001] 56 O.R. (3) 577.

(31) Angéline Martel, *Rights, Schools and Communities in Minority Contexts: 1986-2002. Toward the Development of French through Education, an Analysis*, Department of Public Works and Government Services, Ottawa, 2001.

(32) Pierre Foucher, “Les droits linguistiques au Canada,” in Joseph-Yvon Thériault, ed., *Francophonies minoritaires au Canada. L'état des lieux*, Les Éditions de l'Acadie, Moncton, 1999, p. 307.

To have a right is not necessarily to be more secure. The ability to take advantage of some rights, to make use of them, depends on social power ... Certain rights are not only of little use without social power; their very *meaning* is different. [translation]<sup>(33)</sup>

Moreover, seeking court remedies takes time, energy and financial resources and does not necessarily, in the end, encourage governments to act. Without a clear affirmation of political will on the part of governments to advance minority rights, the courts' interpretation of these rights seems futile. Shortly after taking up her new position, the Commissioner of Official Languages, Dyane Adam, recognized that: "The investigation mechanisms and the threat of court remedy seem to have fostered some resistance, which must be broken down by a change in the culture of federal institutions with regard to linguistic duality."<sup>(34)</sup> She added that: "The Commissioner, like the official language minority communities, believes there have been enough court decisions to clarify the scope of language rights and that it is now time for concrete political and administrative accountability."<sup>(35)</sup> The former Minister of Intergovernmental Affairs, the Honourable Stéphane Dion, for his part maintained that the optimal protection of official language rights would have to rest both on legal action and on political responsibility. According to Mr. Dion:

Legal battles consume resources, wear down litigants and sometimes create divisions within communities ... [U]ntil governments themselves assume their constitutional and legal responsibilities for Canadian bilingualism, citizens and communities will be justified in turning to the courts. At the same time, it is important that court remedy be used advisedly. It must stimulate and encourage governments to move in the right direction, and do nothing that would dissuade them from doing so.<sup>(36)</sup>

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(33) Michael Mandel, *La Charte des droits et libertés et la judiciarisation du politique au Canada*, Les Éditions du Boréal, Montréal, 1996, p. 263.

(34) Office of the Commissioner of Official Languages, *Annual Report, 1999-2000. The Texture of Canada*, Department of Public Works and Government Services, Ottawa, 2000, p. 100.

(35) *Ibid.*, p. 8.

(36) Stéphane Dion, "The Proper Use of the Law in the Area of the Official Languages," Notes for a Keynote Address to Members of the Ontario Bar Association, Toronto, 24 January 2002.

As these comments indicate, an increasing number of stakeholders in the area of official languages feel that the time, energy and financial resources devoted to multiple court actions should, rather, be invested in the real development of communities. More effective means must be found to ensure such development and to encourage more political leadership in that regard.

### **B. Quebec's Nationalist Demands and the Protection of the Rights of Minority Official Language Communities: A Source of Tension**

The nature of relations between Quebec francophones and the other French-speaking and Acadian communities of Canada has fluctuated greatly in the course of the past century. After a more or less harmonious relationship in the first half of the 20<sup>th</sup> century, there was an ideological break between the Canadian and Quebec francophonies at the time of the Quiet Revolution, when the government of Jean Lesage launched a major reform of Quebec's social and political framework.

Until the Quiet Revolution, ... the establishment of a French-Canadian nation from sea to sea was a key element of Quebec's vocation. At the time of the Quiet Revolution, the French-Canadian population began to define itself and to identify with its territory more exclusively. The dawning, gradual affirmation of the Québécois identity provoked the break-up of the French-Canadian nation. The various communities thus gradually began to grow apart. [translation]<sup>(37)</sup>

In 1967, the Estates General of French Canada brought together francophones from all over Canada to discuss the future of the French-Canadian nation. The Estates General marked a new rift between Quebec and the other francophone communities of Canada, the former having rejected "the notion of French Canada in favour of defining itself on a territorial basis" [translation].<sup>(38)</sup> During the same years, Canada's francophone communities began to redefine their own identity on a more territorial basis. Thus, identification as a "Franco-Ontarian," "Franco-Manitoban," or as a "Fransaskois" gradually replaced the notion of "French-Canadian."

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(37) Fédération des communautés francophones et acadienne du Canada, *La francophonie canadienne ... Un espace à reconnaître*, National Library of Canada, Ottawa, 1993, p. 19.

(38) Gaétan Gervais, "Du Canada-français à l'Ontario français," *Le Devoir*, 20 March 2004, p. F8.

The vision of official languages held by francophone communities, one that is based on the equality of rights, contributed in the 1980s and 1990s to deepening the rift between Quebec and the francophone and Acadian communities of Canada. One has only to consider the positions taken by the two parties on the 1990 *Mahé* ruling for an example of the opposition that pits these two visions against each other. The object of this ruling was the recognition of the right of official language minority communities to govern their own schools, a right that was guaranteed by section 23 of the Charter, in the opinion of francophone and Acadian communities. In his brief to the Supreme Court, the Attorney General of Quebec recognized that the Charter guaranteed the right to education in the language of the minority, but that education remained an exclusively provincial area of jurisdiction. Thus:

... the Attorney General maintains that it is incumbent upon the provinces, in the exercise of their legislative jurisdiction, to ensure that these objectives are met by prescribing the curricula which must be offered to the majority as well as to the minority ... The provinces may set guidelines as to the scope of minority control, if circumstances permit. [translation]<sup>(39)</sup>

In demanding treatment equal to that afforded the anglophone majority in their province, and to Quebec's anglophone minority, the francophone communities adopted a position that was diametrically opposed to Quebec's intent to promote the French language on its territory. These conflicting visions were expressed again during the negotiations surrounding the Charlottetown Accord in 1992. At that time, French-speaking communities recommended the entrenchment of the principle of linguistic duality in the Canadian Constitution, while Quebec advocated the recognition of a distinct society. According to José Woehrling:

The divergent viewpoints, if not outright conflict, between Quebec francophones and francophones outside Quebec can be explained by the fact that where language rights are concerned, people are trying to draw a parallel between the situation of francophone minorities and that of the English-speaking minority in Quebec. Politically speaking, any curtailment of the rights of the anglophone minority in Quebec can be used as a pretext to impose the same treatment on francophones outside Quebec, without taking into account the fact that the original

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(39) Attorney General of Quebec, *Mémoire de l'intervenant*, 9 May 1989, pp. 2 and 10.



circumstances of these two groups were quite different. Moreover, the rights of anglophones in Quebec, even limited by Bill 101, are still more extensive than those granted to francophones in most other provinces. In addition, from the legal perspective, any increase in minority rights, to the extent that it applies symmetrically across Canada, provides new weapons to the English minority that wishes to contest Bill 101, and threatens Quebec's language policy. [translation]<sup>(40)</sup>

From the beginning of the 1990s, Quebec francophones and minority francophone communities in other provinces increasingly recognized the importance of a rapprochement. In 1993, the Fédération des communautés francophones et acadienne du Canada (FCFA) proposed a policy of rapprochement between Quebec and francophone and Acadian communities, according to which:

Quebec could in fact choose to spearhead the Canadian and North American francophonie, in addition to leading the Quebec francophonie ... In doing so, rather than considering itself the source and sole depository of the wealth of the North American francophonie, Quebec would contribute to making the latter a tool for the cultural and economic development of all francophones in the northern part of this continent. To do so, it will have to accept that the status of French outside Quebec cannot be considered in isolation from Quebec's situation, and that the development and promotion of French is a continental phenomenon that is not limited to Quebec. [translation]<sup>(41)</sup>

In 1994, the Conseil de la langue française du Québec recognized that it was important for all francophones in Canada to give themselves the means of protecting and promoting the French language, by strengthening the solidarity among francophones in Canada through a more extensive collaboration.<sup>(42)</sup> This will to promote the French language was apparent in the 1995 Quebec Intergovernmental Affairs Secretariat policy's commitment to ensuring "the promotion of the French language in Canada" and "the vitality of francophone communities throughout the country." According to this policy:

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(40) José Woehrling, "Convergences et divergences entre les politiques linguistiques du Québec, des autorités fédérales et des provinces anglophones : le nœud gordien des relations entre les Québécois francophones, la minorité anglo-québécoise et les minorités francophones du Canada," in Government of Quebec, *Pour un renforcement de la solidarité entre francophones au Canada : réflexions théoriques et analyses historique, juridique et sociopolitique*, Conseil de la langue française, Québec, 1995, p. 338.

(41) Fédération des communautés francophones et acadienne du Canada (1993), p. 25.

(42) Government of Quebec, *Pour un renforcement de la solidarité entre francophones au Canada : réflexions théoriques et analyses historique, juridique et sociopolitique* (1995).

Francophone solidarity will express itself best if it is experienced through partnerships that francophones conceive, plan and implement together in those sectors that are most important for the promotion of the French language and for the vitality of their communities. The Government of Quebec intends to play a new role in that context, together with all those who wish to join in this new momentum, in Quebec and in the francophone and Acadian communities of Canada. Henceforth, government action will focus on the realization of common projects that will foster dialogue and communication among all francophones in ways that increase the use of the French language. [translation]<sup>(43)</sup>

Since March 2003, the Government of Quebec has repeatedly come out in favour of a rapprochement and a renewal of its commitment to Canada's French-speaking and Acadian communities. The provincial Minister of Canadian Intergovernmental Affairs, Benoît Pelletier, committed himself, in particular, to: playing a more active role within the framework of the Interdepartmental Conference on Francophone Affairs; undertaking an in-depth review of Quebec's policy regarding the francophone and Acadian communities of Canada; creating a new Centre de la francophonie in the Americas; preparing a comprehensive inventory of the priority issues of minority francophone communities; and holding sectoral forums on issues of concern to those communities (e.g., education, health, and culture).

### **C. Acknowledging the Unique Circumstances of Minority Official Language Communities: Looking Beyond Judicial Remedies**

Since the late 1990s, minority francophone communities have appeared receptive to the idea of looking beyond judicial remedies. In a brief submitted in early 2000, the Association canadienne-française de l'Ontario (ACFO) acknowledged the importance of forging partnerships among Canada's francophone communities and noted that expanded rights in recent years had not resulted in an increase in the services available. In ACFO's opinion, "legal discourse and reality are two fairly different things ... [T]ogether we must find ways of doing away as much as possible with court challenges, delays and setbacks of all kinds" [translation].<sup>(44)</sup> Increasingly, judicial recourse is viewed as an option of last resort.

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(43) Government of Québec, *Politique du Québec à l'égard des communautés francophones et acadiennes du Canada. Un dialogue, une solidarité agissante*, Government of Quebec, Québec, 1995, p. 4.

(44) Association canadienne-française de l'Ontario, *Urgence d'agir. Nous sommes, nous serons. Mémoire sur la vitalité de notre communauté francophone et de son érosion par l'assimilation*, 3 January 2000, pp. 2 and 33.

Greater importance now also appears to be assigned to the diversity of circumstances in which different minority communities find themselves. In 1998, the FCFA acknowledged that “the concept of asymmetry must be respected at all times during the upcoming negotiations [of the Canada-Community Agreements], that is to say that the various levels of development and unique realities of each community must be recognized” [translation].<sup>(45)</sup> Speaking at the Forum de la Francophonie in May 2004, the President of the FCFA observed that: “At some point, our laws and our judicial system will have to acknowledge the principle of asymmetry, because problems often tend to arise when attempts are made to apply certain rights in an identical fashion both to minority francophone communities and to Quebec’s anglophone community. Yet, their circumstances are quite different” [translation].<sup>(46)</sup> Addressing the same forum, Minister Benoît Pelletier said he was “pleased to see a consensus of sorts emerge on the concept of asymmetry. It is a concept that better reflects reality, a concept to which the courts could be receptive and which could help in our common efforts to better protect the French language, which after all is the language in need of protection” [translation].<sup>(47)</sup>

The current climate therefore seems right for the adoption of asymmetrical measures and recognition of the unique circumstances experienced by different communities. The next two sections of this paper will focus on defining this concept and examining current asymmetrical practices in Canada.

## ASYMMETRICAL FEDERALISM AND OFFICIAL LANGUAGES

### A. Defining Asymmetrical Federalism in the Canadian Context

In principle, federalism is a system of government that can preserve concepts of unity and diversity within political institutions as well as within the different communities that make up the federation. In some countries, however, this type of political regime has revealed certain shortcomings, inasmuch as it cannot meet every demand made by certain minorities.

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(45) Fédération des communautés francophones et acadienne du Canada, *Synthèse des discussions et résolution de suivi du Conseil national des présidentes et des présidents de la FCFA du Canada pour l'évaluation des Ententes Canada-communautés*, unofficial document submitted by the FCFA, June 1998, p. 2.

(46) Georges Arès, *Mot du président de la FCFA du Canada*, Forum de la Francophonie, Québec, 30 April 2004.

(47) Benoît Pelletier, *Allocution à l'occasion de la clôture du Forum de la Francophonie*, Forum de la Francophonie, Québec, 2 May 2004.

Various proposals ranging from the status quo to outright independence for minority communities have been put forward in an attempt to satisfy these demands within the federal framework. One such proposal is asymmetrical federalism, which already exists in various forms, some more obvious than others, depending on the federations. Asymmetrical federalism allows for the structuring of policies in a way that is more respectful of the needs of each community within the federation. It allows for diversity while giving minorities a means of having that diversity acknowledged (for example, by granting broader powers to them or by recognizing a distinct status or treatment for them).

In essence, asymmetry recognizes the concept of difference. It allows for the fact that individuals, communities or states possess their own unique characteristics and can be treated differently. According to Pierre Foucher, two types of asymmetry best describe the current circumstances of Canada's two main linguistic communities. The first type of asymmetry involves *powers and jurisdictions*.<sup>(48)</sup> This example applies more specifically to the Quebec community, which wants more autonomy and more powers in areas that concern the province more directly. The other members of the federation would be free to continue, if they so wished, to rely on the federal government in these areas. Asymmetry of this nature supposes that provinces can be awarded different powers in recognition of their unique features.

The Constitution already provides for asymmetrical powers and jurisdictions. For example, section 133 of the *Constitution Act, 1867* stipulated that the linguistic guarantees involving the courts and parliamentary records and journals applied only to the Province of Quebec and to the Parliament of Canada. Likewise, the 1982 Charter recognized the equal status of the two official languages only in the Province of New Brunswick and in the Parliament of Canada. Moreover, the notwithstanding provision contained in section 33 of the Charter implies that asymmetrical practices could in fact be applied by those provinces wishing to opt out of section 2 or sections 7 to 15 of the Charter.

The second type of asymmetry involves *linguistic minority rights*.<sup>(49)</sup> The supposition in this case is that francophone and anglophone minority communities should be granted different rights in light of their specific needs and with a view to ensuring that both communities receive equal (and not merely the same) treatment. Francophone and anglophone minorities have not developed to the same degree; they face different survival odds and are not

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(48) Foucher (1993), p. 216.

(49) *Ibid.*

protected to the same extent within their own province. To address the issue of asymmetrical needs, the federal and provincial governments can step in and treat these minorities differently in order to accommodate more readily the specific needs of each community. By differentiating among the various communities that make up a federation, asymmetry seeks to establish a more “egalitarian” basis for relations among these communities. Since some communities are at a disadvantage when compared to others, asymmetrical practices help to eliminate, or at least to reduce, this disadvantage.

### **B. Asymmetrical Arrangements and Liberal Equality**

Asymmetrical arrangements suppose a possible decentralization of decision-making powers to the level with which the community best identifies, that is to the provincial level in the case of Quebec and to the local level in the case of official language minority communities. In Canada, however, the principle of asymmetry often comes up against the principle of equality (i.e., the equality of provinces and equality of individuals), in particular since the coming into force of the Charter.<sup>(50)</sup> Unlike asymmetry, the principle of equality does not involve recognizing diversity within the country. On the contrary, it consists of affirming that all citizens and provinces are the same, regardless of the territory they occupy within Canada. Language is viewed as a feature of common citizenship, and equality of official languages helps to support the sense of belonging shared by all Canadians.<sup>(51)</sup>

Since the patriation of the Constitution, anglophone provinces have often invoked the principle of equality to thwart Quebec’s attempts to be granted a special status within the federation. This pan-Canadian vision has in some respects doomed the principle of asymmetry to failure within the Canadian context. Asymmetry is often wrongly believed to foster inequality, to promote collective rights over individual rights, and to deny equal rights to citizens. Yet, treating groups differently is not incompatible with the concept of equal rights. Consider, for example, the principle of positive discrimination, which gives persons in a minority

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(50) See David Milne, “Equality or Asymmetry: Why Choose?” in Douglas M. Brown and Ronald L. Watts, eds., *Options for a New Canada*, University of Toronto Press, Toronto, 1991, pp. 285-307. See also Réjean Pelletier, “Le Québec et le Canada : asymétrie des pouvoirs et logique d’égalité,” Address to the symposium *Politique des territoires*, 1998.

(51) See Robert Vipond, “Citizenship and the Charter of Rights: The Two Sides of Pierre Trudeau,” *International Journal of Canadian Studies*, No. 14, 1996, p. 180. See also Kenneth McRoberts, “Linguistic Minorities in a Canada-Quebec Partnership,” in Laforest and Gibbins (1998).

situation (for example, women, Aboriginal people and disabled persons) advantages so that they can better integrate into society overall. Thus, in much the same way that persons must be treated differently to ensure equality (since not everyone is in the same situation or has the same needs), it is important to recognize that linguistic minorities may have special needs requiring special treatment. On this subject, Jean Laponce noted:

To the extent that democratic systems are egalitarian, centralized systems, they quite naturally equate certain categories of individuals for whom laws are passed: individual x = individual y; province a = province b. This is the approach used to establish equality among disparate groups with very different powers ... The resulting perverse effect stems from the fact that lawmakers perceive problems in terms of abstract judicial categories rather than in terms of sociopolitical categories, and treat groups with very different language needs and with different survival odds the same way. [translation]<sup>(52)</sup>

In academic circles, a trend is emerging whereby association with a linguistic group is based on geography, not solely on the individual. The principle is simple: the more linguistic communities live in an area in which they form the majority, the more they tend to withstand the pressures exerted by the language of the majority population that surrounds them. According to Jean Laponce:

What matters, if a language is to survive, is the number of persons who speak it as well as the geographical and social density of linguistic contacts among these persons ... The best way of protecting a minority language ... is to confine it to a geographic area, to isolate it geographically from the dominant language which exerts pressure by virtue of sheer numbers and social and political power. [translation]<sup>(53)</sup>

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(52) J. A. Laponce, "L'aménagement linguistique et les effets pervers," in Paul Pupier and José Woehrling, eds., *Langue et droit. Actes du premier Congrès de l'Institut international de droit linguistique comparé*, Wilson and Lafleur, Montréal, 1989, p. 42.

(53) *Ibid.*, p. 39.

### C. Asymmetry and Official Language Minority Communities

The Commissioner of Official Languages has recognized that “given their minority situation and the fact that they have not always received fair treatment in the past, the official language minority communities are entitled to benefit from remedial measures where required to re-establish the equality of the two official language communities.”<sup>(54)</sup> These different treatments can be applied either by the federal government or by provincial governments, depending on which level of government has jurisdiction over a particular area. Generally speaking, the measures taken are designed to meet needs that are unique to each specific linguistic community, whether in terms of safeguarding language, level of development, access to education or social services, and so forth. Depending on their level of concentration in a given region, official language minority communities have different needs which must be taken into account in developing and implementing policies, and in particular when negotiating administrative agreements that affect them specifically.

A number of years ago, in keeping with the spirit of the Royal Commission on Bilingualism and Biculturalism, the Pépin-Robarts Task Force examined various ways of adopting asymmetry in the area of language rights. The Task Force expressed the view that asymmetry is consistent with the spirit of federalism, in that it is more respectful of the unique features of each linguistic community in Canada.

[W]e recognize and accept as a continuing, unavoidable feature of Canadian society that there will be marked variations in the strength, size, character and aspirations of the communities which together make up Canada. This will inevitably be reflected in wide variations among the provinces of Canada, despite their constitutional equality. This we accept as well.<sup>(55)</sup>

The Task Force proposed ways of appeasing the Quebec majority and of helping minority francophone communities in other provinces to flourish, in such a way that these two objectives could be pursued simultaneously. Specifically, it openly acknowledged that asymmetry already existed with respect to the country’s different linguistic communities and

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(54) Office of the Commissioner of Official Languages (2000), p. 29.

(55) The Task Force on Canadian Unity, *A Future Together: Observations and Recommendations*, Minister of Supply and Services Canada, Ottawa, 1979, p. 41 [jointly submitted by Jean-Luc Pépin and John P. Robarts.]

implied that recognition of duality entailed the recognition of Quebec as the primary home of Canada's francophones. In the opinion of the Task Force, "support for the cultural activities of the English- and French-speaking minorities which are of a local or provincial nature should be provided by the provinces and by the minority communities themselves, rather than by the federal government."<sup>(56)</sup> A proposal such as this supposes a decentralization of jurisdiction over language in favour of the provinces, which in this case are deemed to be better able to meet the specific needs of minorities in their territory.

In order to make the application of asymmetrical arrangements more acceptable in the Canadian context, an effort must be made to recognize the sociological dimension of the minority concept. In the words of Robert Vandycke:

Rather than holding to a very broad (even simplistic) definition [of the minority concept] and granting the same set of rights to all groups that correspond to a set list of criteria, would it not be more appropriate to acknowledge that diverse situations do exist? Plurality would thus be a starting point and efforts would be made to classify groups. The law would thus better reflect this sociological reality, and rights could be graduated and better geared to different types of minorities, depending on their environment. The controversial question of which cultural groups should be protected and what form and scope such protection should take would therefore apply to much more specific issues. In the process, the political and legal debate might perhaps become less emotionally charged. [translation]<sup>(57)</sup>

The survival of minority communities, especially those that are more dispersed, is largely a function of their political clout and of their access to social and economic institutions likely to ensure community development. According to Christer Laurén, "the number of opportunities a minority has to use its language depends on how actively involved it is in running its own affairs" [translation].<sup>(58)</sup>

To ensure that minority official language communities have an opportunity to develop and flourish over the long term, it is critically important that the government support a vision of bilingualism that looks beyond individual rights and seeks to support institutions and

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(56) *Ibid.*, p. 54.

(57) Robert Vandycke, "Le droit des minorités : quels droits, pour quelles minorités? Du concept à une typologie des minorités," in Lafontant (1993), p. 91.

(58) Christer Laurén, "Le suédois en Finlande," in Jacques Maurais, ed., *Politique et aménagement linguistiques*, Conseil de la langue française, Québec, 1987, p. 244.



associations with direct links to the community. Community development becomes possible only if minorities have access to associations that can represent their interests and to education and health services in their own language, and only if they can maintain ties with other members of their community who share a same language within a given territory. Minority francophone communities need leaders who will ensure the survival of these communities by controlling their own social institutions and by ensuring that they are sufficiently represented. The debate that swirled around the case of the Montfort Hospital in Ontario served as a reminder that for the province's francophones, maintaining access to health care services in French is key to the survival of this community in Ontario.

## **PRACTICES BASED ON ASYMMETRY**

Following a series of budget cuts in the 1990s, the flow of federal assistance to minority official language communities diminished. Several government reports examined the effect of government changes on language rights in Canada, concluding that these changes had adversely affected the quality of services provided to minority language communities and resulted in a loss of official language rights.<sup>(59)</sup> In response to government changes in recent years, the federal and provincial governments launched a series of initiatives to offset the lack of services in the area of official languages. Given the prevailing climate, an effort needed to be made to find new, less costly and more effective ways of continuing to meet these communities' needs, while working more closely with the agencies speaking on their behalf. Governments began to consider new arrangements with the various communities that made up the federation. These were based on administrative agreements, cooperation and coordinated action between governments and communities. The latter came to view their development increasingly as being conditional upon their ability to play a greater role in the decision-making process. In a report

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(59) See Donald J. Savoie, *Official Language Communities: Promoting a Government Objective*, study commissioned by the Department of Canadian Heritage, the Treasury Board of Canada Secretariat and the Privy Council Office, November 1998. See also Yvon Fontaine *et al.*, *No Turning Back: Official Languages in the Face of Government Transformations*, report prepared by the Task Force on Government Transformations and Official Languages for the President of the Treasury Board, the Honourable Marcel Massé, Ottawa, January 1999. See also the Honourable Jean-Maurice Simard, *Bridging the Gap: From Oblivion to the Rule of Law. Development and Vitality of the Francophone and Acadian Communities: A Fundamental Obligation for Canada*, The Senate of Canada, Ottawa, 16 November 1999.

prepared for the President of the Treasury Board, Yvon Fontaine underscored the importance of establishing a relationship of trust between the federal government and official language communities, one “taking into account the diversity of their circumstances and needs.”<sup>(60)</sup>

In recent years, the administration of official languages in Canada has been marked increasingly by asymmetrical practices that take into account, to varying degrees, the needs of these communities. Tangible initiatives have been undertaken by various federal departments, notably the Department of Canadian Heritage, with a view to promoting the development of official language communities. Some of the major programs launched by the Department of Canadian Heritage include federal-provincial-territorial agreements on education (minority- and second-language instruction), federal-provincial-territorial agreements for the promotion of official languages, Canada-Community Agreements, and the Interdepartmental Partnership with the Official-Language Communities. Former Intergovernmental Affairs Minister Stéphane Dion had this to say about these initiatives:

Every policy is developed on the basis of the needs that emerge from the context, be it Canada-Community agreements or every federal-provincial-territorial agreement for minority-language education, or for second-language instruction, or the promotion of official languages, or for the delivery of public services relating notably to the arts and culture, health, translation, language training, economic development and legal services. If, in the final analysis, the amounts for the different programs Canadian Heritage provides for official-language minorities are such that Francophones living outside Quebec receive per-capita funding that is more than twice that given to Anglophones in Quebec, it is not because of a desire to give precedence to French *a priori*, but rather because the needs are not the same ... [T]he Government of Canada is sparing no effort to ensure that its linguistic and cultural policies take into account the specific circumstances of each province and each community.<sup>(61)</sup>

To illustrate in greater detail asymmetrical arrangements made by the federal government in the area of official languages, consider the example of the Canada-Community Agreements. An initial series of agreements was negotiated in each province and territory in 1994-1995, followed by another series in 1999-2000. The next round of talks is slated for 2004-2005. These agreements are negotiated in consultation with the various organizations acting as official spokespersons for these communities.

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(60) Fontaine (1999), p. 51.

(61) Stéphane Dion, “Language rights in Canada: a symmetrical and asymmetrical application,” notes for a speech delivered at the Symposium on Language Rights, Université de Moncton, Moncton, 15 February 2002.

Through these agreements, the federal government seeks to encourage communities to take charge of their own affairs. Agreements provide for funding to be made available to agencies in minority communities in a range of areas such as culture, education, health, and economic institutions. To secure funding, agencies must submit a multi-year plan outlining their priorities and the actions they intend to take to promote community development. These plans may vary from one province to another, depending on the specific needs of the communities.

For example, the four areas identified for priority consideration by British Columbia's francophone community for 1999-2004 were: institutionalization; human resources training and management; networking and visibility; and partnership and consolidation. The Franco-Ontarian community, on the other hand, identified seven priority areas for development in 2001-2006: the growth and expansion of the French fact in Ontario; recognition of francophone rights in Ontario; universal access in French to a full range of services and programs; organizational vitality at all levels; the active participation of francophones at the local, regional, provincial, national and international levels; consensus building among francophones in Ontario; and the continuity of the French fact in Ontario. The funding available under these agreements also varies from one province to another, based on the specific needs expressed by each official language community.

Another recent example of an initiative focusing on the unique circumstances of official language communities is the Action Plan for Official Languages unveiled by the Government of Canada in March 2003. In this Action Plan, the government sets out a series of measures targeting education, community development, the federal public service and language industries. These measures vary depending on whether they are geared to francophone or anglophone communities. With respect to education, for example, the federal government is promoting distance education as a means of meeting the needs of anglophone communities outside the Montréal area. More measures have been proposed for francophone communities, since shortcomings in the area of minority language education are greater. Special emphasis has been placed on student recruitment and retention, on increasing the pool of qualified teachers and improving access to post-secondary and early childhood education, on the creation of community education centres and distance education opportunities. With this influx of new funding for education, the federal government is committed to supporting innovative projects geared to the priorities identified by each official language minority community.

Federal government actions over the years have tended to favour more systematically the use of asymmetrical treatments in the case of different official language minority communities. This trend toward acknowledging the diversity of situations is reflected in a growing number of documents released by federal departments. For example, the authors of a study commissioned by the Justice Department in the summer of 2002 list those actions likely to improve access to justice in both official languages, while bearing in mind the specific needs of each province and territory. In their opinion, “the provinces and territories are evidently at different stages when it comes to access to justice in both official languages.”<sup>(62)</sup> The authors note that there is very limited access to justice in French in the three territories because their judicial systems are not as highly developed, unlike the situation in the three central provinces (Quebec, New Brunswick and Ontario), where fewer problems are encountered in terms of accessing the justice system in both official languages. Furthermore, the level of dissatisfaction with the provision of judicial and legal services is much higher among francophone communities (varying from 45% to 58%, depending on the service area) than it is among anglophone communities (where the level hovers between 0% and 13%, depending on the service area). To correct these problems, the authors of the study propose various solutions tailored to the specific realities of the minority communities in each province and territory.

## CONCLUSION

As noted, application of the law has produced positive results for official language minority communities in recent years. However, former Intergovernmental Affairs Minister Stéphane Dion acknowledged that “it would be far better for governments and lawmakers to demonstrate some leadership and move, without being prompted by the courts to do so, to take a dynamic, liberal approach to this matter, as clearly indicated to them by case law.”<sup>(63)</sup> Communities would have a better chance of flourishing if they were guaranteed access to institutions and services in their own language in all facets of their life (i.e., education, health, justice, etc.). The government must therefore find ways of meeting the long-term development needs of these communities. With asymmetrical federalism, it is becoming more acceptable to give minorities the means of ensuring that linguistic diversity, a defining feature of this country, is truly recognized.

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(62) *Environmental Scan: Access to Justice in Both Official Languages* (2002).

(63) Dion (2002).

Application of the law and recourse to asymmetrical arrangements must be viewed as complementary types of arrangements in the area of official languages. Policy-making in Canada has already been marked in recent years by the adoption of asymmetrical practices. A growing number of minority francophone communities already seem to appreciate the benefits of asymmetry and of having Quebec support their demands.

Without question, the successful application of asymmetrical measures depends on the political will to follow through with this course of action. The commitment undertaken by the federal government in its recent Action Plan for Official Languages, which is aimed at strengthening mechanisms for consultation with the communities, is a step in the right direction. The Quebec government has adopted a new vision. It is looking to renew and strengthen its ties with, and its commitment to, francophone minority communities – a position that also bodes well for the future. The Forum de la Francophonie organized in May 2004 by the Quebec government represents a tangible sign of renewed solidarity among Canada's different francophone communities. The various commitments made will come to fruition only through the implementation of concrete measures that take into account communities' real priorities and needs.